

**REPORT OF INDEPENDENT INVESTIGATOR STEVEN M. BISKUPIC
TO THE WAUWATOSA POLICE AND FIRE COMMISSION
REGARDING THE CONDUCT OF WAUWATOSA POLICE OFFICER
JOSEPH MENSAH**

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SUMMARY OF FINDINGS AND RECOMMENDED DISPOSITION

1. Wauwatosa Police Officer Joseph Mensah has, in the course of his official duties during a five-year period, fatally shot three individuals. The Wauwatosa Police and Fire Commission's consideration of whether to return Officer Mensah to official duties necessarily involves whether Officer Mensah is empowered to engage in a fourth such shooting in the future pursuant to use of deadly force policies and procedures. Based on the proposed findings and analysis below, I recommend that the Wauwatosa Police and Fire Commission withhold such authorization and affirmatively remove Officer Mensah from active service. The risk and ensuing consequences to the Wauwatosa Police Department and the City of Wauwatosa of a fourth shooting by this Officer are too great for this Commission to find otherwise.

2. In order to find that a Wauwatosa Police Officer is capable of performing as an Officer at present and in the future, the Police and Fire Commission (PFC) must find that the Officer is capable of performing *all* designated duties, including those involving the use of deadly force. *See Wauwatosa Police Department Rules and Regulations*, Rule 1 (Performance of Duties), Rule 5 (Failure to Perform Duties), Rule 9 (Disregard for Safety), Rule 17 (Use of Force), Rule 22 (Discretion), Rule 27 (Unsatisfactory Performances), and Rule 28 (Report for Duty); *see also Wauwatosa Police Department Policies* 17-11 (Investigation of Law Enforcement Involved Fatalities/Great Bodily Harm).

3. Rule 9 specifically states that an Officer, regardless of intent, shall not create “a situation of unnecessary risk.” [All rules, policies and procedures cited herein are contained in full in the accompanying appendix.¹]

4. I find that authorizing Officer Mensah to continue the performance of his full police officer duties, including the concurrent authorization for the potential use of deadly force for a fourth time, creates an extraordinary, unwarranted and unnecessary risk to the Wauwatosa Police Department and the City of Wauwatosa, in violation of Rule 9 and the other fitness-for-duty Rules and Policies stated herein.

5. In addition, Officer Mensah has made public statements regarding the shootings that are inconsistent and misleading with respect to the facts of these matters. The statements also violate an important policy strictly prohibiting an officer from publicly discussing the details of an ongoing investigation of an officer-involved fatality.

6. I find that this conduct violates Rule 7 (Dishonesty or Untruthfulness, including “misleading information”) and Policies 17-11 and 13-08 (restricting officers from making unauthorized public statements regarding fatal shootings during pending investigations).

7. Combined, the totality of Officer Mensah’s actions after the shootings, including his public statements, further impair his fitness for duty, including his ability to testify in court as part of his official responsibilities.

¹ Although certain requirements are labeled as policies and procedures, for disciplinary purposes they have the same force as rules and regulations. See Rule 5 of the *Wauwatosa Police Department Rules and Regulations*. In addition, Rule 6 requires each officer “to read, understand and comply with all rules and regulations, orders, policies and procedures of the department.”

8. A number of additional purported rules violations have been set forth by the Complainant. For the reasons set forth below, I find the evidence insufficient to sustain any additional violation and I recommend that that Commission dismiss each such additional charge.

9. In particular, I find the evidence insufficient to establish that Officer Mensah acted in violation of use of deadly force rules with respect to the fatal shooting of Mr. Jay Anderson on June 23, 2016.

10. I further find insufficient evidence for the Complaint allegations that Officer Mensah committed other rule or policy violations during the same encounter and subsequent actions by:

- (a) failing to follow policy regarding his squad video recording device;
- (b) failing to render medical aid;
- (c) approaching the passenger side of the Anderson vehicle;
- (d) giving preference to conservative media;
- (e) using social media to respond to critics;
- (f) participating in a legal defense fund;
- (g) receiving improper training; or
- (h) engaging in other activity purportedly in violation of the rules.

11. In sum, based on the totality of the circumstances described below, I find “just cause” as that term is used under Wisconsin Statute § 62.13(5)(em) to remove Officer Mensah from duty as an active Wauwatosa Police Officer and I further find that termination would serve the best interests of the Wauwatosa Police Department and the City of Wauwatosa.

APPLICABLE RULES AND LEGAL STANDARDS

1. For more than 120 years, the Wisconsin legislature has empowered Police and Fire Commissions with the authority to discipline or remove any police officer. *Conway v. Board of Police and Fire Commissioners of City of Madison*, 2003 WI 53, ¶ 41, 262 Wis. 2d 1, 662 N.W.2d 335; *State ex rel. Piertz v. Hartwig*, 201 Wis. 450, 230 N.W. 42 (1930). See also Matthew J. Flynn, Comment, *Police Accountability in Wisconsin*, 1974 Wis. L. Rev. 1131 (providing a detailed review of the history of the laws on police accountability).

2. For a city the size of Wauwatosa, Wisconsin Statute § 62.13(5)(em) governs the discipline of police officers.

3. Under this statute, the Police and Fire Commission may suspend, reduce in rank, or remove any police officer provided: (a) that “just cause” exists to sustain a charge; and (b) the ensuing disciplinary decision is appropriate “as the good of the service may require.”²

4. “Just cause” is defined within the statute through consideration of seven delineated standards:

(1) *Whether the subordinate could reasonably be expected to have had knowledge of the probable consequences of the alleged conduct.*

(2) *Whether the rule or order that the subordinate allegedly violated is reasonable.*

(3) *Whether the chief, before filing the charge against the subordinate, made a reasonable effort to discover whether the subordinate did in fact violate the rule or order.*

(4) *Whether the effort described under subd. 3. was fair and objective.*

² See *Trapp v. Board of Fire and Police Commission of the City of Milwaukee*, 2017 WI App 85, ¶¶ 17-19, 379 Wis. 2d 367 (unpublished decision) (reviewing two-stage inquiry under the statute). While the *Trapp* decision applied Wis.Stat. § 62.50(17), discipline of officers working for cities with a population of 150,000 and over, case law regarding § 62.50(17) may be referenced to § 62.13(5)(em) as persuasive authority because of the similarities between the two statutes. *Koesterling v. Board of Fire and Police Commissioners*, 2011 WI App 19, n. 2, 331 Wis. 2d 486 (unpublished decision).

(5) Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.

(6) Whether the chief is applying the rule or order fairly and without discrimination against the subordinate.

(7) Whether the proposed discipline reasonably relates to the seriousness of the alleged violation and to the subordinate's record of service with the chief's department.

5. According to the last sentence of the first paragraph of Wis. Stat. § 62.13(5)(em), the list of seven standards is not cumulative and a board's consideration of the factors need only be "to the extent applicable." This is particularly so since standards 3 through 6 refer to the "chief" of the department taking disciplinary action instead of a police and fire commission. Nonetheless, the board should still attempt to carefully consider the extent to which all seven factors may apply. See League of Wisconsin Municipalities, *Handbook for Wisconsin Police and Fire Commissioners*, Chapter 9, page 53 (2005) (excerpt attached in appendix).

6. The burden of proof relating to the "just cause" determination is a preponderance of the evidence – that is, that the evidence supporting the factual contention is more likely than not. *In re Owens*, 122 Wis. 2d 449, 454-455, 362 N.W.2d 171 (1984). The combined evidence against the officer, however, still must be "substantial" under Wis. Stat. § 62.13(5)(em)(5).

7. If the evidence supports the "just cause" standard, the board then determines whether discipline should be imposed "as the good of the service may require." Wis. Stat. § 62.13(5)(e). Such a consideration generally includes consideration of the impact of the misconduct on the complainant, the police department, and the community, depending on the rules put in place by the board. See *Trapp v. Board of Fire and Police Commission of the City of*

Milwaukee, 2017 WI App 85, ¶ 27, 379 Wis. 2d 367 (unpublished decision). No specific level of proof is required for this determination. *Id.*

PROCEDURAL HISTORY

1. On June 18, 2020, a complaint was filed against Officer Mensah by legal representatives acting on behalf of the family of Jay Anderson Jr. The Anderson family members are collectively referred to as the “complainant” in this report.
2. On July 15, 2020, the Police and Fire Commission held a hearing which resulted in the acceptance of the charges, adoption of rules for the proceedings, and the assignment of the Independent Investigator. The Police and Fire Commission also ordered the Chief of Police to suspend Officer Mensah pending a review of the complaint.
3. On August 14, 2020, the Police and Fire Commission adopted a scheduling order for further proceedings on the complaint.
4. On August 21, 2020, pursuant to the scheduling order, representatives for the Anderson family filed a supplement to the complaint.
5. On August 28, 2020, pursuant to the scheduling order, counsel for Officer Mensah filed a response to the complaint and supplement to the complaint.
6. Although the scheduling order provided an opportunity for any party to make any additional submission to the Independent Investigator by September 4, 2020, no additional submission was separately made by any party.
7. On September 9, 2020, counsel for the Complainant filed a rebuttal to the response submitted by Officer Mensah.
8. The deadline for submission of this report was set at October 19, 2020.

