

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	August 31, 2020
Time of Incident:	11:09 p.m.
Location of Incident:	1337 W. 19 th Street
Date of COPA Notification:	August 31, 2020
Time of COPA Notification:	11:45 p.m.

Officers Krzeptowski and Kuta were on duty, in full uniform, and in an unmarked squad car when they responded to a call of suspicious persons which was subsequently reclassified as a gang disturbance and person with a gun at 1339 W. 19th Street. As the officers neared 1337 W. 19th Street, the officers observed a group of males whom Officer Kuta knew as gang members. Officer Kuta observed one male, who had on a black shirt and black face mask, subsequently identified as ██████ standing separate from the group on the sidewalk near a tree at 1337-1339 W. 19th Street. Officers Krzeptowski and Kuta both observed muzzle flash come from ██████ direction and Officer Krzeptowski specifically saw ██████ fire a gun at them. As the officers’ squad car came to a stop, the front of their vehicle was struck by gunfire. Officer Krzeptowski returned fire and discharged his weapon a total of eleven times. ██████ was struck in the back of the head and fell to the ground at 1327 W. 19th Street, on the south sidewalk. He was fatally wounded. A black semi-automatic handgun was recovered under a parked vehicle located at 1321 W. 19th Street.

Any discharge of an officer’s firearm triggers a mandatory notification to COPA. This investigation was initiated pursuant to such notification.¹ After review of all available evidence, COPA finds that Officer Krzeptowski is exonerated from an allegation that the use of deadly force violated policy but finds that Officer Krzeptowski and Officer Kuta violated the body-worn camera policy. Additionally, COPA sustained an allegation that Officer Krzeptowski did not load his firearm consistent with Department policy.

INVOLVED PARTIES

Involved Officer #1:	Matthew Krzeptowski: Star #14255. Employee ██████ Date of Appointment: February 2, 2015. Police Officer. Unit of Assignment: 12 th District. DOB: ██████, 1984. Male. White.
Involved Officer #2:	Zachary Kuta: Star #12263. Employee ██████. Date of Appointment: March 16, 2017. Police Officer. Unit of

¹ 2-78-120 (c)(i) &(d) Municipal Code of Chicago.

Assignment: 12th District. DOB: ██████████, 1991. Male. Hispanic.

Involved Individual #1: ██████████ 1994. Male. Hispanic.

Involved Individual #2: ██████████, 1997. Male. Hispanic.

Involved Individual #3: ██████████, 1995. Male. Hispanic.

II. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Matthew Krzeptowski, #14255	1. It is alleged that on or about August 31, 2020, at approximately 11:09 p.m., at or near 1337 W. 19 th Street, Officer Krzeptowski failed to timely activate his Body Worn Camera in violation of Special Order S03-14.	Sustained
	2. It is alleged that on or about August 31, 2020, at approximately 11:09 p.m., at or near 1337 W. 19 th Street, Officer Krzeptowski discharged his firearm at or in the direction of ██████████ in violation of General Order G03-02, and/or General Order G03-02-03.	Exonerated
	3. It is alleged that on or about August 31, 2020, at approximately 11:09 p.m., at or near 1337 W. 19 th Street, Officer Krzeptowski failed to comply with U04-02 by failing to fully load his firearm with only one manufacturer and style of prescribed ammunition.	Sustained
Officer Zachary Kuta, #12263	1. It is alleged that on or about August 31, 2020, at approximately 11:09 p.m., at or near 1337 W. 19 th Street, Officer Kuta failed to timely activate his Body Worn Camera in violation of Special Order S03-14.	Sustained

III. APPLICABLE RULES AND LAWS

Rules

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

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2. Rule 6: Prohibits disobedience of an order or directive, whether written or oral.
 3. Rule 8: Prohibits disrespect to or maltreatment of any person, while on or off duty.
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General Orders²

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. G03-02-03: Firearm Discharge Incidents – Authorized Use and Post-Discharge Administrative Procedures (effective February 29, 2020 to April 14, 2021)
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Special Orders

1. S03-14: Body Worn Cameras (effective April 30, 2018 to present)
2. U04-02: Department Approved Weapons and Ammunition (effective February 29, 2020 to May 6, 2021)

IV. INVESTIGATION³

a. Interviews

In an **interview with COPA⁴** on September 14, 2020, **Officer Matthew Krzeptowski** stated that on August 31, 2020, he was in uniform and working Beat #1241 with Officer Kuta. The officers received a dispatch radio call of gang members on the 1300 block of West 19th Street walking between cars, specifying that the “heavysset” one had a gun.⁵ Other officers were assigned to the call, but officers Krzeptowski and Kuta went to assist.⁶

Once they arrived in the area, Officer Kuta deactivated the emergency lights on their unmarked vehicle.⁷ As they drove east on 19th Street, Officer Krzeptowski observed three to four Hispanic males standing on the south side of the street.⁸ As they drove closer to the group, Officer Krzeptowski heard gunshots and saw multiple muzzle flashes.⁹ Officer Krzeptowski observed a male, now known as ██████████¹⁰ discharging a firearm towards the officers from the sidewalk

² Department general orders, special orders, uniform and property, and department notices also known as directives, “are official documents establishing, defining, and communicating Department-wide policy, procedures, or programs issued in the name of the Superintendent of Police.” Department Directives System, General Order G01-03 II.A.; *see also* Chicago Police Department Directives System, *available at* <http://directives.chicagopolice.org/> (last accessed July 6, 2022).

³ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁴ Attachments 105 (audio), 110 (transcript).

⁵ Attachment 110, pages 13 & 16-17.

⁶ Attachment 110, page 17. Officer Kuta was driving. Attachment 110, page 19, lines 8-9.

⁷ Attachment 110, pages 10 & 19. Officer Krzeptowski did not know why Officer Kuta turned off the emergency lights but said they were going to assist.

⁸ Attachment 110, pages 13 & 20.

⁹ Attachment 110, page 24. Officer Krzeptowski was unsure how many gunshots he heard or if there was a pause in the shots fired at the officers. Attachment 110, page 57.

¹⁰ Officer Krzeptowski described ██████████ as wearing a half black face mask and a “bright, like, turban on his head, or something like that.” Attachment 110, page 25, lines 1-2.

about two to three car lengths away from the group.¹¹ [REDACTED] was moving “right at the right side” of Officer Krzeptowski,¹² so Officer Krzeptowski ducked down to his left before returning fire multiple times through his open door.¹³ [REDACTED] was ten to fifteen feet away as Officer Krzeptowski first discharged his firearm at him.¹⁴ [REDACTED] was running eastbound, pointing the gun at Officer Krzeptowski.¹⁵

Officer Krzeptowski exited the vehicle, and as he was moving to the right behind the vehicle, he saw [REDACTED] turn in a half body motion with the firearm pointed at him.¹⁶ Officer Krzeptowski fired “another couple of rounds” believing he struck [REDACTED].¹⁷ While Officer Krzeptowski reloaded his weapon, he did not resume firing because [REDACTED] dropped to the ground and no longer posed a threat.¹⁸ [REDACTED] was about two to three houses away when Officer Krzeptowski saw him go down.¹⁹ At that point, he observed the males further east move from the street onto the sidewalk and run eastbound.²⁰

After firing the second volley of shots, Officer Krzeptowski walked eastbound on the sidewalk and observed a Hispanic male that he had not realized was there in between cars.²¹ Officer Krzeptowski recognized him from prior interactions as [REDACTED] who belonged to the La Raza street gang.²² [REDACTED] yelled something. Before continuing down the sidewalk, Officer Krzeptowski determined [REDACTED] was secure since he was showing his hands.²³

Officer Krzeptowski next observed another Hispanic male about a car and a half-length away moving as if throwing an object and ordered him to get on the ground.²⁴ Officer Krzeptowski recognized the man as [REDACTED]²⁵ another member of the La Raza street gang with whom he had had prior contact. Officer Krzeptowski secured [REDACTED] by handcuffing him.²⁶ He

¹¹ Attachment 110, pages 22-23. [REDACTED] was on the sidewalk on the south side of 19th Street.

¹² Attachment 110, page 29, line 19. This is when he first sees the muzzle flash.

¹³ Attachment 110, pages 25 & 27. He was still seated in the passenger seat of the squad car.

¹⁴ Attachment 110, pages 29.

¹⁵ Attachment 110, pages 30 & 31. He did not recall if [REDACTED] was discharging his firearm at this point.

¹⁶ Attachment 110, page 14. Officer Krzeptowski said he got out of the vehicle because he “saw them... basically in the line of fire.” Attachment 110, lines 17-18.

