

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	November 7, 2020
Time of Incident:	2:56 am
Location of Incident:	1103 N. Lorel Avenue
Date of COPA Notification:	November 12, 2020
Time of COPA Notification:	1:54 pm

At approximately 2:56 am on November 7, 2020, ShotSpotter detected multiple gunshots fired near 5466 W. Cortez. An officer monitoring a POD camera observed the incident and provided a description of the subjects over the air. A few minutes later, Officer Paul Lane (Officer Lane) and Sergeant Kevin Stephans (Sergeant Stephans) were on patrol when they observed [REDACTED] running in the alley at 1058 N. Lorel, approximately two blocks from the location of the shooting. [REDACTED] had a firearm in his left hand, and he matched the description of one of the subjects. Officer Lane exited his vehicle and engaged in a brief foot pursuit of [REDACTED] who tossed his firearm and fell to the ground as he ran around a corner.

After some resistance on the part of [REDACTED] Officer Lane and Sergeant Stephans placed handcuffs on [REDACTED] and took him into custody. During the struggle, Officer Lane struck [REDACTED] with his firearm, pointed his firearm at [REDACTED] head, and punched the handcuffed [REDACTED] in the groin area. When [REDACTED] attempted to flee, Sergeant Stephans struck him in the face with a closed fist and applied knee strikes to [REDACTED] body. [REDACTED] was arrested for aggravated battery to a peace officer as well as first degree murder. COPA initiated this investigation after receiving an anonymous complaint that Officer Lane used excessive force while taking [REDACTED] into custody.

**II. INVOLVED PARTIES**

Involved Officer #1:	Elvis Ortega, star# 457, emp.# [REDACTED], Date of Appointment: December 18, 2000, Lieutenant, Unit 014, DOB: [REDACTED], 1975, Male, Hispanic
Involved Officer #2:	Kevin Stephans, star# 911, emp.# [REDACTED], Date of Appointment: October 29, 2001, Sergeant, Unit 015, DOB: [REDACTED], 1971, Male, Black
Involved Officer #3:	Paul Lane, star# 15431, emp.# [REDACTED], Date of Appointment: October 27, 2014, Officer, Unit 015, DOB: [REDACTED], 1987, Male, Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1995, Male, Black

## III. ALLEGATIONS

Officer	Allegation	Finding
Lieutenant Elvis Ortega	<p>It is alleged by COPA that on or about November 8, 2020, at approximately 12:19 am, at or near the 15<sup>th</sup> District police station, Lieutenant Elvis Ortega, Star #457, committed misconduct through the following acts or omissions, by:</p> <p>1. Failing to report to COPA the misconduct of Officer Paul Lane that occurred on or about November 7, 2020, at approximately 2:56 am, at or near 1103 N. Lorel Avenue.</p>	Sustained
Sergeant Kevin Stephans	<p>It is alleged by COPA that on or about November 7, 2020, at approximately 2:56 am, at or near 1103 N. Lorel Avenue, Sergeant Kevin Stephans, Star #911, committed misconduct through the following acts or omissions, by:</p> <p>1. Using excessive force during the arrest of ██████████ without justification.</p> <p>2. Failing to intervene in the encounter between Officer Paul Lane and ██████████</p> <p>3. Failing to report the misconduct of Officer Paul Lane.</p> <p>4. Acting inconsistently with your training under ETB #18-01, Foot Pursuits Training Bulletin, by failing to make the required notification to OEMC.</p> <p>5. Performing the functions and responsibilities of the reviewing supervisor on the TRR completed by Officer Paul Lane.</p>	<p>Sustained</p> <p>Exonerated</p> <p>Not Sustained</p> <p>Not Sustained</p> <p>Sustained</p>
Officer Paul Lane	<p>It is alleged that on or about November 7, 2020, at approximately 2:56 am, at or near 1103 N. Lorel Avenue, Officer Paul Lane, Star #15431, committed misconduct through the following acts or omissions, by:</p> <p>1. Striking ██████████ in the groin area while he was handcuffed, without justification.</p> <p>2. Striking ██████████ with your firearm, without justification.</p> <p>3. Pointing your firearm at or in the direction of ██████████ William, without justification.</p>	<p>Sustained</p> <p>Sustained</p> <p>Sustained</p>

4. Directing profanities and unprofessional language at [REDACTED] without justification.	Sustained
5. Acting inconsistently with your training under ETB #18-01, Foot Pursuits Training Bulletin, by failing to make the required notification to OEMC.	Sustained

#### IV. APPLICABLE RULES AND LAWS

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##### Rules

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Rule 2- Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 3- Any failure to promote the Department's efforts to implement its policy or accomplish its goals.

Rule 5- Failure to perform any duty.

Rule 8- Disrespect to or maltreatment of any person, while on or off duty.

Rule 9- Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

Rule 10- Inattention to duty.

Rule 11- Incompetency or inefficiency in the performance of duty.

Rule 38- Unlawful or unnecessary use or display of a weapon.

