

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY ¹

Date of Incident:	January 10, 2021
Time of Incident:	11:52 a.m.
Location of Incident:	6450 S. Cottage Grove Avenue
Date of COPA Notification:	January 11, 2021
Time of COPA Notification:	3:59 p.m.

On January 10, 2021, Officers Victor Guebara, #17147 and Jeffery Shafer, #17177, were driving westbound on 67th and Cottage Grove Avenue when they observed the subject vehicle, a white Chevy Camaro, traveling eastbound.² Shafer ran the vehicle's license plate and learned that the vehicle was reported stolen earlier that morning.³ The officers followed the vehicle through multiple city blocks before the driver, now known as [REDACTED] lost control of the vehicle and jumped the curb at Kimbark Avenue, a one-way street going southbound.⁴ The subject drove the vehicle northbound on the sidewalk, while the officers continued to parallel the vehicle on the street.⁵ The subject driving the vehicle eventually found an opening and attempted to re-enter the street.⁶ At that moment, the officers exited their vehicle and [REDACTED] pointed a firearm in their direction.⁷ The subject driving the vehicle then re-entered traffic and drove southbound on Kimbark Avenue.⁸ In the process of fleeing, the subject driving the vehicle struck the officers' vehicle before getting away.⁹ The officers followed the vehicle southbound on Kimbark Avenue and reported their involvement in a vehicle pursuit after the subject struck theirs.¹⁰ As the officers were providing their path of travel, Sgt. Andrew Morgan, #1801, directed the officers to terminate the pursuit over the radio.¹¹

[REDACTED] ultimately crashed into a garage and fled on foot.¹² Two female passengers, identified as [REDACTED] and [REDACTED] exited the vehicle and were placed under arrest.¹³

¹ After the incident concluded, the subject vehicle's occupants were transported to Comer's Children's Hospital where they were treated and released. Shafer was also transported to Northwestern Hospital for injuries related to the being struck on the passenger side of his vehicle. Guebara sought medical attention for an injury to his hand, resulting from striking [REDACTED] Both officers went on Injury On-Duty (IOD) leave after the incident.

² Att. 39 – Arrest Report for [REDACTED]

³ Att. 39

⁴ Att. 39

⁵ Att. 39

⁶ Att. 39

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⁹ Att. 39

¹⁰ Att. 39

¹¹ Att. 1 – Initiation Report

¹² Att. 39 – Arrest Report for [REDACTED]

¹³ Att. 40 – Arrest Report for [REDACTED] and Att. 41 – Arrest Report for [REDACTED]

Officers followed [REDACTED] through multiple rear yards before he ran through an empty lot and fell on the sidewalk near 6450 S. Cottage Grove Avenue.¹⁴ As Valdez attempted to apprehend [REDACTED] Guebara and Shafer arrived on scene.¹⁵ Guebara exited the driver's side of his vehicle and struck [REDACTED] in the head/face.¹⁶ Guebara walked away in apparent pain sustained from him striking [REDACTED].¹⁷ At about the same time, Shafer straddled [REDACTED] who was laying on this stomach, and struck him multiple times in the head/face.¹⁸ Shafer then pushed [REDACTED] head into the pavement.¹⁹ Once [REDACTED] was standing up-right, Shafer pushed [REDACTED] head into a metal fence, causing him to hit his head.²⁰ As two officers escorted [REDACTED] to one of the police vehicles, Shafer stated words to the effect of, "That's that bitch. Get your bitch ass in the car."²¹

II. INVOLVED PARTIES

Involved Officer #1:	Victor Guebara, Star #17147, Employee ID # [REDACTED] Date of Appointment: February 8, 2014, Police Officer, Unit of Assignment: 376, DOB: [REDACTED] 1981, Male, Hispanic
Involved Officer #2:	Jeffery Shafer, Star #17177, Employee ID # [REDACTED] Date of Appointment: February 14, 2014, Police Officer, Unit of Assignment: 376, DOB: [REDACTED], 1986, Male, White
Involved Officer #3:	Joseph Valdez, Star #8118, Employee ID # [REDACTED] Police Officer, Unit of Assignment: 003, DOB: [REDACTED] 1990, Male, Hispanic
Involved Officer #4:	Miguel Enciso, Star #15838, Employee ID # [REDACTED] Date of Appointment: October 31, 2016, Unit of Assignment: 003, DOB: [REDACTED] 1988, Male, Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 2003, Male, Black
Involved Individual #2:	[REDACTED] DOB: [REDACTED], 2003, Female, Black
Involved Individual #3:	[REDACTED] DOB: [REDACTED], 2005, Female, Black

¹⁴ Att. 39 – Arrest Report for [REDACTED]

¹⁵ Att. 39

¹⁶ Att. 34 POD video 21:55 to 24:00

¹⁷ Att. 34 at 21:55 to 24:00

¹⁸ Att. 34 at 21:55 to 24:00

¹⁹ Att. 34 at 21:55 to 24:00

²⁰ Att. 34 at 21:55 to 24:00

²¹ Att. 24 Hasanovic BWC 2:25 to 2:30

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Victor Guebara	1. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused initiated a motor vehicle pursuit, in violation of G03-03-01.VII.	Sustained
	2. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused engaged in a motor vehicle pursuit, in violation of G03-03-01.V.	Sustained
	3. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused failed to terminate a motor vehicle pursuit, in violation of G03-03-01.X.	Not Sustained
	4. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused struck [REDACTED] about the head and/or face with a closed hand fist without justification, in violation of G03-02.	Sustained
	5. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused failed to activate his BWC, in violation of S03-14.	Sustained
Officer Jeffery Shafer	1. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused initiated a motor vehicle pursuit, in violation of G03-03-01.VII.	Sustained
	2. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the	Sustained

accused engaged in a motor vehicle pursuit, in violation of G03-03-01.V.	
3. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused failed to terminate a motor vehicle pursuit, in violation of G03-03-01.X.	Not Sustained
4. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused pushed [REDACTED] head into the cement sidewalk, in violation of G03-02.	Sustained
5. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused struck [REDACTED] about the head and/or face one or more times, in violation of G03-02.	Sustained
6. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused pushed [REDACTED] head into a metal fence, causing [REDACTED] to strike his head on said fence, in violation of G03-02.	Sustained
7. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused stated words to the effect of, "That's that bitch. Get your bitch ass in the car" in the direction of [REDACTED] [REDACTED] as officers escorted her to the police vehicle.	Sustained
8. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused failed to activate his BWC, in violation of S03-14.	Sustained

Officer Joseph Valdez	1. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused failed to intervene in the use of force on [REDACTED] by Officers Guebara and/or Shafer, in violation of G03-02.V.	Sustained
	2. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused failed to report the unjustified use of force on [REDACTED] of Officers Guebara and/or Shafer to the Department, in violation of Rule 22.	Unfounded
	3. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused failed to timely activate his body worn camera (BWC) in violation of S03-14.	Not Sustained
Officer Miguel Enciso	1. It is alleged that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, the accused failed to activate his body worn camera (BWC), in violation of S03-14.	Sustained

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
2. Rule 6: Disobedience of a directive, whether written or oral.
3. Rule 10: Inattention to duty.
4. Rule 14: Making a false report, written or oral.
5. Rule 22: Failure to report to the Department any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department.

General Orders

1. G03-02: Use of Force
2. G03-02-01: Force Options
3. G03-03-01: Emergency Vehicle Operations – Eluding and Pursuing

Special Orders

1. S03-14: Body Worn Cameras
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Federal Laws

1. The Fourth Amendment to the United States Constitution
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State Laws

1. 720 ILCS 5/7-5 (1986): Justifiable Use of Force
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V. V. INVESTIGATION²²

a. Interviews²³

In a statement to COPA on February 17, 2021, Officer Victor Guebara, #17147, stated that on the date of the incident, he was assigned to Beat 361E, operating a blue unmarked Ford Taurus.²⁴ Guebara worked with Officer Jeffery Shafer, #17177, who was assigned to a gang suppression mission that day. Guebara explained that he and his partner were driving westbound on 67th and Cottage Grove Avenue when they observed a white Chevy Camaro traveling eastbound. Shafer ran the license plate, at which point they learned the vehicle was reported stolen earlier that morning.

