

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	March 31, 2021
Time of Incident:	12:18 a.m.
Location of Incident:	5202 W. Eddy Street
Date of COPA Notification:	March 31, 2021
Time of COPA Notification:	12:41 a.m.

Officer Evan Solano and Officer Sammy Encarnacion, assigned to Beat 1661D, were on routine patrol driving southbound on Laramie Avenue, south of Addison Street. As they were driving, they observed a Hispanic male, now known to be [REDACTED] walking northbound on Laramie with what appeared to be a white bag in his hand. They recognized [REDACTED] from prior encounters, including from the night before, when they had observed him in his vehicle. The officers ran his temporary plate and learned that he was driving on a suspended license.¹

On the date of incident, upon recognizing [REDACTED] Officers Solano and Encarnacion made a U-turn to follow [REDACTED] northbound on Laramie Avenue. The officers intended to conduct an investigatory street stop because they knew, from coming across him the night before, that [REDACTED] had a suspended license. [REDACTED] proceeded to walk northwest into a Shell gas station parking lot. The officers followed behind [REDACTED] into the Shell station and activated their blue emergency lights. [REDACTED] then began to run northwest through the gas station and dropped his white bags. He reached Addison Street and ran westbound on the south sidewalk. The officers drove parallel to [REDACTED] and stated they observed him holding his waistband which led them to believe he had a firearm. [REDACTED] then ran southbound into the gangway of 5237 W. Addison. The officers stopped their vehicle in front of this address and engaged in a foot pursuit.

[REDACTED] continued to run south through the gangway, reached the alley and ran eastbound. Officer Encarnacion initially led the foot pursuit in the alley but was passed up by Officer Solano. Upon reaching Laramie Avenue, [REDACTED] ran southbound on the west sidewalk and both officers continued to pursue. [REDACTED] rounded the corner, running southwest along the front lawn of 5200 W. Eddy Street when he briefly fell twice, stood up and continued to run. Officer Solano turned west on Eddy Street pursuing [REDACTED] ran across the front lawn of 5202 W. Eddy Street. Officer Solano yelled “drop the gun, drop the gun”² and pointed his firearm towards [REDACTED]

¹ According to PDT Unit history and PDT Message Reports, Att. 188, 189, on March 29, 2021, at approximately 21:18 hours, Beat 1661D ran the temporary license plate of [REDACTED] LP # [REDACTED]. Att. 189, p. 17 documents that [REDACTED] driver’s license was suspended. In addition, GPS records, Att. 190, 191 document that on that date and approximate time, Beat 1661D was in the area of Addison Street and Laramie Avenue. There was no ICC video or OEMC audio relative to this event.

² Att. 3.

████████ continued to run towards the bottom of the front exterior staircase and walkway of 5202 W. Eddy Street when Officer Solano fired at ██████████ five (5) times.³

Officer Encarnacion approached Eddy Street and began to face west. ██████████ started to collapse while dropping his firearm from his right hand. ██████████ fell to the ground, face down and with his head facing eastbound, within the walkway of 5202 W. Eddy Street. Both officers proceeded to render medical aid.

Several minutes later, additional responding officers arrived on scene including some who assisted in rendering medical aid. ██████████ was transported to ██████████ where he succumbed to his wounds, one (1) gunshot wound to his middle back area and one (1) gunshot wound to his left thigh.

II. INVOLVED PARTIES

Involved Officer #1:	Evan SOLANO, Star #12874, Employee ID # ██████████, Date of Appointment: June 29, 2015, Police Officer, Unit of Assignment: 016, DOB: ██████████, 1991, male Hispanic.
Involved Officer #2:	Sammy ENCARNACION, Star #11790, Employee ID # ██████████, Date of Appointment: June 29, 2015, Unit of Assignment: 016, DOB: ██████████, 1989, male Hispanic.
Involved Individual #1:	██████████ DOB: ██████████, 1999, male Hispanic

III. ALLEGATIONS

Pursuant to section 2-78-120(d) of the Municipal Code of Chicago, the Civilian Office of Police Accountability (“COPA”) has the duty to investigate incidents, including those in which no allegation of misconduct is made, where a person dies as a result of police actions. In connection with its investigation, COPA made the following allegations and makes the following findings and recommendations:

Officer	Allegation	Finding / Recommendation
Officer Evan Solano #12874	It is alleged that at approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Solano committed misconduct through the following acts or omissions, by:	

³ This depiction is corroborated by video to include Att. 3, 42, 43.

	<p>1. Failing to comply with S03-14 by failing to timely activate your body-worn camera.</p> <p>2. Failing to properly load your firearm in violation of U04-02(II)(H).</p> <p>3. Detaining and/or seizing [REDACTED] without justification.</p> <p>4. Discharging your firearm at or in the direction of [REDACTED] in violation of G03-02.</p> <p>5. Failing to remain separate from and avoiding any contact or communication with Officer Sammy Encarnacion in violation of G03-06(VII)(A)(2).</p> <p>6. Acted inconsistently with his training under EBT #18-01, Foot Pursuits Training Bulletin, when deciding to engage in a foot pursuit.</p> <p>7. Acted inconsistently with his training under EBT #18-01, Foot Pursuits Training Bulletin, when deciding to continue in a foot pursuit.</p> <p>8. Acted inconsistently with his training under EBT #18-01, Foot Pursuits Training Bulletin, by failing to make required notification to OEMC.</p>	<p>SUSTAINED</p> <p>SUSTAINED</p> <p>EXONERATED</p> <p>SUSTAINED</p> <p>UNFOUNDED</p> <p>SUSTAINED</p> <p>SUSTAINED</p> <p>SUSTAINED</p>
<p>Officer Sammy Encarnacion #11790</p>	<p>It is alleged that at approximately 00:18 a.m., on or about March 31, 2021, at or near 5202 W. Eddy Street, Officer Encarnacion, committed misconduct through the following acts or omissions, by:</p> <p>1. Failing to comply with S03-14 by failing to timely activate your body-worn camera.</p> <p>2. Failing to properly load your firearm in violation of U04-02(II)(H).</p> <p>3. Detaining and/or seizing [REDACTED] without justification.</p>	<p>SUSTAINED</p> <p>SUSTAINED</p> <p>EXONERATED</p>

4. Being inattentive to duty by not knowing whether or not you discharged your firearm.	UNFOUNDED
5. Failing to remain separate from and avoiding contact or communication with Officer Evan Solano in violation of G03-06(VII)(A)(2).	UNFOUNDED
6. Acted inconsistently with his training under EBT #18-01, Foot Pursuits Training Bulletin, when deciding to engage in a foot pursuit.	SUSTAINED
7. Acted inconsistently with his training under EBT #18-01, Foot Pursuits Training Bulletin, when deciding to continue in a foot pursuit.	SUSTAINED
8. Acted inconsistently with his training under EBT #18-01, Foot Pursuits Training Bulletin, by failing to make required notification to OEMC.	SUSTAINED

IV. APPLICABLE RULES AND LAWS

Rules⁴

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.
2. Rule 6: Disobedience of an order or directive, whether written or oral.
3. Rule 10: Inattention to Duty.
4. Rule 11: Incompetency or inefficiency in the performance of duty.

General Orders⁵

1. General Order G03-02: Use of Force (effective February 29, 2020 to April 14, 2021)
2. General Order G03-02-01: Force Options (effective February 29, 2020 to April 14, 2021)

⁴ Police Board of Chicago, *Rules and Regulations of the Chicago Police Department, Article V. Rules of Conduct* (April 1, 2010) <https://www.chicago.gov/dam/city/depts/cpb/PoliceDiscipline/RulesofConduct.pdf>

⁵ Department general, special, and uniform orders, 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; *see also* Chicago Police Department Directives System, *available at* <http://directives.chicagopolice.org/directives/> (last accessed December 21, 2021).

3. General Order G03-02-03: Firearms Discharge Incidents Involving Sworn Members (effective February 29, 2020 to April 14, 2021)

4. General Order G03-06: Firearm Discharge and Officer Involved death incident response (effective February 29, 2020 to April 14, 2021)

Special and Uniform Orders

1. Uniform and Property U04-02: Department Approved Weapons and Ammunition (effective February 29, 2020 to May 6, 2021)

2. Body Worn Camera Special Order S03-14 (effective April 30, 2018 to present)

Federal Laws

1. The Fourth Amendment to the United States Constitution

V. INVESTIGATION⁶

a. Interviews⁷

In an April 6, 2021 **telephone interview with COPA**, 911 caller ██████████ stated that on the date and time of incident, she was at home watching a movie when she heard approximately four to five gunshots and a male yelling “help me, he shot me.” She looked out of her front window and observed a male on the ground, whom she knew as ██████████ with a pool of blood about his body. She initially observed only one officer on-scene and then several more arrived. She stated for approximately the last three weeks, ██████████ parked his white Jeep in front of her residence. They would greet each other in passing and he told her that he was parking there because his previous vehicle was stolen. She knew that he lived on the next block, off Addison Street near the gas station. However, she did not know how long he lived there.

In a March 31, 2021 **telephone interview with COPA**, ██████████ stated that on the date and time of incident, he was in his bedroom¹⁰ with his wife watching television when he heard a voice yell, “put the gun down.”¹¹ This was followed by four to six rapid gunshots. He looked out their bedroom front window and observed a person on the ground who was shot, and two police officers. ██████████ went downstairs, opened his front door, and observed officers rendering medical aid and police vehicles in the area. One of the officers that was performing chest compressions

⁶ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁷ COPA made attempts to locate civilian witnesses via a canvass, Att.10, as well as through follow-up of 911 callers. There was no eyewitness identified, only audio witnesses.

⁸ Att. 168; ██████████ resides at ██████████. This residence is next door, and to the west, of where the incident took place.

⁹ Att. 167

¹⁰ ██████████ resides at ██████████.

¹¹ Att. 167; During a canvass by CPD Detectives, ██████████ stated that he heard someone yell “drop the gun”, which varies slightly from what he recounted to COPA. Att. 233, p. 10.

appeared distraught and yelled out to other officers to “watch the gun.” Shortly thereafter, this same officer was observed alone and seated in the front an unmarked vehicle.

In a statement to COPA on May 5, 2021, **Officer David DeLeon #17293**¹² stated on the date and time of incident, he responded to the scene after hearing a radio transmission of shots fired by the police. Upon his arrival, he observed several officers on scene, including Officer Encarnacion, rendering medical aid¹³ to ██████████ on the ground. Officer DeLeon noticed Officer Encarnacion appeared “exhausted”¹⁴ at which time Officer DeLeon asked to switch with him. Officer DeLeon continued rendering medical aid until an unknown officer took over for him. Shortly thereafter, paramedics arrived on scene. During this time, Officer DeLeon described that Officer Solano was standing by and appeared to be “shooked (*sic*) up.”¹⁵ At no time did he observe Officers Solano and Encarnacion communicating with each other. The scene was secure, and Sergeant (Sgt.) Haran gave the order to turn off Body Worn Cameras (BWC) and to not discuss the incident. Additional ambulances were called for the involved officers to check on their well-being. Officer DeLeon was instructed by Sgt. Haran to stay with Officer Solano. Officer DeLeon was in the rear of an ambulance with Officer Solano while enroute to ██████████¹⁶ At no time did they discuss the incident while in the ambulance. Upon arrival to ██████████ ██████████, both Officers Solano and Encarnacion were separated in different rooms.¹⁷ According to Officer DeLeon, he had no knowledge that Officer Solano was the shooting officer until he was at the hospital. Once Officer Solano was cleared from the hospital, Officer DeLeon and Sgt. Molina escorted him back to the scene. After returning to the scene, Officer DeLeon and Lieutenant Forbes escorted Officer Solano back to CPD Area 5.¹⁸ They had no further contact and at no time discussed the incident.

In a statement to COPA on May 5, 2021, **Sgt. Patrick Haran #861**¹⁹ stated on the date and time of incident, he was assigned to Beat 1661 and was Officer Solano’s and Officer Encarnacion’s direct supervisor.²⁰ Sgt. Haran was at the 16th district²¹ when he heard a radio transmission of “shots fired by police”²² and recognized the voice to be that of Officer Solano or Officer Encarnacion. There was no prior radio communication about an investigatory stop or any notification about a foot pursuit. Upon hearing the shots fired notification, Sgt. Haran immediately left the district and responded to the scene. He did not recall any additional details being communicated over the radio. Upon arrival to the scene, he became the supervisor in charge. He observed Officer Encarnacion, Officer DeLeon and Officer Dieball rendering medical aid to ██████████ who was laid across the sidewalk leading up to the [front] stairs to 5202 W. Eddy Street. His head was facing east, his feet were facing west and there was a firearm a short distance from his feet. Sgt. Haran observed blood coming from ██████████ but was unaware of his physical injuries.

¹² Att. 195 and 213

¹³ Specifically, the medical aid rendered was Cardiopulmonary Resuscitation (CPR).

¹⁴ Att. 213, p. 8, line 17.

¹⁵ Att. 213, p. 11, line 11.

¹⁶ ██████████, Chicago, IL 60631.

¹⁷ Officer Anderson accompanied Officer Encarnacion to the hospital in the ambulance.

¹⁸ 5555 W. Grand Avenue.

¹⁹ Att. 194 and 214

²⁰ According to Sgt. Haran he has supervised them for approximately one year.

²¹ 5151 N. Milwaukee Avenue.

²² Att. 214, p. 8, line 14.

While on-scene, Sgt. Haran asked both Officer Solano and Officer Encarnacion if they fired their weapon, in addition to other public safety questions. Officer Solano responded that he did fire, and Officer Encarnacion “either said no or he doesn’t think so.”²³ As other officers continued rendering medical aid to ████████ Officers Solano and Encarnacion did a visual check on themselves to ensure they were not injured. Sgt. Haran stated that he instructed the involved officers to remain separated.²⁴ He described that he assigned an assisting officer²⁵ to each one of the involved officers and instructed all of them to not discuss the incident.²⁶ According to Sgt. Haran, Officers Solano and Encarnacion were separated by distance on scene and then placed in separate vehicles. At no time did he observe the involved officers communicating with each other [about the incident]. Subsequently, both officers were taken separately by ambulance to a hospital. Sgt. Haran remained on scene for several hours and was in charge until someone of higher rank arrived.

According to Sgt. Haran, on the date of incident there was no foot pursuit policy that he was aware of. However, he was aware of a foot pursuit training bulletin, that was revised in February 2020, which he described as a “self-service-type e-learning”²⁷ training.²⁸ There were no other foot pursuit trainings that he was aware of prior to the incident. In addition, Sgt. Haran explained that at some point on the date of incident, the involved officers should have made a radio notification regarding the foot pursuit. He further explained that at times, due to the nature of the event, a radio notification may not be immediate, but it should happen.²⁹ Sgt. Haran stated that it was not until after Officer Solano gave his statement to COPA that he learned from Officer Solano, that the night before the date of incident, “they had observed the subject in a vehicle. He had fled from them, and that’s why they were stopping him that night, the next night.”³⁰

In a statement to COPA on April 13, 2021, **Officer Sammy Encarnacion**³¹ stated that, on the night prior to the incident,³² he and Officer Solano were on-duty driving northbound on Laramie Avenue, near Addison Street. Officer Encarnacion was the passenger when he observed a white Jeep without a front license plate stopped and facing eastbound inside of a BP gas station.³³

²³ Att. 214, p. 13, line 3.

