

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	February 25, 2018
Time of Incident:	7:59 p.m.
Location of Incident:	1556 W. 43 rd Street
Date of COPA Notification:	February 25, 2018
Time of COPA Notification:	8:15 p.m.

On February 25, 2018, at approximately 8:00 p.m., Chicago Police Department (CPD) Officers Carlos Barona, Raul Casales Jr., and Jeremy Barnes were driving northbound on Ashland Avenue, near 44th Street, when they smelled a strong odor of cannabis coming from a Dodge Magnum sedan that had passed the side of their vehicle and driven in front of them. The officers stopped the car at 4247 S. Ashland Avenue. The vehicle was occupied by [REDACTED] (driver), [REDACTED] and a one-year-old child. The officers asked the occupants to get out of the vehicle. After exiting the vehicle, [REDACTED] fled on foot and Officer Barona pursued on foot, giving [REDACTED] verbal commands to stop and show his hands.

[REDACTED] ran southbound on Ashland Avenue, then eastbound on 43rd Street to a trucking dock at an industrial facility located at 1556 W. 43rd Street. Officer Casales pursued approximately 20-30 feet behind Officer Barona, while Officer Barnes stayed with the other occupants of the Dodge Magnum. [REDACTED] ran between two large semi-truck trailers and underneath one of the trailers. Officer Barona pursued him to that area, observed [REDACTED] duck underneath the trailer and reach for his boot, and saw a shiny object near [REDACTED] boot. Officer Barona gave [REDACTED] verbal commands to stop reaching for his boot and show his hands. Officer Barona, believing that [REDACTED] was reaching for a weapon, fired four shots at [REDACTED] striking him once in his abdomen, once in his buttocks, and once in his right arm. [REDACTED] was taken to Stroger Hospital for medical care where he survived his injuries. Officer Barona was transported to Rush University Medical Center for elevated blood pressure and was admitted overnight.

CPD, a Chicago Fire Department (CFD) light truck, and an Alcohol Tobacco & Firearms (ATF) dog were brought in to search the area around the semi-truck trailers where [REDACTED] was shot and apprehended. No weapon was recovered.

COPA conducted a complete and thorough investigation of the incident; however, it was unable to locate any video of the shooting and none of the involved civilians, including [REDACTED] cooperated with COPA’s investigation. After review of the available evidence and statements, COPA determined that Officer Barona’s use of deadly force was prohibited by CPD policy as outlined by General Orders G03-02 and G03-02-03.

II. INVOLVED PARTIES

Involved Officer #1:	Carlos E. Barona, star #16054, employee ID # [REDACTED], Date of Appointment May 1, 2013, Police Officer, Unit of Assignment #312, DOB [REDACTED], 1985, Male, Hispanic.
Involved Individual #1:	[REDACTED] DOB [REDACTED], 1991, Male, Black.

III. ALLEGATIONS

Pursuant to Section 2-78-120(c) of the Municipal Code of the City of Chicago, the Civilian Office of Police Accountability (COPA) is required to conduct investigations into all incidents in which a Department member discharges a firearm in a manner that potentially could strike another individual. COPA personnel respond to any such weapon discharge incident to initiate an administrative investigation consistent with COPA’s jurisdiction.

Officer	Allegation	Finding
Officer Carlos Barona	It is alleged by COPA that on February 25, 2018, at approximately 8:00 p.m., at or near 1556 W. 43rd Street, Officer Barona discharged his firearm at or in the direction of [REDACTED] in violation of Chicago Police Department policy.	Sustained

IV. APPLICABLE RULES AND LAWS

Rules
<ol style="list-style-type: none"> 1. Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department. 2. Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals. 4. Rule 6: Disobedience of an order or directive, whether written or oral. 5. Rule 8: Disrespect to or maltreatment of any person, while on or off duty. 6. Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
General Orders
<ol style="list-style-type: none"> 1. General Order 03-02: Use of Force (effective October 16, 2017 – February 28, 2020) 2. General Order 03-02-03: Firearms Discharge Incidents Involving Sworn Members (effective October 16, 2017 – February 28, 2020)

V. INVESTIGATION¹

a. Interviews

COPA exhausted all attempts to contact [REDACTED] and [REDACTED] for a statement.²

