

SUMMARY REPORT OF INVESTIGATION<sup>1</sup>

## I. EXECUTIVE SUMMARY

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|----------------------------|-------------------------------|
| Date of Incident:          | March 14 <sup>th</sup> , 2012 |
| Time of Incident:          | 8:30 p.m.                     |
| Location of Incident:      | XXXX W. Lake Street           |
| Date of COPA Notification: | March 14 <sup>th</sup> , 2012 |
| Time of COPA Notification: | 9:08 p.m.                     |

On March 14, 2012, at approximately 8:30 p.m., the Office of Emergency Management and Communications (OEMC) received a 911 call of a robbery in progress at Lake Street and XXXX Avenue. Several officers responded to the scene of the robbery and during the course of their police action, a total of five officers discharged their service weapons during three separate rounds of fire against three individuals involved in the robbery and the victim of the robbery. The incident began when Tactical Officers A, Officer B, Officer C, and Officer D, all of them assigned to the 15<sup>th</sup> District, responded to the call and stopped their unmarked Tahoe in front of Liquor Store (Liquor Store) on the southwest corner of Lake and XXXX, believing Liquor Store was the location of the robbery. Upon arriving, an unknown black male standing in front of Liquor Store told the officers that the activity was “Across the street, at the beauty store.” Officer B then drove south on XXXX and parked the Tahoe on the east side of XXXX, just south of a currency exchange located on the southeast corner of the intersection.<sup>2</sup> Officer A exited the front passenger seat of the Tahoe and was the first to approach the beauty store. Officer A did so by walking east along the front of the currency exchange. Officers B, C, and D exited the Tahoe and followed Officer A’s path. As Officer A passed the front of the currency exchange, Subject 3 exited the front door of the beauty supply store and ran east along the front of the daycare center, scaled a fence located at the far east of the strip mall and then ran south through an empty lot. Officer A immediately chased after Subject 3.

### First Round of Gunfire by Officer

Before Officers B, C, and D could join the chase, Subject 1 and Subject 2 exited the beauty supply store and ran in a northeast direction in front of the officers and into the strip mall’s parking lot. As Subject 1 and Subject 2 passed by the officers, Officer B immediately saw that Subject 1

<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

<sup>2</sup> The currency exchange, a beauty supply store, and a daycare center are located within a small strip mall at that location.

was holding a handgun and yelled, “Gun! Gun!” According to the officers, at that moment, Subject 1 turned toward the officers and pointed his gun at them. Officers B, C, and D, whose weapons were already drawn, discharged their firearms multiple times at Subject 1. Subject 1 stumbled, turned and continued to run northeast through the parking lot as the officers repeatedly ordered him to drop his firearm. Subject 1 collapsed just past the northeast corner of the parking lot, near the stairs leading to the Green Line Lake Street CTA platform. Subject 1 sustained multiple gunshot wounds. Subject 2 continued running east on Lake St. as the officers placed Subject 1 into custody. A short time later Subject 2 was found hiding in a nearby backyard; his hands were injured from scaling a barb wire fence.

### **Second Round of Gunfire by Officers**

At about the same time Officer E and Officer F arrived and parked their marked Tahoe facing south on XXXX, near the southeast corner of the intersection. Officers E and F heard gunshots and saw Officers B, C, and D running through the parking lot. As Officers E and F followed Officers B, C, and D, Subject 4, now known to be one of the owners of the beauty supply store, exited the store holding a firearm in his hands. Officers E and F discharged their firearms at Subject 4, who staggered back into the beauty supply store. Subject 4 sustained multiple gunshot wounds. Two firearms were recovered on the sidewalk near the door of the beauty supply store.

### **Third Round of Gunfire by Officers**

After Officers E and F discharged their firearms at Subject 4, Subject 3 scaled the same fence into the original parking lot followed by Officer A. Subject 3 then ran in a northwest direction, toward the intersection of Lake and XXXX. Officer A yelled, “Stop him! Stop him! Get him!” Officer F chased Subject 3 toward the intersection and heard him yell, “I didn’t do nothing!” Officer F saw Subject 3 move his hands under his shirt. Officer F yelled, “Show your hands!” Officer F stated that Subject 3 failed to follow all verbal direction given by him and the other officers. Officer F then discharged his firearm at Subject 3. Subject 3 sustained a gunshot wound to his left thigh.

Subject 1, Subject 3 and Subject 2 were identified and arrested for the robbery of the Beauty Supply Store.

Subject 4 filed a civil suit alleging that he was unarmed at the time he was shot by Chicago Police officers.

## **II. INVOLVED PARTIES**

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|----------------------|--|
| Involved Officer #1: | Officer D, Star #XXX; Employee ID #XXX; Date of Appointment: XX XX, 2001; Police Officer; Unit of Assignment: XXX; DOB: XX XX, 1968; Male; Black.    |
| Involved Officer #2: | Officer B; Star #XXX; Employee ID #XXX; Date of Appointment: XX XX, 2006; Police Officer; Unit of Assignment: XXX; DOB: XX XX, 1978; Male; Hispanic. |
| Involved Officer #3: | Officer C; Star #XXX; Employee ID #XXX; Date of Appointment: XX XX, 2007; Police Officer; Unit of Assignment: XXX; DOB: XX XX, 1979; Male; Hispanic. |
| Involved Officer #4: | Officer E; Star #XXX; Employee ID #XXX; Date of Appointment: XX XX, 2003; Police Officer; Unit of Assignment: XXX; DOB: XX XX, 1969; Male; Hispanic. |
| Involved Officer #5: | Officer F; Star #XXX; Employee ID #XXX; Date of Appointment: XX XX, 2000; Police Officer; Unit of Assignment: XXX; DOB: XX XX, 1964; Male; White.    |
| Subject #1:          | Subject 1; DOB: XX XX, 1988; Male; Black.  |
| Subject #2:          | Subject 3; DOB: XX XX, 1991; Male; Black.  |
| Subject #3:          | Subject 2; DOB: XX XX, 1992; Male; Black.  |
| Subject #4:          | Subject 4; DOB: XX XX, 1979; Male; Asian.  |

**III. ALLEGATIONS**

| <b>Officer</b> | <b>Allegation</b>             | <b>Finding</b> |
|----------------|-------------------------------|----------------|
| Not Applicable | 1. Not Applicable<br>2.<br>3. | Not Applicable |
| Not Applicable | 1. Not Applicable<br>2.       | Not Applicable |

| 3. |

**IV. APPLICABLE RULES AND LAWS**

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Rules

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- 1.
  - 2.
  - 3.