According to Guebara, he made a U-turn to follow the vehicle, but it was no longer in sight. The officers then saw the vehicle turn north on Drexel Avenue. Guebara stated that they did not activate their emergency equipment until they got closer to the subject vehicle, at which point the vehicle continued east on 65th Street. Guebara explained that the vehicle pulled over to the side a couple of times as if it were going to curb itself. The subject's actions made Guebara believe that the subject was either going to pull over or that someone was going to flee from the vehicle. Guebara stated that he was about to stop following the vehicle when he observed the vehicle make a left on Kimbark Avenue, which is a one-way going southbound. As the subject attempted to turn left, the vehicle lost control and jumped the curb, continuing to travel north on the sidewalk. Guebara stated that he continued north on Kimbark Avenue.

Guebara stated that the vehicle eventually made its way back onto the street and struck his vehicle, with Shafer taking most of the impact. The vehicle then reversed and appeared to stall, which gave Guebara and Shafer an opportunity to exit their vehicle. Once they were out of their vehicle, Guebara observed the driver point what appeared to be a two-toned firearm from the windshield. The driver then found an opening between the parked vehicles and continued southbound on Kimbark Avenue. Guebara turned his vehicle around and was able to see the subject

²² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

²³ COPA attempted to interview the civilians in this case. However, COPA was unable to do so due to their age, the initial fact that they were facing criminal charges, and finally, their involvement as witnesses in the criminal cases against Officers Guebara and Shafer.

²⁴ Atts. 71, 72, 77.

vehicle turn westbound on Marquette Road. Believing that the subject just attempted to kill them, and traffic was not very heavy, Guebara initiated a vehicle pursuit. Guebara stated that once they approached Cottage Grove Avenue, the vehicle made a right turn.

Guebara stated that at about the time he reached Cottage Grove Avenue, he heard a termination order over the radio, and he pulled over facing northbound on Cottage Grove Avenue. Guebara said he lost sight of the subject vehicle but subsequently heard that the vehicle had crashed, and the subject fled on foot, going westbound towards Evans Street. Guebara attempted to stop [REDACTED] but he doubled back onto Cottage Grove Avenue. Guebara drove back onto Cottage Grove Avenue and saw an officer, now known as Officer Valdez, with [REDACTED]. As Guebara approached the officer and [REDACTED] he saw the officer struggling to cuff [REDACTED]. As he got closer, he saw [REDACTED] move his hand in a swiping manner. Because he saw him point a firearm earlier, which he stated Shafer reported over the radio, Guebara delivered a direct mechanical strike to [REDACTED] upper body to gain compliance. According to Guebara, once he saw that Shafer and Valdez had better tactical positioning, he backed up and went over the air to give a slow-down to other units. Guebara stated that he injured his hand when he delivered the direct mechanical strike to [REDACTED].

According to Guebara, he was unsure if he saw Shafer strike [REDACTED] while on scene, but he did recall seeing the strikes on the POD video. Guebara explained that he knew he should have activated his BWC.

In a statement to COPA on February 24, 2021, Officer Jeffery Shafer, #17177, provided a statement consistent with that of Guebara's.²⁵ Shafer added that when the vehicle struck their vehicle, the impact was hard enough that he hit his head on the roof of the car. He said that he also had massive back pain from the impact. At this moment, Shafer believed the driver, now known as [REDACTED] was attempting to kill them. Shafer described that just prior to being struck, he was looking out of the passenger side window, into the front window of the subject vehicle, when [REDACTED] looked at him angrily and accelerated the vehicle at a high rate of speed, intentionally colliding into them. Once the vehicle struck theirs, [REDACTED] reversed his vehicle, at which time Guebara told Shafer to get out. According to Shafer, he got out of the vehicle, still shaken up from the crash, and in a lot of pain. He looked in [REDACTED] direction and saw that [REDACTED] was pointing a two-toned semi-automatic firearm at him.

Shafer stated that [REDACTED] maneuvered his vehicle past theirs and continued traveling southbound. Shafer and Guebara re-entered their vehicle and Shafer reported an "emergency" over the radio, followed by a flash message containing their path of travel. While following the vehicle, Shafer could not recall if their emergency equipment was activated. He did recall it was activated when they initially attempted to curb the vehicle, but he could not recall if it was still activated or if they re-activated after the crash. Once they turned northbound on Cottage Grove Avenue, he heard their sergeant terminate the pursuit over the radio. Shafer stated that they pulled over either at 66th or 67th Street, where he still saw other police vehicles responding. Subsequently, Shafer heard an officer give a flash message that the vehicle crashed, and [REDACTED] was involved in a foot pursuit. At that point, Guebara drove towards the location provided over the radio.

²⁵ Atts. 73, 80, 81, 82

According to Shafer, he saw [REDACTED] near 64th and Evans Avenue, but he doubled back towards Cottage Grove Avenue. Guebara drove eastbound on 65th Street then northbound on Cottage Grove Avenue, where Shafer saw an officer struggling with [REDACTED]. Shafer explained that the officer, whom he later learned was Valdez, was trying to place [REDACTED] in cuffs but [REDACTED] was moving his arms, trying to evade being placed in cuffs. Shafer stated that Guebara drove his car close to where the struggle was occurring, at which point he exited the vehicle. Shafer saw [REDACTED] flailing his arms and kicking. Shafer jumped on [REDACTED] to assist by trying to grab his left arm, but [REDACTED] pulled it back. According to Shafer, he believed [REDACTED] was still armed and therefore he delivered four mechanical strikes in an attempt to stun [REDACTED] and place him in cuffs.

Shafer stated that at the police station, after the incident, he realized that his BWC was not on during the incident; however, he believed that he had turned it on earlier and that he had recorded the entire incident.²⁶

In a statement to COPA on February 10, 2021, Officer Joseph Valdez, #8118, worked Beat 361D with partner officers Bryan Vielman and Ricardo Rivera.²⁷ Valdez explained that he and his partners had just completed a traffic stop when a male approached his vehicle. The male informed them that he was at a gas station at 67th Street and Cottage Grove Avenue and he believed that some teenagers may have stolen a Camaro. He also believed that they were still at the gas station. Valdez and his partners were driving southbound on Cottage Grove Avenue, coming from Marquette Road when he heard Shafer request OEMC to run a license plate on a white Camaro, which came back stolen.

Valdez explained that Shafer provided their path of travel, at which time they began to drive eastbound on 66th Street (also known as Marquette Road). Valdez stated that he could not recall how much time elapsed, but it was reported that the vehicle struck Shafer's vehicle. According to Valdez, after Shafer radioed for an emergency, he continued to provide directions. As Valdez approached 65th Street and Cottage Grove Avenue, he and his partners observed the subject vehicle driving northbound on Cottage Grove Avenue. Valdez and his partners made a northbound turn on Cottage Grove Avenue, and approximately halfway down the block, they observed the Camaro jump a curb and drive through a vacant lot. Valdez continued traveling northbound to 64th Street and turned westbound. Valdez stated that as they approached the alley between Evans and Cottage Grove Avenues, he and his partners saw individuals exiting the vehicle. At that point, Valdez got out of his vehicle and attempted to activate his BWC.

Valdez stated that he started running towards Cottage Grove Avenue, then southbound. As he was running southbound on Cottage Grove Avenue, he saw [REDACTED] running through the vacant lot. Valdez stated that he drew his firearm²⁸ and told [REDACTED] to put his hands up, to which [REDACTED] complied. Valdez continued to pursue [REDACTED] on foot and at some point, [REDACTED] tripped and fell. According to Valdez, he approached [REDACTED] and told him to show his hands. [REDACTED] had his hand up and Valdez grabbed one arm and told him to get on the ground and lay on his stomach. As Valdez placed [REDACTED] on his stomach, he put his knee on his back/shoulder area to gain control of him so that he could re-holster his firearm and pull out his handcuffs.

²⁶ Att. 82 Shafer transcript; Page 55, Lines 18 to 24

²⁷ Atts. 67, 68, 79

²⁸ Officer Valdez stated that after the incident, he went over the radio to report a firearm pointing incident.

