

SUMMARY REPORT OF INVESTIGATION
Office of Inspector General Case # 15-0564 (Officer Jason Van Dyke)
June 30, 2016

This report consists of a summary of the evidence set out in the attached investigative materials and the Office of Inspector General's (OIG's) analysis of that evidence. An index of the investigative materials is attached.

I. INTRODUCTION

An OIG investigation has established that Jason Van Dyke, a police officer for the Chicago Police Department (CPD), violated CPD Rules and Regulations during the subsequent investigations of the October 20, 2014 Laquan McDonald shooting. More specifically, and as detailed further below, Van Dyke made numerous false statements and material omissions during his subsequent interviews with CPD and the Independent Police Review Authority (IPRA). In addition, Van Dyke filed a false Tactical Response Report (TRR) and a false Officer's Battery Report (OBR) regarding his encounter with McDonald. Van Dyke's false reports, false statements, and material omissions all served to exaggerate the threat McDonald posed.¹ In addition, OIG's investigation established that Van Dyke failed to follow CPD Rules regarding the operation of CPD's in-car video systems. Finally, Van Dyke failed to cooperate with OIG's investigation, after being properly called upon to do so and in direct violation of a superior's order, by refusing to answer OIG's questions in his interview. Accordingly, OIG recommends that CPD immediately discharge Van Dyke and refer him for placement on the ineligible for rehire list maintained by the Department of Human Resources.

II. APPLICABLE RULES, REGULATIONS, AND LAW

A. CPD Rules and Regulations

The "Rules and Regulations of the Chicago Police Department" set out the standards of conduct and duties of sworn members, as well as CPD goals. The Rules and Regulations state that sworn members must "conduct themselves at all times in such a manner as will reflect credit upon the Department with emphasis on personal integrity and professional devotion to law enforcement."

Article V of the CPD Rules and Regulations, entitled CPD Rules of Conduct (the CPD Rules), sets forth specifically prohibited acts. In pertinent part, the CPD Rules include the following prohibitions:

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

¹ On November 24, 2015, the Cook County State's Attorney charged Van Dyke with a single count of first degree murder in the shooting of McDonald. On December 15, 2015, it subsequently charged him with six counts of murder. OIG has not been involved with any criminal investigation related to the shooting and makes no findings regarding Van Dyke's use of force.

- Rule 3** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
- Rule 6** Disobedience of an order or directive, whether written or oral.
- Rule 11** Incompetency or inefficiency in the performance of duty.
- Rule 14** Making a false report, written or oral.
- Rule 51** Failure to testify or give evidence before any grand jury, coroner's inquest or court of law or before any governmental, administrative, or investigative agency (city, state or federal) when properly called upon to do so, and when there is no properly asserted constitutional privilege, or when immunity from prosecution has been granted.

B. CPD General Order G08-01-02 (effective March 17, 2013)

CPD General Orders "are directives that establish critical policies directly related to the core values and functions of the Department or the broad organizational policies and key practices relating to those core values." General Order G08-01-02 outlines CPD members' responsibilities "when allegations of misconduct come to their attention." Section II.A.2 states, "Members will cooperate with personnel from the Independent Police Review Authority (IPRA), the Bureau of Internal Affairs (BIA), or any other lawful investigatory entity conducting an investigation into a member's misconduct."

C. CPD Special Order S03-05 (effective February 23, 2012 through February 24, 2016)

CPD Special Orders "are directives that establish protocols and procedures concerning specific CPD functions, operations, programs, or processes." Special Order S03-05 outlines the protocols CPD members are to follow regarding in-car video systems.² Section VI of the Special Order provides that at the beginning of their tour of duty, Department members assigned to a CPD vehicle equipped with an in-car video system are to:

- (1) visually inspect the in-car video system equipment for damage;
- (2) obtain the remote transmitter/audio recorder and ensure it is securely attached to the member's person; and
- (3) follow the start-up procedures for the in-car video system as trained and ensure the system is working properly.

The Special Order notes that members are to "immediately notify a supervisor if, at any time, the

² The in-car video systems are also referred to as dash cameras or dashcams in this report.

in-car video system is inoperable, damaged, the equipped vehicle becomes inoperable, or the remote transmitter/audio recorder is missing.” During their tour, members are to “audibly and visually record events in accordance with this directive.” At the conclusion of a tour of duty, members are to “verify the in-car video system is working properly.”

D. City of Chicago Municipal Code

Chapter 2-56, establishing OIG, states the following: “It shall be the duty of every officer, employee, department, agency, contractor, subcontractor and licensee of the city, and every applicant for certification of eligibility for a city contract or program, to cooperate with the inspector general in any investigation or hearing undertaken pursuant to this chapter.” MCC § 2-56-090.

III. OFFICER VAN DYKE EMPLOYMENT HISTORY

Van Dyke has worked as a CPD Police Officer since June 25, 2001. Van Dyke is a member of Fraternal Order of Police (FOP) Lodge 7.

IV. SUMMARY OF INVESTIGATION

A. Procedural History of OIG’s Investigation

By letter, dated December 8, 2015, IPRA Acting Chief Administrator Sharon Fairley requested that OIG conduct an administrative investigation “to determine whether certain police officers/witnesses made false statements on official reports prepared in connection with [Van Dyke’s shooting of McDonald] and/or during the investigation of the incident.” IPRA further requested that OIG investigate “whether any of the involved Chicago Police officers committed any other violation(s) of Chicago Police Department rules, policies or procedures in their involvement with the incident, including, but not limited to, whether any officers’ conduct may have interfered with or obstructed the appropriate investigation and handling of this matter.”

Then, by letter, dated January 13, 2016, CPD Interim Superintendent John J. Escalante requested that OIG conduct an “administrative investigation into any and all allegations of police officer misconduct” arising out of the October 20, 2014 shooting death of McDonald. The Superintendent’s request asked OIG to investigate the following allegations: “whether any officer(s) made false statements on official reports submitted in connection with the shooting of Laquan McDonald on October 20, 2014; whether any officer(s) obstructed or interfered with the investigation of this incident, either individually or in collusion with others; and whether any officer(s) committed any violation of Chicago Police Department rules, policies, or orders in connection with their response and/or handling of this matter.” Escalante attached to the letter request a copy of Sergeant Sandra Soria’s Initiation Report, which raises allegations of misconduct related to the in-car video systems of the vehicles that were present during the McDonald shooting, and identified that Report as a basis for OIG’s administrative investigation.

On March 10, 2016, Kevin Kilmer (Star # 7518), Financial Secretary for the FOP, on behalf of all affected members, filed a grievance with CPD stating that OIG's attempts to conduct CPD officer interviews violated Article 6 of CPD's Collective Bargaining Agreement (CBA) with the FOP.³ On March 16, 2016, FOP on behalf of all impacted CPD officers filed a "Complaint for Injunction in Aid of Arbitration" in the Circuit Court of Cook County asking the court to enjoin OIG from conducting interviews until the grievance was decided in arbitration.⁴ The court dismissed the complaint and denied the injunction on March 22, 2016.

OIG's administrative investigation of other CPD employees' actions related to the McDonald shooting is ongoing. During the course of its investigation, OIG has gathered documents from CPD and IPRA, among other sources, and conducted numerous interviews, including interviews of thirteen CPD personnel who were at or responded to the scene of the shooting and seven civilian witnesses to the shooting. To date in its ongoing investigation, OIG has recommended disciplinary action against multiple CPD personnel, sustaining allegations that they each put forth a false narrative regarding the shooting.

B. The Events of October 20, 2014

The following sections detail Van Dyke's shooting of McDonald, as well as the relevant events that occurred directly before and after the shooting.⁵

1. [REDACTED] and Rudy Barillas's Encounter with McDonald⁶

[REDACTED] and [REDACTED] Rudy Barillas, were parking a truck in a lot at 41st Street and Kildare Avenue when [REDACTED] saw a black male, whom she subsequently identified as McDonald, attempting to steal property from certain vehicles parked in the lot. Barillas told McDonald to leave the lot. McDonald responded by making growling noises. After Barillas again told McDonald to leave the lot, McDonald pulled out a knife and swung it at Barillas. Barillas, who

³ Section 6.1, Paragraph I of the CBA states, "If the allegation under investigation indicates a recommendation for separation is probable against the Officer, the Officer will be given the statutory administrative proceeding rights, or if the allegation indicates criminal prosecution is probable against the Officer, the Officer will be given the constitutional rights concerning self-incrimination prior to the commencement of interrogation." CPD General Order GO8-01-01, Paragraph K contains similar language.

⁴ *Fraternal Order of Police, Chicago Lodge 7 v. City of Chicago*, No. 2016 CH 03726 (Cir. Ct. of Cook County, Ill., Mar. 16, 2016).