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General Orders

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1. 03-03-03 (Firearms Discharge Incidents Involving Sworn Members)
  - 2.
  - 3.

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Special Orders

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- 1.
  - 2.
  - 3.

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Federal Laws

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- 1.
  - 2.
  - 3.

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State Laws

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- 1.
  - 2.
  - 3.

**V. INVESTIGATION<sup>3</sup>**

**a. Interviews**

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

In a statement to Detective A March 14, 2012, **Subject 1**<sup>4</sup> stated that he agreed to help his friend "XX"<sup>5</sup> and two other unknown male black subjects to rob the beauty supply store. Subject 1 agreed to be the look-out in exchange for a portion of the proceeds. According to Subject 1, he was to remain outside the store while the others went inside to rob it. As he stood waiting for his friends who were inside to conduct the robbery, Subject 1 heard sirens and ran to the front door of the store to warn the others that the police were coming. When Subject 1 reached the door he saw the others already exiting the store. Subject 1 stated that he ran towards Lake Street, where the police shot him.

In a statement to IPRA on October 11, 2012, **Subject 1**<sup>6</sup> stated he was drinking alcohol with Subject 3, Subject 2, and an unknown person when they decided to rob the Beauty Supply Store. Subject 1 stated that he was armed with a handgun. Subject 1 added that either Subject 2 or Subject 3 also had a handgun when they entered the beauty supply store, but he could not remember who. Subject 1 stated that they were in the store for approximately two minutes with two employees (now known as Involved Individual 1 and Subject 4) when the police pulled up outside. According to Subject 1, Subject 3 ran out of the store first after which Subject 1 immediately heard several gunshots. Subject 2 dropped his gun on the floor before running out the front door into the parking lot. According to Subject 1, he intended to retrieve Subject 2's gun from the floor and surrender to the police, but Subject 4 picked it up first. Subject 1 stated that he ran out of the store and the police immediately began shooting at him. Subject 1 stated that he stopped running, dropped his gun to the ground, and raised his hands up. When the police stopped shooting they ran toward him. Subject 1 stated that he then ran east to get away and that he also saw Subject 2 running from the police. As he ran he heard gunshots, felt pain<sup>7</sup> and fell to the ground, realizing he had been shot. Subject 1 stated that, after he fell, he saw Subject 3 running from the store being chased by the police. Subject 1 was taken into custody and transported to the hospital.

In separate statements to Detectives Gillespie and Thompson on March 14, 2012 and to IPRA on October 11, 2012, **Subject 2**<sup>8</sup> stated that, at the time of the incident, he was walking alone through a parking lot near Lake and XXXX when he saw four unknown male subjects wearing bandanas exit a nearby beauty supply store and run toward him. Subject 2 then heard gunshots and saw the police. Subject 2 stated that he ran, scaled a barbed-wire fence, and hid in a car lot for twenty or thirty minutes. Subject 2 stated that the owner of the car lot, who was on the roof of his shop, pointed him out to the police and he was taken into custody. Subject 2 stated that he sustained lacerations to his hands and arms from the barbed-wire fence. Subject 2 denied being in the beauty supply store or attempting to rob it.

**Subject 3**<sup>9</sup> did not cooperate with this investigation.

In a statement to IPRA on March 15, 2012, witness **Khader Aruri**<sup>10</sup> stated that he and his son-in-law, Subject 4, were working in the Beauty Supply Shop when three black males wearing

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<sup>4</sup> Attachment 139.

<sup>5</sup> This person was not identified.

<sup>6</sup> Attachment 116, 117.

<sup>7</sup> This investigation revealed that Subject 1 was most likely shot during the 3<sup>rd</sup> round of gunfire by the officers.

<sup>8</sup> Attachments 111, 112, 139.

<sup>9</sup> Attachments 84, 91, 164.

<sup>10</sup> Attachments 31, 32.

masks<sup>11</sup> robbed the store. Aruri stated two of the three men were armed with handguns. Aruri stated that when the police arrived, Subject 1, Subject 3, and Subject 2 ran out of the store through the front door. Aruri stated that as they exited the store they pointed their guns at the police, and that the police shot at them. Aruri stated that Subject 4 was accidentally shot in his leg when the police were shooting at Subject 1, Subject 3, and Subject 2. Aruri stated that Subject 1, Subject 3, and Subject 2 dropped their guns and ran from the police. One of the guns was dropped inside the store and the other outside the store. Aruri stated that Subject 4 did not pick up either of the guns.

In his deposition in civil case **13-CV-01851** on June 30, 2014, **Khader Aruri**<sup>12</sup> stated that he was near the back of the store when someone grabbed him from behind and forced him to the floor. Aruri stated that the same person pointed a silver handgun at his head. An unknown individual turned off the store's electricity during the robbery. Aruri stated that he never heard any gunshots. Aruri also stated that the only gun he saw was the silver one that the unknown person pointed at him. Aruri stood up when he heard Subject 4 screaming, "Oh, my leg, my leg, my leg!"<sup>13</sup> Aruri went to Subject 4 and saw him lying on the floor near the register. No one else was in the store. Aruri attempted to dial 911 but could not because he was too nervous. Aruri exited the store through the front door and saw police in the parking lot. Aruri asked the officers for help and they called for an ambulance.

In an interview with IPRA on March 15, 2012, witness **Cynthia Holmes**<sup>14</sup> stated that, at the time of the incident, she worked at Seasoned & Salt restaurant<sup>15</sup> which is located at 344 N. XXXX, across the street from where the incident occurred. According to Holmes, she was standing in front of the restaurant when she observed several police officers walking toward the front entrance of the Beauty Supply Store. Holmes saw a black male exit the store and heard the officers yell, "Freeze. Police." Holmes then heard several gunshots. Holmes ran back inside the restaurant, locked the door behind her, and did not witness anything else associated with the incident.

In an interview with IPRA on March 15, 2012, witness **Kamil Wronski**<sup>16</sup> stated that, at the time of the incident, he was at his place of employment, West Wind Express Trucking Company, located at 5125 W. Lake St., when he heard two gunshots outside. Wronski looked out a second-floor window and saw a black male (now known to be Subject 2) running east on Lake Street. Wronski stated that he saw Subject 2 stop near the stairs that lead to the CTA Green Line Stop, then extend his arm toward the intersection of Lake and XXXX. Subject 2 pointed an object toward the intersection and Wronski heard six or seven more gunshots and saw what appeared to be muzzle flashes that reflected off the CTA platform. Subject 2 then took off his hat and shirt, dropped them to the ground, and continued to run east on Lake Street until Wronski lost sight of him. Wronski then went outside, flagged down a police officer, and told him what he saw.