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##### General Orders

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1. G03-02 Use of Force (effective February 29, 2020 to April 14, 2021)

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

3. G03-02-02 Incidents Requiring the Completion of a Tactical Response Report (effective February 29, 2020 to April 14, 2021)

4. G08-01-02 Specific Responsibilities Regarding Allegations of Misconduct (effective May 4, 2018 to December 31, 2021)

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##### Training Bulletins and Department Notices

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1. ETB #18-01 Foot Pursuits Training Bulletin (revised February 2020)

2. Department Notice D19-01, Firearm Pointing Incidents (effective November 1, 2019 to present)

## V. INVESTIGATION<sup>1</sup>

### a. Digital Evidence

COPA obtained and reviewed two **body worn camera videos from Officer Lane.**<sup>2</sup> The first video begins with Officer Lane and Sergeant Stephans riding in their squad vehicle. Officer Lane exits the vehicle with his weapon drawn and begins to pursue ██████ who is running in the alley in front of him. Officer Lane points his weapon in the direction of ██████ and yells, “We got one running, we got one running.”<sup>3</sup> ██████ reaches the mouth of the alley and falls to the ground as he runs around the corner. As Officer Lane approaches ██████ he yells, “I’m going to fucking shoot you, bitch. Stay the fuck down, bitch...I’ll fucking shoot you motherfucker.”<sup>4</sup> Officer Lane kneels on top of ██████ and continues to point his firearm at ██████. As ██████ flails on the ground, Officer Lane appears to strike him with his firearm, then presses the firearm against the back of ██████ head and announces he has “one at gunpoint” over the radio.<sup>5</sup> Officer Lane warns ██████ “You want to get shot today? Don’t fucking play with me bro. Don’t—I’m going to beat the shit out of you bro.”<sup>6</sup>

As Officer Lane struggles with ██████ Sgt. Stephans approaches the men, and the officer informs him that ██████ threw his gun during the foot pursuit. ██████ continues to move around on the ground, and Officer Lane uses his firearm to strike ██████ twice in the side of the body.<sup>7</sup> Sergeant Stephans gets on the ground and helps Officer Lane handcuff ██████ in front of his body. During the handcuffing, Officer Lane rests his firearm on Sergeant Stephans’ back, and the weapon is momentarily pointed in the direction of the sergeant’s head.<sup>8</sup> Officer Lane then re-holsters his firearm. Sergeant Stephans states he is going to look for ██████ gun, and he walks back toward the alley. As Officer Lane waits with ██████ he tells ██████ to stop moving. The officer then picks up a pair of handcuffs from the ground and punches ██████ in the groin area with the handcuffs still in his hand.<sup>9</sup> The video abruptly ends at 2:58:40 am, as Officer Lane is on top of ██████ trying to hold him on the ground.

At 2:58:55 am, Officer Lane’s second BWC video begins as he struggles with ██████ on the ground.<sup>10</sup> Sergeant Stephans walks back to the scene and assists in holding ██████ on the ground.<sup>11</sup> Officer Lane uses his cell phone to look up his location, then tells dispatch he is at Thomas and Lorel. After assisting units arrive at the scene, Officer Lane walks back toward the

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<sup>1</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in the analysis.

<sup>2</sup> Atts. 37 & 64.

<sup>3</sup> Att. 37 at 2:01 minutes.

<sup>4</sup> Att. 37 at 2:03 minutes.

<sup>5</sup> Att. 37 at 2:15 minutes.

<sup>6</sup> Att. 37 at 2:25 minutes.

<sup>7</sup> Att. 37 at 2:40 minutes.

<sup>8</sup> Att. 37 at 2:48 minutes.

<sup>9</sup> Att. 37 at 3:49 minutes.

<sup>10</sup> Att. 64. Officer Lane’s BWC had a two-minute buffer period, which means that when he reactivated his BWC at 3:00:55 am, the prior two minute of video were automatically recorded without audio. As a result, there is a 2 minute, 15 second gap in the audio but only a 15 second gap in the video.

<sup>11</sup> The video does not clearly capture the type of force Sergeant Stephans used, though his TRR indicates he punched ██████ in the face and applied knee strikes to ██████ body.

alley and tells the other officers there is a gun somewhere in the alley. As the officers search the alley, Officer Lane locates the gun in the grass with his flashlight.

COPA obtained and reviewed the **OEMC Zone 12 radio transmissions** related to this incident.<sup>12</sup> At approximately 2:56 am, Beat 1502S reports fifteen gunshots fired by multiple subjects at 1015 N. Pine, then states there is a person lying in the street at 5450 W. Cortez. Immediately thereafter, Sergeant Stephans announces, “We got a gun,” and Officer Lane yells, “We got one running.”<sup>13</sup> The dispatcher asks for their location, and Sergeant Stephans asks her to hold on for a second. Officer Lane then reports, “I’ve got one at gunpoint.”<sup>14</sup> The dispatcher again asks their location, but other officers come over the air, reporting there is a male with a gunshot wound to the head at 5455 W. Cortez. Beat 1502S then provides detailed descriptions of both subjects, as well as their direction of flight. At approximately 3:00 am, Officer Lane requests additional units, stating he has one of the subjects in custody at Thomas and Lorel, in the alley.

#### b. Interviews<sup>15</sup>

COPA interviewed **Officer Paul Lane** on March 9, 2022.<sup>16</sup> On the date of the incident, Officer Lane and his partner, Sergeant Stephans, were assigned to a tactical team in the 15<sup>th</sup> district. While touring the area, Officer Lane heard a radio transmission reporting shots fired in the immediate vicinity. A description was also provided for the subjects, one of whom was described as a black male wearing a dark hoodie and light pants. As Officer Lane drove his squad vehicle in the area, he observed an individual matching the description running down an alley with a gun in his hand. The individual was later identified as ██████████

Initially, Officer Lane followed ██████████ in his squad vehicle. ██████████ continued to run down the alley, then attempted to jump over a fence with the gun still in his hand. As Officer Lane opened his vehicle door, ██████████ jumped off the fence and ran back in the direction he had just come from. Officer Lane exited his vehicle, announced his office, and ordered ██████████ to stop. ██████████ did not comply, so Officer Lane drew his weapon and pursued ██████████ on foot in the alley. As ██████████ fled, Officer Lane observed ██████████ toss his gun in the air and over his head.