In a statement to COPA on January 22, 2019, Officer Carlos Barona, #16054,³ stated on the date and time of the incident, he and his partners Jeremy Barnes and Raul Casales were on-duty, in plainclothes, and assigned to the Area South Gang Enforcement Unit #312, Beat 6729E. Officer Barnes was the driver of the unmarked police SUV. While the officers were traveling northbound on Ashland Avenue, near 44th Street, they smelled a strong odor of cannabis coming from a Dodge Magnum sedan that had passed the side of their vehicle and driven in front of them. Officer Barnes activated his emergency lights, and the officers stopped the vehicle on Ashland Avenue, north of 43rd Street.⁴ The officers exited their vehicle and approached the Dodge Magnum. Officer Barona approached the rear passenger's side, Officer Barnes the front driver's side, and Officer Casales the front passenger's side. Officer Barona illuminated his flashlight inside the vehicle and observed a male, now known to be [REDACTED] seated in the rear passenger seat. [REDACTED] appeared to say, "fuck,"⁵ then bent over and made movements as if he was pushing something down between his right leg and the door. Officer Barona told his partners that he thought [REDACTED] might have a firearm and they needed to take him out of the vehicle.⁶

Officer Barnes removed the driver, now known to be [REDACTED] from the vehicle and Officer Casales removed the front passenger, now known to be [REDACTED]. Officer Barona then ordered [REDACTED] to exit the vehicle. As Officer Barona was going to pat-down [REDACTED] a male seated in the rear middle seat, now known to be [REDACTED] began moving around and Officer Barona could no longer see his hands. [REDACTED] made a motion downward and Officer Barona thought he might be retrieving and/or concealing something. Officer Barona also observed a baby in a car seat in the rear driver's seat. He turned his attention to [REDACTED] and instructed him to stop moving and to show his hands. Officer Barona then passed [REDACTED] to Officer Barnes and turned back to look at [REDACTED]. Officer Barona heard a commotion to his left, and when he looked, he saw Officer Barnes stumble backwards and [REDACTED] begin to flee on foot southbound on Ashland Avenue. Officer Barona pursued on foot approximately ten to fifteen feet behind. [REDACTED] fled eastbound on 43rd Street through the truck yard. Officer Barona identified himself as an officer and yelled at [REDACTED] to show his hands and stop running. [REDACTED] looked back and fell to the ground but immediately stood up and continued running.⁷ Officer Barona took out his flashlight

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

² Reference attachments, #39, #43, #81-84, #89-91, and #94-98.

³ Transcript, att. #110. For audio statements refer to attachments #104-107.

⁴ In a Google map of the location of the incident, Officer Barona marked an X at the location where the traffic stop occurred. See attachment #109.

⁵ Att. #110, Pg. 18, Ln. 19.

⁶ Att. #110, Pg. 19, Lns. 5-6.

⁷ Officer Barona marked an X on the Google map indicating the direction [REDACTED] ran. See attachment #109.

and firearm and continued chasing ██████ who ran in between the semi-truck trailers that were parked in the truck yard.⁸

According to Officer Barona, ██████ struck his head as he ran underneath a trailer, landing on his buttocks facing southbound on 43rd Street. At that point, Officer Barona was approximately seven to eight feet north of ██████⁹ Officer Barona ordered ██████ to show his hands, but ██████ reached toward his boot with his right hand and made a pulling motion. Officer Barona believed ██████ was retrieving a firearm from his boot. Officer Barona described the area as “pitch-black”¹⁰ and the only lights illuminated were from his flashlight and firearm.¹¹ Officer Barona attempted to take cover but could not, as he was in between two semi-trucks. Officer Barona saw a “glare,”¹² and in fear for his life, he discharged his firearm four times from approximately three to five feet away.¹³ Officer Barona stopped firing when he saw ██████ lean back. Officer Barona holstered his firearm and went underneath the trailer. He heard ██████ state, “It’s in my boot, it’s in my boot.”¹⁴ As Officer Barona began to handcuff ██████ he heard Officer Casales ask where he was. Officer Casales approached and removed ██████ boot, causing a white bag of suspect narcotics to fall out.¹⁵ Officer Casales called for medical assistance and Officer Barona began to walk to the police vehicle because he was in shock. As he walked, an unmarked police vehicle arrived, and Officer Barona entered the vehicle. Officer Barona was later transported by ambulance to Rush University Medical Center, where he was admitted for an irregular heartbeat and high blood pressure.