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<sup>11</sup> Now known as Subject 1, Subject 3, and Subject 2.

<sup>12</sup> Attachment 144.

<sup>13</sup> Deposition of Khader Yousif Saiad Aruri, Att. 144, Page 43, Line 2.

<sup>14</sup> Attachment 51, 52, 79.

<sup>15</sup> Seasonn & Salt Restaurant

<sup>16</sup> Attachments 23, 24.

In a statement to detectives on March 14, 2012, Wronski<sup>17</sup> viewed the “show-up”<sup>18</sup> and positively identified Subject 2 as the subject running east on Lake Street from the scene, armed with a handgun and firing the gun westbound on Lake Street, in the direction of the officers near the crime scene.

In a statement to IPRA on March 15, 2012, witness **Luis Torrez**<sup>19</sup> stated that he did not witness the shooting. Torrez witnessed the subsequent arrest of Subject 2.

Attempts to interview **Guillermo Ortega**<sup>20,21</sup> were unsuccessful.

In a statement to Det. J. C. Morales on March 14, 2012, **Subject 4**<sup>22</sup> stated that he and his father in-law, Khader Aruri, were working in the Beauty Supply Store and were helping an unknown customer when three male black subjects (now known to be Subject 1, Subject 3, and Subject 2) wearing bandannas and armed with handguns entered the store and ordered Subject 4 and Aruri to lay on the floor. The offenders then ordered Aruri to turn off the store’s lights, but instead Aruri turned off the power to the entire store. The offenders took the money from the cash register and the money Subject 4 had in the restroom. A few moments later Subject 4 heard sirens and watched as Subject 1, Subject 3, and Subject 2 dropped their weapons to the ground as they ran out of his store. Subject 4 chased after the offenders out of his store and once he reached the sidewalk outside, he observed the police officers shooting at the offenders and him. Subject 4 knew immediately he had been shot and went back inside of his store, where he was handcuffed by an officer. Subject 4 stated that he never handled any of the guns.

In a deposition on June 24, 2014, **Subject 4**<sup>23</sup> stated that he had already closed his shop when an unknown person knocked on the door and asked to purchase barrettes. After purchasing the barrettes, the man ran away and three other men pushed their way into the store and forced Subject 4 to the floor and proceeded to rob the store. Subject 4 stated that two of the three men were armed with handguns. The men demanded that the electricity to the store be turned off, and Subject 4’s father in-law, Aruri, subsequently shut off the power. A short time later one of the men received a call on his cell phone, and the men ran out of the store. Subject 4 stated that the first two men ran out of the store and he never saw them again. As the third man ran towards the front exit Subject 4 grabbed his leg and tripped him. Subject 4 stated that the man fell to the floor but quickly got up and ran out of the store. Subject 4 also stood up and ran after the third man. Subject 4 stated that this man dropped his gun on the sidewalk directly in front of the entrance to the store. Subject 4 picked up the gun to protect himself from the three men and was immediately shot. Subject 4 reported that when he exited the store he neither heard nor saw the police, and thought that the robbers were shooting at him. Subject 4 dropped the gun and retreated into his store. Subject 4 lay on the floor near the register as the police entered the store.

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<sup>17</sup> Attachment 139.

<sup>18</sup> A “show-up” is also known as a lineup or a live lineup.

<sup>19</sup> Attachment 27, 28.

<sup>20</sup> Ortega was identified as a potential witness by Luis Torrez (Att. 28)

<sup>21</sup> Attachments 137, 163.

<sup>22</sup> Attachment 139.

<sup>23</sup> Attachment 145.

**Attempts by IPRA to interview Subject 4<sup>24</sup> were unsuccessful<sup>25</sup>.**

In statements to detectives on March 14, 2012 and to IPRA on 16 March 2012, involved **Officer B<sup>26</sup>** stated that on the night of the incident he and his partners, Officers A, Officer D and Officer C, responded to a burglary-in-progress in a convenience store. They were informed via the radio that males wearing masks just entered the store. An unknown black male subject standing in front of the convenience store pointed to the Beauty Supply across the street. The officers then exited the Tahoe and walked toward the front entrance of the beauty supply store. Officer B stated that Officer A was in the lead, followed by Officer C, Officer D, and then himself. Officer B stated that he could not see inside the store because the interior lights were not on. As they approached the front door, a male now known to be Subject 1 exited the store and immediately ran east in front of the stores. Officer B stated that he was unable to see Subject 1's hands, and explained that he only saw Subject 1's back. Officer A immediately chased Subject 1 east along the front of the stores. Before Officers B, D, and C could chase after Subject 1, two males now known to be Subject 3 and Subject 2 abruptly exited the store. Officer B stated that Officers D and C chased Subject 3 and Subject 2 northeast toward Lake Street. Officer B then saw the door to the beauty supply store open and a fourth male subject, now known to be Subject 4, exited the store. Officer B saw Subject 4 pointing a handgun with both hands as he exited the store. Officer B immediately drew his firearm, backed away and identified himself as a police officer while ordering Subject 4 to drop his gun. Officer B stated that when Subject 4 did not comply with his orders to drop the gun, he discharged his firearm several times at Subject 4. Officer B lost sight of Subject 4 after Subject 4 fell backwards inside the store and the door closed. Officer B stated that he also heard several other gunshots at the same time, but did not know from where they originated. While still in the beauty supply store's parking lot Officer B then saw Subject 1 scale a nearby fence and run in front of Officer B in the parking lot. Officer B saw other officers take Subject 1 into custody. Officer B also saw that Officers D and C had another offender in custody near the northeast corner of the parking lot. Officer B remained near the front door of the beauty supply store. Officer B stated that another male subject exited the store yelling at them, but initially Officer B could not understand what he said. Officers B and A entered the store and spoke with Subject 4, who told the officers that he was the owner, or an employee, of the beauty supply store. Officer A handcuffed Subject 4 and an ambulance was requested. Officer B stated that Subject 4's gun was lying on the pavement outside the front door of the beauty supply store. Officer B also stated that he saw a blue-steel, semi-automatic handgun lying on the pavement near Subject 4's handgun. Officer B did not know where the second handgun came from. Officer B stated that he never saw Subject 1, Subject 3, or Subject 2 holding guns. Officer B also stated that he never saw any of the other officers discharge their firearms.

