

ADMINISTRATIVE SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

Date of Incident:	July 28, 2016
Time of Incident:	6:54 pm
Location of Incident:	██████████ (rear yard)
Date of IPRA Notification:	July 28, 2016
Time of IPRA Notification:	7:30 pm

On July 28, 2016, at approximately 6:54 pm, ██████████ (██████████) chased ██████████ (██████████) into the basement stairwell located at the rear of the single-family home at ██████████ ██████████. ██████████ pointed a black, semi-automatic handgun at ██████████ and proceeded to rob him of his property. ██████████ (██████████) and ██████████ (██████████) who were inside the residence, witnessed the incident. ██████████ subsequently telephoned 911 and reported the robbery.

Officers Richard Schmidt and Daniel Christie, as well as several other police officers, responded to the robbery in progress call. Officers Schmidt and Christie drove south on May Street and parked in front of ██████████. The officers exited, and Officer Schmidt walked east through the gangway leading to the rear yard of ██████████. Officer Christie walked east through the gangway directly north of ██████████. As Officers Schmidt and Christie walked through the gangways, Officers David Neberieza and Kevin O'Neill drove north through the alley east of May Street and stopped behind ██████████. As Officer Schmidt approached the rear yards, he heard a male voice say words to the effect, "He's robbing me."² ██████████ exited the enclosed stairway leading to the basement apartment at the rear of the residence, holding a handgun. Officer Schmidt ordered ██████████ to drop his gun and show his hands. ██████████ did not comply and instead raised his firearm in Officer Schmidt's direction. Officer Schmidt, fearing ██████████ would shoot him, discharged his firearm twice, striking ██████████ on the left side of his body and both of his legs. ██████████ immediately dropped his firearm and fell to the ground. ██████████ was subsequently transported to Stroger Hospital where he was treated for his wounds.

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.

² NKA ██████████

II. INVOLVED PARTIES

Involved Officer #1:	Richard Schmidt; Star #19514; Employee ID # [REDACTED] Unit 007; DOB: [REDACTED], 1982; DOA: October 31, 2005; Male; White.
Subject #1:	[REDACTED] DOB: January 17, 1988; Male; Black.

III. ALLEGATIONS

COPA’s predecessor IPRA was notified whenever a CPD member discharged his or her firearm in a manner that potentially could strike another individual, and this investigation was initiated pursuant to such notification. Based on IPRA/COPA’s investigation and review of the available evidence, no allegations were served on Officer Schmidt.

IV. APPLICABLE RULES AND LAWS

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- General Orders
-
1. General Order G03-02-03: Deadly Force
-
- Federal Laws
-
1. The Fourth Amendment to the United States Constitution
-
- State Laws
-
1. 720 ILCS 5/7-5 (1986)

V. INVESTIGATION³

a. Interviews

1. Civilian Statements

Attempts to contact [REDACTED] [REDACTED] (personal visit, phone calls, and letters via Certified and regular USPS) were unsuccessful.

[REDACTED] and [REDACTED] refused to be interviewed in furtherance of this investigation.

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 Attachments 6, 25, 53, 97, 100.

⁵ Attachment 7.

Attempts to interview ██████████ (Emails to Cook County Public Defender, Letters to ██████████ letters and telephone calls to ██████████ attorney, and a telephone call to Mr. ██████████ in Shawnee Correctional Facility) were unsuccessful.

During an Electronically Recorded Interview with Area South Detectives on 28 July 2016, ██████████ stated that at the time of this incident he was playing with dice. ██████████ could not remember the names of anyone he was playing with and he could not recall how many people were playing dice. ██████████ then requested to speak to an attorney and the interview was terminated.

During a canvass⁸ of the location of incident on July 28, 2016, IPRA investigators spoke with ██████████ who stated that her niece, ██████████, told her that her boyfriend was a witness to this incident. During a follow-up conversation with ██████████, she stated that she never told ██████████ that her boyfriend witnessed this incident. Tracy Burton did not know if her boyfriend witnessed this incident and declined to provide her boyfriend's name or contact information.

