

## SUMMARY REPORT OF INVESTIGATION

## I. EXECUTIVE SUMMARY

Date of Incident:	September 17, 2017
Time of Incident:	Approx. 11:07 p.m.
Location of Incident:	4740 N. Hamlin Avenue, Chicago, IL 60625
Date of COPA Notification:	September 18, 2017
Time of COPA Notification:	Approx. 12:07 a.m.

On September 17, 2017 at approximately 11:00 p.m., Officers Justen Garth, #15143, and Francis Mendoza, # 18296 (collectively "the officers"), (Beat 1713R) were assigned to routine patrol in the 17<sup>th</sup> District, driving a marked Ford Explorer. The officers heard a radio transmission from the Office of Emergency Management and Communication ("OEMC"), assigning Beat 1723R to investigate multiple calls of shots fired and four to five individuals fighting in the street near 3650 W. Leland Avenue. The officers were nearby and decided to assist Beat 1723R.

Upon arrival, the officers met Beat 1723R, observed the vicinity of 3650 W. Leland Avenue, and found the area to be quiet. The officers then drove westbound in the south alley of Lawrence Avenue. As they were approaching Hamlin Avenue, they heard a shot fired nearby. As they drove onto Hamlin Avenue, they saw four males fighting in the street. Upon seeing the officers in the marked vehicle, the four males fled southbound on Hamlin Avenue. Two of the individuals ran westbound into the gangway of 4740 N. Hamlin Avenue.

The officers got out of their vehicle and pursued the two individuals on foot into the gangway. One of the fleeing subjects, now known to be [REDACTED] a 15 year old minor, pulled a handgun out of his waistband and pointed it at Officer Garth. Officer Garth fired his service weapon once at [REDACTED] and no one was struck. [REDACTED] then dropped the handgun, and he and another subject, now known to be [REDACTED] a 16 year old minor, surrendered. The officers took [REDACTED] and [REDACTED] into custody and secured the handgun. A third subject, now known to be [REDACTED] was apprehended by other officers while fleeing through a nearby alley. [REDACTED] was believed to be one of the individuals fighting in the street.

COPA investigated Officer Garth's use of deadly force and concluded it was within policy.

## II. INVOLVED PARTIES

Involved Officer #1:	Justen Garth; Star # 15143; Employee ID # [REDACTED] Date of Appointment: October 26, 2015; Police Officer; Assigned to 17 <sup>th</sup> District; Date of Birth: [REDACTED] 1991; Male; Black
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Witness Officer #1:	Francis Mendoza; star # 18296; employee ID # [REDACTED] Date of Appointment: July 15, 2013; Police Officer; Assigned to 2 <sup>nd</sup> District; Detailed to 17 <sup>th</sup> District; DOB: [REDACTED] 1975; Male; Asian/Pacific Islander
Involved Civilian #1:	[REDACTED] DOB: [REDACTED] 2001; Male, White/Hispanic
Involved Civilian #2:	[REDACTED] DOB: [REDACTED] 2001; Male, White/Hispanic
Involved Civilian #3:	[REDACTED] DOB: [REDACTED] 1997; Male; White

### III. ALLEGATIONS

Any discharge of an officer's firearm results in a mandatory notification to COPA. This investigation was initiated pursuant to such notification. However, COPA determined there was no evidence of misconduct requiring allegations against Officer Garth, or any other officers involved in this incident.

### IV. APPLICABLE RULES AND LAWS

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#### General Orders

1. General Order 03-02-03, § IIA

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#### State Laws

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

### V. INVESTIGATION<sup>1</sup>

#### a. Interviews

##### CPD Interviews:

##### Involved Officer Justen Garth – COPA Statement November 17, 2017<sup>2</sup>

Officer Garth stated that on September 17, 2017, he and Officer Mendoza were assigned to routine patrol as Beat 1713R during first watch in the 17<sup>th</sup> District. Both officers were in full uniform and driving a marked Ford Explorer, in which Officer Mendoza was the driver and Officer Garth was a passenger. While on patrol, at approximately 11:00 p.m., the officers heard a radio transmission from OEMC assigning Beat 1723R to investigate multiple calls of shots fired and

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<sup>1</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our investigation.

<sup>2</sup> Att. 71

four to five individuals fighting in the street near 3650 W. Leland Avenue. The officers were nearby<sup>3</sup> and decided to assist Beat 1723R. Officer Garth did not recall whether OEMC provided a description of the individuals in question.

Upon arrival at 3650 W. Leland Avenue, the officers encountered Beat 1723R. Although everything appeared normal, both units decided to further patrol the area. Shortly thereafter, the officers were driving westbound through the south alley of Lawrence Avenue, approaching the 4700 block of north Hamlin Avenue, when Officer Garth heard a gunshot nearby. As the officers approached Hamlin Avenue, Officer Garth saw four individuals fighting in the street near the intersection of Hamlin Avenue and the south alley of Lawrence Avenue. Officer Garth made eye contact with one or more of the individuals who were fighting, and all four individuals began to flee on foot, southbound on Hamlin Avenue.

Officer Mendoza stopped the car at Hamlin Avenue and Officer Garth immediately exited the car with his flashlight in his right hand. Officer Garth announced his office and gave the four fleeing individuals verbal commands, shouting "Police! Let me see your hands! Police!" All four individuals ignored Officer Garth's verbal commands. Officer Garth noticed two of the four individuals were running with their hands concealed at their waistbands. These same two individuals fled west into a gangway at 4740 W. Hamlin Avenue, while the other two individuals fled southbound on Hamlin Avenue.

Officer Garth decided to pursue the two individuals who fled into the gangway on foot. He made this decision because he had heard a gunshot seconds earlier, and these individuals had been running with their hands concealed at their waistbands. As he approached the mouth of the gangway, Officer Garth drew his service weapon, which had a light attached to it. Officer Garth activated the light on his service weapon, which he held in his left hand, while holding the flashlight in his right hand. He continued to announce his office and give verbal commands, yelling "Police! Let me see your hands!"