¹⁷ Attachment 110, page 14, lines 22-23. Officer Krzeptowski said he was adjacent to and within five feet of the vehicle when he fired the second volley of shots at [REDACTED] Attachment 110, page 65.

¹⁸ Attachment 110, page 33, Lines 12-13. Officer Krzeptowski said he stopped firing because of a weapon malfunction, and he would have kept shooting if his firearm had not malfunctioned. Attachment 110, pages 59-60. Officer Krzeptowski clarified his description of the malfunction: after first firing, he had a jam. He had to hit the magazine to fire his weapon and after doing so, he fired again. Second, he performed a tactical reload to have a full magazine but then did not fire again noting that [REDACTED] was no longer a threat. Attachment 110, pages 59-62 & 64. [REDACTED] was already on the ground when Officer Krzeptowski performed the tactical reload. Attachment 110, page 64.

¹⁹ Attachment 110, page 65.

²⁰ Attachment 110, pages 14-15.

²¹ Attachment 110, pages 15 & 35.

²² Attachment 110, pages 35-36. Officer Krzeptowski stated [REDACTED] was wearing all black.

²³ Attachment 110, pages 15 & 36.

²⁴ Officer Krzeptowski clarified he did not actually see [REDACTED] throw an object; however, when he was about two car lengths away, he observed him make a throwing motion while he was laying on his stomach. Attachment 110, pages 39-40 & 58-59. Officer Krzeptowski believed it was possible [REDACTED] also pointed the weapon at him. See Attachment 110, Page 59, Lines 1-7

²⁵ Attachment 110, page 37.

²⁶ Attachment 110, pages 15 and 45.

then looked at █████ who was several feet from █████²⁷ and determined █████ was not a threat anymore as he was face down and bleeding.²⁸ He also saw at least two people from the group run east and flee southbound down an alley.²⁹

Responding officers arrived on scene and recovered a gun underneath a vehicle approximately one or two car-lengths away from █████³⁰ Officer Krzeptowski believed that one member of the group picked up █████ gun when they ran past that area.³¹ Officer Krzeptowski described the recovered gun as a black semi-automatic Glock with an extended magazine and said it looked similar to the gun █████ was holding.³²

At some point, Officer Krzeptowski approached █████ and told him that an ambulance was on the way. █████ had been turned over facing up and was mumbling.³³ He later learned through dispatch that █████ had been injured in the head.³⁴

Officer Krzeptowski described the incident as an “ambush,” and believed the officers were the intended targets. He did not know if anyone other than █████ discharged a firearm at the officers.³⁵ However, Officer Krzeptowski stated that he had no doubt that the person he shot was shooting at him and said there was no chance that he shot another member of the group.³⁶ Officer Krzeptowski clarified that he did not know how many times he discharged his weapon but said per his TRR that the total amount was eleven times.³⁷ He did not give any verbal commands before discharging his firearm at █████ because he did not have time.³⁸ Regarding the allegation that he fired his weapon in violation of Department policy, Officer Krzeptowski said he discharged his firearm because █████ was trying to kill him.³⁹

Regarding the allegation that he failed to timely activate his body worn camera, Officer Krzeptowski stated he turned it on as soon as he could and explained that any delay in activation was a result of being engaged in a high stress situation that transpired quickly. Based on his training, Officer Krzeptowski believed his body worn camera should be activated upon interaction with the public.⁴⁰

²⁷ He described █████ as being three feet from █████ (Attachment 110, page 15) and five to ten feet from █████ (Attachment 110, page 39).

²⁸ Attachment 110, pages 15-16, 41 & 66.

²⁹ Attachment 110, page 16. While Officer Krzeptowski was not certain of the number of males who fled, he was confident one wore a white shirt and another wore a red shirt. Attachment 110, page 44.

³⁰ Attachment 110, pages 42 & 68.

³¹ Attachment 110, pages 44 & 67-68.

³² Attachment 110, pages 42-43. Although he did not specifically say he saw the firearm █████ was holding, he said he was able to see █████ hands when “he was shooting at me.” Attachment 110, page 25. But later he said he could not recall what kind of firearm █████ had or if it had an extended magazine. Attachment 110, page 59.

³³ Attachment 110, pages 41 & 67.

³⁴ Attachment 110, page 66.

³⁵ Attachment 110, pages 31 & 53. He did not know if █████ fired all in one volley of shots or if there was a pause while firing. Attachment 110, page 57.

³⁶ Attachment 110, page 63.

³⁷ Attachment 110, page 48.

³⁸ Attachment 110, page 34-35.

³⁹ Attachment 110, page 51.

⁴⁰ Attachment 110, page 50.

Officer Krzeptowski also addressed the allegation that he failed to fully load his firearm with only one manufacturer and style of prescribed ammunition. Officer Krzeptowski said he received the ammunition in his spare magazine from the training facility during his last qualification with the Department.⁴¹ He did not examine the ammunition, but believed they were all Winchester rounds.

In an **interview with COPA**⁴² on September 14, 2020, **Officer Zachary Kuta** stated on August 31, 2020, he and Officer Krzeptowski responded to a call of a suspicious person, which was reclassified to a gang disturbance involving five male gang members loitering, one armed with a gun, passing through gangways and vehicles near 1337 W. 19th Street. An individual, wearing all black in the group, was reportedly trying to conceal what the caller believed to be a weapon.

As Officer Kuta drove east on 19th street, he observed four to five known gang members loitering on the sidewalk under a streetlight.⁴³ Two members of the group were [REDACTED] and [REDACTED] both wearing a black shirt and black pants and both known to Officer Kuta from prior contacts as members of the La Raza street gang.⁴⁴ Also in the group was a heavysset Hispanic male wearing a red shirt, and a medium-heavysset Hispanic male wearing a white t-shirt. The group entered the street and stood between vehicles to see who was coming up the street.⁴⁵

As the officers approached, Officer Kuta observed a male matching the description of the person trying to conceal a weapon, [REDACTED] on the passenger side of the vehicle wearing all black and a black face mask. [REDACTED] was “loitering away from the group under a tree”⁴⁶ at approximately 1337 or 1339 W. 19th Street and five to ten feet from the vehicle.⁴⁷ [REDACTED] became frantic and anxious, as if he wanted to flee.⁴⁸ As Officer Kuta looked toward the group, he saw a muzzle flash coming from [REDACTED] direction and heard multiple gunshots directed at the vehicle.⁴⁹ Officer Kuta believed it was [REDACTED] firing at their vehicle, but never saw [REDACTED] holding a firearm.⁵⁰ Officer Kuta stated he did not see anything in [REDACTED] hands⁵¹ and later stated he could not recall where [REDACTED] hands or arms were.⁵² Officer Kuta believed he heard one volley of gunshots at first.⁵³ He could not tell if there were two different firearms being shot.⁵⁴

⁴¹ Attachment 110, page 51-52. Officer Krzeptowski most recently qualified on January 21, 2020. Attachment 116.

⁴² Attachments 29 (audio) & 99 (transcript).

⁴³ Attachment 99, page 30. .

⁴⁴ Attachment 99, pages 52-53 & 66. The prior contacts involved gang disturbances and gun and drug-related offenses. Attachment 99, page 26.

⁴⁵ Attachment 99, pages 23 & 32.

⁴⁶ Attachment 99, page 23.

⁴⁷ Attachment 99, pages 23,31 & 48,63. No one else was around [REDACTED] when Officer Kuta first observed him; the group was two to three car-lengths east of [REDACTED]

⁴⁸ Attachment 99, pages 23 & 62.

⁴⁹ Attachment 99, pages 23-24 & 32-33.

⁵⁰ Attachment 99, pages 40-41.

⁵¹ Attachment 99, page 62.

⁵² Attachment 99, pages 67-68.

⁵³ Attachment 99, pages 37 & 64. Officer Kuta could not say how many shots he heard but it was a lot. Attachment 99, pages 33 & 36.

⁵⁴ Attachment 99, 64. He does not know if anyone else besides [REDACTED] was discharging their firearm in the officers' direction. Attachment 99, page 64-65.

