

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	February 14, 2015
Time of Incident:	12:29 a.m.
Location of Incident:	██████████ ██████████
Date of IPRA Notification:	February 14, 2015
Time of IPRA Notification:	1:34 a.m.

On February 14, 2015, at approximately 12:25 a.m., Officers ██████████ and ██████████ were on patrol, in plain clothes and in an unmarked Chicago Police Department (CPD) vehicle, on the ██████████ block of 73rd Street. The officers observed a white Buick sedan having difficulty parking. As they passed the vehicle, Officer ██████████ ran the Buick’s license plate on the Portable Data Terminal. The scan of the license plate indicated that the vehicle had been reported stolen. Officer ██████████ reversed the CPD vehicle to the left and behind the Buick and activated the emergency lights. The officers exited the vehicle and approached the Buick.

As the officers approached the Buick, the driver, now known to be ██████████ put the Buick in reverse striking a parked Ford Focus. ██████████ then placed the Buick in drive and drove forward toward where the officers had positioned themselves after exiting their vehicle, requiring them to jump out of the way. The Buick struck the open squad car door and a parked Chevrolet Trailblazer. The Buick became stuck on the rear bumper of the Trailblazer.

Officer ██████████ approached the driver’s side of the Buick, while Officers ██████████ and ██████████ approached the passenger side. Officers ██████████ and ██████████ gave verbal commands for ██████████ to show his hands, but ██████████ did not comply. Officer ██████████ broke the front passenger window and continued to give verbal commands. ██████████ continued to accelerate, pushing the Trailblazer into the street. Officers ██████████ and ██████████ saw ██████████ reach to his left side with his right hand. The officers assert that they observed the butt of a handgun where ██████████ was reaching.

Officers ██████████ and ██████████ yelled that ██████████ had a gun and fired an unknown number of rounds at ██████████. The Buick came free from the Trailblazer and reversed, striking the front of the squad car. Officer ██████████ went to the driver’s side of the Buick to gain control of the driver while Officers ██████████ and ██████████ went to the passenger side to remove the passengers. After removing the passengers, Officer ██████████ went to the driver’s side of the Buick to assist Officer

¹ 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.

██████████ in removing ██████████ from the vehicle and, in his ensuing custodial search, recovered a handgun from ██████████. ██████████ sustained multiple gunshot wounds to the legs and a gunshot wound to the left shoulder. ██████████ was transported to Christ Hospital where he was treated for his injuries and eventually released.

II. INVOLVED PARTIES

Involved Officer #1:	██████████ Star# ██████████ Employee # ██████████ Date of Appointment: ██████████, 2003; Police Officer; Unit ██████████ DOB: ██████████, 1980; Male; Hispanic
Involved Officer #2:	██████████ Star # ██████████ Employee # ██████████ Date of Appointment: ██████████, 1999; Police Officer; Unit ██████████ DOB: ██████████ 1969; Male; Black
Subject #1:	██████████ DOB: ██████████ 8, 1997, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding
Officer ██████████	1. It is alleged that on 14 February 2015 at approximately 0029 hours in the area of ██████████ W. 73rd Street, you disobeyed the Chicago police Departments Use of Deadly Force policy in that you fired your weapon against ██████████ in violation of Rules 2 and 6 and General Order G03-02-03.	Not Sustained
	2. It is alleged that on 14 February 2015 at approximately 0029 hours in the area of ██████████ W. 73rd Street you were inattentive to duty in that you failed to conduct a timely search of ██████████ ██████████ during his arrest without justification in violation of Rule 10.	Sustained
	3. It is alleged that on September 27, 2017 7 at approximately 1:00 PM at 1615 W. Chicago you violated Rule 14 of the Chicago Police Department in that you made a false oral report; to wit, when asked how far past the center line ██████████ weapon was exposed, you stated, “you could almost see all of it. I mean, his hand was on the butt...It was coming out.”	Not Sustained

<p>Officer [REDACTED]</p>	<p>1. It is alleged that on 14 February 2015 at approximately 0029 hours in the area of [REDACTED] W. 73rd Street, you disobeyed the Chicago police Departments Use of Deadly Force policy in that you fired your weapon against [REDACTED] without justification in violation of Rules 2 and 6 and General Order G03-02-03.</p> <p>2. It is alleged that on 14 February 2015 at approximately 0029 hours in the area of [REDACTED] W. 73rd Street you were inattentive to duty in that you failed to conduct a timely search of [REDACTED] [REDACTED] during his arrest in violation of Rule 10.</p> <p>3 It is alleged that on 14 February 2015 at approximately 0029 hours in the area of [REDACTED] W. 73rd Street you had mixed ammunition in your firearm in violation of Rule 6 and Uniform and Property U04-02-01.</p> <p>4. It is alleged that on September 27, 2017 at approximately 1:00 PM at 1615 W. Chicago Ave. you violated Rule 14 of the Chicago Police Department in that you made a false oral report; to wit, when asked about seeing a gun, you said, “it was enough of the back end of it that I was positive that he had a firearm” and “he reached into an interior pocket with his hand.”</p>	<p>Not Sustained</p> <p>Not Sustained</p> <p>Sustained</p> <p>Not Sustained</p>
---------------------------	--	---

IV. APPLICABLE RULES AND LAWS²

<p>Rules</p>
<p>1. Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.</p> <p>2. Rule 6: Disobedience of an order or directive, whether written or oral.</p> <p>3. Rule 10: Inattention to duty.</p> <p>4. Rule 14: Making a false report, written or oral.</p>
<hr/> <p>General Orders</p> <hr/>

² All applicable Rules and Laws referenced within this report were those in effect on the date of the incident.

1. **General Order G03-02-03: Deadly Force**

2. **General Order G03-02-03: Deadly Force**

Uniform and Property

1. **Uniform and Property U04-02-01**

Federal Laws

1. The Fourth Amendment to the United States Constitution

State Laws

1. 720 ILCS 5/7-5 (1986)

V. INVESTIGATION³

a. Interviews

On February 14, 2015, IPRA investigators conducted a canvass of the immediate area surrounding the ██████ block of 73rd Street.⁴ Most of the residents in the area either did not see or hear anything or would not speak to the IPRA investigators. The residents provided the following relevant information:

- ██████ of ██████ W. 73rd Street, stated that he heard 4 gunshots but did not see anything.
- ██████ of ██████ W. 73rd Street, stated he heard a crash, several moments later he heard 4 gunshots and looked out of his window and saw several police officers surrounding a vehicle.

██████████ was interviewed by IPRA investigators at Advocate Christ Hospital on February 14, 2015.⁵ In his statement, ██████ said he picked up his girlfriend, ██████ (██████████ and her mother ██████ (██████████ at their residence located at ██████ W. 73rd Street. ██████ dropped ██████ off at ██████ and ██████ then picked up a “half pint of Goose” (vodka) and “a bag of weed.”⁶ ██████ and his girlfriend parked in front of his house at ██████ S. Wentworth until sometime after midnight, when they left to pick up ██████ near ██████ and ██████. After picking up ██████ drove to the ██████ block of 73rd Street and stopped in front of ██████ and ██████ house. An unmarked Chicago Police vehicle, traveling east, passed ██████ vehicle. When the police got

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

⁴ Att. 12, 13

⁵ Att. 46, 71

⁶ Hospital records indicate ██████ admitted to daily marijuana use. See Att. 76 at 77.

to the stop sign at 73rd Street and S. [REDACTED] St., the police car reversed, stopped near [REDACTED] car and turned on the emergency lights.

When the police activated their emergency lights, [REDACTED] attempted to flee because he possessed a firearm. [REDACTED] backed the Buick up and struck a vehicle. [REDACTED] put the car in drive and started driving forward as the officers ran toward him. As he accelerated, [REDACTED] saw the officers moving out of the way. [REDACTED] struck a truck and became stuck. [REDACTED] placed the car in reverse as the officers arrived on the passenger side of his vehicle. An officer (now known to be Officer [REDACTED]) started striking the passenger window with the butt of his handgun. The window broke and the Officer [REDACTED] told [REDACTED] to “freeze.” [REDACTED] ignored the command. [REDACTED] heard 4 or 5 shots and was struck in the leg first and then his shoulder. [REDACTED] stated the vehicle was in reverse when he was shot. The officers pulled him out of the vehicle and handcuffed him.

[REDACTED] said he told an officer that he had a gun in his left inside jacket pocket because they did not search him. When the officer retrieved the gun from his inside pocket, the officer said – out loud - that [REDACTED] was attempting to pull the gun on the officer. [REDACTED] said he never pointed the gun at the officer.

During this interview, [REDACTED] references that in his statement to detectives made earlier in the day he told the detectives he was sorry for the “destruction” but that he was not trying to hit the officers. [REDACTED] said that the officer ran up to him and started banging on the window with his (the officer’s) gun, “that’s when he busted the window out on pass side. He says freeze. I keep tryin’ to reverse. He starts shootin’. He say I try to go for the gun. I don’t know if I did or not I’m not gonna lie cuz it was all happened so fast I don’t know how, happened like that.” Later in the statement, [REDACTED] again said, “As I’ layin’ on the floor for ‘bout 10, 15 minutes they, they still had not noticed I had the gun until I told them I had a gun. They never know. Right hand to God sir I promise you can get the bible right now, they never knew I had that gun till I told ‘em sir, the one who shot me sir, he ain’t know I had a gun till I told ‘em sir.”

[REDACTED] described the officer that shot him as a Black male, a little chubby with a beard and a greying afro. [REDACTED] said he was told that he was shot by two officers, but he was only looking at the officer on the passenger side of the vehicle. Later in the interview, [REDACTED] again reiterated the fact that the officers did not search him until he told them he had the gun. [REDACTED] stated the gun was a “Ruger 9” with the safety on and no round in the chamber and 4 rounds in the magazine. When asked if he ever reached for the gun, [REDACTED] responded “No they said I reached for it, it was so much stuff happenin’ I don’t know.” [REDACTED] further explained he was trying to get away and did not want to get caught with a gun again because he already had a gun charge and was afraid, he would be sentenced to a long period of incarceration.

[REDACTED] was interviewed on June 18, 2018, at the Shawnee Correctional Center located at 6665 State Route 146 East Vienna, IL 62995.⁷ [REDACTED] said that he was in a stolen vehicle with a girl and her mother. [REDACTED] said he moved out of the way of a Crown Vic to let it pass. [REDACTED] stated that after the Crown Vic passed, it turned on its lights and backed up. [REDACTED] backed up the vehicle he was driving and struck another vehicle. [REDACTED] put the car

⁷ Att. 129

in drive and pulled forward going around the Crown Vic. [REDACTED] then struck a parked Trailblazer and became stuck.