In a **statement to COPA on March 13, 2018, Officer Jeremy Barnes, #13912**¹⁶ stated on the date and time of the incident, he and his partners, Carlos Barona and Raul Casales, were on-duty, in plainclothes, and assigned to the Area South Gang Enforcement Unit #312. On the date of the incident, the officers were assigned to the 007th District. Officer Barnes was the driver of the unmarked Ford Explorer SUV. The officers were travelling northbound at approximately 4500 or 4600 S. Ashland Avenue when they smelled a strong odor of cannabis coming from a Dodge Magnum that was driving slightly adjacent to their vehicle.¹⁷ Officer Barnes drove behind the vehicle and activated his emergency lights. He did not recall if the sirens were activated. The vehicle pulled over at approximately 4247 S. Ashland Avenue, near the Ashland Cold Storage facility.

The officers exited their vehicle and approached the Dodge Magnum. Officer Barnes approached the driver’s side, Officer Barona approached the rear passenger’s side, and Officer Casales the front passenger’s side. Officer Barnes stated that ██████ was seated on the rear passenger’s side, and he was moving around but Officer Barnes could not see what he was

⁸ Officer Barona marked an X3 on the Google map indicating where ██████ hid by the semi-trucks.

⁹ ██████ was facing northbound of 43rd Street.

¹⁰ Att. #110, Pg. 34, Lns. 15-16

¹¹ Officer Barona’s firearm had a stream light TLR1 Laser, Serial # ██████.

¹² Att. #110, Pg. 36, Ln. 16

¹³ Att. #110, Pg. 39, Lns. 7-8. Officer Barona’s last annual prescribed weapons qualification date was April 20, 2017. See attachment #118.

¹⁴ Att. #110, Pg. 41, Ln. 19.

¹⁵ Inventory # ██████, attachment #20.

¹⁶ Att. #112. For audio statement refer to attachment #65.

¹⁷ The Dodge Mangum was on the eastside (curb side) and the officers were in the inside lane, with their windows rolled down.

doing. As Officer Barnes asked [REDACTED] for her driver's license and insurance, Officer Barona alerted him that they had to remove [REDACTED] from the vehicle. Officer Barnes instructed [REDACTED] and the front passenger, [REDACTED] to step out of the vehicle. They complied, and Officer Barnes handcuffed them together. Officer Barnes stated that [REDACTED] and a baby were seated in the back with [REDACTED]. Officer Barona asked [REDACTED] to exit the vehicle and he complied. As Officer Barona was passing [REDACTED] to Officer Barnes, [REDACTED] struck Officer Barnes in the chest, knocking him off balance. [REDACTED] then fled southbound on Ashland Avenue and eastbound on 43rd Street. Officer Barona chased [REDACTED] on foot, and Officer Barnes remained at the vehicle with the other occupants. Officer Barnes stated he did not know Officer Casales' whereabouts.

According to Officer Barnes, he notified the Office of Emergency Management & Communications (OEMC) over the radio and provided the dispatcher with a physical description of the red jacket [REDACTED] was wearing, his direction of flight, and that Officer Barona was chasing [REDACTED]. Officer Barnes removed [REDACTED] from the vehicle and handcuffed him to [REDACTED] and [REDACTED]. Seconds later, Officer Barnes heard three loud gunshots in rapid succession. Officer Barnes informed the dispatcher of gunshots in the area of 43rd Street and Ashland Avenue. At that point, Officer Barnes did not know who had fired. Responding officers and another beat car stayed with the occupants of the Dodge Magnum while Officer Barnes went to check on his partners. He located Officers Barona and Casales standing near an unmarked police vehicle, but he did not see [REDACTED]. Officer Barnes stated no weapons were found inside the Dodge Magnum or on the occupants.

In a **statement to COPA on March 13, 2018, Officer Raul Casales, #7229**,¹⁸ essentially reiterated the same account of the traffic stop as Officers Barona and Barnes. In addition, Officer Casales stated he did not see [REDACTED] exit the Dodge Magnum, but he did see [REDACTED] flee the scene. [REDACTED] ran southbound on Ashland Avenue and eastbound on 43rd Street. Officer Barona chased [REDACTED] on foot, and Officer Casales began running behind them. As [REDACTED] and Officer Barona turned eastbound on 43rd Street, Officer Barona was approximately twenty to thirty feet ahead of Officer Casales. Officer Casales heard Officer Barona identify himself as an officer and give [REDACTED] verbal commands to stop. [REDACTED] and Officer Barona made a left turn near some trailers and Officer Casales lost sight of them. Officer Casales then heard three to four gunshots.¹⁹ He illuminated his flashlight and ran to the area where he heard the gunshots. Officer Casales found [REDACTED] and Officer Barona underneath a trailer. As Officer Barona began handcuffing [REDACTED] he informed Officer Casales that he fired his weapon at [REDACTED]. Officer Barona instructed Officer Casales to remove [REDACTED] right boot because he had a weapon. When Officer Casales removed the boot, a small clear bag fell out. The officers did not recover a weapon from [REDACTED] or the area around him. Officer Casales stated that [REDACTED] was conscious and moving, but he appeared to have a gunshot wound to his abdomen area. Officer Casales notified OEMC of the shots fired, their location, and requested medical assistance.

