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.]

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.

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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.”

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.

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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


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. 46TH ST
Milwaukee, WI 53210
(414) 935-7502

161750037
DRAFT
Supplement No
0019
Reported Date
06/29/2016
Nature of Call
OJ/INVEST
Officer
O'DAY, LUKE G

REPORT TO FOLLOW
OUTSIDE JURISDICTION INV (WI ACT 346 ONLY)
Location
9800 W. GLendale AVE
City
WAUWATOSA
Zip Code
53226
Rep Dist
633

Assigning
Metropolitan Investigations Division
010266

Approval Date
07/04/2016
16:06:31

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 #16-176-0037).

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 MENSAA and his representative, Attorney of Law Jennifer HELLER.

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

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

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

PO MENSAA 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 303, 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 MENSAA 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 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 MENSAA 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.).
PO MENS AH observed a single vehicle parked in the center of the lot, facing westbound. (He believed the parked car was a black Nissan Maxima, but was not certain.)

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

PO MENS AH 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 MENS AH 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 MENS AH felt the driver was faking being asleep.

PO MENS AH tapped the passenger front window and announced, "Police Officer MENS AH 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 MENS AH. He scanned his uniform with his eyes and then looked down toward the front passenger seat. PO MENS AH stated the driver looked visibly annoyed and shrugged his shoulders. He then closed his eyes and leaned back in the seat again.

PO MENS AH shouted out again, "Police Officer MENS AH 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 MENS AH did not recall if the vehicle started.) PO MENS AH asked if he had an ID or a Driver License. The driver replied, "No."

PO MENS AH stated he had been standing about an arm length away from the passenger front seat 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 MENS AH's chest (badge area) and then back down toward the seat. PO MENS AH asked the driver if he had anything that would identify his name. The driver replied, "No."

PO MENS AH 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 MENS AH 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 MENS AH 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! Don't reach for it!"

PO MENS AH 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 MENS AH 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 MENS AH stated it appeared the driver was annoyed with him and that the officer was bothering him.) PO MENS AH repeated, "I see the gun! Don't reach for it!"

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

PO MENS AH stated the last time the driver made a movement, instead of just his right arm moving toward the
gun on the seat, his whole body lunged toward it. PO MENS AH yelled, "Keep your hands up!" The driver did not comply and PO MENS AH believed he discharged his weapon approximately 3-4 times.

PO MENS AH 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 MENS AH 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 MENS AH 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 MENS AH 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 WAU WATOSA 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 MENS AH removed himself from the immediate area. At this point, he described himself as "kinda out of it" as a result of the incident.

PO MENS AH 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 MENS AH stated WAU WATOSA Police Lieutenant GARY GABRIEL was the first supervisor on scene. He (PO MENS AH) provided a brief public safety statement to him. Squad 302, WAU WATOSA PO BRYAN WADE, was assigned to sit with PO MENS AH. He believed they sat inside WADE's vehicle during the investigation.

I asked PO MENS AH 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 MENS AH) 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 MENS AH 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 MENS AH 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 MENS AH 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 MENS AH'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 MENS AH 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 MENS AH 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 MENS AH's statement and the interview was terminated at 10:37 AM.
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.
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 MENSAAH's squad camera. I located the video in Mile folder Police Related. Folder OIS 06-2016Wauwatosa was located inside. Through a series of folders, I located the player AVViewer. Through the viewer, I was able to access file 0307261.av.

The video was from 3:06:55 AM - 5:16:43 AM.

I made the following observations:

The video depicted the view of an empty parking lot from the windshield of PO MENSAAH'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 MENSAAH 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" depict the squad number (P2245) in the lower left corner. The date 08/23/2016 and time 03:08:55 can be viewed underneath the squad information. Displayed underneath the recording, was a box indicating the "Lights" and "Mic" were activated.

03:08:55 - 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 MENSAAH's feet, indicating his flashlight was on.

03:09:50 - PO MENSAAH'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 MENSAAH's left hand returned to his weapon.
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Supplemental

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 8 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.
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 car.

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.

03:16:20 - 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 saw 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 let's 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) 'There's 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.
03:19:58 - "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.
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.
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, 9500 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 08-2016/Wauwatosa was located inside. Wav file 16-18370 PD radio was located inside folder 15-18370- Spd video OIS 2016-8. The file size 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 - "29. 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 3520 N 110th St."
01:44 - PO MENSAH - "10-4"
03:38 - PO MENSAH - "305. Step it up. He has a gun."
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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."

04:16 - Squad 370 - (unable to understand what the squad is saying)

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

04:40 - PO MENSAX - "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 MENSAX - "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 MENSAX - "305. I'm ok. Suspect down"

05:41 - Dispatch - "10-4"

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

05:53 - PO MENSAX - "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 MENSAX - "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 MENSAX - "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 MENSAX - "305 go."

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

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

07:36 - 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 - "505. You have a better area of the park you are in?"

08:46 - 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 MENSCH - "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."
I listened to the remaining 21:26 minutes of audio and did not hear anything further of evidentiary value.
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.
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 16-16370.

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. 86th 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,

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.

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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.
OFFICER MENSAH KNOWINGLY VIOLATED POLICIES 17-11 AND 13-08
BY PUBLICLY DISCUSSING WITH THE MEDIA AN ON-GOING INVESTIGATION

1. Wauwatosa Police Department Policies 17-11 and 13-08 strictly limit Wauwatosa Police Officers’ statements to the media regarding activity of the Wauwatosa Police Department.

2. Policy 17-11 deals specifically with the public discussion of information regarding a police shooting. Subsection B of the policy states: “Any media release will be made by the Lead Investigator, the Chief of Police or their designees. No other Department personnel are permitted to speak with the media about the incident.”

3. Policy 13-08 is a more general media policy, similarly restricting the media activities of Wauwatosa Police Officers to those specifically designated or approved by the Chief of Police. In particular, the Policy states at Section III G 1, “Unless pre-approved by the Chief of Police, the Operations Captain, or Administrative Captain, only the PIO [Public Information Officer] may participate in any “on-camera” or “on-air” news media interviews.”

4. Officer Mensah did not have permission to conduct the on-camera July 24, 2020 podcast or the July 28, 2020, on-air radio interview. In both interviews, Officer Mensah discussed the Cole shooting, which was then under investigation by the District Attorney.

5. Counsel for Officer Mensah argues that Office Mensah did not violate a rule or policy when he did the interviews because they were done in Officer Mensah’s private capacity.

6. I recommend that the Commission reject this contention, particularly given the specifics of the radio interview. Nothing in the radio interview indicated that Officer Mensah was speaking about the Cole incident in anything other than his capacity as Wauwatosa Police Officer.
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TO THE WAUWATOSA POLICE AND FIRE COMMISSION
REGARDING THE CONDUCT OF WAUWATOSA POLICE OFFICER
JOSEPH MENSAH

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.

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\(^1\) 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.

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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


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.
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 MENSAA and his representative, Attorney of Law Jennifer HELLNER.

Lt. McLIN and I met with PO MENSAA and Atty HELLNER in a conference room on the first floor. Additionally, Attorney Jadin SCHWARTZ (with HELLNER) and Union Representative Wauwatosa Detective John MIŁOTKI were also present inside the room.