██████████ stumbled as he tried to turn a corner and fell to the ground. At that point, Officer Lane caught up to ██████████ and held him on the ground at gunpoint while simultaneously attempting to go over the air to inform the dispatcher. ██████████ continued to resist<sup>17</sup> by flailing his arms and legs, pulling away, and trying to get up so that he could run away. Officer Lane attempted to stop ██████████ from standing up by striking him in the leg area. According to Officer Lane, he intended to strike ██████████ with his hand, but he had his firearm in the same hand, so it is possible

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<sup>12</sup> Att. 36.

<sup>13</sup> Att. 36 at 36-40 seconds.

<sup>14</sup> Att. 36 at 52 seconds.

<sup>15</sup> COPA contacted ██████████ attorney and asked for permission to interview ██████████ however, the attorney declined to allow COPA to speak with ██████████

<sup>16</sup> Atts. 85 & 86.

<sup>17</sup> Officer Lane initially described ██████████ as an active resister, but after taking a break to consult with his attorney, he changed his assessment of ██████████ to an assailant. According to Officer Lane’s revised description, ██████████ was an assailant because he was running with a gun in his hand, and he had just murdered someone. Officer Lane considered ██████████ to be an assailant until the point he was handcuffed, when he became an active resister.

he struck [REDACTED] with the firearm. Officer Lane acknowledged he yelled expletives at [REDACTED] during the struggle, but he explained that he was scared and wanted [REDACTED] to know he was serious. The tussle between Officer Lane and [REDACTED] continued, and at one point, Officer Lane had his gun pointed at [REDACTED] back.<sup>18</sup> Officer Lane holstered his weapon shortly after Sergeant Stephans arrived at the scene, and they were finally able to handcuff [REDACTED]

After handcuffing [REDACTED] Sergeant Stephans left the immediate area and walked back into the alley. While he was gone, [REDACTED] continued to resist Officer Lane by trying to get up off the ground and run away. Officer Lane continued to struggle with [REDACTED] and gave him verbal commands to stay down. Officer Lane then attempted to pat [REDACTED] down, but [REDACTED] kept moving, so the officer hit him in the leg area to regain control. According to Officer Lane, although he tried to hit [REDACTED] in the leg, it was possible the strike landed in the groin area. He also conceded that he had picked up a pair of handcuffs from the ground, and he was likely holding the cuffs in his hand as he struck [REDACTED]. [REDACTED] did not stop resisting, but continuously tried to push himself up off the ground, even lifting Officer Lane up with him.<sup>19</sup> Officer Lane kned [REDACTED] in the leg area and hit him in the arms to get him back under control. As the two men struggled, Officer Lane yelled for assistance. Sergeant Stephans returned to the scene and helped secure [REDACTED] applying pressure to [REDACTED] shoulder to hold him on the ground. Officer Lane did not recall seeing Sergeant Stephans strike [REDACTED] or use any other type of force.

Officer Lane stated that he attempted to go over the air and notify OEMC of the pursuit once he had [REDACTED] on the ground, but the air was tied up with other officers who were responding to the fatal shooting. As a result, Officer Lane had to go over the radio several times to provide his location. He explained he could not provide that information at the beginning of the foot pursuit, as he was unsure of his exact location. Officer Lane added that Sergeant Stephans is not his regular partner, and he has an understanding with his regular partner that if one of them is in a pursuit, the other one is responsible for radio communications.

COPA interviewed **Sergeant Kevin Stephans** on April 4, 2022.<sup>20</sup> On the date of the incident, Sergeant Stephans was leading the 15<sup>th</sup> district tactical team. Sergeant Stephans and Officer Lane rode together for the last two hours of their shift. They were patrolling the area when they observed a suspicious vehicle drive into the alley, prompting Officer Lane to turn their squad vehicle left down a neighboring street. When they reached the end of the street, Sergeant Stephans observed [REDACTED] running with a gun in his hand. [REDACTED] did not appear to notice the squad vehicle behind him until they activated its emergency lights. When [REDACTED] saw the officers, he tried to jump a fence but fell, then he started running back toward the squad vehicle. Sergeant Stephans and Officer Lane both exited their vehicle, and Sergeant Stephans observed [REDACTED] toss his gun in the alley. Officer Lane called out the pursuit over the radio<sup>21</sup> and continued to pursue [REDACTED] on foot. [REDACTED] slipped at the end of the alley and Officer Lane grabbed him, while Sergeant Stephans remained in the alley, trying to find [REDACTED] discarded firearm.

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<sup>18</sup> Officer Lane explained that he did not believe it was safe or feasible to holster his weapon because [REDACTED] had just shot someone, he might have another weapon, and he continued to resist arrest.

<sup>19</sup> Officer Lane explained that his BWC inadvertently deactivated during this point in the struggle, but he reactivated it as soon as Sergeant Stephans returned to help get [REDACTED] under control.

<sup>20</sup> Atts. 93 & 94.

<sup>21</sup> According to Sergeant Stephans, he did not call out the pursuit over the radio because Officer Lane made the necessary transmissions, and the sergeant did not want to tie up the radio.

Eventually, Sergeant Stephans went to the end of the alley to help Officer Lane detain [REDACTED]. They placed [REDACTED] into handcuffs and Sergeant Stephans returned to the alley to recover the firearm.

While Sergeant Stephans searched for the gun, he heard Officer Lane call out for help. Sergeant Stephans returned to Officer Lane's location, where he observed the officer struggling with [REDACTED]. Sergeant Stephans stated that [REDACTED] was attempting to get up from the ground while handcuffed in order to defeat the arrest. Sergeant Stephans responded by striking [REDACTED] in the face with a closed fist and delivering knee strikes to [REDACTED] body. He considered [REDACTED] to be an active resister, as [REDACTED] was swinging his arms and trying to stand up when the sergeant used force. Additional units subsequently arrived at the scene and took [REDACTED] into custody, at which point Sergeant Stephans returned to the alley to secure [REDACTED] firearm.