In statements to detectives on March 14, 2012 and to IPRA on March 15, 2012, witness **Officer A<sup>27</sup>** stated that, as he and his partners, Officers B, C, and D, approached the front door of the beauty supply store he held his gun in his right hand and his flashlight in his left. Officer A stated that he was approximately fifteen feet away when the store's front door opened and a male now known to be Subject 1 ran out of the store and east on the walkway in front of the stores. Officer A immediately chased Subject 1 east in front of the stores and then south through a vacant

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<sup>24</sup> Attachments 74-75, 87-90, 130-135.

<sup>25</sup> Letters were sent to, and telephone conversations were had with, both of Subject 4's attorneys (David Petrich and Justin London).

<sup>26</sup> Attachments 45, 46, 139.

<sup>27</sup> Attachments 37, 38, 139.

lot. Subject 1 scaled a fence and ran north through a playground with Officer A chasing him. Officer A followed Subject 1 as he scaled a second fence and ran north through the beauty supply store's parking lot. Officer A explained that when he scaled the second fence he saw other officers taking Subject 1 into custody in the intersection of Lake and XXXX Avenues. Officer A saw Officer B near the front door of the beauty supply store speaking with a male subject who spoke a foreign language. Officer A approached the front door and saw two handguns on the ground near the front door. Officers A and B entered the store and discovered a male now known to be Subject 4 had been shot. Officer B told Officer A that Subject 4 had a revolver. Officer A stated that during the foot chase he repeatedly identified himself as a police officer and ordered Subject 1 to stop. Officer A also stated that during the foot chase he heard multiple gunshots, but he never saw who was shooting.

In statements to detectives on March 14, 2012 and to IPRA on March 16, 2012, involved **Officer D**<sup>28</sup> related essentially the same information as Officers B and A. Officer D stated that he and Officers A, C, and B approached the front door of the Beauty Supply Store. Officer A shined his flashlight at the front door, which unexpectedly opened and a male, now known to be Subject 3, ran out of the store and east on the sidewalk. Officer A immediately chased Subject 3. Officer D stated that the front door opened again and two males now known to be Subject 1 and Subject 2 exited the store through the front door and ran northwest across the parking lot towards the intersection of Lake and XXXX. Officer D believed he saw Subject 1 holding a firearm when he exited the store. Officer D stated that he chased Subject 1 and Subject 2, during which he saw Subject 1 extend his arm and point an object at Officer C. Believing Subject 1 was pointing a gun at Officer C, Officer D discharged his firearm at Subject 1. Subject 1 ran several more steps and then fell to the pavement. Officer D stated that he immediately handcuffed Subject 1. Officer D heard other officers requesting ambulances. Officer D stated that he never saw Subject 3 or Subject 2 again because he remained focused on Subject 1. Officer D also never saw Subject 4 exit the beauty store.

In statements to detectives on March 14, 2012 and to IPRA on March 17, 2012, involved **Officer C**<sup>29,30</sup> related essentially the same information as his partners, Officers B, A, and D. Officer C stated that he and his partners approached the front door to the Beauty Supply Store, when a male now known to be Subject 3 exited through the front door and ran east on the sidewalk in front of the stores. Officer C then saw two males now known to be Subject 1 and Subject 2 exit the store. Officer C stated that he saw Subject 1 point a handgun at him, and in response he and Officer D discharged their firearms at him. Subject 1 continued to run towards Lake Street with the officers chasing him and subsequently stumbled to the pavement. Officer D handcuffed Subject 1 and Officer C searched him but did not find the gun. Officer C retraced their path and found the gun on the ground in the parking lot approximately ten feet from the front door of the beauty supply store. Officer C saw other officers take Subject 3 into custody a few moments after Officer D handcuffed Subject 1.

In statements to detectives on March 14, 2012 and to IPRA on March 16, 2012, involved

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<sup>28</sup> Attachments 39, 40, 139.

<sup>29</sup> PO C did not know the offenders by name. PO C identified each offender by the offenders' clothing, and subsequently misidentified the offenders in his statement. The offenders were correctly identified by additional evidence.

<sup>30</sup> Attachments 41, 42, 139.

**Officer F**<sup>31</sup> stated that on the night of the incident he and his partner, Officer E, responded to the burglary call at the Beauty Supply Store. Officer F stated that as they approached in their vehicle he saw the tactical officers (now known to be Officers B, A, D, and C) exit their Tahoe and run towards the front of the beauty supply store. Officers F and E exited their vehicle and were near the bus shelter on Lake Street when Officer F heard gunshots. Officer F stated that he saw an individual (now known to be Subject 4) standing on the sidewalk in front of the door of the beauty supply store. Officer F stated that Subject 4 was pointing a silver handgun at him and Officer E. Officer F heard Officer E repeatedly order Subject 4 to drop his gun but Subject 4 refused to comply. Officer F stated that he and the other officers<sup>32</sup> discharged their firearms at Subject 4. Officer F was not sure where any of the other officers were at this time because he was focused on Subject 4 and Officer E. Subject 4 fell to the sidewalk and Officer E approached him. Officer F then saw a male black subject, now known as Subject 3, running through the parking lot. Officer F chased Subject 3 and was about ten or fifteen feet behind him when he saw Subject 3 reach toward the front of his waistband with his hands. Subject 3 then extended his left arm at Officer F, who feared Subject 3 was about to shoot him. Officer F discharged his firearm at Subject 3. Subject 3 continued to run for several more feet before he lay on the street with his hands extended. Subject 3 was then handcuffed and taken into custody. Officer F radioed for an ambulance and made notification of shots fired.

In statements to detectives on March 14, 2012 and to IPRA on March 16, 2012, involved **Officer E**<sup>33</sup> stated that he saw Officers B, A, C, and D, exit their vehicle and approach the beauty supply store. Officer E stated that as he exited his squad car he saw several male subjects running from the front of the beauty supply store. Officer E stated that the male subjects ran in several different directions. Officer E then heard a gunshot and ran towards the bus shelter on Lake Street. Officer E did not know where that gunshot originated from. Officer E then saw a heavysset male subject, now known to be Subject 4, exit the beauty supply store holding a chrome handgun. Officer E saw Subject 4 point his gun at one of the plainclothes officers. Officer E ordered Subject 4 to drop his gun but he failed to comply. Officer E then discharged his firearm several times at Subject 4, who fell to the ground and made his way back into the store. Officer E approached the front door of the store when he saw a male black subject scale a gate and run past him. Officer E then heard a gunshot and immediately attempted to determine Officer F's location. Officer E saw several officers on XXXX Avenue placing a male subject into custody. Officer E went back to the beauty supply store and went inside where the owner told him he needed an ambulance. Officer E then radioed for an ambulance. Officer E stated that he saw two handguns on the ground near the front door of the store. One of the guns was Subject 4's. Officer E did not know where the second gun came from.