²⁴ Att. 214, p. 14, lines 14 – 16.

²⁵ It is now known that Officer DeLeon was instructed to stay with Officer Solano and accompany him to the hospital and, Officer Anderson was instructed to do the same with Officer Encarnacion. See Att. 213.

²⁶ Refer to the BWC of Sgt. Haran, Att. 148, in which at 00:26:22, Sgt. Haran says “Sammy, Evan over here. Right there, don’t say anything, don’t say anything to each other don’t say anything to anybody. Just stand there for a second.” Officer Solano is observed standing on the sidewalk near 5204 W. Eddy and Officer Encarnacion was standing few feet further west on Eddy.

²⁷ Att. 214, p. 23, line 3.

²⁸ During his statement to COPA, Sgt. Haran explained that he knew Officer Solano had completed the Foot Pursuit Training Bulletin because he personally handed it to him, after the Force Review Unit sent it to Sgt. Haran to give to Officer Solano for review.

²⁹ Att. 214, p. 25, lines 11 – 15.

³⁰ Att. 214, p. 26, lines 5 – 8.

³¹ Att. 122 and 178

³² Officer Encarnacion did not recall the time of this encounter during his statement to COPA. However, during the course of this investigation, it was learned that on March 29, 2021 at 9:18 p.m., Officer Encarnacion ran a temporary license plate # ████████ registered to a 2021 White Jeep Cherokee, under ████████ at ████████. See Att. 197.

³³ 5200 W. Addison Street.

He recognized the driver as ██████ whom they knew from prior encounters,³⁴ and notified Officer Solano. He recalled that “Mr. ██████ acknowledged us, and my partner waved to him, and he waved back.”³⁵ As the officers did not see a front license plate, they made a U-turn to further investigate. Subsequently, Officer Encarnacion and Solano drove southbound behind ██████ and noticed he had a temporary license plate. Therefore, he was not in violation for not having a front license plate. They ran his temporary license plate over the Portable Data Terminal (PDT) and found that the vehicle was registered under his name. However, they learned his driver’s license was suspended.³⁶ As they were driving southbound on Laramie Avenue, slightly past Addison Street, ██████ sped up and drove away. The officers did not pursue ██████ and chose not to take police action as they had his driver’s license number and address.³⁷ They drove around his residence but did not observe the white Jeep.

On the date and time of incident, Officer Encarnacion and Officer Solano were on routine patrol, driving southbound on Laramie Avenue slightly south of Addison Street. Officer Encarnacion observed ██████ on the west Laramie Avenue sidewalk. He was walking northbound while holding a Styrofoam cup and bag, possibly with food. Officer Encarnacion and ██████ looked at each other. ██████ continued to walk and Officer Encarnacion informed Officer Solano of his observation. According to Officer Encarnacion, they had probable cause to effect an arrest. He explained they had probable cause because they knew he had taken off the previous night. He added that he could positively identify ██████ as the driver and knew that ██████ had a suspended driver license. However, they had not decided if they were going to take that action or give him a verbal warning. Officer Encarnacion explained that based on how ██████ was walking with food in his hand, he believed that they were going to be able to approach ██████ to conduct a “street stop.”³⁸ With their probable cause, if they had initially exited their vehicle to speak to ██████ it would have technically been a street stop. Officer Encarnacion was asked if, based on the knowledge he learned from the night before when he observed ██████ driving his vehicle while on a suspended license, could he then transfer that same knowledge to effect an arrest or stop on ██████ as he was walking, and Officer Encarnacion responded with “correct.”³⁹ Subsequently, a few seconds after they drove past ██████ they made a U-turn on Laramie Avenue to now face northbound. They observed ██████ walk northwest into the parking lot of the Shell gas station⁴⁰ at the southwest corner of Laramie Avenue and Addison Street.

The officers drove behind him and upon driving further into the gas station parking lot, they activated their emergency lights. ██████ spiked his food and drink to the ground. Then he

³⁴ Officer Encarnacion further explained that approximately one year prior, he responded to a domestic call for ██████ threatening the mother of his child. During this incident, Officer Solano engaged in a foot pursuit of ██████ and detained him without incident. COPA ran a search for this incident that occurred on April 15, 2020, under RD # ██████. See Att. 178, p. 23, lines 12-21. Also, on a different occasion, Officer Encarnacion curbed a vehicle where ██████ was present “with some known gang members that we knew from the area.” See Att. 178, p. 23, lines 22 – 24 and p. 24, line 1. He was not arrested during this traffic stop.

³⁵ Att. 178, p. 15, lines 16-18; See also, Officer Encarnacion further explained ██████ acknowledged them by nodding and waving to them which indicated to him that ██████ knew who they were. Att. 178, p. 31, lines 20-22.

³⁶ Refer to the LEADS response that documents ██████ IL driver’s license was suspended. See Att. 196.

³⁷ Att. 178, p. 29; It is documented in Det. Supp Report, Att. 235, p. 28, in a detective interview with Officer Encarnacion, that they decided not to pursue due to the conditions at the time and ██████ vehicle speed.

³⁸ Att. 178, p. 47, line 6.

³⁹ Att. 178, p. 51, lines 11 – 17.

⁴⁰ 5201 W. Addison Street.

immediately started to hold the front waistband area of his jeans, and he started to look back and run. [REDACTED] ran diagonally through the parking lot, arrived at Addison Street and then ran westbound while still holding his waistband with his right hand. According to Officer Encarnacion, based on his knowledge, training, and previous encounters he believed that [REDACTED] holding his waistband indicated that he had a firearm.⁴¹ Prior to this, while [REDACTED] was walking, there was no indication that he had a firearm. Officer Encarnacion and his partner continued to travel parallel in their vehicle alongside him, going west on Addison Street.⁴² Officer Encarnacion attempted to illuminate his vehicle spotlight where [REDACTED] was holding his waistband. [REDACTED] then ran southbound through a residential yard⁴³ and Officer Encarnacion exited the police vehicle. He yelled, [REDACTED] Stop. Stop.”⁴⁴ Officer Encarnacion began a foot pursuit behind [REDACTED] Officer Encarnacion explained his intention in engaging in this foot pursuit was that it was now an unlawful use of a weapon (UW) investigation. He wanted to catch [REDACTED] as he believed he was concealing a firearm because he was holding his waistband. In addition, he had probable cause from [REDACTED] driving on a suspended license the previous night.⁴⁵

[REDACTED] continued to run south through the yard and gangway then eastbound through the alley south of Addison Street. He described that at one point during the foot pursuit, [REDACTED] went from holding his waistband with one hand to two hands. Officer Encarnacion continued to pursue him while yelling commands. While in the alley he saw [REDACTED] back and right arm “tucked”⁴⁶ by the right side of his waistband. [REDACTED] left arm was in a pumping motion while running. However, his right arm appeared to be still and bent out. This led Officer Encarnacion to believe [REDACTED] was holding something, but he could not see his hands at this time. Officer Encarnacion was unsure of the distance between himself and [REDACTED] during the foot pursuit thus far, but he could see [REDACTED] He initially stated possibly between 10 to 20 feet, and then stated he was approximately “a half a block”⁴⁷ in distance. Upon approaching the mouth of the alley onto Laramie Avenue, Officer Solano ran past Officer Encarnacion and was possibly “a couple garage lengths”⁴⁸ ahead in distance. [REDACTED] reached Laramie and ran southbound with Officer Solano running behind [REDACTED] and Officer Encarnacion behind Officer Solano.

During this period of the foot pursuit, there was no radio communication by Officer Encarnacion. Although he was conducting a UW investigation, he explained that he did not make radio communication because he was running while maintaining a focus on [REDACTED] He added that he was attempting to reach [REDACTED] the events were unfolding rapidly, and he didn’t want to place other officers in danger of “speeding”⁴⁹ to them when he had not yet seen a gun. Officer Encarnacion had prior experiences where he had engaged in foot pursuits and on occasion had made radio notifications. There were no factors he used in deciding when or when not to make a

⁴¹ Officer Encarnacion further stated that he has experienced numerous prior encounters in which he engaged in a pursuit of an individual holding their waistband and, it resulted in recovery of a weapon. Att. 178, p. 72.

⁴² Third-party video footage from Att. 58, [REDACTED], depicts the officers driving westbound on Addison Street, in the south lane, with emergency lights activated.

⁴³ 5237 W. Addison Street.

⁴⁴ Att. 178, p. 61, line 21.

⁴⁵ Att. 178, p. 65, lines 17 – 24 and p. 66, lines 1 – 3.

⁴⁶ Att. 178, p. 64, line 21.

⁴⁷ Att. 178, p. 63, line 14.

⁴⁸ Att. 178, p. 74, line 17.

⁴⁹ Att. 178, p. 68, line 17.

radio notification during a foot pursuit. He explained that at the police academy they receive training on radio communication. However, he was unaware of a specific directive as to when to use radio communication. It was his understanding that he is supposed to notify dispatch of his whereabouts and what is taking place. During this foot pursuit, Officer Encarnacion stated he was unable to say if he had enough time to make any radio communication, however, there was nothing stopping him from doing so.⁵⁰ In addition, Officer Encarnacion stated that he had not received, nor has any knowledge, of any specific foot pursuit training.

Officer Encarnacion stated he had just rounded the corner from the alley onto Laramie Avenue⁵¹ when he observed [REDACTED] from a distance, turn westbound on Eddy Street. Within a few seconds, as Officer Encarnacion was approaching the southeast corner near 5200 W. Eddy Street, he observed Officer Solano also turn west on Eddy Street.⁵² Officer Encarnacion explained that as he began to round the corner on Eddy Street, he heard Officer Solano yell out “gun” followed by the sound of several rapid gunshots.⁵³ As Officer Encarnacion continued to round the corner during the sound of gunshots, he unholstered his firearm. Upon turning the corner west on Eddy Street, he described that there were stair rails with thin bars at 5200 W. Eddy Street. He was able to see [REDACTED] through the spaced-out railings somewhere near the front yard area of 5202 W. Eddy Street. Officer Solano was also in that vicinity but moving diagonally to his left, closer to the sidewalk. Officer Encarnacion stated “as I’m unholstering my service weapon to present out, I see Mr. [REDACTED] with a gun in his hand turning towards my partner, and at the same time, all simultaneously, I present my firearm out to take a shot.”⁵⁴ [REDACTED] was “facing west in constant motion in an attempt to face south towards my partner.”⁵⁵ [REDACTED] was holding a gun in his right hand and pointing it “straight up” with his elbow bent at approximately a 20 degree angle and Officer Encarnacion had a visual of the front barrel of the gun.⁵⁶ He did not recall seeing Officer Solano holding his firearm as he was focused on [REDACTED]. He then observed [REDACTED] falling to the ground, so he did not fire his weapon. At the time he heard the shots he did not know who fired. However, upon seeing [REDACTED] fall to the ground he knew Officer Solano had fired.

Officer Encarnacion ran towards [REDACTED] who was lying on the lawn near the entrance of 5202 W. Eddy Street. He observed a firearm on the ground near the walkway. He searched [REDACTED] for additional weapons, turned him over on his back to render medical aid⁵⁷ and saw [REDACTED] with

⁵⁰ Att. 178, p. 70 – 71.

⁵¹ Officer Encarnacion was presented a Google map, Att. 109, of the location of incident to use as a visual aid. The corner residence of 5200 W. Eddy Street, was used as a reference to identify his approximate location during specific points in time. This residence is on the north sidewalk of Eddy Street, it faces south with its east wall along the west sidewalk of Laramie Avenue, separated by an exterior fence.

⁵² Att. 178, p. 82.

⁵³ Att. 178, p. 138.

⁵⁴ Att. 178, p. 41, lines 10-16.

⁵⁵ Att. 178, p. 88, line 9-11.

⁵⁶ During his statement with COPA, Officer Encarnacion physically showed the COPA investigators how he observed [REDACTED] holding his gun and this was verbalized on the record by his Fraternal Order of Police (FOP) Attorney, [REDACTED]. See Att. 178, p. 91.

⁵⁷ Officer Encarnacion has Law Enforcement Medical Training (LEMART) that was issued by CPD.

a phone.⁵⁸ He observed [REDACTED] bleeding and believed it to be from his right leg⁵⁹ so he applied a tourniquet. He also applied a chest seal and gave him chest compressions. Officer Solano also rendered medical aid. Both officers went over the police radio and Officer Solano requested Emergency Medical Services (EMS). Both officers ensured the gun was secure. Assisting police units and EMS arrived on scene.

While standing on-scene, Officer Encarnacion and Officer Solano physically checked each other for injury. They stood approximately 15 to 20 feet from each other.⁶⁰ When confronted with the allegation that he committed misconduct by failing to remain separate from his partner and avoiding contact or communication, Officer Encarnacion responded that he checked on Officer Solano to ensure he wasn't wounded and told him "You're going to be okay."⁶¹ He did not recall any further communication relative to the incident.⁶² At some point, Sgt. Haran ordered them to separate to different vehicles and to stay away from each other. Officer Encarnacion added that he had blood all over himself and felt the need to go to the hospital because he felt anxious. He was taken to [REDACTED] and remained separated from Officer Solano.

On the date of incident, Officer Encarnacion did not fire his weapon. However, at one point, he believed that he may have fired. It was alleged that Officer Encarnacion was inattentive to duty for not knowing whether he discharged his weapon. He denied the allegation and explained that while on scene after the incident he recalled being asked if he fired his weapon. He responded that he did not know due to several elements, including: the events unfolding rapidly, hearing shots being fired while "presenting out"⁶³ his firearm, having blood on his hands from rendering aid, seeing [REDACTED] on the ground, and the overall trauma from the incident. He stated that he didn't know whether he had fired his weapon because he was "in so much shock" in the moments after his partner discharged his weapon.⁶⁴ Officer Encarnacion stated that if he had discharged his weapon, he would have known for sure. Officer Encarnacion was treated for anxiety at the hospital, and then returned to the scene. Upon his return to the scene, he met with a street deputy and watched his Body Worn Camera (BWC), where he observed that he did not fire his weapon.

Officer Encarnacion admitted to being in violation of failing to properly load his firearm in violation of Uniform and Property directive, 04-02.⁶⁵ He described his service weapon as a Glock model 19 with a magazine capacity of 15 rounds. After the incident, his firearm was recovered, cleared, and found to be with 14 rounds in the magazine, therefore being underloaded by one (1) round. He explained that approximately two weeks prior to the incident, he qualified

⁵⁸ Video evidence to include the BWCs of Officer Solano, Encarnacion and third-party video from [REDACTED] depicts a brightly lit phone in the left hand of [REDACTED] during the time of shots being fired and/or the seconds leading up to it and, a lit phone near him on the ground as officers rendered aid. It is unknown whether or not [REDACTED] was on the phone with anyone during the time of incident.