PO MENSAA identified himself as Joseph Anthony MENSAA (B/M 12-27-89), appointment date with Wauwatosa PD 1-3-15, payroll #69701. PO MENSAA stated he had prior law enforcement experience:

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

PO MENSAA 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 MENSAA 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 MENSAA 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.).
PO MENS AH observed a single vehicle parked in the center of the lot, facing westbound. (He believed the park was closed at 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 MENS AH 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 MENS AH 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 MENS AH believed the vehicle was a black Nissan Maxima, but was not certain.

PO MENS AH 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 MENS AH 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 MENS AH felt the driver was faking being asleep.

PO MENS AH tapped the passenger front window and announced, "Police Officer MENS AH 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 MENS AH. He scanned his uniform with his eyes and then looked down toward the front passenger seat. PO MENS AH stated the driver looked visibly annoyed and shrugged his shoulders. He then closed his eyes and leaned back in the seat again.

PO MENS AH stated he called out again, "Police Officer MENS AH 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 MENS AH did not recall if the vehicle started.) PO MENS AH asked if the driver had an ID or a Driver License. The driver replied, "No."

PO MENS AH 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 MENS AH's chest (badge area) and then back down toward the seat. PO MENS AH asked the driver if he had anything that would identify his name. The driver replied, "No."

PO MENS AH 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 MENS AH observed a black and silver semiautomatic handgun, with an extended magazine inserted into 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 MENS AH 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 MENS AH stated the driver initially complied with his order and placed his hands in the air around chest/shoulder height. However, he suddenly reached toward the seat with his right hand while looking at the weapon (on the seat). PO MENS AH 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 MENS AH stated it appeared the driver was annoyed with him and that the officer was bothering him.) PO MENS AH repeated, "I see the gun! Don't reach for it!"

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

PO MENS AH stated the last time the driver made a movement, instead of just his right arm moving toward the
gun on the seat, his whole body lunged toward it. PO MENSEAH yelled, "Keep your hands up!" The driver did not comply and PO MENSEAH believed he discharged his weapon approximately 3-4 times.

PO MENSEAH 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 MENSEAH 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 MENSEAH 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 MENSEAH 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 MENSEAH removed himself from the immediate area. At this point, he described himself as "kinda out of it" as a result of the incident.

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

I asked PO MENSEAH 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 MENSEAH) 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 MENSEAH 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 MENSEAH 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 MENSEAH 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 MENSEAH'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 MENSEAH 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 MENSEAH 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 MENSEAH's statement and the interview was terminated at 10:37 AM.
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
06/29/2016
OJINVEST
O'DAY, LUKE G

Administrative Information

Report to Follow
OUTSIDE JURISDICTION INV (WI ACT 348 ONLY)

Location
9800 W GLendale aVE
City
Wauwatosa
Zip Code
53226

District
4
Squad
430
From Date
06/23/2016
From Time
03:07

Officer
010266/O'DAY, LUKE G

Assignment
METROPOLITAN INVESTIGATIONS DIVISION

Approved
07/04/2016
Approval Time
18:07:39
File Name
0IS 2016-0

Supplemental Information

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 #16-176-0037).

On Wednesday, June 29, 2016, I reviewed squad car video obtained from the Wauwatosa Police Department. It had been downloaded from Wauwatosa Police's squad camera. I located the video in File folder Police Related. Folder 0IS 06-2016Wauwatosa was located inside. Through a series of folders, I located the player AVViewer. Through the viewer, I was able to access file 0307261 av.

The video was from 3:06:55 AM - 5:16:43 AM.

I made the following observations:

The video depicts the view of an empty parking lot from the windshield of PO MENSAn'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 MENSAn 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.

03:05:55 - 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 MENSAn's feet, indicating his flashlight was on.

03:08:50 - PO MENSAn'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 MENSAn's left hand returned to his weapon.
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 MENSU 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 MENSU: "305. I'm Ok. Suspect down."

Dispatch: "Dispatch copy. Suspect down."

03:07:45 - PO MENSU 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 MENSU can be heard taking deep breaths heavily over the radio.

03:08:16 - PO MENSU: "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 MENSU 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 MENSU 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 MENSU 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 MENSU) 305 how was it looking, was he okay, and to confirm if shots had been fired. PO MENSU responded, "Affirmative. Shots fired. Suspect down."

03:10:22 - 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 MENSU stated, "He's alone by himself."

03:10:42 - PO MENSU 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 MENSU was the third officer, a step behind the first two.

03:11:35 - 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 MENSU 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 MENSU 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.
03:12:26 - The second officer walked around the vehicle, from behind, to the driver side and then both officers disengaged from the scene towards the direction of the squad car.

03:12:28 - PO MENSEAH 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 MENSEAH: "...there's going to be one guy so. There are no runners, no other passengers?" PO MENSEAH 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 MENSEAH, "Ok, so who shot who?" PO MENSEAH 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 MENSEAH gave the following account to LT. GABRISH.

PO MENSEAH - "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 MENSEAH) "Stop there's the gun. Right there."

LT. GABRISH - "Is he up?"

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

LT. GABRISH - "Did you announce police?"

PO MENSEAH - "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 MENSEAH stated) 'There's a gun right there. I'm seeing it.'"

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

PO MENSEAH - "Maybe 4 or 5."

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

PO MENSEAH - "No."

LT. GABRISH notified PO MENSEAH he would change with him (implying his weapon). "Did they do this stuff with you last time?" PO MENSEAH 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 MENSEAH's weapon.)"

LT. GABRISH advised him to stay with Officer WADE.
Incident Report
MILWAUKEE POLICE DEPT

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 MENSAAH, "Yeah."
PO WADE, "So he was like passed out or what?"
PO MENSAAH, "He was faking it."

I watched the remaining video. There was nothing further of evidentiary value.
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  
Report Date  
07/12/2016  
Nature of Call  
O'INVEST  
Officer  
O'DAY, LUKE G  

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<td>This report is written by Det. Luke O'DAY assigned to Metropolitan Division, Homicide Unit (Late Shift).</td>
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This report details follow-up conducted regarding the Officer Involved Shooting (Wauwatosa PD) at Madison Park, 5800 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 MiFile folder Police Related. Folder OIS 08-2016/Wauwatosa 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. 28's a negative. 2018 for an Allina, silver in color. To an Elena DeLa Rosa 4520 N 110th St."
01:44 - PO MENSAH - "10-4"
03:36 - PO MENSAH - "305. Step it up. He has a gun."
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."

04:16 - Squad 370 - (unlet or understand what the squad is saying)

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

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

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

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

05:41 - Dispatch - "10-4"

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

05:53 - PO MENSEAH - "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 MENSEAH - "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 MENSEAH - "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 MENSEAH - "305 go."

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

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

07:38 - Squad 370 - "10-4"
Incident Report
MILWAUKEE POLICE DEPT

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."
08:06 - Dispatch - "318 were you calling?"
08:42 - Dispatch - "505. You have a better area of the park you are in?"
08:46 - 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."
08:08 - 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."
I listened to the remaining 21:28 minutes of audio and did not hear anything further of evidentiary value.
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 Years**

The following summary was provided by the 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.