In a telephone conversation on January 3, 2018, ██████████⁹ (██████████) stated that on the day of the incident, he was at Palos Hospital when he received a telephone call from his cousin, ██████████ ("██████████"). ██████████ informed him that his friend, ██████████ had been shot. ██████████ also stated that the gun belonging to ██████████ ("██████████"), ██████████'s live-in girlfriend, was missing, and ██████████ believed ██████████ took it. ██████████ confirmed that the handgun recovered from the scene of ██████████ arrest belonged to ██████████ ██████████ stated that ██████████ had telephoned him from Cook County Jail, but they did not speak about the incident. ██████████ stated that he did not know the details of the encounter between ██████████ and any police officer(s).

2. Officer Statements

In a statement given to IPRA on August 9, 2016, **Officer Richard Schmidt**¹⁰ stated that he and Officer Christie monitored a radio call of a robbery in progress/man with a gun at ██████████ ██████████ Officer Schmidt and Officer Christie then proceeded to that address. Officer Schmidt was the driver and Officer Christie was the passenger of marked police vehicle. On the way to ██████████ Officer Schmidt and Officer Christie ended up driving behind, and subsequently parking behind, Officer Mayhew and Officer Janik. Officer Schmidt also stated that initially, he activated his emergency equipment, but turned the equipment off as to not forewarn the offenders of the officers' approach. Officer Schmidt stated that he and the other officers exited their vehicles. Officer Schmidt stated that he did not see any civilians or a robbery in progress in the front of the residence located ██████████ After exiting his police vehicle Officer Schmidt immediately proceeded through the gangway toward the rear yard of ██████████

⁶ Attachments 5, 32, 35, 56, 87, 88, 109.

⁷ Attachment 107.

⁸ Attachments 6, 92.

⁹ Attachment 99.

¹⁰ Attachments 45, 82.

As he walked through the gangway, he unholstered his firearm and upon exiting the gangway into the rear yard he heard a male voice screaming, "He's robbin' me! He's robbin' me! He's robbin' me!"¹¹ Officer Schmidt saw, a man, now known to be ██████ standing at the top of the stairs leading to the basement at the rear of the single-family residence. Officer Schmidt saw ██████ holding a handgun in his right hand. Officer Schmidt stated that ██████ right arm was extended, and he was pointing his gun in front of him. Officer Schmidt could not see who or what ██████ was pointing his handgun toward. According to Officer Schmidt, he and ██████ were between 5 and 10 feet away from each other. Officer Schmidt stated that ██████ looked at him and turned his body toward him. Simultaneously, ██████ raised his firearm in Officer Schmidt's direction. Officer Schmidt could not recall if he said anything to ██████ at that time. Officer Schmidt, fearing ██████ would shoot him, discharged his firearm twice. ██████ immediately dropped his firearm and fell to the ground. Officer Schmidt ran over and stood near the dropped handgun, which was on the ground near where ██████ fell. Officer O'Neil approached and handcuffed ██████

Officer Schmidt stated he was unaware of any other officer being in the rear yard at the time of the shooting.

In a statement given to IPRA on August 9, 2016, **Officer Daniel Christie**¹² stated that he was working with Officer Schmidt. Officer Christie stated that he and Officer Schmidt were on routine patrol, with Officer Schmidt driving their marked police vehicle, when he monitored a radio call of a robbery in progress. They proceeded to the location of that incident and ended up following Officers Janik and Mayhew in another marked police vehicle. Officer Christie stated that, upon arrival, Officer Schmidt parked their police vehicle two or three houses south of ██████. Officer Christie added that several other police vehicles arrived at the same time. Officer Christie stated that he and Officer Schmidt walked to the single-family residence at ██████. Officer Christie did not see any citizens outside in front of the residences on May Street. Officer Schmidt immediately entered the south gangway and proceeded east toward the rear yard of the residence, while Officer Christie walked up the stairs to the residence's front door to determine if it appeared there was damage on the door. As Officer Christie climbed the front porch stairs, he heard two gunshots. Officer Christie stated that the gunshots sounded as if they came from the rear yard. Officer Christie immediately descended the front stairs and entered the north gangway leading to the rear yard. As he ran through the gangway, he heard Officer Schmidt on the radio notifying dispatch of shots fired by the police and requesting an ambulance. Officer Christie could not enter the rear yard because there was a 6-foot-tall chain-link fence at the end of the north gangway leading to the rear yard. Officer Christie could see ██████ lying on the ground. Officer Christie also saw a black semi-automatic handgun on the ground about one foot away from ██████. ██████ was lying on the ground near the top of the stairs leading to the basement at the rear of the residence. Officer Christie saw other officers enter the yard and an officer handcuff ██████. Officer Christie then ran around the front of the house and entered the rear yard from the south gangway.