SCOPE OF THE INVESTIGATION

1. The Independent Investigator is Steven M. Biskupic, a former federal prosecutor now in private practice. He was assisted by Michelle L. Jacobs, also a private attorney and former federal prosecutor. Both have extensive experience in the investigation of police officer conduct. These two attorneys were assisted by five retired agents of the Federal Bureau of Investigation. The five are: George Strong, Michael DeMarco, Dale Mueller, Paul Lazzari, and Richard Neureuther. All this work was undertaken *pro bono*, at no charge to the City of Wauwatosa.

2. As discussed in relevant parts herein, the investigation included interviews, review and confirmation of prior investigative reports, additional investigative and legal analysis, and field work, including site visits and review of video and audio recordings. Formal interviews and informal meetings were conducted with Wauwatosa police personnel. A formal interview of the Wauwatosa Chief of Police was conducted. A transcript of that interview is attached in the appendix. Also, separate meetings with members of the Anderson and Cole families and their legal representatives were held.

3. On July 27, 2020, legal counsel for Officer Mensah declined an opportunity to submit Officer Mensah to an interview with the Independent Investigator.

4. On September 4, 2020, legal counsel for five Wauwatosa Police Officers, potential witnesses to the matters discussed herein, indicated that the Officers would not submit to interviews with the Independent Investigator without first being provided with *Garrity* protections, which the Independent Investigator was not authorized to provide. A copy of the attorney's position, including his legal analysis for this position, is contained in the appendix.

PROCEDURAL NOTE

Under the rules adopted by the Police and Fire Commission for this matter, the Independent Investigator “may provide a report to the Commission as to the facts and circumstances surrounding the subject matter of the complaint.” While this report is limited to the factual “subject matter” of the complaint, this report also addresses and recommends action for Rule and Policy violations not specifically referenced by number in the complaint or its supplement. To the extent that the Commission proceeds against Officer Mensah for violations of specific Rules or Policies not previously delineated by the complaint and its supplement, the Commission should first give formal notice pursuant to Wis. Stat. § 62.13(5)(b). For example, this Report relies heavily on a number of Rules and Policies addressing fitness for duty. Those Rules and Policies were not previously raised by number in the complaint or its supplement. Moreover, counsel for Officer Mensah has raised a procedural objection to many of the complaint issues. He contends that certain issues cannot be the basis for discipline because the Complainant was not an “aggrieved party” under those rules pursuant to Wis. Stat. § 62.13(5)(b). This technicality easily can be resolved by having the Commission separately issue the charges alleged herein. *See* Wis. Stat. § 62.13(5)(b) (charges also may be issued by “the board as a body”).

FACTUAL FINDINGS

A. Jay Anderson Jr.

1. On Wednesday, June 22, 2016, Jay Anderson Jr. was 25 years old and residing at 8026 W. Medford Avenue in Milwaukee. He was 5'10" tall and weighed 160 pounds.

2. Anderson lived there with: (a) his parents, Linda and Jay Anderson Sr.; (b) his girlfriend Starkeisha Delarosa; and (c) Delarosa's two small children, one of whom was the child of Anderson.

3. Very late in the evening on June 22, 2016, Anderson left the residence to meet a close family friend at a bar located at 51st and Center Streets in Milwaukee. Anderson drove to the bar in a 2006 Black Nissan Altima, which was owned by Delarosa's mother, but often utilized by Anderson and Starkeisha.

4. Friends and family members describe Anderson as mild-mannered and pleasant to be around. He was a proud father.

5. Occasionally, the stress of having young children at home caused Anderson to want a break to hang out with friends to drink and smoke marijuana.

6. Anderson possessed a firearm, a Ruger model SR9c, 9 mm, semi-automatic pistol. A friend of Anderson said that Anderson possessed the firearm for safety because he lived in a dangerous neighborhood. The particular gun was purchased by a third party in July of 2014. Anderson knew the third party from pick-up basketball. How and when the firearm initially came into Anderson's possession is unknown.

7. Anderson had a prior misdemeanor conviction for possession of a firearm while intoxicated. He had no felony convictions.

8. Anderson and his friend socialized at the bar until after midnight and into the early hours of June 23, 2016. The two consumed brandy and, on the patio area, smoked marijuana. Anderson became intoxicated and the friend suggested that Anderson go home. Later toxicology reports indicated that Anderson's blood alcohol level several hours after leaving the bar was still at 0.11.

9. Instead of going home, Anderson drove alone to Madison Park in Wauwatosa. The family friend said Anderson often went to the park "to chill" or relax. The park was near where the friend lived. In the past, the friend had met Anderson at the park to assist Anderson when he had car troubles.

10. On June 23, 2016, Anderson entered the park at 1:37 a.m. Anderson likely smoked more marijuana (the car was still filled with marijuana odor when examined by police officers an hour and a half later; and a very small amount of marijuana residue was in a paper fold in Anderson's pocket).

11. As set forth in detail below, although other vehicles entered and exited the park during the time that Anderson was there, Anderson did not appear to interact with any of them.

12. Anderson likely fell asleep while sitting behind the wheel of the car. His loaded firearm was on the front passenger seat next to him. The family friend said that Anderson was a heavy sleeper and difficult to wake.

B. Madison Park

1. Madison Park is a Milwaukee County Park located at 9800 W. Glendale Avenue in Wauwatosa. The park spans from 92nd to 100th Streets (east-west) and from Hampton to Ruby Streets (north-south). The entrance to the park is off 100th Street, via Glendale Avenue just past Madison Elementary School.

2. There is a parking lot off Glendale Avenue, just south of tennis and basketball courts. Further north and to the northeast are baseball diamonds and a golf course. In June of 2016, the only illumination for the parking lot at night was from a single light fixture on a service building to the east of the parking lot. As a result, the parking lot at night was very dark.

3. The park was open from 6 am to 10 pm. According to Milwaukee County Ordinance § 47.27, “no person shall remain in the park or parkways during the hours they are closed.” A violation of § 47.27 may subject an offender to a non-criminal forfeiture of between \$10 and \$200. *See* Milwaukee County Ordinance § 48.29.

4. Milwaukee County Sheriffs and Wauwatosa Police Officers both have jurisdiction over Madison Park pursuant to Milwaukee County Ordinance § 47.30.

5. Video from Madison Elementary School exterior cameras show the following relevant activity at Madison Park during the early hours of June 23, 2016:

1:06 am A marked Wauwatosa Police SUV drives through the parking lot.

1:15 am A dark colored minivan enters and parks in the NW corner of the lot.

1:37 am Jay Anderson enters the parking lot and parks in the middle of the lot.

1:58 am A Milwaukee Police Department squad car drives toward the parking lot and shines a spot light on the grassy area west of the park.

The squad does not disturb Anderson or the minivan parked in the NW corner. The MPD squad then exits.

2:00 am The minivan exits the parking lot.

2:16 am A sedan drives through the parking lot, stops temporarily and then exits.

2:21 am Two sedans enter the parking lot and park in the NW corner of the lot.

Less than two minutes later, both of these vehicles exit. Jay Anderson's vehicle is now the only one in the parking lot.

3:01 am Officer Joseph Mensah, driving a Wauwatosa Ford Explorer SUV, enters the parking lot.

C. Joseph Mensah

1. Joseph Mensah became a probationary Wauwatosa Police Officer on January 2, 2015. He successfully completed his probationary period on January 3, 2016.
2. As set forth in more detail below, Officer Mensah was fully trained as a Police Officer. Prior to becoming a Wauwatosa Police Officer, Officer Mensah served as a Dane County Deputy Sheriff and as a UW-Madison Patrol Officer.

3. Officer Mensah was well-liked by his colleagues and considered by them to be a good officer. His fellow officers continue to strongly support him, despite the controversy surrounding the shootings discussed herein.

4. Beyond the three shootings, Officer Mensah's personnel file contains only one disciplinary incident. In February of 2019, he received a Letter of Reprimand for negligently causing a minor collision between his Wauwatosa Police Department squad and another vehicle. The same personnel file also contains 14 pages of commendations from citizens and other police departments for law enforcement efforts undertaken by Officer Mensah, both individually and in conjunction with other officers.