January 8th, 2018 – Wauwatosa Police Officers engaged in a police pursuit of a stolen vehicle. When the vehicle stopped in the 3300 block of N. 86th 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,

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

³The 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.

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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.
7. Moreover, even to the extent that Officer Mensah was off-duty or on suspended status, Officer Mensah was still in violation of Policies 17-11 and 13-08. While being off-duty may allow an officer leeway to engage in certain conduct that he or she could not engage in while on duty (for example, when to wear a uniform, carry a firearm, use social media, drive a particular vehicle, perform certain tasks), being off-duty or on suspended status should not and does not allow an officer to disregard and violate significant rules necessary for the proper performance of the Wauwatosa Police Department. Policies 17-11 and 13-08 are important policies that must be followed while officers are on-duty as well as off-duty. Nowhere in the policies is there any suggestion that they can be violated or disregarded when officers are off-duty or on suspension.

8. The Chief of Police has suggested that any violation is mitigated because Officer Mensah did not discuss any facts not already on the public record and may not have appreciated the seriousness of this violation. I recommend that the Commission reject this position as well. First, as discussed in the next section, Officer Mensah provided misleading information during the interview. Second, one important purpose of the rule is to restrict all unauthorized public statements, regardless of content.

9. The justification for this general restriction, as set forth in Policy 17-11 at page 4, is to ensure that WPD leadership ("the Lead Investigator, the Chief of Police or their designee") control the flow of information to other investigators and the District Attorney.

10. It is crucial that all WPD statements by line police officers on the subject of police officer shootings be official statements and reports, since those statements become "discovery" that a District Attorney is required to disclose during court proceedings. See, e.g.,
State v. DeLao, 2002 WI 49, 252 Wis. 2d 289 (granting new trial when discovery statements were not timely sent from police officers to district attorney to defense counsel).

11. Critically, at the time of the radio interview, Office Mensah’s shooting of Alvin Cole was still under investigation by the Milwaukee County District Attorney’s Office.

12. During the interview, host Dan 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 never fired at Officer Mensah or any other office. Cole shot himself in the arm. Throughout the interview, Mensah discussed the Cole shooting but did not correct this misstatement.

13. Also during the interview, the host cautioned Officer Mensah not to comment specifically on the Cole case “because it is ongoing.” Tr. p. 7. In the separate podcast, Officer Mensah acknowledged that the Cole case was “still under investigation.”

14. Yet, particularly in the radio interview, Officer Mensah freely discussed the Cole shooting in conjunction with his other two. “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 (emphasis added).

15. A line officer who unilaterally decides to conduct a radio interview regarding a pending investigation commits an egregious violation of Policy 17-11, as well as Policy 13-08.
OFFICER MENSAH VIOLATED RULE 7 AND POLICY 13-08

BY PROVIDING MISLEADING INFORMATION

A. Statement Regarding Number of Police Shootings

1. Wauwatosa Police Department Rule 7 requires that a police officer “speak the
   truth at all times, and under all circumstances, whether or not under oath. Members shall not lie,
   give misleading information, falsify written or verbal communications in official reports or in
   their statements or actions with supervisors or organization, when it is reasonable to expect that
   such information be relied upon because of the member’s position or affiliation with the
   organization.” In addition, under Media Policy 13-08, information supplied by Wauwatosa
   Police Officers to the media should be “factual” and “accurate.” See Policy 13-08, pg. 2.

2. 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.” Tr. p. 8.

3. In fact, according to the Wauwatosa Police Department, there are not officers that
   have fired “way more” nor are there “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 for Officer Mensah. See Weber Tr. pp. 86-87.
4. I find that Officer Mensah provided misleading information to the public regarding the number of other Wauwatosa Officers who have been involved in shootings. It appears that Officer Mensah did so in order to minimize the significance of his own conduct then under review.

B. Responding to Madison Park

1. During the radio interview, Officer Mensah further stated the following with respect to the Jay Anderson shooting in the context of the three shootings at issue.

"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 (emphasis added).

2. 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 $20 and $200.
3. Officer Mensah might have been referring to the fact that after arriving on the scene, Officer Mensah observed Anderson with a firearm on the seat of his vehicle, which could be a criminal violation under the circumstances. But, in context, Officer Mensah erroneously communicated to the radio audience that he was “called” to Madison Park by someone else because Jay Anderson was committing a crime.

C. Statements Regarding the Activating of the In-Squad Video

1. During the time period relevant to the Anderson shooting, the Wauwatosa Police Department utilized a camera/audio system based in each squad car. The technology of the squad camera was such that it was constantly recording video (not audio) and then automatically deleting video, on a 30 second loop. Only when the camera is formally activated does deletion stop, thus preserving video from the prior 30 seconds and continuing to record audio and video until the recording is manually “turned off.”

2. The recording system could be activated manually via the in-squad laptop computer, or via the in-squad camera itself, or it could be activated remotely via a unit worn on an officer’s uniform. If the officer activated the camera using the unit on his uniform, the unit would vibrate to alert the officer that the recording was functioning. The camera also was automatically activated when the squad’s emergency lights were turned on or when the squad reached a certain speed. The operation of the in-squad camera was dictated by Wauwatosa Police Department Operating Procedure 2016-03.

3. In the encounter with Anderson, Officer Mensah activated the recording via the unit on his uniform after shooting Anderson, enabling a video recording (but not audio) of the shooting and other activity going back approximately 30 seconds. Both video and audio were engaged going forward from the time the unit was activated.
4. In the aftermath of the shooting of Anderson, Officer Mensah represented to a superior officer and another officer that he unsuccessfully attempted to activate his squad video/audio.

   To the supervisor:
   
   “I tried to hit the button a couple of times.” “Just a regular occupied auto.”

   To a fellow officer:
   
   “I tried to hit record. Kept hitting record over and over but it wouldn’t turn on.”

5. In his official interview with Milwaukee Police Detective O’Day just over a day later, Officer Mensah did not mention the unsuccessful attempts to engage the recording system.

   “P.O. 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.)”

6. In his public radio interview, Officer Mensah stated the following with respect to the engagement of his squad video/audio:

   “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

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6 For purposes of Wisconsin Statute § 164.02, these initial statements by Officer Mensah were not the result of an “interrogation.” Fellow officers arriving on the scene in the immediate aftermath of the shooting properly attempted to gather information to assess what should be done next, not whether Officer Mensah should be subject to discipline. In fact, according to the audio recording, Mensah was unprompted when he said the following to fellow Patrol Officer Bryan Wade: “I tried to hit record. Kept hitting record over and over but it wouldn’t turn on.”
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.

7. These different statements could potentially be reconciled by assuming that Officer Mensah initially believed that he *unsuccessfully* attempted to turn on the audio/video, but subsequently learned that he had in fact activated it.

8. Nonetheless, given the importance of the video, Officer Mensah should have related more complete information to Detective O’Day. The timing of when the audio/video was engaged was critical. If it took Officer Mensah several tries to activate the audio/video, that should have been related. Even a delay of a few seconds because of a malfunctioning unit would mean that the subsequent recording may have missed critical activity.