¹¹ Att. 82, Pg. 13, Ln. 18.

¹² Attachments 46, 84.

Officer Christie did not witness the shooting. He believed Officers Janik and Mayhew were near the front sidewalk of the residence when he heard the gunshots.

In a statement given to IPRA on August 23, 2016, **Officer Jennifer Mayhew**¹³ stated she and her partner, Officer Janik, were assigned to respond to a robbery in progress at [REDACTED]. Officer Mayhew saw other police officers arriving at the same time but did not see any citizens out in front of the residences. Officer Mayhew exited her police vehicle and approached [REDACTED]. Officer Mayhew saw Officer Schmidt enter the south gangway of the residence while Officer Christie walked up the front stairs and knocked on the front door. Officer Mayhew stated that she was standing at the bottom of the front porch when she heard two gunshots. Officer Mayhew ran through the residence's south gangway to the rear yard where she saw [REDACTED] sitting on the ground. Officer Mayhew also saw a black, semi-automatic handgun on the ground near to the right side of [REDACTED]. Officer Mayhew thought she heard [REDACTED] say something about having a gun.

Officer Mayhew stated that, following the shooting, she was assigned as the paper-car¹⁴ and spoke with Mr. [REDACTED] who, "explained what had happened, so the whole story of how the offender came into the yard, put a gun to his head, and robbed him."¹⁵ Officer Mayhew also stated the owner of the home told her, "he saw the gun on, um, on the victim's head and the offender told the, the back basement door it's a gate and it was locked. So, the offender wanted him to unlock it so he could go inside. So, at which point the witness agreed, but called 911."¹⁶

Officer Mayhew stated that she did not witness the shooting, adding that she was not in the rear yard at the time of this incident.

In a statement given to IPRA on August 23, 2016, **Officer Nataly Janik**¹⁷ stated she and her partner, Officer Mayhew, responded to [REDACTED] regarding a call of a man with a gun/robbery in progress. Officer Janik stated the dispatcher relayed that information over the radio and the officers' in-car computer (PDT). Officer Janik stated that she did not see anyone or anything that indicated a robbery in progress in front of the residences. Officer Janik followed Officer Mayhew and Officer Christie to the front porch of the single-family home at [REDACTED]. As she stood a couple of feet away from the front porch, she heard two gunshots. Officer Janik immediately radioed dispatch of shots fired and that they originated in the rear of the house. Officer Janik then proceeded through the gangway to the rear of the residence. Once in the rear yard Officer Janik saw [REDACTED] on the ground two or three feet from the stairs leading to the basement. [REDACTED] was bleeding from his lower leg. Officer Janik immediately radioed for an ambulance. Officer Janik then stood near the black semi-automatic handgun that was near [REDACTED]. Other officers arrived and secured the area. Officer Janik then went and spoke with the robbery victim, [REDACTED] told her that [REDACTED] robbed him of his cell phone and \$300 dollars. [REDACTED] told her that [REDACTED] had pointed a gun at his head and robbed him of his property. Officer

¹³ Attachments 54, 78.

¹⁴ Officers assigned as the "paper car" are to complete the appropriate police reports.

¹⁵ Att. 78, Pg. 17, Ln. 15

¹⁶ *Id.*, Pg. 18, L. 8

¹⁷ Attachments 55, 83.

Janik also spoke with [REDACTED] and [REDACTED] who witnessed [REDACTED] use a handgun to rob [REDACTED]. They also informed Officer Janik that [REDACTED] demanded that [REDACTED] and [REDACTED] open the back door, but they told him they would need to get the key to unlock the scissor-gate. Instead of getting the key, they called 911 to report the robbery.¹⁸