⁵⁹ Throughout the course of the investigation, it was learned that [REDACTED] sustained a gunshot wound to his left thigh and not his right leg. See Att. 215 and 226.

⁶⁰ This is corroborated by the BWC of Sgt. Haran. Refer to Att. 148.

⁶¹ Att. 178, p. 103, line 18.

⁶² During the COPA statement, FOP Attorney [REDACTED] stated on the record that General Order 03-06 allows for tactical and safety conversations.

⁶³ Att. 178, p. 116, line 8.

⁶⁴ Att. 178, p. 118, lines 14-16.

⁶⁵ Refer to Att. 118.

with his service weapon. During the qualification, he was issued new ammunition and added that he must have “miscounted”⁶⁶ or “misread”⁶⁷ and believed he had 15 rounds, not 14.

Officer Encarnacion admitted to committing misconduct by failing to activate his BWC in a timely manner. He believed he had tapped it sooner than he did, which was approximately when he was rendering aid to [REDACTED]. It is his understanding that a BWC should be activated when conducting police action. If he could have done it differently, he would have activated his BWC upon seeing [REDACTED] walking northbound on Laramie Avenue.

In a second statement to COPA on June 14, 2021, **Officer Sammy Encarnacion**⁶⁸ discussed new allegations issued after his first statement, on April 13, 2021, related to an employee training bulletin (ETB) Foot Pursuit Training Bulletin 18-01.^{69,70} He acknowledged that this was a mandatory electronic training (e-learning) that he completed on May 28, 2020.⁷¹ Officer Encarnacion stated that to his understanding, the foot pursuit training bulletin provides “suggestions and recommendations when engaging in a foot pursuit.”⁷² Officer Encarnacion stated that he stood by his previous statement to COPA taken on April 13, 2021.⁷³ Except, he did not stand with his previous answer to COPA when he stated that he did not have foot pursuit training and there was none to his knowledge.⁷⁴ He explained that at the time he was asked that question [during his first statement to COPA], he had forgotten about this training and, he believed that the question was in relation to any physical foot pursuit training. In addition, he did not believe that this e-learning foot pursuit training bulletin to be sufficient as it was just a written document not supported by any physical training.

It was alleged that Officer Encarnacion acted inconsistently with his training under this training bulletin when he decided to engage in a foot pursuit. It was also alleged that he acted inconsistently when he decided to continue the foot pursuit. Officer Encarnacion responded to the first allegation as follows, and subsequently stated he had the same answer for the second allegation. Prior to engaging in the foot pursuit, he did not consider [REDACTED] to be a flight risk. He did not consider waiting for back up prior to the pursuit as Officer Encarnacion and [REDACTED] looked at and acknowledged each other. In addition, [REDACTED] had food, did not initially run and was alone. Officer Encarnacion believed that he and his partner could handle the situation. He explained that there is a balancing test that involves assessing the foot pursuit’s risk, like that used for a vehicle pursuit. During the time of incident, it was late at night and quiet with little to no civilians or

⁶⁶ Att. 178, p. 124, line 18.

⁶⁷ Att. 178, p. 124, line 22.

⁶⁸ Att. 231, 247

⁶⁹ Refer to Att. 211. This is an e-learning, self-service training bulletin that was released to all sworn members in January 2018 and revised in February 2020.

⁷⁰ FOP Attorney, [REDACTED] made an objection on the record to the allegations and stated that such allegations were based upon a training bulletin that officers are to use as guidance, but not required in police actions and, not a violation of a general order. He further objected that such allegations were served after information relayed during Officer Encarnacion’s first statement to COPA. It should be noted that COPA was unaware of the Foot Pursuit Training Bulletin 18-01, until after Officer Encarnacion’s first statement to COPA.

⁷¹ Refer to Att. 210.

⁷² Att. 247, p. 10, lines 11-13.

⁷³ Refer to Att. 122 and Att. 178.

⁷⁴ Att. 247, p. 11, lines 13 – 23.

[driving] vehicles. ██████ path of travel was not “dangerous or reckless”⁷⁵ because he was running down sidewalks and then an empty alley, where Officer Encarnacion maintained a visual for most of the pursuit. He described the lighting conditions as artificial and the weather as dry. There were no obstacles to overcome, such as jumping a fence. Also, during the foot pursuit, and based on his opinion, he and his partner did not separate as they were able to maintain a visual on each other for “a good portion of the foot chase.”⁷⁶

In addition, Officer Encarnacion referenced the training bulletin section that, according to him, documented “Department members will engage in a foot pursuit only when they have reasonable or an articulate suspicion to conduct an investigatory stop or probable cause to arrest.”⁷⁷ Officer Encarnacion stated that he had probable cause to effect an arrest due to ██████ operating a vehicle with a suspended license the night before. On the date of incident, he continued the foot pursuit due to ██████ actions, such as holding his waistband and looking back at the officers. He added, “So the suspicion started - - it went from a misdemeanor probable cause, to arrest, to a reasonable suspicion that he might have a gun at the time.”⁷⁸ ██████ was a danger to the public and as Officer Encarnacion pursued him he was an “active resister.”⁷⁹ It was not until they arrived to Eddy Street that ██████ became an “assailant.”⁸⁰ According to Officer Encarnacion, he had probable cause and he “was in the scope of the law to be able to engage and try to effect that arrest that night”⁸¹ on ██████

Although Officer Encarnacion knew ██████ identity, he explained that he pursued him on foot versus letting him go because ██████ actions, including holding his waistband, looking back at the officers while running and trying to escape, increased the suspicion level that ██████ had a gun.⁸² “[I]t was going to be a bigger threat to the public, and at the time, he continued to remain an active resister.”⁸³

Lastly, it was alleged that Officer Encarnacion acted inconsistently with the foot pursuit training bulletin in failing to make OEMC radio notifications as instructed in the bulletin. He admitted that on the date of incident, he did not make any radio notifications during the foot pursuit. He stated that due to the events unfolding rapidly, he felt as if he did not have time. Additionally, he was focused on ██████ and he was also attempting to catch his breath after yelling verbal commands. During his portion of the foot pursuit, Officer Encarnacion did not actually see the gun. Therefore, if he had sounded as if he was in distress over the radio, he was concerned for the safety of responding units, as well as the public. Lastly, he believed that if he had gone over the radio while running, he would have been separated from his partner.

⁷⁵ Att. 247, p. 16, line 5.

⁷⁶ Att. 247, p. 16, line 24.

⁷⁷ Att. 247, p. 17, line 24 and p. 18, lines 1 -4.

⁷⁸ Att. 247, p. 18, lines 11-14.

⁷⁹ Att. 247, p. 18, line 20.

⁸⁰ Att. 247, p. 18, line 22.

⁸¹ Att. 247, p. 22, lines 20-22.

⁸² Att. 247, p. 26 – 28.

⁸³ Att. 247, p. 28, lines 4 – 6.

In a statement to COPA, on April 13, 2021, Officer Evan Solano⁸⁴ stated on March 31, 2021, he was working in uniform, on routine patrol with his partner, Officer Encarnacion, in an unmarked police vehicle. While driving southbound on Laramie Avenue, Officer Encarnacion observed ██████ walking northbound with a plastic bag in one hand and a drink in the other and alerted Officer Solano. The officers decided to stop ██████ based on probable cause for a traffic violation the night before, where they observed ██████ driving on a suspended license but were unable to detain him at that time.⁸⁶ Officer Solano made a U-turn in the police vehicle, now driving behind ██████ who looked at the officers and continued to walk away from them at a faster pace through the Shell gas station located at Laramie Avenue and Addison Street.⁸⁷

When the officers activated their vehicle's emergency lights, ██████ threw the items in his hands and started running westbound on Addison Street while holding his right waistband. At this point, Officer Solano believed ██████ may be concealing a firearm.^{88,89} The officers followed ██████ in their police vehicle. When ██████ turned southbound, running through a gangway, Officer Solano parked the police vehicle and followed Officer Encarnacion, running after ██████. ██████ turned eastbound in the alley south of Addison Street. At some point in the alley, Officer Solano overtook Officer Encarnacion and was approximately half a block behind ██████. At this time, Officer Solano could only see ██████ back and did not see a firearm. At some point he heard Officer Encarnacion yell, "stop!"⁹⁰ ██████ continued to run, turning southbound onto Laramie Avenue. When Officer Solano turned onto Laramie Avenue, he observed ██████ turn westbound onto Eddy Street and lost sight of him. During this period of time, Officer Solano did not recall whether he or Officer Encarnacion reported the foot pursuit over the radio, and he was not aware of any order requiring such transmissions.⁹¹ Officer Solano explained, because he was not a hundred percent certain ██████ had a firearm, he did not want officers responding and placing themselves in danger or inflaming the situation.

As Officer Solano reached Eddy Street, he was surprised to find ██████ was close, approximately one house away, on the ground with a firearm in his right hand. This was the first time Officer Solano saw ██████ with a gun, and he believed ██████ was positioning himself to shoot at the officers. ██████ made eye contact with Officer Solano, and took a couple of steps westbound, moving his arms in a way that Officer Solano lost sight of the firearm behind ██████ body. Officer Solano unholstered his firearm and gave ██████ verbal direction to "drop the gun. Drop the gun."⁹² ██████ did not comply or say anything. ██████ turned his head, looking over

⁸⁴ Att. 216-218.

⁸⁵ Officer Solano stated he recognized ██████ from three previous incidents: (1) where he assisted other officers in arresting ██████ after he fled on foot from a domestic incident; (2) Officer Solano stopped a vehicle where ██████ was a passenger inside a vehicle with a person of interest in a shooting that occurred on Laramie Avenue approximately 8 months before this incident; and (3) the night before this incident Officers Solano and Encarnacion attempted to conduct a traffic stop where ██████ was the driver. ██████ did not stop, the officers did not pursue him, and ██████ did not return to his listed residential address while the officers were in the area. Officer Solano did not know whether ██████ had a firearm and Officer Solano did not discharge his firearm in any of these incidents. Att. 216, 217.

⁸⁶ See Att. 196, 197.

⁸⁷ Att. 216, 217.

⁸⁸ Att. 216, 217, 245, 246. ██████ did not have a conceal and carry license. Att. 196.

⁸⁹ In his second statement, Officer Solano added that ██████ could have been concealing contraband. Att. 245, 246.

⁹⁰ Att. 217 p. 35, line 22.

⁹¹ Officer Solano stated he had recently, prior to this incident, read a training bulletin about foot pursuits. Att. 217, p. 34, lines 20-21.

⁹² Att. 217 p. 15, line 17.

his right shoulder, and Officer Solano observed an object, later identified as a cell phone, in his left hand. Then, ██████ changed his direction from moving northwest to west, which made Officer Solano believe ██████ was going to turn around and shoot him. At that time, Officer Solano did not know Officer Encarnacion's location and he did not have any cover. He attempted to make himself a smaller target, and discharged his firearm, in rapid succession, while moving to his left. As ██████ turned toward Officer Solano, he was still holding the firearm in his hand, and Officer Solano continued to discharge his firearm until ██████ dropped the firearm and fell to the ground, when the threat was stopped.⁹³ Officer Solano reported his firearm discharge over the radio.



Figure 1: Officer Solano marked the location of himself ("S") and ██████ ("A") at the time he began firing his weapon. The arrow represents the direction in which he was moving.⁹⁴

Officer Solano stated, at the time he discharged his firearm, ██████ was a high-level assailant who posed an imminent threat of shooting him,⁹⁵ and he had no other option than to fire his weapon. Officer Solano was shown his BWC, where ██████ is captured asking, "why are you shooting me?" and Officer Solano responded, "because you had a gun."⁹⁶ Officer Solano denied shooting ██████ solely because he possessed a firearm. Officer Solano further explained he was not sure why he responded as he did, but, at the time, he was in shock. This was the first time he had discharged his firearm, he believed he experienced both auditory exclusion and tunnel vision because he did not hear any gunshots, nor could he find the street sign to provide their location for the ambulance. He was focused on rendering medical aid and requesting an ambulance. He observed that ██████ had injuries, a hole to his front chest, a hole in the side of his chest, and he

⁹³ Att. 217 p. 15, line 18 – p. 16, line 6.

⁹⁴ Att. 218

⁹⁵ Att. 217, p. 58, line 14 – p. 59, line 21.

⁹⁶ Att. 217, p. 60, lines 4 – 6. See Att. 3.

was bleeding from his legs. Officer Solano applied a chest seal and began chest compressions. Officer Solano did not have any physical injuries, but he did have a panic attack.⁹⁷

Officer Solano denied the allegation that he committed misconduct in failing to remain separate from his partner. Officer Solano stated he spoke with Officer Encarnacion to determine whether he suffered any physical injuries, and while the officers were in close physical proximity to each other until Sgt. Patrick Haran formally separated them, they did not discuss the incident.

Officer Solano admitted he was in violation of the Uniform and Property directive.⁹⁸ Officer Solano described his service weapon as a Glock model 19 with a magazine capacity of 15 rounds. After the incident, his firearm was recovered, cleared, and found to be with 8 rounds in the magazine, therefore being underloaded by two (2) rounds.⁹⁹ Officer Solano stated this was a mistake and not intentional.

Officer Solano admitted he activated his BWC after the incident began, noting he should have activated his BWC when he activated his vehicle's emergency lights. Officer Solano described this as a quick and intense situation, where he was focused on driving and [REDACTED] movements rather than his BWC. When he was running with a clear view of [REDACTED] in the alley, he had more time to react to the situation and activated his BWC.

In a second statement to COPA, on June 16, 2021, **Officer Evan Solano**¹⁰⁰ discussed new allegations issued after his first statement, on April 13, 2021, and relative to an employee training bulletin (ETB) Foot Pursuit Training Bulletin 18-01.¹⁰¹ He acknowledged he completed the electronic training on May 14, 2020 and reread the bulletin approximately a month before this incident.¹⁰² Officer Solano stated the ETB is not a general order that he is required to follow, but are "tips and clues" on best practices of what you should or should not do.¹⁰³ Officer Solano added that he did not receive training on foot pursuits in the academy or otherwise, and this ETB training did not include a class, scenarios, or physical training to, for example, show officers how to run while using the radio and maintaining visual of your partner.

It was alleged that Officer Solano acted inconsistently with his training under this training bulletin when he decided to engage in a foot pursuit. It was also alleged that he acted inconsistently with his training when he decided to continue the foot pursuit. Officer Solano denied the allegations and provided the same response as Officer Encarnacion, adding that while they had identified [REDACTED] he did not know whether [REDACTED] lived at the location associated with his name because the officers unsuccessfully waited for him near his residence the night before.

