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Mayor

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David O. Brown
Superintendent of Police

November 25, 2022

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, IL 60622

RE: Superintendent's Non-Concurrence with COPA's proposed finding and penalties
Complaint Register Number: #1088719
Police Officer Shawn Bryant #4142

Dear Chief Administrator:

After a careful review, the Superintendent concurs with the sustained finding for violations of Body Worn Camera policy after each of the officers activated their BWC after taking police action and each only partially recorded this incident.

- Allegation #3 for Sergeant Victor Ramirez #1474
- Allegation #3 for Police Officer Shalaine Enahora #17704
- Allegation #3 for Police Officer Shawn Bryant #4142

The Superintendent also concurs with the sustained finding for Allegation #2 against Officer Bryant for his failure to fully load his firearm in violation of Department orders.

The Superintendent does not concur with the sustained finding for Allegation #1 against Officer Bryant for violation of the Department's use of force policies when he shot a juvenile, [REDACTED] who was armed with a firearm. The Superintendent believes that the facts obtained in COPA's investigation have shown Officer Bryant's use of deadly force in this incident was in compliance with Department Orders and, therefore, Allegation #1 should be classified as *Unfounded*.

I. Summary of the facts

The facts detailed in COPA's investigation are not in dispute. There was no independent video of this incident and the incident was only partially recorded on the officers' body worn cameras, but all of the known witnesses to this incident were interviewed and their accounts were consistent.

On 9 March 2018, Chicago Police Officers Shawn Bryant and Shalaine Enahora were on patrol in civilian dress each wearing a bullet proof vest with an embroidered Chicago Police Star and their name. Officer

Enahora was driving an unmarked Crown Victoria with Officer Bryant as the passenger. The officers were assigned to Beat 306C, a Third District Mission Team assigned to robberies and burglaries, but on that day the officers were assigned to general patrol in the Third District. Chicago Police Officers Jose Hernandez and Victor Ramirez were on patrol in civilian dress each wearing bullet proof vests with an embroidered Chicago Police Star and their name. The officers were assigned to Beat 306B, also a Third District Mission Team assigned on that day to follow up on robberies and burglaries in the District's 30 sector. Officer Hernandez was driving an unmarked Ford Explorer with Officer Ramirez as the passenger. The officers were in the area of 72nd and Merrill following up on an armed robbery pattern which included a robbery at that location six days prior on 3 March 2018.

In that robbery, two male victims responded to a social media application called "Letgo" offering an I-phone for sale. The victims were directed to drive to 72nd and Merrill Avenue to meet the seller and buy the phone. The victims drove to that location and were approached by at least two Black men. One victim later related to Officer Hernandez that one of the offenders was taller than the other. A dispute ensued and one offender fired shots striking both victims who sustained non-life threatening wounds. The offenders then took money from the victims and fled southbound on Merrill Avenue.

Officers Hernandez and Ramirez were on the scene of the robbery after it occurred, spoke to one of the victims, and sent out a flash message for the offenders.

In response to this robbery on Merrill, the Third District along with Cook County and the FBI attempted a "sting" operation at 72nd and Merrill in an attempt to catch the robbery offenders. The offenders were not apprehended during this operation. Officers Bryant, Enahora, Hernandez, and Ramirez were involved in the operation. Officer Hernandez related that on the day of the sting, they responded to another scene where another victim from the northwest suburbs was lured through a social media application to purchase a cell phone and was shot at 69th and MLK Drive. Officer Hernandez stated the victim described the offender as a Black male wearing a hoodie. Officer Enahora stated that a few days prior to 3 March 2018 there was another attempt armed robbery at 7515 S. Champlain where a person was shot in a robbery matching the same pattern.¹

On 9 March 2018, Officers Hernandez and Ramirez observed a dark colored Lexus parked in a no parking zone at 72nd and Merrill occupied by at least one white male driver. The person in the Lexus appeared to be waiting for someone. The officers ran the plate on the vehicle and discovered the car was registered to a person with a Polish surname in Harwood Heights, Illinois. The officers suspected that the person in the Lexus may be a potential victim of the "Letgo" robbery offenders.

Officers Hernandez and Ramirez relocated to a vacant lot north of 72nd Street and east of Merrill where they could watch the Lexus through a wooden fence. Officers Hernandez and Ramirez communicated with Officers Enahora and Bryant and told them to come to 72nd and Merrill because Officers Hernandez and Ramirez believed that the person driving the Lexus may become a victim of the "Letgo" robbery pattern.² While waiting for Officers Enahora and Bryant to respond, Officers Hernandez and Ramirez observed a Black male about six foot tall wearing a hoodie walking on the south side of 72nd Street toward Merrill. This person was later identified as a juvenile named [REDACTED]

¹ Att. 49 Enahora interview at 36:30 and 39:00

² The interviews of all four officers have some variance but in essence Officer Hernandez and/or Ramirez told Officer Enahora by phone or by car to car radio communication that they were surveilling a Lexus as a possible victim of a robbery pattern.