⁵ On April 22, 2016, OIG obtained maps of the locations that are relevant to the shooting from Google Maps and included those maps in Appendix A. Those maps generally reflect the street layout and location of relevant businesses as they were on the night of October 20, 2014.

⁶ The following account of [REDACTED] and Barillas's encounter with McDonald is taken from the March 16, 2015 case supplementary report (CSR) submitted by CPD Detective David March, which includes the statements that [REDACTED] and Barillas provided to CPD on October 21, 2014, and October 22, 2014, respectively. OIG 15-0564 003077.

had already called 911, then threw his cell phone at McDonald.⁷ McDonald ran from the lot, first northbound on Kildare and then eastbound on 40th Street.

2. Officers Thomas Gaffney and Joseph McElligott's Encounter with McDonald⁸

Officer Thomas Gaffney and his partner Officer Joseph McElligott received a call over the radio that someone had broken into a truck at 4100 South Kildare and were dispatched to the scene.⁹ Gaffney was driving and McElligott was in the passenger seat of their assigned vehicle, 815R.¹⁰ When they arrived at 4100 South Kildare, they saw a Hispanic male and female standing by the gate to the truck yard. The two said that a black male wearing a black shirt, later determined to be McDonald, had been trying to steal the radio out of a semi-truck, and had subsequently headed north toward 40th Street.

Gaffney and McElligott drove north on Kildare, turned right onto 40th Street, and saw McDonald walking east on the south side of 40th Street. McElligott exited the vehicle and commanded McDonald to stop and turn around. Gaffney stayed in the vehicle in case McDonald attempted to flee. McElligott ordered McDonald to take his hands out of his pockets. McDonald, who had been facing McElligott, turned and walked away with one hand still in his pocket. McDonald then turned again and took both of his hands out of his pockets. He had a knife in his right hand. McElligott drew his weapon and told McDonald to drop the knife. McDonald started walking east again, going from the sidewalk to the street and back. McElligott

⁷ OEMC recordings reflect that Barillas called 911 at 9:45 p.m. stating that he was holding “a guy right hear [sic] that stolen [sic] the radios” from trucks in a truck yard located at “41st and Kildare.” OIG 15-0564 003227.

⁸ The following account of Gaffney and McElligott's encounter with McDonald is taken from (1) the audio-recorded statements Gaffney and McElligott provided to IPRA on October 21, 2014; and (2) the March 16, 2015 CSR submitted by Detective David March, which includes the statements that Gaffney and McElligott provided to March on the night of the McDonald shooting. OIG 15-0564 000482-98, 000610-30, 003067-69.

⁹ OEMC records reflect that Gaffney and McElligott received the call at 9:47 p.m. OIG 15-0564 003691.

¹⁰ Below is a chart identifying the beat numbers and vehicle numbers of the CPD vehicles that were present when McDonald was shot, along with the names of the officers who were assigned to those vehicles. This SRI refers to the below-referenced vehicles by beat number, unless otherwise specified.

Beat #	Vehicle #	Officers
845R	6412	Officer Joseph Walsh (driver), Officer Van Dyke (passenger)
815R	8489	Officer Gaffney (driver), Officer McElligott (passenger and on foot)
813R	8779	Officer Janet Mondragon (driver), Officer Daphne Sebastian (passenger)
822R	8765	Officer Arturo Becerra (driver), Officer Leticia Velez (passenger)
841R	8948	Officer Ricardo Viramontes (driver), Officer Dora Fontaine (passenger)

followed McDonald on foot, shining his flashlight on him, while Gaffney followed in 815R, parallel to McDonald.

As McDonald approached the intersection of 40th and Keeler, Gaffney reported to dispatch that McDonald was walking away with a knife in his hand.¹¹ Gaffney and McElligott continued to follow McDonald as he headed east, with McElligott giving McDonald orders to drop his knife and stop. McDonald kept turning around and giving the officers a “weird glaze[d] look.” Gaffney IPRA Tr. 11:20.¹²

As McDonald approached the intersection of 40th and Karlov, Gaffney turned his car toward McDonald to direct him down Karlov. Gaffney wanted to keep McDonald away from Pulaski, which was a more populated area. McDonald then swung his arm and popped 815R’s right front tire with his knife. McElligott was toward the back of 815R when McDonald popped its tire. After McDonald took a step back from the vehicle, Gaffney pulled up further in front of him to stop him from proceeding to Pulaski. McDonald then hit the right side of 815R’s windshield once with the knife in his right hand. The windshield did not break but, according to Gaffney, McDonald hit it as hard as he could. McDonald walked around the front of 815R and continued eastward on 40th Street. After McDonald had walked 10 to 15 feet, another squad car turned off of Pulaski onto 40th Street with its lights on, and McDonald began to sprint. McElligott followed McDonald on foot, and Gaffney followed McDonald in 815R. McDonald ran eastbound through a parking lot of a Burger King located at 40th and Pulaski and then headed southbound on Pulaski. Video footage from several cameras captured McDonald’s movements as he reached Pulaski.

3. Summary of the Relevant Video Footage

The below table contains a summary of the relevant video footage of the McDonald shooting, which includes the dashcam videos from 813R, 823R, and 845R, video from the “WNE fire exit” security camera from the Greater Chicago Food Depository, which is bordered by 40th Street to the north, Karlov Avenue to the east, and Keeler Avenue to the west, and the security camera video from the Dunkin’ Donuts, located at 4113 South Pulaski Road (the DD Camera).¹³

Time	Event(s) Captured	Source of Video
9:53:17 –	McDonald walks eastbound on the south side sidewalk of	Greater Chicago

¹¹ OEMC recordings reflect that, at 9:53 p.m., 815R reported: “We’re at 40th and Keeler. This guy uh is walking away from us and he’s got a knife in his hand.” Approximately 30 seconds later, a dispatcher stated, “815R looking for a taser.” See OEMC Documents and CDs; see also OIG 15-0564 003691, 3228.

¹² OIG 15-0564 000620.

¹³ In addition to the videos cited in the summary, OIG obtained video footage from the security camera videos at Burger King and Focal Point, and the dash camera videos from Vehicles 821R and 815R. These videos did not contain footage relevant to this report.

9:54:42	40th Street; a CPD SUV travels east on 40th Street, parallel to McDonald with its front bumper even with McDonald; an officer on foot trails directly behind McDonald by the length of the SUV, with his flashlight trained on McDonald. ¹⁴	Food Depository Security Camera
9:56:53 – 9:57:01	813R and 845R turn left onto 40th Street from Pulaski.	813R Dashcam
9:57:01– 9:57:09	An unidentified person on 40th Street points the CPD vehicles toward the Burger King parking lot (813R); 845R turns into the parking lot (813R). McDonald runs southeast through the Burger King parking lot out onto Pulaski (845R).	813R Dashcam; 845R Dashcam
9:57:09 – 9:57:20	845R drives over the curb and sidewalk north of Burger King and heads south on Pulaski (845R); 813R turns around, turns right onto 40th Street, and then right again on Pulaski (813R); McDonald runs southbound in the middle of Pulaski and enters the intersection of 41st Street and Pulaski (813R).	813R Dashcam; 845R Dashcam
9:57:20 – 9:57:25	845R, which is facing east/southeast on Pulaski just north of 41st street, turns right behind McDonald and proceeds south on Pulaski on the east side of the street; 845R's passenger door briefly opens and then closes as it passes McDonald on his left; McDonald continues southbound on Pulaski, toward 822R, which is stopped in the middle of Pulaski facing north.	813R Dashcam
9:57:25 – 9:57:28	McDonald slows as he approaches 822R, touches his hands to his waist, and then, before Walsh and Van Dyke exit 845R, extends his right arm fully to his right—the video shows that he has a silver object in his right hand; 845R passes 822R and comes to a stop on the east side of Pulaski, facing south and almost directly south of 822R; Van Dyke opens 845R's passenger door.	813R Dashcam

¹⁴ OIG confirmed the vehicle is 815R and the officer on foot is McElligott by comparing the video with photographs of the officers. OIG 15-0564 003356.