The officers were fired upon when their vehicle was still moving. Officer Kuta slammed on the brakes, put it in park and exited to take cover. He drew his weapon and took cover on the north side of the squad car until the gunshots stopped, ducking his head and crawling to the rear driver's side wheel.⁵⁵ He activated his body-worn camera and notified the dispatcher that there were shots fired at and by the police. Officer Kuta did not see Officer Krzeptowski discharge his weapon but learned that Officer Krzeptowski returned fire on the person that fired at their vehicle, ██████⁵⁶

Once the gunfire stopped, Officer Kuta stood up and heard Officer Krzeptowski giving verbal commands. Officer Kuta observed ██████ between one of the vehicles, lying on the street in a prone position with his hands up.⁵⁷ Officer Kuta checked ██████ for weapons and continued to move up the street. ██████ was east of ██████ lying face down on the sidewalk with his hands in the air.⁵⁸ Officer Kuta checked ██████ for weapons; he was also not armed. Officer Kuta observed ██████ on the ground east of ██████ lying on his left side, hunched down, and facedown.⁵⁹ There was blood near ██████ head. Officer Kuta requested an ambulance.⁶⁰ He turned ██████ over and realized it was the same person that he believed fired at the officers from under the tree. In addition to wearing all black, ██████ wore a bright-colored "doo-rag" or t-shirt on top of his head.⁶¹ Officer Kuta checked ██████ for weapons but did not find any.

Responding officers arrived on scene and Officer Mike Sapayan⁶² informed the officers he recovered a weapon underneath a vehicle approximately two to three car-lengths east of ██████⁶³ Officer Krzeptowski informed Officer Kuta that the other males in the group ran eastbound.⁶⁴

Regarding the body worn camera allegation, Officer Kuta said he activated it as soon as he could, as his understanding is to activate the camera when he initiates police action.⁶⁵ He did not activate his body worn camera when responding to the location of the incident because it was a hectic scene and it happened so fast.⁶⁶

In an **Electronically Recorded Interview (ERI)**⁶⁷ on September 1, 2020, ██████ stated that he was on the sidewalk with his boys. ██████ saw a car coming, got on the ground, and heard gunshots and glass breaking. ██████ did not see who was shooting and he could not tell which

⁵⁵ Officer Kuta said he did not know when Officer Krzeptowski exited the squad car or what he was doing. Attachment 99, page 35.

⁵⁶ Attachment 99, pages 34, 37-38, 40 & 55.

⁵⁷ Attachment 99, pages 36 & 43. ██████ was in the original spot where Officer Kuta had first observed the group. Attachment 99, page 43.

⁵⁸ Attachment 99, page 24.

⁵⁹ Attachment 99, pages 24-25 & 45. At this time, ██████ was ten to fifteen feet from ██████ and two to three car-lengths from ██████ Attachment 99, page 44. This is further east on 13th Street from ██████ initial position near the tree. Attachment 99, page 45.

⁶⁰ Attachment 99, page 65.

⁶¹ Attachment 99, page 46.

⁶² Michael Sapayan, star #12943.

⁶³ Attachment 99, pages 50-51.

⁶⁴ Attachment 99, page 51-52.

⁶⁵ Attachment 99, pages 56-57.

⁶⁶ Attachment 99, page 66.

⁶⁷ Attachment 109. ██████ has a buzz cut, is heavyset and is wearing a dark grey t-shirt and dark grey shorts.

direction the shots were coming from. The police grabbed [REDACTED] and handcuffed him. [REDACTED] did not see anyone get shot, but his boy who was handcuffed, [REDACTED] told him someone was shot. He said he ran with La Raza and everybody was after them.

In an **Electronically Recorded Interview**⁶⁸ on September 1, 2020, [REDACTED] said he was walking to the bus stop when he heard gunshots. [REDACTED] went to the ground. He said he didn't know who was on the floor near him. A police officer told him to freeze and that he would blow his brains out. The police grabbed [REDACTED] handcuffed him, searched him, and placed him in custody. [REDACTED] said he did not know who had a gun or who was shot. He said was in La Raza but stopped coming around when he got saved. Every gang is after La Raza. [REDACTED] related his nickname is [REDACTED]⁶⁹

In an **interview with CPD and COPA**⁷⁰ on September 8, 2020, a **Confidential Informant ("CI")**⁷¹ stated that after 11:00 p.m. on August 31, 2020, the CI heard two La Raza gang members talking about the shooting. One of the members, [REDACTED], said he and other La Raza gang members were involved in a shooting, and [REDACTED] ([REDACTED] was shot. [REDACTED] said he, [REDACTED] ([REDACTED]⁷² and two or three others⁷³ were on the street, posted up and armed with guns. [REDACTED] specifically said [REDACTED] and another person had a gun.⁷⁴ The group heard screeching from car tires and saw an unmarked car. They all thought it was the "Opps," an opposition/ rival gang. [REDACTED] started shooting at them, and the "Opps" started shooting back. [REDACTED] then heard voices saying, "Get down, get down," and realized it was the police. The group started to run but [REDACTED] kept shooting. That is when "they got ([REDACTED]" [REDACTED] fell and dropped the gun. [REDACTED] said he grabbed the gun [REDACTED] dropped but [REDACTED] told [REDACTED] to leave it. [REDACTED] then tossed the gun farther away and ran. [REDACTED] said [REDACTED] and [REDACTED] were caught by the police.⁷⁵

In an **interview with COPA**⁷⁶ on September 22, 2020, [REDACTED] stated she was in the living room of her apartment with the window open when she heard a ruckus outside, which sounded like three to four men yelling.⁷⁷ [REDACTED] could not decipher what they were saying. Less than one minute later, [REDACTED] heard more than ten gunshots. [REDACTED] got on the floor and stayed down. An unknown male voice shouted, "Don't move or I'll blow your fucking head off."⁷⁸ Roughly 20 – 30 seconds later, [REDACTED] heard approximately five additional gunshots followed by the sound of a man crying out in pain. [REDACTED] heard sirens.⁷⁹ An unknown voice said there were two victims down and that they found a firearm.⁸⁰ [REDACTED] stood up and looked out her living room

⁶⁸ Attachment 108. [REDACTED] has long hair in back, is heavyset and is wearing navy pants and a black t-shirt.

⁶⁹ Attachment 108 at 44:00.

⁷⁰ Attachment 46.

⁷¹ The Confidential Informant did not want to be identified, due to fear of retaliation by members of the La Raza Gang. CPD said the C.I. provided verified information several times over a period of more than a year and was paid for information. Attachment 104, page 39.

⁷² [REDACTED]

⁷³ [REDACTED] and possibly [REDACTED]

⁷⁴ [REDACTED] said he was unsure who had the other gun.

⁷⁵ COPA's efforts to obtain interviews from [REDACTED] and [REDACTED] were unsuccessful. Attachments 85-89, 91-92.

⁷⁶ Attachment 43.

⁷⁷ [REDACTED] lives at [REDACTED] [REDACTED].

⁷⁸ Attachment 43 at 4:50.

⁷⁹ [REDACTED] said she cannot decipher between police or EMS/ fire sirens.

⁸⁰ [REDACTED] never saw the firearm.

window, which faces 19th Street. She saw multiple police officers, and two individuals in handcuffs. [REDACTED] also observed a male, [REDACTED] lying on his back.^{81,82} [REDACTED] learned on the news that the police were involved in the shooting. Two to three days following the incident, [REDACTED] journaled about the incident.⁸³

In an **Electronically Recorded Interview**⁸⁴ on September 2, 2020, [REDACTED] stated that on the date of the incident, he had just arrived home and was outside his home retrieving the mail when he observed two to three gentlemen, one wearing a red jersey, staring at him. A heavysset guy in the group told the men to leave [REDACTED] alone because he is from the neighborhood. [REDACTED] entered his residence, went to his bedroom on the 3rd floor and looked out the window. [REDACTED] now saw five or six people. The group hid between cars and went into the street whenever a car drove by. [REDACTED] believed they were looking for rival gang members. [REDACTED] told his sister and niece to leave as he was afraid something would happen. [REDACTED] dialed 911 to report the suspicious activity. As [REDACTED] watched from his upstairs window, a car accelerated down the street, driving east from Loomis, and slowed down at the alley. [REDACTED] believes the occupants in the car, who he now knows were the police, saw the group of men because the car accelerated again and stopped. The male wearing the red shirt started approaching the vehicle and someone in the group said, "On that car, on that car."⁸⁵ Seconds later, [REDACTED] heard gunshots coming from the group's direction. He heard a small caliber gun followed by a large caliber gun. [REDACTED] also heard windows breaking and the sound of bullets ricocheting off cars. The car's doors were now open, and the driver exited the vehicle and fell to the ground. [REDACTED] thought the driver may have been hit. [REDACTED] saw the word "Police" on the driver's vest and realized they were police officers⁸⁶ in an unmarked car. One of the squad car's windows was shattered. [REDACTED] knew the shooting came from the group of men on the street but could not tell who in the group fired a weapon. [REDACTED] dialed 911 a second time and reported that Detectives were being shot at and he believed a Detective was struck. The officers identified themselves as the police and said, "Stop." Someone from the group fired additional gunshots. The officers returned fire. [REDACTED] wondered why the officers did not return fire sooner to defend themselves. [REDACTED] went outside as additional officers arrived on scene.