¹⁸ Att. #111. For audio statement refer to attachment #66.

¹⁹ Officer Casales did not see Officer Barona discharge his firearm.

b. Digital Evidence^{20, 21}

Evidence Technician (ET) Photographs²² depict [REDACTED] the scene, and the recovered evidence.²³

COPA obtained **video surveillance footage from Advance Auto Parts**²⁴ at 4301 S. Ashland Avenue. The store is located on the east side of Ashland Avenue, north of 43rd Street.²⁵ There are three cameras located on the exterior of the building.²⁶ The police shooting was not captured in any of the videos. At approximately 21:06 p.m. (DVR time), in all three video clips, police vehicles arrive and park in the vicinity of the Advance Auto Parts store and Ashland Cold Storage. At approximately 21:08:36 p.m., in video clip labeled “front parking,” the video shows an ambulance driving northbound on Ashland Avenue toward Ashland Cold Storage. Approximately one minute later, a Chicago Fire Department (CFD) truck follows in the same direction.

COPA obtained **video surveillance footage from Ashland Cold Storage**,²⁷ located at 1556 W. 43rd Street. At approximately 7:58:47 p.m., the video shows three individuals running around the corner from the east side of Ashland Avenue onto 43rd Street. They run eastbound, close to the north side of 43rd Street. At approximately 7:59:04 p.m., the person in front appears to stumble, then ducks and runs underneath a semi-truck trailer parked at the loading dock of Ashland Cold Storage. The other two individuals run up to the trailers with illuminated flashlights. At approximately 8:00:23 p.m., police vehicles begin to arrive at the scene.

COPA obtained and reviewed **Portable Observation Device (POD) #2411, #2412, and #2413**.²⁸ At approximately 7:56:53 p.m., POD #2412, located at 4304 S. Ashland Ave, shows an unmarked SUV activating its emergency lights as it travels northbound on Ashland Avenue, behind a dark-colored station wagon. The police vehicle is apparently pulling the station wagon over as the two vehicles exit the frame. At 7:59:30 p.m., the camera turns northeast and zooms in and out as it pans east to west. At 8:02:06 p.m., the camera zooms in on the trucking dock outside of the Ashland Cold Storage.²⁹ The video captures police officers searching the area with flashlights. Shortly thereafter, an ambulance arrives at the scene.

At approximately 8:00:00 p.m., POD #2413, located at 4403 S. Ashland Avenue, shows officers responding to the scene of occurrence. Between 8:00 p.m. and 8:03 p.m., POD #2411,

²⁰ COPA obtained and reviewed numerous in-car camera videos associated with RD #JB165332 (see att. #92). None of the videos captured the incident.

²¹ COPA obtained and reviewed numerous Body Worn Camera (BWC) videos of officers associated with OEMC event number #1805613472 (att. #47) or RD #JB165332. None of the BWC were assigned to the involved officers and therefore did not capture the incident.

²² Atts. #67-68.

²³ Such photographs are described under Crime Scene Processing Reports #361494 & 361485 (atts #19 & 116).

²⁴ Att. #53.

²⁵ The location of the incident (semi-truck parking) at Ashland Cold Storage is northeast of Advance Auto Parts.

²⁶ Front entry, front parking, and side parking. The timestamp on the DVR is approximately one hour and seven minutes behind the actual time. The event occurred at approximately 21:06 p.m., DVR time. The resolution is poor.

²⁷ Att. #55.

²⁸ Att. #59.

²⁹ Scene of the police shooting.

located at 4203 S. Ashland Avenue, also captures police vehicles responding to the scene. At 8:03:30 p.m., the camera pans south and zooms in on the scene of the traffic stop, which occurred on the east side of Ashland Avenue, just north of 43rd Street. The video shows numerous police vehicles at the scene.

The **Office of Emergency Management and Communications (OEMC) event queries³⁰ and CPD radio transmissions³¹** document the following relevant and material communications.