9:57:28 – 9:57:30	McDonald changes course and begins walking southwest on Pulaski, away from 822R and 845R (813R); Van Dyke exits the passenger side of 845R with both of his feet in Pulaski’s northbound left turn lane, his gun drawn and pointed at McDonald (813R). Walsh exits the driver side of 845R, just east of Pulaski’s northbound left turn lane, with his gun drawn, and moves north along the driver side of 845R until he is several feet north of 845R (DD Camera).	813R Dashcam; DD Camera ¹⁵
9:57:30 – 9:57:33	McDonald continues to walk southwest, from the middle of Pulaski to the lane markers that divide the west side of the road (or approximately one lane west of where McDonald was prior to changing course) (813R). While McDonald walks southwest, Walsh begins moving sideways in a west/southwest direction, approximately parallel to McDonald, and crosses over the east side of Pulaski’s northbound left-turn lane—his gun is pointed at McDonald (813R; DD Camera). Van Dyke takes approximately two steps northwest toward McDonald, with his left foot crossing into Pulaski’s yellow-painted median strip—his gun is pointed at McDonald (813R; DD Camera). 822R drives north on Pulaski, away from 845R (813R). 841R drives north in the middle of Pulaski, toward 845R and stops just south of 845R, facing north (813R; DD Camera).	813R Dashcam; DD Camera
9:57:33 – 9:57:36	As McDonald approaches the lane markers on the west side of Pulaski, walking in a southwest direction, he looks to his right and moves his right hand behind his waist, near the right side of his lower back, then brings his hand back to his right side (813R). As McDonald crosses the lane markers on the west side of Pulaski, he looks to his left, and takes a step southbound (813R). Meanwhile, Walsh continues moving west/southwest with his gun pointed at McDonald, ultimately traversing almost the entire width of Pulaski’s northbound left-turn lane (813R; DD Camera). Van Dyke takes an additional step west, toward McDonald, putting both of his feet in Pulaski’s median strip and placing himself almost directly between McDonald and Walsh (813R; DD Camera). McDonald is	813R Dashcam; DD Camera

¹⁵ The DD Camera video does not display an embedded timestamp. Therefore, OIG used the timestamp of 813R’s video, which generally captured the same events as the DD Camera from a different angle, to establish the timeframe of the events captured by the DD Camera.

	then apparently shot, and Walsh stops moving and adopts a stance, with his feet more than a shoulder's width apart (813R; DD Camera).	
9:57:36 – 9:57:54	McDonald spins between 180 and 270 degrees in a clockwise direction and then falls to the ground with the top of his head pointing south on Pulaski, approximately one street lane east of Van Dyke and just south of Van Dyke (813R). As McDonald falls to the ground, Van Dyke takes another step west toward McDonald, moving his right foot from Pulaski's median strip into the south-bound side of Pulaski—his gun remains pointed at McDonald (813R). Van Dyke subsequently takes an additional step or two south, toward McDonald (DD Camera). Other than those steps, Van Dyke's feet are stationary (DD Camera). After McDonald is on the ground, his legs and feet do not move (813R). McDonald's upper body makes small, intermittent movements as what appear to be puffs of smoke rise from McDonald's body (813R). ¹⁶	813R Dashcam; DD Camera
9:57:54 – 9:58:05	An officer approaches McDonald and kicks the knife from his hand. McDonald does not make any noticeable movements.	813R Dashcam
9:58:05- 9:58:20	McDonald lies on the ground; no aid is rendered by CPD personnel. 823R, travelling northbound, pulls up on the west side of Pulaski, and stops just south of where McDonald is lying.	813R Dashcam; 823R Dashcam
9:58:20- 9:58:57	Several CPD officers walk and stand near McDonald as he lies on the ground; no aid is rendered by CPD personnel.	813R Dashcam; ¹⁷ 823R Dashcam
9:58:57- 9:59:02	823R begins making a U-turn on Pulaski. A Cook County Sheriff's Police Department (CCSPD) officer puts on blue gloves and walks toward McDonald. ¹⁸ McDonald	823R Dashcam

¹⁶ OEMC records show that dispatch received notice to send an ambulance to the scene at 9:57:51. OIG 15-0564 003691.

¹⁷ The last time stamp visible on the 813R dashcam video is 9:58:55.

¹⁸ OIG identified the CCSPD officer as Officer Adam Murphy.

	is no longer visible in the video frame.	
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4. CCSPD Officer Accounts of the October 20, 2014 McDonald Shooting¹⁹

While on patrol on October 20, 2014, CCSPD Officers Adam Murphy and Jeff Pasqua observed several CPD police vehicles pass by them. Both officers decided to follow the CPD vehicles. When they arrived at the scene, several CPD vehicles were already present—Pasqua estimated it was five or six. McDonald was lying on the pavement “gasping for his last breath of air.” Pasqua OIG Tr. 11:22-23. Meanwhile, the CPD officers were “standing around” and talking to each other. Murphy OIG Tr. 11:1. Murphy noted the CPD officers did not respond to him when he asked if they needed assistance. Murphy stated:

I see there’s blood all over the pavement. [McDonald] was kind of gurgling when he was sitting there. I remember his mouth was going open and closed like he was trying to gasp for air. And I looked for everybody else, and they were kind of standing there. I just started taking my gloves—my rubber gloves out to check for a pulse and to see if I could render aid.

Murphy OIG Tr. 12:18-13:2. He heard someone say an ambulance was en route. Both Officers Murphy and Pasqua recalled then watching McDonald take his final breaths.²⁰ It was “[m]aybe less than a minute before [McDonald] expired.” Murphy OIG Tr. 14:15-16. At no time did any CPD officers attempt to provide aid or comfort McDonald—Murphy stated, “That’s why I felt that I needed to go up to him.” Murphy OIG Tr. 14:11-12.

After McDonald passed away, Murphy got up from beside him and noticed the shooting officer, who he now knows to be Van Dyke, “pacing back and forth in front of his car.” Murphy OIG Tr. 15:7-8. Murphy approached him and told him to sit down and drink water. As he was speaking with Van Dyke, Murphy “heard several officers telling [Van Dyke] to ‘call your union rep, call your union rep.’” Murphy OIG Tr. 15:16-17.

Murphy and Pasqua departed after approximately ten minutes on the scene when a CPD sergeant told them CPD did not need their assistance. At the time they left, there was “[a] sea of CPD” on scene. Murphy OIG Tr. 38:3; Pasqua OIG Tr. 25:7-8.

¹⁹ The following CCSPD Officer accounts are taken from OIG’s June 23, 2016 interview of Jeff Pasqua and its June 24, 2015 interview of Adam Murphy. Pasqua and Murphy are currently CCSPD investigators.

²⁰ The Medical Examiner’s Case Report states McDonald was pronounced dead “on view” at Mount Sinai Medical Center on October 20, 2014, at 10:42 p.m. OIG 15-0564 015029.

C. Officer Van Dyke's Reports Concerning the McDonald Shooting

1. Tactical Response Report (TRR)²¹

On October 21, 2014, at 4:44 a.m., Van Dyke submitted a TRR with the R.D. Number HX475653 and an Event Number of 1429315878, regarding his October 20, 2014 encounter with "Lequan [sic] McDonald."²² Under the heading titled "Assailant: Assault," Van Dyke marked the box labeled "Imminent Threat of Battery."²³ Under the heading titled "Assailant: Battery," he marked the box labeled "Attack with Weapon." Under the heading titled "Assailant: Deadly Force," he marked the box labeled "Uses Force Likely to Cause Death or Great Bodily Harm" and "Weapon." Van Dyke specified in the TRR that the "offender's weapon was a knife in his hand."

2. Officer's Battery Report (OBR)²⁴

Van Dyke completed and submitted an OBR with the R.D. Number HX475653 regarding his October 20, 2014 encounter with McDonald. The OBR form states that an OBR is to be completed when "a sworn member is the victim of a murder, aggravated battery, battery, aggravated assault, or assault while performing a police function either on-duty or off-duty."²⁵ In the OBR, Van Dyke stated three officers were battered. Under the heading titled "Manner of Attack," he marked the box labeled "Stabbed/Cut (Including Actual Attempt)." Under the heading titled "Type of Weapon/Threat," he marked the boxes labeled "Knife/Other Cutting Instrument" and "Other/Specify." He specified the type of weapon/threat as a "Swinging Knife."

D. Officer Van Dyke's Statements Regarding the McDonald Shooting

1. October 20-21, 2014 Statements to Detective David March²⁶

On March 15, 2015, Detective March submitted a case supplementary report (CSR) with the

²¹ OIG 15-0564 003313-14.

²² According to CPD General Order G03-02-05, effective from October 1, 2002, to October 30, 2014, a TRR is used to document, among others things, all incidents "involving the discharge of . . . a firearm," or "which involve a subject fitting the definition of an assailant whose actions are directed against a Department member."

²³ Pursuant to the Illinois Criminal Code, a person commits battery when he or she knowingly and without legal justification "(1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual." 720 ILL. COMP. STAT. 5/12-3. A person commits assault when he or she, without lawful authority, "knowingly engages in conduct which places another in reasonable apprehension of receiving a battery." 720 ILL. COMP. STAT. 5/12-1.

²⁴ OIG 15-0564 003311-12.

²⁵ See also Special Order S04-13-01, issued on December 28, 2012, which outlines the procedures to be followed for the preparation of an OBR.

²⁶ OIG 15-0564 003065-66, 74.