In an **Electronically Recorded Interview**⁸⁷ on September 1, 2020, [REDACTED] related that on the date of the incident, shortly after 10:45 p.m., she went outside to move her car from the alley to a parking space on the street. As [REDACTED] walked down 19th Street to her residence, she observed a Hispanic male in his twenties, approximately 5'7", 120 – 130 lbs., wearing a red t-shirt, blue baggie shorts, and a surgical mask; a Hispanic male in his early twenties, approximately 5'7" – 5'8", 200 lbs., heavysset, wearing a black t-shirt and beige bottoms,⁸⁸ and two people farther down the alley whom she could not make out.⁸⁹ The male in the red shirt greeted [REDACTED] and

⁸¹ [REDACTED] does not know [REDACTED] or either of the handcuffed individuals. She learned [REDACTED] name from the media.

⁸² [REDACTED] said [REDACTED] was wearing an orange and white striped shirt, dark khaki, beige or gray colored cargo shorts and a black face mask. [REDACTED] said there was an orange, drawstring type bag on or near [REDACTED] head/ shoulder area. When the paramedics transported [REDACTED] they left the bag behind.

⁸³ [REDACTED] provided COPA a copy of her typed statement/ journal. Attachment 50.

⁸⁴ Attachment 58.

⁸⁵ Attachment 58. 5 minutes and 54 seconds into the recording.

⁸⁶ [REDACTED] also referred to the officers as Detectives.

⁸⁷ Attachment 59.

⁸⁸ [REDACTED] was not sure whether the bottoms were pants or shorts.

⁸⁹ [REDACTED] saw this same group of four near her residence approximately twenty-five minutes prior.

motioned to the heavysset guy in the black, who was standing farther down the street near [REDACTED] gate, something to the effect that this is not the one. Based on his mannerisms, [REDACTED] believed the male in the red shirt was hiding a gun or weapon behind his back, although [REDACTED] never saw a gun. When [REDACTED] approached her residence, the heavysset guy stood in [REDACTED] walkway and asked if she lived in the corner house. [REDACTED] replied no and that she lived where he was standing. He then stepped aside. [REDACTED] said the heavysset guy also behaved like he was hiding a gun or weapon. [REDACTED] did not notice much about two other males, who were standing on the sidewalk in the shadows. [REDACTED] entered the house and told her roommate she believed someone might get shot out front. At 10:59 p.m., [REDACTED] dialed 911 to alert the police. At 11:10 p.m., [REDACTED] heard two gunshots and dialed 911 a second time. [REDACTED] roommate heard additional gunshots and people running.

b. Digital Evidence

COPA obtained and reviewed **third-party surveillance video, Police Observation Device video, and Body Worn Camera (BWC) video** from the involved and responding officers.⁹⁰ The following summaries reflect the most evidence material to the investigation.

Officer Krzeptowski's BWC⁹¹ depicts the following: Officer Krzeptowski is seated in the front passenger seat of the squad car, with the window partially down.⁹² As the vehicle stops, Officer Krzeptowski opens the front passenger door but suddenly moves to his left while still seated in the front passenger seat. Officer Kuta exits the vehicle. Officer Krzeptowski then discharges, what appears to be two rounds, from within the vehicle while holding his firearm with his right hand through the open front passenger door. The front passenger window shatters. Officer Krzeptowski exits the vehicle and discharges his weapon several more times holding the firearm in a shooting stance.

Officer Krzeptowski advances east,⁹³ down the sidewalk, with his gun still drawn and encounters [REDACTED] with his hands up lying on the ground in between vehicles. Officer Krzeptowski stops behind a vehicle and reloads the magazine in his firearm. He advances to [REDACTED] who is lying on the ground behind a tree with his hands up. At about the same time, Kuta approaches [REDACTED] who is lying on the sidewalk, bleeding. Officer Krzeptowski handcuffs [REDACTED]. He activates his BWC as additional officers arrive on scene.⁹⁴ Officer Krzeptowski tells responding officers, "Look around here for the weapon. He was throwing the weapon this way. He was right here. This guy as well. Look around for the weapon right around here. There was two other guys that were right with him. Yeah. Yeah. He fucking shot at me, look around the this whole area."⁹⁵ He further relates there were two other guys with them—one with a red shirt. Officer Krzeptowski says, "He shot at me through the fucking window... good thing I fucking ducked."⁹⁶ Officer Krzeptowski radios to send an ambulance. He then points out the person who shot at him, to a

⁹⁰ Attachments 6-7, 9-10, 34-42, 44-45, 60-70, 93-96, 98.

⁹¹ Attachment 6.

⁹² There is no audio at this point as the video begins in buffer mode.

⁹³ Attachment 6. He inserts a second magazine 1 minute and 30 seconds into the recording while standing behind a vehicle parked on the street.

⁹⁴ The audio turns on.

⁹⁵ Attachment 6 at 2:00.

⁹⁶ Attachment 6 at 2:45.

supervisor, but the gesture is not visible on video. As another officer asks ██████████ “You shot at him?” and Officer Krzeptowski says, “No, him.”⁹⁷ Officer Krzeptowski asks ██████████ where the firearm was and pats him down. Officer Krzeptowski suggests another guy could have taken it.

A short time later an officer announces he has the gun.⁹⁸ Officer Krzeptowski tells ██████████ that an ambulance is coming, and he (██████████) will be alright. Officer Krzeptowski tells a supervisor he fired back, multiple rounds. Officer Krzeptowski further informs Officer Kuta that they would have been dead, referring to himself and Officer Kuta. Officer Krzeptowski adds that there was another guy wearing a white shirt, in addition to the Hispanic male with the red shirt. Officer Kuta tells a supervisor that he checked and does not believe he discharged his weapon. Officer Kuta states they started shooting as soon as the officers pulled up, and he took cover behind the wheel.

Officer Kuta’s BWC⁹⁹ depicts the following: Officer Kuta exits the driver seat of the vehicle and ducks.¹⁰⁰ Officer Kuta activates his BWC and then four gunshots are heard.¹⁰¹ Officer Krzeptowski states, “Shots fired.”¹⁰² “Get on the ground!” is heard multiple times.¹⁰³ He runs past ██████████ who is in between the cars and yells let me see your hands. He walks past ██████████ lying on the ground and yells multiple times to show his hands. He then approaches ██████████ lying face down on the ground with an orange shirt over the bottom of his head and neck.¹⁰⁴ He turns ██████████ on his back. The remainder of the recording is substantially the same as Officer Krzeptowski’s BWC recording.

The **Office of Emergency Management and Communications (OEMC) Event Queries**,¹⁰⁵ **Radio Transmissions**,¹⁰⁶ and **911 calls**¹⁰⁷ document the following relevant and material communications. At 10:42 p.m. on the date of incident, a citizen reported that three Hispanic men in their twenties ran past his apartment complex and were hiding outside of 1338 W. Cullerton Avenue. At approximately 10:50 p.m., the dispatcher asked Beat 1235 to respond to 1338 W. Cullerton Avenue for a suspicious person.¹⁰⁸ At 10:59 p.m., a citizen¹⁰⁹ reported suspicious activity outside of her residence near 19th and Throop. She stated that four Hispanic males in their twenties, possibly gang members, were waiting for someone on the corner. The

⁹⁷ Attachment 6 at 3:48.

⁹⁸ Officer Michael Sapayan’s Body worn camera depicts him looking underneath a gray sedan at what appears to be a firearm. Attachment 44 at 2:00.

⁹⁹ Attachment 7.

¹⁰⁰ There is no audio as the video begins in buffer mode.

¹⁰¹ You cannot see who fires the shots.

¹⁰² Attachment 7 at 2:05.

¹⁰³ Attachment 7 at 2:08.

¹⁰⁴ ██████████ is wearing a black t-shirt and black shorts. Evidence photos show the orange shirt has a hole consistent with a bullet hole. Att. 100.

¹⁰⁵ Attachments 11-12, 33.

¹⁰⁶ Attachments 21, 57.

¹⁰⁷ Attachments 13-20, 56.