- CPD Transmissions, Zone 13, 19:59-23:00 hours
A male officer (Beat 6729E) reports they are at 43rd Street and Ashland Avenue. The dispatcher requests additional police vehicles at that location. The recording captures a female yelling in the background as a male voice states, “Shut up! Shut the fuck up!” The dispatcher makes another request for backup, then communicates that Beat 6721E heard “loud reports” (gunshots) in the area of 43rd Street and Ashland Avenue. The dispatcher believes the officers involved are Beat 6729E, they are on zone 6, and there are reports of shots fired at or by police. An unidentified male voice (UMV) reports the offender is wearing a red sports jacket and, shortly thereafter, states the offender is in custody. Dispatch instructs other responding units to slow down. The UMV requests an ambulance near 43rd Street and Ashland Avenue for a male who was shot. The remainder of the transmissions include additional police units announcing their response and police activities to secure the area.
- CPD Transmissions, Zone 6, 19:59-23:00 hours
Beat 6729E reports shots fired by the police at 42nd Street and Ashland Avenue. The dispatcher announces a 10-1³² at 42nd Street and Ashland Avenue, with the offender shot. The dispatcher confirms that Beat 6729E is okay and reports that EMS is on its way. An unidentified female voice reports the offender is in the bay area, east of 43rd Street and Ashland Avenue. Officers then request a slow-down.
- CPD Transmissions, CW1, 1900-2100 hours
The dispatcher announces a 10-1, shots fired by police (Beat 6729E) at 42nd and Ashland Avenue. Beat 4605 reports they are going to respond to the scene, where the offender is shot and in custody.

c. Physical Evidence³³

The **City of Chicago Fire Department (CFD) Report³⁴** for ██████████ indicates that paramedics from ambulance #68 arrived at the scene at approximately 8:12:09 p.m. ██████████ presented with multiple gunshot wounds to his abdomen, right upper arm, and buttocks. The paramedics transported ██████████ to Stroger Hospital without incident.

³⁰ Att. #47.

³¹ Atts. #85 (CW1), #86 (Zone 6), and #87 (Zone 13).

³² This is a radio communication indicating an officer is in need of emergency assistance.

³³ COPA’s attempts to obtain ██████████ medical records were unsuccessful. (See attachments #13, 69, 72, 74).

³⁴ Att. #18.

Officer Barona's medical records³⁵ indicate he arrived at Rush University Medical Center by ambulance on February 25, 2018, at approximately 9:19 p.m.³⁶ Officer Barona was diagnosed with shortness of breath, chest pain, and nausea. He was given a stress test and discharged from the hospital the following day.

The **Illinois State Police (ISP) Forensic Science Laboratory Report-Firearms/Toolmarks**³⁷ documents the examination and testing of Officer Barona's firearm.³⁸ An ISP forensic scientist test fired Officer Barona's firearm with the Winchester 9mm Luger + P magazine and determined the weapon to be operable as received. The ISP forensic scientist determined that one fired bullet³⁹ recovered from ██████████ could not be identified or eliminated as having been fired from Officer Barona's firearm.

Crime Scene Processing Report #361485,⁴⁰ completed on February 26, 2018, documents the recovery of evidence from the scene, including descriptions of the evidence collected and photographs of the scene at 4247 S. Ashland Avenue and 1532 W. 43rd Street. ETs recovered four fired cartridge cases from between two trailers parked in Bays 6 & 7 at 1532 W. 43rd street.⁴¹ A fired bullet was also recovered from underneath the trailer, towards the rear at Bay 7.⁴² The report further documents the recovery of ██████████ belongings to include a pair of Timberland boots, a clear knotted plastic baggie containing white powder,⁴³ a pill container with one pill inside labeled "Apetamin-P" Cyproheptadine,⁴⁴ and a medium size paper clip "clamp" from underneath the trailer in Bay 7.⁴⁵

d. Documentary Evidence

Original Case Incident Reports⁴⁶ and the **COPA Preliminary Report**⁴⁷ essentially document the same information as the Introduction of this report, with fewer details.

The **Detective's Supplementary Reports and General Progress Reports (GPRs) for RD #JB165332/Aggravated Assault PO: Handgun, Aggravated Battery, and Narcotics Possession: Crack**,⁴⁸ includes but is not limited to: information collected and reported by CPD regarding the incident, observation of evidence on scene, and the assigned detectives' notes from their interviews with civilian witnesses and police officers. Regarding the statement of Officers

³⁵ Att. #71.