Valdez stated that he saw other officers approaching, at which time he changed positions to have a better angle to place him in handcuffs. As he was attempting to place [REDACTED] in cuffs, he observed someone, whom he later learned to be Guebara, on his left-hand side. Subsequently, Valdez felt a nudge, but he was not sure what it was since he was looking down, concentrating on controlling [REDACTED]. He added that he was not sure if someone was pushed or shoved. Valdez stated that [REDACTED] was already stiffened but then began to flail his arms, squirm, and kick his legs. According to Valdez, he lost control of [REDACTED] arm. At that time, Valdez saw Shafer approach, straddle and give [REDACTED] two to four direct mechanical strikes, followed by commands to stop resisting.

According to Valdez, he was able to gain control of [REDACTED] arm and cuff one hand. Valdez described that [REDACTED] continued to squirm, while still stiffening his body, making it difficult to cuff his left hand. Valdez stated that he also observed Shafer hold [REDACTED] head to the ground prior to gaining control of his left arm to get him fully cuffed. Once they were able to cuff him, they stood him upright. Afterwards, Valdez tried to look for a transport vehicle. Valdez added that he also saw Shafer push [REDACTED] onto a fence once he was standing upright. Valdez explained that when it occurred, he believed it to be routine. Valdez stated that Shafer was putting [REDACTED] up against the fence to either conduct a search or to gain compliance.

When asked what his response was to seeing Shafer strike [REDACTED] multiple times, Valdez explained that he saw Shafer deliver the strikes, but he was not sure what type of strikes he had delivered. He did not know if they were open hand or closed strikes. Valdez added that it was not until he returned to the district where he watched his BWC and POD video that he learned what exactly happened. Valdez also explained that [REDACTED] stopped squirming and he was able to gain control of his left arm when Shafer was holding [REDACTED] head to the ground.

Valdez explained that on the date of incident, he was not aware if the use of force he observed by Shafer was reportable. He stated that everything occurred fast, and he wanted to review his BWC footage to see if the strikes were justified. Once he learned that there was POD video and he had a chance to review it, he tried to report it to Sgt. Andrew Morgan, who informed him that the incident was already being reported.

After reviewing his BWC during his statement, Valdez stated that he thought he assisted Shafer in getting [REDACTED] up off the ground, but that he was not correct. He also stated that he believed that he had escorted [REDACTED] to the transport vehicle, which was refuted by the video. Valdez stated that he saw an abrasion to [REDACTED] forehead, but he denied that [REDACTED] complained of any injuries or that he asked for medical attention. Valdez attributed the abrasion to [REDACTED] being involved in a motor vehicle accident just prior to being apprehended. Valdez also learned after the incident that a firearm was recovered from inside of the vehicle.

In a statement to COPA on February 10, 2021, Officer Miguel Enciso, #15838, Enciso stated that on the date of incident, he worked Beat 361C with partner officer, Noel Rodriguez.²⁹ Enciso explained that he and his partner were on routine patrol when they heard a radio transmission of an officer calling out an emergency, stating that they had just been hit. Enciso

²⁹ Atts. 66, 69, 70, 76

added that they did not know a lot of information because officers were talking over each other on the radio.

According to Enciso, he and his partner were traveling southbound on Cottage Grove Avenue, near 63rd Street when they observed a white Camaro traveling northbound at what appeared to be a high rate of speed. The vehicle was followed by two unmarked police vehicles, which made them believe it was related to the incident reported over the radio. Enciso stated that his partner made a U-turn at 66th Street. Approximately one-half block down, they observed the vehicle travel onto oncoming traffic, jump the curb and drive through an empty lot. Enciso and his partner followed behind the subject vehicle through the empty lot.

Enciso explained that by the time his partner jumped the curb, they observed the subject vehicle crashed into a garage in the alley. Enciso stated that he told his partner to stop the car because he saw three occupants, two African American females and the African American male driver, exit the front passenger door of the vehicle. Enciso explained that he and his partner exited their vehicle and engaged in a foot pursuit. Rodriguez engaged the females, while he engaged [REDACTED]³⁰ Enciso stated that he and [REDACTED] ran into a vacant yard that was filled with shrubbery and tree branches, which caused them to struggle to get through the yard. Enciso added that he had [REDACTED] in sight, ordering him to stop but [REDACTED] failed to comply. According to Enciso, [REDACTED] made it to the front wooden gate and jumped over to what would be Evans Street. Enciso knew there were other units responding so he reported [REDACTED] location over the radio, and he backtracked to find Rodriguez.

Enciso stated that once he was back in the alley, [REDACTED] circled back and was back in his sight, just a couple of houses south. Enciso got on the air and reported that [REDACTED] was doubling back on foot to Cottage Grove Avenue through the initial vacant lot. As Enciso was pursuing [REDACTED] on foot, he fell into a ditch. By the time he got up and gathered himself, [REDACTED] was already detained. Enciso explained that he saw an officer on top of [REDACTED] or on his side. He then observed an unmarked Taurus arrive and saw that officers had surrounded [REDACTED]. Since Enciso observed several units responding to the location, he looked for an address of their location and went over the radio to give a slow-down to other units responding.

Enciso denied seeing any officer strike [REDACTED] while on scene. He explained that when he saw the officers surround [REDACTED] he thought they were just trying to place him in custody. After watching the video, he learned what happened. Enciso explained that when he told his partner to stop the car, he tapped his BWC to activate it. Enciso stated that he heard a beep and therefore believed it was recording. Enciso added that he's not sure if his partner was activating his at the same time and that was the beep he heard but to his knowledge, he attempted to turn his BWC on prior to the foot pursuit.

In a statement to COPA on May 11, 2021, Sgt. Andrew Morgan, #1801, stated that on the date of incident, he was patrolling the area of 72nd Street and Ellis Avenue, monitoring the air.³¹ Morgan heard one of his units involved in a pursuit of a vehicle that was reported stolen,

³⁰ Officer Enciso stated that while engaged in a foot pursuit with [REDACTED] his primary view of [REDACTED] was his back. Officer Enciso further described that [REDACTED] ran while holding his pants and he did not see [REDACTED] with a weapon.

³¹ Atts. 89, 91.

which then attempted to flee and strike the officers' vehicle before fleeing. Morgan stated that he asked if anyone was hurt and advised them to stop the pursuit. Morgan explained that the officers must have not heard him because they "were constantly on the air, giving the direction of flight and pursuit."³² After a few minutes, he went over the radio again to terminate the pursuit.

Morgan stated that upon arrival on scene of the incident, the scene was already secured. Morgan saw that a white Camaro had crashed into a garage and learned that the offenders were taken to the police station. Morgan stated that while on scene, he saw Galvan walking towards him, holding a pistol. Morgan reported that he learned that Galvan recovered the firearm from inside of the subject vehicle. According to Morgan, Galvan placed the firearm in a box, and it was subsequently inventoried.

Morgan stated that after leaving the scene, he relocated to the station where he debriefed with the officers on scene. Morgan stated that both Shafer and Guebara complained of injuries. Morgan stated that he did not recall any of the arrestees complaining of injuries. Morgan also watched a video in the Strategic Decision Support (SDS) room as well as BWCs of responding officers. While he was reviewing media and documents related to the arrest, Valdez attempted to report the incident to him, but he stopped him and told him he already watched the video and therefore did not need him to do anything further. Morgan then called Lt. Butler to report the incident to him.

b. Digital Evidence

POD 7074 video, located at 6500 S. Cottage Grove Avenue, shows that at approximately 21:56 into the video, a male, now identified as [REDACTED] runs through a vacant lot.³³ As he reaches the sidewalk, he trips near an orange cone and falls to the ground. An officer, now known as Officer Valdez, approaches [REDACTED] as [REDACTED] raises one of his arms in the air. [REDACTED] is then placed on his stomach by Valdez.

