

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	July 18, 2020 / 9:35 pm / 3245 W. Fullerton Avenue, Chicago, IL 60647.
Date/Time of COPA Notification:	July 19, 2020 / 3:37 pm.
Involved Sergeant #1:	Sergeant Michael Tews/ Star #1463 / Employee ID# [REDACTED] / DOA: October 28, 2002 / Unit: 025/714 / Male / White.
Involved Officer #1:	Officer William Messino / Star #18980 / Employee ID # [REDACTED] / DOA: October 28, 2002 / Unit: 025/714 / Male / White.
Involved Officer #2:	Officer Zachary Much / Star #3952 / Employee ID # [REDACTED] / DOA: January 16, 2018 / Unit: 014 / Male / White.
Involved Individual #1:	[REDACTED] / Male / White.
Involved Individual #2:	[REDACTED] / Female / Hispanic.
Involved Individual #3:	[REDACTED] a.k.a. [REDACTED] / Female / White.
Case Type:	05A – Excessive Force.

I. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Sergeant Michael Tews	1. Driving on the sidewalk, without justification.	Exonerated.
	2. Using excessive force by driving your vehicle into pedestrians, without justification.	Sustained / 90-day suspension
	3. Failing to investigate if your use of force resulted in any injuries.	Sustained / 90-day suspension
	4. Failing to request appropriate medical aid for the injured person(s) on scene.	Not Sustained.
	5. Failing to use time as a tactic to mitigate the need for force.	Sustained / 90-day suspension
	6. Failing to accurately detail the force used in a Tactical Response Report.	Sustained / 90-day suspension

	7. Failing to report to OEMC your reportable use of force.	Sustained / 90-day suspension
	8. Failing to operate your Department vehicle with “due regard for the safety of all persons.”	Sustained / 90-day suspension
	9. Failing to activate the emergency-roof lights while operating your Department vehicle in non-pursuit emergency operations.	Exonerated.
	10. Failing to yield the right-of-way to all pedestrian traffic while operating your Department vehicle in non-pursuit emergency operations.	Sustained / 90-day suspension
	11. Failing to request OEMC to assign a field unit to investigate your traffic collision.	Unfounded.
	12. Failing to investigate your traffic collision to determine if there were any injuries.	Unfounded.
	13. Failing to obtain the authorization from the Superintendent or his designee prior to permitting the deployment of Oleoresin Capsicum (OC) spray on “[n]oncompliant groups, crowds, or an individual taking part in a group or crowd (e.g., demonstrations, celebrations[.])”	Unfounded
	14. Failing to ensure OEMC was informed of the deployment of OC spray.	Sustained / 90-day suspension
	15. Investigating a reportable use of force despite using and/or ordering a reportable use of force during the same incident.	Sustained / 90-day suspension
	16. Reviewing a reportable use of force despite using and/or ordering a reportable use of force during the same incident.	Sustained / 90-day suspension
	17. Failing to enter your PSIT Logon Identification Number (PC Number) into your PDT.	Sustained / 90-day suspension
Officer William Messino	1. Using Oleoresin Capsicum (OC) spray, without justification.	Sustained / 15-day suspension
	2. Failing to notify OEMC of your reportable use of force.	Sustained / 15-day suspension

Officer Zachary Much	1. Using excessive force by driving your vehicle [in]to pedestrians, without justification.	Unfounded.
	2. Failing to investigate if your use of force resulted in any injuries.	Unfounded.
	3. Failing to request appropriate medical aid for the injured person(s) on scene.	Unfounded.
	4. Failing to use time as a tactic to mitigate the need for force.	Exonerated.
	5. Failing to accurately detail the force used in a Tactical Response Report.	Unfounded.
	6. Failing to report to OEMC your reportable use of force.	Unfounded.
	7. Failing to operate your Department vehicle with “due regard for the safety of all persons.”	Unfounded.
	8. Failing to active the emergency-roof lights while operating your Department vehicle in non-pursuit emergency operations.	Unfounded.
	9. Failing to yield the right-of-way to all pedestrian traffic while operating your Department vehicle in non-pursuit emergency operations.	Unfounded.
	10. Failing to request OEMC to assign a field unit to investigate your traffic collision.	Unfounded.
	11. Failing to investigate your traffic collision to determine if there were any injuries.	Unfounded.

II. BACKGROUND

In the wake of [REDACTED] death at the hands of police officers in Minneapolis, Minnesota on May 26, 2020, large scale protests and demonstrations erupted around our nation calling for police reform. Chicago experienced a period of significant civil unrest which resulted in thousands of police and civilian encounters, many of which were fraught with emotion and hostility. Many of these encounters were captured on videos that went viral on social media platforms and were circulated around the world. While these videos were vital pieces of evidence, they often failed to positively identify the involved officer or civilian. Significant

investigative resources were expended to obtain such information and move these cases to conclusion.