⁹⁷ Att. 216, 217.

⁹⁸ Att. 217, p. 82, lines 14 - 19.

⁹⁹ Att. 12, p. 31.

¹⁰⁰ Att. 245-246.

¹⁰¹ Refer to Att. 210.

¹⁰² Officer Solano stated his Sergeant spoke to him following another foot pursuit incident where he and his partner had separated, he ran on foot while his partner drove the police vehicle. Officer Solano stated he was not provided any discipline related to that incident and he was directed to read the bulletin related to risks to consider while in a foot pursuit – separating from his partner. Officer Solano, added, he learned from this experience and that is why he did not separate from Officer Encarnacion during this incident.

¹⁰³ Att. 246, page 9, line 2.

Lastly, it was alleged that Officer Solano acted inconsistently with the foot pursuit training bulletin in failing to make OEMC radio notifications as instructed in the bulletin. Officer Solano admitted he did not make any notifications¹⁰⁴ until after he discharged his weapon but denied the allegation because he believes the ETB requires him to notify OEMC immediately when there is an opportunity. Officer Solano explained while he was driving the police vehicle, he was focused on [REDACTED] and believed Officer Encarnacion would quickly detain him in the alley. Then, in the alley, Officer Solano was running full sprint, and everything happened so quickly. Officer Solano explained that he made a notification as soon as he could.¹⁰⁵

b. Digital Evidence

Video Surveillance Footage from [REDACTED] depicts the entirety of the shooting incident, as well as pre-incident events and post-incident response. In summary, at approximately 12:05:30 a.m., the front door camera¹⁰⁸ depicts a male (now known to be [REDACTED]) parking a white Jeep Cherokee in front of this address. [REDACTED] is observed exiting the driver's seat while carrying white bags in his hand. He walks eastbound on Eddy Street and turns northbound onto Laramie Avenue where he is no longer in view. At approximately 12:08:20 a.m., the rear camera¹⁰⁹ depicts a partial view of [REDACTED] between the slats of a wooden fence, walking further northbound on Laramie [towards the Shell gas station]. Seconds later, an unmarked dark colored SUV (now known to be Beat 1661D, Officers Solano and Encarnacion) is observed driving southbound on Laramie Avenue. Shortly thereafter, this same SUV is depicted slowly driving northbound on Laramie Avenue and then making a quick left turn into the Shell gas station.¹¹⁰ Beginning at approximately 12:09:26 a.m., silhouettes of [REDACTED] followed by the silhouettes of Officers Solano and Encarnacion, are observed running eastbound in the alley.

At 12:09:38 a.m.,¹¹¹ the front door camera depicts [REDACTED] running southbound on Laramie, then turning the corner westbound on Eddy Street. [REDACTED] runs in a southwest direction along the front lawn of 5200 W. Eddy Street and then he appears to fall. As he attempts to get up, he stumbles a second time. There appears to be a lit cell phone in his left hand. [REDACTED] proceeds to run in a northwest direction across the front lawn of [REDACTED]. At 12:09:41 a.m., Officer Solano is depicted running southbound from Laramie Avenue and then behind [REDACTED]. [REDACTED] appears to run west towards the front stairs of [REDACTED] with the lit cell phone in his left hand and a firearm in his right hand. Officer Solano, while moving in a southwest direction behind [REDACTED] extends his right arm westbound with his firearm in his hand, pointed towards [REDACTED]. At 12:09:43 a.m., [REDACTED] runs west towards the exterior front stairs, he appears to begin to slightly angle his body in a southwest direction, at which time Officer Solano fires his first (1) shot and a muzzle flash is observed. The video depicts [REDACTED] right hand and arm in front of him at the time the first shot is fired.

¹⁰⁴ Officer Solano admitted that both he and Officer Encarnacion would have been considered the primary officer required to make the notification, at different times during the foot pursuit. Att. 246, p. 27, lines 1-20.

¹⁰⁵ Att. 246, p. 28, lines 16-18.

¹⁰⁶ Att. 42 - 44

¹⁰⁷ The timestamp of this video is 9 minutes behind from the actual time of incident.

¹⁰⁸ Att. 42, 43

¹⁰⁹ Att. 44

¹¹⁰ 5201 W. Addison Street.

¹¹¹ The actual time would be 12:18 a.m., which corroborates with all available real-time evidence.



Figure 2: The first shot fired by Officer Solano. Timestamp is offset by 9 minutes. True time is 12:18:43 a.m.

Officer Solano continues to rapidly fire his weapon towards [REDACTED] four more times¹¹² depicted by muzzle flashes, as [REDACTED] continues to move in a southwest direction.



Figure 3: The second shot fired by Officer Solano. Timestamp is offset by 9 minutes. True time is 12:18:43 a.m.

¹¹² Officer Solano fired a total of five (5) shots as corroborated by evidence to include, but not limited to, video and Department reports.



Figure 4: The third shot fired by Officer Solano. Timestamp is offset by 9 minutes. True time is 12:18:43 a.m.



Figure 5: The fourth shot fired by Officer Solano. Timestamp is offset by 9 minutes. True time is 12:18:43 a.m.



Figure 6: The fifth shot fired by Officer Solano. Timestamp is offset by 9 minutes. True time is 12:18:43 a.m.

The video depicts [REDACTED] collapse within the walkway of 5202 W. Eddy Street. He simultaneously dropped a firearm that landed on the grass near the bottom first step.



Figure 7: At [REDACTED]

Subsequently, the involved officers are depicted rendering medical aid, while responding units and Chicago Fire Department (CFD) paramedic arrive to the scene.

Additional video surveillance footage from the following locations does not depict the shooting incident. However, the footage does depict events surrounding the incident including, but not limited to, responding police units after the incident. In summary, relevant video clips from the **Shell gas station**,¹¹³ 5201 W. Addison Street, depict [REDACTED] walking into the gas station parking lot. After a few seconds he is followed by an unmarked police SUV with blue lights activated. [REDACTED] is observed running towards Addison Street and dropping a white bag in the parking lot as the vehicle continues to follow. Relevant exterior video surveillance clips from the **BP gas station**,¹¹⁴ 5200 W. Addison Street, depict a distant view of the Shell gas station across the street. At 12:17 a.m., camera 5 and camera 10 depict [REDACTED] running in a northwest direction, onto Addison Street, followed by a dark colored SUV with blue emergency lights. A residential exterior video from [REDACTED]¹¹⁵ depicts [REDACTED] running northwest from the Shell gas station, then west on Addison Street, followed by a dark SUV with blue emergency lights activated. At approximately 12:18:10 a.m., the sound of five (5) rapid gunshots are heard.

COPA obtained and reviewed **Body Worn Camera (BWC)**¹¹⁶ from 34 CPD members that depicts the incident's aftermath or unrelated video footage. However, the BWC of Officer Solano and Officer Encarnacion depicts the moments directly before and after the shooting incident.¹¹⁷

¹¹³ Att. 45 – 47

¹¹⁴ Att. 71 – 108, 110-113

¹¹⁵ Att. 49

¹¹⁶ Att. 135 – 162; The timestamp in all BWC video footage is in military format. For purposes of this report, all times will be referenced in standard AM or PM time.

¹¹⁷ It should be noted that while the BWCs were activated during the time of the foot pursuit, there are two minutes of video while in buffering mode which captures a part of initial approach of [REDACTED] while in the Shell gas station, the foot pursuit and subsequently the shots fired.

In summary, **Officer Encarnacion's BWC**¹¹⁸ begins with a view from inside a moving vehicle as a front passenger and without audio for the first two minutes. There is a partial view of streetlights and street signs through the front windshield. At 12:17:08 a.m., the video depicts the vehicle driving through a Shell gas station with emergency blue lights activated. At approximately 12:17:25 a.m., the vehicle stops, Officer Encarnacion exits and begins a foot pursuit through a gangway and then an alley. An individual (now known to be ██████████) is depicted further ahead. While in the alley, Officer Solano runs past Officer Encarnacion. ██████████ appears to approach the mouth of the alley and turns south. The video depicts Officer Solano continuing to run slightly ahead of Officer Encarnacion. At approximately 12:17:59 a.m., Officer Solano turns south on Laramie Avenue followed by Officer Encarnacion. At approximately 12:18:07 a.m., Officer Solano turns right onto Eddy Street over the front lawn of 5200 W. Eddy Street. At approximately 12:18:09 a.m., Officer Encarnacion reaches the same front lawn area and begins to turn west.

The video depicts a wider view onto the south side of Eddy Street, with a view of the front of 5200 and 5202 W. Eddy Street. Officer Solano is depicted running towards the sidewalk and parkway from the front lawn area of 5202 Eddy Street. At approximately 12:18:10 a.m. the video depicts ██████████ as he falls near the walkway of 5202 W. Eddy Street (Figure 8). Officer Encarnacion is then observed holding his firearm extended towards ██████████ and then downward as he gets closer.

¹¹⁸ Att. 4



Figure 8: Screenshot from Officer Encarnacion's BWC after shots were fired. ██████ is depicted falling to the ground.

Officer Encarnacion activates his camera at 12:18:14 a.m. Both officers make radio notifications. Officer Encarnacion stands over ██████ who appears to be moving while holding a lit cell phone. ██████ is heard saying “I’m gonna die, I’m bleeding a lot (inaudible)”¹¹⁹ with his cell phone lit and lying on the grass, as he attempts to reach it. Officer Encarnacion instructs ██████ to stop moving as he attempts to render aid. Officer Encarnacion tells Officer Solano where the gun is and Officer Solano at times stands over it. Subsequently, Officer Encarnacion and Officer Solano are depicted rendering aid. Assisting units arrive on scene. Officer Encarnacion and Officer Solano check each other for injuries. At approximately 12:26:26 a.m. a male member (now known to be Sgt. Haran) is heard saying “don’t say anything (inaudible)”¹²⁰ as Officer Encarnacion and Officer Solano stand several feet away from each other, near 5204 W. Eddy Street. An ambulance is observed on scene and the officers are told they can turn off their BWC.

In summary, **Officer Solano’s** ¹²¹ video begins essentially the same as Officer Encarnacion’s. At 12:17:30 a.m., Officer Solano appears to stop the vehicle in front of a residential building, exits the driver’s side and runs through a gangway behind Officer Encarnacion. Officer Solano turns left at the end of the gangway, through an alley, while continuing to run behind Officer Encarnacion. In the distance, an individual (now known to be ██████) is observed running further ahead in the same direction. Officer Solano runs past Officer Encarnacion and activates his camera at 12:17:56 a.m. Officer Solano reaches the mouth of the alley, turns right onto Laramie Avenue and continues to chase ██████ turns right onto Eddy Street. As Officer Solano reaches the front lawn of 5200 W. Eddy Street, the video depicts ██████ on his hands and knees on the front lawn. ██████ gets up and continues to run west onto the front lawn of 5202 W. Eddy Street. At 12:18:07 a.m., ██████ appears to briefly look back over his right shoulder (Figure 9), towards Officer Solano.

¹¹⁹ Att. 4, at 12:18:38.

¹²⁰ Refer to the BWC of Sgt. Haran, Att. 148 at 00:26:22 (12:16:22 a.m.), for additional details relative to his order to the involved officers of where to stand and to not speak about the incident.

¹²¹ Att. 3



Figure 9: Screenshot of Officer Solano's BWC as [REDACTED] looks at him while running.

Simultaneously, Officer Solano, while behind [REDACTED] yells “hey, drop the gun, drop the gun.”¹²² [REDACTED] continues to run northwest. At 12:18:08 a.m., [REDACTED] is depicted running in a slight southwest angle as he is approaching the bottom of the front staircase to 5202 W. Eddy Street. Officer Solano displays his firearm in his right hand, pointed towards [REDACTED] (Figure 10).



Figure 10: Screenshot of Officer Solano's BWC when he initially displays and points his firearm towards [REDACTED]

At approximately 12:18:08 a.m., Officer Solano appears to fire the first gunshot, indicated by a muzzle flash coming from his firearm's barrel (Figure 11).

¹²² Att. 3, at approximately 00:18:06.



Figure 11: A screenshot of Officer Solano's BWC depicting what appears to be the first shot fired. The red circle denotes the muzzle flash..

Simultaneously, Officer Solano continues to rapidly fire his weapon while [REDACTED] continues to run. As [REDACTED] approaches the walkway to 5202 W. Eddy Street, a firearm is observed in his right hand while pointed in front of him, and a lit cell phone in his left hand (Figure 12).



Figure 12: Screenshot of Officer Solano's BWC depicting what appears to be a firearm in [REDACTED] right hand.

Officer Solano fired a total of five (5) gunshots. At approximately 12:18:11 a.m., the video depicts [REDACTED] on the ground within the front walkway of 5202 W. Eddy Street. He is face down while making sounds and beginning to turn on his back. Officer Solano flashes a light on [REDACTED] as he begins to walk towards him. He also flashes a light on a firearm that is on the grass, near the bottom left corner of the first step. [REDACTED] is heard saying “Why you shooting me?”¹²³ and Officer Solano responds “You had a gun!”¹²⁴ At this time Officer Encarnacion is observed approaching [REDACTED]. Officer Solano makes ongoing radio notifications. Officer Encarnacion begins rendering

¹²³ Att. 3, at 12:18:17 hours.

¹²⁴ Att. 3, at 12:18:18 hours.

aid and Officer Solano assists. The remainder of the video is consistent with Officer Encarnacion's BWC as well as video surveillance footage from [REDACTED]

COPA obtained and reviewed 17 **In-Car Camera (ICC)**¹²⁵ video clips from police units that did not capture the shooting incident.

Office of Emergency Management Communication (OEMC) 911 calls,¹²⁶ **CPD Radio transmissions**¹²⁷ and **Event Queries**¹²⁸ document the following relevant material. At approximately 12:18:41 a.m.,¹²⁹ Beat 1661D notifies OEMC of shots fired by the police, provides a location and requests Emergency Medical Services (EMS). Additional notifications made by 1661D include that a weapon was recovered, and medical aid was being rendered, including tourniquet application and chest compressions. OEMC continued to broadcast information and requested a supervisor. Instructions were given relative to securing the scene. Additionally, ambulances were requested for the involved officers. At 12:30:34 a.m. Beat 1661 (now known to be Sgt. Haran) announces the scene is secure and to turn off cameras.

In addition, three 911 callers report hearing gunshots. A fourth female caller¹³⁰ reports seeing a victim on the ground shot and officers in the area.

c. Physical Evidence

The **Crime Scene Processing Reports**,¹³¹ **Evidence Plat**,¹³² **Inventory Sheets**¹³³ and **Evidence Technician (ET) Photos**¹³⁴ document the crime scene and recovered evidence. There were a total of four (4) fired cartridge casings¹³⁵ head stamped Win 9mm Luger +P, and two (2) fired bullets that were recovered from the front area of 5200 and 5202 W. Eddy Street. There was one (1) tan firearm, with a laser attachment, recovered from the walkway of 5202 W. Eddy Street. This firearm was described as a FN 509, semi-automatic, 9mm, serial # [REDACTED],¹³⁶ with thirteen (13) live rounds in the magazine and one (1) live round in the chamber with mixed ammunition, and a 17-round capacity magazine. There was a black LG cell phone also recovered on the front lawn of 5202 W. Eddy Street.