The POD is then manipulated to zoom into the incident. A blue unmarked sedan arrives and parks on the sidewalk, near where [REDACTED] is being apprehended. An officer, now identified as Guebara, exits the driver's side of the vehicle. He approaches [REDACTED] who is face down on the ground with one hand behind his back and one hand visible under his chin, and delivers one closed-hand strike to what appears to be the right side of his head before walking away. At approximately the same time, other officers surround [REDACTED] Shafer straddles [REDACTED] and delivers four closed-hand strikes to [REDACTED] head as [REDACTED] attempts to cover his head with his right hand. Shafer appears to attempt to gain control of [REDACTED] right arm. Subsequently, Shafer pushes [REDACTED] head to the ground and scrapes it on the concrete. Several additional officers arrive on scene. Multiple officers move through the empty lot, towards the alley. Eventually, Shafer stands [REDACTED] up off the ground and pushes him onto a wrought iron fence, face first. Shafer appears to say something to [REDACTED] before walking away. Guebara then takes hold of [REDACTED] and appears to say something to him. Shafer regains hold of [REDACTED] and escorts him to a marked police vehicle in the vacant lot. The POD pans to show the overall area of incident. Several police units are shown on scene.

³² Att. 90 Morgan statement transcript, Page 12, Lines 5-6

³³ Att. 34.

Video footage³⁴ of Valdez's BWC starts at approximately 11:51:20.³⁵ The video shows Valdez running towards what we now know to be Cottage Grove Avenue. At approximately 11:51:58, Valdez approaches [REDACTED] who is seen in a seated position on the sidewalk, near an orange cone, with both of his arms in the air. Valdez appears to briefly point his firearm at [REDACTED]. Valdez turns [REDACTED] onto his stomach before holstering his firearm and taking out his handcuffs. An officer, who has now been identified as Shafer, arrives and straddles [REDACTED]. Movement is observed but is obstructed by the placement of the BWC on Valdez's vest. Officers, including Shafer, appear to attempt to place [REDACTED] in handcuffs. At approximately 1:26 and 1:59 of the video, Valdez activates his BWC. While still on the ground, Shafer appears to pat-down [REDACTED]. At approximately 1:48 of the video, Shafer turns [REDACTED] over and places him in a seated position.

At 2:00 of the video, the audio is activated. [REDACTED] is heard screaming, stating that he cannot breathe. Guebara is heard saying words to the effect of, "You can't breathe but you can hit a mother fucker with a car, right?"³⁶ Guebara then asks [REDACTED] if he was trying to kill him. Guebara grabs [REDACTED] by the front of his jacket and pushes him against the fence before calling him a "Stupid mother fucker."³⁷ [REDACTED] asks the officer to fix the cuffs because they are not on all the way, to which Guebara tells him to shut up. Shafer approaches and appears to make an adjustment to the handcuffs. Again, [REDACTED] is heard screaming, telling the officers they are making his mouth bleed. Valdez walks towards a marked police SUV located in the vacant lot. The video shows Shafer escorting [REDACTED] to the vehicle. [REDACTED] informs officers that he does not have anything on him, and they can search him. An unidentified male officer is heard asking [REDACTED] questions, to which [REDACTED] replies.

Office of Emergency Management and Communications (OEMC) radio transmissions capture at approximately 9:00 of the recording, Beat 361E reported an emergency.³⁸ A male officer reported that a stolen vehicle, a white Camaro with stripes, just hit them. The officer reported the vehicle's path of travel. Several units were heard over the radio, making their reports inaudible. An unidentified unit, now known to be Beat 361, asked how fast the vehicle was traveling. Beat 361E reported that they are traveling at 30 mph, keeping with the flow of traffic. An unidentified unit reported the vehicle was traveling northbound on Cottage Grove Avenue. At approximately 10:23 of the recording, a supervisor [Beat 361] terminated the pursuit. The supervisor subsequently repeated the termination order. At approximately 10:55 of the recording, an unidentified officer reported a foot pursuit near 65th and Cottage Grove Avenue. The direction of flight is reported over the radio. At approximately 11:47 of the recording, officers report that the subject was in custody.

Evidence Technician (ET) Photographs depict images of an unmarked blue Ford Taurus with damage to the passenger side of the vehicle, a white Camaro crashed against a brick garage, a two-tone firearm, a magazine and fingerprints found on the magazine.³⁹

³⁴ BWC footage was obtained from other responding officers. The video footage does not directly capture the incident involving Officers Guebara and Shafer. At least some of the videos capture details surrounding the incident and the videos have been made attachments as part of this investigation.

³⁵ Att. 9.

³⁶ Att. 9 at 2:03

³⁷ Att. 9 at 2:16

³⁸ Att. 5.

³⁹ Atts. 83, 84.

c. Documentary Evidence

The **Initiation Report** submitted by Lt. Darwin E. Butler, #776, dated January 11, 2021, documents a similar account of the incident as that of the **Arrest Reports**, the **Original Case Incident Reports** and the officers' statements.⁴⁰ The Initiation Report adds that after asking Sgt. Morgan if he authorized the vehicle pursuit by Beat 361E, Sgt. Andrew Morgan informed him that he gave a termination of the chase order twice via CPD radio to Beat 361E.

Lt. Darwin reviewed video footage and observed Guebara exit from the driver's side of his patrol vehicle and strike [REDACTED] one time in the face/head with a closed fist then immediately return to his patrol vehicle. Shafer exited from the passenger side of the patrol vehicle to assist Valdez in cuffing [REDACTED]. Shafer struck [REDACTED] about the head several times as [REDACTED] appeared to resist arrest. Moments later Officers Valdez and Shafer placed handcuffs on [REDACTED]. Shafer, while assisting [REDACTED] up from the ground, appeared to push [REDACTED] forward, head-first into a nearby fence, causing him to strike the fence with his head.

Lt. Darwin then reviewed BWC footage from the officers on scene and observed that Officers Guebara, Shafer and Enciso failed to activate their BWCs. It was also noted that a two-tone chrome/blue steel pistol was ultimately recovered from the glove compartment of the subject vehicle driven by [REDACTED]. [REDACTED] was transported to Children's Hospital by Beat 371 in good condition with a laceration to his head. Shafer was transported to Northwestern Hospital in stable condition with lower back pain.

The **Tactical Response Report (TRR)** of **Officer Victor Guebara** documents that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, Guebara, while on-duty, used force against [REDACTED].⁴¹ The report indicates that [REDACTED] did not follow direction and that he stiffened, pulled away and fled. In response to [REDACTED] actions, Guebara used member presence, verbal direction, control techniques, and had the assistance of other units. Guebara further responded with a closed hand strike/punch.

The TRR explained that responding officers, while on routine patrol, conducted an inquiry on a vehicle bearing license plate # [REDACTED] resulting in finding out that the vehicle was stolen under RD #JE108666. Officers activated their emergency equipment, at which time the offender, now known as [REDACTED] fled eastbound in the vehicle. While in pursuit, [REDACTED] made a "bold and brazen" attempt to defeat arrest and began to drive on the sidewalk from 65th Street and Kenwood Avenue, in the wrong direction. [REDACTED] then turned in the direction of the responding officers and began to accelerate towards the officers, striking the passenger side of the officers' vehicle. As [REDACTED] reversed his vehicle, he brandished and pointed a two-toned firearm, while fleeing from the officers. [REDACTED] subsequently drove southbound on Kenwood Avenue, then northbound on Cottage Grove Avenue, before losing control of the vehicle and crashing into a garage at 6427 S. Evans Avenue and then fleeing on foot. Multiple officers were on scene and observed [REDACTED] flee on foot. Guebara observed an officer, now known as Officer Valdez, close the distance on [REDACTED] before [REDACTED] lost his footing and fell to the ground. [REDACTED] refused to obey verbal commands and he

⁴⁰ Atts. 1, 39 -42

⁴¹ Att. 33.

stiffened his body while Officer Valdez was trying to place him into custody. Guebara exited his vehicle and in fear of [REDACTED] still in possession of the firearm and because he used the vehicle as a weapon to defeat arrest (in addition to failing to follow Officer Valdez's directions), Guebara delivered a closed hand strike with his left hand about [REDACTED] upper body. Guebara did this to help place [REDACTED] in custody. Officer Guebara felt pain in his hand and walked away.