As Officer Garth reached the mouth of the gangway and illuminated it with his two flashlights, he saw the two individuals stopped at the other end of the gangway, approximately ten to fifteen feet away, their progress impeded by a wooden gate. Officer Garth saw the heavier set individual, now known to be [REDACTED] with his hands on the fence, attempting to climb over it. Officer Garth saw [REDACTED] looking in his direction, and both of [REDACTED] hands. The skinnier individual, now known to be [REDACTED] looked at Officer Garth and began to pull something out of his waistband. Officer Garth yelled "Police! Let me see your hands!"

Officer Garth saw [REDACTED] withdraw a handgun from his waistband. Officer Garth continued to announce his office and give verbal commands, which [REDACTED] ignored. Holding the gun in his right hand, [REDACTED] began to turn in Officer Garth's direction. Officer Garth saw [REDACTED] elbow move downward and his wrist move upward as he turned toward Officer Garth. As he saw this motion, Officer Garth lined up the sights of his service weapon on [REDACTED] and simultaneously sought cover behind an angled wall of the bungalow on the north side of the gangway.

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<sup>3</sup> Officer Garth could not recall the exact location.

████ continued to ignore Officer Garth's verbal commands and pointed the handgun at Officer Garth. Fearing for his safety and the safety of his partner, Officer Garth fired one shot at █████ and missed. Officer Garth then retreated for cover behind the angled wall. Maintaining as much cover as he could, Officer Garth peeked around the angled wall and saw █████ crouch toward the ground, drop the gun, and get on his knees. At that point, █████ and █████ both made statements to the effect of "Okay! Okay! Our hands are up! Our hands are up!" Officer Garth only fired one shot during this encounter because █████ dropped the gun and began to comply with the officers' commands, and Officer Garth did not want to fire indiscriminately, especially considering the position of █████ who was unarmed.

Officer Garth continued to cover both individuals by pointing his service weapon at them while his partner, Officer Mendoza, came from behind him and proceeded down the gangway, giving the verbal commands "Don't move! Don't move!" Officer Mendoza ordered █████ to lay face down to handcuff him behind his back. █████ complied, but the gun was laying on the ground between his legs. Once █████ was in custody, Officer Garth moved forward, ordered █████ lay face down, and handcuffed him behind his back. Once █████ and █████ were handcuffed, the officers moved them each at least three feet away from the weapon to make sure it was out of their reach. A female officer then arrived at the scene. Officer Garth could not recall her identity. The officers instructed the female officer to take over control of █████ and █████

At that point, Officer Garth heard an officer from another unit say over the radio "He's running through the alley!" Officer Garth ran into the west alley of Hamlin Avenue and observed a third individual, now known to be █████ run between two garages. Officer Garth was alone at this point and decided not to pursue the third individual between the garages. Another unit apprehended █████ and Officer Garth identified him as one of the four people he saw fighting in the street at the intersection of Hamlin Avenue and the south alley of Lawrence Avenue.

#### **Witness Officer Francis Mendoza – COPA Statement November 17, 2017<sup>4</sup>**

Officer Mendoza stated that on September 17, 2017, he and Officer Garth were assigned to routine patrol as Beat 1713R in the 17<sup>th</sup> District. Both officers were in full uniform and travelling in a marked SUV<sup>5</sup>, in which Officer Mendoza was the driver and Officer Garth was a passenger. The officers heard an OEMC radio transmission dispatching another unit to investigate multiple calls of shots fired, although Officer Mendoza could not recall the exact location or the assigned unit. The officers were nearby on Irving Park Road when they got the call to assist the assigned unit at approximately 11:00 p.m. Officer Mendoza recalled that the OEMC transmission described the individuals in question as four to five Hispanic males. There was a clothing description, but Officer Mendoza could not recall what it was.

The officers patrolled the area, meeting the assigned unit in the process, and initially found everything to be quiet. A short time later, the officers were driving westbound through an alley near the intersection of Hamlin and Lawrence Avenues when they heard a shot fired nearby. When they reached the end of the alley, the officers saw four males fighting in the street. The four males

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<sup>4</sup> Att. 70

<sup>5</sup> Officer Mendoza could not recall the make or model.

appeared to match the description given by OEMC. Officer Mendoza stopped the SUV, and the four males fled on foot, southbound on Hamlin Avenue. Officer Mendoza saw two of the fleeing individuals holding their waistbands as they ran.

The officers got out of the vehicle with their guns drawn immediately, given that they were responding to calls of shots fired and had just heard a shot fired seconds earlier. The two individuals holding their waistbands ran down a gangway on the west side of Hamlin Avenue, south of Lawrence Avenue. The officers pursued those two individuals and gave verbal commands, including "Stop! Chicago Police! Stop running!" The fleeing individuals ignored those commands. The officers pursued the two individuals who ran into the gangway on foot, with Officer Garth in the lead and Officer Mendoza approximately five to ten feet behind him. Officer Garth was the first to arrive at the mouth of the gangway, and Officer Mendoza arrived at the mouth of the gangway a second or two after Officer Garth.

Both Officer Garth and Officer Mendoza were now in the gangway. Officer Mendoza was standing approximately five feet directly behind Officer Garth. The gangway was narrow, and Officer Garth was blocking Officer Mendoza's view of the western end of the gangway and the two subjects. It was at this point that Officer Mendoza heard a gunshot. He did not see who fired the shot. He did not see a muzzle flash. He did not know if he was being fired upon.

