

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	October 5, 2017.
Time of Incident:	12:35 pm.
Location of Incident:	██████████ Chicago IL, 60620.
Date of COPA Notification:	October 5, 2017.
Time of COPA Notification:	1:02 pm. <sup>1</sup>

On October 5, 2017, at approximately 12:35 pm, Officers Zachary Gammonley and Joseph Biszewski (collectively “the Officers”) were on routine patrol and monitoring the radio when they heard reports of a person with a gun at ██████████ and responded to the location. As the Officers arrived, they observed three male blacks standing on the front porch of ██████████. As the Officers exited their vehicle and approached the residence; two of the male blacks ran inside the residence and closed the door. The third black male stayed outside and told the Officers he did not have anything. The Officers performed a protective pat down, verifying he had no weapons.

The Officers sought and obtained permission from ██████████ to enter the residence.<sup>2</sup> The Officers proceeded to complete a safety sweep of the residence. The Officers cleared the second floor and proceeded down the back stairwell when they heard footsteps going down the back stairs; however, they could not see anyone because of dark enclosed stairwell. The Officers proceeded down the stairs until they reached the basement. Officer Gammonley announced his office and opened the basement door. As he pushed the door open and entered the basement, he heard several gunshots and noticed muzzle flashes coming from the southwest corner. Officer Gammonley returned fire as he retreated from the basement to seek cover. Officer Gammonley performed a tactical reload and radio that shots had been fired. Additional units arrived, and the scene was secure. Eventually the subject, ██████████ surrendered and was taken into custody without further incident.

**II. INVOLVED PARTIES**

Involved Officer #1:	GAMMONLEY, Zachary, star #15808, Employee ID # ██████████ DOA: February 23, 2015, Police Officer, Unit: 006, Male, White.
Involved Individual #1:	██████████ Male, Black.

<sup>1</sup> The Log number for this incident was not obtained until 5:50 pm.

<sup>2</sup> ██████████ informed the Officers he resided at the location.

### III. ALLEGATIONS

Pursuant to section 2-78-120 of the Municipal Code of Chicago, the Civilian Office of Police Accountability ("COPA") has a duty to investigate all incidents in which a Department member discharges their firearm in a person's direction or where a person sustains serious bodily injury because of police action. During its investigation of this incident, COPA did not find evidence to support allegations of excessive force related to Officer Gammonley's firearm discharge.

### IV. APPLICABLE RULES AND LAWS

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#### General Orders

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1. GO 03-02: Use of Force (effective October 16, 2017 – February 29, 2020)
  2. GO 03-02-01: Force Options (effective October 16, 2017 – February 29, 2020)
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### V. INVESTIGATION<sup>3</sup>

#### a. Interviews

In a **statement to COPA** on October 5, 2018, **Officer Zachary Gammonley**<sup>4</sup> relayed that he and his partner, Officer Biszewski, responded to a person with a gun call. The Officers were given a description and told that two black male subjects were sitting on the front porch or near the front porch of a daycare center and had guns on them. The Officers responded to the location and saw the subjects who fit the description given to them by dispatch. The Officers exited their vehicle and approached the residence to investigate.

As they approached, the subjects stood up; one male stayed on the porch, and the other two males ran inside the residence and locked the door behind them. The subject remaining on the porch was cooperative. The Officers completed a name check and released the male. The building owner, █████ consented for the Officers to enter the residence.<sup>5</sup> The Officers entered the two-flat building and discovered that the first-floor door was locked. █████ stated that the first-floor apartment housed his daughter's daycare center.

The Officers proceeded upstairs and encountered a man who used a wheelchair lying in bed. The Officers approached the rear of the apartment and heard footsteps going rapidly down the stairs.<sup>6</sup> Officer Gammonley signaled to Officer Biszewski and went down the dark stairwell.

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

<sup>4</sup> Atts. 36 (audio) and 37 (transcript).

<sup>5</sup> █████ was unaware of the two males fleeing into the residence.

<sup>6</sup> Att. 37, Page 10.

Officer Gammonley had a weapon-mounted flashlight, and Officer Biszewski had a handheld flashlight.