R.D. Number HX475653 that contains a summary of CPD's investigation in the aftermath of the McDonald shooting.²⁷ Lieutenant Anthony Wojcik approved the CSR on March 16, 2015. It includes March's summaries of the statements he obtained from Van Dyke at the scene of the shooting and at the Area Central Police Headquarters, located at 5101 South Wentworth.²⁸ The CSR summarizes Van Dyke's October 20, 2014 statement in relevant part as follows:

McDonald ran out onto Pulaski Road and then turned southbound, running toward a Dunkin' Donuts restaurant, on the east side of Pulaski, south of the Burger King. Walsh positioned the police vehicle between McDonald and the Dunkin' Donuts to block his path towards that restaurant. When Walsh slowed the police vehicle alongside McDonald, Officer Van Dyke opened the right front door of the vehicle to exit and confront McDonald. Walsh told Van Dyke to stay in the vehicle as they were too close to McDonald to safely exit their vehicle. Walsh drove on southbound and stopped the police vehicle ahead of McDonald.

Officer Van Dyke exited the vehicle on the right side and drew his handgun. As Van Dyke stood in the street on Pulaski, facing northbound, toward McDonald, McDonald approached southbound. McDonald was holding the knife in his right hand, in an underhand grip, with the blade pointed forward. He was swinging the knife in an aggressive, exaggerated manner. Van Dyke ordered McDonald to "Drop the knife!" multiple times. McDonald ignored Van Dyke's verbal direction to drop the knife and continued to advance toward Van Dyke.

When McDonald got to within 10 to 15 feet of Officer Van Dyke, McDonald looked toward Van Dyke. McDonald raised the knife across his chest and over his shoulder, pointing the knife at Van Dyke. Van Dyke believed McDonald was attacking Van Dyke with the knife, and attempting to kill Van Dyke. In defense of his life, Van Dyke backpedaled and fired his handgun at McDonald, to stop the attack. McDonald fell to the ground but continued to move and continued to grasp the knife, refusing to let go of it. Van Dyke continued to fire his weapon at McDonald as McDonald was on the ground, as McDonald appeared to be attempting to get up, all the while continuing to point the knife at Van Dyke. The slide on Van Dyke's pistol locked in the rearward position, indicating the weapon was empty. Van Dyke performed a tactical reload of his pistol with a new magazine and then assessed the situation.

²⁷ CPD reported its investigation of the McDonald shooting under record number HX-475653, and classified most reports as an investigation into an aggravated assault in which McDonald was the offender. In a few reports, CPD classified the case as an investigation into a justifiable homicide in which McDonald was the victim. CPD created an additional record number and classified the case as a justifiable homicide, apparently for recordkeeping purposes. In CPD's investigative reports classified under the aggravated assault, CPD personnel drew conclusions about the propriety and lawfulness of Van Dyke's shooting of McDonald. This raises questions about CPD's role in investigating a police-involved shooting in light of IPRA's jurisdiction over the matter.

²⁸ March completed two General Progress Reports (GPRs) relating to his interviews of Van Dyke that contain March's handwritten notes of the interviews. OIG 15-0564 003239-41, 54. March's handwritten notes of the interviews do not differ in any significant way from the summary of Van Dyke's statements in the CSR.

McDonald was no longer moving and the threat had been mitigated, so Officer Van Dyke and Officer Walsh approached McDonald. McDonald was still holding the knife in his right hand. Van Dyke continued to order McDonald to “Drop the knife!” Officer Walsh told Van Dyke, “I have this.” Van Dyke then used his handgun to cover Walsh as Walsh walked up and forcibly kicked the knife out of McDonald’s right hand, thereby eliminating the threat to the officers.

The CSR summarizes Van Dyke’s October 21, 2014 statement in relevant part as follows:

Van Dyke additionally articulated the reasoning behind his decision to use deadly force against the offender in this incident, Laquan McDonald. Van Dyke was aware of the radio transmissions from Officer Thomas Gaffney, on Beat 815R, that McDonald was armed with a knife. Van Dyke was aware that McDonald had attacked the officers on Beat 815R by slashing the tire of their police vehicle.

As he confronted McDonald at 4112 South Pulaski Road, Van Dyke saw that McDonald was in fact, armed with a knife, a deadly weapon. Van Dyke was aware of a widely accepted teaching in law enforcement that an assailant armed with a knife was considered a deadly threat, if within 21 feet, because it was possible for such an assailant to close that distance and attack with the knife before a defensive shot could be fired from a handgun.²⁹ Van Dyke was also aware of the existence of throwing knives, which can be thrown from a distance, as well as spring loaded knives, which propel a blade through the air from the knife handle. Van Dyke also said he recalled a previously issued Chicago Police Department bulletin warning of a weapon which appeared to be a knife but which actually was capable of firing a bullet, making it a firearm.

March wrote in the CSR that a search was subsequently conducted for the bulletin Van Dyke referenced. An “Officer Safety Alert number 2012-OSA0297,” issued on December 4, 2012, was located.³⁰ March wrote that “[i]t was a warning regarding a ‘revolver knife’ which was capable of firing .22 caliber cartridges.”

2. October 22, 2014, IPRA Interview³¹

On October 22, 2014, at 11:47 a.m., IPRA investigator Brian Killen interviewed Van Dyke at IPRA’s offices, located at 1615 West Chicago Avenue, regarding the McDonald shooting. Attorney Thomas Rebholz and FOP Field Representative Kriston Kato accompanied Van Dyke.

²⁹ On April 29, 2016, OIG spoke with CPD Deputy Chief Director of Training Keith Calloway. Calloway is familiar with the “21-foot rule” as a law enforcement principle, but it has never been a part of CPD’s training process. Calloway characterized the 21-foot rule as “junk science” as the theory behind it has never been scientifically proven. *See* OIG Investigative Report of Call with Keith Calloway.

³⁰ OIG 15-0564 003310.

³¹ OIG 15-0564 000632–55.

Prior to the interview, Killen informed Van Dyke that “any intentional falsification to any answer to any question would be in direct violation of Department rules and regulations,” and that his “failure to provide a complete and accurate account of th[e] incident could result in a finding of a violation of Rule 14 with discipline leading up to and including separation from the Chicago Police Department.” Van Dyke IPRA Tr. 3:16-28. Van Dyke stated he understood the potential disciplinary consequences of making a false statement to IPRA or providing a less than complete account of the shooting to IPRA. In summary, Van Dyke stated in relevant part as follows.

Van Dyke started work at 9:00 p.m. on October 20, 2014. Van Dyke is a relief officer and, as a result, he does not have a regular partner. Walsh was Van Dyke’s partner that night and they were assigned to beat 845R. Van Dyke and Walsh were both in full uniform. Walsh drove the vehicle. Van Dyke and Walsh were leaving a 7-11 on 59th and Pulaski when they heard Beat 815R requesting assistance. Van Dyke stated 815R requested a taser for an individual at around 40th or 41st and “one of the K streets.” Van Dyke IPRA Tr. 8:30-31. Van Dyke and Walsh then turned on their lights and sirens and drove to 40th and Pulaski. On the way, Van Dyke heard 815R still asking for a taser over the radio. He also heard them say the subject was armed with a knife and just slashed one of their tires. Van Dyke did not have a taser.

Van Dyke and Walsh drove westbound on 40th Street. Van Dyke saw McElligott on foot approaching the Burger King parking lot and McDonald running eastbound through the lot with a knife in his right hand. Van Dyke and Walsh entered the lot and cut McDonald off from going into the Burger King. Van Dyke saw another CPD vehicle approaching on their left. McDonald continued running eastbound toward Pulaski, and Van Dyke and Walsh continued to follow him on to Pulaski. At that point, McDonald started running southbound in the middle of Pulaski. Van Dyke stated that McDonald appeared to be running toward the Dunkin’ Donuts, so they cut him off. As another CPD vehicle approached, McDonald diverted back into the southbound lanes on Pulaski. Van Dyke and Walsh then went around the other CPD vehicles and got ahead of McDonald “by about five or six car lengths.” Van Dyke IPRA Tr. 13:22. Walsh parked their vehicle on an angle in the middle of Pulaski to keep McDonald from running down the road. Van Dyke then stated the following:

Van Dyke: Um I exit the vehicle. Uh I see ‘em runnin’ wavin’ this knife with his right hand you know under, it in an under position. I give ‘em verbal commands to drop the knife. I’m yellin’ at ‘em drop the knife.

....

IPRA: . . . And he’s still on Pulaski and he’s in the southbound lanes still runnin’ south though right?

Van Dyke: Yes.

IPRA: You said he was kinda makin’ that beeline between say Burger King and the Dunkin’ Donuts on the east side of Pulaski?

Van Dyke: Correct.

IPRA: So you, you stop. You get out, pistol drawn.

Van Dyke: Yes.