5. By virtue of being a sworn Wauwatosa Police Officer, Officer Mensah was authorized to carry a firearm. His firearm issued by WPD was a Glock 22, black .40 caliber handgun. On the night of the Anderson shooting, the gun was loaded with .40 caliber bullets. One bullet was in the chamber and 15 bullets were in the attached magazine.

D. Encounter Between Officer Mensah and Jay Anderson

1. Because Jay Anderson died as a result of the shooting, the only direct evidence of what happened during the encounter between Anderson and Officer Mensah prior to the shooting consists of Mensah's statements, limited recorded dispatch audio and limited videotape activated by Officer Mensah after he shot Anderson.

2. As indicated, Anderson was parked alone in Madison Park at 3:01 am when Officer Mensah, while on duty, drove into Madison Park on routine patrol.

3. The Milwaukee Police Department subsequently handled the 2016 official investigation of Mensah's shooting of Jay Anderson. On June 24, 2016, Officer Mensah gave a statement to Milwaukee Police Detective Luke O'Day regarding the events of June 23, 2016. Detective O'Day was interviewed on August 23, 2020 as part of the independent investigation, and confirmed that the following report is a correct recitation of the statement given by Mensah, as taken down by Detective O'Day on June 24, 2016. Although the report is marked "draft," it was the final, official report of interview of Officer Mensah by Detective O'Day.

Incident Report MILWAUKEE POLICE DEPT

2333 N. 49TH ST
Milwaukee, WI 53210

(414) 935-7502

161750037

DRAFT

Reported Date
06/29/2016
Nature of Call
OJINVEST
Officer
O'DAY, LUKE G

Supplement No
0019

Administrative Information							
Agency MILWAUKEE POLICE DEPT		Incident No 161750037		Supplement No 0019		Reported Date 06/29/2016	
Status REPORT TO FOLLOW		Nature of Call OUTSIDE JURISDICTION INV (WI ACT 348 ONLY)					
Location 9800 W GLENDALE AVE				City WAUWATOSA		ZIP Code 53225	
District 4	Squad 430	From Date 06/23/2016	From Time 03:07	Officer 010266/O'DAY, LUKE G			
Assignment METROPOLITAN INVESTIGATIONS DIVISION				Entered by 010266			
Assignment METROPOLITAN INVESTIGATIONS DIVISION				Confidential HOMICIDE	Property? None	Approving Officer 006709	
Approval Date 07/04/2016		Approval Time 18:06:31					
MISC INFO OIS 2016-8							
Modis @air and							
Gang Act? No	Gang Name NONE						
Supplement							

This report is written by Det. Luke O'DAY assigned to Metropolitan Division, Homicide Unit (Late Shift).

This report details follow-up conducted regarding the Officer Involved Shooting (Wauwatosa PD) at Madison Park, 9800 W. Glendale Ave. (IR #16-175-0037).

On Friday, June 24, 2016, at about 9:50 AM, Police Lieutenant Joseph McLIN and I traveled to the Wauwatosa Police Department, 1700 N. 116th St., to meet with Wauwatosa PO Joseph MENSAH and his representative, Attorney of Law Jennifer HELLMER.

Lt. McLIN and I met with PO MENSAH and Atty HELLER in a conference room on the first floor. Additionally, Attorney Jaclyn SCHWARTZ (with HELLMER) and Union Representative Wauwatosa Detective John MILOTZKY were also present inside the room.

PO MENSAH identified himself as Joseph Anthony MENSAH (B/M 12-27-89), appointment date with Wauwatosa PD 1-3-15, payroll #6701. PO MENSAH stated he had prior law enforcement experience:

- 2009 - 2012 Reserves
- 2012 - 2013 Dane County Sheriff Office
- 2013 - 2014 UW-Madison Patrol Officer

PO MENSAH stated on Thursday, June 23, 2016, he worked Late Shift (11:00 PM - 7:24 AM; Wednesday night into Thursday morning), and was assigned to Squad 305, vehicle P224, as a one-person unit. He was assigned to the area that encompassed W. Burleigh St. to W. Capitol Dr., N. 92nd St. to N. 124th St. PO MENSAH stated was in full uniform that night: dark blue shirt and pants, ballistic vest inside a blue carrier over the shirt, a shield patch on the left breast, and was equipped with a taser, expandable baton, 2 set of handcuffs, Extreme LED flashlight, department issued handgun (equipped with a tactical light), and 3 magazines.

PO MENSAH stated he was on routine patrol and headed to Madison Park to do a "park check" around 2:50 - 3:00 AM. He entered the park by traveling eastbound on W. Glendale Ave. He stated the park was extremely dark without any lighting, except for a light mounted on the exterior of a multi-unit residential complex (located on the east side of the park at 4611 N. 92nd St.).

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PO MENSAH observed a single vehicle parked in the center of the lot, facing westbound. (He believed the park was closed after 12:00 AM.) He approached the vehicle, parking about 1-2 car lengths in front of it, and activated his take-down lights. Prior to activating the lights, PO MENSAH stated he believed he had observed some movement inside the vehicle by the driver. Once the take-down lights were on, however, he did not observe any further movement.

PO MENSAH advised Dispatch as he prepared to exit his squad, "305. Occupied auto. Madison Park." He then scanned the rest of the area, looking for additional vehicles or subjects on foot. He then focused on the vehicle as he approached it on foot. PO MENSAH believed the vehicle was a black Nissan Maxima, but was not certain.

PO MENSAH stated he approached the vehicle from the passenger side and observed the passenger front window was rolled up. He used a flashlight to illuminate the inside to check for additional occupants; he did not observe anyone. PO MENSAH stated as he focused the light on the driver, he observed he was "breathing fast" as if nervous or scared. He described him as lying back against the car seat. PO MENSAH felt the driver was faking being asleep.

PO MENSAH tapped the passenger front window and announced, "Police Officer MENSAH with the Wauwatosa Police Department" but did not get a response. After tapping a few more times, the driver "woke up" and looked at PO MENSAH. He scanned his uniform with his eyes and then looked down toward the front passenger seat. PO MENSAH stated the driver looked visibly annoyed and shrugged his shoulders. He then closed his eyes and leaned back in the seat again.

PO MENSAH stated he called out again, "Police Officer MENSAH with the Wauwatosa Police Department. Wake up. Gotta talk to you." After a couple of times repeating himself, the driver "woke up again," turned the key in the ignition and rolled down the passenger front window. (PO MENSAH did not recall if the vehicle started.) PO MENSAH asked if the driver had an ID or a Driver License. The driver replied, "No."

PO MENSAH stated he had been standing about an arm length away from the passenger front door as he addressed the driver. He observed the driver make several glances over to the passenger front seat then back up at him. On one of the occasions, the driver looked at PO MENSAH's chest (badge area) and then back down toward the seat. PO MENSAH asked the driver if he had anything that would identify his name. The driver replied, "No."

PO MENSAH became concerned that the driver had made several separate and distinct glances toward the passenger front seat. He stepped forward and looked into the interior of the vehicle. PO MENSAH observed a black and silver semiautomatic handgun, with an extended magazine inserted in the weapon, on the front seat. (He did not remember seeing anything else on the seat or in which direction the barrel was facing.)

PO MENSAH stated he was a "hazy" with the exact chain of events moving forward, but he believed he immediately un-holstered his weapon, kept it close to his body, and pointed the barrel down to the ground. At the same time, he ordered, "I see the gun! Keep your hands where I can see them!"

PO MENSAH stated the driver initially complied with his order and placed his hands in the air about chest / shoulder height. However, he suddenly reached toward the seat with his right hand while looking at the weapon (on the seat). PO MENSAH stated he immediately moved his weapon to the high ready position (weapon at eye level, arm extended from his body) and ordered, "Hands up!" At about the same time, he radioed Dispatch, "305. He has a gun! Step it up!" (He believed he heard something on the radio, "All squads ..." but didn't remember anything further.) The driver immediately placed both hands in the air, stating, "What? There's nothing there! It's nothing!" (PO MENSAH stated it appeared the driver was annoyed with him and that the officer was bothering him.) PO MENSAH repeated, "I see the gun! Don't reach for it!"

PO MENSAH stated the driver again reached toward the front passenger seat. He (PO MENSAH) ordered, "Stop reaching for the weapon!" The driver pulled back and said, "It's nothing!" PO MENSAH stated the driver made at least 4 separate movements with his right arm toward the front passenger seat. Each time PO MENSAH ordered him to stop, and the driver returned both of his hands into the air.

PO MENSAH stated the last time the driver made a movement, instead of just his right arm moving toward the

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gun on the seat, his whole body lunged toward it. PO MENSAH yelled, "Keep your hands up!" The driver did not comply and PO MENSAH believed he discharged his weapon approximately 3-4 times.