Sergeant Stephans acknowledged he approved Officer Lane's TRR, stating that he was unaware he could not be the reviewing supervisor on Officer Lane's TRR.<sup>22</sup> He also noted that he knew Officer Lane's firearm was unholstered when they at the scene, but he did not know where the weapon was pointed. When Sergeant Stephans reviewed the BWC video, he saw Officer Lane's firearm pointed at [REDACTED] but not pressed against his head. Sergeant Stephans further stated he did not observe Officer Lane strike [REDACTED] with his weapon when they were at the scene, as the sergeant was focused on [REDACTED] and Officer Lane was positioned behind him. He heard Officer Lane curse at [REDACTED] but did not intervene because the incident occurred too quickly, and Officer Lane was using profanity to gain [REDACTED] compliance. Additionally, Sergeant Stephans told COPA he did not complete an initiation report regarding Officer Lane's actions because he tested positive for COVID and was sent home shortly after the incident occurred, and a lieutenant assured him he would take care of any paperwork.

COPA interviewed **Lieutenant Elvis Ortega** on March 22, 2022.<sup>23</sup> On the date of the incident, Lieutenant Ortega was the watch operations lieutenant in the 15<sup>th</sup> district. Lieutenant Ortega initially responded to the scene of the person shot, but he returned to the station upon learning a subject was in custody. Lieutenant Ortega first became aware of Officer Lane's use of force when Sergeant Stephans informed him an incident had occurred requiring a TRR. Lieutenant Ortega reviewed Officer Lane's BWC footage, his TRR, and the arrest report from the incident. He then issued Officer Lane a SPAR<sup>24</sup> for profanity and muzzle awareness. Lieutenant Ortega told COPA that the SPAR for muzzle awareness arose from the BWC video showing Officer Lane's firearm resting on Sergeant Stephans' back, with the muzzle pointed toward the sergeant's head. Lieutenant Ortega stated that a SPAR is used to note a less serious transgression or violation that does not arise to the level of reportable misconduct. In his view, the force Officer Lane used against [REDACTED] was not excessive, as [REDACTED] actions were those of an assailant. Lieutenant Ortega did not generate an initiation report or notify COPA, as he did not observe any misconduct and had already issued a SPAR for the less serious transgressions that Officer Lane committed. Lieutenant Ortega also explained that a SPAR is a form of discipline that goes on an officer's record.

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<sup>22</sup> Sergeant Stephans stated he has not made the same mistake since this incident occurred.

<sup>23</sup> Atts. 88 & 90.

<sup>24</sup> SPAR stands for Summary Punishment Action Request.

COPA also interviewed **Officers Jon-Michael Pronek<sup>25</sup> and Tone Trujillo<sup>26</sup>**, who responded to the scene after ██████ was in custody, but neither officer was present during the foot pursuit or ██████ arrest.

### c. Physical Evidence

█████ **medical records<sup>27</sup>** reveal he was treated at Mount Sinai Hospital on November 7, 2020. ██████ presented with pain to the left side of his neck and his entire left arm, including his left shoulder and clavicle. ██████ told medical personnel he sustained the injuries when he was apprehended by police and thrown to the ground onto his left side. X-rays of ██████ chest, left shoulder, left elbow, left wrist, and left hand revealed no acute abnormalities. William was diagnosed with a left wrist sprain, prescribed ibuprofen, and discharged into CPD custody. The records also indicate that ██████ had a history of scoliosis, and he reported mild pre-existing shoulder discomfort from a motor vehicle accident.

### d. Documentary Evidence

The **arrest report<sup>28</sup>** for ██████ documents that on November 7, 2020, Officer Lane and Sergeant Stephens observed ██████ running in an alley with a firearm in his left hand. Approximately three minutes prior, ShotSpotter had detected 15 gunshots in the vicinity, and an officer monitoring a POD camera had observed an individual matching ██████ description firing several rounds in the direction of ██████.<sup>29</sup> The members pursued ██████ on foot, and Officer Lane observed ██████ discard his firearm in the alley. Officer Lane apprehended ██████ at approximately 1103 N. Lorel, where ██████ fought with and kicked at Officer Lane in an effort to defeat the arrest. ██████ was placed into custody and charged with first degree murder and aggravated battery to a peace officer.

**Tactical Response Reports (TRR)** were completed by Officer Lane<sup>30</sup> and Sergeant Stephens.<sup>31</sup> According to Officer Lane's TRR, while on patrol, he observed ██████ running northbound from the 1000 block of Lorel while armed with a firearm. Officer Lane initially followed ██████ down the alley in his squad vehicle, but he subsequently exited the vehicle and continued to pursue ██████ on foot. As Officer Lane gave ██████ verbal commands to stop, the officer observed ██████ throw his firearm in the alley. ██████ stumbled and fell to the ground, at which time Officer Lane attempted to place ██████ into custody at gunpoint. ██████ pushed Officer Lane with both hands, kicked with his legs, wrestled, pulled away and stiffened his body in an attempt to defeat the arrest. In response to ██████ actions, Officer Lane performed a direct mechanical strike to ██████ body with his service weapon, as no other practical option was available because Officer Lane was unable to holster his weapon while struggling with ██████

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<sup>25</sup> Att. 82.

<sup>26</sup> Att. 81.

<sup>27</sup> Att. 77.

<sup>28</sup> Att. 4.

<sup>29</sup> ██████ sustained a gunshot wound to the head and was subsequently pronounced deceased.

<sup>30</sup> Att. 79.