Immediately after Officer Mendoza heard the gunshot, he heard Officer Garth screaming "Let me see your hands! Drop the gun!" Officer Mendoza moved to the left of Officer Garth and pointed his service weapon down the gangway. He saw [REDACTED] and [REDACTED] standing at the other end of the gangway, approximately ten to twenty feet away, with their hands up. There was a wooden fence at the end of the gangway, which [REDACTED] and [REDACTED] apparently did not have time to climb over. Officer Mendoza saw a gun on the ground, right next to [REDACTED]. Officer Mendoza described the gun as a black revolver with a wooden handle. Officer Mendoza never saw anyone hold or drop the gun. The officers ordered [REDACTED] and [REDACTED] to lay face down on the ground. [REDACTED] and [REDACTED] complied, but [REDACTED] appeared to lay down on top of the gun, which worried Officer Mendoza, who then took [REDACTED] into custody by handcuffing his hands behind his back and making sure the gun was out of his reach by moving [REDACTED] at least three feet away from the gun.

Once both subjects were in custody, the officers called their location into OEMC, as well as the fact that two additional subjects had fled southbound on Hamlin Avenue. Seconds later, Officer Mendoza could hear officers yelling "Where you at?" He then saw other officers' flashlight beams on Hamlin Avenue. The officers instructed an assisting unit to secure the two subjects who were in custody. Two other units pursued the two individuals who were still fleeing in a nearby alley. One individual got away, while a third, [REDACTED] was taken into custody.

Officer Mendoza did not fire any shots during this incident. It is his understanding that Officer Garth fired a shot, but he did not see Officer Garth fire the shot. Throughout the event, Officer Mendoza heard a total of two shots fired—one while the officers were driving through the alley, and one while they chased [REDACTED] and [REDACTED] into the gangway.

### Civilian Witnesses

COPA investigators undertook the following efforts to contact subjects [REDACTED] and [REDACTED] for statements:

On October 24, 2017, Major Case Specialist (“MCS”) Sean Rochford spoke with the Chief of the Cook County State’s Attorney’s Juvenile Delinquency Division, [REDACTED], via telephone. MCS Rochford called Ms. [REDACTED] to inquire as to the status of possible criminal charges pending against [REDACTED] and the identity of his attorney. Per State’s Attorney [REDACTED] instructions, MCS Rochford faxed a letter on COPA letterhead with the same inquiries to the Cook County State’s Attorney’s office the same day.<sup>6</sup>

On October 25, 2017, MCS Rochford spoke with Assistant State’s Attorney [REDACTED] via telephone. Ms. [REDACTED] informed MCS Rochford that [REDACTED] had been charged with one count of aggravated assault against a police officer, two counts of aggravated unlawful use of a weapon, and one count of unlawful use of a firearm. Ms. [REDACTED] also informed MCS Rochford that [REDACTED] was represented by Cook County Assistant Public Defender, [REDACTED].<sup>7</sup>

On January 4, 2018, MCS Rochford sent two certified letters to the Cook County Public Defender’s Juvenile Justice Division seeking permission to interview [REDACTED] and [REDACTED], respectively.<sup>8</sup>

On January 9, 2018, MCS Rochford searched the Thomson Reuters Clear database for [REDACTED] contact information and found likely matching records. MCS Rochford called a phone number listed for [REDACTED] in the same database. There was no answer and the outgoing message stated that the voicemail box was full. MCS Rochford sent an SMS notification to the same phone number, then sent a certified letter requesting an interview to the address listed on [REDACTED] arrest report.<sup>10</sup>

On January 18, 2018, MCS Norelis Martinez called two different telephone numbers and left voicemails in Spanish for [REDACTED] mother asking permission to interview [REDACTED].

On January 19, 2018, MCS Rochford sent a certified letter in Spanish to [REDACTED] mother asking permission to interview her son regarding the events that gave rise to this case<sup>11</sup>.

On January 22, 2018, MCS Rochford sent a certified letter in Spanish to [REDACTED] mother seeking permission to interview [REDACTED] regarding the events that gave rise to this investigation<sup>12</sup>. That same day, MCS Martinez called [REDACTED] mother via telephone and had a conversation with her in Spanish. [REDACTED] mother gave MCS Martinez verbal consent to interview her son.

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<sup>6</sup> Att. 50

<sup>7</sup> Att. 56

<sup>8</sup> At the time of his arrest, ER was charged with reckless conduct.

<sup>9</sup> Att. 74, 75

<sup>10</sup> Att. 76

<sup>11</sup> Att. 77

<sup>12</sup> Att. 78

MCS Rochford and Martinez scheduled an appointment to meet with [REDACTED] and his mother at their residence on January 23, 2018 at noon.

On January 23, 2018, MCS Rochford and Martinez appeared at the residence of [REDACTED] and his mother at the appointed time. [REDACTED] answered the door and informed MCS Rochford and Martinez that his mother was not home and that she usually gets home from work around 6:00 p.m. MCS Rochford and Martinez then drove to the address listed for [REDACTED] on his arrest report. There, MCS Martinez spoke with [REDACTED] father in Spanish. [REDACTED] father stated that his wife and son would both be home on January 29, 2018 at 3:30 p.m. MCS Rochford and Martinez made an appointment to return to [REDACTED] residence on that date and time.<sup>13</sup>

On January 24, 2018, MCS Martinez spoke with [REDACTED] mother via telephone and rescheduled the appointment to interview [REDACTED] to January 29, 2018 at 5:00 p.m. On the morning of January 29, 2018, MCS Martinez called [REDACTED] mother to confirm the appointment for that afternoon. [REDACTED] mother informed MCS Martinez that she would not be able to keep the appointment and asked MCS Martinez to call her the following week to reschedule the interview.