In a statement to IPRA on March 15, 2012, witness **Officer David Milligan**<sup>34</sup> stated that at the time of the incident he and his partner, Officer Michael Holmes, responded to a Burglary in Progress call at the Beauty Supply Store. Upon arrival Officer Milligan immediately saw Officers F and E running across XXXX Avenue. Officer Milligan stated that he then heard approximately twenty gunshots. Officers Milligan and Holmes exited their marked squad car and ran to the southeast corner of Lake and XXXX to assist Officers F and E. Officer Milligan then saw Subject 3 run northwest through the parking lot from the front of the beauty supply store. Officer Milligan

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<sup>31</sup> Attachments 43, 44, 139.

<sup>32</sup> Officer F explained that he did not know the names of the other officers.

<sup>33</sup> Attachments 48, 139.

<sup>34</sup> Attachments 33, 34.

also saw tactical officers in the parking lot. Officer Milligan ordered Subject 3 to stop but he failed to comply. Officers Milligan, Holmes and F chased Subject 3 north on XXXX. Officer Milligan saw Subject 3 move his hand to the front of his waistband, and then suddenly extend his arm toward Officer F. Officer Milligan could not tell if Subject 3 was holding anything in his hand when he extended his arm toward Officer F. Officer F then discharged his firearm at Subject 3. Subject 3 took two or three more steps before falling to the ground. Officer Milligan saw what appeared to be blood on Subject 3's upper left thigh. Officer Milligan said he did not discharge his firearm at Subject 3 because he did not want to risk striking Officer F, who was in his line of fire.

In a statement to IPRA on March 15, 2012, witness **Officer Michael Holmes**<sup>35</sup> related essentially the same information as his partner, Officer Milligan. Officer Holmes stated that as he exited his squad car he saw Officers F and E exiting their squad car. As Officer Holmes exited his squad car he heard multiple gunshots, but did not know who was shooting. Officer Holmes stated that he ran east to the currency exchange. When Officer Holmes got to the corner of the building he saw Subject 3 standing in front of the door to the beauty supply store. Officer Holmes heard other officers order Subject 3 to get down on the ground, but Subject 3 ran northwest through the parking lot. Officer Holmes chased Subject 3 to the intersection of Lake and XXXX Avenues. As he ran, Subject 3 moved his hands first to his waistband, and then fully extended his left arm to his left. Officer Holmes stated he could not tell if Subject 3 held anything in his left hand. Officer Holmes then heard a gunshot and looked to his left and saw Officer F holding his firearm in his hands. Officer Holmes stated that although he did not see which officer discharged a firearm, it appeared that Officer F fired his weapon. Officer Holmes stated that Subject 3 fell to the ground. Officer Holmes then handcuffed Subject 3 and saw that Subject 3 was bleeding from one of his thighs. Officer Holmes stated that he only focused on Subject 3, and never saw Subject 1 or Subject 2 during the incident. Officer Holmes also stated that he never discharged his firearm.

#### **b. Digital Evidence**

The **Police Observation Devices**<sup>36</sup> (PODs) recordings from PODs #400 and #307 showed several police vehicles and ambulances arrive at the location of incident. The PODs did not record any further portion of the incident relative to this investigation.

The recording from the **Chicago Transit Authority's Green Line Security Camera**<sup>37</sup>, located on XXXX Avenue in a fixed position pointed north towards Lake Street, showed that on March 14, 2012, at approximately 2033 hours and 50 seconds, a crowd of people are walking northbound on XXXX. Once they approach the northeast corner of Lake St. and XXXX Ave., the crowd runs northbound on XXXX. At approximately 2034 hours and 20 seconds, a black male subject (now known to be Subject 3) runs northwest through the intersection followed by five police officers. During the chase, Subject 3 appears to look back at the officers while running. One of the officers, with his weapon in hand and arm extended towards Subject 3, appears to shoot at Subject 3, as the chasing officers slow to a stop. Two officers involved in the chase turn around and run in the opposite direction. The remainder of the recording depicts numerous CPD and CFD vehicles arriving at the location of incident. The camera's view is partially obstructed by a support

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<sup>35</sup> Attachments 35, 36.

<sup>36</sup> Attachments 63, 64, 65.

<sup>37</sup> Attachment 105, 106.

pillar for the CTA Green Line platform.

The **Office of Emergency Management and Communications Event Queries**<sup>38</sup> stated that on March 14, 2012, at 2032 hours, an unidentified person called 911 and reported that three male subjects, at least one subject armed with a gun, wearing baseball caps and masks, pushed their way into a convenience store. The caller also stated that there could also be a fourth subject still outside the store.

### c. Physical Evidence

A laboratory report from the **Illinois State Police (ISP) Division of Forensic Services (RD# HV197-819)**<sup>39</sup> dated July 25, 2012, indicated that Officer E' Smith & Wesson, 9mm semiautomatic handgun was examined and found to be in firing condition. Officer E' firearm was inventoried with one unfired cartridge in the chamber and ten unfired cartridges in the magazine. Two of the recovered fired bullets/bullet fragments and seven of the recovered fired casings were examined and determined to have been fired from Officer E' firearm.

The report also stated that Officer D' Beretta, 9mm semiautomatic handgun was examined and found to be in firing condition. Officer D' handgun was inventoried with one unfired cartridge in the chamber and eleven unfired cartridges in the magazine. Three of the recovered fired casings were examined and determined to have been fired from Officer D' firearm.

Officer B's Sig Sauer, 9mm semiautomatic handgun was examined and found to be in firing condition. Officer B's firearm was inventoried with one unfired cartridge in the chamber and four unfired cartridges in the magazine. Three of the recovered fired bullets/bullet fragments and nine of the recovered fired casings were examined and determined to have been fired from Officer B' firearm.

Officer C' Springfield Armory, .45 caliber, semiautomatic handgun was examined and found to be in firing condition. Officer C' firearm was inventoried with one unfired cartridge in the chamber and two unfired cartridges in the magazine. Four of the recovered fired bullets/bullet fragments and eleven of the recovered fired casings were examined and determined to have been fired from Officer C' firearm.