<sup>31</sup> Att. 78.

Officer Lane used open-handed strikes, closed-handed strikes, direct mechanical strikes with a control instrument, pressure point strikes, knee strikes, elbow strikes, and an emergency take down. Once Sergeant Stephens arrived, the members were finally able to place ██████ in handcuffs in the front of his body. At that point, Sergeant Stephens walked away from Officer Lane and ██████ regained his strength and began to lift himself and Officer Lane off the ground, resulting in the deactivation of Officer Lane's BWC. Prior to being lifted off the ground, Officer Lane retrieved a pair of handcuffs that Sergeant Stephens had dropped. While Officer Lane had the handcuffs in his hand, he performed direct mechanical strikes to ██████ lower body in an attempt to immobilize ██████ and prevent any further attacks. Officer Lane made multiple attempts to request additional units as he struggled to gain control of ██████ Sergeant Stephens returned to help Officer Lane, and they were finally able to gain control of ██████ Sergeant Stephens was also the reviewing supervisor who approved Officer Lane's TRR.

Sergeant Stephens' TRR reports that he observed ██████ running in an alley with a gun in his hand. A brief foot pursuit ensued and ██████ tossed his handgun, then subsequently fell to the ground. Sergeant Stephens observed Officer Lane on the ground wrestling with ██████ According to the sergeant, ██████ stiffened his body, pulled away, and kicked. Sergeant Stephens assisted by applying emergency handcuffing. Sergeant Stephens then left the scene to recover ██████ handgun, at which time he heard Officer Lane scream for help. Sergeant Stephens ran back to the scene and observed ██████ trying to flee from Officer Lane while he was handcuffed. Sergeant Stephens struck ██████ with a close fist to the face, took him to the ground, administered knee strikes to ██████ body, and applied pressure holds.

Officer Lane received a **SPAR** for inattention to duty during this incident.<sup>32</sup> According to the description, Lieutenant Ortega issued Officer Lane the SPAR for using profanity and unprofessional verbal commands, as well as "muzzle awareness." The discipline imposed was a violation noted.

## VI. 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.

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<sup>32</sup> Att. 31.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct reviewed complied with Department policy.<sup>33</sup> If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

**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. 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.”<sup>34</sup>

## VII. ANALYSIS AND CONCLUSIONS

### Officer Paul Lane

COPA makes a finding of **Sustained** for **allegation 1 & 2** against Officer Lane. Allegation 1 alleges Officer Lane struck ██████ in the groin area while he was handcuffed without justification, while Allegation 2 alleges he struck ██████ with his firearm without justification. General Order G03-02 governs the use of force by Department members. Department members may only use force that is “objectively reasonable, necessary, and proportional, under the totality of the circumstances, in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent escape.”<sup>35</sup> General Order G03-02-01 further outlines the force options available to Department members who encounter different types of subjects, including active resisters and assailants. The order defines an active resister as “a person who attempts to create distance between himself or herself and the member’s reach with the intent to avoid physical control and/or defeat the arrest.”<sup>36</sup> This type of resistance includes, but is not limited to, evasive movement of the arm, flailing arms, and full flight by running. Department members may respond to active resistance using holding techniques, control instruments, stuns, takedowns, tasers, and OC spray.<sup>37</sup> However, Department members may only use impact weapons and direct mechanical techniques, including punching and kicking, against assailants who are using or threatening to use force which is likely to cause physical injury.<sup>38</sup>

In the present case, COPA finds that ██████ was an active resister, not an assailant. Officer Lane’s BWC video shows that ██████ resisted the officer by flailing his arms, trying to pull away, and repeatedly attempting to get up off the ground. However, at no point during the struggle did ██████ use or threaten to use force against Officer Lane that was likely to cause physical injury. Indeed, both Officer Lane and Sergeant Stephans correctly classified ██████ as

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<sup>33</sup> See *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).

<sup>34</sup> *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

<sup>35</sup> General Order G03-02 (III)(B), Use of Force (effective February 29, 2020 – April 14, 2021).

<sup>36</sup> G03-02-01 (IV)(B)(2), Force Options (effective February 29, 2020 – April 14, 2021).

<sup>37</sup> G03-02-01 (IV)(B)(1)-(2).

<sup>38</sup> General Order G03-02-01 (IV)(C).

an active resister during their COPA statements.<sup>39</sup> It is undisputed that Officer Lane punched ██████ in the groin area after he was handcuffed, using a direct mechanical strike that was not authorized against an active resister. At the time Officer Lane delivered the punch, the BWC video shows ██████ was lying on his side on the ground in handcuffs, and his level of resistance had decreased significantly. Officer Lane maintained that he only intended to strike ██████ in the lower extremities, and the strike to ██████ groin area was inadvertent. However, Officer Lane's explanation is irrelevant, as Department policy prohibited him from punching ██████ in any part of the body. Officer Lane's misconduct is aggravated by the fact that he was holding a pair of handcuffs in the hand he used to punch ██████. For these reasons, allegation 1 is sustained as a violation of Rules 2, 3, 6, 8, and 9.

COPA also finds allegation 2 is also sustained against Officer Lane. The BWC video shows that Officer Lane repeatedly struck ██████ in the leg with his firearm during the initial part of the struggle. Officer Lane did not dispute this, but he told COPA his intention was to strike ██████ with his hand, not his firearm. Regardless, Officer Lane's strike was a direct mechanical technique that was not authorized against an active resister. Additionally, Department policy prohibits the use of a firearm as an improvised impact weapon, even against assailants, "unless reasonably necessary and no other practical options are available."<sup>40</sup> In this situation, it was not reasonably necessary for Officer Lane to strike ██████ at all, much less with his firearm. Therefore, COPA finds allegation 2 is sustained as a violation of Rules 2, 3, 6, 8, and 9.