9. I note that in the interview with Detective O’Day, Officer Mensah conceded that his recollection was “hazy” and, as such, it is possible that he did not recall the unsuccessful attempt to engage the video; and/or the questioning of Detective O’Day may not have suggested that such information needed to be supplied. Moreover, to the extent that the information about the unsuccessful attempt was relevant to the Detective O’Day investigation, Detective O’Day ascertained that information within a week by independently reviewing the recorded statement of Mensah discussing that information with his fellow officers. Detective O’Day did not feel it necessary to follow-up with Officer Mensah on this particular topic.

10. In contrast, however, Officer Mensah conveyed no such uncertainty in the radio interview as to the activation of the video: He turned it on without incident and for the specific purpose of properly recording the shooting. (“You can’t accidently push the button 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....")

D. **Fitness for Duty Considerations**

1. I find that the totality of Officer’s Mensah’s statements under Rule 7 and Policy 13-08 further impact his credibility as a potential witness under fitness-for-duty rules. *See 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 impaired by prior filing of false police report).

2. Under court rulings, prosecutors are obligated to review the history of potential law enforcement witnesses to determine whether impeachment material may exist. *Giglio v. United States, 405 U.S. 150, 152 (1972); see also State v. Anderson, 2009 WI App 95, ¶13* (officer personnel files may contain impeachment material) (unpublished decision).

3. The statements of Officer Mensah described herein would give a reasonable prosecutor pause before deciding whether to call Officer Mensah to the witness stand on matters connected to these issues. The statement regarding the number of prior Wauwatosa police officer shootings was an improper exaggeration meant to minimize his own conduct. The statement regarding why Officer Mensah responded to Madison Park gave the wrong impression of the true facts. The statements regarding the video recording are troubling because of the significance of when and how that equipment was engaged and because in the Gonzales shooting, Officer Mensah *shut off* the video recording on his way to the scene. ⁷

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⁷ Although not set forth as a separate potential rule violation, additional concern arises from Officer Mensah’s public disparagement of the Police and Fire Commission during the same radio interview. “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.” Tr. p. 9. I find no evidence that the suspension of Officer Mensah was racially motivated.
THE EVIDENCE DOES NOT ESTABLISH THAT OFFICER MENS AH
IMPROPERLY USED DEADLY FORCE IN THE SHOOTING OF JAY ANDERSON

A. Overview

1. The Complainant contends that Officer Mensah used excessive force in shooting Jay Anderson, in violation of Wauwatosa Police Department Policy 13-01, which was in effect at the time of the Anderson shooting and which dictated when officers may use deadly force.\(^8\)

2. The complaint alleges that Officer Mensah violated the policy because:
   (a) Anderson did not lunge for the firearm, as Mensah contended; (b) no verbal warning was given, as required by the policy; (c) Anderson did not have a gun in his hand; (d) Anderson was falling asleep or passing out; and (e) Mensah did not need to fire as many shots as he did.

B. Legal Standards

1. Policy 13-01 incorporates federal and state standards on use of force and sets forth the conditions under which an officer may lawfully utilize deadly force,

2. The federal standard was summarized in *Graham v. Conner*, 490 U.S. 386 (1989), wherein the U.S. Supreme Court held that a law enforcement officer's use of deadly force was permitted under the Fourth Amendment of the U.S. Constitution when, from the objective standard of a "reasonable officer on the scene," the use of force was justified by: (a) the severity of the alleged crime at issue; (b) whether the suspect posed an immediate threat to the safety of the officers or others; and (c) whether the suspect was actively resisting or attempting to evade arrest. See Policy 13-01 at pg. 2. The federal standard also considers whether the officer's response was proportional to the threat posed by the suspect. Deadly force is appropriate only

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\(^8\) The policy has since been amended twice; neither of the changes impact the analysis herein.
when an officer in good faith believes such force is necessary to respond to a significant threat of
great bodily harm. *Id.; See also Tennessee v. Garner, 471 U.S. 1 (1985).*

3. The Wisconsin standard is encompassed by Wisconsin’s implementation of
DAAT (Defense and Arrest Tactics), which is a uniform policy required by Wis. Stat. § 66.0511
and administered by the State of Wisconsin Law Enforcement Standards Board. Under DAAT,
officers are trained on when and how to use force (including deadly force) when responding to
threats. *See Manney v. Board of Fire and Police Commission of the City of Milwaukee, 2017 WI
App 85, ¶ 33; Milwaukee Police Association v. Board of Fire and Police Commission of the City
of Milwaukee, 787 F. Supp. 2d 888 (E.D. Wis. 2011).* In addition, Wisconsin law provides that
law enforcement officers are privileged (immune from prosecution) when they use force “in
good faith” and consistent with “authorized and reasonable fulfillment” of official duties. Wis.
Stat. §939.45(3).

4. Finally, Policy 13-01 E (1)(a) states, “The use of deadly force is authorized as
follows: [To] Protect the officer or others from what is reasonably believed to be an imminent
threat of death or great bodily harm....”

5. Under the totality of these standards, the applicable questions arising from Officer
Mensah’s shooting of Jay Anderson are: (a) did Officer Mensah reasonably perceive a threat of
great bodily harm? (b) was Officer Mensah’s subsequent use of deadly force reasonably
necessary to respond to the threat? and (c) did Officer Mensah act in good faith?^9

^9 This is similar, but not identical, to the analysis of the District Attorney, who condensed the issues down
to these two questions: (1) Did the officer have an actual subjective belief that deadly force was necessary
to prevent imminent death or great bodily injury to himself and others? and (2) Was the belief objectively
reasonable? The District Attorney’s analysis of these questions is contained in the appendix. See Chief
Deputy District Attorney Lovern December 5, 2016 Letter.
C. Analysis

1. I find that the evidence supports that Officer Mensah acted in accordance with Policy 13-01 and the accompanying federal and state standards for use of force.

2. Officer Mensah reasonably perceived a threat of great bodily harm when faced with a situation in which a suspect, sitting in the driver’s seat of a parked car at 3 a.m. in a closed county park, had a firearm within reach on the front passenger seat of the automobile.

3. Officer Mensah reasonably responded to that threat when the person in the driver’s seat failed to obey the following commands:

   “Hands up!”

   “I see the gun! Don’t reach for it!”

   “Stop reaching for the weapon!”

4. The video of the incident, particularly the infrared version, shows that Anderson continued to move his hands and, immediately before the shooting, moved his hands and body in the general direction of the firearm.

5. The Complainant contends that Officer Mensah’s version is not credible because he sets forth a verbal exchange with Anderson that was not captured by the video/audio recording. For example, the complaint argues that no verbal warning was given although Mensah stated he did give such warning. Likewise, Officer Mensah stated that Anderson denied having identification on him, when in fact Anderson did have identification in his pocket.

6. I find that the lack of audio support does not invalidate Mensah’s justification for the shooting under Policy 13-10, given the video evidence (Mr. Anderson obviously is following verbal orders at the start by keeping his hands up) and the undisputed presence of the firearm on the passenger seat of the vehicle.
7. The complaint further points out that Anderson did not have the firearm in his hand at the time of the shooting and that the movements of Anderson were the result Anderson falling asleep or succumbing to the effects of his alcohol and marijuana use.