The **Tactical Response Report (TRR) of Officer Jeffery Shafer** documents that on January 10, 2021, at approximately 11:49 a.m., at or near 6450 S. Cottage Grove Avenue, Shafer, while on-duty, used force against [REDACTED]⁴² The report indicates that [REDACTED] did not follow direction, stiffened, pulled away, and fled. It states that [REDACTED] was an imminent threat of battery with a weapon and that he physically attacked with a weapon. Additionally, [REDACTED] used force likely to cause death or great bodily harm. In response to [REDACTED] actions, Shafer used member presence, verbal direction, control techniques, the assistance of other units, and handcuffs/physical restraints. Shafer further responded with closed hand strikes/punches and push/physical redirection.

The TRR documents that the responding officers conducted a vehicle compliance inquiry, resulting in the vehicle being stolen. Officers activated their emergency equipment, at which time the offender, now known as [REDACTED] fled in the vehicle. While in pursuit, [REDACTED] made a "bold and brazen" attempt to defeat arrest and accelerated towards the officers, striking the passenger side of the officers' vehicle, causing the officer immediate back and body pain. As [REDACTED] reversed his vehicle, he brandished and pointed a two-toned firearm, while fleeing from the officers. [REDACTED] subsequently drove southbound on Kenwood Avenue,⁴³ then northbound on Cottage Grove, before losing control of the vehicle and crashing into a garage at 6427 S. Evans Avenue and fleeing on foot. Multiple officers were on scene and observed [REDACTED] flee on foot. Valdez pursued [REDACTED] on foot. [REDACTED] lost his footing and fell to the ground, while still possessing the firearm. [REDACTED] refused to obey verbal commands to get on his stomach and give up his hands as Valdez was trying to place him into custody. Shafer, observing [REDACTED] failing to comply with Valdez's commands and believing he was still in possession of the firearm, delivered multiple mechanical strikes with a closed fist about [REDACTED] upper body. According to Shafer, he believed that [REDACTED] was still in possession of the firearm and feared it could cause great bodily harm or death. Officers were eventually able to gain control of [REDACTED] hands and [REDACTED] was eventually placed into custody. It was further documented that [REDACTED] sustained a laceration to his head from the traffic crash.

The **Arrest Report⁴⁴ of [REDACTED] and Original Case Incident Report** document that [REDACTED] was arrested on January 10, 2021, at approximately 11:52 a.m., at 6450 S. Cottage Grove Avenue.⁴⁵ [REDACTED] was charged with multiple offences, to include Receive/Possess/Sell Stolen Vehicle, Aggravated UUW/Vehicle/Loaded/NO FCCA, Aggravated Battery/Use Deadly Weapon, Agg Assault to Peace Officer/Fire/ER Worker, Criminal Damage to Property <\$500, Possession of a Firearm with Defaced Serial Number, among other traffic related charges.⁴⁶

⁴² Att. 35

⁴³ It is not noted that in their statements to COPA, Officers Shafer and Guebara stated the vehicle turned on Kimbark Avenue not Kenwood Avenue.

⁴⁴ Att. 39, 42. The arrest reports for the two female occupants, [REDACTED] and [REDACTED] have been made part of this investigation and listed as attachments 40, 41. Ms. [REDACTED] and Ms. [REDACTED] were transported to Comer's Children's Hospital by ambulance. They were treated and released back to police custody.

⁴⁵ Att. 5.

⁴⁶ All charges were dismissed on June 23, 2021 (See bond proffer).

The Arrest Report further documents officers, working Beat 361E, observed a white Chevrolet Camaro, bearing Illinois license plate # [REDACTED] traveling eastbound on 67th Street, from Cottage Grove Avenue. The officers were in an unmarked Ford Taurus, driving westbound on 67th Street, facing Cottage Grove Avenue. The officers performed a vehicle check in LEADS on the Camaro, resulting in the vehicle being reported stolen under RD #JE108666. The officers made a U-turn and observed the Camaro turn northbound onto Drexel Avenue from 67th Street. Officers working 361E activated their emergency lights and attempted to curb the vehicle at 65th Street and Drexel Avenue. The vehicle then fled eastbound on 65th Street towards Kenwood Avenue, then attempted to go northbound onto the one way of Kenwood Avenue. The vehicle lost traction and slid onto the east sidewalk of Kenwood Avenue and traveled northbound on the sidewalk. The vehicle made a left turn and accelerated towards the street, intentionally striking Beat 361E's vehicle, on the passenger side. The Camaro then reversed, at which time Officers Guebara and Shafer observed [REDACTED] brandish a two-tone pistol, which placed the officers in fear of receiving a battery. [REDACTED] was taken to Comer's Children's Hospital by Beat 371 where he was treated and released by Dr. [REDACTED] [REDACTED]

The Camaro traveled southbound on Kenwood Avenue, towards 67th Street. The vehicle eventually lost control in the alley, near 6427 S. Evans, striking the garage. [REDACTED] fled the vehicle on foot. After running through an empty lot, [REDACTED] reached Cottage Grove Avenue. [REDACTED] stumbled and fell at 6450 S. Cottage Grove, where Valdez closed the distance. Valdez instructed [REDACTED] who was still in possession of the firearm, to get on his stomach and give up his hands. At this point, Officers Guebara and Shafer arrived on scene and observed [REDACTED] failing to obey Valdez's commands, stiffening his arms. Believing that [REDACTED] was still in possession of the firearm, Guebara delivered one mechanical strike with a closed fist, before feeling pain in his hand and walking away. [REDACTED] continued to disobey the commands given to him, while stiffening his arms and pulling them away. Shafer then delivered multiple mechanical strikes about the face because he believed [REDACTED] was still in possession of the firearm and would use the firearm to defeat arrest. Officers Shafer and Valdez eventually placed [REDACTED] into custody. Shafer conducted a pat-down of [REDACTED] for the firearm, with negative results. Galvan recovered a two-tone Chrome/Blue Steel Ruger from within the glove compartment of the vehicle.

d. Additional Evidence

On January 20, 2021, the Chicago Bureau of Internal Affairs relieved Officers Guebara and Shafer of their police powers. Both officers were subsequently assigned to Unit 376, Alternate Response Section.⁴⁷

On August 31, 2021, Shafer and Guebara were placed into custody and charged with Aggravated Battery and Official Misconduct.⁴⁸ Charges against both officers were dismissed on January 24, 2024.

⁴⁷ Atts. 100, 102.

⁴⁸ Atts. 101, 103.

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.

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. 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). 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. See *e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). 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." *Id.* at ¶ 28.

VII. ANALYSIS

a. Officer Guebara

COPA finds Allegations #1 and #2 that Guebara initiated and engaged in a motor vehicle pursuit in violation of G03-03-01.VII is **Sustained**.

First, COPA finds that officer Guebara's actions constituted a pursuit. An officer's emergency driving is considered a pursuit if it meets two elements: (1) the officer engages in an "active attempt [...] to apprehend any driver or operator of a motor vehicle"; and (2) the driver or operator "fails or refuses to obey" a visual and audible signal directing such driver or operator to bring his vehicle to a stop.⁴⁹ According to Guebara, after learning the vehicle was stolen, he made a U-turn to follow the vehicle, but it was no longer in sight. The officers then saw the vehicle turn north on Drexel Avenue. Guebara stated that they did not activate their emergency equipment until they got closer to the subject vehicle, at which point the vehicle continued east on 65th Street. Guebara explained that the vehicle pulled over to the side a couple of times as if it were going to

⁴⁹ G03-03-01, Glossary Terms 4.A (Eff. April 9, 2019)

curb itself. The subject's actions made Guebara believe that the subject was either going to pull over or that someone was going to flee from the vehicle. Guebara stated that he was about to stop following the vehicle when he observed the vehicle make a left on Kimbark Avenue, which is a one-way going southbound. As the subject attempted to turn left, the vehicle lost control and jumped the curb, continuing to travel north on the sidewalk. Guebara stated that he continued north on Kimbark Avenue.