COPA makes a finding of **Sustained** for **allegation 3** against Officer Lane, in that he pointed his firearm at or in the direction of ██████ without justification. Rule 38 prohibits the unlawful or unnecessary use or display of a weapon. Additionally, Department policy provides that members "may only point a firearm at a person when it is objectively reasonable to do so under the totality of the circumstances faced by the member on the scene."<sup>41</sup> In assessing reasonableness, members may consider factors including the nature of the incident, the risk of harm to the member or others, and the level of threat or resistance presented or maintained by the subject (e.g., possession or access to weapons). However, "nothing in the policy requires members to take actions, or fail to take actions, that unreasonably endanger themselves or others."<sup>42</sup>

In the present case, Officer Lane stated he initially pointed his firearm at ██████ because ██████ had a gun in his hand. Officer Lane acknowledged he saw ██████ discard the firearm, but the officer continued to point his weapon at ██████ while they were struggling on the ground because ██████ was resisting, and the officer feared he might have a secondary weapon. The BWC video shows that Officer Lane held his firearm against the back of ██████ head for more than 30 seconds as ██████ flailed on the ground. Throughout this period, ██████ attempted to

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<sup>39</sup> Officer Lane described ██████ as an active resister until the end of his COPA statement, when he took a break to consult with his attorney. When Officer Lane returned from the break, he clarified that ██████ was actually an assailant until he was handcuffed, and only then did he become an active resister. COPA finds that Officer Lane's initial description of ██████ was credible and consistent with his BWC video, and therefore it gives little weight to Officer Lane's revised account. However, even assuming that ██████ was an assailant until he was handcuffed, Officer Lane violated Department policy when he punched ██████ in the groin *after* ██████ was handcuffed.

<sup>40</sup> General Order G03-02-01 (IV)(C)(1)(a)(2)(a); *see also* General Order G03-02-07 (II)(D)(3), Baton Use Incidents (effective February 29, 2020 – April 14, 2021).

<sup>41</sup> Department Notice D19-01 (II)(E), Firearm Pointing Incidents (effective November 1, 2019 to present).

<sup>42</sup> Department Notice D19-01 (II)(G).

pull away and refused to give up his hands, but he did not pose an imminent threat to Officer Lane. COPA finds Officer Lane's actions were not objectively reasonable under the totality of the circumstances, as the officer knew [REDACTED] had discarded his firearm and, at most, posed a threat of escape. Officer Lane's decision to hold his firearm against [REDACTED] head created a grave safety risk that unreasonably endangered the lives of [REDACTED] Sergeant Stephans, and the officer himself. Even if Officer Lane's finger was not on the trigger, as he maintained, he pointed the firearm at [REDACTED] head while engaged in a hands-on struggle with [REDACTED]. One wrong movement could have resulted in tragic consequences. Indeed, Officer Lane acknowledged that he lost his balance at one point during the struggle, causing him to inadvertently point his firearm at Sergeant Stephans.<sup>43</sup> Officer Lane's conduct was unreasonable, unnecessary, and escalated the situation far beyond [REDACTED] level of resistance. For these reasons, COPA finds allegation 3 is sustained as a violation of Rules 2, 3, 6, 8, and 38.

COPA makes a finding of **Sustained** for **allegation 4** against Officer Lane, in that he directed profanities and unprofessional language at [REDACTED]. Rule 8 prohibits disrespect to or maltreatment of any person, while Rule 9 prohibits engaging in any unjustified verbal or physical altercation with any person. In the present case, Officer Lane's BWC video captured the officer repeatedly threaten [REDACTED] and direct profanities at him, including yelling, "I'm going to fucking shoot you, bitch. Stay the fuck down, bitch... I'll fucking shoot you motherfucker."<sup>44</sup> Seconds later, Officer Lane continued, "You want to get shot today? Don't fucking play with me bro. Don't—I'm going to beat the shit out of you bro."<sup>45</sup> During Officer Lane's COPA statement, he acknowledged using expletives during [REDACTED] arrest but explained that he was scared and wanted [REDACTED] to know he was serious. While COPA finds Officer Lane's explanation credible, it does not negate the clear, obvious misconduct captured on his BWC video. As such, COPA finds this allegation sustained as a violation of Rules 2, 3, 8, and 9.

COPA makes a finding of **Sustained** for **allegation 5** against Officer Lane, in that he failed to make the required notifications to OEMC. Under ETB #18-01 Foot Pursuits Training Bulletin, officers are required to *immediately* notify OEMC when they engage in a foot pursuit, broadcasting their location, direction of travel, a description of the subject, and the reason for the pursuit.<sup>46</sup> According to Officer Lane, he went over the air multiple times in an attempt to notify OEMC of the foot pursuit, but the radio was tied up with other traffic. Officer Lane's account is partly corroborated by his BWC footage and the OEMC radio transmissions, which captured Officer Lane announce, "We got one running," then yell, "I've got one at gunpoint" several seconds later.<sup>47</sup> Nevertheless, neither radio transmission conveys the reason for Lane's pursuit, that he even engaged in a pursuit or the identity of whom he was in pursuit of. Furthermore, both transmissions stand as proof that Officer Lane had the ability to initiate an appropriate notification. For these reasons, COPA finds this allegation sustained.

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<sup>43</sup> See Att. 37 at 2:47 minutes.

<sup>44</sup> Att. 37 at 2:03 minutes.

<sup>45</sup> Att. 37 at 2:25 minutes.

<sup>46</sup> Att. 96, pg. 4, ETB #18-01, Foot Pursuits Training Bulletin (revised February 2020).