This investigation into the misconduct of the involved Department members began after COPA witnessed a third-party video posted to social media. While the video itself provided powerful evidence as to the misconduct in question, it did not include enough details to identify the parties involved. Therefore, COPA used a combination of in-depth interviews, requests for Departmental assistance, and careful review of Department records to identify the officers and civilians involved. The following is a summary of the evidence COPA obtained and the ultimate outcome of this investigation.

III. SUMMARY OF EVIDENCE

At approximately 9:35 pm on July 18, 2020, Officer Zachary Much was driving to his assigned security perimeter position near ██████████ residence when he encountered a group of individuals blocking traffic on W. Fullerton Ave. at N. Sawyer Ave.¹ As Officer Much approached the individuals, he observed the northern sidewalk was clear, and he attempted to drive around the individuals blocking the roadway.² Officer Much drove onto the curb, but the individuals surrounded his vehicle. He stopped his vehicle, placed it in park, and notified OEMC that his vehicle was being surrounded.³ OEMC relayed this information, as well as Officer Much's reported location, over the radio. Sergeant Michael Tews and Officers William Messino, Michael Barton, and William Martir (the Members) heard the OEMC radio transmissions and informed OEMC they would respond to assist Officer Much.⁴

When the Members arrived at Officer Much's reported location, they did not observe Officer Much or his vehicle.⁵ The Members continued to travel east on W. Fullerton Ave. for approximately three blocks, where they observed a large crowd of individuals blocking the street at N. Sawyer Ave. Officer Much's vehicle was stopped in the middle of the street, surrounded by individuals who were using their bicycles to block the vehicle's path.⁶ The Members noticed the south sidewalk of W. Fullerton Ave was unoccupied and Sgt. Tews decided to drive onto the sidewalk to circumvent the individuals blocking the road.⁷ As Sgt. Tews drove on the sidewalk, the individuals surrounding Officer Much's vehicle rushed towards the Members' vehicle.⁸ Three individuals, Mr. ██████████ Ms. ██████████ and an unidentified male with a bicycle, attempted to block the path of the Members' vehicle by standing in front of it as the

¹ Officer Much was working alone during this incident; however, there is no indication that any responding Department members were aware of this until after the incident.

² Att. 90, pgs. 8.

³ Att. 90, pgs. 8, 14, 16; Att. 31 at 1:59:46; Att. 32 from 00:00 to 02:08. Officer Much provided the location of W. Fullerton Ave and N. Bernard St., which was three blocks west of his actual location.

⁴ Sgt. Tews was the driver, Officer Messino was the front seat passenger, Officer Martir was seated behind Officer Messino, and Officer Barton was seated behind Sgt. Tews.

⁵ Att. 92, pgs. 8 and 9.

⁶ Att. 23 at 00:00 - 00:24 seconds.

⁷ Sgt. Tews explained that the Members' vehicle came under attack while still on the roadway, and prior to driving on the sidewalk. Att. 92, pgs. 11 and 12.

⁸ Att. 89, pgs. 16 and 17. This allowed Officer Much to free his vehicle and travel east on W. Fullerton Ave.

vehicle passed between a rod-iron planter and a building.⁹ As the Members' vehicle proceeded forward through the crowd, individuals near the vehicle and began to throw objects at or strike the vehicle. Involved officers also reported that individuals also attempted to enter the vehicle and grabbing at and attempted to strike the Members inside.¹⁰

As Sgt. Tews drove forward, Mr. ██████ and Ms. ██████ moved out of the path of the Members' vehicle and stood between the vehicle and the building. Simultaneously, the unknown male dropped his bicycle on the sidewalk and fell into the planter. As the vehicle passed Mr. ██████ and Ms. ██████ Officer Messino reached out his window and sprayed them with his OC spray, and Sgt. Tews struck and ran over the bicycle.¹¹ Once the Members' vehicle passed the rod-iron planter, the crowd began to disburse, and Sgt. Tews was able to return to the roadway.¹² At this point, Officer Much was no longer surrounded, so Sgt. Tews continued to drive east on W. Fullerton Ave. to assist in other instances of civil unrest. Approximately 2.5 hours later, Sgt. Tews returned to the 014th District Station, reported the incident to his superiors and OEMC, and completed and/or reviewed various Department reports.¹³

During a statement to COPA, Ms. ██████ described Officer Much's vehicle accelerated as it approached a group of individuals, and it struck pedestrians while traveling 30 miles per hour; however, Ms. ██████ did not witness any injuries.¹⁴