While stuck on the Trailblazer, the officers approached [REDACTED] vehicle on the passenger and driver sides. [REDACTED] said the driver side window was busted, and when it broke, he put the car in drive. While giving his statement, [REDACTED] had his left hand extended as if he was holding the steering wheel and his right hand by his side, moving forward and backward, as if shifting gears. [REDACTED] said that when he was stuck on the Trailblazer, he tried to keep the car moving by shifting the car between drive and reverse to free it from the Trailblazer. [REDACTED] said he saw plainclothes officers on both sides of the vehicle, and he was trying to free his car more than paying attention to the officers. [REDACTED] said that the gun he had was in his coat pocket, and it was dark inside the car. [REDACTED] stated that the only lights were the squad car's blue lights. [REDACTED] said he could not reach with his right hand in his left side coat pocket because he was trying to get the vehicle unstuck by shifting gears. [REDACTED] said he heard four or five shots, and he was hit in the leg and the shoulder. When his leg went numb, the car rolled back into the squad car.

[REDACTED] said he was removed from the car and placed in handcuffs. [REDACTED] was placed on his left side, which was the shoulder that was shot. [REDACTED] got on the floor and lay on his left side with his hands behind his back. [REDACTED] said he told the officer he was shot, and the officer rolled him onto his back. Because the jacket was unzipped, and the gun was heavy, the left side of the jacket remained on the ground exposing the gun. [REDACTED] said the officer took the gun out of his jacket and showed it to his lieutenant or sergeant.

[REDACTED] further demonstrated his actions in the car by placing his left hand upward as if holding a steering wheel. [REDACTED] said the first round hit him in his right thigh, the second hit him in his left shoulder causing his hand to fall off the steering wheel, and the third round hit him in his right thigh.

Some information given in this statement was inconsistent with [REDACTED] statement given on February 14, 2015, and [REDACTED] was asked if reading his previous statement might help to refresh his recollection. [REDACTED] said that it might. [REDACTED] was told that in his first statement he said that he spoke with a detective from CPD as well as an investigator from IPRA. [REDACTED] said that he did not remember speaking with a CPD detective and did remember speaking with an investigator with a recorder. [REDACTED] said that when he woke up from surgery, the investigator was sitting in his room. [REDACTED] remembered signing some papers and speaking with the investigator. [REDACTED] said he would have told the detective that he wanted a lawyer and would not have spoken to the detective.

[REDACTED] was asked to review specific portions of the transcript from his February 14, 2015 IPRA statement, specifically excerpts from page 6 and 7. [REDACTED] is reported as telling the detective that he was in possession of a firearm and admitting that he almost hit the officers with the vehicle and apologized for doing so. [REDACTED] stated explicitly that he did not recall speaking to the detectives only that he remembered speaking with the IPRA investigator who was in his room when he had awoken from surgery. He also stated that he did not remember ever telling the officer he had the gun; he said that when the officer rolled him from his left side to his

back, the officer could see the gun in his jacket pocket. Moreover, ██████ stated that he would not have incriminated himself and would have asked for a lawyer.

█████ said he never reached for the gun or otherwise held the gun. ██████ demonstrated how the gun was positioned by moving R/I's jacket from R/I's left side to the center of R/I's body and indicating that the gun would have been resting on R/I's left thigh. ██████ said when the officers had him lying on his left side, the officer rolled him to his back. ██████ said he was handcuffed, and the left side of his jacket remained on the ground, exposing the gun. ██████ said that the officers could see the print of the gun and a portion of the clip, and approximately half of the grip was outside the pocket opening and visible above the pocket when he was rolled to his back. The gun never fell out of the pocket. ██████ described the officer who removed the gun as a black officer wearing beige cargo pants, a black vest and black shirt. ██████ did not remember which side of the car the black officer was on initially. ██████ described the officer who took him out of the car as a white officer who immediately handcuffed him. ██████ said the officer who handcuffed him never searched him, he just put him in handcuffs. ██████ did not know what that officer did after placing him in handcuffs. ██████ said that he was probably on the ground for a minute before the officer rolled him over and saw the gun. ██████ said he was not under the influence of any intoxicants during this interview and his memory was clear, to the best of his ability. ██████ said he did not discuss this incident or review any documents, except a discussion with his attorney, and the review of the transcript presented to him during the interview.

█████ was interviewed on February 17, 2015,⁸ at ██████ W. 73rd Street. ██████ stated she was in the rear passenger seat of the vehicle driven by ██████ on the date of incident. ██████ stated ██████ picked her up around 8:30 p.m. and drove to her sister's house at 70th and ██████ Her sister started acting erratically and ██████ walked to a friend's house at ██████ and St. Lawrence. ██████ contacted her daughter, and her daughter and ██████ picked her up. The incident with the police and ██████ occurred when she was being dropped off at her residence, located at ██████ W. 73rd Street. ██████ said that ██████ was having trouble parking due to the snow and ice. When the police passed them, ██████ saw the officers looking at ██████ and ██████ looked back at them. ██████ believed the officers must have been running the license plate because they stopped and jumped out of the car and ran toward the Buick. ██████ stated when the police attempted to stop ██████ he was trying to get away. ██████ did not know why he was trying to flee. ██████ told ██████ to stop. ██████ saw a police officer approach the passenger door of the vehicle and strike the window with his gun until the window broke. The officer told her daughter (█████) to get in the back and she jumped over the seat and into the back. ██████ saw the officer place his gun in the vehicle and heard 3 gunshots. After the vehicle stopped, the officer ordered everyone out of the vehicle. ██████ stated she did not see ██████ reach for a gun. ██████ did not see him with a gun and did not know he had a gun until after the incident. ██████ admitted to being intoxicated on the night of the incident.

█████ was interviewed on February 24, 2015,⁹ at ██████ W 73rd Street with her mother present, as she was a minor at the time. ██████ said she met up with ██████

⁸ Att. 58, 63

⁹ Att. 76, 82

██████████ at approximately 7:00 p.m. and she, along with her mother, ██████████ got into the car with ██████████ who drove her mother to ██████████ by ██████████. ██████████ and ██████████ then drove around and spoke with several people throughout the evening. ██████████ drank Goose (vodka) and ██████████ smoked marijuana. They picked her mother up and drove back to their residence. ██████████ was having difficulty parking and moved from one spot to another. A police vehicle passed his vehicle and a short time later backed up. ██████████ attempted to flee the scene. ██████████ told ██████████ to stop. An officer approached the passenger window and began striking the window with his gun. ██████████ described the officer as a white male, although, she could not distinguish between white and Hispanic. ██████████ said she heard ██████████ saying, "I'm not doing anything." After the window broke the officer shot at ██████████ 3 times in rapid succession. ██████████ said she saw the muzzle flashes. ██████████ indicated every time she saw ██████████ he had both hands on the steering wheel. She stated that at no time did ██████████ indicate he had a gun on his person, including earlier in the evening and when the incident occurred. After ██████████ was shot, ██████████ remembered ██████████ saying, "I'm done, I'm done." She also remembered hearing the officers telling ██████████ to get his hands up or something similar. ██████████ stated after the officer fired his weapon she had limited recollection of what happened. ██████████ could not state how she got out of the vehicle or recall whether the officers asked her any questions. ██████████ admitted to being tipsy, but she denied being intoxicated to the point where she would not be able to remember what occurred.

On February 16, 2015, **Officer ██████████ ██████████** was interviewed at IPRA as a witness.¹⁰ Officer ██████████ stated that he was working Beat ██████████ with a partner, Officer ██████████ #██████████. Officer ██████████ was the driver of the vehicle. While Officer ██████████ was driving north on South ██████████ entering the intersection of 73rd and ██████████ he observed an unmarked CPD vehicle reversing west on 73rd Street. The unmarked CPD vehicle stopped and activated its emergency lights. Officer ██████████ reversed his vehicle and made a left turn westbound on 73rd to assist the unmarked vehicle. "At that point as we're pulling up we see on my left hand side a Trailblazer bein' pushed by a white vehicle. At that point the Trailblazer spins around and hits the front of my vehicle. Um at that point I exit and uh I saw that the white Regal was on the sidewalk with um three officers, um right on it. One was on the driver's side. Um ██████████ and the two other officers were on the uh passenger side." Officer ██████████ saw the head of the driver, who he described as a Black male with short hair. Officer ██████████ also saw an officer, now known to be Officer ██████████ on the driver's side window. As Officer ██████████ approached he was near the rear of Buick. Officer ██████████ drew his weapon and the Buick became dislodged from the Trailblazer and started to reverse past him. Officer ██████████ who was by the driver's window, moved with the vehicle, crossing in front of Officer ██████████. Officer ██████████ and other officers gave verbal commands to ██████████. Officer ██████████ heard the other officers say: "turn off the car," "stop the vehicle," and "get out of the vehicle." As Officer ██████████ passed him, Officer ██████████ saw Officer ██████████ discharge his firearm. Officer ██████████ saw Officer ██████████ clear the shattered window, open the door and pull the driver out of the vehicle. Officer ██████████ heard the subject say that he was shot. Officer ██████████ heard screaming on the other side of the vehicle, so he went over to the passenger's side and saw two women on the ground who he believed had been in the vehicle. Officer ██████████ went back to the driver's side of the vehicle and heard an officer say something like, "go through him." Officer ██████████ heard another officer say, "weapon recovered." Officer ██████████ said the officer he saw with a black or blue steel pistol was a white officer, but he did not know his name.

¹⁰ Att. 47, 72

On February 16, 2015, Officer ██████████ ██████████ was interviewed at IPRA¹¹ as a witness. Officer ██████████ said he was working Beat ██████████ with a partner, Officer ██████████ #█████████ on the date of incident. Officer ██████████ was the passenger in the vehicle. As they traveled northbound on ██████████ approaching 73rd Street, Officer ██████████ saw an unmarked CPD vehicle reversing westbound on 73rd St. The unmarked vehicle activated its emergency lights. Officers ██████████ and ██████████ proceeded west on 73rd St. toward the unmarked vehicle. A parked and unoccupied Trailblazer started moving eastbound on 73rd St. and bumped the front driver's side bumper of Officer ██████████ vehicle. Officer ██████████ exited the vehicle and moved toward the officers near the Buick. As he approached the Buick, Officer ██████████ saw two officers from the unmarked squad car by the Buick, one on the driver's side and the other on the passenger side. Officer ██████████ heard three different officers giving verbal commands: "Chicago Police, stop the car," and "get outta the vehicle." When Officer ██████████ exited his squad car he drew his weapon, went around his squad car and stood on the driver's side of the Buick. Officer ██████████ observed the white Buick reversing. Officer ██████████ held his position behind Officers ██████████ and ██████████ because Officers ██████████ and ██████████ were in front of him not allowing direct access to what was happening. Officer ██████████ heard 4-6 shots but did not know who fired. Officer ██████████ saw passengers but was unable to see the driver. After the shots were fired, an officer wiped out the shattered window on the driver's side, opened the door and pulled the driver out of the car. The driver was then handcuffed. At that time, the officers were trying to verify the location of the incident and Officer ██████████ went to the corner to identify if they were on 73rd Street or 73rd Place. Officer ██████████ did not see the weapon being recovered.