IPRA: And order 'em to put the knife down.

Van Dyke: Yes I do.

IPRA: And you say he's wavin' it at, as best you can describe what were you doin' with your hand there?

Van Dyke: He's wavin' it in an, he's clenchin' it. Um with the blade forward underneath and he's wavin' it um from you know his right side towards his left in an upward fashion.

IPRA: Okay. Him doin' that make you think he was gonna put the knife down?

Van Dyke: No.

IPRA: You took that to be a threatening –

Van Dyke: Yeah he was wavin' it upwards –

Rebholz: Chest level.

Van Dyke: -- yea at my chest. Chest level.

IPRA: As if he wanted to he could stab you?

Van Dyke: Yes.

IPRA: Okay. And how far, so you get out and he's doin' this with the knife. How far are you from him at this point if you guess?

Van Dyke: I would say I was approximately ten to fifteen feet away from him.

IPRA: And he's facin' you?

Van Dyke: He's, he's comin' towards me.

IPRA: Okay. So he's closin' the distance between you and him?

Van Dyke: He is and I'm back pedalin'.

....

IPRA: Okay. And he's closin' the distance between you and him and you're back pedalin' did you say?

Van Dyke: Yes I am.

IPRA: Is he runnin' toward you?

Van Dyke: He's walkin' really fast almost like ah almost like a jog I think.

IPRA: Okay. And that's when he's doin' the wavin' with the knife?

Van Dyke: Yes.

IPRA: And what, what happens? So he's closin' the distance. You're back pedalin' and what happens?

Van Dyke: He's getting', he's getting' closer to me. I could see that there's nobody to my right. There's nothin' in front a me. There's nothin' to my left. I keep on orderin' 'em to drop the knife, drop the knife, drop the knife. He doesn't drop the knife. He's still wavin' the knife at me. I'm thinkin' he's, he's goin' do somethin' to me.

IPRA: And whaddid [sic] you think was he was gonna do?

Van Dyke: I think he's going to try and take my life away from me.

IPRA: And what happens?

Van Dyke: I shoot 'em.

....

IPRA: Okay. And just goin' back to when you discharged your firearm, do you remember, were you, were you standing still when you fired or were you movin'?

Van Dyke: I think I was moving.

IPRA: Do you think, do you think you were still movin' backwards?

Van Dyke: Yes.

Van Dyke IPRA Tr. 14:8 to 21:3. Van Dyke stated he shot McDonald sixteen times. He was aware of the number of shots because he emptied his magazine. Van Dyke did a "tactical

reload,” but did not fire more shots because he “felt that the threat was eliminated.” Van Dyke IPRA Tr. 18:22, 28. Walsh approached McDonald and forcibly kicked the knife out of his hand. At the end of his interview, Killen asked Van Dyke whether everything he stated was “a true and accurate account of what occurred.” Van Dyke IPRA Tr. 23:20-21. Van Dyke responded, “Yes sir.” Van Dyke IPRA Tr. 23:22.

G. Records and Interview Concerning 845R’s In-Car Video System

On October 21, 2014, CPD Sergeant Lance Becvar submitted a supplementary report for R.D. No. HX475653 concerning his retrieval of video from the in-car video systems of the five CPD vehicles that were on scene when Van Dyke shot McDonald.³² With respect to Vehicle 6412 (also referred to as Vehicle 845R), the vehicle in which Van Dyke was the passenger on October 20, 2014, Becvar noted “video recovered.” Becvar also completed a corresponding “In Car Camera Video Retrieval Worksheet” regarding his October 20, 2014 video retrieval, in which he made the following notation with respect to Vehicle 6412 (845R): “No mics; mic charger disconnected.”³³

On July 17, 2015, Becvar sent an email summarizing his findings regarding his October 20, 2014 video retrieval from Vehicle 6412 and the other four CPD vehicles that were on scene when Van Dyke shot McDonald.³⁴ With respect to Vehicle 6412, Becvar stated as follows: “Video recovered Titled PC0S571@20141020215250 view out of focus. Focusing [sic] problem found to be related to a loose cable connection for the camera. No MICs in vehicle and the charging cradles disconnected from power.”

In a January 27, 2016 OIG interview with Becvar, he stated that the cable connector must have been pulled out of 845R’s in-car video system or loosened from vibration. He estimated the chances that the cable disconnected from vibration at 10 or 15 percent. With respect to the charging cradles, Becvar stated that they plug into the bottom of the chargers and “vibrate loose or people possibly take them out.” Becvar OIG Tr. 80:8.

Becvar also stated that if a vehicle’s microphones were synced and functioning, its car video display and the recovered video would both show an “M1” (driver mic) and an “M2” (passenger mic).³⁵ Becvar’s statement is corroborated by the in-car video system user manual, which establishes that officers are able to see “M1” and “M2” displayed on their in-car video system in real time as it is recording if the microphones are properly connected.³⁶ The user manual further

³² OIG 15-0564 004991.

³³ OIG 15-0564 004992.

³⁴ OIG 15-0564 000567.

³⁵ The video recovered from 845R’s in-car video system on October 20, 2014, does not show an “M1” or an “M2.”

³⁶ See Coban Mobile Recorder User Manual. OIG 15-0564 008973.

reflects that the in-car video system display contains a “camera preview” that “displays the image as seen through the camera lens. The default image is set as the front facing camera.”³⁷

H. OIG’s Attempted Interviews of Officer Van Dyke

On February 24, 2016, pursuant to Section 6.1 of the CBA between CPD and FOP, OIG, through CPD’s Bureau of Internal Affairs, served Van Dyke with a Notification of Interview, Notification of Allegations, and copies of his prior statements, including: (1) his October 20, 2014 statement to March, contained in the March 16, 2015 CSR; (2) March’s GPR containing his handwritten notes of his interview of Van Dyke; and (3) Van Dyke’s October 22, 2014 statement to IPRA. In addition, OIG provided Van Dyke with the dashcam footage from 813R and 845R and the security camera footage from Dunkin’ Donuts.

Following communications with Dan Herbert, Van Dyke’s attorney, OIG rescheduled Van Dyke’s interview from the March 9, 2016 date listed in his Notification of Interview to March 22, 2016. Neither Van Dyke nor Herbert appeared for the interview on March 22. OIG contacted Herbert, who “acknowledged it was his mistake that Officer Van Dyke did not appear for the interview.” Van Dyke 3/22/16 OIG Tr. 5:3-5.

On April 4, 2016, pursuant to Section 6.1 of the CBA, OIG, through CPD’s Bureau of Internal Affairs, served Van Dyke with another Notification of Interview, an updated Notification of Allegations, and copies of the following: (1) his October 21, 2014 statement to March, contained in the March 16, 2015 CSR; and (2) March’s GPR containing his handwritten notes of his second interview of Van Dyke. At that time, Commander Brendan Deenihan of BIA, ordered Van Dyke to cooperate with the OIG investigation and gave Van Dyke General Order 08-01 and Rule 51 of CPD’s Rules and Regulations. Deenihan memorialized his conversation with Van Dyke, and the memorandum states that Van Dyke understood the order to cooperate.

On April 7, 2016, Van Dyke appeared at his scheduled OIG interview. The interview was transcribed by a certified court reporter. Van Dyke’s attorney, Dan Herbert, was also present for the interview. Van Dyke was placed under oath. OIG investigators presented him with his administrative advisements in writing.³⁸ Van Dyke refused to sign OIG’s Advisement of Rights,

³⁷ OIG 15-0564 0008972.

³⁸ OIG’s Advisement of Rights presented to Van Dyke states, in part:

I understand that this interview is part of an official investigation and that I have a duty to cooperate with the Office of Inspector General, which includes answering all questions completely and truthfully.

I understand that I have no right to remain silent. I understand that I have an obligation to answer questions put to me truthfully. I understand that if I refuse to answer questions put to me, I will be ordered by a superior officer to answer the questions. I further understand and I have been advised that if I persist in my refusal to answer after an order to do so, such further refusal constitutes a violation of the Rules and Regulations of the Chicago Police Department and may serve as the basis for my discharge.

...

and, citing Section 6.1, Paragraph I of the Fraternal Order of Police CBA and CPD General Order GO8-01-01, objected to the fact that OIG did not advise him of his constitutional rights concerning self-incrimination prior to the interview.³⁹ Commander Deenihan, by telephone, again directly ordered Van Dyke to cooperate in the administrative investigation. Van Dyke invoked his Fifth Amendment right against self-incrimination.

Van Dyke further objected to the interview on the grounds that any statement made by him would violate a January 20, 2016 Decorum Order entered by Judge Vincent Gaughan in Van Dyke's criminal case, 15-CR-20622.⁴⁰

Van Dyke stated that he read and understood the 34 allegations listed in the Notification of Allegations. He invoked his Fifth Amendment right against self-incrimination when OIG asked for his response to the allegation that he provided a false narrative to Detective March on or about October 20, 2014, concerning the McDonald shooting through a series of false statements and material omissions. Van Dyke's attorney then terminated the interview, and he and Van Dyke immediately left.