During Officer Much's statement to COPA, he explained that as he approached the individuals blocking the roadway, he slowed his vehicle to the point of idling, deactivated his emergency equipment, and attempted to navigate around the crowd.¹⁵ Individuals immediately surrounded his vehicle with their bicycles, prompting Officer Much to place the vehicle in park.¹⁶ Officer Much denied he struck anyone with his vehicle and stated that, if he had struck anyone, he would have requested medical assistance.¹⁷ Finally, Officer Much explained that as the individuals surrounded his vehicle, he believed his personal safety was in imminent danger, as they were throwing objects at his vehicle, hitting the vehicle with their hands, and yelling.¹⁸

⁹ The building was to the south of the vehicle and the planter was to the north of the vehicle, limiting the possible paths of travel to east (forward) or west (backward.) The width of sidewalk between the building and planter was approximately the width of the Members' vehicle. *See* Atts. 1 and 23.

¹⁰ During their statements, the Members explained that their vehicle was attacked prior to and after driving on the sidewalk. Att. 89, pgs. 10 to 14; Att. 91, pgs. 9 and 10; Att. 92, pgs. 11 to 13; Att. 95, pgs. 8, 12 to 14.

¹¹ The footage clearly shows the Members' vehicle moving in a manner consistent with it striking and running over the bicycle. Att. 23 at 00:38.

¹² As the Members' vehicle traveled on the sidewalk, the number of individuals increased, and their demeanor became more aggressive. *See* Atts. 1, 2 and 23.

¹³ Sgt. Tews completed a Tactical Response Report (TRR) and a Crash/Damage Report. Att. 48, pgs. 9 and 10; Att. 54. Additionally, he reviewed and approved the TRRs of Officers Messino and Barton, as well as the Original Case Incident Report completed by Officer Messino. Atts. 49, 55, and 56. On both officers' TRRs, Sgt. Tews noted that no attempt was made to locate witnesses "due to the large unruly crowd." Atts. 55, pg. 2 and Att. 56, pg. 2.

¹⁴ Att. 86, pgs. 4, 5, 8 and 9. During this investigation, COPA did not locate anyone who was struck or injured by Officer Much's vehicle, nor did it receive any complaints regarding people being injured by a Department vehicle.

¹⁵ Att. 90, pgs. 7, 13, 19 and 20.

¹⁶ Att. 90, pgs. 14, 16, 19 and 20.

¹⁷ Att. 90, pgs. 11, 12 and 20.

¹⁸ Officer Much described this incident as the "most terrifying moment of my career." Att. 90, pg. 11.

During their statements, the Members all recounted that, based on the radio transmissions from Officer Much and OEMC, they believed Officer Much was in urgent need of assistance.¹⁹ Additionally, the Members explained that when they discovered W. Fullerton Ave. was blocked and Sgt. Tews drove towards the unobstructed southern sidewalk, individuals began to throw objects at their vehicle. The Members also recalled that once their vehicle was traveling east on the sidewalk, their only options for movement were forward (to the east) or reverse (to the west), as the crowd had essentially surrounded the vehicle, and the planter and building limited its path.²⁰ Further, Officer Barton explained that the rear window of the Members' vehicle was struck at least twice.²¹ The Members told COPA that based on their professional experience, they each believed that stopping their vehicle would have placed them in immediate danger, in part because the individuals had broken windows on the vehicle and attempted to gain entry.²² Additionally, Officer Messino explained that he discharged his OC spray at Mr. [REDACTED] because Mr. [REDACTED] and the other individuals were throwing objects at the vehicle.²³

The Members acknowledged they did not discuss possible injuries to individuals and did not stop to determine if any individuals were injured.²⁴ Sgt. Tews asserted his actions did not constitute a use of force, so no TRR was required;²⁵ therefore, Department policy did not prohibit him from reviewing the TRRs of Officers Messino and Barton.²⁶ Sgt. Tews also explained that while he activated his emergency equipment, including the blue lights, the damage to the vehicle resulted in the lights not functioning.²⁷ Finally, Sgt. Tews admitted that he failed to log-on to the Portable Data Terminal (PDT) in the vehicle, despite Department policy requiring him to do so.²⁸

A preliminary damage report completed by the City's Assets, Information and Services (AIS) Department details damage to the Members' vehicle, including damage to the front bumper, grill, and license plate, the doors on both sides of the vehicle, the tailgate, the rear window, and various strobe lights.²⁹

During this investigation, COPA expended significant time and resources to identify the occupants of the Members' vehicle. First, COPA completed a GPS records search of the relevant

¹⁹ Att. 89, pg. 7 and 8; Att. 91, pg. 7; Att. 92, pg. 39 and 40; Att. 95, pg. 7.