Guebara stated that the vehicle eventually made its way back onto the street and struck his vehicle, with Shafer taking most of the impact. The vehicle then reversed and appeared to stall, which gave Guebara and Shafer an opportunity to exit their vehicle. Thus, it is clear from Guebara's own statements that he was attempting to apprehend the driver and the driver failed to obey his signals to stop.

Second, the pursuit was prohibited by Department policy. Pursuant to Department policy, the initiation, continuation, and supervisory authorization of each motor vehicle pursuit must conform to a balancing test in which the member decides whether the necessity to immediately apprehend the fleeing suspect outweighs the level of inherent danger created by the motor vehicle pursuit.⁵⁰ In doing so, the member is to determine whether the speeds involved and/or the maneuvering practices engaged in permit the Department vehicle operator complete control of the vehicle and do not create unwarranted danger to him/herself or others. He/she is also to consider whether the volume of pedestrian/vehicular traffic, weather, and road conditions reasonably permits initiating or continuing the pursuit.⁵¹

Furthermore, Department policy prohibits the continuation of a motor vehicle pursuit during the following circumstances: whenever a pursued vehicle or pursuing Department vehicle is involved in any traffic crash in which there is a probability of personal injury; when the most serious offense for which the pursued vehicle is wanted is a theft (including Possession of Stolen Motor Vehicle) or a hazardous traffic violation (other than driving under the influence of alcohol and/or drugs); and after the initial observed violation, the pursued vehicle disregards the traffic signals or signs when entering an intersection controlled by traffic signals or stop/yield signs.⁵²

Here, Guebara began pursuing the vehicle because it was reported stolen. After activating their emergency equipment, the vehicle pulled over a couple of times and then continued driving. The vehicle then began going the wrong way on a one-way street. The vehicle then lost control and jumped the curb, traveling on the sidewalk. The vehicle then entered the street and struck Guebara's vehicle. COPA finds that based on the vehicle's actions of pulling over, then continuing, turning down a one-way street, losing control, jumping the curb, and driving on the sidewalk, continuing to pursue was in violation of Department policy in that it created an unwarranted danger to the police vehicle and others. At that time, the most serious violation was Possession of a Stolen Motor Vehicle. Thus, COPA finds that the pursuit was prohibited by Department policy. Thus, allegations 1 and 2 are sustained.

⁵⁰ General Order G03-03-01 (II)(A), effective April 9, 2019

⁵¹ General Order G03-03-01 (II)(B) effective April 9, 2019.

⁵² General Order G03-03-01 (III)(C) effective April 9, 2019

COPA finds Allegation 3 that Guebara failed to terminate a motor vehicle pursuit violation of G03-03-01.X is **Not Sustained**. In his statement to COPA, Guebara said by the time he reached Cottage Grove Avenue, he heard a termination order over the radio, and he pulled over facing northbound on Cottage Grove Avenue. While Sgt. Morgan stated that he had given termination orders over the radio and Guebara did not terminate the pursuit.⁵³ Sgt. Morgan then explained that the officers must have not heard him because they “were constantly on the air, giving the direction of flight and pursuit.”⁵⁴ Per Emergency Vehicle Operations – Eluding and Pursuing, G03-03-01, a pursuit will be immediately terminated whenever an order to terminate the pursuit is given by a supervisor.⁵⁵ Based on Morgan’s opinion that the officers could not hear the order because they “were constantly on the air, giving the direction of flight and pursuit,” it is within reason that the officers did not hear his initial orders to terminate the pursuit.⁵⁶ Thus, this allegation is **Not Sustained**.

COPA finds Allegation 4 that Guebara struck [REDACTED] about the head and/or face with a closed hand fist without justification, in violation of G03-02 is **Sustained**. The CPD’s Rules of Conduct establish a list of acts which are expressly prohibited for all members, including Rule 8, which states that officers may not engage in any behavior that would result in disrespect toward or maltreatment of any person, and Rule 9, which prohibits officers from engaging in any unjustified verbal or physical altercation with any person. Additionally, CPD policy specifies that all uses of force employed by officers must be “objectively reasonable, necessary, and proportional,” depending on the circumstances of the situation.⁵⁷ CPD members are trained to view the use of force according to a spectrum of possible encounters based on whether the subject involved is a cooperative person, a passive resister, an active resister, or an assailant, with greater levels of force being permitted as the subject’s behavior becomes more dangerous.⁵⁸

According to Guebara’s statement, Guebara delivered a direct mechanical strike to [REDACTED] upper body to gain compliance.⁵⁹ Upon viewing of the available footage, [REDACTED] was, at that point of the incident, at most an active resister.⁶⁰ In fact, [REDACTED] was face down on the ground with one hand behind his back and one hand under his chin, though Valdez described him as actively resisting arrest. Furthermore, Guebara delivered the strikes mere seconds after emerging from his vehicle, allowing no time to assess the situation or de-escalate. Guebara was not authorized to use direct mechanical techniques against [REDACTED] as direct mechanical strikes are only authorized for assailants.⁶¹ Thus, this allegation is **Sustained**.

⁵³ Att. 90 Morgan interview transcript

⁵⁴ Att. 90 Morgan interview transcript, Page 12, Lines 5-6

⁵⁵ Att. 112 G03-02-01 (effective February 29, 2020 to April 15, 2021)

⁵⁶ Att. 90 Morgan interview transcript, Page 12, Lines 5-6

⁵⁷ Att. 109 G03-02(III)(B), Use of Force (effective February 29, 2020 to April 1, 2021)

⁵⁸ Att. 112 G03-02-01(IV) (A to C), Force Options (effective February 29, 2020 to April 15, 2021)

⁵⁹ Att. 71 Guebara statement transcript; this is also stated in Att. 33 Guebara’s TRR

⁶⁰ Att. 113 G03-02-01(IV) (A to C), Force Options (effective February 29, 2020 to April 15, 2021); Att. 34 POD footage shows [REDACTED] was an active resister (per the definition from G03-02-01:): 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. Direct mechanical strikes are only authorized for assailants in this general order. Att. 34 POD 22:05 to 22:25 shows that [REDACTED] was flat on his belly and was not a threat to the officers at the point of the incident.

⁶¹ G03-02-01(IV) (A to C), Force Options (effective February 29, 2020 to April 15, 2021); direct mechanical strikes are only authorized for assailants per this general order.

COPA finds Allegation 5 that Guebara failed to activate his BWC in violation of S03-14 is **Sustained**. According to Special Order S03-14, a department member will activate their BWC to event mode at the beginning of a law enforcement related incident.⁶² A pursuit of a vehicle and apprehension of a suspect is clearly a law enforcement related incident. Guebara said that he knew he should have activated his BWC.⁶³ COPA does not have any evidence that Guebara recorded this incident on his BWC.⁶⁴ Thus, this allegation is **Sustained**.

b. Officer Shafer

COPA finds Allegations 1 and 2 that Shafer initiated and engaged in a motor vehicle pursuit, in violation of G03-03-01.VII are **Sustained**. As previously discussed, COPA finds that the pursuit was in violation of Department policy. COPA finds that Officer Shafer actively participated in a vehicle pursuit in violation of Department Rules. Although Officer Shafer was the passenger, Department policy does not permit him to passively sit by. Rule 2 prohibits conduct which impedes the Department's efforts to achieve its policy and goals. Rule 3 prohibits failures to promote Department policy. Moreover, the pursuit directive expressly states that "all members involved in or supervising a motor vehicle pursuit must be prepared to justify their actions."⁶⁵ Working in concert, these three rules create a duty whereby all officers playing a role in a pursuit must justify their actions and cannot passively sit by. As such, based on a preponderance of the evidence, COPA finds that both officers actively attempted to apprehend the vehicle. For these reasons, the preponderance of the evidence establishes that the allegations against Shafer are sustained.