In a statement given to IPRA on August 8, 2016, **Officer Kevin O'Neill**¹⁹ stated that he was working with his partner, Officer David Neberieza. Officer O'Neill stated that they monitored the radio call of the robbery in progress at [REDACTED]. Officer O'Neill activated their vehicle's emergency equipment and drove to the address. When they arrived, Officer O'Neill saw several police vehicles on the street in front of the location of the robbery call. He then proceeded to drive south on May Street, then east on 68th Street, and then north in the alley east of May Street. As they drove north through the alley, approaching the rear of the residence at [REDACTED] he saw [REDACTED] walking up the rear stairs from the basement. Officer O'Neill also saw Officer Schmidt walking east through the south gangway. Officer O'Neill stated that his view was obstructed by garbage cans and the residence's rear porch. Officer O'Neill saw [REDACTED] turn toward Officer Schmidt and raise his right arm. Officer O'Neill saw a dark object that looked like a handgun in [REDACTED] right hand. Officer Schmidt then fired two times at [REDACTED] who immediately fell to the ground. Officer O'Neill exited his vehicle, scaled the fence separating the alley and the rear yard, and handcuffed [REDACTED]. Officer O'Neill also saw a black semi-automatic handgun on the ground near [REDACTED]. Officer O'Neill remembered [REDACTED] saying, "I have drugs on me."²⁰ Officer O'Neill also saw blood on [REDACTED] lower leg, but he could not remember which leg.

In a statement given to IPRA on August 8, 2016, **Officer David Neberieza**²¹ stated that he and his partner, Officer O'Neill, responded to an armed robbery call at [REDACTED]. Officer Neberieza saw numerous police vehicles already at the location of the incident. Officer Neberieza told Officer O'Neill they should drive around the block to the alley because there were already numerous officers in the front of the residence. Officer Neberieza and Officer O'Neill drove south to 68th Street, then east to the east alley of May Street. They drove north in the alley from 68th Street and, as they approached the rear yard of [REDACTED] Officer Neberieza heard Officer O'Neill say, "He's right there."²² Officer Neberieza saw [REDACTED] exiting the basement stairwell at the rear of the residence. He did not see Officer Schmidt at this time, adding that his view of the rear yard was partially obstructed by overgrown bushes and trees. Officer Neberieza also did not see if [REDACTED] was holding anything in his hands as he exited the basement stairwell. Officer Neberieza exited and proceeded around the back of the police vehicle. When Officer Neberieza was running around the rear of the police vehicle, he heard gunshots. At that moment he froze, because did not know where the gunshots were coming from. As he approached the rear yard, he saw [REDACTED] on the ground with Officer Schmidt standing near him. Officer Neberieza saw a handgun on the ground one to two feet away from [REDACTED]. Officer Neberieza did not witness Officer Schmidt shoot [REDACTED]. Officer Neberieza ran over to [REDACTED] and Officer Schmidt, at which time he saw [REDACTED] exiting the same rear stairwell. [REDACTED] repeatedly said, "I just got robbed, I

¹⁸ Attachment 11.

¹⁹ Attachment 80.

²⁰ Att. 80, Pg. 16, Ln. 23

²¹ Attachments 44, 81.

²² Att. 44, Pg. 11, Ln. 31

just got robbed!” Officer Neberieza then walked ██████ back down the basement stairs to verify who he was.

Once the situation was under control, ██████ recounted to Officer Neberieza that ██████ chased him from the alley into the rear basement stairwell, where he (██████ was trapped because the metal scissor-gates of the door to the residence were locked with a pad-lock. ██████ then produced a handgun and pointed it ██████ head while removing his money and cell phone from his pockets. One of the occupants of the basement apartment opened the door, at which time ██████ pushed ██████ against the locked scissor-gate, pointed the gun at ██████ head, and instructed the occupant to unlock the gate. The occupant told ██████ he needed to get the key to the padlock. The occupant then went inside, and instead of retrieving the key, called 911.

In a statement given to IPRA on August 31, 2016, **Officer Julie Follis**²³ stated that she was working with Officer John Murphy, when she monitored a radio call of an armed robbery in progress at ██████. Upon arrival, they drove south of the address and parked their marked police vehicle. Officer Follis saw Officers Janik, Mayhew, Christie, and Schmidt near the front of the residence at ██████. Officer Follis stated that she and Officer Murphy were in front of the residence south of ██████ when she heard two quick gunshots. Officer Follis stated that she ran into the rear yard of ██████ and saw Officer Schmidt standing near ██████ who was sitting on the ground. Officer Follis stated that Officer Christie was handcuffing ██████. Officer Follis also saw a black, semi-automatic handgun on the ground about one or two feet away from ██████ right side. Officers Follis and Murphy were assigned to follow the ambulance transporting ██████ to Stroger Hospital.