PO MENSAH stated he took a couple of steps backward as he fired. As he backed away, he did not know if the driver had taken possession of the weapon. PO MENSAH stated he felt exposed because he was in an open parking lot without any cover to place between him and the driver (vehicles, trees, etc.). Additionally, he could not move laterally because the driver would have protection from the vehicle's engine block, which would be in between them.

PO MENSAH stated immediately after discharging his weapon, he pressed the button on his squad mic that activated the camera. (He explained the video goes back 20 seconds without audio.)

PO MENSAH maintained a distance from the vehicle as he waited for backup. He stated the park was huge and extremely dark. He further stated he couldn't see anything because of the take-down lights of his squad. He believed Wauwatosa Officers Ralph SALYERS and Stephen MILLS were the first to arrive on scene. The three of them cleared the vehicle for additional occupants and then PO MENSAH removed himself from the immediate area. At this point, he described himself as "kinda out of it" as a result of the incident.

PO MENSAH stated, at some point, Dispatch asked for his location inside Madison Park. He believed he responded "in the middle" and that the "Fire (Fire Department) can stage on 100th St."

PO MENSAH stated Wauwatosa Police Lieutenant Gary GABRISH was the first supervisor on scene. He (PO MENSAH) provided a brief public safety statement to him. Squad 302, Wauwatosa PO Bryan WADE, was assigned to sit with PO MENSAH. He believed they sat inside WADE's vehicle during the investigation.

I asked PO MENSAH specifically why did he discharge his weapon. He responded that he discharged his weapon because he knew the firearm was on the passenger front seat of the vehicle. He stated he ordered and pleaded with the driver numerous times to not reach for the weapon. He (PO MENSAH) shot because the driver reached for the weapon and he believed the driver was going to use it against him; he knew the potential for the amount of injury the weapon (on the seat) could cause. He stopped firing because he believed the threat had been neutralized / incapacitated. PO MENSAH believed he saw the rounds go into the driver's body. He also observed him slump toward the driver front door; he did not know if the driver had been successful in possessing the weapon on his front seat.

PO MENSAH described the driver as a black male, 25-26 yoa, long dreads / braids. He was unable to describe the driver's clothing. He believed he was inside a black Nissan Maxima but was not sure. He did not recall any prior contact with either the driver or the vehicle.

PO MENSAH stated previous checks in the Madison Park (by himself and other officers) had resulted in recovery of illegal drugs, stolen cars, foot pursuits, etc. When he observed the vehicle inside the lot, PO MENSAH's intention was to simply learn why the driver was there after closing hours. He stated he had numerous contacts with vehicles and occupants after closing hours, prior to that night, and had never before issued a citation. He would learn the reason for being inside the park and direct the occupants to leave.

PO MENSAH stated he had conducted an earlier park check around 12:30 AM. He had encountered 2 vehicles after closing hours. When he turned his squad lights on, one vehicle immediately exited the park. A subject walked up to the second vehicle and PO MENSAH instructed him to leave the park. The subject entered his vehicle and complied. Neither of the two vehicles matched the vehicle that was involved in this incident.

This concluded PO MENSAH's statement and the interview was terminated at 10:37 AM.

Report Officer
010266/O'DAY, LUKE G

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4. In addition to this statement to Detective O'Day, immediately after the shooting, the following statements by Officer Mensah (and others) were preserved by a video/audio recording from Mensah's squad. The summary was prepared by Detective O'Day on June 29, 2016. Again, although the report is marked "draft," it is the final, official report of Detective O'Day. The audio/video was reviewed during the independent investigation and the summary of Detective O'Day was confirmed as an accurate summary of certain of Officer's Mensah's statements. It is not a verbatim transcript of everything that was said.

**Incident Report
MILWAUKEE POLICE DEPT**

2333 N. 49TH ST
Milwaukee, WI 53210

(414) 935-7502

**161750037
DRAFT**

Supplement No
0022

Reported Date
06/29/2016
Nature of Call
OJINVEST
Officer
O'DAY, LUKE G

Administrative Information															
Agency	MILWAUKEE POLICE DEPT		Incident No	161750037	Supplement No	0022	Reported Date	06/29/2016	Reported Time	11:26	CAD Call No	161750406			
Status	REPORT TO FOLLOW														
Nature of Call	OUTSIDE JURISDICTION INV (WI ACT 348 ONLY)														
Location	9800 W GLENDALE AVE								City	WAUWATOSA		ZIP Code	53225	Rep Dist	833
District	4	Squad	430	From Date	06/23/2016	From Time	03:07	Officer	010266/O'DAY, LUKE G						
Assignment	METROPOLITAN INVESTIGATIONS DIVISION								Entered by	010266					
Assignment	METROPOLITAN INVESTIGATIONS DIVISION								Confidential	HOMICIDE	Property?	None	Approving Officer	006709	
Approval Date	07/04/2016				Approval Time	18:07:39									
MISC INFO	OIS 2016-8														
Modus Operandi															
Gang Act?	No														
Gang Name	NONE														
Supplement															

This report is written by Det. Luke O'DAY assigned to Metropolitan Division, Homicide Unit (Late Shift).

This report details follow-up conducted regarding the Officer Involved Shooting (Wauwatosa PD) at Madison Park, 9800 W. Glendale Ave. (IR #16-175-0037).

On Wednesday, June 29, 2016, I reviewed squad car video obtained from the Wauwatosa Police Department. It had been downloaded from Wauwatosa PO Joseph MENSAH's squad camera. I located the video in Mfile folder *Police Related*. Folder *OIS 08-2016Wauwatosa* was located inside. Through a series of folders, I located the player AVViewer. Through the viewer, I was able to access file *0307251.av*.

The video was from 3:06:55 AM - 5:18:43 AM.

I made the following observations:

The video depicts the view of an empty parking lot from the windshield of PO MENSAH's squad, looking east. Two lights are visible in the distance to the east.. A black vehicle is positioned possibly 2-3 car lengths in front of the squad, facing the camera. PO MENSAH is wearing a dark blue uniform and is standing outside the passenger front door of the vehicle. His right arm is extended toward the passenger front window as if he was pointing a weapon at the driver (weapon is not observed). A subject is sitting in the driver seat and his right arm can be observed in the air.

The numbers "P2245@5 <mailto:P2245@5>" depicts the squad number (P2245) in the lower left corner. The date "06/23/2016" and time "03:06:55" can be viewed underneath the squad information. Displayed underneath the recording, was a box indicating the "Lights" and "Mic" were activated.

03:06:55 - The video began without audio. The driver was moving around with both hands in the air. A circle of light could be observed at PO MENSAH's feet, indicating his flashlight was on.

03:06:59 - PO MENSAH's left hand dropped from his weapon to the area of his duty belt on the left side. The circle of light disappeared, indicating he had holstered his flashlight. The driver's right hand was moving side to side. PO MENSAH's left hand returned to his weapon.

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**Incident Report
MILWAUKEE POLICE DEPT**

**161750037
DRAFT**

Supplement No
0022

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03:07:13 - I observed movement by the driver and the right hand could be seen extending toward the passenger front seat. It disappeared for a fraction of a second, then reappeared above the dashboard in front of the passenger front seat. The right hand then immediately dropped from view in front of the passenger front seat..

03:07:15 - PO MENSAH immediately discharged his weapon 6 times as he disengaged, walking backwards (north), disappearing from camera view.

03:07:23 - Audio starts up.

03:07:27 - Dispatch: "305. You ok?"

03:07:31 - PO MENSAH: "305. I'm Ok. Suspect down."
Dispatch: "Dispatch copy. Suspect down."

03:07:45 - PO MENSAH could be observed approximately 20 feet from the vehicle. His weapon was trained on the vehicle and it appeared he was attempting to check on the status of the driver from a distance. PO MENSAH can be heard taking deep breaths heavily over the radio.

03:08:16 - PO MENSAH: "305. I'm okay. Suspect down."

03:08:21 - Unknown officer came over the air asking if the fire department could come onto the scene. PO MENSAH instructs the officer, "305. You can have fire stage on 100th St." Dispatch asked if other squads could come into the lot. He replied, "Affirmative for now. I have no idea who else is in the park. It's just me and him right now."

03:08:55 - Dispatch asked if there was anyone else in the car. PO MENSAH replied, "Negative. Just me and him." Sirens could be heard in the background of responding officers.

03:09:40 - The lights of a responding squad appear to the right (south) of the camera.

03:09:41 - PO MENSAH can be heard off camera stating to the responding squad, "I have no idea if there is anyone else in the park. I'm fine."