As the Officers went down the stairs, Officer Biszewski opened the back door that led outside, at which point Officer Irvinder Perez entered.<sup>7</sup> Officer Gammonley stated that the only option was to continue to go down to the basement. The Officers proceeded to the basement. Officer Gammonley was the first to approach the basement door, which was cracked open. Officer Gammonley announced his office by saying, "Chicago Police,"<sup>8</sup> pushed the door open, crossed the threshold, and took three or four steps to pass a door. Officer Gammonley cleared the door to ensure no one was hiding behind the door. As Officer Gammonley panned around the basement, ██████ discharged his weapon in Officer Gammonley's direction. Officer Gammonley returned fire in the direction of the muzzle flashes coming at him because the basement was dark.<sup>9</sup>

Officer Gammonley retreated into the stairwell and boxed himself in the corner as ██████ continued to fire. Officer Gammonley returned fire. As soon as there was a break in ██████ fire, Officer Gammonley up the stairwell. Officer Gammonley stated that he did not give any verbal commands and never had any interaction with ██████ Officer Gammonley stated that after he stopped firing, he did a tactical reload in case the threat pursued them and sought further coverage. Officer Gammonley stated that Officer Biszewski was a step behind him and believed that Officer I. Perez was on the landing. The Officers set up a perimeter because they knew ██████ could not escape the basement.

Officer Gammonley explained that ██████ fired multiple time throughout the incident. Officer Gammonley stated that there was no break in the volleys of shots fired at him. Officer Gammonley said he never saw ██████ because the basement was too dark, and only saw muzzle flashes. Officer Gammonley fired roughly twenty-one or twenty-two shots. Officer Gammonley said that his weapon was a Glock 17, and fully loaded capacity was 18 rounds of 9 mm ammunition.

In a **statement to COPA** on October 5, 2018, **Officer Joseph Biszewski**<sup>10</sup> essentially stated the same account as Officer Gammonley. Officer Biszewski added that he did not fire his weapon because he was close to Officer Gammonley. Officer Biszewski radioed to dispatch indicating shots had been fired and requested assistance. Officer Biszewski related that Officer I. Perez was behind him.

Officer Biszewski stated he was on the scene when SWAT arrived. Officer Biszewski estimated that it took approximately two hours for SWAT to arrive on the scene. Officer Biszewski said that he did not see ██████ after the shooting and was not around when he surrendered and was brought outside. Officer Biszewski stated he saw ██████ subsequently in court. Officer Biszewski stated that Commander Bradley took him and Officer Gammonley to a holding area a block away.

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<sup>7</sup> Officer Gammonley explained that Officer I. Perez entering the rear door, cause him to believe neither male had fled from the building. Att. 37, pg. 11.

<sup>8</sup> Att. 37, Pages 11 and 14.

<sup>9</sup> Att. 37, Page 11.

<sup>10</sup> Atts. 35 (audio) and 41 (transcript).

In a **statement to COPA** on September 21, 2018, **Officer Irvinder Perez**<sup>11</sup> essentially stated the same account as Officers Gammonley and Biszewski. Officer I. Perez said that upon her and her partners', Officer Caser Perez', arrival she observed tactical officers already on the scene. Officer I. Perez said she and her partner, Officer C. Perez, exited their vehicle and walked to the residence's rear. Officer I. Perez met up with Sergeant Bednarek, who was also on the scene. Officer I. Perez said that one of the tactical officers unlocked and opened the back door allowing her to enter the rear of the building. Officer I. Perez followed behind the tactical officers going down the back stairs toward a partially open basement door.

Officer I. Perez said that Officer Gammonley entered the basement first and she then heard gunshots coming from the basement. Officer I. Perez observed Officer Gammonley exit the basement while returning fire. Officer I. Perez along with Officers Gammonley and Biszewski, took cover. Officer I. Perez assisted with securing the scene and waited for SWAT to arrive on the scene.

In a **statement to COPA** on October 30, 2019, **Officer Cesar Perez**<sup>12</sup> essentially stated the same account as Officers Gammonley, Biszewski, and I. Perez. Officer C. Perez added that he was a PPO and did not recall if he was assigned a body-worn camera the day of the incident.<sup>13</sup> Officer C. Perez said he was in the lot north of the residence when he heard gunshots. Officer C. Perez notified dispatch that gunshots had been fired at their location. Officer C. Perez proceeded to run to the back door of the residence when he observed Officers I. Perez, Biszewski, and Gammonley running out. The Officers took cover and waited for Sergeant Bednarek to come.