In a statement given to IPRA on August 31, 2016, **Officer John Murphy**²⁴ stated that he was working with Officer Julie Follis. Officer Murphy and Officer Follis responded to the armed robbery at ██████. Officers Murphy and Follis exited their vehicle and did not see any civilians or any indication of an armed robbery. Officer Murphy stated that several officers were knocking on the front door of the single-family residence at ██████ and that another officer walked to the rear yard through the gangway. Officer Murphy did not know the name of the officer that walked to the yard. A few moments later, Officer Murphy heard two gunshots that sounded like they came from the rear yard. An unknown female officer ran to the yard, followed by Officer Murphy. Officer Murphy stated that he did not know the female officer’s name. Officer Murphy entered the rear yard and saw ██████ sitting on the ground with two uniformed officers standing near him. Officer Murphy also saw at least one black male subject standing in the basement stairwell at the rear of the house. Officer Murphy stated that, although he never saw a gun on the ground near ██████ he heard other officers say ██████ gun had been recovered. Officer Murphy stated that he rode in the ambulance with ██████.

b. Digital Evidence²⁵

²³ Attachment 69.

²⁴ Attachment 70.

²⁵ The 7th District did not start issuing Body-Worn Cameras until May 1, 2017.

The **in-car camera recording**²⁶, from the police vehicle (Unit 706E), assigned to Officer Schmidt and Officer Christie showed them parking the vehicle on the west side of May Street. The recording did not depict the encounter between [REDACTED] and the officers or provide any information relative to this investigation.

POD #446,²⁷ located at 6759 S. May Street, did not have any archived video due to technical difficulty.

The **Office of Emergency Management and Communications (OEMC) PCAD Event Queries**²⁸ stated that on July 28, 2016, at 1849 hours, an unknown male caller²⁹ telephoned 911 and reported that an unknown male was attempting to rob the caller's location. The male caller added that the offender is at the door with a gun and then terminated the telephone call.

At 1851 hours, an unknown male Verizon Wireless caller telephoned 911 and reported that someone was being robbed at 6721 S. Lake, however, he would not verify the address. It was noted that 6721 S. Lake Street is not a valid address. The 911 call-taker attempted to call the person back but there was no answer. The call-taker also noted that no description was given and was not sure if the call was a prank. At 1854 hours Shots fired by the police. At 1855 hours, EMS was requested.

According to the **Office of Emergency Management and Communications (OEMC) audio recordings**³⁰ there were two telephone calls made to 911 by unidentified callers. During the first call, the unidentified caller asked the 911 call-taker to send the police to 6721 S. May because someone was trying to rob them, and that the offender had a gun. The caller did not provide any additional information.

The second call to 911 was also made by another unidentified person. This 2nd caller stated to the call-taker that someone was trying to rob them. The caller can then be heard talking to another unidentified person. The 2nd caller did not answer any questions or provide additional information.

The OEMC Dispatcher then informed 007th District Police Units of the Robbery In-Progress at [REDACTED] adding that the offender may be armed with a gun. The first officers to arrive at [REDACTED] did not find anyone involved in a robbery and asked the OEMC Dispatcher to call the 911 caller back. A few moments later a second police unit radioed the Dispatcher of shots fired by the police.

²⁶ Attachment 57.

²⁷ Attachment 41.

²⁸ Attachment 65.

²⁹ Both calls originated from [REDACTED], which was registered to [REDACTED]

³⁰ Attachments 60-64.

c. **Physical Evidence**

Evidence Technician Photographs³¹ depict the location of incident. The photographs also depicted two expended cartridge casings in the grass on the south side of the rear yard near the entrance to the gangway leading to the front of the residence. The photographs also depicted a black, semi-automatic handgun in the grass near the rear of the residence.

The **Chicago Fire Department's Ambulance Report**³² note that on July 28, 2016, at 6:55 pm, Ambulance 14 was dispatched to [REDACTED] regarding a gunshot victim. Upon arrival, the paramedics found [REDACTED] sitting in the backyard conscious and alert. [REDACTED] had gunshot wounds to each lower leg, below the knees, and one gunshot wound to the lower left quadrant that appeared to have exited through the back. Mr. [REDACTED] was transported to Stroger Hospital.