8. I agree that the facts support both of these complaint assertions: Anderson did not have the gun in his hand when Mensah shot; and, Anderson’s movements may well have been the result of his sleepiness and/or the effect of alcohol and marijuana. Nonetheless, these facts do not negate the permitted use of force under Policy 13-01. First, Officer Mensah was not required under the law or the policy to wait until the suspect actually grabbed the nearby firearm before responding to the threat that the firearm created. Second, the threat presented by the movement towards the firearm is not negated because Mr. Anderson was intoxicated (whether or not that fact was known to Officer Mensah).

9. The complaint also points to the number of shots fired at Anderson, contending they were excessive. Officers permitted to use deadly force, however, are constitutionally justified to keep firing until the threat has ended. See Plumhoff v. Rickard, 572 U.S. 765 (2014) (finding that officer firing gun 15 times in 10 seconds was not excessive force).

10. Mensah’s six shots took approximately two seconds. He also fired only six of the 16 bullets he had available to fire.¹⁰

11. From the available evidence and under the applicable legal standard, I further find that Officer Mensah acted in good-faith fear for his personal safety.

12. In sum, despite the other findings herein, I find that the evidence supports that Officer Mensah acted within legal bounds in the shooting of Mr. Anderson.

¹⁰ This same analysis supports a finding that the total number of shots fired by Mensah during all three shootings does not by itself run afoul of use-of-force restrictions. As such, I conclude that no violation arises for the total number of shots fired during all three shootings, as contended by the Complainant.
THE EVIDENCE DOES NOT SUPPORT THAT OFFICER MENSEAH
VIOLATED OPERATING PROCEDURE 2016-03
BY FAILING TO PROPERLY ENGAGE HIS SQUAD VIDEO

1. In addition to the issue regarding Officer Mensah's statements about the attempt to activate the squad's video/audio recording system, the Complainant contends that Officer Mensah violated the substance of the policy by failing to engage the camera from the start of the encounter with Jay Anderson, which the Complainant characterizes as the equivalent of a traffic stop subject to a mandatory recording requirement under the rules.

2. Operating Procedure 2016-03, in effect at the time of the Anderson encounter, outlined procedures for an officer's use of the squad recording equipment. Section III A stated that the "camera must be recording when the vehicle's emergency lights are activated, or the squad reaches a speed of 65 mph for the following: ... (c) During all traffic stops...."

3. I find that the evidence does not support a finding that Officer Mensah violated the substance of Operating Procedure 2016-03.

First, it is not clear from this language whether the encounter gave rise to the "traffic stop" requirement of the policy. The literal language of the policy at the time made it unclear as to whether the policy applied to all traffic stops or only those involving the use of emergency lights or which came after the squad reached a speed of 65 mph.\[11\]

Second, even assuming that policy applied to all traffic stops, the encounter with Jay Anderson could not definitively be characterized as a traffic stop. While Wisconsin courts have referred to parking violations as "traffic stops," see United States v. Ferrell, 2009 WL

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\[11\] The policy was amended in 2018 to clearly state that the camera shall be activated for all traffic stops of any kind. See Operating Procedure 18-01.
6376179 (E.D. Wis. 2009); State v. Thomas, 2016 WI App 57; there exist constitutional
distinctions between pulling over a speeding driver and approaching an illegally parked car.

United States v. Johnson, 874 F.3d 571 (7th Cir. 2017). Moreover, Officer Mensah approached
Anderson's vehicle because Anderson was in the park after closing – a potential violation of
Milwaukee County Ordinance § 47.27 whether or not Anderson was in a vehicle.\textsuperscript{12}

\textsuperscript{12} This is not to say that it would not have been better had Officer Mensah turned on his video at the start
of the encounter or as soon as he saw the firearm. The rule gave an officer the discretion to turn on the
video at any time.
THE EVIDENCE DOES NOT ESTABLISH THAT OFFICER MENSAH FAILED TO RENDER MEDICAL AID
UNDER POLICY 13-01 AND WISCONSIN STATUTE § 940.291

1. The Complainant contends that Officer Mensah failed to render medical aid to Jay Anderson after the shooting. The complaint states that by failing to do so, Mensah violated Wauwatosa Police Policy 13-01 and Wis. Stat. § 940.291.

2. Policy 13-01 states, in part, that after use of force (such as a shooting) and “after the situation has stabilized and the subject is under control,” an officer has an obligation to “check for injuries and render first aid, if necessary” and to “keep in close physical contact with [the] subject to monitor conditions while [the subject] is in police custody.”

3. Wisconsin Statute § 940.291 makes it a Class A misdemeanor for an officer to intentionally fail to render aid or to make arrangements for such aid for any person in the officer’s custody. The statute further notes, however, that the officer must possess the knowledge and ability to render the necessary aid.

4. I find that within one minute after the shooting of Jay Anderson, Officer Mensah notified Dispatch that Anderson had been shot (“suspect down” according to the log). Within another minute, the Wauwatosa Fire Department paramedics had been directed to the scene. Within that second minute, Officer Mensah further stated, “You can have fire stage on 100th street,” thus confirming that Officer Mensah knew that paramedics were en route. After approximately seven minutes, paramedics were told that it was safe to enter the parking lot. Upon arrival, paramedics immediately began administering aid.

5. A total of approximately 8 minutes passed between the time of the shooting and the paramedics first administering aid.
6. During the first three minutes, besides the conduct described above, Officer Mensah moved further away from the Anderson vehicle and back toward his own squad. He did not re-approach Anderson’s vehicle during this time.

7. Approximately three minutes after the shooting, Officers Salyers and Mills arrived on the scene. Unaware of Anderson’s immediate condition, according to the video evidence, they appear concerned that Anderson was still in the vehicle within reach of the suspect firearm. They then approach the vehicle with great caution and with guns drawn. As shown by the squad video, Officer Mensah initially appears not to share that same concern, as he wanders causally around the squads. But he then joins the other two officers at their prompting to cautiously approach the vehicle with his gun drawn.

8. At that point, it appears to Officers Salyers and Mills that Anderson is incapacitated. The firearm is removed from the vehicle.

9. The officers lower their weapons and return to their squads. They are joined by other Wauwatosa Police Officers. Two officers then approach the vehicle with what appears to be a first aid kit. Anderson is removed from the vehicle as paramedics arrive. As indicated previously, approximately eight minutes have passed from the time of the shooting.

10. I have located no Wisconsin case law interpreting the requirements of Wis. Stat. § 940.291 and policies mandating that an officer render medical aid. In the absence of controlling Wisconsin law, I am guided by cases from around the country evaluating other such instances.
11. In *Houston v. Galluzi*, 2019 WL 249211 (M.D. Fla. 2019), a federal court evaluated a claim that a person shot by law enforcement was constitutionally deprived of medical care. The court held otherwise, finding that since paramedics had been called within one minute of the shooting, no constitutional violation had taken place.

12. Likewise, in *Peacock v. Smith*, 2018 WL 5649899 (M.D. Ga. 2018), a federal court found no constitutional violation for an individual officer's failure to personally administer aid where the officer was aware that paramedics had been called.