Sergeant Bednarek said to [REDACTED] that they were the police. [REDACTED] responded, but Officer C. Perez could not remember what he said. Officer C. Perez stated that no one entered the basement, and he remained on the scene until SWAT arrived. Officer C. Perez said he was taken to Area South and spoke with detectives.

In a **statement to COPA** on March 1, 2019, **Sergeant Richard Bednarek**<sup>14</sup> essentially stated the same account as Officers Gammonley, Biszewski, I. Perez, and C. Perez. Sergeant Bednarek said he was on the front porch with other assisting units when he heard gunshots fired from within the building. Sergeant Bednarek entered the building through the front door and could not go anywhere but up. Sergeant Bednarek proceeded to the second floor and then down the back stairwell. Sergeant Bednarek encountered other officers' downstairs by the basement who relayed that [REDACTED] had fired at them from within the basement.

Sergeant Bednarek retrieved his rifle and approached the basement door. [REDACTED] said if anyone entered the basement, he would shoot. Sergeant Bednarek told [REDACTED] "It is over; let's end this peacefully. No one's going to get hurt. And [REDACTED] refused."<sup>15</sup> [REDACTED] wanted to speak with the mother of his child. An officer contacted her and put [REDACTED] on speaker phone. [REDACTED] told his child's

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<sup>11</sup> Atts. 33 (audio) and 34 (transcript).

<sup>12</sup> Atts. 44 (audio) and 45 (transcript).

<sup>13</sup> At the time of this incident Probationary Police Officers (PPOs) were not equipped with Body Worn Cameras; therefore, there is no footage from Officer C. Perez.

<sup>14</sup> Atts. 39 (audio) and 46 (transcript).

<sup>15</sup> Att. 46, Page 9.

mother to tell everyone he loved them. Sergeant Bednarek assumed something was about to happen, so he told the officer to disconnect the call. Sergeant Bednarek requested SWAT and secured the scene. SWAT assumed command upon the arrival.

### b. Digital Evidence

**Evidence Technician Photographs**<sup>16</sup> documented the crime scene in the basement, the basement stairwell, defaced recovered weapon, shell casings and markers, and a firearm magazine.

The **Body-Worn Cameras**<sup>17</sup> of Officers Gammonley, Biszewski, and I. Perez corroborate the Officers' COPA statements. Additionally, Officer Gammonley is observed announcing his office before he pushes open the basement door.<sup>18</sup> As soon as Officer Gammonley entered the basement, ██████ discharged his weapon in the direction of the Officers. Officer Gammonley returned fire and took cover until it was safe for him to retreat up the stairs.

### c. Documentary Evidence

The **Synoptic Report**<sup>19</sup> state that Officer Gammonley did not have any drugs or alcohol in his system.

The **Arrest Report**,<sup>20</sup> **Original Case Incident Report**,<sup>21</sup> **Detective Supplementary Report**,<sup>22</sup> and **Crime Scene Processing Report**<sup>23</sup> detailed that ██████ fired multiple times at the Officers Gammonley and Biszewski from inside the basement. ██████ was arrested and charged with three counts of aggravated firearm discharge toward a police officer, three counts of attempted first-degree murder, and two counts of unlawful weapon use.

█████ fired two different .40 caliber handguns in the Officers' direction. ██████ barricaded himself in the basement and SWAT was summoned to assist. SWAT arrived on the scene and began negotiations with ██████ who surrendered without further incident. After the ██████ was secured, SWAT personnel performed a systemic search of the residence to ensure there were no other offenders inside the residence. ██████ was tested for gunshot residue and fingerprinted. A canvass of the area was conducted. Evidence was marked and inventoried, and the scene was processed.

█████ was interviewed by Detectives Murphy and Green.<sup>24</sup> Before the interview Det. Murphy advised ██████ of his Miranda warnings. ██████ acknowledged his rights and agreed to be interviewed. ██████ stated he saw an unmarked police car pull up in front of the house and walked

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<sup>16</sup> Atts. 42 and 43

<sup>17</sup> Atts. 15 and 16

<sup>18</sup> Att. 15, file AXON\_Body\_2\_Video\_2017-10-05\_1228\_cr1087018\_ja459709 GAMMONLEY at 05:53.

<sup>19</sup> Att. 5.