<sup>47</sup> Att. 37 at 2:01 minutes & 2:15 minutes; Att. 36 at 38 second & 52 seconds.

**Sergeant Kevin Stephans**

COPA makes a finding of **Sustained** for **allegation 1** against Sergeant Stephans, in that he used excessive force during [REDACTED] arrest. Under General Order G03-02, Department members may only use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent escape.<sup>48</sup> General Order G03-02-01 further outlines the various force options available to Department members when they are met with resistance or threats. In the present case, Sergeant Stephans described [REDACTED] as an active resister. However, in both his TRR and statement to COPA, Sergeant Stephans admitted he punched [REDACTED] in the face and applied knee strikes to [REDACTED] body. A closed fist strike and knee strikes are considered direct mechanical techniques, which Department policy prohibits against active resisters. Therefore, COPA finds this allegation sustained as a violation of Rules 2, 3, 6, 8, and 9.

COPA makes a finding of **Exonerated** for **allegation 2** against Sergeant Stephans, in that he failed to intervene in the encounter between Officer Lane and [REDACTED] Sergeant Stephans told COPA he did not observe the initial struggle between Officer Lane and [REDACTED] as he was still in the alley searching for [REDACTED] discarded firearm. Further, when the sergeant did reach the struggle, he focused his attention on securing [REDACTED]. At that point, Officer Lane was positioned behind Sergeant Stephans, preventing the sergeant from observing the officer's exact actions. Sergeant Stephans' assertions are corroborated by Officer Lane's BWC footage; as such, this allegation is exonerated.

COPA makes a finding of **Not Sustained** for **allegation 3** against Sergeant Stephans, in that he failed to report the misconduct of Officer Lane. General Order G08-01-02 sets forth the responsibilities of Department members when they become aware of potential misconduct by another member. According to the order, "When misconduct is observed or an allegation of misconduct is received by supervisory or command personnel, they will initiate a complete and comprehensive investigation in accordance with this and other directives without looking to higher authority for such action."<sup>49</sup> Additionally, the supervisor who first learns of the alleged misconduct must notify COPA by telephone within one hour of receiving the information, then document all of the available information in a written initiation report.<sup>50</sup> Here, Sergeant Stephans acknowledged that he reviewed Officer Lane's TRR, and part of that process involved watching Officer Lane's BWC footage. Sergeant Stephans then notified Lieutenant Ortega of the use of force incident, though the evidence is unclear whether he characterized it as misconduct. Sergeant Stephans explained that he did not notify COPA or complete an initiation report regarding Officer Lane's conduct because, shortly after the incident occurred, he learned he tested positive for COVID and was sent home. The day-shift lieutenant assured Sergeant Stephans he would take care of any required paperwork related to the incident. COPA finds the sergeant's explanation to be credible, as this incident occurred in the middle of the COVID pandemic and the Department was obligated to send the sergeant home if he tested positive for the virus. However, given the lack of clarity regarding the sufficiency of Sergeant Stephan's notification to Lieutenant Ortega, COPA does not

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<sup>48</sup> General Order G03-02 (III)(B).

<sup>49</sup> General Order G08-01-02 (II)(B)(2), Specific Responsibilities Regarding Allegations of Misconduct (effective May 4, 2018 to December 30, 2021).

<sup>50</sup> General Order G08-01-02 (II)(B)(3).

have clear and convincing evidence to reach an exonerated finding. As such, COPA finds this allegation not sustained.

COPA makes a finding of **Not Sustained** for **allegation 4** against Sergeant Stephans in that he failed to make the required notifications to OEMC. As discussed above, ETB #18-01 Foot Pursuits Training Bulletin requires members to immediately notify OEMC of any foot pursuit, broadcasting their location, direction of travel, a description of the subject, and the reason for the pursuit.<sup>51</sup> According to Sergeant Stephans, he did not call out the pursuit because he saw Officer Lane on his radio, and he did not want to tie up the radio with unnecessary transmissions. Further, Sergeant Stephans did not actually engage in the foot pursuit of ██████████ but remained in the alley to retrieve the firearm that ██████████ discarded. For these reasons, COPA finds this allegation not sustained.

COPA makes a finding of **Sustained** for **allegation 5** against Sergeant Stephans, in that he performed the functions and responsibilities of the reviewing supervisor on Officer Lane's TRR. General Order G03-02-02 sets forth the Department's requirements for the completion of TRRs. Under the order, a supervisor who used reportable force or ordered the use of reportable force during a use of force incident will not perform the functions and responsibilities of the reviewing supervisor for purposes of a TRR.<sup>52</sup> Here, it is undisputed that Sergeant Stephans used force against ██████████ and also served as the reviewing supervisor on Officer Lane's TRR, a clear violation of Department. For these reasons, COPA finds the allegation is sustained as a violation of Rules 6, 10, and 11.

### **Lieutenant Elvis Ortega**

COPA makes a finding of **Sustained** for allegation 1 against Lieutenant Ortega, in that he failed to report Officer Lane's misconduct to COPA. As discussed above, General Order G08-01-02 defines the responsibilities of Department members when allegations of misconduct are brought to their attention. The order requires supervisory members who observe misconduct or receive an allegation of misconduct to initiate a complete and comprehensive investigation without looking to higher authority for such action.<sup>53</sup> Additionally, when incidents are subject to the log number process, the supervisor who first learns of the alleged misconduct must notify COPA by telephone within one hour of receiving the information, then document all of the available information in a written initiation report.<sup>54</sup> Special Order G08-01-02 further notes, "If the misconduct is of the type investigated by COPA, it must be reported to COPA. Neither admonishments or summary punishment may be unilaterally implemented by the Department for the types of misconduct investigated by COPA."<sup>55</sup>

In this case, Lieutenant Ortega was not present for ██████████ arrest, but he did see Officer Lane's BWC footage immediately after the incident. After viewing the video, Lieutenant Ortega

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<sup>51</sup> Att. 96, pg. 4, ETB #18-01, Foot Pursuits Training Bulletin.