³⁶ A CFD Run Sheet was not completed for Officer Barona.

³⁷ Att. #73, ISP Lab Case No. #C18-005793.

³⁸ Inventory # ██████████: Glock 19, Model Gen 4, 9X19 semi-automatic pistol, Serial # ██████████. Officer Barona's firearm had a total capacity 15 rounds. ETs recovered ten bullets from the magazine and one from the chamber of the weapon. The firearm also had an attached stream light TLR1 Laser, Serial # ██████████. (See attachment #116.)

³⁹ Inventory # ██████████, Att. #115.

⁴⁰ Att. #116.

⁴¹ Inventory # ██████████ Evidence markers #1-3 & 5, attachment #116.

⁴² Inventory # ██████████ Evidence marker #4, attachment #116.

⁴³ Inventory # ██████████ and # ██████████, attachment #20.

⁴⁴ Inventory # ██████████ attachment #20.

⁴⁵ Inventory # ██████████ attachment #20.

⁴⁶ Atts. #6-7, 11.

⁴⁷ Att. #4.

⁴⁸ Atts. #92 and #93.

Casales, Barnes, and Barona, the notes contain essentially the same information that the officers told COPA during their statements, except that Officer Casales told detectives that while searching ██████ at the scene, Officer Barona told him there was a firearm near ██████ boot.⁴⁹ In his statement to COPA, Officer Casales reported that Officer Barona told him the firearm was inside ██████ right boot. The detectives also interviewed civilians ██████ and ██████. They stated that during the traffic stop, ██████ fled on foot, and shortly thereafter, they heard two gunshots.⁵⁰

A **Major Incident Notification Report (MIN)**⁵¹ documents the identifiers of ██████ and Officer Barona, as well as a description of Officer Barona's firearm. The narrative section states that ██████ received medical care at Stroger Hospital and Officer Barona received medical care at Rush Presbyterian St. Luke's Medical Center.

The **Tactical Response Report (TRR)**⁵² of Officer Barnes completed on February 26, 2018, documents that on the date and time of the incident, ██████ exited a vehicle during a traffic stop, pushed Officer Barnes on the chest, and fled on foot.

The **Tactical Response Report (TRR)**⁵³ of Officer Barona completed on February 26, 2018, documents that on the date and time of the incident, he pursued ██████ on foot while giving verbal commands to stop running and show his hands. ██████ fled underneath parked semi-trucks at Ashland Cold Storage and reached for his right boot. Officer Barona, believing that ██████ was reaching for a weapon, discharged his weapon four times at ██████ sustained non-fatal gunshot wounds and was transported to the hospital for medical treatment.

e. Additional Evidence

An **Internal Affairs Division (IAD) Synoptic Report**⁵⁴ documents that on February 25, 2018, at approximately 11:49 p.m., Officer Barona was given alcohol and drug testing. He submitted to a breathalyzer, resulting in a reading of .000 Br.A.C.

VI. STANDARD OF PROOF

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

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false

⁴⁹ Att. 92; Pg. 47, Lns. 14-15.

⁵⁰ Att. #92, Pgs. #49-50.

⁵¹ Att. #77.

⁵² Att. #10.

⁵³ Att. #9.

⁵⁴ Att. #64.

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 a proposition is proved.⁵⁵ 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. 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.”⁵⁶

VII. LEGAL STANDARD

CPD Policy states that the “Department’s highest priority is the sanctity of life.”⁵⁷ CPD members are expected to act with the utmost regard for preserving human life and must comply with CPD use of force orders.⁵⁸ CPD’s policy in place on the date of the incident provides that a member’s use of force must be evaluated based on the totality of the circumstances known by the member at the time of the incident, from the perspective of a reasonable Department member in the same or similar circumstances, and without the benefit of 20/20 hindsight.⁵⁹ The policy recognizes that Department members must “make split-second decisions – in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation.”⁶⁰

The CPD General Order entitled “Use of Force” provides that a member’s use of force must be “objectively reasonable, necessary, and proportional.”⁶¹ Each of these elements is further explained in the policy, as follows:

- **Objectively Reasonable:** In evaluating a use of force, CPD policy states the key issue is whether the Department member’s use of force was objectively reasonable under the

⁵⁵ 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).

⁵⁶ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (2016).

⁵⁷ General Order G03-02 (effective October 16, 2017 to February 28, 2020) (hereinafter the “Use of Force Order”).