On January 29, 2018, MCS Rochford and Martinez appeared at [REDACTED] residence at the appointed time. There, [REDACTED] father informed MCS Rochford and Martinez that his son had been arrested that morning but could provide no other information. That same day, MCS Rochford spoke with Sgt. Mahaffey at the Chicago Police Department Juvenile Intervention and Support Center. Sgt. Mahaffey informed MCS Rochford that [REDACTED] had been arrested pursuant to warrant for failure to appear for a court date. Sgt. Mahaffey informed MCS Rochford that [REDACTED] had been placed at the Juvenile Detention Center but could provide no further information.<sup>14</sup>

On January 30, 2018, MCS Rochford called Assistant Cook County Public Defender [REDACTED] and left a voicemail asking permission to interview [REDACTED]. That same day, MCS Rochford received the receipt from the certified letter sent to the Cook County Public Defender on January 4, 2018, asking permission to interview [REDACTED].<sup>15</sup>

On January 31, 2018, MCS Rochford sent a certified letter to [REDACTED] at the Cook County Public Defender's Juvenile Justice Division seeking permission to interview [REDACTED].<sup>16</sup> That same day, MCS Rochford received a telephone call from Ms. [REDACTED] who stated that she had no objection to COPA staff interviewing [REDACTED]. Ms. [REDACTED] stated that it may be necessary to obtain a court order granting the interview, since [REDACTED] was still in custody. Ms. [REDACTED] stated that she would call MCS Rochford soon to provide further details and facilitate the interview.

On February 5, 2018, MCS Rochford received the certified mail receipt, signed by [REDACTED] mother, from the letter of January 19, 2018 seeking permission to interview [REDACTED].<sup>17</sup>

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<sup>13</sup> Att. 79

<sup>14</sup> Att. 80

<sup>15</sup> Att. 91

<sup>16</sup> Att. 82

<sup>17</sup> Att. 90

On February 13, 2018, MCS Rochford received the certified mail receipt signed by Cook County Public Defender [REDACTED] from letter of January 31, 2018 seeking permission to interview [REDACTED].<sup>18</sup>

On February 16, 2018, MCS Rochford and Martinez went to the address listed on [REDACTED] arrest report to take his statement. MCS Rochford and Martinez were told by a man who would not open the door or identify himself that there was no one at that address by the name of [REDACTED]. That same day, MCS Rochford and MCS Jacqueline Hennard went to an address listed for [REDACTED] on Thomson Reuters Clear and were informed by residents of the address that no one by the name of [REDACTED] lived there.<sup>19</sup>

On February 20, 2018, MCS Martinez informed MCS Rochford that she called and left a message for [REDACTED] mother the previous week, asking permission to interview [REDACTED]. That same day, MCS Martinez called [REDACTED] mother at the same telephone number, received no answer, and the outgoing message stated that the voicemail box was full and would not accept new messages. That same day, MCS Rochford called and left a voicemail for [REDACTED] inquiring as to the status of a possible interview with [REDACTED].

On March 27, 2018, the certified letter to [REDACTED] of January 9, 2018 came back return to sender with the explanation "Unclaimed. Unable to forward."<sup>20</sup>

On March 28, 2018, MCS Rochford called and left another voicemail for [REDACTED] inquiring as to the status of [REDACTED] incarceration and whether an interview could be arranged. That same day, MCS Martinez called [REDACTED] mother regarding a possible interview with [REDACTED]. There was no answer, and the outgoing message stated that the voicemail account was not set up and would not accept messages. That same day, MCS Martinez called [REDACTED] father, who informed her that his son was no longer incarcerated and that he had a court date on March 30, 2018 at 9:00 a.m.

On March 30, 2018, MCS Rochford and Martinez went to Juvenile Criminal Court and had an informal meeting with [REDACTED] and both of his parents. All three verbally consented to an interview. However, the assistant public defender in court that day refused to grant COPA staff permission to speak to [REDACTED] regarding the events that gave rise to this investigation. The assistant public defender informed MCS Rochford that [REDACTED] could give a statement to COPA once the underlying criminal case was resolved, but she did not know when that would be. MCS Rochford provided [REDACTED] and his parents with business cards and asked them to contact COPA to give a statement when the underlying criminal case was resolved.<sup>21</sup>

As of the date of this report, COPA has not been able to interview any of the subjects in this case. After a diligent investigation, COPA has not discovered the existence of any other potential eyewitnesses.

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<sup>18</sup> Att. 93

<sup>19</sup> Att. 87

<sup>20</sup> Att. 94

<sup>21</sup> Att. 88



**b. Digital Evidence****Body-Worn Camera Video and In-car Camera Video**

Neither body-worn camera nor in-car camera video for Officers Garth and Mendoza are available in this case. At the time of the incident, Officers Garth and Mendoza were not equipped with body-worn cameras, as officers in the 17<sup>th</sup> District had not yet been supplied with them.<sup>22</sup> The marked Ford Explorer they were driving was equipped with an in-car camera, but it was not functioning at the time of the incident, so no video was available. A repair ticket,<sup>23</sup> #7439, was issued for the malfunctioning in-car camera.<sup>24</sup>

COPA obtained sixteen minutes and twenty-seven seconds of in-car camera video and audio from Beat 1723R. No material portion of the event in question was captured on video or audio.<sup>25</sup>

**POD Camera Video**

COPA obtained video from POD 1052, located at 3763 W. Lawrence Avenue, which is the southeast corner of Lawrence and Hamlin Avenues. The video starts at 10:00 p.m. on September 17, 2017 and ends at 11:59 p.m. on the same date. No material portion of the events in question was captured.<sup>26</sup>

**Third Party Video**

Security camera video was obtained from Aspira Hauhan Middle School, located at 3729 W. Leland Avenue. It is one minute and twenty-seven seconds long. No material portion of the events in question was captured.<sup>27</sup>

Twenty-six brief files of security video were obtained from 3757 W. Giddings Street. Other than police driving down the street in marked SUVs and walking around with flashlights, nothing of note was captured.<sup>28</sup>

Thirteen brief video files were obtained from Chicago Import, Inc., located at 3811 W. Lawrence Avenue. The footage shows various angles of Hamlin Avenue and the south alley of Lawrence Avenue. Other than police officers driving marked CPD vehicles, walking, and running through the alley, as well as parking in the alley, nothing of note was captured.<sup>29</sup>

OEMC Event Queries and Radio Transmissions were collected and made part of this case file. The following is a summary of the relevant audio recording entries from September 17, 2017:

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<sup>22</sup> Att. 47

<sup>23</sup> Multiple attempts were made by the MCS to obtain a copy of the repair ticket. As of the date of this report, the MCS was unsuccessful in obtaining the report. Refer to the case log, which details the attempts made.