¹²⁵ Att. 124-134, 237-242.

¹²⁶ Att. 21 – 24.

¹²⁷ Att. 20, 27

¹²⁸ Att. 6, 7

¹²⁹ According to Officer Solano's BWC, the OEMC notification of shots fired by the police was initiated on-scene at 12:18:24. However, due to radio traffic and Officer Solano running to the corner for a location, it was not acknowledged by OEMC until 12:18:41.

¹³⁰ This caller was identified as [REDACTED] who resides at [REDACTED] and was an audio witness to the shots fired and after the shots fired observed [REDACTED] on the ground while bleeding and officers in the area (See Att. 168).

¹³¹ Att. 166, 175

¹³² Att. 176

¹³³ Att. 12

¹³⁴ Att. 199

¹³⁵ The investigation revealed that although Officer Solano fired five (5) times, only 4 fired cartridge casings were located/recovered on scene.

¹³⁶ According to department reports, this firearm was not registered (see Att. 232).

ET photos depict all evidence recovered, different angles of the location of incident, and a white Jeep Grand Cherokee, with temporary license plate # [REDACTED], parked in front of 5202 W. Eddy Street that belonged to [REDACTED]

After the scene, ETs relocated to the 025th District and photographed Officer Solano and Officer Encarnacion. They cleared and recovered Officer Solano's Glock 19, semi-automatic firearm, serial # [REDACTED], that was loaded with eight (8) live rounds in the magazine and one (1) live round in the chamber. The magazine was documented to have a 15-round capacity.¹³⁷ They cleared and recovered Officer Encarnacion's Glock 19, semi-automatic firearm, serial # [REDACTED], that was loaded with fourteen (14) live cartridges in the magazine and one (1) live cartridge in the chamber. The magazine had a 15-round capacity.¹³⁸ Officer Encarnacion did not fire his weapon.

The **Illinois State Police (ISP) Laboratory Report**, titled **Firearms/Toolmarks**,¹³⁹ documents the examination of [REDACTED] FN model 509, 9 mm Luger semi-automatic pistol with a laser sight, serial # [REDACTED]; Officer Solano's Glock model 19 Gen4 semi-automatic pistol, serial # [REDACTED]; and Officer Encarnacion's Glock model 19 Gen4 semi-automatic pistol, serial # [REDACTED]. All the firearms were tested and determined to be operable. In addition, the four (4) fired cartridges recovered from the scene, all Winchester 9mm Luger +P, were determined to be fired from Officer Solano's firearm. Two (2) fired bullet fragments were compared to each other and determined to be inconclusive. The same two (2) fired bullet fragments were test fired against Officer Solano's and Officer Encarnacion's firearms and determined to be inconclusive.

The **Illinois State Police (ISP) Laboratory Report**, titled **Latent Prints**,¹⁴⁰ documents the examination of [REDACTED] firearm, to include one (1) magazine and fourteen (14) live cartridges. All the items, except for the magazine, resulted in no suitable latent prints. A latent print impression was located and determined to be database suitable on the firearm. During a database search in the Automated Biometric Identification System (ABIS)¹⁴¹ and the Next Generation Identification (NGI)¹⁴² system, against a standard sample from [REDACTED] the results were deemed as no identification and inconclusive.

¹³⁷ The clearing and processing of Officer Solano's firearm revealed that the weapon's magazine capacity was fifteen (15), and plus one in the chamber, totaling a sixteen (16) round capacity. His firearm was recovered with a total of nine (9) live rounds to include the one in the chamber. Evidence, to include but not limited to, Officer Solano's BWC (Att. 3) and his TRR (Att. 5), document he fired a total of five (5) times. There were four (4) fired cartridges recovered on-scene, with one missing. Therefore, it appears that Officer Solano's weapon was only loaded with a total of fifteen (15) rounds at the time of incident, and therefore underloaded by one (1) round.

¹³⁸ Officer Encarnacion was unsure if he had fired his weapon or not shortly following the incident. Therefore, his weapon was also recovered and cleared. Officer Encarnacion's firearm was recovered with a total of fifteen (15) live rounds to include the one in the chamber. However, he should have been loaded with a total of sixteen (16) live rounds. Therefore, he was underloaded by one (1) round.

¹³⁹ Att. 221

¹⁴⁰ Att. 222

¹⁴¹ According to Aware.com, "an ABIS is a type of biometric search system that performs a one-to-many comparison of a "probe" sample to samples in a database containing many biometric templates" to find a match and/or record of a specific individual or to verify their identity. Refer to <https://www.aware.com/biometric-identification-system/>.

¹⁴² According to fbi.gov, NGI is a new system, created by the FBI, that replaced the Integrated Automated Fingerprint Identification System (IAFIS). It is an electronic repository of biometric and criminal history information. Refer to <https://www.fbi.gov/services/cjis/fingerprints-and-other-biometrics/ngi>.

The **Chicago Fire Department (CFD) Ambulance Report** for ██████ documents that Ambulance 20 was dispatched at approximately 12:23:24 a.m.¹⁴⁴ for a gunshot victim at 5203 W. Eddy Street. They arrived on scene at 12:27:51 a.m. Upon arrival, ██████ was observed to be “on his back in a front yard only responsive to pain.”¹⁴⁵ He was assessed to have a gunshot wound to his chest, and gunshot wounds to his upper left leg and upper right leg.¹⁴⁶ It is documented that police members had applied two tourniquets, two chest seals and were performing chest compressions prior to EMS arrival. CPR was discontinued once it was determined that ██████ had a weak pulse. ██████ was transported to ██████. It is documented that while enroute, ██████ was under traumatic arrest and chest compressions were re-initiated. They arrived at the hospital where ██████ was pronounced deceased in the emergency department.

The **Chicago Fire Department (CFD) Ambulance Report** for **Officer Solano**¹⁴⁷ documents that Ambulance 47 was dispatched at approximately 12:37:00 a.m. for a “sick person”¹⁴⁸ at 5202 W. Eddy Street. The **Chicago Fire Department (CFD) Ambulance Report** for **Officer Encarnacion**¹⁴⁹ documents that Ambulance 7 was dispatched at approximately 12:49:39 a.m. for a “sick person”¹⁵⁰ at 5202 W. Eddy Street. The officers were each attended to by different CFD personnel. Both officers complained of feeling anxious and Officer Solano also complained of chest pain. Both officers were assessed on-scene as normal and alert. Both officers were transported to Resurrection Hospital, separately, for further medical treatment.

The **Medical Records** from ██████¹⁵¹ document that ██████ arrived at the trauma center with multiple gunshot wounds on March 31, 2021, at approximately 12:45 a.m. Upon arrival, ██████ was unresponsive, and EMS administered CPR as he had no palpable pulse.¹⁵² Emergency medical aid was performed, and it was documented that the “patient regained pulses twice but in a matter of minutes lost them again.”¹⁵³ Gunshot wounds were documented to be on his right lower back, right axillary, left medial thigh and left proximal thigh. Dr. ██████ pronounced his time of death at 1:13 a.m.

The **Medical Records** from ██████¹⁵⁴ document that Officer Solano arrived at the emergency department, at approximately 1:18 a.m. via ambulance. He notified medical staff that he is a police officer and stated “a guy pulled a gun on me and I shot him”¹⁵⁵ and subsequently began to feel dizzy with pressure in his chest. Officer Solano was placed in a bed and monitored. It is documented that there were detectives by his side

¹⁴³ Att. 33

¹⁴⁴ The times referenced in the records are in military time. However, for consistency of this Summary Report of Investigation (SRI), all times will be documented in regular time.

¹⁴⁵ Att. 33, p. 5.

¹⁴⁶ Att. 33, p. 5.

¹⁴⁷ Att. 35

¹⁴⁸ Att. 35, p. 4.

¹⁴⁹ Att. 34

¹⁵⁰ Att. 34, p. 4.

¹⁵¹ Att. 193

¹⁵² Att. 193, p. 12.

¹⁵³ Att. 193, p. 54.

¹⁵⁴ Att. 200, 201.

¹⁵⁵ Att. 201, p. 11.

discussing the incident. Officer Solano was diagnosed with “situational anxiety.”¹⁵⁶ He was discharged with no medication. Officer Solano did not have any alcohol or drugs in his system.¹⁵⁷

Officer Encarnacion arrived at the emergency department at approximately 1:11 a.m. via ambulance complaining of anxiety. EMS notified the emergency department he was involved in a shooting with no injuries.¹⁵⁸ Medical staff documented that Officer Encarnacion presented with anxiety after being “shot at.”¹⁵⁹ It is further documented he had no injuries and no physical complaints. He was placed in a room. He was diagnosed with anxiety; his heart rate was stabilized, and he was subsequently discharged in stable condition.

The **Medical Examiner’s (ME) Report**¹⁶⁰ # [REDACTED], for [REDACTED] documents his date of death as March 31, 2021. He was examined on April 1, 2021, by Dr. [REDACTED]. The evidence of injury were two (2) gunshot wounds (GSW). There was one (1) entrance GSW to the right side of his back, which traveled through the body from back to front, left to right and upward, and caused injury to the right lung. This GSW exited on the right side of the chest. There were projectile fragments visible on radiographs of the right side of the chest but could not be removed due to their small size. There was one (1) entrance GSW on the lateral aspect of the left thigh that traveled from left to right and slightly downward; and exited the medial aspect of the left thigh. The cause of death was determined to be multiple GSWs, and the manner of death was determined to be homicide.

Toxicology results were positive for “11 Hydroxy Delta-9 THC,” “Delta-9 Carboxy THC,” and “Delta-9 THC.”¹⁶¹ In a case report by ME Investigator [REDACTED] it is reported that on March 31, 2021, at approximately 1:45 a.m. CPD Officer Calo #5025, notified the ME’s office regarding the death of an unknown male (later learned to be [REDACTED] with shots fired by the police. On March 31, 2021, at 2:40 a.m., Investigator [REDACTED] arrived at the [REDACTED] emergency room and met with CPD members. Investigator [REDACTED] documented her observation of the body of the unknown male, to include injuries and any surgical sutures. The ME’s office ordered further investigation.

¹⁵⁶ Att. 201, p. 9.

¹⁵⁷ Att. 180

¹⁵⁸ Att. 200, p. 41.

¹⁵⁹ Att. 200, p. 13.

¹⁶⁰ Att. 225, 226. It should be noted that Att. 226 is an amended report of the postmortem examination due to a typo of the GSW to the leg in which it was initially documented in error on page 4 as an entrance to the right thigh instead of the left thigh. There was no GSW to the right leg.

¹⁶¹ Att. 225, p. 11; Tetrahydrocannabinol (THC) is the primary psychoactive constituent of cannabis and an active cannabinoid pharmacotherapy component. The 11 Hydroxy Delta-9 THC is more potent and psychoactive than THC and is the active component of marijuana. The Delta-9 THC is responsible for impairment while the Delta-9 Carboxy THC has no impairment effect. Refer to <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3196989/> and <https://glewkimlaw.com/marijuanalaws/delta-9-thc-v-carboxy-thc/>.

d. Documentary Evidence

Original Case Incident Reports¹⁶² and **Detective Supplementary Reports**¹⁶³ for RD # [REDACTED] and related RD # [REDACTED],¹⁶⁴ document the date, time, location of incident, all involved parties, responding units, evidence recovered, medical response, and/or investigative steps. The reports document Officer Encarnacion's interview, which is consistent with what was reported to COPA. Detectives did not interview other CPD members.

General Progress Reports (GPRs),¹⁶⁵ by CPD detectives, document the on-scene police response and investigative actions to include, but not limited to, responding personnel and civilian identifiers, canvass information, evidence collected, firearms processing, notes of interviews, hospital information, and any notifications made. The information documented in the GPRs is essentially the same as reported in the Detective Supplementary Reports. In addition, several other department reports were included along with the GPRs. Such reports include, but are not limited to, case reports, hand-drawn maps (not to scale) with approximate measurements of the location of incident to include marked evidence and, points of reference to OEMC audio transmissions.

The Detective Supplementary Report titled, *Suspended*,¹⁶⁶ documents that after the incident, on the same day, Detective Jonathan McCabe #20547 learned that CPD 17th district personnel had been called to the address of [REDACTED], by [REDACTED] the father of [REDACTED] who had called 911 to report his son was missing. At the time, [REDACTED] identity was speculative. Therefore, Detective McCabe instructed 17th district personnel to complete a Missing Person Report¹⁶⁷ and to provide Detective McCabe's contact information. Later that day, Detective McCabe received a call from Mr. [REDACTED] who was at [REDACTED] and told him he believed his son was involved in a police related shooting. Detective Daniel Berg #20193 was notified and interviewed Mr. [REDACTED] at the hospital.

Mr. [REDACTED] stated that on March 30, 2021, at approximately 10:00 p.m. [REDACTED] arrived at his residence, at [REDACTED] in a white Jeep with temporary plates. He stayed for some time and then left. Sometime later, [REDACTED] learned of a person shot and killed by the police. He watched the news and observed a white Jeep in the crime scene. He called [REDACTED] who did not answer. He then called 911 to report [REDACTED] missing.

The **Tactical Response Report (TRR)**¹⁶⁸ completed by Officer Solano documents an on-view incident in which the activity consisted of an investigatory stop, a person with a gun and pursuing/arresting the subject, documented as [REDACTED] did not follow verbal direction, fled, presented an imminent threat of battery with a weapon, and used force likely to cause death

¹⁶² Att. 2

¹⁶³ Att. 163-165, 185-186, 232-235, 252-258.

¹⁶⁴ This is a law enforcement RD# only for tracking purposes of the officer involved shooting. The RD # [REDACTED] is the primary for this incident.

¹⁶⁵ Att. 251

¹⁶⁶ Att. 235, p. 24

¹⁶⁷ The Missing Person Case report was documented under RD # [REDACTED]. This report was Closed after [REDACTED] identity was confirmed and after [REDACTED] was notified of his death.

¹⁶⁸ Att. 5

or great bodily harm with a semi-automatic pistol, in which it was “displayed, not used.”¹⁶⁹ It is documented that he committed an assault or battery against the officer. Officer Solano responded with member presence, movement to avoid attack, verbal directions, tactical positioning, additional unit members, and by discharging his firearm five (5) times. His weapon discharge contributed to ██████ being injured. Officer Solano rendered medical aid and requested EMS. ██████ was taken to the hospital where it was determined that his injuries were fatal. Sgt. Patrick Haran #861 approved the TRR on March 31, 2021.