¹⁰⁸ Attachment 21 at 5 minutes and 36 seconds into the recording. The Zone transmissions are from 2245 – 2345 hours/ 10:45 p.m. – 11:45 p.m. but there is no time stamp; therefore, the time indicated above is estimated to correspond to the number of minutes into the recording.

¹⁰⁹ Attachment 14. This caller was identified as ██████████ ██████████. She provided an Electronically Recorded Interview.

individuals were standing between cars, in front of the house, and hiding in a gangway. The caller reported that one of the men, heavyset with black hair and wearing a black t-shirt, looked like he was holding a gun in his pocket. At 11:05 p.m., a citizen¹¹⁰ reported that five to seven Hispanic males in their twenties, on 19th Street, east of Loomis, were hiding between cars, adding that whenever a car drives past, the individuals come out looking to do something. Most of the subjects were wearing black with shorts, and one of them was wearing a red shirt. At approximately 11:08 p.m., the dispatcher urged the officers to use caution, as there was a report of a person with a gun at 1339 W. 19th Street.¹¹¹ The dispatcher provided the given descriptions.

At approximately 11:10 p.m., an officer announced there were shots fired, and shots fired at the police at 1335 W. 19th Street. Approximately six minutes later, an officer notified OEMC that shots were fired by the police.¹¹² Officers made multiple requests for an ambulance for a person shot in the head. Simultaneously at 11:10 p.m., a citizen reported a shootout in front of 1339 W. 19th Street.¹¹³ In a separate call at 11:10 p.m., a citizen reported that someone shot at Detectives on 19th and Loomis.¹¹⁴ At 11:17 p.m., a citizen reported hearing eight gunshots near Cullerton and Loomis.¹¹⁵ The caller said two or three Hispanic males ran westbound on Cullerton.

The **Evidence Technician (ET) Photographs** depict¹¹⁶ the shooting scene, involved vehicle, and recovered evidence from various angles. The photographs of the squad car include images of suspected bullet damage to the window frame. The front passenger side window of the squad car is shattered.

c. Physical Evidence

Medical records¹¹⁷ document that ██████ sustained a gunshot wound to the back of the head just right of midline. Emergency Medical Services (EMS) told hospital personnel there was a shootout between police and a group of unknown individuals. Despite emergency medical intervention,¹¹⁸ ██████ was pronounced dead on September 1, 2020 at 2:48 a.m.

The **Postmortem Examination Report**¹¹⁹ documents that ██████ died from a gunshot wound to the head.¹²⁰ The manner of death was homicide. The Toxicology Report revealed positive findings of Tetrahydrocannabinol (THC) and Fentanyl in ██████ blood.¹²¹

¹¹⁰ Attachment 15. This caller was identified as ██████. He provided an Electronically Recorded Interview.

¹¹¹ Attachment 21 at 23 minutes and 8 seconds into the recording.

¹¹² Attachment 21 at 31 minutes into the recording.

¹¹³ Attachment 18. This caller was identified as ██████. ██████ heard but did not witness the shooting.

¹¹⁴ Attachment 17. ██████

¹¹⁵ Attachment 20. He was not sure what they were wearing.

¹¹⁶ Attachment 100.

¹¹⁷ Attachment 84.

¹¹⁸ ██████ experienced cardiac arrest twice. Hospital staff performed CPR.

¹¹⁹ Attachment 83.

¹²⁰ The wound is 5 ½ inches below the top of the head, just right of the posterior midline. The wound does not have any evidence of close or contact range firing.

¹²¹ Medical records indicate Fentanyl was administered. Attachment 84, page 49.

The **Bureau of Internal Affairs' Synoptic Report**¹²² documents that on September 1, 2020 at 3:10 a.m., Officer Krzeptowski submitted to a drug test, which revealed negative results. On the same date, at 3:36 a.m., Officer Krzeptowski took a Breathalyzer Test and returned a Br.A.C.¹²³ reading of .000.

d. Documentary Evidence

Arrest Reports¹²⁴ document that [REDACTED] and [REDACTED] were both placed into custody for reckless conduct. It is reported that officers responded to a call of suspicious persons, which was later reclassified as a gang disturbance/ person with a gun on the 1300 block of West 19th Street. Officers Kuta and Krzeptowski arrived on scene and a subject in the group fired gunshots at the officers. [REDACTED] and [REDACTED] were part of the group and involved in the disturbance. They were both transported to the police station for processing and later released without charges.¹²⁵

Tactical Response Reports (TRR)¹²⁶ prepared by Officers Kuta and Krzeptowski document that [REDACTED] fired shots at Officers Krzeptowski and Kuta. Officer Krzeptowski returned fire, fatally wounding [REDACTED]. Officer Krzeptowski discharged his weapon eleven times. Officer Kuta did not mark any member's response or weapon discharge.

The **Inventory and Crime Scene Processing Reports**¹²⁷ document the recovery of evidence following the shooting. ETs recovered (1) one fired cartridge case stamped "FC 9mm Luger" from the sidewalk at 1337 W. 19th Street; (1) one fired cartridge case stamped "FC 9mm Luger" near the curb at 1337 W. 19th Street; (1) one fired cartridge case stamped "Hornady 9mm Luger" from the sidewalk at 1337 W. 19th Street; (1) one fired cartridge case stamped "Sig 9mm Luger" from the sidewalk at 1333 W. 19th Street; (7) seven fired cartridge cases stamped "Win 9mm Luger +P" from the street at 1337 W. 19th Street; (2) two fired cartridge cases stamped "Win 9mm Luger +P" from the front passenger seat of the squad car, which was parked at 1337 W. 19th Street; and (2) two fired cartridge cases stamped "Win 9mm +P" from the street at 1339 W. 19th Street. ETs also recovered (1) one fired bullet in the street, near the curb at 1337 W. 19th Street; (1) one fired bullet from the squad car's front passenger door lower window trim; and (1) one fired bullet from the air filter compartment of a white Volkswagen sedan parked at 1337 W. 19th Street.

Additionally, ETs recovered from the scene an unregistered Glock Model 19 pistol;¹²⁸ a Glock (31) thirty-one capacity magazine containing (19) nineteen live rounds stamped "Win 9mm Luger;" (4) four live rounds stamped "Sig 9mm Luger;" and (2) two live rounds stamped "FC 9mm Luger." ETs also recovered (1) one fired cartridge case stamped "Hornady 9mm Luger" from the chamber of the weapon.

¹²² Attachment 48.

¹²³ Breath Alcohol Concentration

¹²⁴ Attachments 1 and 2

¹²⁵ COPA made multiple requests for the Detective file. As of August 17, 2022, it has not been received.

¹²⁶ Attachments 4 and 5. Both officers named the subject [REDACTED] in their TRRs.

¹²⁷ Attachments 74 and 77.

¹²⁸ 9mm semi-automatic, Serial Number [REDACTED]

The reports also document the processing of Officer Krzeptowski's Glock Model 17 pistol,¹²⁹ and two Glock magazines.¹³⁰ ETs recovered (1) one live round stamped "Win 9mm Luger +P" from the chamber; (17) seventeen live rounds stamped "Win 9mm Luger +P" from the full magazine;¹³¹ (1) one live round stamped "Win 9mm +P 19" from the full magazine; and (6) six live rounds stamped "Win 9mm Luger +P" from the used magazine.

There was an iPhone recovered near the tree. The orange shirt was described as having a through and through hole in it.

The **Illinois State Police (ISP) Laboratory Report—Firearms/ Toolmarks**¹³² documents the examination and testing of Officer Krzeptowski's weapon. The pistol was operable, as received, and test fired using one of the magazines submitted with the weapon. A Forensic Scientist determined that the eleven Winchester 9 mm Luger +P fired cartridge cases recovered from the scene, and a 9 mm fired bullet recovered from the Medical Examiner's Office¹³³ were fired by Officer Krzeptowski's weapon.

A second **ISP Laboratory Report—Firearms/ Toolmarks**¹³⁴ documents the examination and testing of the Glock Model 19 recovered from the scene. The pistol was operable as received and test fired using the magazine submitted with the weapon. A Forensic Scientist determined that the Hornady 9 mm Luger, Sig 9 mm Luger, and two Federal 9 mm Luger¹³⁵ fired cartridge cases were fired by the Glock Model 19. It was inconclusive as to whether either of the fired bullets recovered from the squad car's front passenger door lower window trim¹³⁶ and the Volkswagen's air filter compartment¹³⁷ were fired from Officer Krzeptowski's firearm or the Glock Model 19.