⁵⁸ Questions as to the propriety of an officer’s use of force, including excessive or deadly force, are also typically evaluated under state law and the 4th Amendments to the United States Constitution and Illinois State Constitution. However, CPD policy in place at the time of this incident prohibited the use of deadly force under circumstances that would have been permissible under state law and 4th amendment law, meaning that CPD policy is *more* restrictive than state law and federal 4th amendment law. COPA’s analysis, therefore, focuses solely on whether Officer Barona’s use of deadly force complied with CPD policy in place at the time of the incident, February 25, 2018. To the extent COPA cites to judicial decisions in its analysis, it does so solely as an aide to the interpretation of common concepts or terms (such as the meaning of “objectively reasonable”).

⁵⁹ Use of Force Order, section II.D.

⁶⁰ Use of Force Order, section II.D.

⁶¹ Use of Force Order, section III.B.

totality of the circumstances at the time force was used. Although “reasonableness” cannot be precisely defined, the policy provides that the following non-exclusive list of factors may be considered:

- “whether the subject is posing an imminent threat;
 - the risk of harm, level of threat, or resistance presented by the subject; and
 - the subject’s proximity or access to weapons.”⁶²
- Necessary: Department members are limited to using “only the amount of force required under the circumstances to serve a lawful purpose.”⁶³
 - Proportional: A Department member’s use of force must be proportional to the “threat, actions, and level of resistance offered by a subject.”⁶⁴

To reduce or avoid the need for force, CPD policy directs members to use de-escalation techniques known as “Principles of Force Mitigation” when it is safe and feasible under the circumstances.⁶⁵ These techniques include:

- “Continual Communication,” which means using verbal control techniques to avoid or minimize confrontations before resorting to physical force. This includes using persuasion, advice, instruction, and warning prior to any use of force;
- “Tactical Positioning,” which involves the use of positioning, distance, and cover to contain a subject and create a zone of safety for officers and the public; and
- Using “Time as a Tactic” to, among other things, permit the de-escalation of a subject’s emotions and provide time for the subject to comply with police orders, provide time for continued communication, and allow for the arrival of additional members or special units and equipment.⁶⁶

While attempting to de-escalate an encounter, CPD members are required to continually assess the situation and modify their use of force in ways that ensure officer safety as circumstances develop.⁶⁷

a. Use of Deadly Force

A Department member’s use of deadly force, which includes the discharge of a weapon at or in the direction of a person subject to arrest, is controlled by CPD policy restrictions in addition to those described above. Department members may only use deadly force as a “last resort” when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person.⁶⁸ A threat is defined as “imminent” when it is objectively reasonable to believe that:

⁶² Use of Force Order, section III.B.1(a)-(c).

⁶³ Use of Force Order, section III.B.2.

⁶⁴ Use of Force Order, section III.B.3.

⁶⁵ Use of Force Order, section III.B.4; *see also* G03-02-01(III) (the “Force Options Order”).

⁶⁶ Force Options Order, section III.

⁶⁷ Use of Force Order, section III.B.4.

⁶⁸ Use of Force Order, section III.C.3.

- “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.”

CPD’s definition of “last resort” re-enforces the principle that a Department member may only use deadly force when presented with an “imminent threat.”⁶⁹

The Force Options Order outlines the force options available to Department members when met with resistance or threats.⁷⁰ The order authorizes the use of deadly force in situations involving an “assailant,” which is defined as a subject whose actions constitute an imminent threat of death or great bodily harm to a Department member or another person.⁷¹

VIII. LEGAL ANALYSIS

a. Officer Barona’s use of deadly force violated Department policy.

COPA finds that, based on the totality of the circumstances, a reasonable officer in Officer Barona’s position could conclude that ██████ possessed either contraband or a firearm. However, Officer Barona offered no support as to why he concluded that ██████ possessed a firearm. He did not purport to see a firearm, or an item shaped like a firearm. During his interview with COPA, Officer Barona stated that at the initiation of the traffic stop, he approached the rear passenger’s side of the vehicle. He shined his flashlight into the vehicle and believed he heard ██████ say, “Fuck.” He then observed ██████ bend over and appear to push something between his leg and the vehicle door. Officer Barona then informed his partners that everyone needed to exit the vehicle. Before Officer Barona could pat ██████ down for a weapon, he observed Officer Barnes stumble backwards and ██████ flee on foot. ██████ eventually ran under a trailer, striking his head and landing on the ground. At that point, Officer Barona ordered ██████ to show his hands. ██████ disregarded the order, instead reaching towards his boot. Officer Barona saw what he believed to be a shiny object and thought ██████ was reaching for a weapon. Officer Barona then discharged his firearm four times at ██████