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** is evidence indicating that it is **more likely than not** that a proposition is proved.¹⁷⁰ 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.¹⁷¹ Clear and convincing is 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.”¹⁷²

a. Seizures through use of deadly force under the Fourth Amendment.

The Fourth Amendment protects, “[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures.”¹⁷³ As noted by the United States Supreme Court, “[n]o right is held more sacred, or is more carefully guarded, by the common law, than the right of every individual to the possession and control of his own person,

¹⁶⁹ Att. 5, p. 1.

¹⁷⁰ 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.”).

¹⁷¹ See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

¹⁷² *Coan* at ¶ 28.

¹⁷³ U.S. Const. amend. IV.

free from all restraint or interference of others, unless by clear and unquestionable authority of law.”¹⁷⁴ “[T]he ultimate touchstone of the Fourth Amendment is ‘reasonableness.’”¹⁷⁴

A seizure of a person can take the form of an officer’s application of physical force or an officer’s show of authority that restrains a person’s liberty.¹⁷⁵ The test is whether the officer’s conduct objectively manifested an intent to restrain the person.¹⁷⁶

“A police officer’s use of force to effect an arrest is a seizure within the meaning of the Fourth Amendment.”¹⁷⁷ It therefore must be reasonable.¹⁷⁸ Under the Fourth Amendment, officers may be justified in using deadly force when they reasonably believe a person poses an imminent threat of serious physical harm to themselves or others.¹⁷⁹ An officer may use deadly force even on a fleeing person if that officer reasonably believes the person poses such a threat.¹⁸⁰

In evaluating an officer’s use of deadly force, courts provide that the fact finder must understand that officers often face situations that are “tense, uncertain, and rapidly evolving” and that they are required to “make split second judgments” about how much force to apply.¹⁸¹ “Whether use of deadly force constitutes a constitutionally reasonable seizure is an objective inquiry and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”¹⁸²

Importantly, “an officer does not possess unfettered authority to shoot a member of the public simply because that person is carrying a weapon. Instead, deadly force may only be used by a police officer when, based on a reasonable assessment, the officer or another person is threatened with the weapon.”¹⁸³

b. Department policy regarding the use of force.

The Department’s stated highest priority is the sanctity of human life. In all aspects of their conduct, the Department expects that its members act with the foremost regard for the preservation of human life and the safety of all persons involved.¹⁸⁴ Department members are only authorized to use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, to ensure the safety of a member or third person, stop an attack, make an arrest,

¹⁷⁴ *Riley v. California*, 573 U.S. 373, 381 (2014) (citations omitted).

¹⁷⁵ *Torres v. Madrid*, 141 S. Ct. 989, 995 (2021) (citing *Terry v. Ohio*, 392 U.S. 1, 19 n.19 (1968)).

¹⁷⁶ *Torres*, 141 S.Ct. at 998.

¹⁷⁷ *Doxtator v. O’Brien*, No. 19-C-137, 2021 U.S. Dist. LEXIS 94896, at *22 (E.D. Wis. May 19, 2021) (citing *Tennessee v. Garner*, 471 U.S. 1, 7 (1985); *Graham v. Connor*, 490 U.S. 386, 388 (1989)).

¹⁷⁸ *Id.*

¹⁷⁹ See *Siler v. City of Kenosha*, 957 F.3d 751, 758, 59 (7th Cir. 2020).

¹⁸⁰ *Garner*, 471 U.S. at 11.

¹⁸¹ *Garner*, 490 U.S. at 397.

¹⁸² *Graham*, 490 U.S. at 396.

¹⁸³ *Cooper v. Sheehan*, 735 F.3d 153, 159 (4th Cir. 2013) (emphasis in original); *Curnow v. Ridgecrest Police Agency*, 952 F.2d 321, 324-25 (9th Cir. 1991) (deadly force unreasonable when suspect holding gun was not pointing it or facing officers); *Williams v. Ind. State Police Dept.*, 797 F.3d 468, 484-85 (7th Cir. 2015) (deadly force justified not merely by possession of weapon, but by suspect’s actions); *Biegert v. Moliter*, 968 F.3d 693, 699 (7th Cir. 2015) (“We emphasize that someone does not pose “an immediate threat of serious harm” solely because he is armed. . . . Having a weapon is not the same thing as threatening to use a weapon.”).

¹⁸⁴ General Order G03-02 (II)(A).

control a subject, or prevent escape.¹⁸⁵ This means Department members may use only the amount of force necessary to serve a lawful purpose. The amount and type of force used must be proportional to the threat, actions, and level of resistance a person offers.¹⁸⁶

When evaluating every use of force, the main issue is whether the amount of force used by the member was objectively reasonable in light of the totality of the circumstances faced by the member on scene. Factors to be considered include but are not limited to: whether the subject is posing an imminent threat to the member or others; the risk of harm, level of threat or resistance presented by the subject; and the subject's proximity to weapons.¹⁸⁷

The force options authorized to be used on a subject depend on the level of resistance being offered by the person. The use of deadly force is authorized only on an "assailant" whose actions constitute an imminent threat of death or great bodily harm to the member or another person.¹⁸⁸ In contrast, when dealing with a cooperative person, members may only use police presence and verbal direction.¹⁸⁹

c. Department policy regarding use of deadly force.

While the Department's use of force policy in places reflects the standards under Fourth Amendment law, the Department's Use of Force policy imposes additional restrictions upon an officer's use of deadly force under circumstances that would be permissible under Fourth Amendment jurisprudence.¹⁹⁰ For example, Department policy provides a detailed description of the type of force appropriate for varying levels of threats and resistance. Department policy also requires use of de-escalation techniques to avoid or minimize the need for use of force.¹⁹¹ Department policy also permits use of deadly force only as a "last resort"¹⁹² when necessary to prevent imminent harm.¹⁹³

Under Department policy, deadly force is force by any means that is likely to cause death or great bodily harm, including the firing of a firearm in the direction of the person to be arrested. 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 to the member or another person; or to prevent an arrest from being defeated by resistance or escape, where the person poses an "imminent threat" of death or great bodily harm to a sworn member or another person unless arrested without delay.¹⁹⁴

¹⁸⁵ *Id.* at (III)(B).

¹⁸⁶ *Id.* at (III)(B).

¹⁸⁷ *Id.* at (III)(B)(1).

¹⁸⁸ *Id.* at (IV)(C)(2)

¹⁸⁹ *Id.*

¹⁹⁰ Thus, although a Department member's use of force may violate Department policy, it does not necessarily mean that such force would be deemed unreasonable under the Fourth Amendment in a civil suit. COPA may nevertheless cite to Fourth Amendment related judicial opinions but only for guidance on how to interpret common concepts or terms.

¹⁹¹ General Order 03-02-01(II)(B).

¹⁹² General Order 03-02(III)(C). The Department does not define "last resort." Merriam-Webster defines "last resort" as "something done only if nothing else works." <https://www.merriam-webster.com/dictionary/last%20resort>

¹⁹³ General Order 03-02(III)(C).

¹⁹⁴ General Order 03-02(III)(C).

A threat is imminent when it is objectively reasonable to believe that the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; and the subject has the means or instruments to cause death or great bodily harm; and the opportunity of ability to cause death or great bodily harm.¹⁹⁵

c. Department requirement to use de-escalation techniques to avoid or prevent the need for use of force.

The Department's rules and regulations provide: "[w]hile the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances involved."¹⁹⁶

Toward that end, Department members are required to use de-escalation techniques to reduce or prevent the need for use of force. Members are to continually assess situations and determine the following:

- 1) If any use of force is necessary;
- 2) the authorized force option based on the totality of the circumstances;
- 3) If the seriousness of the situation requires an immediate response or whether the member can employ other force options or the Force Mitigation Principles; and
- 4) If the level of force employed should be modified based upon the subject's actions or other changes in the circumstances. The level of force will be de-escalated immediately as resistance decreases, provided that the member remains in control and as safety permits.¹⁹⁷ As the subject offers less resistance, the member is to immediately lower the amount or type of force used.¹⁹⁸

The principles of de-escalation, or force mitigation, include:¹⁹⁹

- 1) Continual Communication²⁰⁰ - to minimize or avoid confrontations, members are to attempt to use verbal control techniques prior to, during, and after the use of force. They are to attempt to establish and maintain verbal communication in all police-public encounters such as exercising persuasion, advice, and instruction prior to the use of force. When safe and feasible, members are to provide a warning prior to the use of force.
- 2) Tactical Positioning²⁰¹- When safe and feasible to do so, members are to make advantageous use of positioning, distance, and cover by isolating and containing a subject, creating distance between the member and a potential threat, or utilizing barriers or cover. Members will continuously evaluate the members positioning, subject's actions, and available force options.

¹⁹⁵ General Order 03-02(III)(C)(2).

¹⁹⁶ Rules and Regulations of the Chicago Police Department, Art. I.B.7.

¹⁹⁷ General Order G03-02-01(II)(F).

¹⁹⁸ Id. at (II)(G).

¹⁹⁹ Id. at (III).

²⁰⁰ Id. at (III)(A).

²⁰¹ Id. at (III)(B).

- 3) Time as a Tactic²⁰²- When safe and reasonable, members are to slow down the pace of the incident to permit the de-escalation of the subject's emotions and allow the subject an opportunity to comply with the verbal direction given. Using time as a tactic will also allow for the arrival of other officers as well as allow the individual the opportunity to voluntarily comply with lawful verbal direction before force is used.

d. Responsibility to remain separate following an officer's firearm discharge.

Department policy requires that members involved in an officer involved shooting and members that witnessed the incident remain separate from other involved and witness members.²⁰³ Impacted members are to avoid contact or communication with each other until released by the designated incident commander.²⁰⁴ The rule applies after the scene has been secured.²⁰⁵

e. Department training regarding foot pursuits.

Department members are trained on when foot pursuits are authorized and how to conduct them to ensure safety of everyone involved. Pursuant to that training, Department members are instructed that they may "engage in a foot pursuit only when they have reasonable articulable suspicion to conduct an investigatory stop or probable cause to arrest."²⁰⁶ The Department reminds officers that while the act of fleeing from the police does not create reasonable articulable suspicion to justify a stop, it can be "one factor in the totality of the circumstances to establish reasonable articulable suspicion."²⁰⁷

Noting that foot pursuits risk physical injury to all, the decision to engage or continue in a foot pursuit involves a balancing test, where members "will assess the risks to the public, to themselves, and to the fleeing subject, in relation to law enforcement's duty to enforce the law and apprehend the subject."²⁰⁸ The Department emphasizes that, "**when making the decision to pursue, or to continue to pursue, the safety of the public, Department members and the fleeing subject should be the foremost considerations.**"²⁰⁹

²⁰² Id. at (III)(C).

²⁰³ General Order G03-06(VII)(A)(2), (B)(2).

²⁰⁴ Id.

²⁰⁵ Id. at (VII).

²⁰⁶ Foot Pursuits Training Bulletin ETB#18-01 p.1. "If an officer does not have reasonable articulable suspicion or probable cause to stop a subject, an officer should not engage in a foot pursuit." p.3. Department Publications Special Order S09-05-02 IV. (effective Aug. 14, 2003 - present) Training Bulletins are issued to: 1. explain, clarify, or restate Department policy and procedure; 2. bring items of special interest to the attention of Department members; and 3. aid members in achieving the mission and goals of the Department.

²⁰⁷ Foot Pursuits Training Bulletin p. 1. For example, the member should not engage in a foot pursuit, if a person "looks in the direction of an officer and begins to run, and there are NO other factors to contribute to reasonable articulable suspicion..." p.3.

²⁰⁸ Foot Pursuits Training Bulletin p. 1 Members "will consider ... safety" of all "in relation to ...the duty to enforce the law and apprehend the subject." p.5.

²⁰⁹ Foot Pursuits Training Bulletin p. 3. (bold in original). Noting the use of force on a fleeing person must be "objectively reasonable, necessary and proportional" and deadly force may not be used unless the person poses an imminent threat of death or great bodily harm. p. 5.

Factors members should consider when engaging in or continuing²¹⁰ a foot pursuit include, but are not limited to:

1. the number of subjects involved,
2. the number of officers involved,
3. whether the subject is believed or known to be armed,
4. the seriousness and nature of the offense committed by the subject,
5. the availability and proximity of assist units,
6. the availability of radio communications,
7. the physical characteristic of the pursuit location, including but not limited to the:
 - a. nature of the area: residential, commercial, school zone, roadway,
 - b. community setting: school dismissal, community event, pedestrian traffic,
 - c. environmental factors: weather, lighting, time of day,
 - d. condition of the structures: abandoned building, troubled building, gang and/or drug house,
 - e. physical hazards: clotheslines, unrestrained animals, unsteady ground, train tracks, rail yards, waterways,
 - f. The officer's familiarity with the area.²¹¹

When deciding if a fleeing person should even be pursued in the first place, a member should consider the following: 1) What is the nature of the offense? 2) Has identity been established? 3) Where is the person running to?²¹² Since foot pursuits are rapidly evolving in nature, a member must “continuously assess the circumstances of the pursuit and determine the appropriate response to effectively apprehend the subject and safely conclude the pursuit.”²¹³ A member must discontinue a foot pursuit if the risk to anyone outweighs the need to apprehend the person fleeing.²¹⁴ Alternative responses include obtaining backup, establishing a perimeter or requesting specialized units to assist.²¹⁵

If members believe a person presents a flight risk, they “should consider waiting for backup before stopping a vehicle, or before approaching a subject who is on foot” and before getting occupants out of a stopped vehicle.²¹⁶ Members should also consider that “the best course of action may be to contain the subject, rather than attempting to overtake and immediately apprehend them” especially, for example, if the person is armed or enters a building.²¹⁷

²¹⁰ Once engaged in a foot pursuit, the member shall “continuously assess the circumstances” using the balancing test. Foot Pursuits Training Bulletin p. 3.

²¹¹ Foot Pursuits Training Bulletin p. 2.

²¹² Foot Pursuits Training Bulletin p. 3. Recognizing the members “need to make a quick decision...”

²¹³ Foot Pursuits Training Bulletin p. 3.

²¹⁴ Or a supervisor orders a member to discontinue. Foot Pursuits Training Bulletin p. 3. If there is an injury, members should weigh the importance of apprehending the person fleeing with assisting someone who is injured, noting “the foremost regard for the preservation of human life and the safety of all persons involved.” If the person fleeing discards evidence, particularly items that pose a serious risk to the public, members should weigh the need to recover the item with the need to apprehend the person. Foot Pursuits Training Bulletin p. 4.

²¹⁵ Foot Pursuits Training Bulletin p. 3.

²¹⁶ Foot Pursuits Training Bulletin p. 3. Noting to be aware of signs, such as body language and movements.

²¹⁷ Foot Pursuits Training Bulletin p. 5.