COPA finds Allegation 3 that Shafer failed to terminate a motor vehicle pursuit in violation of G03-03-01.X is **Not Sustained**. In his interview, Shafer stated that they terminated the pursuit as soon as they heard the order to terminate the pursuit.⁶⁶ As noted in the interviews section, Guebara stated that at about the time he reached Cottage Grove Avenue, he heard a termination order over the radio, and he pulled over facing northbound on Cottage Grove Avenue. Sgt. Morgan stated that he had given termination orders over the radio and Guebara did not terminate the pursuit.⁶⁷ Sgt. Morgan explained that the officers must have not heard him because they "were constantly on the air, giving the direction of flight and pursuit."⁶⁸ Per Emergency Vehicle Operations – Eluding and Pursuing, G03-03-01, a pursuit will be immediately terminated whenever an order to terminate the pursuit is given by a supervisor.⁶⁹ Based on Morgan's opinion that the officers could not hear the order because they "were constantly on the air, giving the direction of flight and pursuit" it is within reason that the officers did not hear his initial orders to terminate the pursuit.⁷⁰ Thus, this allegation is **Not Sustained**.

⁶² Att. 111 Body Worn Cameras S03-14 (effective April 30, 2018 to present)

⁶³ Att. 71 Guebara statement transcript

⁶⁴ CO-1369086

⁶⁵ G03-03-01.IV.A

⁶⁶ Att. 71 Shafer interview transcript

⁶⁷ Att. 90 Morgan interview transcript

⁶⁸ Att. 90 Morgan interview transcript, Page 12, Lines 5-6

⁶⁹ Att. 112 G03-02(III)(B), Use of Force (effective February 29, 2020 to April 1, 2021)

⁷⁰ Att. 90 Morgan interview transcript, Page 12, Lines 5-6

COPA finds Allegation 4 that Shafer pushed ██████ head into the cement sidewalk in violation of G03-02 is **Sustained**. The CPD's Rules of Conduct establish a list of acts which are expressly prohibited for all members, including Rule 8, which states that officers may not engage in any behavior that would result in disrespect toward or maltreatment of any person, and Rule 9, which prohibits officers from engaging in any unjustified verbal or physical altercation with any person. Additionally, CPD policy specifies that all uses of force employed by officers must be "objectively reasonable, necessary, and proportional," depending on the circumstances of the situation.⁷¹ CPD members are trained to view the use of force according to a spectrum of possible encounters based on whether the subject involved is a cooperative person, a passive resister, an active resister, or an assailant, with greater levels of force being permitted as the subject's behavior becomes more dangerous.⁷² Following a review of the evidence, ██████ was an active resister⁷³ at this point of the incident, and thus, Shafer was not authorized to use direct mechanical techniques against ██████⁷⁴ According to Shafer, he pushed ██████ head into the cement because he believed ██████ was an armed assailant.⁷⁵ Upon viewing of the BWC footage and POD footage, COPA found no evidence that Shafer could have reasonably concluded that ██████ was an armed assailant.⁷⁶ Thus, this allegation is **Sustained**.

COPA finds Allegation 5 that Shafer struck ██████ about the head and/or face one or more times in violation of G03-02 is **Sustained**. The CPD's Rules of Conduct establish a list of acts which are expressly prohibited for all members, including Rule 8, which states that officers may not engage in any behavior that would result in disrespect toward or maltreatment of any person, and Rule 9, which prohibits officers from engaging in any unjustified verbal or physical altercation with any person. Additionally, CPD policy specifies that all uses of force employed by officers must be "objectively reasonable, necessary, and proportional," depending on the circumstances of the situation.⁷⁷ CPD members are trained to view the use of force according to a spectrum of possible encounters based on whether the subject involved is a cooperative person, a passive resister, an active resister, or an assailant, with greater levels of force being permitted as the subject's behavior becomes more dangerous.⁷⁸ Following a review of the evidence, ██████ was an active resister and thus Shafer was not authorized to use direct mechanical techniques against ██████⁷⁹ According to Shafer, he believed ██████ was still armed and therefore he delivered four mechanical strikes to attempt to stun him in order to place him in cuffs.⁸⁰ Upon viewing of the

⁷¹ Att. 112 G03-02(III)(B), Use of Force (effective February 29, 2020 to April 1, 2021)

⁷² Att. 113 G03-02-01(IV) (A to C), Force Options (effective February 29, 2020 to April 15, 2021).

⁷³ Att. 113 G03-02-01(IV) (A to C), Force Options (effective February 29, 2020 to April 15, 2021); Att. 34 POD footage shows ██████ was an active resister (per the definition from G03-02-01: 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. Att. 34 POD 22:15 to 22:25 shows that ██████ was flat on his belly and was not a threat to the officers at the point of the incident.

⁷⁴ G03-02-01(IV) (A to C), Force Options (effective February 29, 2020 to April 15, 2021); direct mechanical strikes are only authorized for assailants per this general order.

⁷⁵ Att. 71 Shafer transcript Page 77, Lines 19 to 22, Page 78 lines 1 to 2

⁷⁶ Att. 9 Valdez BWC and Att. 34 Pod footage

⁷⁷ G03-02(III)(B), Use of Force (effective February 29, 2020 to April 1, 2021)

⁷⁸ G03-02-01(IV) (A to C), Force Options (effective February 29, 2020 to April 15, 2021).

⁷⁹ G03-02-01(IV) (A to C), Force Options (effective February 29, 2020 to April 15, 2021).

⁸⁰ Att. 71 Shafer transcript

BWC footage and POD footage, COPA found no evidence that Shafer could have reasonably concluded that [REDACTED] was an armed assailant.⁸¹ Thus, this allegation is **Sustained**.

COPA finds Allegation 6 that Shafer pushed [REDACTED] head into a metal fence, causing [REDACTED] to strike his head on said fence in violation of G03-02 is **Sustained**. The CPD's Rules of Conduct establish a list of acts which are expressly prohibited for all members, including Rule 8, which states that officers may not engage in any behavior that would result in disrespect toward or maltreatment of any person, and Rule 9, which prohibits officers from engaging in any unjustified verbal or physical altercation with any person. Additionally, CPD policy specifies that all uses of force employed by officers must be "objectively reasonable, necessary, and proportional," depending on the circumstances of the situation.⁸² CPD members are trained to view the use of force according to a spectrum of possible encounters based on whether the subject involved is a cooperative person, a passive resister, an active resister, or an assailant, with greater levels of force being permitted as the subject's behavior becomes more dangerous.⁸³ According to Shafer, "I was able to eventually get him up after being cuffed, he pushed -- pushed into me and pulled forward, and then I had to use the fence like I was taught in the academy to help place him in custody until responding officers could help and put him in a vehicle to transport."⁸⁴ Upon viewing of the POD footage, [REDACTED] did not appear to push against Shafer and therefore this explanation is not satisfactory.⁸⁵ Thus, this allegation is **Sustained**.

COPA finds Allegation 7 that Shafer stated words to the effect of, "That's that bitch. Get your bitch ass in the car," in the direction of [REDACTED] as officers escorted her to the police vehicle is **Sustained**. The CPD's Rules of Conduct establish a list of acts which are expressly prohibited for all members, including Rule 8, which states that officers may not engage in any behavior that would result in disrespect toward or maltreatment of any person, and Rule 9, which prohibits officers from engaging in any unjustified verbal or physical altercation with any person. In Shafer's 2nd COPA statement, he confirmed that he said this statement.⁸⁶ Additionally, Shafer can be heard saying on another officer's BWC, "That's that bitch. Get your bitch ass in the car."⁸⁷ This language and conduct is clearly disrespectful and unjustified. Thus, this allegation is **Sustained**.

COPA finds Allegation 8 that Shafer failed to activate his BWC is **Sustained**. According to Special Order S03-14, a Department member will activate the BWC to event mode at the beginning of a law enforcement related incident.⁸⁸ A pursuit of a vehicle and apprehension of a suspect is clearly a law enforcement related incident. Shafer stated that at the police station, after the incident, he realized that his BWC was not on during the incident; however, he believed that

⁸¹ Att. 9 Valdez BWC and Att. 34 Pod footage 23:20 to 23:35

⁸² G03-02(III)(B), Use of Force (effective February 29, 2020 to April 1, 2021)

⁸³ G03-02-01(IV) (A to C), Force Options (effective February 29, 2020 to April 15, 2021).