On February 16, 2015, Officer ██████████ ██████████ was interviewed at IPRA¹² as an involved officer. Officer ██████████ said he was working as Unit ██████████ on Beat ██████████ which is an Area South gun unit. He was partnered with Officers ██████████ and ██████████ who were not his normal partners. Officer ██████████ was the driver, Officer ██████████ the front passenger, and Officer ██████████ was in the rear behind the driver. While on patrol in the ██████████ block of West 73rd they noticed a white Buick having difficulty parking in a large space. As they passed the vehicle, Officer ██████████ ran the plate on the Portable Data Terminal (PDT). As they drove a couple of car lengths past the Buick, Officer ██████████ announced that the vehicle came back as stolen.

Officer ██████████ activated the emergency lights and reversed the vehicle. When the rear bumper of the squad car was about equal with the front bumper of the Buick, the Buick started to reverse. Officer ██████████ kept his eyes on the occupants of the Buick and observed two passengers, along with the driver, in the vehicle. The squad car stopped, and all three officers exited and approached the Buick yelling, "Police, police, stop the car, stop the car." The Buick backed in a westward direction and struck a parked vehicle and became slanted in a more north/south direction. As the officers approached the Buick, they were yelling, "Stop the car, put the car in park, put the car in park. Stop the car, police."¹³

Officer ██████████ stated that at the time that they were still giving verbal commands to the driver, the driver of the Buick put the vehicle into drive and attempted to run them over. However,

¹¹ Att. 48, 78

¹² Att. 49, 88

¹³ Att. 88 at 15

the officers were able to move out of the way, and the Buick then struck the open passenger door of their squad car and into another parked vehicle. The Buick then became stuck. Officer ██████ drew his weapon and moved forward toward the Buick on the passenger side with Officer ██████ while Officer ██████ approached on the driver's side. Officer ██████ struck the front passenger window with his hand and broke the window. Officer ██████ saw the front seat passenger jump into the back seat.

The officers continued to give verbal commands: "Stop the vehicle", "put it in park" and "show us your hands, police." Officer ██████ and Officer ██████ had their weapons drawn and Officer ██████ inserted part of his body into the Buick. Officer ██████ could hear the tires continue to spin as he focused on the rear passengers who were screaming. When the Buick dislodged from the parked vehicle, it started in reverse. Officer ██████ holstered his weapon and grabbed Officer ██████ jacket because Officer ██████ was being dragged.

Officer ██████ heard multiple gunshots and the Buick struck the front of the unmarked squad car. Officer ██████ said he heard 5 to 6 shots and because he heard the shots, believed Officer ██████ had been shot. Officer ██████ said he was not able to hear anything being said in the Buick. After the Buick stopped, Officer ██████ checked to ensure Officer ██████ was all right. The rear passenger door was opened, and the two women got out. Officer ██████ handcuffed the two women.

Officer ██████ went to the driver's side of the Buick to check on Officer ██████ and saw ██████ handcuffed. Officer ██████ came over to the driver's side of the Buick and found a loaded handgun in ██████ jacket pocket when he searched ██████ upper torso. Officer ██████ took the handgun from Officer ██████ unloaded it and placed it in his right-side cargo pant pocket until it was retrieved by the evidence technician. Officer ██████ said there was a live round in the chamber and additional rounds in the magazine.

Officer ██████ said he heard ██████ say his legs hurt. Officer ██████ was unaware of any other officers on scene until he went to check on Officer ██████. He then saw other officers. He heard Officer ██████ call for EMS for the driver and passengers.

On April 15, 2015, Officer ██████ was interviewed a second time at IPRA¹⁴ as an involved officer. During the interview Officer ██████ was confronted with the audio recording of the OEMC transmissions of the incident. At the start of the OEMC recording an officer stated, "we got hit." Officer ██████ could not identify the voice. The voice at approximately 16 and 22 seconds into the recording, where an officer identified shots "fired by the police." Officer ██████ indicated the first voice was his and the second voice was Officer ██████. Approximately 47 seconds into the recording an officer stated, "we are all good squad" and Officer ██████ identified the voice as his own. Officer ██████ was asked where he was located during his transmission and he stated that he was on the driver's side of ██████ vehicle. Officer ██████ identified the voice requesting an ambulance as Officer ██████. Officer ██████ made out the voice in the background of the transmission as saying something about a gun but he could not identify the voice. Officer ██████ could not identify the voice in the background of the transmission. Officer ██████ stated he was to the right of Officer ██████ when

¹⁴ Att. 96, 98

Officer [REDACTED] recovered the gun from [REDACTED] but could not identify if he, Officer [REDACTED] or someone else on scene made the comment, “gotta gun,” that was captured in the background of the recording.

On February 16, 2015, Officer [REDACTED] # [REDACTED] was interviewed at IPRA¹⁵ as an involved officer. Officer [REDACTED] said he was working Unit [REDACTED] on Beat [REDACTED] on February 14, 2015, which is an Area South gun unit. Officer [REDACTED] was partnered with Officers [REDACTED] and [REDACTED]. Officer [REDACTED] was the driver, Officer [REDACTED] was in the front passenger seat and Officer [REDACTED] was the rear driver side passenger. On February 14, 2015, Officer [REDACTED] was driving east in the [REDACTED] West block of 73rd Street, when he saw a vehicle having difficulty parking. Officer [REDACTED] ran the vehicle’s license plate as they passed the vehicle and continued east. After driving three or four car lengths, Officer [REDACTED] announced that the vehicle came back as stolen. Officer [REDACTED] turned on the emergency lights and reversed the squad car. As the squad car neared the vehicle (later identified as a Buick), they stopped. The officers got out of the squad car and ran toward the Buick.

The Buick started to reverse and backed into a parked car on the north side of the street. As the officers started to run toward the Buick, the Buick started moving forward toward the officers requiring them to jump out of the way. As the Buick passed the officers, it struck the open passenger door of the squad car and then struck a parked Trailblazer. The officers pursued the vehicle on foot giving verbal commands of “Police,” “Show us your hands,” and “Stop.” Officer [REDACTED] said he ran forward and approached the driver’s side of the vehicle and told the driver to “Stop,” “Police,” and “Put your hands up.” The vehicle continued to accelerate, and Officer [REDACTED] saw the front passenger jump into the back seat. Officer [REDACTED] continued to give the driver verbal commands to “Stop,” and “Put your hands up.” Officer [REDACTED] saw Officer [REDACTED] banging on the passenger window while he tried to open the driver’s door.

The driver of the Buick was repeatedly “revving” the car, “jamming, hitting the Trailblazer.” The Buick eventually became free and started to move in reverse. Officer [REDACTED] saw the driver reach toward his chest and heard Officer [REDACTED] screaming, “Police, let me see your hands.” As Officer [REDACTED] was positioned with a clear view of the front of [REDACTED] on the driver side, he stated that, “as he’s ([REDACTED] goin’ backwards I see em pullin’ out a gun.” Officer [REDACTED] then fired his weapon as the car was moving in reverse. Officer [REDACTED] said, “my partner ([REDACTED] also fire[d] his weapon.” When asked how he knew it was a gun that the driver of the vehicle was attempting to retrieve, Officer [REDACTED] said, “because I saw the butt of the hand coming out.”

Officer [REDACTED] said he fired two rounds at the driver. When he saw the driver slouched over he stopped firing. Officer [REDACTED] removed the driver from the vehicle, handcuffed him and called for EMS. Officer [REDACTED] came over to the driver’s side of the vehicle, searched the driver and recovered a handgun from inside his jacket.

¹⁵ Att. 51, 80

Officer ██████ was interviewed again at COPA on September 27, 2017¹⁶ as an accused officer, where he was given a copy of his TRR, OBR, case report, arrest report and a transcript of his previous statement.

Officer ██████ said he did not remember if he had his flashlight out or if he was using it during the incident. Officer ██████ said the streetlights were lit and the headlights on the squad car were on, so he was able to see “pretty well.” Officer ██████ said that after the Buick struck the parked car, the driver put the Buick in drive and accelerated rapidly toward the officers requiring them to jump out of the way to avoid being struck. After the Buick passed the officers, it struck a parked Trailblazer and became lodged. Officer ██████ said the driver was shifting the Buick between drive and reverse to dislodge the two vehicles. Officer ██████ said as the driver was trying to get loose, the Buick was swerving back and forth, and he had to jump out of the way, so he did not get hit. Officer ██████ did not recall if he had his weapon drawn as he approached the Buick. When he reached the Buick, Officer ██████ pulled on the door handle to try to open the door and gain control of ██████. Officer ██████ said when ██████ was able to get the car free, everyone just kind of jumped back. When the Buick became free, Officer ██████ could not remember which way it was going, he only realized that the car was no longer attached to the truck. Officer ██████ saw the passenger jump into the back seat. Officer ██████ was directly in front of ██████ and saw ██████ going inside his jacket and pulling out a gun. Officer ██████ said at that point “I discharged my weapon.”

Officer ██████ thought that ██████ reached into his jacket with his right hand. Officer ██████ explained that just prior to ██████ pulling the gun, Officer ██████ was standing in the front of the vehicle near the bumper, looking into the vehicle through the windshield and driver’s side window. Officer ██████ said he concentrated his shots at the driver’s center mass, he knew there were others in the vehicle and he did not want to hit them.

As the Buick was moving away from him, Officer ██████ “made adjustments,” if ██████ moved one way he adjusted his sights accordingly. Officer ██████ said he moved with the vehicle, which is why the crime scene photographs do not show any bullet holes through the front windshield. Officer ██████ said after he discharged his weapon he saw ██████ head go down, and when ██████ slouched down, Officer ██████ believed the threat was eliminated and ceased firing.

Officer ██████ said he cleared out the broken window and stuck his arm into the Buick to open the door. Officer ██████ said he did not remember if he pulled up a button or pulled the interior door handle to unlock and open the car door. Officer ██████ heard someone say, “I got you,” which led him to believe he was being covered so he could approach the vehicle. Officer ██████ said he went to the car and was able to get ██████ out of the driver’s seat and get him on the ground. Officer ██████ did not recall if it was Officer ██████ or Officer ██████ that began to secure ██████. Officer ██████ was on the radio asking for multiple ambulances because he was concerned about the passengers. Officer ██████ thought one of the female passengers was pregnant.