Stroger Hospital Medical Records³³ note that on July 28, 2016, at 7:36 pm, [REDACTED] was examined in the Emergency Room. The records stated that [REDACTED] sustained two gunshot wounds to the anterolateral³⁴ to his lower left side; two gunshot wounds to his lower left leg, at the anteromedial³⁵ and anterolateral³⁶ of the left knee; and one gunshot wound to his lower right leg, anterolateral³⁷ mid-shaft. X-rays depicted a lodged bullet fragment in [REDACTED] lower right leg.

A report from the **Illinois State Police Division of Forensic Services**,³⁸ dated August 8, 2016, stated that the suspected narcotic recovered from [REDACTED] was tested and determined to be 17.3 grams of Cocaine.

A report from the **Illinois State Police Division of Forensic Services**,³⁹ dated October 5, 2016, stated that Officer Schmidt's Sig Sauer, 9mm semi-automatic pistol contained 14 unfired Winchester 9mm, Luger +P cartridges. Officer Schmidt's firearm was examined and found to be in firing condition. The report continued that the 2 Winchester 9mm, Luger +P recovered fired cartridge cases were examined and determined to have been fired from Officer Schmidt's firearm.

A report from the **Illinois State Police Division of Forensic Services**,⁴⁰ dated October 26, 2016, stated that the Sig Sauer, 40 caliber semi-automatic pistol contained 12 unfired cartridges. Examination of the pistol, the magazine, and one unfired cartridge did not reveal any latent impressions suitable for comparison.

³¹ Attachment 42.

³² Attachment 34.

³³ Attachment 94.

³⁴ Located or occurring in the front and to the side.

³⁵ Located in front and toward the middle.

³⁶ Located in front and to the side.

³⁷ Located in front and to the side.

³⁸ Attachment 101.

³⁹ Attachment 102.

⁴⁰ Attachment 103.

A report from the **Illinois State Police Division of Forensic Services**,⁴¹ dated November 23, 2016, stated that Sig Sauer, 40 caliber semi-automatic pistol was examined and found to be in firing condition. A test fired cartridge from Sig Sauer, 40 caliber semi-automatic pistol was entered into the IBIS⁴² database; however, no identification was made.

A report from the **Illinois State Police Division of Forensic Services**,⁴³ dated October 30, 2017, stated that the swabs of Sig Sauer, 40 caliber semi-automatic pistol were examined and found a mixture of DNA profiles. ██████ can be excluded from the major human male DNA profile. Charles Minefee cannot be excluded from that profile. ██████ can also be excluded from the minor human DNA profile.

According to **Cook County Court Records (██████████)**⁴⁴, on March 7, 2018, Mr. ██████ pled guilty to Armed Robbery / No Firearm and was sentenced to 12 years of incarceration in the Illinois Department of Corrections.

d. Documentary Evidence

Officer Schmidt's firearm⁴⁵ was inventoried and found to contain 13 unfired cartridges in its magazine and 1 unfired cartridge in the chamber. It was determined the firearm's capacity (magazine plus chamber) was 16 unfired cartridges.

The **Arrest Report**⁴⁶ states that ██████ chased ██████ through the rear lot of ██████ trapping him inside the rear basement staircase. ██████ placed a handgun against ██████ head and took ██████ money and cellphone from his pockets. Officers responded to the call of a robbery in progress and observed ██████ exit a rear, basement stairway. ██████ raised a black firearm in Officer Schmidt's direction. In fear of his life, Officer Schmidt fired two rounds, striking ██████ twice about the body and causing him to fall to the ground. ██████ dropped his firearm and was placed in custody. ██████ was transported to Cook County Hospital by Chicago Fire Department Ambulance. A custodial search revealed that ██████ was in possession of six clear knotted plastic baggies containing suspect crack cocaine. ██████ was subsequently charged with Armed Robbery, Aggravated Assault on a Peace Officer, and Possession of Cocaine.

The **Tactical Response Report**⁴⁷ authored by Officer Schmidt states that ██████ who was armed is a blue-steel, semi-automatic handgun, did not follow verbal direction and was classified as an imminent threat, who used force that was likely to cause death or great bodily harm. Officer Schmidt responded by discharging his firearm twice at ██████

⁴¹ Attachment 104.