13. At the other end of the spectrum, in *Valderama v. Rousseau*, 780 F.3d 1108, 1117 (8th Cir. 2015), a court found a constitutional violation for failure to render aid where an officer waited three and a half minutes to call for paramedics; downplayed the seriousness of the injuries; and attempted to conceal evidence during the delay. The court further said that one of the key points of inquiry was whether the officer activity during the delay served legitimate law enforcement purposes. In that case, the court held, the delay in rendering aid did not serve a legitimate purpose because officers were obstructing justice and minimizing the victim's injuries.

14. I find the evidence insufficient to establish that Officer Mensah failed to administer aid as contemplated by Policy 13-01 and Wis. Stat. § 940.291.

First, within one minute of the shooting, Officer Mensah reported that shots had been fired and that the suspect had been injured. During the first two minutes, he became aware that paramedics had been called and confirmed that they should stage a short distance from the parking lot.

Second, Officer Mensah reasonably waited for backup to arrive before approaching the vehicle. This was not necessarily inconsistent with his personal view that Anderson had been incapacitated, since the park was very dark and he could not know for sure
all the surrounding circumstances. Wauwatosa police officers have indicated that it was standard practice to wait for backup to arrive before approaching a dangerous situation. As such, Mensah acted consistent with that practice by waiting for backup to arrive, then deferring to the direction of the other officers to make sure that Anderson was incapacitated and the firearm was removed from the vehicle. Policy 13-01 requires that officers wait until “after the situation has stabilized” before attempting to administer aid. The situation was not stabilized until the firearm had been removed and Anderson’s condition had been confirmed.

Third, Officer Mensah and the other officers initially responding to the scene had little or no ability to treat serious gunshot wounds to the head. This was not a case where officers could have applied basic first aid to stop the head wound from bleeding or to apply CPR to revive Anderson.
THE EVIDENCE DOES NOT ESTABLISH THAT OFFICER MENSAH
VIOLATED HIS RULE 22 DISCRETION BY APPROACHING
THE PASSENGER SIDE OF THE ANDERSON VEHICLE

1. Rule 22 requires that Wauwatosa Police Officers utilize proper discretion in the exercise of their duties.

2. The Complainant argues that Officer Mensah violated his discretion under Rule 22 by parking his squad car facing the front of Anderson’s vehicle, by turning on “blinding take down” (white) lights instead of the emergency lights; and by approaching the passenger side of the vehicle (instead of the driver’s side) – all in the investigation of nothing more serious than a county ordinance violation.

3. I find that the evidence does not establish a violation of the discretion given a law enforcement officer under Rule 22, particularly with respect to approaching the passenger side of Anderson’s vehicle.

4. Officer Mensah approached a parked vehicle in the middle of a very dark parking lot at 3 a.m. His decision to park facing Anderson’s vehicle; to turn on the bright white take-down lights to illuminate the front of Anderson’s vehicle instead of the rear; and to approach the passenger side instead of the driver’s side were all objectively reasonable and not in violation of any Wauwatosa rule, policy, or training. By approaching the passenger side, Officer Mensah avoided putting himself between the two vehicles (an inherently more dangerous position) and also put himself in a position where he was able to better see the interior of Anderson’s vehicle. These advantages would have been lost had he walked between the two vehicles and approached the driver’s side of the vehicle.
5. As part of this investigation, Mensah’s approach was reviewed with numerous current and former law enforcement officers. No law enforcement officer, active or retired, suggested that Officer Mensah should have walked between the two vehicles to the driver’s side door. In general, officers stated it was good strategy for Officer Mensah initially to park facing Anderson’s vehicle. Two retired Milwaukee Police Officers, however, noted that Milwaukee Police Officers would never park and approach from the front. Both said that they had been involved in thousands of traffic stops and said that in their view, approaching the driver’s side from behind, but stopping before being parallel to the door, would have been a better practice because a person in the driver’s seat with a gun and bad intention would have had to grab the gun and turn his or her entire body to aim it at the approaching officer. At the same time, other law enforcement sources set forth multiple advantages for an approach to the passenger side from the front – one that gave the Officer the benefit of seeing more of the interior of the vehicle (including the face of the driver) with more time and space to react. All of those interviewed indicated that officer safety is a paramount concern when approaching an unknown vehicle.

6. While the strategy debate is an interesting one from a law enforcement standpoint, Wauwatosa has no requirement that an Officer approach a parked vehicle in a certain fashion – the matter is left to individual officer discretion under Rule 22. Given the objectively reasonable criteria set forth above, no violation of Rule 22 is established.
THE EVIDENCE DOES NOT ESTABLISH THAT OFFICER MENSAH VIOLATED MEDIA POLICY 13-08 BY FAVORING CONSERVATIVE MEDIA

1. Wauwatosa Police Department Media Policy 13-08 states that it is the policy of the department to "cooperate fully and impartially with the news media."

2. The Complainant contends that Officer Mensah violated Media Policy 13-08 by granting interviews to two conservative media (including the above-referenced July 28, 2020 WISN radio interview and the July 24, 2020, a 15-minute podcast interview at https://www.youtube.com/watch?v=2ugNGIPfDf8) but no other media.

3. Since as discussed above, the interviews were unauthorized, I do not believe that the evidence warrants an additional finding that Policy 13-08 was violated by granting two interviews to only conservative media.

4. While Policy 13-08 states that it is the policy of the department to "cooperate fully and impartially with the news media," the policy does not restrict individual media interviews and does not dictate which media outlets should be utilized and when. Such decisions should be made by the Chief of Police and other policy makers, so that if objection is raised by other media, the Chief or other policymakers are in position to address (and if necessary, correct) the issue.
THE EVIDENCE IS INSUFFICIENT TO ESTABLISH
THAT OFFICER MENSAH VIOLATED
SOCIAL MEDIA POLICY 18-10
OR RULE 30 DEALING WITH OPPRESSIVE CONDUCT

1. The Complainant contends that Officer Mensah violated Social Media Policy 18-10 and Rule 30 (prohibiting oppressive conduct) by posting an entry on a social media site. The complaint alleges that Officer Mensah, using a pseudonym Joseph Frost, posted the following Facebook warnings about libel and slander; and that he may have done so while on duty at 10:18 p.m. on June 5, 2020.

"Slander: the utterance of false charges or misrepresentations which defame and damage another’s reputation

Libel: defamation of a person by written or representational means
Y'all better pray to whoever it is you pray to that you that you can back up whatever allegations you make about me. ESPECIALLY if you work for or are associated with any organizations. I'II leave it at that."

2. Wauwatosa Police Department Policy 18-10 states that officers are free to exercise their First Amendment rights by utilizing social media, including Facebook, but may not do so during work hours and may not discuss WPD investigations without permission. Further, in using social media, officers are instructed that they “are expected to maintain professionalism and appropriate conduct online.” Rule 30 states that officers should not engage in any conduct at any time that is overbearing or oppressive; or which unreasonably erodes public respect for the Department.

3. In response to this complaint allegation, counsel for Officer Mensah has not disputed that this Facebook post was made by him.
4. The evidence from this investigation further establishes that Officer Mensah was not on duty at 10:18 p.m. on June 5, 2020, or anytime near that hour, so he did not post to Facebook while on duty.