03:09:55 - Unknown officer over the air asked (PO MENSAH) 305 how was it looking, was he okay, and to confirm if shots had been fired. PO MENSAH responded, "Affirmative. Shots fired. Suspect down."

03:10:33 - Unknown officer can be heard asking if "they were going to go up on it (vehicle)?" A different officer stated, "When we get a third squad we will go up on it (vehicle)." PO MENSAH stated, "He's alone by himself."

03:10:42 - PO MENSAH stated, "The firearm is right next to him on the passenger seat."

03:10:53 - 3 Wauwatosa Police Officers approached the driver side of the vehicle. PO MENSAH was the third officer, a step behind the first two.

03:11:15 - One of the officers opened the driver door and positioned himself at the door. The second officer continued to check the rest of the vehicle for additional occupants.

03:11:29 - PO MENSAH disengaged from assisting in clearing the vehicle and walked away westbound toward the direction of his squad.

03:11:55 - Squad 318 radioed over the air, "318. I have a 30 something year old male black. He's not breathing at this time." Dispatch responded, "10-4. I have Fire (Wauwatosa Fire Department) staging."

03:11:57 - Wauwatosa squads arrive to set up a perimeter on the east side of the parking lot.

03:12:02 - PO MENSAH reappeared on the passenger side of the vehicle but remained about 10 feet away.

03:12:05 - One of the officers (possibly the one at the driver door) asks - "You got it or no?"

03:12:09 - The same officer can be heard stating, "... go on and grab it out of there."
The second officer reached in through the passenger front window and appeared to remove an item from the front passenger seat.

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Incident Report
MILWAUKEE POLICE DEPT

161750037
DRAFT

Supplement No
0022

Supplement

03:12:26 - The second officer walked around the vehicle, from behind, to the driver side and then both officers disengaged from the scene toward the direction of the squad camera.

03:12:28 - PO MENSAH notified Dispatch that the scene was inside Madison Park parking lot. He walked away west as the two clearing officers disengaged.

03:12:31 - As the officers disengage, I observed what appeared to be a handgun in the left hand of the second officer as he walked off the screen.

03:13:18 - Conversation off screen with a male subject and PO MENSAH: "...there's going to be one guy so. There are no runners, no other passengers?" PO MENSAH replied, "I don't why he's here by himself. I have no idea if anyone is here out in the park. I have no clue."

03:13:31 - Unknown officer walks over to the driver side of the vehicle and appears to be checking on the driver. "Let's see if we can do something for this guy." Two additional officers walk over and attempt medical aid. One of the officers brought with him a medical kit.

03:14:05 - Lt. Gary GABRISH asked PO MENSAH, "Ok, so who shot who?" PO MENSAH replied, "I did."

03:15:25 - WFD arrived on scene. Officers removed the driver from the vehicle to attempt further medical attention. He was then transported from the scene.

03:16:29 - PO MENSAH gave the following account to Lt. GABRISH.
Lt. GABRISH - "Did you have this recorded by any chance?"

PO MENSAH - "I tried to hit the button a couple of times." "Just a regular occupied auto. I went around to the passenger seat. Knock and knock and knock. Nothing and nothing. Looked down, just doing my search, whatever, and I see a gun there. Pop it out, "Hey, is that a gun? Step it up." (to Dispatch) Then whole time, kept doing this, kept doing this..." (Driver) "I'm not reaching for it, it's nothing there, nothing there." (PO MENSAH) "Stop there's the gun. Right there."

Lt. GABRISH - "Is he up?"

PO MENSAH - "Yeah, he's up. Coherent and everything. Put his hands up... as soon as I woke him up, 'Wauwatosa Police, Wauwatosa Police. Saw the gun there. Get your hands up, hands up.' Put his hands up. Kept saying, 'Keep your hands up, keep your hands up. And lets leave it at that.' And he (Driver) kept reaching for it. Kept reaching for it. And the last thing was he lunged forward again."

PO MENSAH - "Silver semi automatic on the passenger seat.

Lt. GABRISH - "Did you announce police?"

PO MENSAH - "Oh yeah. He knew I was a cop. I kept saying it over and over. 'Wauwatosa Police.' 'Wauwatosa Police.' He looked right over at my name tag. Right at my uniform. Kept looking at it. (Driver stated) "There's nothing there. Nothing there." (PO MENSAH stated) "Theres a gun right there. I'm seeing it."

Lt. GABRISH - "How many rounds did you shoot?"

PO MENSAH - "Maybe 4 or 5."

Lt. GABRISH - "Did you change any magazines out?"

PO MENSAH - "No."

Lt. GABRISH notified PO MENSAH he would change with him (implying his weapon). "Did they do this stuff with you last time?" PO MENSAH replied, "I kept everything. Everything that I have right now, they want photos of exactly how I look right now. And then they take all that stuff at the station. (Lt. GABRISH did not change out PO MENSAH's weapon.)

Lt. GABRISH advised him to stay with Officer WADE.

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Incident Report
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03:18:58 - "I tried to hit record. Kept hitting record over and over but it wouldn't turn on."

03:20:18 - Conversation with PO WADE:

PO WADE, "Was he reaching for a gun or what?"

PO MENSAH, "Yeah."

PO WADE, "So he was like passed out or what?"

PO MENSAH, "He was faking it."

I watched the remaining video. There was nothing further of evidentiary value.

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5. Wauwatosa Police Department recordings preserved contemporaneous interactions between Officer Mensah and the WPD dispatch center. Those interactions were summarized by Detective O'Day as follows. The audio was reviewed during the independent investigation and the summary of Detective O'Day was confirmed as accurate. Although the report is marked "draft," it was the final, official report prepared by Detective O'Day.

Incident Report MILWAUKEE POLICE DEPT

2333 N. 49TH ST
Milwaukee, WI 53210

(414) 935-7502

161750037

DRAFT

Reported Date
07/12/2016
Nature of Call
OJINVEST
Officer
O'DAY, LUKE G

Supplement No
0028

Administrative Information							
Agency MILWAUKEE POLICE DEPT		Incident No 161750037		Supplement No 0028		Reported Date 07/12/2016	
Status REPORT TO FOLLOW		Nature of Call OUTSIDE JURISDICTION INV (WI ACT 348 ONLY)		Reported Time 03:59		CAD Call No 161750406	
Location 8026 W MEDFORD AV				City MILWAUKEE		ZIP Code 53225	
Rep Dist 833	From Date 06/23/2016	From Time 03:07	Officer 010266/O'DAY, LUKE G				
Assignment METROPOLITAN INVESTIGATIONS DIVISION				Entered by 010266			
Assignment METROPOLITAN INVESTIGATIONS DIVISION				Confidential HOMICIDE		Property? None	
Approval Date		Approval Time					
Narrative							
OIS 2016-8							
Modus Operandi							
Gang Act? No		Gang Name NONE					
Supplement							

This report is written by Det. Luke O'DAY assigned to Metropolitan Division, Homicide Unit (Late Shift).

This report details follow-up conducted regarding the Officer Involved Shooting (Wauwatosa PD) at Madison Park, 9800 W. Glendale Ave. (IR #16-175-0037).

On Tuesday, July 12, 2016, I reviewed Wauwatosa Police Department radio traffic recorded during the time of the incident. The file had been downloaded from their department and hand delivered to Metro. I located the file in Mfile folder *Police Related*. Folder *OIS 08-2016Wauwatosa* was located inside. Wav file *16-18370 PD radio* was located inside folder *16-18370- Sqd video OIS 2016-8*. The file was 34:18 in length.

PO Joseph MENSAH was assigned to Squad 305.

I made the following observations:

00:02 - PO MENSAH - "(Squad) 305 Occupied auto at Madison Park."

00:05 - Dispatch - "10-4. (Squad) 318"

00:12 - Squad 318 - "10-4. From the station."

00:48 - PO MENSAH - "305"

00:50 - Dispatch - "305"

00:53 - PO MENSAH - "28. 749-Union Sam David, 749-USD."

01:24 - Dispatch - "305. 29's a negative. 2016 for an Altima, silver in color. To an Elena DeLaRosa 4520 N 110th St."

01:44 - PO MENSAH - "10-4"

03:36 - PO MENSAH - "305. Step it up. He has a gun."

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**Incident Report
MILWAUKEE POLICE DEPT**

**161750037
DRAFT**

Supplement No
0028

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03:41 - Dispatch - "All squads respond to Madison Park. All squads respond to Madison Park."

04:00 - Dispatch - "370. Did you copy?"

04:04 - Squad 370 - "I did not. I'm sorry, can you go ahead?"

04:08 - Dispatch - "305 is out with a subject at Madison Park who has a firearm."

04:18 - Squad 370 - (unable to understand what the squad is saying)

04:22 - Dispatch - "Affirmative. Everybody is going."