⁴² Integrated Ballistics Identification System.

⁴³ Attachment 106.

⁴⁴ Attachment 110.

⁴⁵ Attachments 4 & 28.

⁴⁶ Attachment 11.

⁴⁷ Attachment 12.

The **Officer's Battery Report**⁴⁸ authored by Officer Schmidt states that Officer Schmidt was on-duty and uniformed. Officer Schmidt was investigating a suspicious person/man with a gun. Officer Schmidt described the lighting conditions as being daylight and the weather clear. Officer Schmidt's narrative was that the offender was in the act of committing an armed robbery. Officer Schmidt viewed the offender with a firearm. The offender raised the firearm in Officer Schmidt's direction, placing him in fear for his life.

The **Detective's Supplemental Report (RD# HZ368732)**⁴⁹ states a Firearms Trace Summary report identified that the recovered handgun used by ██████ was purchased on March 10, 2014 from Midwest Sporting Goods Company Inc. by ██████. An investigation revealed that on July 28, 2016, ██████ made a police report for theft. It was reported that earlier on July 28, 2016, ██████ received a telephone call that her cousin⁵⁰ was in custody for having a gun. ██████ who had been at Palos Community Hospital with her boyfriend, ██████, went home and discovered her handgun missing. ██████ stated that her cousin had been living with her.

Chicago Police Detectives William Sullivan and Michele Moore-Grosse spoke with ██████, who stated that he and his girlfriend, ██████, were at the hospital. ██████ stated that, while in the hospital, his cousin, ██████, telephoned him and told him that ██████ had taken ██████ handgun. ██████ also stated that ██████ had been shot. ██████ explained that ██████ gets high all the time and that she told him that she did not know that ██████ had taken the handgun until later. ██████ continued that although there were no witnesses to the theft of the handgun, it was most likely that ██████ was the person who took it.

██████ told the detectives that ██████ spent three days at Palos Community Hospital due to complications from diabetes. ██████ was present when ██████ telephoned ██████ and told him she believed ██████ took ██████ gun because he had been asking about it earlier in the day. ██████ explained that ██████ lived with them periodically and that ██████ and ██████ knew she kept a handgun in the home

The Detectives also spoke with Ms. ██████ mother, ██████. ██████ stated that she was unaware that her daughter's handgun was stolen. ██████ also stated that she did not know ██████

The Detectives spoke with Ms. ██████ who stated that she never lived with Ms. ██████ and Mr. ██████ Ms. ██████ also stated that she did not know Mr. ██████ Ms. ██████ abruptly terminated the interview.

The report continued that the DNA profile recovered from the handgun was determined to belong to ██████ ██████ told detectives that before the handgun was stolen, he and ██████ would go target shooting with it.

⁴⁸ Attachment 13.

⁴⁹ Attachment 97.

⁵⁰ The report did not identify Ms. ██████ cousin.

VI. ANALYSIS

a. Legal Standard

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 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.

The applicable Chicago Police Department's General Order is 03-02-03, II,⁵¹ 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:

⁵¹ 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.

- 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; otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

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

The applicable standard of proof is a preponderance of the evidence. A preponderance of evidence can be described as evidence that makes it more likely than not that the alleged misconduct took place. 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 involved officer's conduct complied with Department policy, even if by a narrow margin, then the standard of proof has been met.

b. Legal Analysis

The evidence demonstrates that Officer Schmidt reasonably believed that deadly force was necessary to prevent Mr. [REDACTED] from causing death or bodily harm, and his decision to discharge his firearm at Mr. [REDACTED] two times was objectively reasonable under the totality of the circumstances.