On June 3, 2016, pursuant to Section 6.1 of the CBA, OIG served Van Dyke with a Notification of Interview and Notification of Allegations regarding his failure to cooperate with OIG's investigation. In response, Van Dyke's attorney emailed OIG, stating Van Dyke would not speak about the case without a modification to the Decorum Order.

V. ANALYSIS

OIG's investigation established that Van Dyke made numerous false statements and material omissions in his interviews with CPD and IPRA regarding the McDonald shooting. In addition, Van Dyke filed a false TRR and a false OBR regarding his encounter with McDonald. Van Dyke's false reports, false statements, and material omissions all served a similar purpose—to exaggerate the threat McDonald posed. Further, OIG's investigation established that Van Dyke failed to follow CPD orders regarding the operation of CPD's in-car video systems. Finally, Van Dyke failed to cooperate with OIG's investigation, after being properly called upon to do so and directly ordered by a superior officer, by refusing to answer OIG's questions in his interview.

Van Dyke's actions, individually and collectively, constitute violations of CPD Rules. Each of Van Dyke's false statements constitutes a violation of Rule 14 (making a false report, written or oral). His false statements also constitute violations of Rule 2 (engaging in any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon

I understand that any statement made by me during this interview and the fruits thereof cannot be used against me in a criminal proceeding.

³⁹ See *supra* pg. 4, n.3.

⁴⁰ The Decorum Order states, in part, that no person expected to testify in the matter shall “[m]ake any statement outside of court as to the content, nature, substance, or effect of any statements or testimony that is expected to be given in any proceeding in or related to this matter.”

the Department) and Rule 3 (failing to promote the Department's efforts to implement its policy and accomplish its goals). An officer who has made false statements in an official investigation has irrevocably tainted not only his credibility, but also the credibility of CPD—and also fails to promote CPD's goal of employing officers with personal integrity and professional devotion to law enforcement. Van Dyke further violated Rule 6 (disobedience of an order, namely S03-05) and Rule 11 (incompetency in the performance of a duty) by failing to audibly record events with his in-car video system and failing to notify his supervisor about the system's inoperability. Finally, Van Dyke violated Rule 6 and Rule 51 (failing to give evidence before an investigative agency) by refusing to answer questions posed by OIG during his properly noticed April 7, 2016 interview and by making clear he would refuse to answer any questions after receiving his June 3, 2016 notice. Accordingly, OIG recommends that CPD immediately discharge Van Dyke.

A. Van Dyke's False Statements

1. October 20-21, 2014 False Statements to Detective March

Van Dyke made multiple false statements to Detective March regarding the McDonald shooting that are clearly contradicted by the 813R dashcam video, the most objective and reliable evidence of the events that night. Most notably:

- McDonald did not advance toward Van Dyke after Van Dyke ordered him to “Drop the knife!”

As described in the Summary of Relevant Video Footage, Section III.C.3., by the time Van Dyke and Walsh exited their vehicle, McDonald was walking southwest away from Van Dyke and Walsh, who at all times were east of McDonald. At no time during the encounter between McDonald and Van Dyke and Walsh did McDonald advance toward the two officers. Rather, it was Van Dyke who moved in McDonald's direction as he continued to walk southwest.

- McDonald did not raise his knife across his chest and over his shoulder and point his knife at Van Dyke.

The 813R dashcam video evidences that at no time during the period when Van Dyke and Walsh were outside their vehicle did McDonald raise the knife across his chest and over his shoulder and point the knife at Van Dyke. Seconds prior to the shooting, McDonald moved the knife from his right hip to the right side of his lower back, but this modest movement of the knife was not in the direction of Van Dyke and Walsh—Van Dyke and Walsh were in front of McDonald and to his left, and McDonald moved his knife behind his back, not in front of his body.

- Van Dyke did not backpedal before he fired his handgun at McDonald.

Van Dyke's statement that he backpedaled prior to shooting McDonald is clearly refuted by the 813R dashcam video and the Dunkin' Donuts security camera video, which show that Van Dyke takes approximately three steps northwest/west toward McDonald before shooting him. At no time does Van Dyke move in a way that increases the distance between himself and McDonald.

Rather, the video shows he either stayed still or moved toward McDonald.

- McDonald did not attempt to get up after he was shot and fell to the ground.

The 813R dashcam video reveals that McDonald did not attempt to get up after he fell to the ground. Upon being shot and falling to the street, McDonald never moved his legs or lower body. In addition, the video only shows McDonald's upper body making small, intermittent movements as what appears to be puffs of smoke rise from his body. Those small movements are not suggestive of a person trying to get to his feet. Accordingly, Van Dyke's statement that McDonald attempted to get up after he was shot is demonstrably false.

- McDonald was not attacking Van Dyke with the knife and attempting to kill Van Dyke.

For the reasons stated above, the objective evidence presented in the video cannot be squared with Van Dyke's claim that McDonald was "attacking Van Dyke with a knife" and "attempting to kill" him.

In addition, Van Dyke made multiple material omissions in his statement to March, reinforcing the false narrative he provided to March. In particular, Van Dyke failed to state that McDonald was walking away from him prior to the shooting and that he and Walsh moved toward McDonald prior to the shooting.

2. October 22, 2014 False Statements to IPRA

During his IPRA interview, Van Dyke again put forth a false narrative of the McDonald shooting that exaggerated the threat McDonald posed. Most notably:

- McDonald was not waving the knife in an upward fashion at chest level as he was going south on Pulaski.

As described in the Summary of Relevant Video Footage, Section III.C.3., seconds prior to the shooting, McDonald moved the knife from his right hip to the right side of his lower back—Van Dyke and Walsh were in front of McDonald and to his left, and McDonald moved his knife behind his back, not in front of his body. McDonald was not "waving the knife" "in an upward fashion" at "chest level."

- Van Dyke did not backpedal as McDonald was closing the distance between Van Dyke and McDonald, and he did not move backwards as he shot McDonald.

The video shows that McDonald was walking in a southwest direction away from Van Dyke and Walsh, and therefore was not "closing the distance" between himself and the officers. Van Dyke reiterated several times in his IPRA interview that he "backpedaled" prior to shooting McDonald. However, the 813R dashcam video shows Van Dyke take approximately three steps toward McDonald before Van Dyke shot him.

Finally, Van Dyke failed to tell IPRA that McDonald was walking away from him prior to the shooting and that it was Van Dyke and Walsh who approached McDonald. Van Dyke's repetition of his previous false statements to CPD demonstrates the deliberate nature of Van Dyke's testimony.

3. False Statements in Van Dyke's TRR and OBR

Van Dyke also asserted his false narrative of the McDonald shooting in the official CPD reports he submitted regarding his encounter with McDonald. In his TRR, Van Dyke claimed that McDonald (1) used force likely to cause death or great bodily harm to Van Dyke; (2) attacked Van Dyke with a weapon; and (3) created an imminent threat of battery. As outlined above, however, McDonald, while in Van Dyke's presence, never swung his knife in a manner to cause death or great bodily harm to Van Dyke. In addition, McDonald was never close enough to Van Dyke to stab him and, in fact, was walking away from Van Dyke during the vast majority of their encounter. Thus, Van Dyke's TRR constitutes a false report and represents an additional attempt by Van Dyke to exaggerate the threat posed by McDonald.

Notably, all of Van Dyke's false statements served to materially exaggerate the danger McDonald posed to Van Dyke and Walsh. In this context, Van Dyke's statements can be seen as a deliberate attempt to establish the false narrative that a back-pedaling Van Dyke shot an onrushing McDonald in response to McDonald's potentially deadly knife attack. 813R's dashcam video puts a lie to Van Dyke's narrative and proves it has little basis in reality.

B. Failure to Comply with Special Order S03-05

Van Dyke also violated Rule 6 (disobedience of an order, namely Special Order S03-05) and Rule 11 (incompetency in the performance of a duty) by failing to audibly record events with his in-car video system and failing to notify his supervisor about the system's inoperability. Special Order S03-05 required Van Dyke, as a sworn member assigned to a vehicle equipped with an in-car video system, to audibly record events with 845R's in-car video system during his tour of duty on October 20, 2014, and to notify his supervisor if the system was inoperable or damaged, or the audio recorder was missing.