²⁰ Att. 89, pg. 17; Att. 91, pgs. 11 and 12; Att. 92, pg. 12; Att. 95, pgs. 10 and 11.

²¹ Officer Barton specifically recalled that as the Members' vehicle transitioned from the roadway to the sidewalk, a male holding a skateboard ran towards the rear of the vehicle and Officer Barton heard the glass of the rear window break. Officer Barton heard a second glass break when the Members' vehicle was on the sidewalk, and he realized the entire rear window was missing. Att. 89, pgs. 13 to 16.

²² Att. 89, pg. 23; Att. 91, pg. 16; Att. 92, pgs. 14, 41 and 42; Att. 95, pg. 15.

²³ Att. 95, pgs. 12 and 13.

²⁴ Att. 89, pg. 19 and 20; Att. 91, pg. 15; Att. 92, pgs. 25, 26, 31.

²⁵ Att. 92, pgs. 17 to 19. Sgt. Tews' TRR states that he used force mitigation efforts, specifically member presence, movement to avoid attack, and additional unit members. The TRR does not indicate that Sgt. Tews used any force in response to the individuals' verbal threats, thrown objects, physical attacks with weapons, and uses of force likely to cause death or great bodily harm. Att. 54.

²⁶ Att. 92, pg. 19. Sgt. Tews explained that a lieutenant approved his TRR with no alterations, which Sgt. Tews interpreted as confirmation that his actions were not a use of force. Att. 92, pg. 23.

²⁷ Att. 92, pgs. 20 and 21.

²⁸ Att. 92, pgs. 33 and 34.

²⁹ The damage to the vehicle was estimated to be \$2,465.14 in value. Att. 53.

times, but the search revealed only Officer Much's vehicle in the area.³⁰ COPA then obtained a still image of a Department license plate that was reportedly attached to the Members' vehicle.³¹ A search of Asset Works Management revealed the license plate belonged to a vehicle assigned to Area 5 Gang Enforcement.³² Upon learning this information, COPA completed a GPS search for the vehicle during the relevant times. This search revealed that the vehicle was near the location of the incident, but no member had signed into the PDT.³³ COPA searched the Attendance and Assignments Sheets for Area 5 Gang Enforcement and learned the vehicle was not listed.³⁴ COPA also reviewed the Radio Data Report to identify what radio transmissions were made related to the Members' response,³⁵ but this review in no way assisted in identifying any members. Finally, COPA sent a request to Commander Fabian Saldana requesting his assistance in identifying the members in Vehicle No. PD4847 at the time of the incident.³⁶ Commander Saldana's response indicated that Sgt. Tews and Officers Messino, Martir, and Barton occupied the vehicle during the incident.³⁷

IV. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy.³⁸ If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

³⁰ Att. 4.

³¹ Att. 2.

³² Atts. 12 and 13. Asset Work Management identified the vehicle as PD4847.

³³ Att. 16.

³⁴ Att. 22.

³⁵ Att. 39.

³⁶ Att. 44.

³⁷ Att. 48.

³⁸ *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005) (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not).

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the “beyond-a-reasonable doubt” standard required to convict a person of a criminal offense.³⁹ Clear and convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.”⁴⁰

V. ANALYSIS AND CONCLUSION

a. Sergeant Michael Tews

COPA finds **Allegation #1**, that Sgt. Tews drove on the sidewalk without justification, is **exonerated**. It is undisputed that Sgt. Tews drove his Department vehicle on the sidewalk; however, there is no evidence that his decision was unreasonable when he initially began driving on the sidewalk. The video footage clearly shows, and the statements of the individuals and the Members confirm, that a large crowd of individuals was blocking the roadway while leaving the southern sidewalk clear. Upon observing the clear sidewalk, Sgt. Tews elected to drive onto it to circumvent the individuals’ blockade. COPA finds Sgt. Tews’ decision was reasonable and proper, particularly since the Members were responding to another officer’s request for emergency assistance.