⁸⁴ Att. 71 Shafer transcript page 78, lines 13 to 18

⁸⁵ Att. 34 Pod footage; Att. 9 Valdez BWC and Att. 34 Pod footage; even if [REDACTED] had pushed against Shafer, Shafer's explanation would not be a satisfactory explanation for his pushing [REDACTED] head into the metal fence.

⁸⁶ Att. 80 Shafer Statement #2 5:20 to 5:25

⁸⁷ Att. 30 Hasanovic BWC 2:25 to 2:30

⁸⁸ Att. 111 Body Worn Cameras S03-14 (effective April 30, 2018 to present)

he had turned it on earlier and recorded the entire incident.⁸⁹ COPA does not have any evidence that Shafer attempted to turn on his BWC.⁹⁰ Thus, this allegation is **Sustained**.

c. Officer Valdez

COPA finds Allegation 1 that Valdez failed to intervene in the use of force on [REDACTED] by Officers Guebara and/or Shafer in violation of G03-02.V is **Sustained**. In his statement, Valdez stated that he saw Shafer use direct strikes against [REDACTED] and that he did not know if the strikes were justified or not.⁹¹ Department General Order G03-02 Use of Force states that members who observe excessive force will act to intervene on the subject's behalf.⁹² Based on the POD footage of the incident, [REDACTED] does not appear to be an assailant and therefore there is no justifiable use of this force used by the officers.⁹³ Moreover, there is no evidence that Officer Valdez attempted to intervene on [REDACTED] behalf. Therefore, this allegation is **Sustained**.

COPA finds Allegation 2 that Valdez failed to report the unjustified use of force on [REDACTED] of Officers Guebara and/or Shafer to the Department in violation of Rule 22 is **Unfounded**. In his statement, Valdez said that his supervisor Sgt Andrew Morgan told him that the misconduct was being reported and Valdez did not have to file a use of force report.⁹⁴ In Morgan's statement, he said he told Valdez that he did not have to do any paperwork associated with the misconduct connected to this incident.⁹⁵ Thus, this allegation is **Unfounded**.

COPA finds Allegation 3 that Valdez failed to timely activate his body worn camera (BWC) S03-14 is **Not Sustained**. According to the Body Worn Special Order S03-14, a Department member will activate the BWC to event mode at the beginning of a law enforcement related incident.⁹⁶ In his statement, Valdez stated that he attempted to activate the BWC when getting out of his vehicle and implied that he did not activate the BWC when running because he typically activates with his dominant hand and he was using this hand for pulling out his firearm.⁹⁷ He then said that he unsuccessfully attempted to activate the BWC after placing [REDACTED] in custody.⁹⁸ COPA has no evidence indicating that Valdez attempted to activate his BWC the first time as no video footage of this is available; however, it does appear that Valdez unsuccessfully attempted to activate his BWC after [REDACTED] was in custody.⁹⁹ As such, COPA finds it possible that Valdez did attempt to turn on his BWC when getting out of his vehicle. Thus, this allegation is Not Sustained.

d. Officer Enciso

⁸⁹ Att. 71 Shafer transcript; Page 55, Lines 18 to 24

⁹⁰ CO-1369086 a CMS note stating that searches of evidence.com show no BWC for Shafer

⁹¹ Att. 67 Valdez statement transcript, Page 16, Lines 4 to 5; and Att. 67 Valdez statement transcript, Page 51, Lines 20 to 24

⁹² Att. 109 Use of Force G03-02 V (effective from February 29, 2000 to April 14, 2021)

⁹³ Att. 9 Valdez BWC and Att. 34 Pod footage

⁹⁴ Att. 67 Valdez statement transcript Pg 37 Lines 1 to 7

⁹⁵ Att. 91 Morgan statement transcript. Page 23, Lines 5 to 12

⁹⁶ Att. 111 Body Worn Cameras S03-14 (effective April 30, 2018 to present)

⁹⁷ Att. 67 Valdez statement transcript Pages 53, Lines 23 to 24, Page 54, Line 1 to 8

⁹⁸ Att. 67 at Pages 53, Lines 23 to 24, Page 54, Line 1 to 8

⁹⁹ Att. 79 Valdez BWC 1:24 to 1:28 it appears that Valdez attempts to turn on his BWC.

COPA finds Allegation 1 that Enciso failed to activate his body worn camera (BWC) in violation of S03-14 is **Sustained**. According to Special Order S03-14, a Department member will activate the BWC to event mode at the beginning of a law enforcement related incident.¹⁰⁰ In his statement to COPA, Officer Enciso explained that when he told his partner to stop the car, he tapped his BWC to activate it. Officer Enciso stated that he heard a beep and therefore believed it was recording. However, COPA searched the BWC footage database at Evidence.com and found no footage for this incident.¹⁰¹ Thus, this allegation is **Sustained**.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Victor Guebara

i. Complimentary and Disciplinary History¹⁰²

Officer Victor Guebara has received 58 complimentary awards, including 46 honorable mentions and four emblems of recognition for physical fitness. Officer Guebara does not have a record of recent sustained cases or discipline.

ii. Recommended Penalty, by Allegation

COPA has considered Officer Guebara's complimentary history and lack of disciplinary history in this case. Officer Guebara violated Department policy by initiating and engaging in a vehicle pursuit in violation of Department policy, engaging in excessive force, and failing to activate his BWC. Officer Guebara's actions brought extreme discredit to the Department, in that he was criminally charged for his conduct. Furthermore, Officer Guebara's use of excessive force appears to have been out of retaliation rather than a misunderstanding of Department policy, which is particularly concerning. COPA recommends a suspension of 365 days up to separation from the Department. Should he not be separated, COPA recommends training in Use of Force, Vehicle Pursuits and Anger Management.

b. Officer Jeffery Shafer

i. Complimentary and Disciplinary History¹⁰³

Officer Jeffery Shafer has received 79 complimentary awards, including 64 honorable mentions and four department commendations. Officer Shafer received a 5-day suspension for a sustained neglect of duty allegation from 2019 incident.

ii. Recommended Penalty, by Allegation

COPA has considered Officer Shafer's complimentary history and disciplinary history in this case. Officer Shafer violated Department policy by initiating and engaging in a vehicle pursuit

¹⁰⁰ Att. 111 Body Worn Cameras S03-14 (effective April 30, 2018 to present)

¹⁰¹ Att. 108 Screenshot from Evidence.com showing no BWC for Enciso at the time of the incident.

¹⁰² Att. 114

¹⁰³ Att. 114

in violation of Department policy, engaging in excessive force, using verbal abuse, and failing to activate his BWC. Officer Shafer's actions brought extreme discredit to the Department, in that he was criminally charged for his conduct. Furthermore, Officer Shafer's use of excessive force was extreme and appears to have been out of retaliation rather than a misunderstanding of Department policy, which is particularly concerning. COPA recommends separation from the Department.

c. Officer Joseph Valdez

i. Complimentary and Disciplinary History¹⁰⁴

Officer Joseph Valdez has received 90 complimentary awards, including 77 honorable mentions and four department commendations. Officer Valdez does not have a record of recent discipline or sustained cases.

ii. Recommended Penalty, by Allegation

1. COPA has considered Officer Valdez's complimentary history and lack of disciplinary history. In this case, Officer Valdez failed to intervene when other officers used excessive force. Officers are required to intervene in such circumstances. Indeed, public trust in the Department requires such intervention. COPA has considered in mitigation Officer Valdez's attempt to report the misconduct afterwards. Thus, COPA recommends a suspension of up to 30 days.

d. Officer Miguel Enciso

i. Complimentary and Disciplinary History¹⁰⁵

Officer Miguel Enciso has received 110 complimentary awards, including 97 honorable mentions and four department commendations. Officer Enciso does not have a record of recent discipline or sustained cases.

ii. Recommended Penalty, by Allegation

COPA has considered Officer Enciso's complimentary history and lack of disciplinary history. Officer Enciso failed to activate his BWC. COPA recommends a violation noted.

¹⁰⁴ Att. 114

¹⁰⁵ Att. 114

Approved:

[Redacted Signature]

Sharday Jackson
Deputy Chief Administrator – Chief Investigator

January 26, 2024

Date

[Redacted Signature]

Andrea Kersten
Chief Administrator

January 26, 2024

Date