<sup>20</sup> Att. 8.

<sup>21</sup> Att. 9.

<sup>22</sup> Atts. 22 and 23.

<sup>23</sup> Att. 12.

<sup>24</sup> Att. 22. Pages 25 and 26.

inside because he was not committing any crimes. [REDACTED] entered the basement, and when the police entered, he began shooting. [REDACTED] fired the first gun until it was empty and then picked up the second one and fired it until it would no longer shoot. [REDACTED] stated that he picked up Officer Gammonley's magazine, looking for more ammunition but it was empty, so he dropped it on the floor. [REDACTED] said he did not hear anyone announce that they were the police and did not know who entered the basement when he began shooting.<sup>25</sup> [REDACTED] acknowledged he was wrong but stated the police had no right to enter the residence in the first place. [REDACTED] said he was willing to go to jail for what he did and was glad the officer was alright.

After the shooting, [REDACTED] stated that he called 911 and threatened to shoot anyone else who attempted to enter the basement. When asked about the weapons, [REDACTED] stated they were dark in color and did not recall where they came from. At approximately 7:20 pm, [REDACTED] stated he no longer wished to answer questions and requested an attorney. The interview was concluded at that time.

Illinois State Police Forensic Scientist Jennifer Barret detailed the examination results from evidence recovered from the scene and revealed that the weapon inventoried under # [REDACTED] had suitable latent impressions made by the person whose fingerprints and palmprints appear on the copies of the fingerprint and palmprint standards marked [REDACTED] D. [REDACTED] was a match to [REDACTED]

The **OEMC Event Queries**<sup>26</sup> detail that a call was made to 911 at 12:25 pm stating that a person with a gun was at [REDACTED]. At approximately 12:26 pm Officers Gammonley and Biszewski answered the call and headed to the location. At approximately 12:35 pm shots fired in the basement was reported to dispatch. It further indicated that multiple event numbers were created. The offender, [REDACTED] was taken into custody. Officers Gammonley and Biszewski were both checked out by ambulance on the scene.

An **Email**<sup>27</sup> from Attorney Michael J. Levinsohn stated that he was not allowing COPA to interview his client, [REDACTED]

Officer Gammonley's **Tactical Response Report**<sup>28</sup> (TRR) details [REDACTED] actions as not following verbal direction, imminent threat of a battery with a gun, and using force likely to cause death or great bodily harm by shooting at Officer Gammonley. Officer Gammonley details his response as member presence and firearm. Officer Gammonley details his force as eighteen discharges of his semi-automatic weapon.

Finally, the TRR details all the required notifications and that Lieutenant Terrance [REDACTED] determined that Officer Gammonley's weapon discharge complied with Department policy.

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<sup>25</sup> [REDACTED] had previously stated that he was aware the person entering the basement was a police officer.

<sup>26</sup> Atts. 17 to 20, 29 and 30.

<sup>27</sup> Att. 40.

<sup>28</sup> Att. 6.

**VI. ANALYSIS AND CONCLUSION<sup>29</sup>****i. Applicable Department Policies****1. G03-02: Use of Force<sup>30</sup>**

The Department's highest priority is the sanctity of human life. In all aspects of their conduct, Department members will act with the foremost regard for the preservation of human life and the safety of all persons involved. The main issue in evaluating every use of force is whether the amount of force the officer used was objectively reasonable in light of the totality of the circumstances faced by the officer.<sup>31</sup>

Factors to be considered by the officer include but are not limited to: whether the subject is posing an imminent threat to the officer or others; the risk of harm, level of threat or resistance presented by the subject; and the subject's proximity or access to weapons.

Department members will use only the force that is proportional to the threat, actions, and level of resistance offered by a subject. This may include using greater force or a different type of force than that used by the subject. The greater the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that maybe necessary to overcome it. When or if the subject offers less resistance, however, the member will decrease the amount or type of force accordingly.

Deadly force is force by any means that is likely to cause death or great bodily harm. It includes but is not limited to: firing of a firearm in the direction of the person to be arrested; firing of a firearm at a vehicle in which the person to be arrested is riding; intentional striking of a subject's head with an impact weapon; and application of a chokehold, defined as applying direct pressure to a person's trachea (windpipe) or airway (front of the neck) with the intention of reducing the intake of air.