The **ISP Laboratory Report—Latent Prints**¹³⁸ documents that the Glock Model 19, live rounds (cartridges) and one discharged cartridge case associated with the weapon were examined. There were no suitable latent prints.

The **ISP Laboratory Report—DNA**¹³⁹ documents that a Forensic Scientist conducted DNA testing on swabs collected from the grip and trigger of the Glock Model 19 and determined there were at least two contributors; the profile was inconclusive.

¹²⁹ Generation 4, 9mm semi-automatic, Serial Number [REDACTED]

¹³⁰ During the incident, Officer Krzeptowski's magazine fell from his firearm. Officer Krzeptowski left the magazine on the sidewalk and inserted his spare magazine into the firearm. The weapon discharge occurred prior to the magazine malfunction. Officer Krzeptowski did not discharge any rounds from the spare magazine. Attachment 55

¹³¹ The Case Supplementary Report documents there were sixteen live rounds stamped "Win 9mm +P" recovered from the full magazine. Attachment 104, page 18.

¹³² Attachment 71.

¹³³ Attachment 77.

¹³⁴ Attachment 81.

¹³⁵ Labeled FC 9mm Luger in CPD's Inventory and Crime Scene Processing Reports

¹³⁶ Labeled Agency Item# 14765677-11072099 (CPD inventory/ item numbers)

¹³⁷ Labeled Agency Item# 14765683-11072107

¹³⁸ Attachment 79.

¹³⁹ Attachment 82.

The **ISP Laboratory Report—Microscopy Trace**¹⁴⁰ documents that a Forensic Scientist analyzed the gunshot residue collection kits administered to ██████████ and ██████████ and concluded that the subjects may not have discharged a firearm with either hand. If either of the subjects did discharge a firearm, then the particles were not deposited, were removed by activity, or were not detected by the procedure.

Conversely, the black t-shirt ██████████ was wearing contained a minimum of three tri-component and additional consistent primer gunshot residue (PGSR) particles on the left chest area, which indicates that the sampled area of the black t-shirt's left chest was in the environment of a discharged firearm or contacted a PGSR related item. The orange shirt found on ██████████ head /neck area was not analyzed.

The **Detectives' Supplementary Reports**¹⁴¹ document the following:

- During a Public Safety Interview, **Officer Krzeptowski** said he believes he fired approximately five rounds in front of 1337 W. 19th Street.¹⁴² He explained that he fired one round from within his squad car. He then exited the car, stood by the passenger door, and fired four additional rounds. Officer Krzeptowski said the person he shot, ██████████ was located to the right/south of him. ██████████ shot at him five to eight times.
- **Officer Kuta** was interviewed by Detectives on the scene.¹⁴³ He was responding to a call of a person with a gun on 19th Street. Upon arrival, he saw a group of five males he recognized to be La Raza gang members standing on the south side of the street and one person standing separately. When he was about two car lengths away from the group, one of them came into the street. The police were fired upon; the window shattered as Krzeptowski was just opening his door to get out. He put the vehicle in park and exited to the ground by the rear wheel well for cover. He heard approximately ten to fifteen gunshots from in front of him, near where the male subjects had been standing. He may have seen muzzle flash right before taking cover but was not sure. He could not see who was firing because he had taken cover. He remained under cover until the shooting stopped. He checked on his partner and while clearing the street, saw people running. He saw ██████████ with his hands out, ██████████ with his hands out who Krzeptowski handcuffed. He approached ██████████ rolled him over, searched for weapons and called for EMS. He additionally described a medium build Hispanic male in a white t-shirt and a large build Hispanic male wearing a red shirt with a shag haircut, a juvenile Hispanic male wearing all black and a heavysset Hispanic male wearing all black. He further related that Officer Sapon recovered a weapon under a vehicle.

¹⁴⁰ Attachment 97.

¹⁴¹ Attachments 103-104. Additionally, ██████████ family filed a civil suit, but no testimony or evidence has been introduced as of May 2022. ██████████ v. *City of Chicago*, 2022-L-002598

¹⁴² Attachments 104 pages 36-37.

¹⁴³ Attachments 104, pages 31-32.

- ██████ reportedly told responding Sgt. C. Galvez that they did not know Officers Kuta and Krzeptowski were the police; the police just came rolling down the street and it was dark. ██████ said he did not shoot anyone.¹⁴⁴
- During a canvass, Detectives located several individuals who heard gunshots, but they did not locate any eyewitnesses to the shooting.
- Detectives interviewed civilian witness ██████, who related that at approximately 10:45 p.m. on the date of incident, he observed several Hispanic males on the street and sidewalk on the 1300 block of West 19th Street. One of them wore a red, hooded shirt and a face mask, and had a bulge on the right side of his hip. The group spoke loudly and displayed gang signs. Betanzos believes he heard someone in the group say words to the effect of, “These motherfuckers are coming at 11:20.”¹⁴⁵ A short time later, Betanzos heard gunshots and from his home security camera observed people running.¹⁴⁶ The following day, ██████ saw a news report concerning ██████ death and recognized ██████ as the same person he saw in the red, hooded shirt with the bulge on his right side.
- ██████ and ██████ were stopped at 2345 hours at 1336 W. Cullerton.¹⁴⁷ ██████ and ██████ were stopped at approximately 2021 hours on August 31, 2020.¹⁴⁸
- Detectives obtained Securus recordings¹⁴⁹ from the Illinois Department of Corrections’ (IDOC) Intelligence Unit. A review of phone calls placed to paroled La Raza members revealed that in a phone call on September 1, 2020, an unidentified male informed inmate ██████ that “one of the soldiers” was shot and killed by the police near ██████ old house.¹⁵⁰ The male then handed the phone to ██████, AKA ██████ who related that the guys were posted and the police pulled up on the group in a regular car. ██████¹⁵¹ ██████ advanced at the police and shot at them. The police returned fire and shot ██████ in the head. ██████ added that the police arrested ██████ and ██████, but they were later released. ██████ said he talked to ██████ after he was released. ██████ said they usually used ██████ as a send off to hold their weapons. ██████ called ██████ saying he heard what happened from ██████ and it was (explicative) up.¹⁵² ██████ replied they were going to get what they got coming.

¹⁴⁴ Attachment 104, page 33.

¹⁴⁵ Attachment 104, page 38.

¹⁴⁶ ██████ does not pay the fee to have his cameras record.

¹⁴⁷ Attachment 104, page 36.

¹⁴⁸ Attachment 104, page 37. In the ISR from this stop, ██████ ██████ ██████ is wearing a red t-shirt and khaki cargo shirts. Attachment 32.

¹⁴⁹ Attachment 96.

¹⁵⁰ Attachment 104, page 40

¹⁵¹ Attachment 104, page 40 & Attachment 96. ██████ refers to the shooter and the one who got shot as ██████. When ██████ asked who was ██████, ██████ says it was ██████ ██████ ██████ little ██████ ██████ the one who was with ██████ ██████

¹⁵² Attachment 104, page 40.

V. STANDARD OF PROOF

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** a proposition is true.¹⁵³ For example, 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.¹⁵⁴ 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.”¹⁵⁵

VI. LEGAL STANDARD

A. *Use of Force*

The main issue in evaluating police use of force is whether the amount of force the officer used was (1) objectively reasonable, (2) necessary, and (3) proportional under the totality of the circumstances faced by the officer.¹⁵⁶ “Objectively reasonable” force is based on the “totality of the circumstances faced by the member on the scene.”¹⁵⁷ Factors to consider include but are not limited to (a) “whether the subject is posing an imminent threat” (b) “the risk of harm, level of threat, or resistance presented by the subject” and (c) “the subject’s proximity or access to weapons.”¹⁵⁸ “Necessary” force is “only the amount of force required under the circumstances to

¹⁵³ 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).

¹⁵⁴ See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

¹⁵⁵ *Id.* at ¶ 28.

¹⁵⁶ See Use of Force General Order G03-02 III.B. (effective February 29, 2020) & Force Options General Order G03-02-01 II.C. (effective February 29, 2020).

¹⁵⁷ Use of Force order G03-02 III.B.1.