The combination of ██████ movements in the car, the assumption that ██████ struck Officer Barnes as he attempted to conduct a pat down, ██████ fleeing from the traffic stop, ██████ reaching toward his boot, and the shiny object, taken together, led Officer Barona to believe that ██████ had a weapon. Yet, Officer Barona separated from both of his partners in pursuit of ██████ entering an area that he described as “pitch black,” absent only the light illuminating from his flashlight and firearm.⁷² Additionally, Officer Barona informed COPA that he continued to approach ██████ despite believing that ██████ was drawing a gun on him from his boot, as ██████ sat on the ground under the trailer.⁷³ During his interview, Officer Barona was asked, “And you stated that you discharged your firearm because he began to yank on his boot?” Officer Barona

⁶⁹ *Id.*

⁷⁰ Use of Force Order, section III.C.

⁷¹ Force Options Order, section IV.C.2.

⁷² Att. 110, Transcript of PO Barona’s Statement, Page 34, Line 15

⁷³ *Id.* at Page 35, Lines 10-24

responded, “Yes...He starts yanking on his boot, causes me to think he’s drawing a weapon on me.”⁷⁴ Officer Barona was then asked, “Other than him yanking on his boot at that time, was there any other indication that he might have a firearm in that moment?” He responded, “At that moment, No. It was just him yanking on his boot.”⁷⁵

The evidence does not support that ██████ used any force towards Officer Barona that warranted a response of deadly force. A search of the area was conducted, and no firearm was found. There is no evidence indicating that ██████ had the means, opportunity, or ability to cause great bodily harm while under the trailer, after striking his head and landing on the ground. There is also no evidence that ██████ used or threatened the use of force prior to Officer Barona discharging his weapon four times. Thus, Officer Barona’s use of deadly force was not proportional to force offered by ██████

Additionally, COPA finds that a reasonable officer in the same circumstances would not find the use deadly force necessary. Observing a glare is not the equivalent of observing a weapon, and Officer Barona did not explain how he could have reasonably believed a weapon was located in ██████ boot. There was no mention of ██████ making any threats that could reasonably be perceived as an imminent threat of great bodily harm. Officer Barona never observed ██████ with a weapon or any other object in his hand. The totality of the circumstances, taken from Officer Barona’s account of the incident, would not lead a reasonable officer to believe that deadly force was necessary, nor that a threat to life was imminent. Therefore, COPA finds the use of deadly force was objectively unreasonable and not proportional to the force used by ██████

Furthermore, a reasonable officer would not pursue an individual believed to be armed without considering the need for assistance. Officer Barona separated from his partners (leaving Officer Barnes alone to deal with the car’s other occupants) and evidently did not consider waiting for backup. He also followed ██████ into an area without considering the need to seek cover or considering whether to contain ██████ These actions were also unreasonable and led Officer Barona to believe that he had no other options other than using deadly force.

For all of the reasons stated above, COPA finds that the preponderance of the evidence establishes that Allegation #1 against Officer Barona is **sustained** as a violation of Rules 2, 3, 6, 8, and 9.

IX. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Barona

COPA has found that Officer Barona violated Rules 2, 3, 6, 8, and 9 by discharging his firearm at ██████ without justification. In mitigation, COPA has considered Officer Barona’s extensive complimentary history, minimal disciplinary history,⁷⁶ and nine years of service to the

⁷⁴ *Id.* at Page 59, Lines 9-14

⁷⁵ *Id.* at Page 59, Lines 15-19

⁷⁶ Att. 119. Officer Barona received a reprimand for failing to complete an Investigatory Stop Report in August 2017. He has received 219 awards, including one life saving award, eight Department commendations, one special commendation, two complimentary letters, two police officer of the month awards, four top gun arrest awards, and 187 honorable mentions.

Department. In aggravation, COPA has considered the gravity of Officer Barona’s misconduct, specifically his improper use of deadly force against an unarmed citizen. Officer Barona’s actions did not simply violate CPD policy; they resulted in serious, life-threatening injuries to ██████████. Accordingly, COPA recommends that Officer Barona is **Separated** from the Department.

Approved:

██████████

10/31/2022

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date

██████████

10/31/2022

Andrea Kersten
Chief Administrator

Date