5. The evidence also establishes that Officer Mensah has conceded his use of Facebook under a pseudonym and that he has used Facebook to engage his critics—particularly those who have made derogatory racial comments about him or have called him a coward. Radio Interview Tr. pp. 13-14.

6. I find that Officer Mensah's Facebook post cited above does not rise to the level of conduct subject to discipline. Officer Mensah has been subject to intense protests both in-person and online. The social media policies gave him a certain leeway to respond.

7. In the post, Officer Mensah essentially stated that he might resort to legal action against those who he believes may have libeled or slandered him. While perhaps not the wisest decision on his part to engage his critics in this manner, I find no violation of the rules under these circumstances for that particular post.
THE RECORD DOES NOT ESTABLISH THAT OFFICER MENSAH
VIOLATED LEGAL AND ETHICAL REQUIREMENTS
WHILE PARTICIPATING IN A LEGAL DEFENSE FUND

1. The Complaint alleges that Officer Mensah has violated legal and ethical
requirements by participating in a legal defense fund through the gofundme.com web site. The
Complaint alleges that the site utilizes Officer Mensah’s official picture. The Complaint
further cites potential violations from this conduct under Wisconsin Statute § 19.59 (code of
ethics for local government officials, employees and candidates); Wauwatosa Municipal Code
sections §§ 2.05.030 and 2.05.040 (conflict of interest); and Wauwatosa Police Department
Rules 57, 58 and 65 (prohibiting use of position for personal gain).

2. I find that as a matter of law, the record is insufficient to discipline Officer
Mensah for any such conduct.

First, the Wauwatosa City Attorney has previously represented that § 19.59 only
applies to elected municipal officials, those employees otherwise serving in high positions, or
those appointed to particular committees. https://www.wauwatosa.net/home/showdocument?id=114, at pg. 7 [copy included in the appendix].

Second, legal defense funds are sometimes exempted under state ethical
prohibitions. See Wis. Stat. § 11.1301 and 2014 GAB 01 (permitting public officials to use
campaign funds or establish defense funds under limited circumstances).

13 According to the Chief of Police, the photo had been released to the public based on media requests. Tr. p. 11.
Third, these ethical provisions cannot significantly impair the rights of police officers to obtain legal counsel under the Sixth Amendment of the United States Constitution and Article I, section 7 of the Wisconsin Constitution.

Fourth, by virtue of their positions, police officers in Wisconsin have additional statutory rights to legal counsel under Wisconsin Statute §164.02.

3. I further note that despite these cited provisions, police officers in Wisconsin have historically been permitted to use legal counsel provided by their unions. While it is true that an individual officer may pay union dues in exchange for that benefit, the amount of legal fees paid by the union on an officer’s behalf has the potential to far exceed the amount of union dues the officer has paid. In such case, the benefit conferred upon an individual officer comes indirectly from other officers contributing to that same union.

4. Therefore, I find that the laws cited by the Complainant do not clearly establish that a legal defense fund is prohibited. To the extent that the use of a legal defense fund under these circumstances concerns Wauwatosa public officials, I recommend that applicable standards be amended by the Common Council, City Attorney, or appropriate public official to clearly set forth the restriction before disciplinary action is taken.
THE EVIDENCE ESTABLISHES THAT OFFICER MENSAH
RECEIVED PROPER TRAINING

1. The Complainant suggests that Officer Mensah did not receive proper training.
2. As a result of this investigation, I find no lack of appropriate training.
3. The training received by Officer Mensah was comparable to other officers in the Wauwatosa Police Department and comparable to officers at other law enforcement agencies.
4. Officer Mensah entered duty on January 3, 2015. Between January 2015 and June 2016, Officer Mensah received 151.5 hours of training. This total included not only specific training required by the Wisconsin Department of Justice, Training and Standard Bureau, but also on-the-job training with an experienced WPD Field Training Officer. Officer Mensah was on probation throughout 2015 and any unacceptable performance would have resulted in his termination.
5. Additional training of note during the first 18 months of PO Mensah’s employment included the following:
   - March 2015, WPD Lethality Assessment (addressing primarily domestic violence and assessing the possibility of violence among the actors).
   - April 2015, WPD Less Lethal Training (addressing use of force considerations).
   - May 2015, LESB Legal Update Training.
   - October 2015, “Pain Behind The Badge” (addressing the by-product of police stress).
   - November 2015, WPD Critical Incident Debrief Training (addressing the procedures in place to investigate all critical incidents).
• May 2016, WPD High Risk Vehicle Contact (addressing various options available to an officer(s) when dealing with high-risk vehicle contacts).

6. For the entirety of his career (between January 3, 2015 and June 10, 2020) Officer Mensah received 1,149.5 hours of training, according to the Wisconsin Department of Justice, Training and Standard Bureau. This amount of training compares favorably with the following totals of Wauwatosa police officers ("PO") with similar service time.

   PO 5723 - 1096 training hours
   PO 3799 - 738 training hours
   PO 3208 - 1511 training hours
   PO Mensah - 1149 training hours

7. Therefore, I find no evidence to sustain a charge against Officer Mensah or the Wauwatosa Police Department for improper or inadequate training.
THE EVIDENCE DOES NOT ESTABLISH ANY OTHER VIOLATION RAISED OR DISCUSSED AS PART OF THE COMPLAINT

1. The Complainant raises in summary fashion a number of additional assertions. They are set forth below, along with my explanation in bold as to why each charge is not supported.

   (a) Officer Mensah either failed to call for back-up and/or should have called for back-up before approaching and shooting Anderson, in violation of his discretion under Rule 22.

   The factual record supports that Mensah called for back-up (using the customary Wauwatosa Police Department signal phrase “step it up”) as soon as he saw a firearm.

   (b) The totality of Officer Mensah’s conduct establishes that his work performance was unsatisfactory, in violation of Rule 27; and that he has a general disregard for safety under the general rule requirement that an Officer give due regard to the safety of citizens, see preamble to Wauwatosa Police Department Rules and Regulations.

   The totality of Officer Mensah’s conduct is more appropriately dealt with under the fitness-for-duty standards (including Rule 9) discussed above.

   (c) Officer Mensah and other officers failed to take a picture of the location of Anderson’s gun on the seat of the car.

   No policy or procedure explicitly required such action. Moreover, given his involvement in the shooting, Officer Mensah wisely did not directly involve himself in the removal of the firearm or the decision of whether a photograph was taken.
(d) Mensah did not attend a mandatory counseling session as required under Policy 17-11.

The evidence supports that Mensah did attend such counseling.

(c) Mensah, or his supervisor, did not fill out a critical incident form after the Anderson shooting.

The form was not in existence in 2016 and the information otherwise required was orally submitted by Officer Mensah.

(f) Officer Mensah was reprimanded in February of 2019 for a driving accident.

I find no relevance of that accident to these present proceedings.

2. In sum, I find that these allegations do not support further proceedings as potential rule violations. I recommend that these additional issues be summarily dismissed.
1. As indicated at the beginning of this report, under the statutory language of Wis. Stat. § 62.13(5), the Commission is to undertake a two-prong analysis to determine: (a) whether “just cause” exists to sustain a charge; and (b) whether any ensuing discipline is appropriate “as the good of the service may require.”