<sup>24</sup> Att. 7

<sup>25</sup> Att. 48

<sup>26</sup> Att. 46

<sup>27</sup> Att. 43

<sup>28</sup> Att. 45

<sup>29</sup> Att. 44

At 11:07:01 p.m., a female 9-1-1 caller reported shots fired outside of 3650 W. Leland Avenue. The shots sounded like they came from within the block, but the caller did not see anything.<sup>30</sup>

At 11:07:12 p.m., a female 9-1-1 caller, whom the OEMC operator did not ask to identify herself, reported that she saw three young men who appeared to be “gangbangers” and “Hispanic teens” shooting near 4627 N. Lawndale Avenue. She believed four shots were fired in front of “Jenkins Park.” There was one shooter. He was wearing a white, black, and grey checkered hoodie and greyish pants.<sup>31</sup> Another guy was wearing a white shirt, black cap, and glasses. There was a total of three young men. The shooter pulled the gun from the pocket of his hoodie. The young men were shooting in the street and chasing a car.<sup>32</sup>

At 11:07:21 p.m., a male 9-1-1 caller reported that he heard gunshots outside of 4653 N. Lawndale Avenue. He heard three or four gunshots. He saw four young men running away, heading west on Leland Avenue. He believed they were “Hispanic.” Three of the young men were wearing black sweatshirts. One of them was wearing a black and white shirt.<sup>33</sup>

At 11:07:24 p.m., a female 9-1-1 caller reported she heard four gunshots at Lawndale Avenue and Leland Avenue. She was inside, saw a light from a car, heard the car rev its engine, heard the car’s tires screech, then heard four shots. She saw the car heading south. She could not see the car well enough to determine a make or model.<sup>34</sup>

At 11:07:24 p.m., a female 9-1-1 caller, who was located at 4710 N. Lawndale Avenue, reported she heard gunshots that sounded like they were coming from a nearby alley. She heard a car’s tires screech, then heard approximately three gunshots in a row.<sup>35</sup>

At 11:07:24 p.m., a male 9-1-1 caller reported he saw people fighting and shooting at Hamlin and Leland Avenues. He saw some people in a car and some people running in the street. He heard two shots.<sup>36</sup>

At 11:07:25 p.m., a female 9-1-1 caller reported she heard three gunshots and a car speeding west near the corner of Lawndale and Leland Avenues, near Jensen Park.<sup>37</sup>

At 11:09:50 p.m., a male 9-1-1 caller reported he was pulling into the back of his house at 4719 N. Lawndale Avenue when he saw five or six young men “drinking in the alley.” They saw his car coming and immediately ran into a backyard on Monticello Avenue. Approximately five minutes later, he heard gunshots and car tires screeching. It was a bunch of “young Hispanic kids,” who were drinking and, as the caller surmised, “probably had a couple of guns.”<sup>38</sup>

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<sup>30</sup> Att. 41

<sup>31</sup> COPA obtained lockup footage from Area North following the incident. In the footage, [REDACTED] can be seen wearing a grey, white, black, and partially checkered hoodie, as well as dark colored shorts.

<sup>32</sup> Att. 38

<sup>33</sup> Att. 37

<sup>34</sup> Att. 32

<sup>35</sup> Att. 34

<sup>36</sup> Att. 35

<sup>37</sup> Att. 36

<sup>38</sup> Att. 39

At 11:11:21 p.m., a male 9-1-1 caller stated he heard gunshots in front of 4728 N. Lawndale Avenue. He saw a few teenagers on the block who looked “suspicious” and appeared to be “gangbangers.”<sup>39</sup>

At 11:23:20 p.m., a female 9-1-1 caller reported she heard two gunshots outside of 4734 N. Hamlin Avenue. The caller heard someone running and the shots sounded like they came from nearby, although she could not determine a direction.<sup>40</sup>

Police radio transmissions<sup>41</sup> relevant to this incident begin with the OEMC dispatcher assigning Beat 1723R to investigate multiple calls of shots fired near the intersection of Lawndale and Leland Avenues. Callers to 9-1-1 heard three to five shots fired and saw four young men fighting in the street. Callers described the young men as “Hispanic” and possibly “gangbangers;” one of whom was wearing a white, black, and grey hoodie; and the other three wearing black sweatshirts.

Beat 1723R reported they drove down Leland Avenue all the way to Pulaski Road but did not see anything. This was followed by brief inaudible yelling, and then an unidentified male voice calling out a “10-1.”<sup>42</sup> An unidentified male voice then stated two were in custody. An unidentified female voice asked “13R, where are you?” Beat 1723R stated “We’re at Hamlin and Giddings. Where’s 13R at?” The same unidentified male voice that stated two were in custody then stated “I got one weapon recovered. We’re looking for three more Hispanics running around Hamlin. Careful, there’s another weapon somewhere.”