¹⁶ Att. 116, 117, 119, 120

When discussing [REDACTED] removal from the Buick, Officer [REDACTED] said he “pretty much” just got him out. Officer [REDACTED] did not remember if [REDACTED] just got out or if he had to “drag” [REDACTED] out. Officer [REDACTED] said [REDACTED] was conscious and talking. Officer [REDACTED] did not remember if [REDACTED] was sitting or lying down. Officer [REDACTED] said [REDACTED] was on the ground and handcuffed.

Officer [REDACTED] described seeing [REDACTED] pulling the gun in relation to [REDACTED] centerline as, “You could almost see all of it,” and “it was coming out.” When shown a picture of the weapon recovered at the scene, Officer [REDACTED] said that during the shooting incident he saw from approximately the ejection port to the end of the weapon, the butt of the weapon, and about half the slide. [REDACTED] entire hand was past the center line of his body, his hand was moving from left to right. Officer [REDACTED] did not remember if he let his partners know that he saw a gun.

Officer [REDACTED] said he did not let the subject pull the weapon out. Officer [REDACTED] saw [REDACTED] in his peripheral vision, and he did not want either himself or Officer [REDACTED] to be shot, so Officer [REDACTED] had to eliminate the threat. Officer [REDACTED] stated that he lost sight of [REDACTED] gun after he discharged his weapon, because [REDACTED] slouched down. Officer [REDACTED] said, after [REDACTED] slouched down, he could not see anything but [REDACTED] torso and head.

Officer [REDACTED] said he holstered his weapon when he heard another officer say, “I got you” and then approached the driver’s side window in order to control [REDACTED] Officer [REDACTED] reviewed his previous statement, which stated “Officer [REDACTED] came to the driver’s side of the vehicle.”¹⁷ Officer [REDACTED] said he assumed Officer [REDACTED] arrived “fairly quick.” Officer [REDACTED] said as soon as he took [REDACTED] out of the car, Officers [REDACTED] and [REDACTED] were coming over. Regarding conducting a pat down of [REDACTED] Officer [REDACTED] stated he did a “quick -- just to make sure he didn’t have anything else in his waistline, because we did handcuff him in the back, so, to make sure he didn’t have nothing in his back that could harm us or anything.” Officer [REDACTED] then asserted that he went to check on the other passengers on the other side of the vehicle.

When discussing the search for the weapon Officer [REDACTED] said, “We had to go back. We didn’t know if it was in the car, I don’t know if he still had it in his jacket, so that was the search I conducted, and [REDACTED] retrieved the weapon from his jacket.” When asked if he searched for the weapon Officer [REDACTED] said, “Yes, I most likely did.” When pressed Officer [REDACTED] said he probably went back to the car to search for the gun. Officer [REDACTED] then gave different accounts of the search, finally stating he was not sure what he was doing when the gun was recovered.

The OEMC recording was played for Officer [REDACTED] Officer [REDACTED] was asked if he could identify who was making the statements during the transmission. Officer [REDACTED] was asked if he remembered where he and the other officers were located at specific times during the transmission.

The following is a transcription of the audio recorded radio traffic. Radio traffic not directly related to the shots fired has been omitted:¹⁸

¹⁷ Taken from the IPRA statement conducted on February 16, 2015.

¹⁸ The OEMC was transcribed from Att. 70 by R/I.

Ofc. 00:00 *Oh shit we just got hit, we got hit, we got hit*

Disp. 00:04 *Who got hit and where are you at guys*

Disp. 00:13 *Alright somebody out there on the air with an emergency who got hit*

Ofc. 00:16 *Shots fired by the Police*

Disp. 00:18 *Alright I got shots fired by the police but, where are you?*

Ofc. 00:22 *Shots fired by the Police, shots fired by the Police*

Disp. 00:26 *Alright I can't copy you, shots fired by the Police, we can't copy where you're at, we need where you're at.*

Disp. 00:35 *Unit out there with the emergency where are you at? Where are you at with the shots fired by the Police? We need a location.*

Ofc. 00:46 *Inaudible*

Ofc. 00:50 *████████ squad ██████████ we're all good, we're all good. We're at ██████████ I'm getting the full address right now. We are good.*

Disp. 01:00 *Alright ██████████ said they are good, they said shots fired by the Police. It looks like 73rd Street, ██████████ block of West 73rd Street*

Ofc. 01:07 *73rd Street*

Disp. 01:07 *shots fired on the ticket.*

Ofc. 01:11 *Yah squad yah.*

Ofc. 01:13 *████████ we're gonna need an ambulance*

Disp. 01:17 *Alright, we're getting an ambulance. Is this for the offender?*

Disp. 01:25 *████████ is this for the offender, I got the ambulance rolling.*

Ofc. 01:29 *Yah 10-4 squad the Police is fine, the Police is fine what we need is an ambulance for the offender.*

Disp. 01:38 *It's just one right.*

Ofc. 01:40 *As of right now (01:41 background gotta gun) squad, ██████████ also be advised there's a weapon recovered*

Disp. 01:50 10-4

...

Disp. 02:40 [REDACTED] go ahead with your emergency

Ofc. 02:42 We're gonna need a...

Disp. 02:47 [REDACTED] what do you need you're cutting out

Ofc. 02:51 Squad I'm gonna need another ambulance here too, one person is shot the other person I believe is pregnant

Disp. 03:04 Alright is the pregnant female is she shot or no

Ofc. 03:07 At this time I can't tell, I don't think so. I need you to (inaudible) that's my direct supervisor

Officer [REDACTED] could not identify the officer who said, "we got hit" at 00:00. Officer [REDACTED] could not identify the officer who said, "Shots fired by the police" at 00:16. Officer [REDACTED] said that the officer who said, "Shots fired by the police" at 00:22 may have been him. Officer [REDACTED] said at the time of the transmission he would have been by the front quarter panel of the Buick and Officer [REDACTED] would have been either in or next to the Buick. Officer [REDACTED] had no idea where Officer [REDACTED] was located.

Officer [REDACTED] immediately identified the voice that stated, [REDACTED] and "We are all good" as Officer [REDACTED]. Officer [REDACTED] stated that Officer [REDACTED] transmission of "we are all good," meant that "we were pretty much secure, and we were fine. Maybe that was so people wouldn't get hurt flying into helping us out or not." Officer [REDACTED] said that the officers were right by [REDACTED] at this time. Officer [REDACTED] said he was the person who requested the ambulance at 01:12 and said he was not sure where he and the other officers were located at this time. Officer [REDACTED] said he may have been checking on the female passengers on the passenger's side of the Buick. Officer [REDACTED] said, "The weapon should have been recovered right after we put him on the ground and handcuffed him, and that weapon didn't take long to be found because yeah that weapon should have been recovered." Officer [REDACTED] identified the voice saying, "the police is fine," as his own, but he did not say where he was located. Officer [REDACTED] could not identify the voice that said "gotta gun" which was heard while he was transmitting the police is fine comment at 01:40, but he said it had to have been Officer [REDACTED].

When asked how the gun got back into [REDACTED] jacket after he attempted to pull it out, Officer [REDACTED] said he did not allow [REDACTED] to pull the gun all the way out.

Officer [REDACTED] said when the Buick was dislodging from the Trailblazer, one of [REDACTED] hands was on the shifter and both hands were constantly going up and down. Officer [REDACTED] could not describe the exact position of [REDACTED] hands. Officer [REDACTED] said it all happened quickly and that he was not sure what did or did not take place when [REDACTED] was reaching for the gun.

Officer ██████ said that after discharged his firearm he was not thinking about the location of ██████ gun. Officer ██████ said when another officer said, “I got you,” he believed he was covered sufficiently and could move into the vehicle. Officer ██████ thought that ██████ passed out because of the way he slouched over. Officer ██████ said, “I thought we actually killed this dude.” When Officer ██████ pulled the trigger, the female passengers were in the car, and he was concerned for their safety. Officer ██████ said he did not remember if he helped get the female passengers out or who took them out. Officer ██████ said he knew the female passengers were scared because one jumped into the back seat. Officer ██████ did not see them as a threat, even if the gun was in the car with them.

Officer ██████ stated that handcuffing of ██████ would not have taken long because ██████ was compliant. “At first, I thought he was dead,” Officer ██████ said the subject was very compliant, the subject “didn’t say any words to us...he just gave up.” Officer ██████ did not remember if he patted down or searched the subject. Officer ██████ said, “I know that I probably did a quick sweep on his waistline and his back just to make sure.” Officer ██████ did not recall going through his pockets or “any of that stuff.”

Officer ██████ provided a third statement to COPA on December 18, 2017¹⁹ as an accused officer, where he was given his two previous statements for review.

Officer ██████ attempted to clarify his previous statement about what he perceived ██████ was doing with the firearm by saying, “... I believed it was—he had his hand on the gun and was going to pull it out. I was not going to let him pull out that weapon.” Officer ██████ said ██████ never pulled the gun out completely and ██████ “never pointed it at me or my partner.” Officer ██████ alleged that ██████ had already tried to run over him and his partners and stated that he was not going to allow ██████ to become a greater threat. Officer ██████ stated, “I knew what he was doing. I knew what I saw, and I eliminated that threat.” Officer ██████ said he did not know where the weapon was located after he shot ██████ all he remembered was seeing ██████ body slouched over.

Officer ██████ clarified an answer to a previous question asked by the investigator from the second interview in reference to the gun being pointed at him and stated that he was positioned at the front pillar of the vehicle, and saw ██████ reach into the inside pocket to retrieve “what I knew, believe, and what I am almost certain was a handgun.”

On February 16, 2015 Officer ██████ # ██████ was interviewed at IPRA²⁰ as an involved officer. Officer ██████ made a clarification regarding his Tactical Response Report (TRR) which indicated he fired four rounds. Based on the forensic examination of his weapon at the area, he became aware he fired three rounds not four. Officer ██████ said he was working with Officer ██████ who was the driver of their police vehicle. Officer ██████ was in the rear, behind the driver and Officer ██████ was the front passenger. While on patrol in the ██████ block of 73rd Street, Officer ██████ observed a white Buick having difficulty parking. Officer ██████ ran the plate on the vehicle and, within seconds, informed his partners that the plate came back as belonging to a stolen

¹⁹ Att. 124, 125, 127

²⁰ Att. 53, 81

vehicle. Officer [REDACTED] reversed the squad car. When the officers exited the squad car, Officer [REDACTED] saw that the Buick had backed down the street and struck a parked car. As the officers approached the Buick, the Buick drove forward toward the officers, Officer [REDACTED] said he was behind the rear of the squad 5 or 6 feet to the south. As the Buick drove toward Officer [REDACTED] he was required to move from its path. As the Buick passed the officers, Officer [REDACTED] saw that it was occupied by three people. The Buick struck another parked vehicle and became lodged on the vehicle.