Once a member engages in a foot pursuit the member must “immediately notify” OEMC broadcasting: location and direction, description of the person fleeing, the reason for the pursuit, and if in plain clothes.²¹⁸ Members must coordinate with responding members to establish a perimeter and request outside support if appropriate and make reasonable efforts to update their location and direction.²¹⁹ OEMC must again be notified if the person being pursued is apprehended and once the member discontinues the pursuit.²²⁰ “Running with a firearm in hand is to be avoided.”²²¹

The Department emphasizes that partners should stay together during a foot pursuit and makes this a responsibility of each partner. Members should not separate from their partner unless there are “exigent circumstances.”²²² One partner should be the “primary” or “lead” officer focusing on the person fleeing and any threats, while the other partner should be the “secondary” or “support” officer responsible for “radio communications, including updating the direction of travel, and requesting assist units.”²²³

e. Member Responsibility to Perform Duties Competently

Rule 10 of the Department’s Rules of Conduct prohibits inattention to duty.²²⁴ Rule 11 of the Department’s Rules of Conduct prohibit incompetency or inefficiency in the performance of a member’s duties.²²⁵

The Department’s Standards of Conduct provide:

the responsibility for the proper performance of a member’s duty, whether he be on or off duty, lies primarily with the member himself. A member carries with him, at all times, the responsibility for the safety of the community. He discharges that responsibility by the faithful and dedicated performance of his assigned duty and an immediate and intelligent response to emergency. Anything less violates the trust placed in him by the community, and nothing less qualifies as professional conduct.²²⁶

f. Department Policy Regarding Body Worn Cameras

To increase transparency and improve the quality and reliability of investigations, Department policy mandates all law-enforcement-related encounters to be electronically recorded on the officers’ body worn camera (“BWC”).²²⁷ The recording of law-enforcement-related

²¹⁸ Foot Pursuits Training Bulletin p. 4. The BWC or ICC video system must be activated at the beginning of the incident.

²¹⁹ Foot Pursuits Training Bulletin p. 4. Supervisors have specific duties during foot pursuits as well. p. 5.

²²⁰ Foot Pursuits Training Bulletin p. 4.

²²¹ Foot Pursuits Training Bulletin p. 4.

²²² Foot Pursuits Training Bulletin p. 1. “‘Separation’ is any situation in which one officer is unable to immediately render aid or otherwise assist the other officer in the apprehension of the subject.”

²²³ Foot Pursuits Training Bulletin p. 1.

²²⁴ Rules and Regulations of the Chicago Police Department, Art. V.

²²⁵ Rules and Regulations of the Chicago Police Department, Art. V.

²²⁶ Rules and Regulations of the Chicago Police Department, Art. I.B.18.

²²⁷ S03-14(II)(A).

encounters is mandatory.²²⁸ Law-enforcement-related encounters include, but are not limited to, foot and vehicle pursuits, use of force incidents, investigatory stops, high risk situations, and emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene.²²⁹ Officers must activate their BWCs at the beginning of an incident and record the entire incident.²³⁰ 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.”²³¹

g. Firearm Loading Requirements

Department orders require members to fully load their firearms.²³²

VII. ANALYSIS AND CONCLUSION

In making the findings discussed herein, COPA reviewed the statements of Officers Solano and Encarnacion and evaluated their credibility. As discussed in more detail throughout, COPA finds that some of their explanations for acting were not reasonable, or their perceptions were not supported by video evidence, but their statements are otherwise materially supported by physical and video evidence.

a. Officers Solano and Encarnacion each failed to timely activate their body worn cameras.

Officer Solano activated his BWC in the midst of the foot pursuit, as he was passing Officer Encarnacion while running eastbound in the alley. He explained that he did not activate the camera sooner because he was driving and focused on ██████████ and that he activated at the first moment it was calm enough to do so. Officer Encarnacion did not activate his BWC until after the shooting. He acknowledged that he should have activated it when they first saw ██████████ walking northbound on Laramie Avenue.

Pursuant to the BWC directive, the officers should have activated sooner. As Officer Encarnacion acknowledged, the proper time to activate was when they saw ██████████ walking north on Laramie Avenue. Both officers state that it was at this time they determined they were going to do an investigatory stop of ██████████ related to the night before, and at this point Officer Solano conducted a U-turn to approach ██████████. Not only were they beginning an investigatory stop—which is an enumerated law enforcement related activity requiring them to activate—but they should have been aware that ██████████ might flee. They believed he had fled from them the night before, and he had purportedly run as part of the arrest that Officer Solano previously assisted in. This awareness that he may flee further triggered the duty to activate their cameras.

The BWC directive expressly contemplates, and requires officers to activate their cameras while driving, as it enumerates “emergency vehicle responses where fleeing suspects or vehicles

²²⁸ S03-14(III)(1).

²²⁹ S03-14(III)(2).

²³⁰ S03-14(III)(2).

²³¹ S03-14(III)(2).

²³² U04-02(II)(H).

may be captured on video leaving the crime scene.”²³³ There is no evidence that Officer Solano could not activate his BWC at the time he initiated the investigatory stop of ██████████

The officers’ failure to comply with the BWC directive challenged COPA’s ability to comprehensively collect objective evidence that corroborates the officers’ account of the incident. COPA has no audio of any discussions the two officers may have had in initiating the investigatory stop or discussing their impression that they saw ██████████ adjust a firearm at the gas station. Additionally, COPA has no audio of any commands given during the foot pursuit.

For these reasons, COPA finds that Officers Solano and Encarnacion failed to timely activate their BWC in violation of Special Order 03-14, and **Allegation 1** against each officer is **Sustained**.

b. Each officer failed to fully load their firearm in violation of Department policy.

Ballistic and video evidence shows that Officer Solano fired his weapon five times. However, when technicians broke down his firearm, it was six cartridges short of fully loaded. Ballistic evidence shows that Officer Encarnacion was one cartridge short of fully loaded as well, even though he fired no shots. Therefore, both officers were loaded short of policy.²³⁴ Both officers acknowledged to COPA that they were not fully loaded and indicated it was unintentional since they had recently used their firearms to requalify and did not properly reload. For these reasons, COPA finds that **Allegation 2** against Officers **Solano** and **Encarnacion** is Sustained.

c. The officers were justified in seizing ██████████

There is clear and convincing evidence that Officers Encarnacion and Solano had probable cause to seize Mr. ██████████²³⁵ When Officer Solano shot Mr. ██████████ and he dropped to the ground, he was seized tantamount to an arrest, requiring probable cause under the Fourth Amendment.

The officers had probable cause to arrest Mr. ██████████ based on driving while his license was suspended the night prior. At that time, the officers saw Mr. ██████████ initially sitting in his Jeep in the BP parking lot. They recognized Mr. ██████████ and got behind his vehicle when he was driving on Laramie; they determined that his license was suspended through a PDT database search. At that point, they had probable cause Mr. ██████████ was committing a class A misdemeanor of driving while his license was suspended in their presence.²³⁶ When they saw him the next night, they recognized him as the person who was driving while his license was suspended the day prior

²³³ S03-14 III.A.2.n. The directive also enumerates vehicle pursuits and emergency driving situations which would require officers to activate their cameras while driving.

²³⁴ U04-02.

²³⁵ The officers did not detain Mr. ██████████ because he had not submitted to authority nor had the officers used physical force to detain him. See *Torres v. Madrid*, 141 S. Ct. 989, 998 & 1003 (2021) (holding the officers seized Torres when they shot her because the officers’ shooting applied physical force to her body and “objectively manifested an intent to restrain” her from driving away). COPA therefore does not further analyze the propriety of detaining ██████████

²³⁶ 625 ILCS 5/6-303 (any person who drives ... a motor vehicle on any highway of this State at a time when such person’s driver’s license... is revoked or suspended ... shall be guilty of a Class A misdemeanor.). *People v. Kozak*, 264 N.E.2d 896 (1970) (highway does not include private parking lots).

day and still had probable cause. Since the officers had probable cause, it was reasonable under the Fourth Amendment to seize Mr. ██████

In addition, it is illegal under Illinois law to carry a fully exposed handgun in public.²³⁷ Officer Solano saw ██████ with a fully exposed handgun before shooting him.²³⁸ The officers had authority to seize him under the Fourth Amendment on that basis.

For these reasons, COPA finds that Officers **Solano** and **Encarnacion** are **exonerated of Allegation 3**.

d. Officer Solano's use of deadly force was not objectively reasonable.

1. ██████ did not pose an imminent threat.

COPA finds, by a preponderance of the evidence, that it was not objectively reasonable for Officer Solano to believe that ██████ actions were immediately likely to cause death or great bodily harm unless action was taken.²³⁹ Officer Solano described the actions that led him to believe that ██████ was going to shoot as: (1) ██████ twice looked over his right shoulder towards Officer Solano and (2) he was starting to turn towards Officer Solano. He further stated that he could not see the firearm because ██████ had tucked it in to his stomach.

The video, both from Officer Solano's BWC and ██████ front door camera, confirms that ██████ did change direction slightly to his left (west), just before Officer Solano fired his weapon, but at the time, the firearm was not pointed or moving towards Officer Solano.²⁴⁰ It also appears from Officer Solano's BWC video that ██████ is veering left/west to avoid the front steps of 5202 W. Eddy. ██████ did not look back at Officer Solano at the time the officer fired, instead he was looking westbound towards the sidewalk on Eddy Street. There is also no indication that ██████ was turning towards Officer Solano, as the angle from both cameras show him focused on fleeing west on Eddy.

²³⁷ Under the Illinois Criminal Code, it is unlawful to carry or possess a handgun in public except under certain circumstances, including validly carrying or possessing under the Illinois Conceal Carry Act. 720 ILCS 5/24-1(a)(10); The Illinois Concealed carry act requires that the firearm be concealed or partially concealed. 430 ILCS 66/10(c)(1); See also *People v. Reed*, 2021 IL App (1st) 181966-U, P23-P24, 2021 Ill. App. Unpub. LEXIS 1429, at *9-11 ("The observation of a firearm and a defendant's attempt to flee can give rise to probable cause to believe that the defendant lacked a concealed carry license, which is necessary to lawfully carry a concealed or partially concealed firearm."); *Williams*, 266 Ill. App. 3d at 760 (stating that the trier of fact could infer that the defendant who ran from police and threw his gun into the garbage did not have a FOID card while fleeing from police).

²³⁸ See *United States v. Nafzger*, 974 F.2d 906, 913 (7th Cir. 1992) ("The police who actually make the arrest need not personally know all the facts that constitute probable cause if they reasonably are acting at the direction of another officer or police agency. In that case, the arrest is proper so long as the knowledge of the officer directing the arrest, or the collective knowledge of the agency he works for is sufficient to constitute probable cause.").

²³⁹ It was reasonable to believe the other two prongs of the imminent threat analysis were met: ██████ had the means to cause great bodily harm, a firearm, and based on his proximity to Officer Solano he had the ability to cause great bodily harm.

²⁴⁰ Notably, Officer Solano did not mistake ██████ cell phone in his left hand to be a firearm. He indicated that he saw the object in the left hand, and saw it extend outwards towards him, but also made clear that he knew the firearm to be in ██████ right hand at this time, and he did not claim that ██████ ever pointed or extended it.

COPA recognizes the risks Department members face when pursuing subjects who are holding firearms and that these circumstances require officers to 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. A subject with a firearm could potentially turn and shoot at an officer at any point during a foot pursuit. Nonetheless, Department policy cannot and does not permit Department members to use deadly force on any subject who flees with a firearm.²⁴¹ Officers are only permitted to use deadly force where they reasonably believe the person threatens imminent harm to them with the firearm.²⁴²

A reasonable officer with police training would recognize that many subjects flee with firearms with the intention to escape and avoid criminal liability, not to shoot at police. They would also recognize that many subjects discard firearms during flight. Therefore, Department members must evaluate the risk posed by a subject's actions based on the totality of the information available to them. While Department policy and relevant law do not require that a Department member wait for a subject to point a firearm in their direction prior to discharging their firearm,²⁴³ there must be some objectively reasonable basis for the Department member to believe the subject's actions are likely to cause death or great bodily harm to the Department member or another person unless action is taken.

COPA finds that the preponderance of the evidence in this case shows that ██████ was attempting to escape without the use of force and does not support that ██████ actions were likely to cause death or great bodily harm. The only act he took that suggested he might threaten Officer Solano was to look over his right shoulder at the officer.²⁴⁴ However, after doing so he continued to run. Officer Solano also acknowledged that after looking over his shoulder, ██████ tucked the firearm into his stomach. He then looked ahead and moved as if to avoid the staircase of 5202 W. Eddy and continue fleeing west. It was at this point that Officer Solano shot him. However, a reasonable officer should have recognized that he was not an imminent threat.

2. Officer Solano failed to use de-escalation techniques in violation of Department policy.

Moreover, Officer Solano did not use tactical positioning, and his failure to do so directly led to his belief that he needed to use deadly force. He indicated to COPA that he fired, in part, because when he turned the corner, he was shocked that ██████ was now closer to him, and he began to fear for his life. ██████ was now closer because Officer Solano rounded the corner

²⁴¹ *Ybarra v. City of Chicago*, 2019 U.S. Dist. LEXIS 203070 at *13 (N.D. Ill. 2019) (“deadly force is not justified merely because an individual has access to a firearm.”).

²⁴² *Weinmann v. McClone*, 787 F.3d 444, 448 (7th Cir. 2015) (“In other words, a person has a right not to be seized through the use of deadly force unless he puts another person (including a police officer) in imminent danger or he is actively resisting arrest and the circumstances warrant that degree of force.”); *Cooper v. Sheehan*, 735 F.3d 153, 159 (4th Cir. 2013) (“[A]n officer does not possess the unfettered authority to shoot a member of the public simply because that person is carrying a weapon. Instead, deadly force may only be used by a police officer when, based on a reasonable assessment, the officer or another person is threatened with the weapon.”) (emphasis in original).

²⁴³ *See, Thompson v. Hubbard*, 257 F.3d 896 (8th Cir. 2001) (holding that there is no requirement that an officer wait until a shot is fired in his or her direction before employing deadly force to protect himself or herself).

²⁴⁴ It is almost inherent that someone being chased will look over their shoulder at the person chasing them. If looks over the shoulder were sufficient to establish an imminent threat, then officers would be justified in shooting essentially every fleeing subject. However, directives require an imminent threat.

without considering tactical positioning.²⁴⁵ A reasonable officer in Officer Solano's position would take the corner more cautiously (what officers call "slicing the pie") to ensure he did not round a blind corner into a dangerous situation. Even once he had seen the firearm, he continued his headlong chase after ██████ even though at this time he was in a position where he could have used the corner of the house as cover, or otherwise sought cover.²⁴⁶

He stated that deadly force was necessary because he was unable to seek cover, however, that is not the case.²⁴⁷ As discussed, he still could have sought cover at the moment he first saw the firearm. Moreover, when ██████ made the actions that Officer Solano said indicated an imminent threat—looking over his right shoulder, then pulling his right hand with the firearm in as if to turn—Officer Solano was still east of the staircase of 5200 W. Eddy and could have sought cover behind it. However, he kept running after ██████

Both officers also failed to consider waiting for backup. Knowing ██████ was a flight risk, the officers should have considered backup to contain ██████. The officers knew where ██████ lived, and it appears he didn't realize the officers were nearby until they approached him in their car. There is nothing to suggest they had an immediate need to apprehend him at that moment.