¹⁵⁸ Use of Force order G03-02 III.B.1.(a)-(c).

serve a lawful purpose.”¹⁵⁹ “Proportional” force is proportional to the “threat, actions, and level of resistance offered by a subject.”¹⁶⁰ Members must continually assess situations to determine if any force is necessary and if force should be modified when circumstances change.¹⁶¹

The “foremost regard” in police-public encounters is “the preservation of human life and the safety of all persons....”¹⁶² Consistent with this priority, officers must “use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so based on the totality of the circumstances.”¹⁶³ De-escalation techniques, or principles of force mitigation, include (A) continual communication (B) tactical positioning and (C) time as a tactic.¹⁶⁴ Tactical positioning includes “creating distance between the member and a potential threat, or utilizing barriers or cover.”¹⁶⁵ The Department expects members to resolve confrontations without resorting to force.¹⁶⁶

While recognizing officers must “make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation” assessing uses of force is “from the perspective of a reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight.”¹⁶⁷

B. Use of Deadly Force

The Department’s “highest priority is the sanctity of human life.”¹⁶⁸ Consistent with this priority, the “use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat to life or to prevent great bodily harm....”¹⁶⁹

Assessing if there is an imminent threat is an objectively reasonable standard, not the subjective belief of an officer.¹⁷⁰ A threat is imminent when: (a) the person’s actions are “immediately likely to cause death or great bodily harm” to another unless action is taken and the person has (b) the “means or instruments” and (c) the “opportunity and ability” to cause death or great bodily harm.¹⁷¹

¹⁵⁹ Use of Force order G03-02 III.B.2.

¹⁶⁰ Use of Force order G03-02 III.B.3. “This may include using greater force or a different type of force than that used by the subject. The greater the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it. When or if the subject offers less resistance, however, the member will decrease the amount or type of force accordingly.”

¹⁶¹ See Force Options order G03-02-01 II.F.

¹⁶² See Force Options order G03-02-01 II.A.

¹⁶³ See Force Options order G03-02-01 II.B. & Firearm Discharge Incidents Order G03-02-03 II.B. (effective February 29, 2020) & Use of Force order III.B.4 De-escalation techniques include: a. providing a warning and exercising persuasion and advice b. stabilizing the situation through the use of time, distance, or positioning c. requesting additional units or specialized units or equipment.

¹⁶⁴ See Force Options order G03-02-01 III.A.-C.

¹⁶⁵ Force Options order G03-02-01 III.B.

¹⁶⁶ See Force Options order G03-02-01 II.D.

¹⁶⁷ Use of Force order II.D.

¹⁶⁸ Use of Force order G03-02.II.A. & Force Options order G03-02-01 II.A. & Firearm Discharge Incidents Order G03-02-03 II.A.

¹⁶⁹ Use of Force order G03-02 III.C.3. & Firearm Discharge Incidents Order G03-02-03 II.C.

¹⁷⁰ See Use of Force order G03-02 III.C.2.

¹⁷¹ Use of Force order G03-02 III.C.2.

An officer must determine the person is an “assailant” whose “actions constitute an imminent threat” before using deadly force.¹⁷² While Department policy clearly prohibits the use of deadly force unless there is an imminent threat, it highlights that even if a person is fleeing or may evade arrest, an imminent threat is required before using deadly force.¹⁷³ When discharging a firearm, the member shall “take precautions to identify the appropriate target” and “to minimize the risk that people other than the target will be struck.”¹⁷⁴ Lastly, officers must identify themselves as police officers prior to using deadly force.¹⁷⁵

C. BWC

To increase transparency and improve the quality and reliability of investigations, Department policy mandates all law-enforcement-related encounters be electronically recorded on the officers’ BWC.¹⁷⁶ Law-enforcement-related encounters include, but are not limited to, foot and vehicle pursuits, traffic stops, investigatory stops, arrests, use of force incidents, high risk situations, calls for service, emergency driving situations and emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene.¹⁷⁷

The recording of law-enforcement-related encounters is mandatory.¹⁷⁸ Officers must activate their BWCs at the beginning of an incident and record the entire incident for all law-enforcement-related activities.¹⁷⁹ If there are circumstances preventing the activation of the BWC at the beginning of an incident, the officer “will activate the BWC as soon as practical.”¹⁸⁰

D. Firearm loading

Department weapons policy requires firearms to be “fully loaded with only one manufacturer and style of prescribed ammunition (same bullet type and grain weight).”¹⁸¹

VII. LEGAL ANALYSIS

A. Officer Krzeptowski’s use of deadly force was within policy

¹⁷² Force Options order G03-02-01 IV.C.2 & Force Options order G03-02-01 IV.C. (An “assailant” is “a subject who is using or threatening the use of force against another person or himself/herself which is likely to cause physical injury.”).

¹⁷³ See Use of Force order G03-02 III.C.3.b.&4.a.

¹⁷⁴ Firearm Discharge Incidents Order G03-02-03 III.

¹⁷⁵ See Use of Force order G03-02 III.C.5. Unless it is not safe and feasible to do so or would jeopardize the safety of others.

¹⁷⁶ Special Order S03-14.II.A (Eff. April 30, 2018)

¹⁷⁷ Special Order S03-14.III.A.2 (Eff. April 30, 2018).

¹⁷⁸ Special Order S03-14.III.A.1 (Eff. April 30, 2018).

¹⁷⁹ Special Order S03-14.III.A.2 (Eff. April 30, 2018).

¹⁸⁰ Special Order S03-14.III.A.2 (Eff. April 30, 2018).

¹⁸¹ Department Approved Weapons and Ammunition Uniform and Property U04-02.II.H (effective February 29, 2020)

i. The evidence is sufficient that ██████ was shooting at police

COPA first determines the evidence is sufficient to make a factual finding that ██████ was discharging a firearm at the officers. Both officers describe seeing a shooter on the sidewalk separate from the group in the street. Officer Krzeptowski said upon hearing gunshots and seeing muzzle flashes, he saw a person shooting at them, standing separate from the group, and he returned fire on that person with his first volley of shots. He then saw ██████ running pointing the firearm at him before firing his second volley of shots. Officer Kuta said he was looking at the group when he heard gunshots and saw muzzle flash coming from the direction where he had just seen ██████ standing separate from the rest of the group. Notably, after finding no weapon on or near ██████ Officer Krzeptowski tells another officer that ██████ was not the shooter. When another officer asks ██████ if he shot the officer, Krzeptowski says, “No, him.”¹⁸²

There is also circumstantial evidence ██████ was a shooter. A witness gave a description of a person that appeared to be carrying a gun, and this description is consistent with ██████ who called 911 before the shooting, reported that one of the men in the group looked like he was holding a gun in his pocket. She described him as heavysset with black hair and wearing a black t-shirt.¹⁸³ There is also physical evidence consistent with ██████ being a shooter. The shirt ██████ was wearing contained gunshot residue particles on the left chest area. This indicates it was in the environment of a discharged firearm.¹⁸⁴

Lastly, there is evidence that members of the group identified ██████ as the shooter to other alleged La Raza gang members. On September 8, 2020 the CI described hearing an August 30, 2020 conversation where a member of the group who was at the shooting identified ██████ as the shooter and the person who got shot. The CI said ██████ told another alleged La Raza member that he picked up the gun ██████ dropped after he was shot, then disposed of it nearby when ██████ told him to leave it. This provides a basis of inside knowledge that is consistent with the location where officers found a gun. The CI said ██████ related that ██████ and ██████ got caught by the police, consistent with the fact that they got arrested.¹⁸⁵ Additionally, on September 1 and 2, 2020 La Raza members identify ██████ as the shooter in recorded prison phone calls. While the callers likely knew the phone calls were recorded, there is no indication they were aware the calls were going to be reviewed. The information the callers gave was incriminating in that it could cause the caller(s) to be subject to a search or parole violation. It is reasonable to assume the caller(s) did not anticipate anyone would listen to the recording and is therefore reliable. The information is also more credible, because it shows a basis of knowledge of the incident: the police car was described as a regular car, ██████ and ██████ were arrested and released¹⁸⁶ and the caller knew ██████ was shot in the back of the head. It is reasonable to infer that if ██████ was not the

¹⁸² Attachment 6.

¹⁸³ Note in the ERI, ██████ described the heavysset male that was behaving like he was hiding a gun or a weapon as being in his early twenties, approximately 5’7” – 5’8”, 200 lbs., heavysset, wearing a black t-shirt and beige bottoms. ██████ was wearing black cargo shorts.

¹⁸⁴ While the GSR test on ██████ hands was negative, this is not conclusive evidence that ██████ did not shoot a firearm. It is not uncommon for GSR to be wiped off of the hands due to subsequent activity, such as medical care or rain. Additionally, ██████ and ██████ did not test positive for GSR.

¹⁸⁵ Per CPD, the CI has a history of giving accurate information to the police.