The dispatcher asked if anyone stayed with the recovered weapon and the same unidentified male voice stated “Officer Huamani.” Beat 610A stated “They can identify the first guy who took off and then we got those three gangbangers who were reported. We got them right here, if they want to take a look at them.” Beat 1732R stated “We got two detained over here on Hamlin.” Beat 1710R stated “We have shots fired at and by police at 4740 N. Hamlin.” The dispatcher asked, “Who did the shooting, name and star?” Beat 1710R responded “Button is 15143.” When the dispatcher asked how many arrests would be made, Beat 1710R responded “Three. Eventually going to the area.” The dispatcher stated the RD number for this incident was JA435708 and the event number was 17012. Beat 1620R stated the exact address for the crime scene was 4740 Hamlin Avenue and the weapon was recovered in the south gangway at that address.

#### Contents of [REDACTED] Phone<sup>43</sup>

The Chicago Police Department executed a search warrant and extracted data from [REDACTED] cell phone, which was recovered by Chicago Police evidence technicians from the south gangway at [REDACTED]. COPA was provided with a copy of the data, including the following picture of a handgun,<sup>44</sup> which matches the description of the handgun recovered from the crime scene during the incident in question:

<sup>39</sup> Att. 40

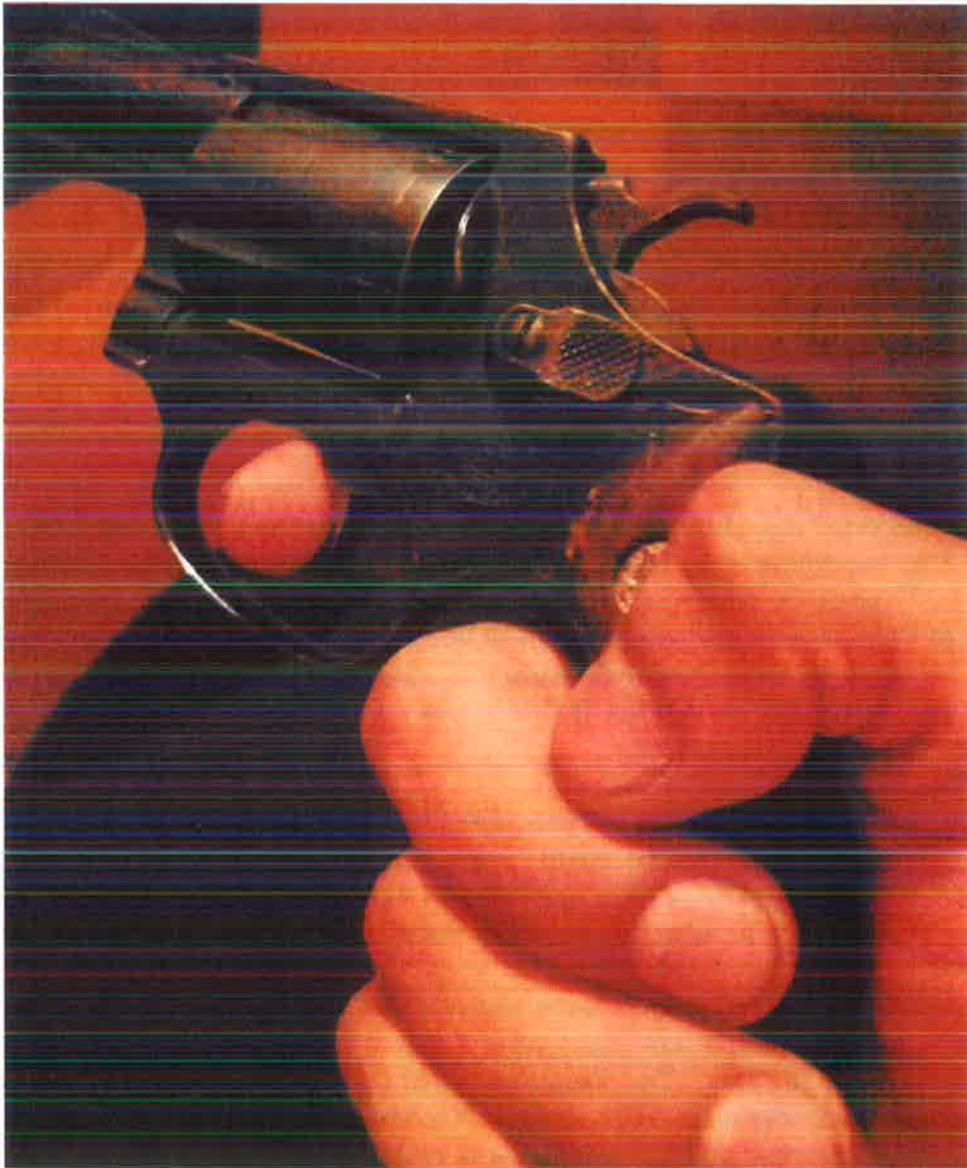
<sup>40</sup> Att. 42

<sup>41</sup> Att. 31

<sup>42</sup> A radio designation for an officer needing assistance.

<sup>43</sup> Att. 83-85

<sup>44</sup> Att. 84



**a. Physical Evidence**

A **Crime Scene Processing Report**<sup>45</sup> indicates Chicago Police Department evidence technicians recovered a Smith and Wesson Model 36 .38 Special revolver with a 2" barrel and blue finish, serial number [REDACTED], from the south gangway of [REDACTED] near the gangway fence/gate area. The revolver had a capacity of five rounds, and five discharged .38 Special cartridge cases (three with the head-stamp "Winchester 38 SPL" and two with the head-stamp "Hornady 38 SPL") were recovered from the cylinder.