<sup>52</sup> General Order G03-02-02 (II)(E), Incidents Requiring the Completion of a Tactical Response Report (effective February 29, 2020 to April 14, 2021).

<sup>53</sup> General Order G08-01-02 (II)(B)(2).

<sup>54</sup> General Order G08-01-02 (II)(B)(3).

<sup>55</sup> Special Order S08-01-02 (III), Special Situations Involving Allegations of Misconduct (effective April 8, 2019 to present).

recognized that Officer Lane's conduct did not comply with Department policy, and he issued the officer a SPAR for what he described as minor transgressions. However, Lieutenant Ortega stated that he did not notify COPA or obtain a log number because he did not observe Officer Lane engage in any reportable misconduct. Lieutenant Ortega's explanation is not credible. COPA has jurisdiction over allegations of excessive force and verbal abuse, and in the present case, Officer Lane was captured on video repeatedly calling ██████ both a "bitch" and a "motherfucker."<sup>56</sup> More significantly, the BWC video clearly shows that Officer Lane struck ██████ in the leg area with his firearm, then punched ██████ in the groin area while he was handcuffed. Under the Department's use of force policy, Officer Lane was not authorized to do either. Lieutenant Ortega had a duty to initiate a log number for Officer Lane's misconduct and notify COPA of the same. It is undisputed that he did not do so; therefore, COPA finds this allegation sustained as a violation of Rules 2, 3, 5, 6, and 11.

## VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

### a. Officer Lane

COPA has found that Officer Lane violated Rules 2, 3, 6, 8, 9, and 38 by using excessive force against ██████ pointing his firearm at ██████ without justification, and directing profanities and unprofessional language at ██████. In mitigation, COPA has considered Officer Lane's complimentary history, minimal disciplinary history,<sup>57</sup> and relative inexperience as an officer. In aggravation, COPA has considered the gravity of Officer Lane's misconduct, including his repeated and flagrant violations of the Department's use of force policy. Additionally, COPA notes that Officer Lane's decision to hold his firearm against the back of ██████ head created an extreme safety risk to ██████ Sergeant Stephans, and the officer himself. Although Officer Lane was candid and credible during his COPA statement, it does not negate the severity of his actions. Accordingly, COPA recommends Officer Lane receive a suspension of not less than 366 days.

### b. Sergeant Stephans

COPA has found that Sergeant Stephans violated Rules 2, 3, 6, 8, 9, 10, and 11 by using excessive force against ██████ and serving as the reviewing supervisor on Officer Lane's TRR. In mitigation, COPA has considered Sergeant Stephans' extensive complimentary history and lack of sustained disciplinary history.<sup>58</sup> In aggravation, COPA has considered the sergeant's supervisory rank, more than 20 years of experience as a Department member, and the gravity of his misconduct. Sergeant Stephans admitted that he punched ██████ in the face and delivered knee strikes to his body, despite the fact that ██████ was only an active resister. While COPA appreciates Sergeant Stephans' candor, his actions set a poor example for Officer Lane and could

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<sup>56</sup> Indeed, Department policy expressly states that allegations of verbal abuse that include "the use of profane, insolent, or disrespectful language will require the assigned supervisory member to obtain a Log Number." Special Order S08-01-02 (II)(K)(1).

<sup>57</sup> Att. 95. Officer Lane received reprimands for a preventable traffic accident in May 2021 and noncompliance with motor vehicle pursuit requirements in April 2022. He has received 82 awards, including four complimentary letters, eight Department commendations, one special commendation, one life saving award, and 65 honorable mentions.

<sup>58</sup> Att. 95. Sergeant Stephans has received 120 awards, including ten complimentary letters, nine Department commendations, three crime reduction awards, one Chicago Police leadership award, and 81 honorable mentions.

have resulted in serious injury to [REDACTED] Accordingly, COPA recommends Sergeant Stephans receive a suspension of not less than 30 days.

**c. Lieutenant Ortega**

COPA has found that Lieutenant Ortega violated Rules 2, 3, 5, 6, and 11 by failing to report Officer Lane’s misconduct to COPA. In mitigation, COPA has considered Lieutenant Ortega’s complimentary history and lack of sustained disciplinary history.<sup>59</sup> In aggravation, COPA has considered the lieutenant’s supervisory rank, more than 21 years of experience as a Department member, and the gravity of his misconduct. Lieutenant Ortega’s failure to report Officer Lane’s excessive force raises serious questions about his judgment and ability to lead. Officer Lane’s misconduct was clear, obvious, and captured on video. Lieutenant Ortega intentionally ignored his reporting requirements and instead issued Officer Lane a SPAR with a “violation noted,” the lowest form of discipline possible. This decision effectively ended the investigation into Officer Lane’s misconduct before it began. In fact, COPA only learned of this incident because an anonymous complaint of the incident. Lieutenant Ortega’s actions brought discredit to himself and the Department, and they undermined the City’s system of police accountability. Accordingly, COPA recommends Lieutenant Ortega receive a suspension of not less than 366 days.

Approved:

[REDACTED]

5/24/2022

\_\_\_\_\_  
Matthew Haynam  
*Deputy Chief Administrator – Chief Investigator*

\_\_\_\_\_  
Date

<sup>59</sup> Att. 95. Lieutenant Ortega has received 108 awards, including four complimentary letters, three crime reduction awards, one Department commendation, and 79 honorable mentions.