¹⁸⁶ The caller indicated he talked to them after they were released. Note ██████ said they usually use ██████ as a send off to hold their weapons.

shooter, or there was an additional shooter, this would be information the caller would want to share with the La Raza member in custody. There is no apparent indication that any such contradictory information existed in the prison calls.

Thus, COPA finds the evidence is sufficient to determine ██████ was shooting at the officers.

ii. When Officer Krzeptowski fired both volleys of shots, he was facing an imminent threat from ██████

The evidence is clear and convincing that an objectively reasonable officer on the scene would agree Officer Krzeptowski was facing an imminent threat when he used deadly force. ██████ actions of shooting at the officers were “immediately likely to cause death or great bodily harm” unless action was taken. Both officers had to duck to avoid the risk of getting shot and still Officer Krzeptowski’s door window was shot out. The BWC clearly shows the officers immediately seeking cover and the shot-out window. Bullets were found embedded in the squad car and a vehicle nearby. Fired cartridge cases that were found near 1337 and 1333 W. 19th Street were identified as having been fired from the recovered Glock. Clearly, discharging a firearm directly at the occupied vehicle shows the shooter had the means and instruments to cause death or great bodily harm. Similarly, discharging a firearm upon officers as they were driving towards the group shows an opportunity and ability to cause death or great bodily harm.¹⁸⁷



¹⁸⁷ Here ██████ was acting as an assailant by using force against another person likely to cause physical injury when he shot at the officers. Further, as discussed above, this assailant’s actions constituted an imminent threat allowing the use of deadly force.

PHOTO 1: ¹⁸⁸ Officer Krzeptowski's first volley of shots from the passenger seat next to the broken window.



PHOTO 2: ¹⁸⁹ Officer Krzeptowski's second/ last volley of shots adjacent to the vehicle.

Officer Krzeptowski's returning fire was objectively reasonable and necessary under the totality of the circumstances he faced. Additionally, he indicated he stopped firing when [REDACTED] dropped to the ground,¹⁹⁰ thereby using proportional force. COPA finds that the evidence corroborates Officer Krzeptowski's description of the shooting as only returning fire when being fired upon or facing a continuing imminent threat when [REDACTED] ran with a firearm pointed at the officers. Furthermore, the entry wound is to the back of [REDACTED] head, the bottom left of mid-line, is consistent with Officer Krzeptowski's description of shooting as [REDACTED] ran while pointing a firearm at the officers.

The BWC supports Officer Krzeptowski did not fire any additional shots after his second volley of shots, when no other shots appeared to be coming from the group. He instead advanced and commanded the remaining individuals to stay down and show their hands. He did not fire at other group members who were hiding or fleeing but instead yelled verbal commands with cover nearby. In Photo 3 [REDACTED] is seen hiding between vehicles and a person in red clothing is in the distance running away. Additionally, the conversations of alleged gang members corroborate that [REDACTED] was continuing to shoot after the others realized it was police in the vehicle and started fleeing.

¹⁸⁸ Attachment 6, 00:57.

¹⁸⁹ Attachment 6, 00:59.

¹⁹⁰ While there was some confusion in the interview about if Officer Krzeptowski stopped shooting because his firearm jammed, he clarified he stopped shooting (the second volley) when [REDACTED] dropped. His firearm jammed before his second volley.



PHOTO 3:¹⁹¹ Officer Krzeptowski points his firearm after reloading when clearing the sidewalk.

iii. When Officer Krzeptowski used deadly force against ██████ it was his last resort

The evidence is clear and convincing that this was a “last resort” when analyzing Officer Krzeptowski’s use of deadly force. Officers Krzeptowski and Kuta describe, and their BWCs support the officers were under fire when Officer Krzeptowski first discharged his firearm. He discharged his first volley of shots almost simultaneous to his window being shot out. He used only one hand to hold the firearm while he sat up after ducking out of the way. The second volley of shots followed within seconds as Officer Krzeptowski stepped out of the vehicle and was able to use both hands to discharge his firearm. While Officer Krzeptowski was unsure if there was a pause in the shots fired at the officers or if ██████ was discharging his firearm when he was running and pointing it at him, alleged gang member conversations indicated ██████ kept firing after others realized it was police and started to run.

To get to potential cover, such as another vehicle or tree, Officer Krzeptowski would have had to cross the line of fire from ██████. There is no indication that any more cover could have been safely taken or that de-escalation techniques could have stopped the threat of being fired upon.

COPA recognizes that officers are expected and required to resolve confrontations without resorting to force and to use de-escalation techniques. While there may have been an opportunity for tactical positioning or time as a tactic to coordinate with other officers to isolate the potential threat before approaching the group, upon arrival the officers were immediately faced with a confrontation when being fired upon; it was no longer safe and feasible to use de-escalation tactics.

¹⁹¹ Attachment 6, 1:10.

For these reasons, Allegation #2 against Officer Krzeptowski is EXONERATED.

B. BWC

In this case, the officers are responding to a dispatch about a group of gang members, one of them armed. Their experience indicates that at the least, they will be performing an investigatory stop that may quickly evolve into a high-risk situation; both are law enforcement-related activities that trigger the BWC activation requirement.

Officer Kuta activated his BWC after he ducked out of the vehicle and sought cover as shots were still being fired. Officer Kuta said he activated his BWC as soon as he could, as his understanding is to activate the camera when he initiates police action. He added he did not activate his BWC while responding because the situation was hectic and evolving. Officer Krzeptowski activated his BWC as he is handcuffing ██████ telling responding officers to look for the weapon. He had fired two volleys of shots, changed his magazine and started handcuffing ██████ Officer Krzeptowski said he activated his BWC as soon as he could, and it was a high stress situation that transpired quickly.

Earlier activation of their BWCs would have improved the quality and reliability of the investigation. While this certainly was a high stress situation that was rapidly evolving, earlier activation was practicable and necessary in light of the information they were apprised of at the time. The officers had the opportunity to activate their BWCs earlier once they decided to respond to the call before circumstances would have prevented the activation.

For these reasons, Allegation #1 against Officer Krzeptowski and Allegation #1 against Officer Kuta are each SUSTAINED.

C. Firearm

ETs recovered (1) one live round stamped “Win 9mm +P 19” and (6) six live rounds stamped “Win 9mm Luger +P” from Officer Krzeptowski’s used magazine. Officer Krzeptowski said he received the ammunition in his spare magazine from the training facility. He did not examine the ammunition but believed they were all Winchester rounds.

The evidence is sufficient that his firearm was not fully loaded with only one manufacturer and style of prescribed ammunition (same bullet type and grain weight). Therefore, this allegation is SUSTAINED.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Matthew Krzeptowski

i. Complimentary and Disciplinary History

- 1. Complimentary:** 2019 Crime Reduction Award, 1 Attendance Recognition Award, 2 Department Commendations, 2 Physical

Fitness Awards, 46 Honorable Mentions, 1 Top Gun Arrest Award, 1 Traffic Stop of the Month Award, 1 Unit Meritorious Performance Award

2. Disciplinary: None.

ii. Recommended Penalty, by Allegation

COPA has considered Officer Krzeptowski’s complementary and disciplinary history. Additionally, COPA has considered Officer Krzeptowski’s account of his actions related to the activation of his BWC and ammunition. As previously stated, earlier activation of Officer Krzeptowski’s BWC would have improved the quality and reliability of the investigation. Additionally, it is incumbent upon each individual officer to ensure they are in compliance with Department requirements pertaining to ammunition. Considering these factors, COPA recommends a Written Reprimand.

b. Officer Zachary Kuta

i. Complimentary and Disciplinary History

1. Complimentary: 2019 Crime Reduction Award, 1 Attendance Recognition Award, 1 Complimentary Letter, 1 Department Commendation, 1 Physical Fitness Award, 58 Honorable Mentions, 1 Honorable Mention Ribbon Award, 1 Life Saving Award, 1 Special Commendation, 1 Unit Meritorious Performance Award

2. Disciplinary: None.

ii. Recommended Penalty, by Allegation

COPA has considered Officer Kupta’s complementary and disciplinary history. Additionally, COPA has considered Officer Kupta’s account of his actions related to the activation of his BWC. As previously stated, earlier activation of Officer Kupta’s BWC would have improved the quality and reliability of the investigation. Considering these factors, COPA recommends a Written Reprimand.

Approved:

[Redacted Signature]

Sharday Jackson
Deputy Chief Administrator – Chief Investigator

August 22, 2022

Date

[Redacted Signature]

Andrea Kersten
Chief Administrator

August 22, 2022

Date