Officers pursued the vehicle on foot, giving verbal commands to “Turn the car off, stop, show your hands, police.” Officers [REDACTED] and [REDACTED] approached the Buick on the passenger’s side, while Officer [REDACTED] approached the Buick on the driver’s side. When Officer [REDACTED] was adjacent to the passenger door, he struck the front passenger window with his hands to break the window. When the window broke, Officer [REDACTED] told the driver to “Turn the car off, stop, police.” He said the “driver reaches into his uh interior pocket on his jacket on his left side with his right hand and he uh retrieves a gun.” As the Buick reversed and disengaged from the car that it was stuck to, Officer [REDACTED] discharged his weapon. Officer [REDACTED] said, “I could tell as he was pulling it out I could see enough of the, the butt of it to tell that it was a firearm.” Officer [REDACTED] said he could tell from his experience it was a gun because he has seen a lot of guns. He said he stopped firing because he could not keep running as fast as the vehicle as it reversed, and the momentum moved his line of sight off the driver.

As he fired his weapon, Officer [REDACTED] heard one or two other shots. He believed one shot occurred after he stopped firing. Officer [REDACTED] said Officer [REDACTED] opened the driver’s door and handcuffed the driver. Officer [REDACTED] opened the rear door, got the two female passengers out and handcuffed them. He checked the women for injuries and did not see any. Officer [REDACTED] went to the driver’s side where he recovered the “handcuff”²¹ from the driver’s left interior jacket pocket. After removing the gun, he gave it to Officer [REDACTED]

Officer [REDACTED] provided a second statement to COPA on September 27, 2017²² as an accused officer, where he was given a copy of his TRR, OBR, case report, arrest report and a transcript of his previous statement.

Officer [REDACTED] said he was carrying a “Streamlight” flashlight approved by the department. Officer [REDACTED] said he believed he used his flashlight at some point in time as the incident occurred at night. Because the incident occurred two and a half years ago, Officer [REDACTED] did not recall specifically if he was using it or not. With the artificial lighting, Officer [REDACTED] said he could see about 20 feet. Officer [REDACTED] said he could not say if he could identify the gender or other characteristics of the occupants of the Buick.

Officer [REDACTED] said he would stand on his previous statement about [REDACTED] inability to park the vehicle and would not speculate as to whether [REDACTED] was drunk or nervous. Officer [REDACTED] did not believe his recollection would be better now than it was two and one-half years ago. Officer [REDACTED] said he did not recall which hand he used to strike the window of the Buick and that

²¹ Officer [REDACTED] used the word “handcuff” in his statement, but from context COPA investigators believe Officer [REDACTED] was referring to [REDACTED] firearm.

²² Att. 118, 121

it was possible that he had something in his hand. Officer ██████ said it was possible that he had his weapon drawn as he approached the Buick. Officer ██████ did not recall when exactly he drew his weapon. Officer ██████ did not recall if ██████ was shifting the Buick from drive to reverse. Officer ██████ said it was possible that the Buick was initially going forward, pushing the Trailblazer into the ██████ District squad car that was coming to back them up.

After breaking out the window, Officer ██████ said he gave the driver commands to “stop, put the car in park.” Officer ██████ tried to inform ██████ he was caught, but ██████ did not respond to the commands. Officer ██████ said he may have inserted part of his body into the Buick at some point but did not recall exactly. Officer ██████ said he could have inserted his head, arms and torso into the Buick. Officer ██████ said he did not recall if he had his weapon out when he was adjacent to the window, but he knew he had unholstered his firearm once ██████ retrieved his weapon. Officer ██████ said he saw the butt of the gun when ██████ attempted to retrieve it.

Officer ██████ said he was positive that he observed ██████ reach for a gun because enough of the back end of the gun was past ██████ center line. Officer ██████ could not say specifically where the line would have been, but he stated it was enough that he was certain it was a gun and that ██████ was retrieving it to hurt either him or his fellow officers. Officer ██████ said he saw the bottom of the magazine as well. Officer ██████ did not recall seeing the hammer or any portion of the slide. Officer ██████ said ██████ was pulling the gun relatively quickly, “it wasn’t like he was trying to pull start a chain saw.” Officer ██████ said he did not recall how far it was out before he discharged his weapon. “It was out far enough that I identified it as a weapon. And recognized it as a threat to, uh safety, in my eyes, and myself and my partners.” Officer ██████ said it happened “really quickly,” he could not say specifically if he let his partners know that he saw a weapon.

Officer ██████ said, “I didn’t want to further escalate the situation of him having his weapon out. And, almost immediately after his weapon came out, his car came free from the car that was in front. He drove backwards and dragging a portion of my body. Well, not dragging, I don’t wanna say dragging, besides that doesn’t sound right. ...”, clarifying he had a portion of his body inside the car and when it went backward Officer ██████ was knocked out of the vehicle, so there was not time to announce that ██████ had a gun. Officer ██████ said he lost sight of the gun when the car moved back, and he was outside the vehicle. Officer ██████ said to the best of his recollection ██████ was pulling the weapon in a rapid fluid motion.

Officer ██████ said he was concerned about the gun when he was handcuffing the women and Officer ██████ was handcuffing ██████. Officer ██████ said, “we searched all over.” Officer ██████ said he was the one that searched ██████ even though Officers ██████ and ██████ were with ██████ before he was. Officer ██████ said he did not know if Officer ██████ searched ██████ or was about to search him. Officer ██████ stated that he recovered ██████ gun.

Officer ██████ was asked if he could identify who was making statements during the OEMC audio recording and if he remembered where he and the other officers were located when making those statements. The following is in essence but not verbatim, the radio traffic. Radio traffic not directly related to the shots fired has been omitted.

- Ofc.²³ 00:00 *Oh shit we just got hit, we got hit, we got hit*
- Disp. 00:04 *Who got hit and where are you at guys*
- Disp. 00:13 *Alright somebody out there on the air with an emergency who got hit*
- Ofc.²⁴ 00:16 *Shots fired by the Police*
- Disp. 00:18 *Alright I got shots fired by the police but, where are you?*
- Ofc.²⁵ 00:22 *Shots fired by the Police, shots fired by the Police*
- Disp. 00:26 *Alright I can't copy you, shots fired by the Police, we can't copy where you're at, we need where you're at.*
- Disp. 00:35 *Unit out there with the emergency where are you at? Where are you at with the shots fired by the Police? We need a location.*
- Ofc. 00:46 *Inaudible*
- Ofc.²⁶ 00:50 *████████ squad ██████████ we're all good, we're all good. We're at ██████████ I'm getting the full address right now. We are good.*
- Disp. 01:00 *Alright ██████████ said they are good, they said shots fired by the Police. It looks like 73rd Street, ██████████ block of West 73rd Street*
- Ofc. 01:07 *73rd Street*
- Disp. 01:07 *shots fired on the ticket.*
- Ofc.²⁷ 01:11 *Yah squad yah.*
- Ofc.²⁸ 01:13 *████████ we're gonna need an ambulance*
- Disp. 01:17 *Alright, we're getting an ambulance. Is this for the offender?*
- Disp. 01:25 *████████ is this for the offender, I got the ambulance rolling.*
- Ofc.²⁹ 01:29 *Yah 10-4 squad the Police is fine, the Police is fine what we need is an ambulance for the offender.*

²³ Believed to be a ██████████ district officer arriving at the scene

²⁴ Believed to be Officer ██████████

²⁵ Officer ██████████

²⁶ Officer ██████████

²⁷ Believed to be Officer ██████████

²⁸ Officer ██████████

²⁹ Officer ██████████

Disp. 01:38 *It's just one right.*

Ofc.³⁰ 01:40 *As of right now (01:41 background gotta gun) squad, [REDACTED] also be advised there's a weapon recovered*

Disp. 01:50 *10-4*

Disp. 02:40 [REDACTED] *go ahead with your emergency*

Ofc.³¹ 02:42 *We're gonna need a...*

Disp. 02:47 [REDACTED] *what do you need you're cutting out*

Ofc.³² 02:51 *Squad I'm gonna need another ambulance here too, one person is shot the other person I believe is pregnant*

Disp. 03:04 *Alright is the pregnant female is she shot or no*

Ofc.³³ 03:07 *At this time I can't tell, I don't think so. I need you to (inaudible) that's my direct supervisor*

Officer [REDACTED] said he did not know who said "We got hit" at the start of the recording. Officer [REDACTED] said that Officer [REDACTED] may have been the person who said "Shots fired by the police" at 00:16 in the recording, but that he is not sure that the person who said "shots fired by the police" at 00:22 in the recording is the same voice and that it could have been him.

Officer [REDACTED] identified Officer [REDACTED] as the person who said [REDACTED] at 00:45 of the recording. Officer [REDACTED] said he did not recall where he was located at the time of the transmission. Officer [REDACTED] said he did not recall where the officers were when Officer [REDACTED] said "we are all good." Officer [REDACTED] believed Officer [REDACTED] is the person who requested an ambulance at 01:12 of the recording, but Officer [REDACTED] did not recall where he was at this time. Officer [REDACTED] said Officer [REDACTED] was the person who acknowledged the ambulance was for the offender and said "the police is fine" at 01:30-01:37 of the recording. Officer [REDACTED] said he believed the statement in the background at 1:41 of the recording was "we got a gun." Officer [REDACTED] said he did not know who made the statement "we got a gun."

Officer [REDACTED] said he stood by his previous statement about [REDACTED] pulling the gun and would not speculate on how the gun was returned to the interior pocket of [REDACTED] jacket. Officer [REDACTED] said, "Here's how I remember it. The car got stuck, he [REDACTED] pulled the weapon. The car got unstuck, as I'm firing." Officer [REDACTED] said all three events took place in a very short time span, not quite instantaneously but a very short time span. Officer [REDACTED] said he did not

³⁰ Officer [REDACTED]

³¹ Believed to be Officer [REDACTED]

³² Officer [REDACTED]

³³ Officer [REDACTED]

recall if he saw [REDACTED] hand on the gear shift. Officer [REDACTED] said he knew where the weapon was when he discharged his weapon, but he did not know where the weapon was when [REDACTED] was moved out of the vehicle. Officer [REDACTED] said the gun could have still been in the Buick. Officer [REDACTED] said immediately after he discharged his weapon he was on the passenger's side and removed, searched, and handcuffed the female occupants. Officer [REDACTED] then went over to assist Officer [REDACTED]. Officer [REDACTED] said he did not know if any officers were with the female occupants when he assisted Officer [REDACTED]. Officer [REDACTED] said a very short period of time elapsed between the shots being fired and the recovery of the weapon, he could not say specifically how much.