Chicago Police Department evidence technicians also recovered Officer Garth's service weapon. It was a Glock 19 Gen 4 9mm semi-automatic pistol with a 4" barrel and blue finish, and a serial number of [REDACTED]. The weapon contained a Glock 9mm fifteen-round capacity

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<sup>45</sup> Att. 22

magazine. Fourteen live rounds of “Win 9mm Luger +P” were recovered from the magazine and one live round of the same ammunition was recovered from the chamber. An expended shell casing with the head-stamp “Win 9mm Luger +P” was recovered from the south gangway of [REDACTED]. One metal, suspected bullet fragment was recovered from the backyard of [REDACTED] near the rear deck stairs.

An **Illinois State Police (ISP) Forensic Science Center Laboratory Report**<sup>46</sup> outlines the results of a fingerprint examination performed on the recovered revolver and five discharged cartridges. The Illinois State Police Forensic Science Center in Chicago was unable to identify any latent impressions suitable for comparison.

The **crime scene photographs**<sup>47</sup> depict the scene from various angles. Crime scene markers can be seen where relevant evidence; including a revolver, a shell casing, a suspected bullet hole in a fence/gate, and a suspected bullet fragment; was recovered at [REDACTED]. One of the photographs, attached below, is of the revolver that was recovered from the scene.



**Property Inventory Reports**<sup>48</sup> document the evidence recovered relative to this incident. These include inventory numbers [REDACTED] (media extracted from silver/grey Samsung cell phone recovered from south gangway of 4740 N. Hamlin Avenue), [REDACTED] (suspected bullet fragment), [REDACTED] (silver/grey Samsung cell phone recovered from south gangway of 4740 N. Hamlin Avenue), [REDACTED] (Smith & Wesson Model 36 .38 SPL revolver containing five spent shell casings recovered from south gangway of 4740 N. Hamlin Avenue).

#### d. Documentary Evidence

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<sup>46</sup> Att. 89

<sup>47</sup> Att. 86

<sup>48</sup> Att. 22

Per the **Arrest Reports**<sup>49</sup>, [REDACTED] was arrested at 4740 N. Hamlin Avenue on September 17, 2017 at 11:25 p.m. He was charged with aggravated assault against a peace officer using a weapon and aggravated unlawful use of a weapon. [REDACTED] was arrested at 4740 N. Hamlin Avenue on September 17, 2017 at 11:25 p.m. He was charged with reckless conduct. [REDACTED] was arrested at 4744 N. Avers Avenue on September 17, 2017 at 11:30 p.m. He was charged with reckless conduct.

Since [REDACTED] and [REDACTED] are minors, the disposition of any criminal cases against them is not a matter of public record. [REDACTED] pleaded guilty to reckless conduct on October 17, 2017. His term of court supervision was discharged on December 29, 2017.<sup>50</sup>

Per the **Tactical Response Report**<sup>51</sup>, completed by Officer Garth on September 18, 2017, [REDACTED] did not follow verbal direction, fled, created an imminent threat of battery, attacked with a weapon, and used force likely to cause death or great bodily harm in that he was armed with a handgun and displayed it toward Officer Garth after disobeying the officer's verbal commands. Officer Garth responded with member presence and firing one shot with his firearm.

Per the **Officer's Battery Report**<sup>52</sup>, at the date, time, and location of the incident, Officer Garth was on duty, in uniform, and working with one partner in a squad car. Officer Garth checked the "other" box to indicate the manner of attack and indicated he was threatened with a revolver.

The **CPD Detective Supplementary Reports/General Progress Report**<sup>53</sup> indicate Officer Garth stated [REDACTED] fled, ignored numerous verbal commands, pulled a gun out of his waistband, and pointed it toward Officer Garth and his partner. Officer Garth, fearing for his life and that of his partner, fired one shot at [REDACTED]. The reports also indicate CPD detectives gathered POD camera video, as well as third party surveillance video from two sources.<sup>54</sup> Detectives were not able to identify any eyewitnesses to the officer involved shooting.

## VI. ANALYSIS

### A. Legal Standard

According to the relevant Chicago Police Department General Order in effect on the date of the incident<sup>55</sup>:

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 (hereinafter the "first prong" of the policy) or;

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<sup>49</sup> Att. 4-6

<sup>50</sup> Att. 96

<sup>51</sup> Att. 26

<sup>52</sup> Att. 25

<sup>53</sup> Att. 66

<sup>54</sup> COPA obtained copies of these videos. They are previously referenced in this report.

<sup>55</sup> Chicago Police Department General Order 03-02-03, § IIA (effective February 10, 2015)

2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested (hereinafter the “second prong” of the policy):
  - a. Has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm;
  - b. Is attempting to escape by use of a deadly weapon or;
  - c. Otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

Additionally, the use of deadly force is codified under 720 ILCS 5/7-5 (1986). The pertinent part of the statute states that:

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

Finally, determinations regarding the potential use of excessive force, deadly or not, during an arrest, investigatory stop, or other “seizure” are properly analyzed under the Fourth Amendment’s objective reasonableness standard. The question is whether the officers’ actions are ‘objectionably reasonable’ given the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989) (citing *Scott v. United States*, 436 U.S. 128, 137-139 (1978); see *Estate of Phillips v. City of Milwaukee*, 123 F3d 586, 592 (7th Cir. 2003). Moreover, the reasonableness calculation “must embody allowance 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. *Graham* at 396-97. “When an officer believes that a suspect’s actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force.” *Muhammed v. City of Chicago*, 316 F3d 380, 683 (7th Cir. 2002). (quoting *Sherrod v. Berry*, 856 F2d 802, 805 (7th Cir. 1988) (*en banc*) and omitting emphasis).

The analysis of the reasonableness of an officer’s conduct 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. at 2020 (2014), quoting *Tennessee v. Garner*, 471 U.S. (1985) (internal quotation marks omitted).

## **B. Legal Analysis**

### **1. Deadly Force Necessary to Prevent Death or Great Bodily Harm**



The first prong of the policy permits the use of deadly force if the officer reasonably believes such force is necessary to prevent death or great bodily harm to the sworn member or another person. In this analysis, the reasonableness of the officer's conduct must be considered in light of the totality of the circumstances. *Marion v. City of Corydon Indiana*, 559 F3d 700, 705 (7th Cir. 2009).