COPA finds that **Allegations #2 and 5** against Sgt. Tews are **sustained**.⁴¹ Department members are permitted to use force to overcome resistance.⁴² However, the nature of the force used must be proportional to the level of resistance faced.⁴³ Members are also required to make attempts to de-escalate the need for force when it is safe and reasonable to do so, including by using time as a tactic to slow down the pace of the incident.⁴⁴ Under Department policy, a citizen who “fails to comply (non-movement) with verbal or other direction” is a passive resister.⁴⁵ Members are permitted to respond to passive resistance by using holding techniques, compliance techniques, control instruments, and oleoresin capsicum (OC) spray, but no additional forms of force.⁴⁶ In contrast, a citizen who uses or threatens the use of force that is likely to result in physical injury is an assailant.⁴⁷ Members are permitted to respond to an assailant using direct mechanical strikes, impact weapons and impact munitions.⁴⁸ Finally, Department policy prohibits the use of deadly force except in response to a citizen whose actions constitute “an imminent threat of death or great bodily harm” to a member or another person.⁴⁹

³⁹ *People v. Coan*, 2016 IL App (2d) 151036 (2016).

⁴⁰ *Id.* at ¶ 28.

⁴¹ These allegations both pertain to Sgt. Tews’ use of force. Allegation #2 alleges that Sgt. Tews used excessive force by driving his vehicle into pedestrians without justification, while Allegation #5 alleges he failed to use time as a tactic to mitigate the need for force.

⁴² G03-02-01, Force Options (effective February 29, 2020 – April 14, 2021).

⁴³ G03-02-01 II (F).

⁴⁴ G03-02-01 III(C).

⁴⁵ G03-02-01 IV(B)(1).

⁴⁶ G03-02-01 IV(B)(1)(a-d).

⁴⁷ G03-02-01 IV(C).

⁴⁸ G03-02-01 IV(C)(1-3).

⁴⁹ G03-02-01 IV(C)(2).

Here, COPA finds that driving a vehicle into and through a crowd of individuals constitutes deadly force.⁵⁰ COPA also finds individuals within the crowd, specifically Mr. [REDACTED] Ms. [REDACTED] acted as passive resisters when they blocked the path of the Members' vehicle as it drove between the building and rod-iron planter. Additionally, some individuals within the crowd struck the Members' vehicle with various objects resulting in sustained damage to their vehicle. However, striking an occupied Department vehicle is not an act consistent with an imminent threat of death or great bodily harm towards the Members. For these reasons, COPA finds Sgt. Tews' conduct in driving the Members' vehicle into pedestrians constituted a use of deadly force and failure that violated Department policy as well as Rules 2, 3, 6, and 8.

COPA finds **Allegation #3**, that Sgt. Tews failed to investigate if his use of force resulted in injuries, is **sustained**. For members to comply with the Department's reporting requirements, they must determine if the force they used resulted in injury or complaints of injury.⁵¹ Additionally, members are required to assess the scene after using force to ensure that medical attention is requested for any person who is injured or complains of injury.⁵² These requirements are rooted in the Department's position that its "highest priority is the sanctity of human life."⁵³ Here, it is undisputed that Sgt. Tews failed to take any steps to determine if his use of force resulted in injury to any non-Department members. Given the hostility of the crowd, COPA acknowledges it may not have been feasible for Sgt. Tews to stop and exit the Members' vehicle immediately after the incident; however, this does not excuse Sgt. Tews' complete failure to investigate if his use of force resulted in injuries. Sgt. Tews could have waited several minutes for the crowd to dissipate, then returned to the scene, or he could have requested that another unit in the area look for injured parties. His failure to do any of these things violated Department policy as well as Rules 2, 3, 5, and 6.

COPA finds **Allegation #4**, that Sgt. Tews failed to request appropriate medical aid for any injured persons, is **not sustained**. Since Sgt. Tews failed to investigate if his use of force resulted in any injuries or complaints of injuries, and there is no evidence (*i.e.*, medical records, ambulance reports, photographs, etc.) that injuries occurred, COPA cannot determine if Sgt. Tews failed to request medical treatment as required by policy.

COPA finds that **Allegations #6, 7 and 14** against Sgt. Tews are **sustained**.⁵⁴ Department policy requires members to complete a TRR when they use force on a subject who is injured or alleges injury, is an active resister or an assailant, actively obstructs a member by using a physical act directed at the member, or physically attacks a member.⁵⁵ Additionally, members

⁵⁰ This determination is based on the risk of serious injury to any parties that could have been struck by the Members' vehicle as it drove through the crowd of individuals.

⁵¹ See generally G03-02-02, Incidents Requiring the Completion of a Tactical Response Report (effective February 29, 2020 – April 14, 2021).

⁵² G03-02 IV(A), Use of Force (effective February 29, 2020 – April 14, 2021).

⁵³ G03-02 II(A).

⁵⁴ These allegations pertain to the Department's reporting requirements for certain uses of force. Allegation #6 alleges Sgt. Tews failed to accurately detail the force he used in a TRR, while Allegation #7 alleges he failed to inform OEMC of his reportable use of force. Similarly, Allegation #14 alleges Sgt. Tews failed to ensure OEMC was informed of Officer Messino's deployment of OC spray.