04:40 - PO MENSAH - "305! Shots fired! Shots fired!"

04:45 - Dispatch - "All squads step it up at Madison Park. All Squads. 305 are you okay?"

04:54 - PO MENSAH - "305. I'm ok. Suspect down."

04:59 - Dispatch - "Dispatch copies. Suspect down."

05:27 - Sqd 370 - "370 en route."

05:30 - Dispatch - "10-4"

05:34 - Dispatch - "305 status?"

05:38 - PO MENSAH - "305. I'm ok. Suspect down"

05:41 - Dispatch - "10-4"

05:44 - WFD - "Fire to Base Command"

05:53 - PO MENSAH - "305. You can have Fire stage on 100th St."

05:58 - Dispatch - "10-4. Is it safe for other squads to come in?"

06:03 - PO MENSAH - "Um. Affirmative. But now I have no idea if there is anyone else in the park. It's just me and him right now."

06:17 - Dispatch - "10-4. Was there anyone else in the car?"

06:21 - PO MENSAH - "Negative. Just me and him."

06:24 - Dispatch - "10-4"

06:28 - Squad 318 - "Squad 318 10-23."

06:30 - Dispatch - "10-4"

07:04 - Dispatch - "370"

07:05 - Squad 370 - "Go ahead."

07:07 - Dispatch - "Would you like any assistance from West Allis?"

07:15 - Squad 370 - "Let see what we have a minute. 370 to 305"

07:20 - PO MENSAH - "305 go."

07:24 - Squad 370 - "How's it looking? Are you okay. And shot's fired correct?"

07:30 - PO MENSAH - "Affirmative. Shots fired. Suspect down."

07:38 - Squad 370 - "10-4"

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07:44 - Squad 370 - "Dispatch. At this point why don't you have Milwaukee County Sheriff's to respond for mutual aid."
07:52 - Dispatch - "10-4"
07:59 - Squad 301 - "301 23."
08:04 - Dispatch - "10-4 301."
08:05 - Dispatch - "318 were you calling?"
08:42 - Dispatch - "305. You have a better area of the park you are in?"
08:48 - Squad 301 - "301 to Dispatch. They are clearing the vehicle right now. I'm headed around the park to see if anyone else is in here."
08:58 - Dispatch - 10-4. "The Sheriffs were asking if there was a better location to respond to in the park."
09:06 - Squad 301 - "The main entrance to the park, the main driveway, is probably best way now."
09:15 - Squad 318 - "318. I have a 30 something year old male black. He's not breathing at this time."
09:25 - Dispatch - "10-4. I have Fire staging."
09:30 - Squad 315 - "315. I'm 23."
09:38 - Dispatch - "10-4"
09:44 - PO MENSAH - "305. We are in the parking lot."
09:48 - Dispatch - "10-4"
10:20 - Squad 370 - "370 is on scene."
10:23 - Dispatch - "10-4"
11:23 - Squad 318 - "318. P&B"
11:28 - Dispatch - "10-4 318. Is it safe for Fire to enter?"
11:32 - Squad 318 - "Affirmative."
11:35 - Dispatch - "10-4"
11:52 - Dispatch - "303. Were you calling?"
11:55 - Squad 303 - "Not for now."
11:58 - Dispatch - "10-4"
12:00 - Squad 370 "370. Have command here."
12:07 - Dispatch - "10-4 370."
12:13 - Squad 22 (?) - "22 is 23."
12:39 - Squad 318 - "318. He does have a pulse."
12:44 - Dispatch - "10-4"
12:45 - Squad 370 - "370. Mark this time right now for Med making contact with the subject."

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Incident Report
MILWAUKEE POLICE DEPT

161750037
DRAFT

Supplement No
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12:52 - Dispatch - "10-4"

I listened to the remaining 21:26 minutes of audio and did not hear anything further of evidentiary value.

Report Officer 010266/O'DAY, LUKE G	Printed At 07/25/2016 03:50	Page 4 of 4
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6. The following information is taken from medical/autopsy reports: Jay Anderson was struck by four of the six gun-shots from Officer Mensah's WPD firearm. Three shots struck Anderson in the head. One bullet struck Anderson in the right shoulder. Immediately after the shooting, Anderson was unconscious but still had a pulse and was not declared dead as a result of the gunshot wounds until an hour after the shooting, at 4:05 am.

7. The following additional information was obtained from Detective O'Day when interviewed as a part of the independent investigation. Detective O'Day confirmed that during the June 24, 2016 interview, Officer Mensah did not mention any failed attempts to activate the squad video.

E. Other Shootings by Officer Mensah

1. Antonio Gonzales

On the evening of July 16, 2015, Officer Mensah and fellow Wauwatosa Police Officer Jeffrey Newman were separately dispatched to 8533 Glencoe Circle in response to a report of a disturbance. Upon arriving, they encountered Antonio Gonzales, age 29. Gonzales was heavily intoxicated (his blood alcohol level was later determined to be .255) and he had been arguing with persons at the scene. Gonzales had also brandished swords, including a Samurai sword with a 49-inch blade. The officers encountered Gonzales outside the residence, where Gonzales possessed the Samurai sword. According to witnesses, the officers loudly instructed Gonzales to drop the sword. Gonzales refused and taunted the officers, stating, "Bring it on." The officers moved back from Gonzales, but Gonzales continued towards them. Gonzales raised the sword above his head and moved within striking distance of Mensah. At that point, both Mensah and Newman fired. Mensah shot eight times; Newman fired once. Gonzales was killed. The encounter between Gonzales and the officers occurred very quickly. Officer Mensah was on the

scene for only one minute before shooting; Officer Newman was present only three minutes. Subsequent reviews determined that both officers acted properly, though reports noted Officer Mensah turned off his squad camera in route to the scene. Officer Mensah stated that he did so because he often forgets to turn off his camera and then it runs continuously.

2. Alvin Cole

On February 2, 2020, Officer Mensah and other Wauwatosa Police Officers responded to a report of a man with a gun at Mayfair Mall. When Officer Mensah arrived on the scene, fellow officers and a Mayfair security officer were in pursuit of 17-year-old Alvin Cole (and others who were with Cole) through a parking lot in the southwest corner of the Mall. During the pursuit, while Cole was running away officers, Cole pulled out a handgun from a fanny pack and the gun fired, apparently accidentally, striking Cole in the arm. Cole fell to the ground into a crawl position, where he was surrounded by several Wauwatosa Police Officers. Cole was commanded to drop the gun, which was still in his hand. Unbeknownst to the Officers (and likely Cole himself), Cole's firearm had become inoperable because the magazine was not attached and the bullet in the chamber had been fired. Cole did not drop the weapon. Officer Mensah and other officers approached Cole. According to Officer Mensah, Cole pointed the weapon at him and, fearing for his personal safety, Mensah fired his gun at Cole five times, repeatedly striking Cole and causing his death. Cole still had his own firearm in his hand after being shot. No other Wauwatosa Police Officer fired at Cole during the encounter. Officer Mensah was on the scene less than 30 seconds before encountering and shooting Cole. Officer Mensah's squad video was activated and remained on during the encounter.

F. Other Shootings by Wauwatosa Police Officers in the Last 10 ears

The following summary was provided by the Wauwatosa Police Department.



Wauwatosa Police Department

DATE: August 24th, 2020

TO: Barry M. Weber, Chief of Police

SUBJECT: Synopsis of Critical Incidents, January 2010 to August 24th, 2020

Chief,

The following is an authoritative list of the critical incidents that members of this agency have been involved in since January of 2010. It encompasses incidents where Wauwatosa Police members employed deadly force via department issued firearms.

June 19th, 2015 – Two Wauwatosa Police Detectives and a Wauwatosa Police Officer where conducting follow-up to a burglary that occurred the day before. The officers were in the area of N. 60th and W. Good Hope Rd. when they encountered a suspect as he tried to enter a vehicle stolen in another burglary in Wauwatosa. The suspect fled and fired shots at the officers, non-fatally striking one of the Detectives. Officers returned fire but did not hit the suspect. Milwaukee Police Department investigated. Wauwatosa Police Department Case 15-16372, Milwaukee Police Department Case 151700081, Milwaukee County Case Numbers 15CF2871 and 15CF2839.

July 16th, 2015 – Antonio Gonzales Incident, Milwaukee Police Investigated, Wauwatosa Police Department Case Number 15-19346.