Officer F's Beretta, 9mm semiautomatic handgun was examined and found to be in firing condition. Officer F's handgun was inventoried with one unfired cartridge in the chamber and eight unfired cartridges in the magazine. One of the recovered fired bullets/bullet fragments and six of the recovered fired casings were examined and determined to have been fired from Officer F's firearm.

The report also stated that the fired bullet recovered from Subject 1's shoulder by Mt. Sinai Hospital medical personnel was examined and found to have been fired from Officer C' firearm. The two fired bullets recovered from Subject 4 were examined and found to have been fired from

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<sup>38</sup> Attachment 17, 19.

<sup>39</sup> Attachment 140, 161-162.

Officers C and E' firearms<sup>40</sup>.

In an **ISP Laboratory Report (RD# HV197-819)**<sup>41</sup> dated October 22, 2013, the Smith & Wesson, 9mm, blue-steel semiautomatic handgun recovered from the sidewalk in front of the Beauty Supply Store was examined and found to be in firing condition. It was inventoried with nine unfired cartridges.

The same ISP report stated that the Rossi, .357 Magnum, chrome revolver recovered from the sidewalk in front of the Beauty Supply Store was examined and found to be in firing condition. The revolver was inventoried with three unfired cartridges in its cylinder.

In an **ISP Laboratory Report**<sup>42</sup> dated July 06, 2012, the results of the gunshot residue tests indicated that Subject 3, Subject 2, and Subject 4, may not have discharged a firearm. If they did discharge a firearm, then the particles were removed by activity, were not deposited, or were not detected by the procedure.

In an **ISP Laboratory Report**<sup>43</sup> dated March 28, 2013, examination of the firearms and live cartridges recovered from the sidewalk in front of the Beauty Supply Store revealed no latent prints suitable for comparison.

**Evidence Technician Photographs**<sup>44</sup> depicted the location of incident. Multiple expended casings were photographed scattered on the ground. A chrome revolver and a dark colored semi-automatic pistol were on the sidewalk in front of the Beauty Supply Store. The photographs also depicted Subject 1, Subject 3, and Subject 2 on hospital gurneys.

The **Platt**<sup>45</sup> prepared by CPD Forensic Investigator and Evidence Technicians documented that the two recovered firearms were found on the sidewalk near the front door of the Beauty Supply Store. One of the firearms was found 5 feet, 6 inches north of the building and the other was 4 feet, 6 inches north of the same building. The firearms were found within 1 foot of each other on the ground.

The **Chicago Fire Department's Ambulance Report for Subject 1**<sup>46</sup> stated that on March 14, 2012, at 2036 hours, Ambulance #52 was dispatched to 5199 W. Lake Street. Ambulance #52 arrived at 2044 hours and found Subject 1 with gunshot wounds to his right flank, right shoulder, upper left leg, and his back. Subject 1 was transported to Mt. Sinai Hospital.

**Medical Records from Mt. Sinai Hospital**<sup>47</sup> stated that Subject 1 sustained gunshot wounds to his right shoulder, the right side of his chest, and his left side. Subject 1 also sustained

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<sup>40</sup> Based on the Crime Scene Processing Report's narrative, it was unclear where two fired bullets (Inventory #s 12562680 and 112562677) were recovered. Sgt. Thomas Pierce was the Evidence Technician assigned to Mt. Sinai Hospital. He did not recall recovering or inventorying any evidence at Mt. Sinai on the night of this incident. (Atts. 128, 158-159)

<sup>41</sup> Attachment 141.

<sup>42</sup> Attachment 142.

<sup>43</sup> Attachment 143.

<sup>44</sup> Attachments 54-62.

<sup>45</sup> Attachment 157.

<sup>46</sup> Attachment 80.

<sup>47</sup> Attachment 102.

a fractured right clavicle and a fractured right scapula. A bullet was lodged in his right shoulder which was recovered by hospital personnel and turned over to the CPD.

The **Chicago Fire Department's Ambulance Report for Subject 3<sup>48</sup>** stated that on March 14, 2012, at 2042 hours, Ambulance #15 was dispatched to 5199 W. Lake Street regarding a gunshot victim. Ambulance #15 arrived at 2044 hours and found Subject 3 handcuffed and prone on the street with a gunshot wound to his upper left leg. Subject 3 was transported to Stroger Hospital.

**Medical Records obtained from Stroger Hospital<sup>49</sup>** stated that Subject 3 sustained a gunshot wound to his left thigh and superficial abrasions to his legs. The fired bullet and bullet fragments were lodged in Subject 3's left thigh.

The **Chicago Fire Department's Ambulance Report for Subject 2<sup>50</sup>** stated that on March 14, 2012, at 2116 hours, Ambulance #29 was dispatched to 5124 W. Lake Street regarding a gunshot victim. Ambulance #29 arrived at the location at 2126 hours and found Subject 2 with multiple small lacerations to his right and left thighs, the palms of his hands, and to his right elbow. It was noted that Subject 2 fled the scene and scaled a barb-wired fence. Subject 2 was transported to Stroger Hospital.

**Medical Records from Cook County Hospital<sup>51</sup>** stated that Subject 2 sustained lacerations on his right hand and fingers, left thigh, right elbow, and his abdomen. The records indicated that Subject 2 sustained his injuries by running through barbed wire.

The **Chicago Fire Department's Ambulance Report for Subject 4<sup>52</sup>** stated that on March 14, 2012, at 2042 hours, Ambulance #23 was dispatched to 5199 W. Lake Street regarding a gunshot victim. Ambulance #23 arrived at the location at 2043 hours and found Subject 4 with gunshot wounds to his upper right leg, his upper and lower left leg, his right arm, and his upper and lower left arm. Ambulance #23 transported Subject 4 to Mt. Sinai Hospital.

**Medical Records from Mt. Sinai Hospital<sup>53</sup>** stated that Subject 4 sustained multiple gunshot wounds to both arms and thighs and a fractured left femur. Bullet fragments surrounded the fractured left femur and right shoulder.

#### **d. Documentary Evidence**

Subject 1, Subject 3, and Subject 2 were identified as the offenders that robbed the Beauty Supply Store. Subject 3 was charged with six counts of attempted murder<sup>54</sup>.

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<sup>48</sup> Attachment 81.

<sup>49</sup> Attachment 103.