⁵⁵ G03-02-02 III (A)(1)(a-e).

must “immediately notify the Office of Emergency Management and Communications (OEMC) that he or she has been involved in a reportable use of force incident,” including the deployment of OC spray.⁵⁶ Finally, supervisory members are responsible for ensuring “adherence to the Department Rules, Regulations, Policies, Orders and Procedures.”⁵⁷

Here, as discussed above, Sgt. Tews’ actions while driving the vehicle constituted a use of force. It is undisputed that this use of force was not included in the TRR completed by Sgt. Tews. In fact, Sgt. Tews’ TRR does not detail any use of force, stating only that he used force mitigation efforts such as member presence, additional unit members, and movement to avoid attack. Additionally, Sgt. Tews admitted that he waited over two hours to notify OEMC of the incident, and he never took action to ensure OEMC was informed of Officer Messino’s deployment of OC spray. Each of these failures violated the Department’s reporting requirements as well as Rules 2, 3, 5, and 6.

COPA finds that **Allegations #8 and 10** against Sgt. Tews are **sustained**.⁵⁸ Even during emergency vehicle operations, Department members are required to operate their vehicles “with due regard for the safety of *all* persons.”⁵⁹ Additionally, during non-pursuit emergency operations, members are required to “yield the right-of-way to *all* pedestrian traffic.”⁶⁰ In this case, Sgt. Tews was operating the Members’ vehicle in non-pursuit emergency operations when he elected to drive the vehicle into and through a crowd of pedestrians. While Sgt. Tews explained that stopping the vehicle would have created a risk of harm to the Members inside the vehicle, this risk did not absolve him of his obligations to act with consideration for the safety of *all* people and yield to *all* pedestrians. Sgt. Tews’ failure to drive with due regard for the safety of *all* people and yield to *all* pedestrians violated Department policy and Rules 2, 3, 5, and 6.

COPA finds that **Allegation #9**, that Sgt. Tews failed to activate his emergency-roof lights while operating a Department vehicle in non-pursuit emergency operations, is **exonerated**. During this investigation, COPA learned that the Members’ vehicle suffered significant damage, including damage to its emergency lights. This damage likely explains why the emergency lights were not activated during the incident, but the vehicle’s siren was. Sgt. Tews had no way to fix this damage in the field; therefore, COPA finds there was no reasonable method for him to activate the emergency lights during this incident.

COPA finds that **Allegations #11 and 12** against Sgt. Tews are **unfounded**.⁶¹ As detailed above, COPA has determined that Sgt. Tews’ actions constituted a use of force and not a traffic

⁵⁶ G03-02-02 IV(A)(1).

⁵⁷ Section IV(B) of the Rules and Regulations of the Chicago Police Department.

⁵⁸ These allegations pertain to the manner in which Sgt. Tews drove the Members’ vehicle. Allegation #8 alleges Sgt. Tews failed to operate the vehicle with “due regard for the safety of all persons,” while Allegation #10 alleges he failed to yield the right-of-way to all pedestrian traffic while operating the vehicle in non-pursuit emergency operations.

⁵⁹ G03-03 III(A) (emphasis added), Emergency use of Department Vehicles (effective June 1, 2003 – current).

⁶⁰ G03-03-02 III(A)(6),(B)(2) (emphasis added), Emergency Vehicle Operations – Nonpursuits (effective June 1, 2003 – current).

⁶¹ Allegation #12 alleges Sgt. Tews failed to investigate his traffic collision to determine if there were injuries, while Allegation #11 alleges he failed to ask OEMC to assign a field unit to investigate the collision.

collision. Therefore, Department policy governing a member's response to a traffic collision does not apply to Sgt. Tews' actions during this incident.

COPA finds **Allegation #13**, that Sgt. Tews failed to obtain authorization from the Superintendent or his designee prior to permitting the deployment of OC spray, is **unfounded**. While Department policy requires supervisory members to seek authorization before permitting a subordinate's use of OC spray,⁶² that requirement applies only in certain circumstances, and only when the supervisory member is aware of his subordinate's intended actions. Here, Sgt. Tews adamantly denied that he directed or permitted Officer Messino to use his OC spray. Sgt. Tews maintained he did not even learn OC spray was deployed until after the incident, when the Members had relocated to the 14th District Station. Officers Messino, Martir, and Barton all confirmed there was no discussion about the OC spray inside the Members' vehicle, and Officer Messino neither requested nor received permission from Sgt. Tews prior to deploying the spray. In fact, Officers Martir and Barton stated they did not see anyone use OC spray during the incident, lending credibility to Sgt. Tews' account that he was unaware of Officer Messino's actions until after-the-fact. Therefore, COPA finds Sgt. Tews did not permit Officer Messino to deploy OC spray without proper authorization.