This conduct was in direct conflict with Department policy, which requires officers to create cover between themselves and subjects and to use cover to avoid the need for force.²⁴⁸

For the foregoing reasons, COPA finds that it was not objectively reasonable for Officer Solano to believe that ██████ posed an imminent threat of death of great bodily harm nor was it objectively reasonable to believe that deadly force was a necessary last resort. Therefore, COPA finds that **Allegation # 4 is Sustained.**

e. Officer Encarnacion was not inattentive to duty when he indicated that he might have discharged his firearm.

COPA finds that even though Officer Encarnacion incorrectly informed Sgt. Haran, while on scene, that he had discharged his firearm during the incident, it was not unreasonable for him to do so. He explained to COPA that he knew he had presented out his firearm and heard shots (now determined to all be from Officer Solano) at the time. In the aftermath he was shook up, so he was not fully sure if he had fired. Under the circumstances, it was not unreasonable for him to be unsure. Additionally, if he was unsure, COPA believes it prudent for officers in that situation to inform superiors to ensure and investigation and evidence preservation. For these reasons,

²⁴⁵ Officer Encarnacion's body worn camera as well as the front door camera at ██████ both show Officer Solano quickly rounding the corner without stopping or slowing down.

²⁴⁶ When ██████ first becomes visible on Officer Solano's camera in the front yard of 5200 W Eddy, at which point Officer Solano yells "hey, drop the gun" for the first time, indicating he has now seen the firearm, the corner of the home is still in view on Officer Solano's camera as he has not fully rounded the corner and could have used it for cover. Att. 4, at 02:11-02:12.

²⁴⁷ He also reported that he had to use deadly force to protect his partner. However, Officer Encarnacion was behind Officer Solano, and Officer Solano reasonably should have known that Officer Encarnacion was also in a position where he could have used cover.

²⁴⁸ It also conflicts with the requirement that deadly force be necessary as a last resort because he had opportunities to seek cover and take other steps to avoid the need for deadly force.

COPA finds that Officer **Encarnacion** was not inattentive to duty in violation of Department rules, and **Allegation 4** is **Exonerated**.

f. The Officers remained separated from each other and avoided communication about an officer involved shooting as required under Department policy.

The officers' BWC indicates that they did not initially separate from one another as they attempted to render aid to ██████ and began to secure the scene. However, once additional officers arrived on scene and were able to take over medical aid, the two officers separated from one another on scene. Both officers indicated that they rode to the hospital separately and did not discuss the incident once at the hospital. Sgt. Haran corroborated that the officers' rode separately to the hospital, and further indicated that he instructed them to remain separate on scene, and that he never observed them communicating with one another. Therefore, the evidence is clear and convincing that the officers separated themselves when the scene was secured, and **Allegation 5** against each officer is **Unfounded**.

g. Foot Pursuit Analysis

1. The officers had Probable cause to engage in a foot pursuit.

As stated above, when Officers Encarnacion and Solano engaged in a foot pursuit of Mr. ██████ they had probable cause to arrest Mr. ██████ for driving while his license was suspended on the night prior.

2. Officers Solano and Encarnacion acted inconsistently with their training when deciding to engage in a foot pursuit.

A preponderance of the evidence shows Officers Solano and Encarnacion acted inconsistently with their training when engaging in a foot pursuit by not properly applying the balancing test. First, Officers Solano and Encarnacion did not consider the nature of the offense when deciding to engage in a pursuit. Both officers said they considered the offense of driving with a suspended license and were suspicious Mr. ██████ had a gun or narcotics.²⁴⁹ Officer Encarnacion thought it was more dangerous to the public for someone to possibly be running with a handgun. Officer Solano said he thought both driving on a suspended license and potentially having a firearm or contraband were both high risk crimes. Additionally, while both officers were suspicious Mr. ██████ had a gun, they said one of the reasons they did not announce the pursuit via OEMC was concern for the officer safety in responding when they were not sure if Mr. ██████

²⁴⁹ Officer Encarnacion said there is a balancing test similar to a vehicle pursuit analysis. Officer Encarnacion said he balanced the nature of the location with having probable cause to arrest for driving with a suspended license. He said he also had reasonable suspicion that ██████ might have a gun. However, in his earlier statement to COPA he said he was investigating an unlawful use of a firearm but felt he was not sure enough to announce it on the radio. Officer Encarnacion said Mr. ██████ actions of holding his waistband and looking back at the officers while fleeing raised a threat level suspecting he had a gun. He identified Mr. ██████ as an active resister. Officer Solano said Mr. ██████ immediately grabbed or went for his waistband with his right hand and he was concerned might Mr. ██████ might have firearm or contraband or narcotics inside waistband.

had a gun or not.²⁵⁰ The officers are trained that apprehending a person who has committed a violent crime is much more important than the necessity of apprehending someone for a minor non-violent offense. It seems the officers considered the hunch/possibility of possessing a gun as sufficient basis to pursue Mr. [REDACTED]. Here, the offense for which there was evidence was driving on a suspended license from the day prior, which is minor and not on-going. Additionally, it was not a threat to public safety, unlike a foot pursuit. The officers did not appear to consider the insufficient evidence of a violent crime and only evidence of a minor non-violent offense.

Second, Officers Solano and Encarnacion did not consider the fact that they had already identified Mr. [REDACTED] when deciding to engage in a pursuit. The officers seemed to indicate that because they did not make contact with Mr. [REDACTED] the night before when they had gone to his residence and their additional suspicions of contraband on this night, weighed in favor of a pursuit. But per their training, an arrest on a later date would be advisable when they know someone's identity and there is no indication a delay in arrest will risk harm to life or damage to property. Here, the officers not only identified Mr. [REDACTED] but had obtained a significant amount of information about him when running his name in PDT the day prior, including where he lived. They also knew he frequented that area and were familiar with his white Jeep. They did not indicate that they considered a potential delay in charging Mr. [REDACTED]²⁵² and were familiar with Mr. [REDACTED] address. This alternative would not have presented the inherent risks of harm to the officers, [REDACTED] or members of the public associated with a foot pursuit. Additionally, waiting until a later time to apprehend or charge Mr. [REDACTED] may have been more reasonable in this case where the criminal offense a minor, non-violent, traffic crime, and there was no new urgency since the day prior.

While the officers said there were some factors they considered when deciding if they should engage in a foot pursuit,²⁵³ the evidence is sufficient that the officers did not appropriately apply the balancing test and weigh the relevant factors consistent with their training.

²⁵⁰ The officers were not trained to consider the lack of evidence of a violent crime or the safety of responding officers when deciding if they should notify OEMC but the lack of evidence of a violent crime and the safety of the officers and the fleeing subject were factors they were trained to consider when deciding if they should engage in a foot pursuit.

²⁵¹ The officers also had authority to issue a notice to appear in lieu of an arrest. *See* 725 ILCS 5/107-12. (a) Whenever a peace officer is authorized to arrest a person without a warrant, he may instead issue to such person a notice to appear.

²⁵² Officer Encarnacion did indicate he thought running with a firearm would be a harm to the public.

²⁵³ Officers Solano and Encarnacion said they did consider the location of the pursuit when deciding to engage in a pursuit. The officers were familiar with the area. Mr. [REDACTED] first ran away from a gas station, down a street, through an open fence and yard. He continued to run in an empty alley, down a sidewalk and through the yards of a residential area. The officers both said they considered that there were not many obstacles or traffic in the area that could increase the risk of injury. Neither officer mentioned any potential risk to the public more generally. Officers Solano and Encarnacion also said they considered other relevant factors consistent when deciding if they should engage in a foot pursuit. They considered that there were two officers and only one person that was fleeing. They considered that the weather was clear. They also considered whether [REDACTED] would flee. Here Officers Solano and Encarnacion said they did not believe Mr. [REDACTED] would be a flight risk because he was carrying food. But Officer Solano twice characterized Mr. [REDACTED] as fleeing the traffic stop the night prior. Officer Solano had also previously engaged in a foot pursuit with [REDACTED]

COPA finds by a preponderance of the evidence that Officer Solano and Officer Encarnacion acted inconsistently with their training when deciding to engage in a foot pursuit. Thus, **Allegation #6** against **Officer Solano** and **Allegation #6** against **Officer Encarnacion** are **SUSTAINED**.

1. Officers Solano and Encarnacion acted inconsistently with their training when deciding to continue in a foot pursuit.

A preponderance of the evidence indicates Officers Solano and Encarnacion acted inconsistently with their training when continuing in a foot pursuit by not properly applying the balancing test. Members should continually assess the circumstances of the pursuit and determine the appropriate response. As mentioned above, the officers did not weigh the relevant factors consistent with their training when deciding if they should engage in a foot pursuit, these same factors were not weighed when continuing in a foot pursuit.²⁵⁴

Additionally, several circumstances changed that the officers are trained to consider. Officers are cautioned when rounding corners and trained they should not separate from their partner absent exigent circumstances.²⁵⁵ Officer Solano was separated from Officer Encarnacion when he turned corners ahead of Encarnacion. When separated, Officer Solano saw that Mr. ██████ was known to be armed after Mr. ██████ displayed a firearm. Also, there is no evidence the officers appropriately considered other potential responses including obtaining backup or establishing a perimeter. Other units appeared to be available to assist and the officers had access to radio communications.

COPA finds by a preponderance of the evidence that Officer Solano and Officer Encarnacion acted inconsistently with their training when deciding to continue in a foot pursuit. Thus, **Allegation #7** against **Officer Solano** and **Allegation #7** against **Officer Encarnacion** are **SUSTAINED**.

2. Officers Solano and Encarnacion failed to notify OEMC of the foot pursuit.

A preponderance of the evidence indicates the officers acted inconsistently with their training regarding notifications to OEMC during foot pursuits. Officers Encarnacion and Solano acknowledged they did not make any of the notifications about the foot pursuit to OEMC.

Officer Encarnacion explained there was not time. He said it was hard to notify OEMC as he was sprinting and out of breath. He felt it would be more difficult to stay with his partner if he did. Additionally, he was concerned about other officers risking safety by responding quickly to a notification of a foot pursuit with a gun or possibly a gun when he had not actually seen a gun.

²⁵⁴ United States Department of Justice Civil Rights Division and United States Attorney's Office Northern District of Illinois, *Investigation of the Chicago Police Department*, January 13, 2017, at p. 5. (“[F]oot pursuits are [] inherently dangerous and present substantial risks to officers and the public. Officers may experience fatigue or an adrenaline rush that compromises their ability to control a suspect they capture, to fire their weapons accurately, and even to make sound judgments. Consequently, officers caught up in the heat of a pursuit ‘often exhibit the tendency to rush into what can be described as ‘the killing zone,’ that is, within a 10-foot radius of the offender. The adrenaline rush also may make it more difficult for the officer to decrease the amount of force used as a threat diminishes.”).

²⁵⁵ Officer Solano had been trained on staying with his partner during foot pursuits.

Officer Solano also explained it happened quickly and he was running at full speed. Additionally, he was concerned about people getting hurt since other officers respond quickly to an announcement about a gun and they were not sure [REDACTED] actually had a gun. Also, he wanted to find a cross street to identify his location. He thought the foot pursuit would end quickly. He said he did not think there was an order requiring him to notify OEMC and that he did not necessarily have to follow the training. But the Department expects its members to perform their duties competently and professionally. COPA does not believe an officer can choose to effectively disregard their training as mere tips and guidance. To permit an officer to do so would set a dangerous precedent. Training ensures Department members have the skills and knowledge necessary to perform their duties professionally, efficiently, and lawfully.²⁵⁶

COPA finds by a preponderance of the evidence that Officer Solano and Officer Encarnacion acted inconsistently with their training by failing to notify OEMC of a foot pursuit. Thus, **Allegation #9** against **Officer Solano** and **Allegation #9** against **Officer Encarnacion** are **SUSTAINED**.

VI. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Solano

i. Complimentary and Disciplinary History

Officer Solano has received one 2019 Crime Reduction Award, three Complimentary Letters, five Department Commendations, two Emblems of Recognition – Physical Fitness, and twenty-four Honorable Mentions. He has no prior disciplinary history.

ii. Recommended Penalty

COPA has determined Officer Solano's use of deadly force against [REDACTED] on March 31, 2021, to be without justification and in violation of General Order 03-02. COPA further determined that Officer Solano failed to properly activate his body-worn camera, failed to properly load his firearm, and failed to follow his training with respect to foot pursuits. While all of these actions require corrective action, the improper use of deadly force against a citizen is an egregious act requiring severe consequences. Accordingly, COPA recommends separation from the Department.

b. Officer Encarnacion

i. Complimentary and Disciplinary History

²⁵⁶ See United States Department of Justice Civil Rights Division and United States Attorney's Office Northern District of Illinois, *Investigation of the Chicago Police Department*, January 13, 2017, at p. 94 ("To set and maintain a culture of policing safely, effectively and constitutionally, a law enforcement agency must provide its officers strong training both at the outset and throughout their careers. Proper training gives officers the confidence and knowledge to police safely and effectively.").

Officer Encarnacion has received one Crime Reduction Award, five Complimentary Letters, two Department Commendations, and twenty-six Honorable Mentions. His disciplinary history includes two Reprimands for 2021 SPARs: Tardiness and a Court Appearance Violation.

ii. Recommended Penalty

COPA’s investigation resulted in sustained findings against Officer Encarnacion for failing to properly activate his body-worn camera, failing to properly load his firearm, and failing to follow his training with respect to foot pursuits. COPA gives significant weight to the fact that it was Officer Encarnacion who initiated the foot pursuit of [REDACTED]. Such a police engagement is inherently dangerous and any decision to engage in a foot pursuit must be giving proper consideration and ought to progress within the parameters of an officer’s training. Here, COPA finds that Officer Encarnacion’s decision to pursue [REDACTED] was against the weight of his training, and that such a departure from CPD’s training was not reasonably justified by Officer Encarnacion or the circumstances of the encounter. In this instance, the death of [REDACTED] was the conclusion that flowed from Officer Encarnacion’s decision to initiate a foot pursuit, and therefore, led to and is arguably, to some degree, indivisible from the unjustified use of deadly force against [REDACTED]. Accordingly, COPA recommends that the Department impose a substantial suspension up to and including Separation against Officer Encarnacion.

Approved:

[REDACTED]

Angela Hearts-Glass
Deputy Chief Investigator

1-20-2022

Date

[REDACTED]

Andrea Kersten
Interim Chief Administrator

1-20-2022

Date