A threat is imminent when it is objectively reasonable to believe that: the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; the subject has the means or instruments to cause death or great bodily harm; and the subject has the opportunity and ability to cause death or great bodily harm.

**2. G03-02-01: Force Options<sup>32</sup>**

Per Department policy, all uses of force must be objectively reasonable, necessary under the circumstances, and proportional to the threat, actions, and level of resistance offered by a subject.

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<sup>29</sup> During COPA's preliminary investigation, it was determined that there was no factual basis to serve any allegations related to the Officers' entry of the building. [REDACTED] the second-floor occupant, provided consent to the Officers to enter the common spaces and search his apartment. See Att. 15 file AXON\_Body\_2\_Video\_2017-10-05\_1228\_cr1087018\_ja459709 GAMMONLEY from 03:11 to 03:46; Att. 22, Page. 22.

<sup>30</sup> Chicago Police Department, General Order G03-02, effective October 16, 2017, to February 29, 2020.

<sup>31</sup> *Id.* at (III)(B)(1).

<sup>32</sup> Chicago Police Department, General Order G03-02-01, effective October 16, 2017, to February 29, 2020.

An assailant is a subject who is using or threatening the use of force against another person or themselves which is likely to cause physical injury. Assailants are divided into two categories: (1) a subject whose actions are aggressively offensive with or without weapons; and (2) a subject whose actions constitute an imminent threat of death or great bodily harm to a Department member or to another person. When dealing with an assailant whose actions constitute an imminent threat of death or bodily harm, Department policy authorizes the use of firearms and other deadly force responses.

**a. Legal Analysis**

A preponderance of the evidence<sup>33</sup> demonstrates that Officer Gammonley's use of deadly force was objectively reasonable considering the totality of circumstances he faced in this incident. Officer Gammonley's use of deadly force was a last resort and was necessary to prevent the imminent threat of death or great bodily harm presented by ██████. Based upon the below factors, COPA finds that ██████ posed an imminent threat of death or great bodily harm.

First, it was objectively reasonable for Officer Gammonley to believe that ██████ actions were immediately likely to cause death or great bodily harm to unless action was taken. Here, officers were dispatched to respond to a person with a gun call. Upon arrival to the scene of the call, officers saw two males flee into a residence. After obtaining consent from a resident, Officer Gammonley, and others, began a search of the property. During the search, Officer Gammonley heard an individual fleeing down the rear enclosed stairwell. Officer Gammonley and others proceeded down the stairwell until they encountered a partially closed basement door. Officer Gammonley entered the basement and was immediately fired upon by ██████. Officer Gammonley's firearm discharge was in direct response to ██████ firing at him.

Second, it was objectively reasonable for Officer Gammonley to believe that ██████ had the means or instruments to cause death or great bodily harm. Officer Gammonley was directly aware that the call to officers was dispatched to a person with a gun call. Once in the basement Officer Gammonley was directly fired upon by ██████. The interviews, documentary, and digital evidence support a conclusion that ██████ had a gun and fired it at Officer Gammonley.

Third, it was objectively reasonable for Officer Gammonley to believe that ██████ had the opportunity and ability to cause death or great bodily harm. Officer Gammonley saw ██████ holding discharging the firearm, arguably in his direction. The interviews, documentary, and digital evidence support that ██████ fired at Officer Gammonley, which prompted Officer Gammonley to discharge his weapon.

Based on the analysis set forth above, COPA finds that Officer Gammonley's use of deadly force in this incident was authorized under Department policy.

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<sup>33</sup> A preponderance of evidence can be described as evidence indicating that it is more likely than not that the conduct was within policy.



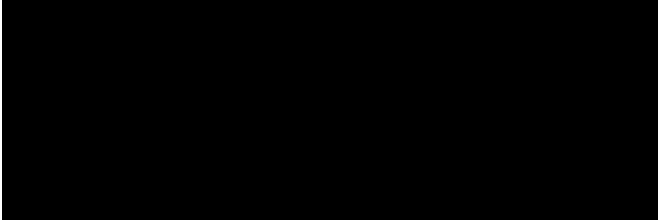
Approved:



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Matthew Haynam  
*Deputy Chief Administrator – Chief Investigator*

9/29/2022

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Date



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Andrea Kersten  
*Chief Administrator*

9/29/2022

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Date