COPA finds **Allegations #15 and 16**, that Sgt. Tews investigated and reviewed his subordinates' uses of force despite the fact that he was involved in a reportable use of force during the same incident, are **sustained**. Pursuant to Department policy, "A supervisor who used reportable force or ordered a use of reportable force during a use of force incident will not perform the functions and responsibilities of the reviewing supervisor or investigating supervisor for the incident."⁶³ Here, it is undisputed that Sgt. Tews investigated and reviewed the force used by Officers Barton and Messino during this incident. Further, despite Sgt. Tews' assertions to the contrary, his own conduct in driving the Members' vehicle into a crowd of pedestrians constituted a reportable use of force. Sgt. Tews used this force during the same incident in which he acted as the investigator and reviewer of Officer Barton's and Officer Messino's uses of force. Therefore, Sgt. Tews' review and investigation violated Department policy as well as Rules 2, 3, and 6.

COPA finds **Allegation #17**, that Sgt. Tews failed to log-on to his PDT, is **sustained**. Department members are required to "enter[] their Public Safety Information Technology (PSIT) Log-on Identification Number and password" after securing their PDT into their assigned vehicle.⁶⁴ Sgt. Tews admitted he failed to log-on to his PDT as required by Department policy, explaining he did not do so because he was "going to a specific detail that was going to require me to be out on foot."⁶⁵ Despite Sgt. Tews' justification, his failure violated Department policy as well as Rules 2, 3, 5, and 6.

⁶² G03-02-01 IV(B)(1)(d)(1)(b).

⁶³ G03-02-02 II(E).

⁶⁴ U01-06 III, Portable Data Terminal (effective February 22, 2012 – current).

⁶⁵ Att. 92, pg. 34.

b. Officer William Messino

COPA finds **Allegation #1**, that Officer Messino used OC spray without justification, is **sustained**. Department members are permitted to use force to overcome resistance.⁶⁶ However, the nature of the force used must be proportional to the level of resistance faced.⁶⁷ As discussed above, individuals who “fail to comply (non-movement) with verbal or other direction” are passive resisters.⁶⁸ Department policy allows the use of OC spray against passive resisters, including “[n]on-compliant groups, crowds, or an individual taking part in a group or crowd (e.g., demonstrations, celebrations),” but only after authorization is obtained from the Superintendent or his designee.⁶⁹

Here, Officer Messino deployed his OC spray against Mr. [REDACTED] and Ms. [REDACTED] who were attempting to block the Members’ vehicle from continuing on the sidewalk. The footage of the incident, coupled with the statements of Mr. [REDACTED] and Ms. [REDACTED] provide compelling evidence these two individuals were passive resisters, not assailants as suggested by the Members. Therefore, Department policy required Officer Messino to obtain authorization prior to deploying his OC spray, which Officer Messino admitted he did not do.

Additionally, COPA finds Officer Messino’s use of OC spray against Mr. [REDACTED] and Ms. [REDACTED] was not objectively reasonable, proportional, or necessary under the circumstances. At the time Officer Messino deployed the spray, Mr. [REDACTED] and Ms. [REDACTED] were pinned in the small space between the Members’ vehicle and the building. Officer Messino reached out the front passenger’s window and deployed his OC spray as the vehicle drove past them. It is unclear from the video what Officer Messino was attempting to accomplish with this use of force, and he offered various explanations as to the reasons why he used his OC spray. Officer Messino told COPA he targeted Mr. [REDACTED] because “they were throwing objects at our car,”⁷⁰ but his TRR states he discharged his OC spray because Mr. [REDACTED] was attempting to gain entry into the Members’ vehicle.⁷¹ Although COPA believes some individuals from the crowd attacked the vehicle with bottles, rocks, and skateboards, the footage does not show Mr. [REDACTED] or Ms. [REDACTED] engaged in these activities, and Officer Messino himself provided inconsistent accounts. For all these reasons, COPA finds Officer Messino deployed his OC spray in violation of Department policy and Rules 2, 3, 6, and 8.

COPA finds **Allegation #2**, that Officer Messino failed to inform OEMC of his reportable use of force, is **sustained**. Department members are required to “immediately notify...OEMC that he or she has been involved in a reportable use of force incident.”⁷²

⁶⁶ G03-02-01.

⁶⁷ G03-02-01 II (F).

⁶⁸ G03-02-01 IV(B)(1).