2. To the extent applicable, the Commission must consider seven separate factors in finding “just cause” and I recommend that the Commission do so as follows.

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

I have suggested that disciplinary action be taken against Officer Mensah for violations of (a) fitness-for-duty rules, particularly Rule 9; (b) for publicly commenting on the pending Cole matter without permission, in violation of Policies 17-11 and 13-08; and (c) for providing misleading information regarding the totality of Wauwatosa police officer shootings, the reason he responded to Madison Park, and the activation of his in-squad camera, all in violation of Rule 7 and Policy 13-08.

Officer Mensah reasonably should have had knowledge of these rules, policies and procedures because all Wauwatosa Police Officers are required, as part of their duties, to have read all the rules, policies and procedures applicable to their performance. In fact, the failure to read and follow all the rules, policies and procedures is itself a rule violation.

See Rule 6.
Moreover, the violations set forth herein are not technical or trivial – they are important rules not only for the integrity of the day-to-day operation of the Wauwatosa Police Department, but also for situations involving officer-initiated shootings, one of the most critical events that can arise for the department.

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

For the same reasons, I find that the applicable rules are reasonable.

(iii) 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.

In place of the chief, this Commission has directed an independent investigation into the charges. As outlined at the start of this report, the investigation undertook investigative steps and detailed analyses to determine whether Officer Mensah did, in fact, violate certain rules. The results are contained in this report and are subject to challenge by any party.

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

The detail presented in this report was an effort to show the fairness and objectivity of these proceedings (recognizing that the parties still have an opportunity under the rules to present testimony and arguments at a hearing that may contradict any of these proposed findings). The recommended findings and disposition were based solely on the facts and analysis found by the lawyers and investigators. No outside party dictated any part of this report. In addition, as a part of this investigation, Officer Mensah was offered an opportunity to participate in an interview, but he declined.
(v) Whether the chief discovered substantial evidence that the subordinate violated the rule or order as described in the charges filed against the subordinate.

Again, the Commission may be substituted for "the chief" in consideration of this factor. I believe the proposed affirmative findings in this report are supported by substantial evidence and I have further noted those instances where I believe the evidence was insufficient to sustain a charge. Under the established procedures, the parties will have the opportunity to challenge these findings.

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

Again, this Commission may be substituted for "the chief" in consideration of this factor. No other Wauwatosa police officer has shot and killed three people. No other Wauwatosa police officer has conducted a radio interview without authorization, discussed a pending criminal investigation, and provided misleading information, including on the history of police shootings in Wauwatosa. Therefore, there are no ready disciplinary comparisons within the Wauwatosa Police Department for this matter. The proposed discipline is unique to this officer and is not based on any improper factor.

(vii) 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.

I have proposed that Officer Mensah be terminated for the violations set forth herein. In making this recommendation, I suggest that the Commission follow the reasoning of the courts and the Milwaukee Fire and Police Commission in two recent cases.
The first is *Vidmar v. Milwaukee City Board of Fire and Police Commission*, 2016 WI App 93, 372 Wis. 2d 701, 889 N.W.2d 443 [copy included in appendix]. In that case, a Milwaukee Police Officer was terminated from his position because he had taken an abandoned dirt bike from evidence. Although initially treated as a minor violation (the bike was returned), the matter escalated because to conceal the bike’s removal, the officer had falsified an evidence tag – an act that would negatively impact the officer’s ability to testify in court in the future. The Commission and the courts determined that the officer was no longer fit for duty because his ability to enforce the law necessarily included his ability to testify in court. The following language of the court of appeals at paragraph 20 of the decision is instructive:

*We agree with the position of the Board that the capacity to enforce the laws means the capacity to engage in the full spectrum of responsibilities that an officer may be called upon to undertake. One of the most crucial of those responsibilities is giving testimony in court that is worthy of belief. If an officer’s capacity to work in the field, which includes giving credible testimony in court, has been permanently compromised—as is the case here with Vidmar—then his ability to engage in the full spectrum of the responsibilities of a police officer has also been compromised. In such a scenario, the officer does not have the capacity to enforce the laws.*

In the case at hand, the fitness-for-duty analysis matches the situation with Officer Mensah. In order to properly perform as a Wauwatosa Police Officer, Officer Mensah must be capable of performing all designated duties, including those involving the use of deadly force. Yet that would mean that Officer Mensah is authorized to use deadly force for a fourth time, a situation creating extraordinary, unwarranted and unnecessary risk to the Wauwatosa Police Department and the City of Wauwatosa.

The second case is *Manney v. Board of Fire and Police Commission of the City of Milwaukee*, 2017 WI App 85, 378 Wis.2d 220 [copy also included in appendix]. In that matter, a Milwaukee Police Officer was terminated for failure to properly follow a “pat-down” rule (where an officer checks a suspect for weapons). The rule violation itself may have been relatively
minor and an unusual subject of discipline, but the violation was connected to an extremely serious incident: an officer shooting. Officer Manney had approached a mentally disturbed individual and the encounter escalated into a physical confrontation that resulted in the officer shooting the suspect. The use of deadly force was deemed justified and no crime was charged, but the officer was still terminated because the pat-down violation was in a chain of events connected to the escalating encounter. On review, the Wisconsin Court of Appeals held that while even a single rule violation could result in termination, *id.* at ¶32, a violation connected to the subsequent use of deadly force impacted additional concerns (and rules) that gave the board further grounds for termination. *Id.* at ¶33.

In the matter at hand, Officer Mensah’s use of deadly force in the Anderson shooting has been deemed proper. Yet his accompanying rule violations involving misleading information (regarding whether such shootings are an anomaly within Wauwatosa, why he was called to Madison Park, and when his in-squad video was activated) were directly connected to the use of force and further call into question his fitness for duty, as outlined above. Moreover, in connection with the separate Cole shooting, Officer Mensah publicly and in unauthorized fashion discussed facts relating to a pending criminal investigation. This was done in direct violation of Policies 17-11 and 13-08. Thus, this Commission has multiple rule violations connected to significant events: officer-shootings.
NOTE REGARDING DUTY DISABILITY

If this Commission removes Officer Mensah solely based on fitness-for-duty criteria arising from his participation in three prior shootings, then the City of Wauwatosa will need to consider whether Officer Mensah is entitled to a duty disability benefit pursuant to Wis. Stat. § 40.65. See Bretl v. LIRC, 204 Wis.2d 9, 100, 553 N.W.2d 550 (1996) (considering and rejecting whether single fatal shooting created extraordinarily stressful situation for police officer); see also Burt Redding v. LIRC, 377 Wis. 2d 729, 902 N.W.2d 809, 2017 WL 3037552 (Ct. App. 2017); County of Washington v. LIRC, 2012 WL 12180949 (Ct. App. 2013) (unpublished); Highman v. LIRC, 2001 WI App 1, 240 Wis. 2d 323, 621 N.W.2d 385 (Ct. App. 2000) (holding same).
Respectfully submitted to the Wauwatosa Police and Fire Commission this 7th day of October, 2020.

By:

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