First, Officer Schmidt had probable cause to believe that Mr. ██████ was committing a forcible felony.⁵² Officer Schmidt reported that he responded to the scene after receiving a radio call of a robbery in progress/man with a gun. The radio call justified Officer Schmidt and all other responding officers to be on high alert for a possibly violent offender. Officer Schmidt further reported that as walked through the gangway he heard a male voice screaming, "He's robbin' me! He's robbin' me! He's robbin' me!" and then spotted Mr. ██████ standing at the top of the stairs leading to the basement at the rear of the single-family residence with a firearm in his right hand. Although civilian witnesses to the incident, such as Mr. ██████ and Mr. ██████ did not cooperate with IPRA's/COPA's investigation, they provided materially consistent accounts of the incident to the responding officers. The civilian witnesses of the incident stated that Mr. ██████ robbed Mr. ██████ at gunpoint and that a locked gate prevented Mr. ██████ and Mr. ██████ from exiting the area in which Officer Schmidt located Mr. ██████. For these reasons, COPA finds Officer Schmidt's account credible, and finds that under the circumstances confronting Officer Schmidt, a reasonable officer with similar training and experience as Officer Schmidt would believe that Mr. ██████ had just committed an armed robbery, a forcible felony (*i.e.* a very serious crime involving use of force).

Second, Officer Schmidt had reason to believe that Mr. ██████ was armed and dangerous. The evidence demonstrates that Mr. ██████ possessed a firearm during the incident. Multiple officers reported locating a firearm by Mr. ██████ shortly after Officer Schmidt discharged his firearm and Officers Schmidt and O'Neill reported observing ██████ holding a firearm.⁵³ Moreover, the registered owner of the firearm located at the scene, Ashley Crawford, and her boyfriend, Charles Minifee provided the information to explain how ██████ obtained this firearm. As explained above, Officer Schmidt had probable cause to believe that Mr. ██████ had just used the firearm to commit an armed robbery, making it reasonable for Officer Schmidt to believe Mr. ██████ was extremely dangerous.

Third, a preponderance of the evidence demonstrates Mr. ██████ pointed a firearm in Officer Schmidt's direction. Officer Schmidt stated that, prior to discharging his firearm, ██████ looked at him and turned his body toward him while simultaneously raising the firearm in his direction. Officer Schmidt stated he responded by discharging his firearm two times at Mr. ██████. Officer O'Neill materially corroborated Officer Schmidt's account. Officer O'Neill stated he saw Mr. ██████ turn toward Officer Schmidt and raise his right arm. Officer O'Neill observed a dark object that looked like a handgun in ██████ right hand. Officer O'Neill stated that Officer Schmidt then fired two times at ██████ and ██████ immediately fell to the ground. COPA finds Officers Schmidt's and O'Neill's accounts credible and consistent with the other available evidence.⁵⁴

⁵² "Forcible felony means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnaping, kidnaping, aggravated battery resulting in great bodily harm or permanent disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual." 720 ILCS 5/2-8

⁵³ Officer Schmidt's and O'Neill's accounts of this portion of the incident are explained in detail below.

⁵⁴ As explained above, the evidence connects the firearm located at the scene to Mr. ██████

Based on the totality of the circumstances, Officer Schmidt reasonably believed [REDACTED] posed an imminent threat of death or great bodily injury and that the use of deadly force was necessary to eliminate the threat when [REDACTED] pointed a gun at him. *See Bell v. Crow*, 321 F. 3d 637, 639 (7th Cir. 2003) (if a suspect threatens an officer with a weapon, the risk of serious physical harm has been established such that the police may use deadly force). The evidence demonstrates that Officer Schmidt discharged only two shots at [REDACTED] and stopped firing once [REDACTED] fell to the ground and no longer posed a threat. Therefore, Officer Schmidt’s use of deadly force complied with Department policy.

VII. CONCLUSION

The evidence demonstrates that an officer with similar training and experience as Officer Schmidt would have reasonably believed that [REDACTED] posed an immediate threat of death or great bodily harm and that the use deadly force was necessary to prevent death or great bodily harm. Accordingly, Officer Schmidt’s use of deadly force was objectively reasonable as outlined by the Chicago Police Department’s General Order 03-02-03, the Illinois state statute, and the United States Constitution.

Approved:

[REDACTED]

Angela Hearts-Glass
Deputy Chief Administrator-Chief Investigator

12-17-19

Date

[REDACTED]

Sydney R. Roberts
Chief Administrator

12-17-19

Date

⁵⁵ Although [REDACTED] medical wounds referenced three gunshot wounds to his legs, a preponderance of evidence demonstrates that all the wounds to [REDACTED] legs came from a single bullet.

Appendix A

Assigned Investigative Staff

Squad#:	7
Major Case Specialist:	Brian Killen
Supervising Investigator:	Mark Javier
Deputy Chief Administrator:	Angela Hearts-Glass