Becvar, who recovered the video from 845R's in-car video system, found that the system's charging cradles were disconnected from their power source and that the video was out of focus due to a loose cable connection. In addition, 845R's dashcam video reflects that Van Dyke and Walsh did not connect their microphones to 845R's in-car video system because there is no "M1" or "M2" symbol visible at the top of the video footage from October 20, 2014, as there would have been if the microphones were connected. If Van Dyke had properly followed the pre-tour of duty in-car video system protocols, he would have identified all these issues. Thus, Van Dyke failed to follow the in-car video system procedures set forth in S03-05 on October 20, 2014.

C. Failure to Cooperate with OIG's Investigation

Van Dyke violated CPD Rule 51, Rule 6, General Order G08-01-02, and the City of Chicago Municipal Code by refusing to answer questions posed by OIG during his properly noticed April 7, 2016 interview and by making clear he would refuse to answer any questions after receiving his June 3, 2016 notice. On April 7, Van Dyke violated a direct order from his superior, Commander Deenihan, and asserted that he could not be compelled to give a statement based on his Fifth Amendment rights and also referenced a Decorum Order in his current pending criminal case. In emails dated between June 8 and June 16, 2016, Van Dyke's attorney reiterated that Van Dyke would not appear without a modification to the Decorum Order. Well-established case law demonstrates that Van Dyke's claim that he should have been provided constitutional rights concerning self-incrimination prior to his administrative interview is without merit. Further, his argument that Judge Gaughan's Decorum Order prevents him from providing information in a confidential OIG investigation is unfounded.

On April 7, 2016, when Van Dyke appeared for his properly-noticed interview, he refused to answer OIG's questions, despite a superior's order to do so, stating he was invoking his Fifth Amendment right against self-incrimination. Van Dyke persisted in his refusal even after being presented with OIG advisements stating that any statements made by him during the OIG interview and the fruits thereof could not be used against him in a criminal proceeding.

United States Supreme Court case law makes clear that a government employer can compel an employee's statement so long as the employee is granted immunity from the use of such testimony at subsequent criminal proceedings. Most notably, in *Garrity v. New Jersey*, 385 U.S. 493 (1967), the Supreme Court held that statements made by government employees under a coercive threat of employment discipline for non-cooperation cannot be used in criminal proceedings against the employee, because those statements are considered to have been compelled. *Garrity*, 385 U.S. at 500. However, an employee may be compelled to testify in a disciplinary proceeding if he is granted immunity from the use of such testimony at subsequent criminal proceedings. See *In re March*, 71 Ill. 2d 382, 400 (1978); see also *Lefkowitz v. Cunningham*, 431 U.S. 801, 806 (1977) (Given "the important public interest in securing from public employees an accounting of their public trust[,] [p]ublic employees may constitutionally be discharged for refusing to answer potentially incriminating questions concerning their official duties if they have not been required to surrender their constitutional immunity.").

In the present case, OIG's advisement to Van Dyke clearly stated that OIG's investigation was administrative and that any statements made by him during the interview could not be used against him in a criminal proceeding. Thus, under *Garrity* and its progeny, OIG was not required to advise Van Dyke of his right to remain silent because Van Dyke had no such right. Once OIG informed Van Dyke that his testimony could not be used against him at a subsequent criminal proceeding, Van Dyke, under the law, was obligated to answer OIG's questions. Accordingly, Van Dyke's refusal to answer OIG's questions, in violation of a superior's direct order, constitutes grounds for his discharge.

Additionally, Judge Gaughan's Decorum Order did not bar Van Dyke from answering the

questions OIG posed as part of its confidential administrative investigation. It is clear that Judge Gaughan entered his Decorum Order to shield the jury from public statements that could affect the fairness of the trial and did not mean to bar an employer—here, the City of Chicago—from conducting a confidential investigation into the alleged misconduct of a public employee. Thus, the Decorum Order does not apply to entities conducting confidential investigations such as OIG, and does not seek to limit Van Dyke’s statements in this context.

Accordingly, Van Dyke had no legitimate basis for refusing to answer OIG’s questions in his April 7, 2016 interview and in response to the June 3, 2016 notice. This failure serves as an additional basis for his discharge.

VI. RECOMMENDATION

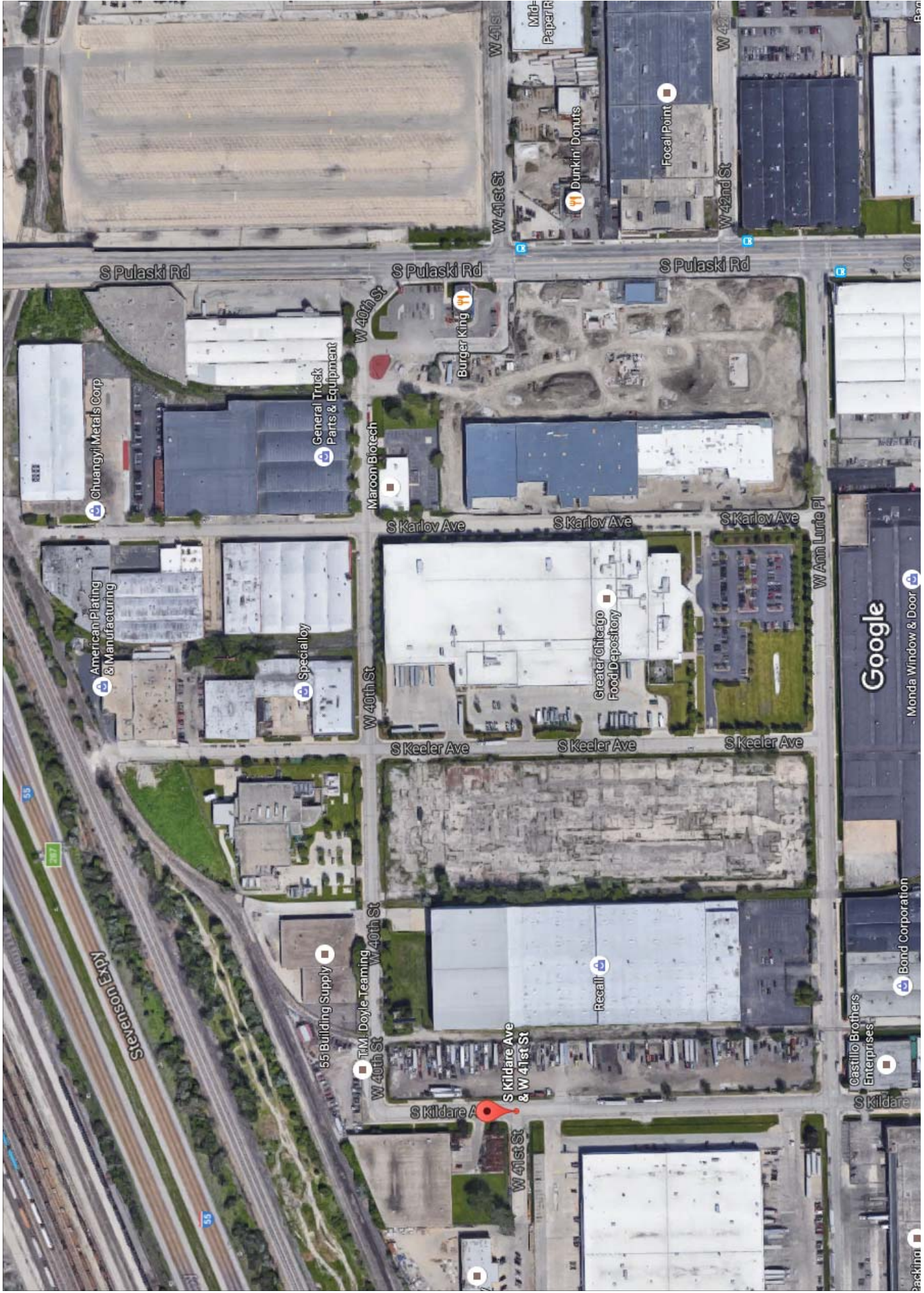
Van Dyke’s false statements and material omissions raise significant concerns regarding his credibility and ability to perform his duties as a sworn officer. As a sworn officer, Van Dyke’s reports are relied upon in criminal legal proceedings and his credibility is therefore critical to his position. An officer who has made false statements in an official investigation has irrevocably tainted his credibility and has wholly disqualified himself from effectively executing core police functions. Based on this conduct he may be the subject of cross-examination in any contested proceedings in which he may appear as a witness, *see* FED. R. EVID. 608(b) (“Specific instances of conduct”), and his conduct and the findings resulting from this investigation would further qualify as impeachment material that should, in principle, be disclosed in any contested proceeding involving the official records or testimony Van Dyke generates. *See Giglio v. United States*, 405 U.S. 150 (1972) (requiring disclosure in criminal case of information impeaching of government witness’s credibility). Illinois courts have repeatedly noted that “as the guardians of our laws, police officers are expected to act with integrity, honesty, and trustworthiness” and have found intentional false or misleading statements by police officers to be sufficient cause for termination. *Rodriguez v. Weis*, 408 Ill. App. 3d 663, 671 (1st Dist. 2011) (quoting *Sindermann v. Civil Service Comm’n*, 275 Ill. App. 3d 917, 928 (2nd Dist. 1995)). OIG therefore recommends that CPD immediately discharge Van Dyke and refer him for placement on the ineligible for rehire list maintained by the Department of Human Resources.