Officer [REDACTED] provided a third statement to COPA on December 18, 2017³⁴ as an accused officer, and was given his two previous statements for review.

Officer [REDACTED] said he stood by his previous answer that [REDACTED] was pulling a firearm. Officer [REDACTED] said ultimately the gun was recovered. Officer [REDACTED] said that after he discharged his weapon, [REDACTED] "was out of my sight" and could not say what happened to the weapon. Officer [REDACTED] said he did not recall what [REDACTED] said when he was outside the car.

When asked if he would like to clarify or change what he said in the previous statement, Officer [REDACTED] said "I had heard from the detectives who were working the case that he said it, that he had a firearm to them. It's - he had a gun."

b. Digital Evidence

The Office of Emergency Management and Communication (OEMC) radio transmission³⁵

The following is in essence, but not verbatim, the radio traffic. Radio traffic not directly related to the shots fired have been omitted.

Ofc. 00:00 *Oh shit we just got hit, we got hit, we got hit*

Disp. 00:04 *Who got hit and where are you at guys*

Disp. 00:13 *Alright somebody out there on the air with an emergency who got hit*

Ofc. 00:16 *Shots fired by the Police*

Disp. 00:18 *Alright I got shots fired by the police but, where are you?*

Ofc. 00:22 *Shots fired by the Police, shots fired by the Police*

Disp. 00:26 *Alright I can't copy you, shots fired by the Police, we can't copy where you're at, we need where you're at.*

³⁴ Att. 126, 128

³⁵ Att. 70, 93

- Disp. 00:35 *Unit out there with the emergency where are you at? Where are you at with the shots fired by the Police? We need a location.*
- Ofc. 00:46 *Inaudible*
- Ofc. 00:50 *████████ squad ██████████ we're all good, we're all good. We're at ██████████ I'm getting the full address right now. We are good.*
- Disp. 01:00 *Alright ██████████ said they are good, they said shots fired by the Police. It looks like 73rd Street, ██████████ block of West 73rd Street*
- Ofc. 01:07 *73rd Street*
- Disp. 01:07 *shots fired on the ticket.*
- Ofc. 01:11 *Yah squad yah.*
- Ofc. 01:13 *████████ we're gonna need an ambulance*
- Disp. 01:17 *Alright, we're getting an ambulance. Is this for the offender?*
- Disp. 01:25 *████████ is this for the offender, I got the ambulance rolling.*
- Ofc. 01:29 *Yah 10-4 squad the Police is fine, the Police is fine what we need is an ambulance for the offender.*
- Disp. 01:38 *It's just one right.*
- Ofc. 01:40 *As of right now (01:41 background gotta gun) squad, ██████████ also be advised there's a weapon recovered*
- Disp. 01:50 *10-4*
- Disp. 02:40 *████████ go ahead with your emergency*
- Ofc. 02:42 *We're gonna need a...*
- Disp. 02:47 *████████ what do you need you're cutting out*
- Ofc. 02:51 *Squad I'm gonna need another ambulance here too, one person is shot the other person I believe is pregnant*
- Disp. 03:04 *Alright is the pregnant female is she shot or no*
- Ofc. 03:07 *At this time I can't tell, I don't think so. I need you to (inaudible) that's my direct supervisor*

c. Physical Evidence**Medical Records³⁶**

The medical records from Advocate Christ Medical Center, dated February 14, 2015, documented that [REDACTED] was treated for bullet wounds to the following areas: (1) his left upper extremity: an entry wound lateral anterior shoulder with no exit; (2) his right lower extremity: bullet wounds at anterior and medial thigh; (3) his left lower extremity: bullet wounds at lateral and posteromedial thigh.

The Illinois State Police (ISP) Forensic Science Lab Report³⁷

The ISP lab report [REDACTED] indicated that the two Winchester 9mm shell casings located on the street near [REDACTED] W. 73rd Street were fired from Officer [REDACTED] Smith and Wesson 5943; the one Remington-Peters .40 S&W and two Winchester .40 S&W shell casings found in the Buick and on the street, were fired from Officer [REDACTED] Springfield Armory XD-40; the fired bullet recovered from under the driver's side floor was fired from Officer [REDACTED] gun; the three PMC 9mm shell casings located in the Buick were not fired from any weapon recovered at the scene.

d. Documentary Evidence**Detective Supplement³⁸**

The CPD Detective Supplement Report [REDACTED] approved on June 30, 2015, by Sergeant John Foster, includes the officer, witness and offender statements³⁹ to CPD. The report includes the evidence collected at the scene. The report identified the vehicle driven by the subject as well as the vehicles struck by the subject in his attempt to flee from the officers and included pictures taken at the scene. The report was classified as Clear Closed/ Arrest and Prosecution.

CPD Crime Scene Processing Report # [REDACTED]

The following is a summary of evidence collected by the assigned forensic investigators at the scene of incident:

- Two Winchester 9mm Luger +P expended shell casings recovered from the street at [REDACTED] W. 73rd Street.
- One R-P 40 S&W expended shell casing recovered from the street at [REDACTED] W. 73rd Street.
- One Winchester 40 S&W expended shell casing recovered from the passenger side floor of the Buick.

³⁶ Att. 67

³⁷ Att. 99, 100, 101, 102, 103, 104

³⁸ Att. 104

³⁹ These statements are consistent with the statements previously summarized.

⁴⁰ Att. 15

- One Winchester 40 S&W expended shell casing recovered from the gap on the floor between the front passenger seat and the front passenger door of the Buick.
- One PMC 9mm Luger expended shell casing recovered from the front driver's side floor of the Buick.
- One PMC 9mm Luger expended shell casing recovered from the rear driver's side floor of the Buick.
- One PMC 9mm Luger expended shell casing recovered from the floor between the left side of the passenger seat and the center console in the Buick.
- One fired bullet recovered from under the front driver's seat of the Buick.
- One Smith and Wesson model 5943 9mm semi-automatic pistol with Winchester 9mm ammunition recovered from Officer [REDACTED]. The magazine capacity is 15 rounds; one round was recovered from the chamber and 13 rounds from the magazine. Officer [REDACTED] fired two rounds.
- One Springfield Armory model XD-40 40 caliber semi-automatic pistol with Winchester 40 S&W ammunition recovered from Officer [REDACTED]. The magazine capacity is 12 rounds; one round was recovered from the chamber and 9 rounds were recovered from the magazine. Officer [REDACTED] fired 3 rounds.
- One Ruger model P95 9mm semi-automatic pistol with mixed manufacturer ammunition recovered from Officer [REDACTED].⁴¹

Crime Scene Photographs⁴²

Evidence photographs taken by Forensic Investigators [REDACTED] and [REDACTED] recorded under RD# [REDACTED] depicted the crime scene after the incident concluded. The photographs included but were not limited to: the surrounding area of the incident, the vehicles and the damage sustained, the interior of the Buick, marked pieces of evidence located in the street as well as inside the Buick, apparent bullet hole on the exterior of the driver's door of the Buick and the items located in the vehicle.

The crime scene video⁴³ also depicts the crime scene after the fact identifying the same pieces of evidence depicted in the crime scene photographs.

Criminal Case⁴⁴

[REDACTED] was charged nine counts of attempted murder, one count of possession of stolen vehicle, 3 counts of aggravated assault, one count of possession of a firearm with a defaced serial number, and eight counts of aggravated unlawful use of a weapon. [REDACTED] pled guilty and was found guilty of one count of possession of a stolen vehicle and one count of aggravated unlawful use of a weapon. The remaining counts were dismissed.

⁴¹ The weapon recovered from [REDACTED] was cleared and placed in Officer [REDACTED] cargo pant pocket. It was subsequently retrieved from the pant pocket by the evidence technician at the police station.

⁴² Att. 83

⁴³ Att. 84

⁴⁴ Att. 131

VI. ANALYSIS

a. Applicable Law

1. Use of Deadly Force

The applicable Chicago Police Department's General Order is 03-02-03, II,⁴⁵ which states; 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 or;
 - b. is attempting to escape by use of a deadly weapon or;
 - c. otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

Additionally, General Order G03-02-03 Deadly Force, Section III, (E) applies. This section of General Order G03-02-03 prohibits Department members from firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person. Finally, General Order 03-02-03, Section IV, titled "Affirmation of Protection of Life Policy" states that "[s]worn members will not unreasonably endanger themselves or another person to conform to the restrictions of this directive." Read in context, this exception applies narrowly to cases where specific, unusual facts and circumstances demonstrate that complying with the prohibition would unreasonably endanger the officer or another person.

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

⁴⁵ This report references the version of General Order 03-02-03 II in effect on the date of the incident. The Department subsequently amended its use of force directives.

situation.” *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). 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).

2. Standard of Proof

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has been found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.” *Id.* at ¶ 28.

b. Analysis of the Allegations Against Officer [REDACTED] and [REDACTED]

1. Factual Findings

COPA makes the following material findings of fact:

- i. [REDACTED] was attempting to flee from police and drove recklessly

It is undisputed that [REDACTED] attempted to flee from the police during the incident on February 14, 2015. [REDACTED] admitted that when the police activated their emergency lights, he attempted to flee because he possessed a gun.⁴⁶ [REDACTED] reversed the Buick and struck a car. After striking the car, [REDACTED] put the Buick in drive and drove forward as the Officers [REDACTED] and [REDACTED] ran toward him. As [REDACTED] accelerated, he observed Officers [REDACTED]

⁴⁶ See Att. 71 at 5

██████████ and ██████████ moving out of the way.⁴⁷ ██████████ then struck a truck, became stuck and placed the car in reverse. ██████████ also admitted that he ignored the commands of the officers and continued reversing. ██████████ said that an officer told him to “freeze,” but that he kept driving.⁴⁸ Under the circumstances, a reasonable officer would believe that ██████████ was attempting to flee.

- ii. Officer ██████████ and Officer ██████████ were not in the direct path of ██████████ vehicle when they discharged their weapons

The evidence demonstrates ██████████ drove the Buick toward Officers ██████████ and ██████████ and that they had to move out of the way to avoid being struck. It is undisputed that none of the officers discharged their firearms as ██████████ drove towards them. After Officers ██████████ and ██████████ moved out the way, ██████████ continued to drive forward past the officers, striking their squad car, and then striking a Chevrolet Trailblazer. ██████████ Buick became stuck on the Trailblazer. The officers then approached ██████████ vehicle as ██████████ continued his attempt to escape. Officer ██████████ approached the driver’s side while Officers ██████████ and ██████████ went to the passenger’s side. ██████████ admits that an officer yelled for him to “freeze,” but that he did not comply and continued accelerating in reverse trying to dislodge his vehicle from the Trailblazer.⁴⁹ There is no evidence that any officer was directly behind ██████████ vehicle as he attempted to reverse.