<sup>50</sup> Attachment 82.

<sup>51</sup> Attachment 104.

<sup>52</sup> Attachment 83.

<sup>53</sup> Attachment 101.

<sup>54</sup> Attachments 4-9, 123-127, 139.

The related **Department Reports**<sup>55</sup> were consistent with the narrative in the Summary of Incident section of this Report.

**Officer F's Tactical Response Report**<sup>56</sup> stated that he discharged his firearm five times at Subject 3. The report documented that Subject 3 was armed with an apparent handgun. It was determined and subsequently noted in the same report that Subject 3 was unarmed at the time of the incident.

**Officer D' Tactical Response Report**<sup>57</sup> stated that he discharged his firearm six times at Subject 1 because Subject 1 pointed a handgun at Officer D. The report also documented that Subject 1 was determined to have been armed with a semi-automatic handgun.

**Officer E' Tactical Response Report**<sup>58</sup> stated that he discharged his firearm six times at Subject 4 because Subject 4 was armed with a revolver.

**Officer B' Tactical Response Report**<sup>59</sup> stated that he discharged his firearm four times at Subject 4 because Subject 4 pointed a revolver handgun at him.

**Officer C' Tactical Response Report**<sup>60</sup> stated that he discharged his firearm eight times at an unknown subject because the unknown subject was armed with a semi-automatic firearm. The narrative of the report stated that the unknown subject pointed a blue steel, semi-automatic firearm at him. Fearing for his life, Officer C discharged his firearm, striking the unknown offender.

#### e. Additional Evidence

According to the complaint filed in **civil suit 13-CV-01851**<sup>61</sup>, which listed Subject 4 as the Plaintiff, stated that Subject 1, Subject 3, and Subject 2, panicked during the robbery when they heard the police arrive and ran out of the store. The narrative continued that Subject 4 saw one of the offenders drop a handgun to the floor inside the store. Subject 4 then followed the offenders outside where he saw a gun on the ground outside the store. Fearing the offenders may return and harm him, Subject 4 picked up the gun for protection and stood in the doorway of the store. Subject 4 saw the police and threw the gun to the ground. Subject 4 alleged he was shot by the police after he threw the gun away. The complaint stated that Subject 4 never pointed the gun at anyone. The narrative continued that Subject 4 never saw any of the offenders point guns at the officers, adding that the offenders threw their guns down and then ran away.

## VI. ANALYSIS

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<sup>55</sup> Attachments 4-10, 53.

<sup>56</sup> Attachment 118.

<sup>57</sup> Attachment 119.

<sup>58</sup> Attachment 120.

<sup>59</sup> Attachment 121.

<sup>60</sup> Attachment 122.

<sup>61</sup> Attachment 138.

A Chicago Police Officer's use of deadly force is governed by: Chicago Police Department's Policy regarding the use of deadly force, Illinois state statutory law, and applicable standards within the United States Constitution. Based on the totality of the circumstances, the involved officers were in compliance with Chicago Police Department policy in using deadly force because it was reasonable for them to believe that they were in imminent danger of death or great bodily harm, given they had arrived on the scene of an armed robbery and were confronted with multiple subject pointing firearms at them.

## A. Applicable Rules and Law

### 1. Chicago Police Department General Order

According to the Chicago Police Department's General Order 02-08-03, Section III, A: A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or:
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm;
  - b. is attempting to escape by use of a dead weapon or;
  - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

### 2. Illinois and United States Case Law

An officer's use of deadly force is a seizure within the meaning of the Fourth Amendment. When applying the Constitutional standard to a Fourth Amendment analysis, the question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them. Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). Consequently, "when an officer believes that a suspect's actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force." *Muhammed v. City of Chicago*, 316 F.3d 380,

383 (7th Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (*en banc*) (omitting emphasis)). Finally, the analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020; see also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003).

### 3. Illinois Statutory Law

Chicago Police officers are bound by the legal standard in Illinois regarding the use of deadly force, as codified in Illinois State Statute 720 ILCS 5/7-5. The pertinent portion of the statute states that:

...a peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person...

### B. Analysis of the Actions of the Involved Officers

In this case, based on the totality of the circumstances, COPA finds that the involved officers' use of deadly force was within policy. Based on the available evidence, including witness statements, video evidence, and forensic evidence, COPA finds that officers arrived on the scene of an armed robbery to find multiple subjects with handguns who were not complying with lawful orders to drop the weapons. In response, the officers deployed deadly force.

Two of the subjects claimed that they had not done anything to cause the officers to fire at them, but COPA has determined that the subjects gave conflicting accounts of the incident. In his statement to IPRA, Subject 1 stated that he helped Subject 3 and Subject 2 rob the beauty supply store. Subject 1 also admitted that he and Subject 2 were armed with handguns when they entered the store. Subject 1 further stated that he saw Subject 2 drop his gun to the floor and run out of the store, and that Subject 4 picked it up. Subject 1 stated that he exited the store still holding his handgun, and only dropped it after the police started shooting at him. However, in his statement to detectives eight months earlier, Subject 1 stated that he only acted as a lookout while Subject 3 and Subject 2 robbed the beauty supply store. Subject 1 stated that he never entered the store, and ran away when the police arrived. Additionally, in separate statements to IPRA and detectives, Subject 2 denied participating in the robbery. Subject 2 stated that he was only walking through the parking lot when the police arrived. Subject 2 stated that he ran when he heard gunshots and sustained his lacerations when he attempted to scale a fence topped with barbed wire. In direct contrast to Subject 1's statement to detectives, and both of Subject 2's statements, the security recording from inside the Beauty Supply Store showed Subject 1 and Subject 3 armed with handguns prior to police arrival. Thus, despite the fact that the subjects denied that they had engaged in any activity that would cause the officers to utilize deadly force, COPA finds that the subjects lack credibility.

A third subject, Subject 4, made similar claims but refused to cooperate with IPRA's

investigation. However, he did speak with detectives, during which he stated that although he chased the offenders out of his store, he never picked up a gun. Subject 4 denied handling any of the offenders' dropped guns. But in his deposition two and a half years later, Subject 4 stated that he exited the store after the three offenders, saw a handgun on the sidewalk directly in front of the store's entrance, and picked it up. Subject 4 stated he was then shot, and at the time he did not know who was shooting at him. In contrast, in his civil suit, Subject 4 stated that he followed the offenders out of his store and picked up one of the guns dropped by the offenders because he feared they would return and harm him, but then he dropped it before the police shot him. Subject 4 also stated that none of the offenders posed a threat to any of the police officers because the offenders had already dropped their guns before they fled, but in his civil suit he reported the only reason he picked up one of the offenders' discarded guns was because of the threat the offenders posed to him. As with the inconsistencies with the accounts of Subject 1 and Subject 2, Subject 4's changing version of events undermines his credibility.