**a. Analysis of evidence that [REDACTED] had a deadly weapon**

Here, both Officer Garth and Officer Mendoza stated a person, now known to be [REDACTED] fled while holding his waistband, and failed to follow verbal commands. Officer Garth stated [REDACTED] pulled a brown-handled, black-framed revolver from his pocket and pointed it at Officer Garth. Officer Mendoza did not see [REDACTED] holding a gun but saw a gun on the ground right next to [REDACTED] as soon as he arrived at the mouth of the gangway.

A firearm was secured at the scene and inventoried under CPD inventory report number [REDACTED]. It was a Smith & Wesson Model 36 .38 SPL revolver with a wooden handle and blue finish. The firearm, pictured under "Crime Scene Photographs," above, is identical in appearance to the gun in the photograph extracted from [REDACTED] phone. It matches the description of the gun given by the officers in their respective interviews.

A 9-1-1 caller who was an eye witness to the initial shots fired that led to police responding to the area, described the shooter as a young Hispanic man wearing a white, black, and grey checkered hoodie, as well as greyish pants. This description matched [REDACTED] and what he was wearing when he was taken to Area North following the incident.

As previously stated, despite numerous efforts by COPA investigators to take statements from [REDACTED] and [REDACTED] none could be reached for comment.

However, the officers' respective statements, the 9-1-1 caller's description of the shooter, the firearm recovered at the crime scene, and the photograph of a matching firearm recovered from [REDACTED] phone, taken together, indicate it is more likely than not that [REDACTED] had a firearm at the time of his encounter with the officers.

**b. Analysis of Reasonable Belief that Force was Necessary to Prevent Death or Great Bodily Harm**

A firearm is a deadly weapon per se. See *People v. Nickolopoulos*, 25 Ill. 2d 451. However, mere possession of a firearm does not, in and of itself, justify a reasonable belief that deadly force is necessary to prevent death or great bodily harm. Rather, it is one of several factors to be considered. See *Wienmann v. McClone*, 787 F.3d 444 (7th Cir. 2015) ("Deadly force may be used if the officer has probable cause to believe that the armed suspect (1) 'poses a threat of serious physical harm, either to the officer or to others,' or (2) 'committed a crime involving the infliction or threatened infliction of serious physical harm' and is about to escape.") (quoting *Tennessee v. Garner*, 471 U.S. 1, 11-12, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985)).

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<sup>56</sup> Att. 49



Officer Garth stated [REDACTED] pulled a firearm from his waistband and pointed it at him from approximately ten to fifteen feet away. Fearing for his safety and that of his partner, Officer Garth fired one shot at [REDACTED] from the same distance, then briefly took cover behind an angle in the wall before [REDACTED] and [REDACTED] surrendered to the officers.

Although Officer Mendoza never saw [REDACTED] with a gun in his hand, he saw [REDACTED] flee while reaching for his waistband. He observed [REDACTED] ignore both his and Officer Garth's verbal commands. When Officer Mendoza arrived at the mouth of the gangway at 4740 N. Hamlin Avenue, he saw a gun on the ground right next to [REDACTED]

While none of the civilians in this case could be reached for comment as to whether [REDACTED] was in possession of a firearm at the time of the incident, available evidence indicates he was. Officer Garth saw [REDACTED] aim a short-barreled revolver with a brown handle and black frame at him. Moments later, Officer Mendoza recovered an identical revolver near [REDACTED]. That recovered revolver had five spent casings.<sup>57</sup> Together, the evidence is compelling that [REDACTED] not only possessed the revolver, but he also shot it on the night in question. We find no reason to discredit Officer Garth's statement that [REDACTED] pointed a firearm at him, which would establish a reasonable belief that [REDACTED] threatened death or great bodily harm to the officers. Nor is there any reason to discredit Officer Mendoza's statement that there was a gun on the ground right next to [REDACTED] just after he and ER surrendered.

Here, the totality of the circumstances, namely the numerous 9-1-1 calls of shots fired in the area, both officers hearing a shot fired and then seeing [REDACTED] and [REDACTED] flee while holding their waistbands, [REDACTED] and [REDACTED] ignoring verbal commands, Officer Garth's statement that [REDACTED] pointed a gun at him, and Officer Mendoza's statement that he saw a gun on the ground right next to [REDACTED] make Officer Garth's fear of death or great bodily harm to himself or his partner objectively reasonable. Officer Garth's use of force must be evaluated based on the information available to him when he discharged his firearm, not with the benefit of hindsight. *Graham v. Connor*, 490 U.S. 386, 397 (1989). The evidence indicates [REDACTED] did point a gun at Officer Garth. [REDACTED] imminent threat of deadly force left Officer Garth with a split-second to respond with appropriate force. The officer fired once, then deescalated once the threat ended.<sup>58</sup>

### c. CONCLUSION

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

COPA has determined by a preponderance of the evidence that Officer Garth's use of deadly force against [REDACTED] was objectively reasonable as outlined in the Use of Force Model, state and federal law, and the Chicago Police Department General Orders.

<sup>57</sup> This indicates live ammunition was expelled from each of the five casings.

<sup>58</sup> Inventory Report numbers 14004502 and 14004487 indicate Officer Garth fired his service weapon once.

Approved. 



Andrea Kersten  
*Deputy Chief Administrator*

Date



Appendix A

## Assigned Investigative Staff

<b>Squad#:</b>	Squad 1
<b>Major Case Specialist:</b>	Sean Rochford
<b>Supervising Investigator:</b>	Chantall Morley
<b>Deputy Chief Administrator:</b>	Andrea Kersten