Officer ██████████ said that during the encounter with ██████████ he was standing near the left front fender of ██████████ vehicle, near the wheel well.⁵⁰ Officer ██████████ stated he took that position in order to observe ██████████ through the front windshield and driver’s window. However, the physical evidence establishes it is more likely than not that Officer ██████████ stood next to the driver’s side window of ██████████ Buick when he fired into it. Specifically, no bullets struck the front windshield.⁵¹ Moreover, Officer ██████████ stated that Officer ██████████ was standing right next to the driver’s window and moving with the vehicle prior to discharging his firearm.⁵² Therefore, a preponderance of the evidence demonstrates that Officer ██████████ was not in the vehicle’s direct path of travel at the time he fired at ██████████⁵³

Similarly, Officer ██████████ took a position on the passenger’s side of ██████████ Buick and struck the front passenger window eventually breaking it. After breaking the window, Officer ██████████ inserted himself into the vehicle through the broken window. Officer ██████████ alleges that while part of Officer ██████████ upper body was in ██████████ vehicle while his feet were on the ground, ██████████ pulled his firearm causing Officer ██████████ to discharge his firearm at ██████████⁵⁴ Officer

⁴⁷ Although ██████████ insisted that he was not trying to hit the officers with his vehicle or hurt them, he acknowledged the officers had to jump out of the way. *See Id.* at 5.

⁴⁸ *Id.* at 6

⁴⁹ Att. 71 at 6

⁵⁰ Att. 119 at 19-21

⁵¹ Att. 83

⁵² Att. 72 at 14-16

⁵³ Even assuming *arguendo* that Officer ██████████ was standing at or near the left front fender of the Buick, he would not have been in the path of the Buick as it reversed.

⁵⁴ Att. 81 at 18-21. Officer ██████████ provided inconsistent testimony regarding whether any part of his upper body except his arms was in the vehicle.

█████ stated that almost simultaneously, █████ vehicle came free of the truck and began moving backwards forcing Officer █████ out of the vehicle.⁵⁵ Officer █████ stated that he discharged his firearm as the Buick reversed.⁵⁶

iii. █████ was armed at the time of the incident

█████ admitted that he possessed a gun during the incident in question and that the weapon was located in his interior left pocket of his jacket.⁵⁷ It is undisputed that Officer █████ recovered █████ firearm from his interior left pocket of █████ jacket after the incident. The OEMC transmissions also corroborate the recovery of the gun. The gun was collected and inventoried. Therefore, the evidence is undisputed that █████ possessed a gun during this incident.

iv. There is insufficient evidence to prove or disprove that █████ attempted to pull his firearm from his jacket at the time Officer █████ and Officer █████ discharged their weapons

The most disputed and determinative fact in this case is whether █████ attempted to pull his gun from the interior pocket of his jacket. There is insufficient evidence to determine whether █████ attempted to pull his firearm out of his jacket at the time Officers █████ and █████ discharged their firearms.

Officer █████ asserted that █████ reached into his jacket with his right hand, and pulled part of the gun out from left to right.⁵⁸ Both Officer █████ and Officer █████ alleged seeing the butt of a gun as it came out of █████ jacket.⁵⁹ Officer █████ added that he also saw the bottom of the gun's magazine well;⁶⁰ while Officer █████ additionally alleged he saw the slide of the gun from the ejector port to the trigger guard, approximately half of the slide.⁶¹ Officer █████ further alleged that █████ right hand came past the center line of his chest as he pulled part of the gun out.⁶² Officers █████ and █████ both stated that they did not give █████ an opportunity to pull the gun out fully before firing upon him, and neither officer recalled announcing that █████ had a gun.

Some evidence contradicts Officer █████ and █████ accounts.

First, it is undisputed that █████ firearm was recovered from the left interior pocket of █████ jacket by Officer █████ after Officer █████ removed █████ from the vehicle and handcuffed █████ At the time of this incident, █████ was wearing a black jacket with a left interior pocket. The opening of the interior pocket is approximately seven inches long and

⁵⁵ Officer █████ did not assert that the vehicle itself posed a threat of death or great bodily injury to him and specifically noted that he was not dragged by the vehicle. Att. 121 at 21-22.

⁵⁶ Att. 81 at 20

⁵⁷ Att. 71 at 6

⁵⁸ Att. 81 at 18

⁵⁹ Att. 80 at 19; Att. 81 at 19

⁶⁰ Att. 121 at 19

⁶¹ Att. 119 at 27-29

⁶² *Id.*

located approximately ten inches from the bottom of the jacket. The Ruger P 95 recovered from [REDACTED] was an alloy steel large frame pistol with a 3.9-inch barrel, its overall length is 7.25 inches and height 5.75 inches. Relevant pictures of [REDACTED] firearm and jacket are below:



Picture of [REDACTED] Firearm



Picture of [REDACTED] Jacket

The dimensions of [REDACTED] left interior jacket pocket along with the characteristics of [REDACTED] firearm would have made it difficult for [REDACTED] gun to have been uncovered by in [REDACTED] jacket pocket when searched if he had begun pulling the firearm out in the manner described by Officers [REDACTED] and [REDACTED]. Specifically, Officer [REDACTED] stated that almost the entire firearm was visible to him and therefore the firearm would have had to have been outside of [REDACTED] jacket pocket. Moreover, even if only the portion of the firearm that Officer [REDACTED] alleged was visible, by far the heaviest parts of [REDACTED] firearm would have still been outside of the jacket pocket. In addition, the magazine contained ammunition, adding weight to the butt of the gun making it less likely that the firearm would have fallen back into [REDACTED] jacket pocket

if he had begun pulling the firearm in the manner described by Officers [REDACTED] and [REDACTED]. Finally, the sights, trigger guard, butt, safety, slide release, and hammer all protruded from [REDACTED] firearm, each of which would have been susceptible to catching on any fold in the fabric of the pocket, thus preventing the gun from fully reentering [REDACTED] pocket.⁶³ However, the evidence is insufficient to conclude that the firearm could not possibly have been located in [REDACTED] jacket pocket if he attempted to pull it out in the manner Officers [REDACTED] and [REDACTED] alleged.

Second, Officers [REDACTED] and Officer [REDACTED] behavior after shooting [REDACTED] was inconsistent with observing [REDACTED] pulling out a firearm. Officer [REDACTED] could only recall conducting a cursory pat-down of [REDACTED] waist-area after removing him from the vehicle.⁶⁴ Furthermore, Officer [REDACTED] could not recall searching inside the Buick, and there is no evidence that he did.⁶⁵ Furthermore, Officer [REDACTED] inevitably would have discovered [REDACTED] firearm if he had actually searched [REDACTED] jacket. It is undisputed that Officer [REDACTED] did not recover [REDACTED] firearm. It is troubling that Officer [REDACTED] reportedly believed that [REDACTED] had attempted to pulled out a firearm on him, but yet failed to take swift action to recover the firearm and eliminate the potential threat it posed to him and the other officers. Additionally, there is no evidence that either Officer [REDACTED] or Officer [REDACTED] asked the other officers present to search for the firearm or even verbally alerted their fellow officers to the presence of a gun prior to it being recovered from [REDACTED] pocket. The OEMC recording reflects that Officer [REDACTED] likely did not recover the firearm until at least approximately one minute and twenty seconds after the shots.⁶⁶ Approximately, one minute and twenty-four seconds elapsed between the announcement of the shots fired by police until Officer [REDACTED] says in the background “gotta gun” and Officer [REDACTED] subsequently announces the recovery of the gun over the radio.⁶⁷ Officer [REDACTED] and Officer [REDACTED] failures to commence an immediate and thorough search for the gun and failure to announce the presence of a gun after discharge is inconsistent with the actions of a reasonably trained officer in similar circumstances.

Third, [REDACTED] and [REDACTED] also did not observe [REDACTED] reaching for the firearm. [REDACTED] specifically stated that both of [REDACTED] hands were on the wheel when Officer [REDACTED] opened fire.^{68, 69}

⁶³ [REDACTED] could have theoretically placed the firearm back into his pocket after the shooting, a preponderance of the evidence demonstrates this did not occur. According to Officer [REDACTED] after he shot [REDACTED] slouched over, appearing to give up. [REDACTED] stated that after he was shot, he could not move his feet and his arm was numb, which is consistent with Officer [REDACTED] account.⁶³ Officer [REDACTED] quickly removed [REDACTED] from the vehicle and handcuffed him. Under these circumstances, it is highly improbable that [REDACTED] could have successfully placed the firearm fully back into the left interior pocket, especially considering that the sights, trigger guard, butt, safety, slide release, and hammer all protruded from [REDACTED] firearm.

⁶⁴ Att. 81 at 24-25; Att. 119 at 31-35

⁶⁵ Att. 81 at 24-25; Att. 119 at 31-35

⁶⁶ Atts. 70, 93

⁶⁷ Officer [REDACTED] could not confirm or deny that he exclaimed “gotta gun.” However, Officer [REDACTED] expressly denied that it was his voice and Officer [REDACTED] was speaking in the foreground while “gotta gun” can be heard in the background. Att. 119 at 41-42. It is undisputed that Officer [REDACTED] recovered a firearm. Therefore, a preponderance of the evidence demonstrates Officer [REDACTED] is the voice exclaiming, “gotta gun.”

⁶⁸ Att. 63 at 25; Att. 82 at 25-26

⁶⁹ COPA has some concerns regarding [REDACTED] and [REDACTED] ability to fully and accurately recall the incident. [REDACTED] and [REDACTED] had both consumed alcohol on the night the incident, and

Fourth, Officer ██████ and Officer ██████ observations were not corroborated by any of the witness officers present during the incident, and Officer ██████ and Officer ██████ alleged observations of ██████ firearm are somewhat inconsistent. Officer ██████ alleged that he saw slide of the gun from the ejector port to the trigger guard, approximately half of the slide, but Officer ██████ stated that he only saw butt of a gun and magazine well despite having a much better angle from the passenger side, to clearly see ██████ pulling a firearm from left to right out of his left interior jacket pocket.

Despite the above, COPA finds the available evidence insufficient to amply disprove Officer ██████ and ██████ accounts that ██████ attempted to pull his firearm. COPA notes that ██████ himself, in his initial statement to IPRA shortly after the incident, stated that he could not recall if he reached for the firearm.⁷⁰

2. Legal Analysis

- i. There is insufficient evidence to demonstrate Officers ██████ and ██████ Violated the Department's Use of Force Policy.