Other independent witnesses also supported the statements of the officers. Store employee Khadar Aruri stated that Subject 1, Subject 3, and Subject 2 ran out of the store pointing guns at the police and that the police shot at them. Aruri stated that Subject 4 was accidentally shot at that time. Civilian witness Kamil Wronski was at his workplace when he saw Subject 2 pointing an object toward the police around the same time he heard gunshots and saw muzzle flashes.

While it is notable that none of the subjects actually fired their weapons at the officers, this does not affect the analysis. Courts, in this jurisdiction and across the country, have repeatedly and broadly accepted the notion that officers are not required to wait to act until an armed person actually uses deadly force against the officer. *Montoute v. Carr*, 114 F.3d 181, 185 (11th Cir. 1997) (“ . . . an officer is not required to wait until an armed and dangerous felon has drawn a bead on the officer or others before using deadly force); see also *Leong v. City of Detroit*, 151 F.supp.2d 858 (E.D.Mich. 2001), holding that regardless of whether the suspect actually pointed his gun at the officers, or instead remained with his back turned, he was quite capable of leveling the weapon at an officer or a bystander and inflicting severe injury or death in an instant, and therefore the use of deadly force was permitted; see also *Anderson v. Russell*, 247 F.3d 125 (4th Cir. 2001), holding that an officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action; see also *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007), (“Even if we accept that the threat posed by Long to Deputy Slaton was not immediate in that the cruiser was not moving toward Slaton when shots were fired, the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.”)

Finally, it should be noted that while Subject 4 was shot by the responding officers, he was not part of the group that had committed the armed robbery, and in fact he was one of the victims of the robbery. While this is unfortunate, it does not affect COPA's analysis. When the responding officers arrived on scene, the only information they had was that there had been an armed robbery by multiple suspects. After Subject 1, Subject 2, and Subject 3 exited the store, Subject 4 had picked up a gun dropped by one of the suspects inside the darkened store, and had then proceeded out the door onto the sidewalk, where he was confronted by the police officers. However, the officers had no way to know that Subject 4 was not one of the robbery suspects; all they saw was another male subject emerge from the shop holding a handgun and pointing it in the direction of the officers. Subject 4 then failed to drop the weapon when ordered to do so, and he was subsequently shot by officers. The Seventh Circuit Court of Appeals addressed a similar

situation in *Ford v. Childers*, where they noted that officers may reasonably rely on appearances when assessing potentially dangerous situations, even if those reliances are later determined to be erroneous. In that case, an officer responding to a call of an armed bank robbery arrived to observe a masked individual standing in the bank with his arm extended toward several people whose arms were raised above their heads; the officer later saw the suspect fleeing the bank carrying a bag in his hand. In that case, the court held that even though the officer did not actually see a weapon in the suspect's hand, due to a post obscuring the suspect's hand, "...given the information he possessed at that particular time and the observations he made, Childers reasonably concluded that the suspect was armed and dangerous. ... [A] reasonable belief that danger exists may be formed by a reliance on appearances." *Ford v. Childers*, 855 F.2d 1271, 1275-76 (7th Cir. 1988), citing *Davis v. Freels*, 583 F.2d 337, 341 (7th Cir. 1978). As the court went on to note, "...no right is guaranteed by federal law that one will be free from circumstances where he will be endangered by the misinterpretation of his acts."<sup>62</sup>

In this case, COPA finds that, by a preponderance of the evidence, it is likely that the officers fired their weapons in response to the perceived threat of the subjects pointing their weapons at the officers and ignoring commands to drop their weapons. The involved officers provided consistent and corroborative accounts of the incident, that Subject 1, Subject 3, and Subject 2 entered the Beauty Supply Store, armed with handguns and attempted to rob it. As they exited the darkened store they were armed with handguns. The offenders failed to comply with the officers' commands, and fearing for their safety the officers discharged their firearms. Additionally, Officer C stated that he discharged his firearm at Subject 1 as Subject 1 ran from the store holding, and pointing, a firearm at him, but once Subject 1 was taken into custody it was discovered that he was not armed. Subsequently, Subject 1's firearm was found on the ground in front of the store, indicating that he dropped it as he ran from the store. Officer C stated that he never saw Subject 1 drop his gun, and taking the totality of the circumstances into account; that Subject 1 was part of a group that had just committed a forcible felony, in threatening to use physical force likely to cause death or great bodily harm by using a firearm in the commission of the robbery. Furthermore, Subject 1 was non-compliant with the officers in that he did not surrender or cease his actions, but instead continued his attempt to defeat his arrest by fleeing. The involved officers also stated that Subject 4 was observed standing in the doorway of the store holding a gun when he was subsequently shot by the responding officers.

Therefore, the involved officers' use of deadly force against the subjects was objectively reasonable, and thus, WITHIN the policy of the Chicago Police Department, as well as in compliance with Illinois state statutes and the applicable standards within the United States Constitution.

## VII. CONCLUSION

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<sup>62</sup> *Id.* at 1276, quoting *Sherrod v. Berry*, *supra*, at 805 (internal quotation marks omitted.)

Based on the analysis set forth above, COPA makes the following findings:

| <b>Officer</b> | <b>Allegation</b>             | <b>Finding</b> |
|----------------|-------------------------------|----------------|
| Not Applicable | 1. Not Applicable<br>2.<br>3. | Not Applicable |
| Not Applicable | 1. Not Applicable<br>2.<br>3. | Not Applicable |

Approved:

\_\_\_\_\_  
 Angela Hearts-Glass  
*Deputy Chief Administrator*

\_\_\_\_\_  
 Date

\_\_\_\_\_  
 Sydney Roberts  
*Chief Administrator*

\_\_\_\_\_  
 Date

Appendix A

Assigned Investigative Staff

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|                                   |                            |
|-----------------------------------|----------------------------|
| <b>Squad#:</b>                    | <b>8</b>                   |
| <b>Major Case Specialist</b>      | <b>Brian Killen</b>        |
| <b>Supervising Investigator</b>   | <b>Robert Subject 2man</b> |
| <b>Deputy Chief Administrator</b> | <b>Angela Hearts-Glass</b> |