January 11th, 2016 – Wauwatosa Police Officers responded to an apartment complex in the area of N. 124th St and W. Center St for the report of a domestic disturbance. The suspect, who had just murdered his girlfriend, attempted to flee the scene. A Police Lieutenant observed the suspect and attempted to stop him. The suspect and the

Lieutenant ended up on the ground and the suspect was attempting to stab the Lieutenant with a knife. Two Wauwatosa Police Officers who arrived on the scene shot the suspect. The suspect survived his injuries. Milwaukee Police Department investigated the critical incident, Wauwatosa Police investigated the homicide. Wauwatosa Police Department Case Number 16-1070. Milwaukee County Case 16CF260.

June 23rd, 2016 – Jay Anderson Jr. Incident, Milwaukee Police Investigated, Wauwatosa Police Department Case Number 16-18370.

January 9th, 2018 – Wauwatosa Police Officers engaged in a police pursuit of a stolen vehicle. When the vehicle stopped in the 3300 block of N. 85th St., the driver exited the stolen car and began shooting at Wauwatosa Police Officers. Two Wauwatosa Police Officers returned fire, striking the suspect in the lower body. The suspect survived his injuries. Wauwatosa Police Department and Milwaukee County DA's Investigators investigated. Wauwatosa Police Department Case 18-604. Milwaukee County Case 18CF177.

February 2nd, 2020 – Alvin Cole Incident, Milwaukee Police Investigated. Wauwatosa Police Department Case Number 20-2687

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Joe Roy", written in a cursive style.

Joseph E. Roy
Administrative Lieutenant

G. Mensah Media Interviews

1. On July 28, 2020, Officer Mensah gave a broadcast radio interview to WISN 1130 talk show host Dan O'Donnell. A full transcript of the interview is contained in the appendix and incorporated herein.

2. During the interview, O'Donnell commented regarding the Cole shooting that, "in fact the suspect ran out of the mall and shot at you." Tr. p. 6. This is an inaccurate statement. Cole did not fire at Officer Mensah or any other officer. Cole shot himself in the arm while running away from the officers. Throughout the interview, Mensah discussed the Cole shooting but did not correct this misstatement.

3. Mensah further stated that he agrees "absolutely" that his suspension by the Wauwatosa Fire and Police commission was an injustice to him. Tr. p. 7.

4. Also in the radio interview, Officer Mensah stated the following regarding the number of "critical incidents" (officer shootings) that had taken place in Wauwatosa beyond his own: "It's crazy because if you were to look at my department and other departments as well, there are several officers that have fired way more. I'm not trying to deflect onto them, but the issue is even with my own department, we have over half a dozen officers within these past five years that have gotten in several critical incidents of shootings." Radio Tr. p. 8. In fact, according to the Wauwatosa Police Department, *there are not* "over a half dozen" officers who in the last five years have fired their weapons on "several" separate incidents. The Wauwatosa Police Chief stated that *no* Wauwatosa Police Officer during this time frame has fired his or her weapon in citizen encounters more than once, except Officer Mensah. Weber Tr. p. 87.

5. Mensah further suggested that his suspension by the Wauwatosa Fire and Police Commission was racially motivated. Mensah stated, “Not to throw race out there, but it is just kind of weird that out of all these critical incidents that we have, there’s a black officer. I am the only one who has got suspended for a critical incident involving a suspect that’s armed. It’s confusing and I don’t understand why.” Radio Tr. p. 9.

6. With respect to all three shootings, Mensah stated: “I’m an anomaly in this whole situation even though they continue, continue to disregard the fact that the common denominator in every single one of these incidents is that the subject was armed.... Either they displayed a weapon, went for a weapon, fired that weapon in every single one of them. And out of all of these the entire – their defense in all these incidents is that I am the problem in every single one of them. It completely takes out the fact that you have people who are committing crimes where I’m going to calls where people have committed crimes. They present a weapon at an officer.” Tr. p. 17.

7. In fact, in the case of Jay Anderson, Officer Mensah had not been called to Madison Park to investigate a report of a crime being committed. He went to the park on routine patrol and saw a car parked there after closing – a non-criminal offense punishable, if at all, by a forfeiture of between \$10 and \$200.

8. Mensah further stated, where a shooting “turns fatal or nonfatal is not up to us. That’s God doing that. That’s nothing to do with us.” Tr. p. 20.

9. Returning to his suspension by the Police and Fire Commission based on the Anderson shooting, Mensah stated, “Why does the Fire and Police Commission have an issue with it now? The incident in 2016, they have an issue with it now. They knew all of this after 2016 and didn’t have an issue with it in 2017. Didn’t have an issue with it in 2018. Didn’t have an issue with it in 2019. Now to 2020 I’m suspended for no reason but just suspended.” Tr. p. 23.

10. In fact, the current complaint regarding the 2016 Anderson shooting was not filed until June of 2020. The complaint set forth justifications for termination if proven. In addition, Wisconsin statutes give the Police and Fire Commission the lawful authority to suspend an officer with pay pending a determination of whether complaint allegations have been proven.

11. With respect to the Anderson shooting, Officer Mensah further stated, “Let’s talk about 2016, for example. There’s my account of what happened, but there’s so much other evidence involved in the case. Evidence I knew nothing about. The family claims I violated a policy by not turning on my body cam. I’m not going to get into it, but that’s not a policy violation. There’s reasons and circumstances when that gets turned on. It’s turned on because I turn it on. You can’t accidentally bump that camera. You can’t accidentally push the button. It’s in a leather case. You have to physically turn that button on. I turned it on. I turned it on because I knew that people would want to believe me, but I wanted – I needed them to. I needed to have the evidence to support what I saw. So I turned that on fully knowing that once I hit the button it would go back in time or it would go back, you know, 20, 30 seconds and it would capture that. I did that.” Tr. pp. 24-25.³

³ The technology of the squad camera is such that it is constantly recording and automatically deleting video on a 30-second loop. As discussed more fully below, only when the camera is formally activated does deletion stop, thus preserving video from the prior 30 seconds and all video and audio going forward until the recording is “turned off” again.

12. In fact, in 2016 immediately after the incident, Officer Mensah gave a different account about triggering of the squad camera. Mensah said then that he had repeatedly tried but failed to activate the camera. In his subsequent interview with Detective O'Day, Officer Mensah did not discuss the unsuccessful effort to engage the camera. Mensah simply said that the camera recording began after the shooting.

13. On July 24, 2020 Officer Mensah gave a 15-minute podcast interview in which he appeared on camera and similarly discussed the subject of the three Wauwatosa shootings.

<https://www.youtube.com/watch?v=2ugNGIPfDf8>

14. According to the Wauwatosa Police Chief, Officer Mensah did not have permission to give these interviews.

15. Additional relevant facts are discussed in specific following sections.

**UNDER OBJECTIVE CONSIDERATIONS, OFFICER MENSAH IS NOT FIT FOR
DUTY BECAUSE OF THE EXTRAORDINARY AND UNNECESSARY RISK
CREATED BY THE POSSIBILITY OF A FOURTH USE OF DEADLY FORCE**

1. A number of Rules and Policies combine to require a Wauwatosa Police Officer to be fit for duty. *See Wauwatosa Police Department Rules and Regulations*, Rule 1 (Performance of Duties), Rule 5 (Failure to Perform Duties); Rule 9 (Disregard for Safety), Rule 17 (Use of Force), Rule 22 (Discretion), Rule 27 (Unsatisfactory Performances), and Rule 28 (Report for Duty); *see also Wauwatosa Police Department Policies* 17-11 (Investigation of Law Enforcement Involved Fatalities/Great Bodily Harm).

2. In order to be fit for duty, an officer must be capable of performing all aspects of his or her job. An officer's "ability to enforce the law" encompasses working patrol, conducting investigations, making arrests, and offering credible testimony in court. An officer who, as a practical matter, is unable to perform any of these duties, is unable to enforce the law. *Vidmar v. Milwaukee City Board of Fire and Police Commission*, 2016 WI App 93, ¶19, 372 Wis. 2d 701, 889 N.W.2d 443 (upholding termination of officer whose future ability to testify in court was compromised by prior filing of false police report); *see also* Policy 17-11 (stating that officers involved in fatal shootings "will remain on leave at the discretion of the Chief of Police").

3. In order to be fit for duty, an Officer must be able to exercise use-of-force discretion. *See* Rule 22 and Policy 20-01 (Use of Force policy now in effect).

4. In addition, Rule 9 specifically states that an Officer shall not create “a situation of unnecessary risk.” The Rule does not state that in order for a violation to occur, the Officer must have acted intentionally or maliciously in creating the situation causing the unnecessary risk. Instead, the Rule states that the Officer is subject to discipline under this rule if the situation is caused by his or her “specific action, failure to act, or omission.”