Assuming *arguendo* ██████ attempted to pull the firearm in the manner described by Officers ██████ and ██████ the use of deadly force would be justified by Department policy. Specifically, an officer with similar training and experience as Officers ██████ and ██████ would reasonably believe that ██████ posed a risk of death or great bodily injury and that deadly force was necessary to eliminate the threat. Department members are not required to wait until a person points a firearm at them to use deadly force. ██████ purported actions, attempting to pull out the firearm, would be particularly threatening considering just moments before that ██████ recklessly drove his vehicle in the direction of Officers ██████ and ██████

However, as explained above, there is insufficient evidence to prove or disprove that ██████ attempted to pull out the firearm he possessed. Therefore, Allegation #1 against Officer ██████ and ██████ is **Not Sustained**.⁷¹

████████████████████ likely did not have an unobstructed view of ██████ hands from her position in the backseat.

⁷⁰ However, ██████ denied pulling out the firearm in his initial statement to IPRA and denied even reaching for the firearm in his statement to COPA investigators on June 18, 2018.

⁷¹ As explained above, a preponderance of the evidence demonstrates that ██████ vehicle did not pose an imminent risk of death or great bodily harm at the time they discharged their firearms. However, even assuming *arguendo*, the Buick threatened Officer ██████ and ██████ at the time they discharged their firearms, Department policy prohibited Officers ██████ and ██████ from discharging their firearm at or into the moving vehicle of the vehicle was the only force used or threatened to be used unless complying with the prohibition would unreasonably endanger themselves or another person.⁷¹ There is no credible evidence that Officer ██████ Officer ██████ or any other person would have been unreasonably endangered by complying with the prohibition on firing at or into moving vehicles. Indeed, Officer ██████ and Officer ██████ decision to fire posed a clear risk of crossfire and put each other at serious risk.⁷¹ Any threat the Buick posed to the officers on the scene could have been mitigated by the officers moving out the way, exactly as Officers ██████ and ██████ did when ██████ drove towards them initially. Therefore,

- ii. There is insufficient evidence to demonstrate that Officers [REDACTED] and [REDACTED] willfully made false oral reports in violation of Rule 14.

The credibility of an individual relies primarily on two factors: (1) the reliability of the individual's account and (2) the individual's truthfulness. Reliability relates to the individual's ability to accurately perceive the event at the time of the incident and then accurately recall the event from memory while truthfulness relates to the honesty of individual making the statement. The fact that an individual is not reliable does not necessarily mean the individual is not truthful.

To sustain a Rule 14 allegation, a preponderance of evidence must demonstrate that Officers [REDACTED] and [REDACTED] willfully made a materially false statement. In other words, the evidence must not only demonstrate that Officers [REDACTED] and [REDACTED] are unreliable, but they were intentionally untruthful in their statement. To demonstrate that Officers [REDACTED] and [REDACTED] were intentionally untruthful the evidence must prove that Officers [REDACTED] and [REDACTED] knew the statement was false at the time they made it.

As outlined above, the evidence is insufficient to demonstrate whether Officers [REDACTED] and [REDACTED] assertion that [REDACTED] attempted to pull a firearm was false. Moreover, even assuming *arguendo* Officer [REDACTED] and [REDACTED] assertion on this issue was false, the available evidence is insufficient to prove by a preponderance of the evidence that Officers [REDACTED] and [REDACTED] willfully misrepresented that they observed [REDACTED] pulling a firearm prior to discharging their firearms (i.e. that they were untruthful). Therefore, COPA concludes Allegation #3 against Officer [REDACTED] and Allegation #4 against Officer [REDACTED] are **Not Sustained**.

- iii. Officer [REDACTED] was inattentive to duty when he failed to conduct a timely search of [REDACTED] in violation of Rule 10 but there is insufficient evidence to prove that Officer [REDACTED] was inattentive to duty.

Officer [REDACTED] stated that he conducted a quick pat-down of [REDACTED] waist area after handcuffing [REDACTED] and laying him on his stomach. Officer [REDACTED] could not recall whether he conducted a more thorough search or if he searched the Buick. However, it is undisputed that Officer [REDACTED] did not recover [REDACTED] firearm which inevitably would have been discovered had Officer [REDACTED] simply checked [REDACTED] left interior jacket pocket, the exact spot Officer [REDACTED] asserted he saw [REDACTED] pull the firearm from. The OEMC recording demonstrates that approximately one minute and twenty-four seconds elapsed between the announcement of the shots fired by police and Officer [REDACTED] stating in the background "gotta gun." Officer [REDACTED] had ample opportunity to conduct a more thorough search of [REDACTED] and there were no urgent circumstances present to justify conducting only a cursory search of [REDACTED] particularly when numerous other officers were present to handle other tasks. Officer [REDACTED] actions were particularly egregious when two other civilians, [REDACTED] and [REDACTED] were present in the immediate area.

only [REDACTED] purportedly attempting to pull the firearm would justify Officer [REDACTED] and [REDACTED] use of deadly force.

However, there is insufficient evidence to demonstrate that Officer ██████ was inattentive to duty. A preponderance of the evidence demonstrates that Officer ██████ was handcuffing and searching ██████ and ██████ immediately after the shooting incident. Because Officer ██████ was located on the passenger side of the vehicle, his actions were reasonable, and Officer ██████ completed handcuffing and searching ██████ and ██████ in a timely manner. It is undisputed that Officer ██████ searched ██████ and located the firearm after arriving on the driver's side of the vehicle. However, there is insufficient evidence to determine how long it took Officer ██████ to locate the weapon after arriving on the driver's side of the vehicle. ██████ asserted that Officer ██████ only recovered the firearm after he asked to be rolled over from his stomach, but Officer ██████ did not reference this request in his interviews, and Officer ██████ asserted he recovered ██████ firearm shortly after he arrived on the driver's side of the Buick. There is insufficient evidence to prove or to disprove that Officer ██████ failed to search ██████ in a timely manner.

For these reasons, COPA concludes Allegation #2 against Officer ██████ is **Sustained**. Allegation #2 against Officer ██████ is **Not Sustained**.

- iv. Officer ██████ had mixed ammunition in his firearm on February 14, 2015, in violation of Rule 6.

The Chicago Police Department Uniform and Property policy U04-02-01 II., D., 3 requires semiautomatic pistols be: fully loaded with only one manufacturer and style of prescribed ammunition (same bullet type and grain weight). The ISP forensic report stated that one Remington-Peters and two Winchester shell casings were fired from Officer ██████ weapon. This is sufficient evidence to prove by a preponderance of the evidence that Officer ██████ had loaded his firearm with two types of ammunition on the date of the incident. Therefore, COPA concludes Allegation #3 against Officer ██████ is **Sustained**.

VII. DISCIPLINARY RECOMMENDATION

a. Officer ██████

i. Complimentary and Disciplinary History

Officer ██████ has been a CPD member since August 25, 2003. In that time, he has received 138 Honorable Mentions, 6 Department Commendations, 3 Complimentary Letters, 1 Police Blue ██████ Award, 1 Honorable Mention Ribbon Award, 1 Superintendents Award of Valor, and 1 Life Saving Award. In the last seven years, Officer ██████ has not received any discipline.

ii. Recommended Penalty, by Allegation

1. Allegation No. 2

COPA recommends a Suspension of 3 days for the allegation that Officer ██████ failed to conduct a timely search of ██████ during his arrest. Officer ██████ had just discharged his firearm at ██████ because he perceived ██████ to be an imminent threat of death or great

bodily harm. As such, Officer [REDACTED] should have done a more thorough search for a weapon while taking [REDACTED] into custody.

b. Officer [REDACTED]

i. Complimentary and Disciplinary History

Officer [REDACTED] has been a CPD member since September 13, 1999. In that time, he has received 99 Honorable Mentions, 10 Department Commendations, 1 Special Commendation, 1 Complimentary Letter, 1 Honorable Mention Ribbon Award, and 1 Superintendents Award of Valor. In the last seven years, Officer [REDACTED] has not received any discipline.

ii. Recommended Penalty, by Allegation

1. Allegation No. 3

COPA recommends a Reprimand for the allegation that Officer [REDACTED] had mixed ammunition in his firearm. Officer [REDACTED] reported that he got the ammunition when he qualified with his weapon. His failure to follow the General Order by having ammunition from more than one manufacturer appears to be inadvertent.

VIII. CONCLUSION

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

Officer	Allegation	Finding
Officer [REDACTED]	1. It is alleged that on February 14, 2015, at approximately 12:29 a.m. in the area of [REDACTED] W. 73 rd Street, Officer [REDACTED] disobeyed the Chicago Police Departments Use of Deadly Force policy in that he fired his weapon against [REDACTED] without justification in violation of Rules 2 and 6. 2. It is alleged that on February 14, 2015 at approximately 12:29 a.m. in the area of [REDACTED] W. 73 rd Street, Officer [REDACTED] was inattentive to duty when he failed to conduct a timely search of [REDACTED] [REDACTED] during his arrest in violation of Rule 10. 3. It is alleged that on September 27, 2017 at approximately 1:00 p.m. at 1615 W. Chicago Officer [REDACTED] violated Rule 14 of the Chicago Police Department in that he made a false oral report.	Not Sustained Sustained / 3 Days Not Sustained
Officer [REDACTED]	1. It is alleged that on February 14, 2015 at approximately 12:29 a.m. in the area of [REDACTED] W. 73 rd Street, Officer [REDACTED] disobeyed the Chicago	Not Sustained

<p>police Departments Use of Deadly Force policy in that he fired his weapon against [REDACTED] without justification in violation of Rules 2 and 6.</p>	<p>Not Sustained</p>
<p>2. It is alleged that on February 14, 2015, at approximately 12:29 a.m., at the location of [REDACTED] W. 73rd Street, Officer [REDACTED] was inattentive to duty in that he failed to conduct a timely search of [REDACTED] during his arrest in violation of Rule 10.</p>	<p>Not Sustained</p>
<p>3. It is alleged that on February 14, 2015, at approximately 12:29 a.m., at the location of [REDACTED] W. 73rd Street, Officer [REDACTED] had mixed ammunition in his firearm in violation of Rule 6.</p>	<p>Sustained / Reprimand</p>
<p>4. It is alleged that on September 27, 2017 at approximately 1:00 p.m. at 1615 W. Chicago Ave. Officer [REDACTED] violated Rule 14 of the Chicago Police Department in that he made a false oral report.</p>	<p>Not Sustained</p>

Approved:

[REDACTED]

 Andrea Kersten
 Deputy Chief Administrator

December 30, 2019

 Date

[REDACTED]

 Sydney Roberts
 Chief Administrator

December 30, 2019

 Date

Appendix A

Assigned Investigative Staff

Squad#:	
Major Case Specialist:	
Supervising Investigator:	
Deputy Chief Administrator:	
	Andrea Kersten