⁶⁹ G03-02-01 IV(B)(1)(d)(1)(b). Although the quoted language is specific to passive resisters, Department policy also requires members to obtain authorization from the Superintendent or his designee prior to using OC spray against an active resistor who is part of a group or crowd. *See id.* at IV(B)(2)(C)(2).

⁷⁰ Att. 95, pg. 13.

⁷¹ Att. 55.

⁷² G03-02-02 IV(A)(1).

Department policy expressly defines the deployment of OC spray as a reportable use of force.⁷³ Here, it is undisputed that Officer Messino deployed his OC spray but failed to immediately inform OEMC of the action. This failure violated Department policy and Rules 2, 3, 5, and 6.

c. Officer Zachary Much

COPA finds that **Allegations #1 to 3 and #5 to 11** against Officer Much are **unfounded**. While COPA does not doubt Ms. ██████'s presence at the incident, COPA has credibility concerns related to her account of Officer Much's actions – especially the travel speed. Ms. ██████ alleged that Officer Much struck pedestrians while traveling approximately 30 miles per hour. Despite her claim, there are no known reports of injuries at the scene. Additionally, the footage did not capture any individuals displaying signs of injury consistent with such a vehicle strike. Further, COPA finds Officer Much's statement regarding this incident as credible, especially considering video footage corroborates his account of the events. Officer Much's actions were consistent with a member who was seeking to avoid using force, and COPA finds the manner in which he operated his vehicle was not a use of force.

COPA finds that **Allegation #4** against Officer Much is **exonerated**. Department policy provides that, when it is safe and reasonable to do so, members should use time as a tactic to slow down the pace of the incident and deescalate any need for force.⁷⁴ In this case, Officer Much's actions were a textbook example of using time to reduce the need for force. Once Officer Much determined his path was blocked by pedestrians, he placed his vehicle in park and requested assistance. This action allowed members to respond to Officer Much's aid, and during the intervening time the individuals stopped surrounding his vehicle, fully eliminating the need to use force.

RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Sergeant Michael Tews

i. Complimentary and Disciplinary History

Sgt. Tews has received 1 Life Saving Award, 5 Department Commendations, 7 Complimentary Letters, 94 Honorable Mentions and 19 other awards. Sgt. Tews has no sustained disciplinary history in the past five years.⁷⁵

ii. Recommended Penalty

Sgt. Tews' actions speak for themselves. His decision to drive into and through a crowd of pedestrians while disregarding the risk of injury was a flagrant violation of Department policy. While COPA acknowledges this incident occurred during a highly dynamic and evolving situation, the Department is clear that members must consider the sanctity of life prior to acting. Sgt. Tews' actions needlessly risked the lives of dozens of individuals, escalated the hostility of

⁷³ G03-02-02 III(A)(2)(b)(4).

⁷⁴ G03-02-01 III(C).

⁷⁵ Att. 96.

the crowd, and jeopardized the safety of Sgt. Tews and his subordinates. Additionally, the incident was captured on video and widely circulated on social media, bringing significant discredit to the Department and the City. Sgt. Tews also showed a complete disregard for any potentially injured individuals and failed to ensure his subordinates adhered to Department policy. Further, his failure to log-on to his PDT directly delayed this investigation. It is for these reasons that COPA recommends Sgt. Tews receive a **90-day suspension**.

b. Officer William Messino

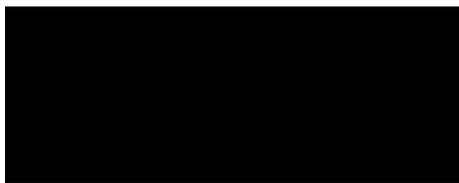
i. Complimentary and Disciplinary History

Officer Messino has received 3 Complimentary Letters, 41 Honorable Mentions and 10 other awards. He has no sustained complaints and one SPAR, which he received in November 2020 for failure to perform any duty. Officer Messino received a reprimand as a result of that incident.⁷⁶

ii. Recommended Penalty

COPA has found that Officer Messino used OC spray against a group of passive resisters without justification. He did not seek authorization prior to deploying his OC spray, and he failed to notify OEMC immediately after he used it. COPA recognizes that this incident evolved rapidly, and Officer Messino had only seconds to decide how to respond to the individuals' attempts to block the Members' vehicle. Further, it was Sgt. Tews' reckless decision to drive through the crowd of hostile individuals that placed Officer Messino in the untenable position of having to protect himself from the assailants without using unjustified force against the passive resisters. However, the decisions Officer Messino made violated Department policy and brought significant discredit to the Department. It is for these reasons that COPA recommends he receive a **15-day suspension**.

Approved:



Matthew Haynam
Deputy Chief Investigator

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1/25/2022

Date

⁷⁶ Att. 97.