5. “Unnecessary risk” is the term used by the courts when evaluating the appropriateness of law enforcement actions when encountering citizens in potentially dangerous situations. *See Terry v. Ohio*, 392 U.S. 1 (1968); *State v. Beaty*, 57 Wis. 2d 531, 539 (1973). The evaluation of “unnecessary risk” is an objective one, using a standard of reasonableness under the circumstances. *See Illinois v. Wardlow*, 528 U.S. 119, 124-25 (2000). The United States Supreme Court has explained, “In reviewing the propriety of an officer’s conduct, courts do not have available empirical studies dealing with the inferences from suspicious behavior, and this court cannot reasonably demand scientific certainty from judges or law enforcement where none exists.” *Id.*

6. No scientific certainty exists to suggest the potential dangerousness to Officer Mensah, his fellow officers, or members of the public if, after return to duty, Officer Mensah is confronted with a situation where he must choose whether to use deadly force a fourth time. Will he hesitate? Will fellow officers react differently? Will nefarious members of the public (given Officer Mensah’s high profile) attempt to bait him? Those questions now objectively exist, as confirmed by the Wauwatosa Police Chief. Weber Tr. pp. 93-101. The Chief further

confirmed that returning Officer Mensah to regular duty would, in the Chief's view, create "unnecessary risk." Tr. p. 101.⁴

7. The Wauwatosa Police and Fire Commission can and should find that the effects of three fatal shootings by one officer in a jurisdiction the size of Wauwatosa has caused great concern to the City of Wauwatosa, the Police Department as a whole, and to the general public.

8. The chances of three fatal shootings by a single Officer in a jurisdiction the size of Wauwatosa are extremely rare. *See* Stoughton, Noble & Alpert, *Evaluating Police Uses of Force*, at pg. 89 (New York University Press 2020) [excerpt contained in appendix].

9. According to the study of police departments throughout the country, for a jurisdiction the size of Wauwatosa, even one fatality from a police shooting would be unusual.⁵

10. Officer Mensah publicly states that the totality of his three shootings is not an anomaly, even within his own Department. This is an inaccurate statement. According to the Chief of Police, Mensah is the only Wauwatosa Police Officer in the last 10 years to fire his weapon during more than one separate citizen encounter and the only officer whose firing of his weapon resulted in fatalities. *See* Weber Tr. pp. 86-87.

⁴ The Chief subsequently clarified that if Mensah were returned to duty, the Chief would take steps to minimize the risk. The Chief further added that the ultimate determination of whether "unnecessary risk" was present should be made by the PFC. *See* Oct. 2, 2020 Letter from Attorney Patrick Knight [in appendix].

⁵ *See also* Garcia & Burkitt, *Most Arizona officers never fire their weapons, so why do some use lethal force again and again?* Arizona Republic, Jan. 30, 2020 (studying officer shootings in Arizona during an 8-year period and noting one officer had shot and killed three people during that time frame); Keith L. Alexander, *For 55 officers involved in fatal shootings this year, it wasn't their first time*, Washington Post, Dec. 22, 2015 (finding from one-year national study of police fatal shootings that 55 officers had been involved in more than one career fatal shooting and a "handful" had been involved in three; but further noting large gaps in recordkeeping and that "many and complex reasons" may exist for multiple shootings, such as assignment to gang and drug squads, where shootings are more likely to occur. [Copy of articles contained in appendix.]

11. Further undermining a subjective view that Officer Mensah may be fit for continued duty are his contemporaneous recollection of certain details of the Anderson shooting as “hazy” and his inappropriate public statements regarding the Anderson and Cole shootings, as discussed in more detail below.

12. If a fourth shooting by Officer Mensah were to take place, the public’s confidence in the Wauwatosa Police Department would be significantly eroded.

13. A fourth shooting also increases the likelihood that the City of Wauwatosa would face a multi-million-dollar liability arising from such a shooting.

14. A municipality in Wisconsin may face civil liability under federal law when a law enforcement officer deprives a victim of his or her civil rights by shooting the victim in violation of the reasonableness standards under the Fourth Amendment. *Weinmann v. McClone*, 787 F.3d 444 (7th Cir. 2015); *Buchanan v. City of Milwaukee*, 290 F. Supp. 2d 954, 959-60 (E.D. Wis. 2003); *Estate of Thurman v. City of Milwaukee*, 197 F. Supp. 2d 1141 (E.D. Wis. 2002).

15. In prior Wisconsin shooting cases, municipal liability has been millions of dollars, even though the officer may have acted appropriately under use-of-force standards. *See, e.g.*, <https://www.npr.org/sections/thetwo-way/2017/05/10/527809499/milwaukee-reaches-tentative-settlement-agreement-over-fatal-2014-police-shooting>; <https://www.jsonline.com/story/news/local/milwaukee/2020/03/06/brown-deer-settles-police-shooting-1-7-million/4963152002/>

16. In a civil setting, courts evaluate such shootings using an objective standard of reasonableness under the Fourth Amendment, not the subjective good-faith standard that applies to the District Attorney evaluation of whether a shooting should result in criminal charges. *Compare* Wis. Stat. § 939.45(3), and *Estate of Thurman*, 197 F. Supp. 2d at 1148-49. “The reasonableness inquiry requires scrutiny of the conduct leading up to the shooting,... If the

officer's own unreasonable conduct created the danger that required him to use deadly force the officer may be liable [for civil damages]" *Id.*

17. Moreover, in a legal action regarding municipal liability under 42 U.S.C. § 1983 for alleged excessive force, evidence regarding an officer's involvement *in a prior shooting* may be relevant. The decision as to whether to admit such evidence would be made by the presiding judge in the context of the specific facts of the case. *Soller v. Moore*, 84 F.3d 964, 968 (7th Cir. 1996) ("While it is a close question, we think the evidence [of prior shootings] was relevant. But the district court's finding that it was not relevant was not unreasonable.")

18. In addition, in other section 1983 contexts, knowledge attributable to the City with respect to similar incidents of alleged misconduct also may become relevant to proving improper policy or custom, giving rise to liability against the City. *Williams v. City of Birmingham*, 323 F. Supp. 3d 1324, 1336 (N.D. Ala. 2018).

19. In his response filing, legal counsel for Officer Mensah isolates each shooting and contends that since each individual shooting was permissible under the rules, the cumulative effect cannot constitute a separate violation. This position ignores the fact that the totality of an Officer's conduct, especially with respect to fatal shootings, impacts and educates an officer's supervisors, as well as this Commission, with respect to fitness for duty, discretion, and other applicable rules, particularly Rule 9 and "unnecessary risk." One isolated act is much different than the same act being repeated over time. At one end of the spectrum, an officer who stubbornly issues more than one hundred jaywalking or parking tickets after a high school football game demonstrates a certain type of judgment and discretion compared to an officer who foregoes such action, even though the tickets would have been justified under the law. Likewise, at the other end of the spectrum, an officer involved in multiple shootings demonstrates a certain

type of judgment different from an officer involved in one shooting, even if all the shootings were within constitutional bounds. *See* Rule 22 (exercise of discretion).

20. To hold otherwise would be to require a Police Department to retain an officer involved in any number of shooting (five? ten? more?) as long as each individual shooting was deemed legally permissible.

21. In this regard, I also have considered the following facts involved in the Anderson shooting, and although I conclude the shooting by Mensah was within legal bounds, I find that these facts raise additional concern about permitting Officer Mensah to return to duty: (a) While Mensah claimed he believed that Anderson was faking sleep, the totality of known facts suggests that Anderson in fact had been sleeping or passed out from alcohol and drug use; (b) Shortly after the Anderson shooting, Mensah stated that his recall was “hazy” – a troubling response about so serious an event; (c) Anderson did not have a firearm in his hand at the time of the shooting and some ambiguity exists as to Anderson’s true intention in moving in the general direction of the firearm; (d) As explained in detail below, Mensah gave conflicting statements about when and how his squad video was engaged during the encounter with Anderson. Moreover, in the prior fatal shooting of Antonio Gonzales, Officer Mensah affirmatively *turned off* his squad camera en route to the encounter. (e) Finally, in additional public statements, Officer Mensah has attempted to minimize the totality of his conduct by erroneously contending that multiple other officers within the Wauwatosa Police Department have discharged their weapons “way more” than Mensah.

22. As indicated above, Wauwatosa Police Chief Barry Weber does not dispute that returning Officer Mensah to duty would create “unnecessary risk” for the Wauwatosa Police Department. Weber Tr. p. 101. The Chief also said he would have great concern over the

impact of a fourth shooting, p. 94; including the danger to fellow officers, pp. 96 & 107; the volatility in the community, p. 106; and even the danger to Officer Mensah himself, pp. 94-95.

23. Therefore, returning Officer Mensah to duty creates a situation of “unnecessary risk” in violation of Rule 9 and the other fitness-for-duty rules cited herein.