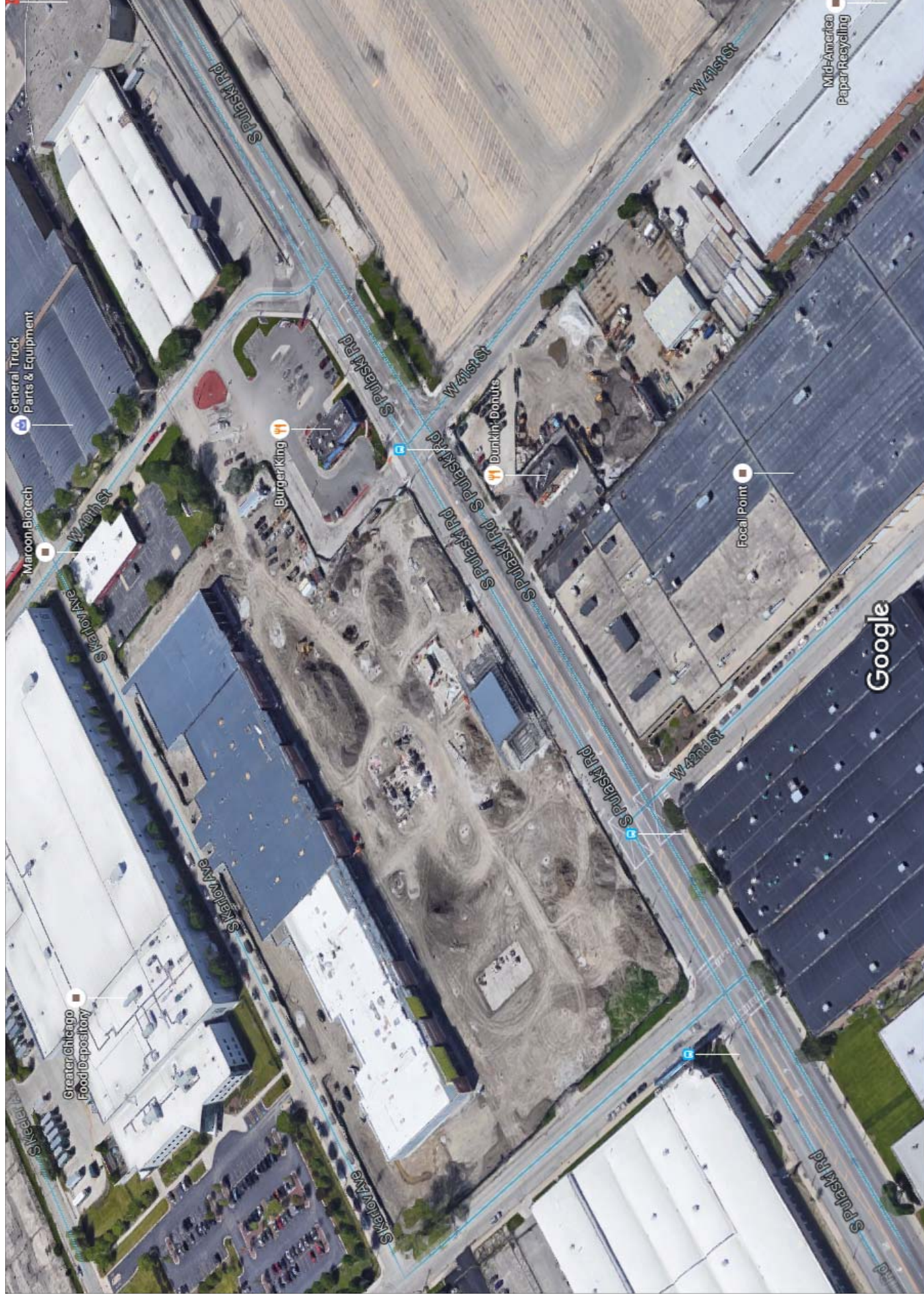
VII. CPD RULE VIOLATIONS

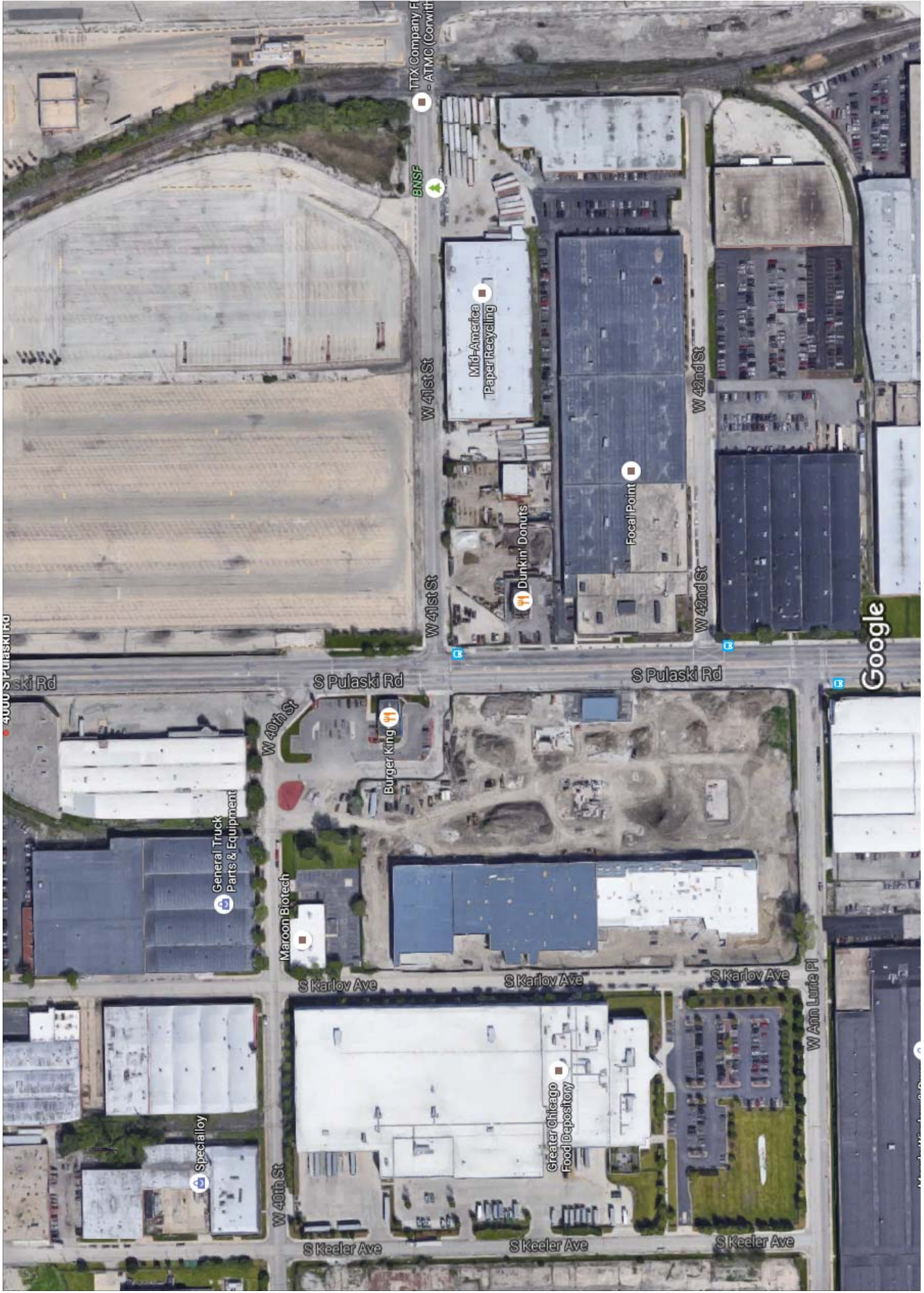
- Rule 2** Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 3** Any failure to promote the Department’s efforts to implement its policy or accomplish its goals.
- Rule 6** Disobedience of an order or directive, whether written or oral.
- Rule 11** Incompetency or inefficiency in the performance of duty.
- Rule 14** Making a false report, written or oral.

Rule 51 Failure to testify or give evidence before any grand jury, coroner's inquest or court of law or before any governmental, administrative, or investigative agency (city, state or federal) when properly called upon to do so, and when there is no properly asserted constitutional privilege, or when immunity from prosecution has been granted.

Appendix A







Imagery ©2016 Google, Map data ©2016 Google 200 ft