The Lexus drove off westbound on 72nd Street and then southbound on Jeffery Avenue. Officers Hernandez and Ramirez followed the Lexus. The Lexus turned eastbound on 73rd Street back toward Merrill. Officers Hernandez and Ramirez saw Officers Bryant and Enahora and had a brief conversation. Officers Bryant and Enahora stated they saw the Lexus drive northbound on Merrill back toward 72nd Street.

Officers Hernandez and Ramirez returned to the area and saw two males, [REDACTED] and another shorter juvenile now known to be [REDACTED] walking toward the Lexus on Merrill from the east alley of Merrill along 72nd Street. The officers also saw the Lexus had returned and was parked back at the same location on Merrill. Officer Hernandez stated he saw [REDACTED] and [REDACTED] look back at the officers, hesitate, and continue toward Merrill. Officers Hernandez and Ramirez realized that [REDACTED] was the same person they saw earlier. Officer Ramirez stated he observed Chaney waving his arms as if he was talking to the person in the Lexus. The officers then saw the Lexus drive westbound on 72nd Street and saw [REDACTED] and [REDACTED] standing at approximately 7211 S. Merrill.

Officer Ramirez stated he told Officer Hernandez that they would stop [REDACTED] and [REDACTED] and Officer Ramirez would contact Officers Bryant and Enahora to approach from the south while Officer Hernandez approached from the north. Officer Ramirez exited the squad car and walked southbound in the east alley of Merrill.

Officer Hernandez made a U-turn and drove back southbound on Merrill. [REDACTED] and [REDACTED] then ran southbound on Merrill. [REDACTED] ran east down a driveway at 7217 W. Merrill. Officer Hernandez pursued [REDACTED]. [REDACTED] surrendered, raised his arms, dropped a cell phone, and got down on his knees.³ [REDACTED] stated words to the effect of, "I shouldn't be here. I shouldn't have done that."⁴ Officers Hernandez and Ramirez heard the two shots fired by Officer Bryant before [REDACTED] was arrested.

Officers Enahora and Bryant were driving northbound on Merrill passing 73rd Street. Officers Enahora and Bryant observed [REDACTED] and [REDACTED] walking southbound on the east sidewalk of Merrill, look at the officers' cars and begin running. Officer Bryant stated that in his experience the actions of running upon seeing the officers' cars was "not normal" and "indicative [of criminal activity]."⁵

Officer Bryant told COPA that he was relying on the observations Officer Hernandez and Ramirez made in the course of their surveillance.⁶ Officer Enahora also stated that the facts related by Officers Hernandez and Ramirez made her believe that the actions taking place matched the robbery pattern.⁷

Officer Bryant then made the following observations. Chaney ran east down a driveway.⁸ Officer Bryant told Officer Enahora to stop their vehicle and Officer Bryant exited. [REDACTED] ran southbound toward Officer Bryant.⁹ Officer Bryant stated that as soon as [REDACTED] and Chaney split up, [REDACTED] hand was inside his left vest pocket and he began "tugging" on his pocket.¹⁰ Officer Bryant stated that [REDACTED] was about two car

³ COPA SR pg. 7 Ramirez interview

⁴ *Id.*

⁵ Att 62 Bryant interview at 42:00

⁶ Att 62 Bryant interview at 38:40

⁷ Att. 49 Enahora 40:00

⁸ Att. 62 Bryant 42:40

⁹ Att. 62 Bryant 43:10

¹⁰ Att. 62 Bryant 45:10

lengths away from him when he first observed [REDACTED] tugging on his pocket.¹¹ Officer Bryant stated that if [REDACTED] was just trying to get away from him then his hands would have been moving, but instead [REDACTED] was trying to get something out of his pocket that was not coming out and “at that point I felt it was a gun and I was going to be shot or one of my teammates was going to be shot.”¹² As this was occurring [REDACTED] was moving toward Bryant more quickly than Officer Bryant was moving toward [REDACTED] and Officer Bryant described himself more “standing [his] ground” on the parkway grass.¹³ Officer Bryant stated he could see [REDACTED] face and [REDACTED] looked “like he was not going down without a fight.” Officer Bryant stated two times to [REDACTED] “Get the fuck on the ground.”¹⁴ Officer Bryant stated that as [REDACTED] was getting closer, Brown started to “cant” to go west toward the street and the entire time [REDACTED] was tugging at his pocket trying to get something out.¹⁵ Officer Bryant stated that [REDACTED] was a foot and a half away from him. As [REDACTED] was turning, Officer Bryant fired twice.¹⁶ [REDACTED] started falling near the curb and continued forward, falling in the street.¹⁷ The entire incident took “seconds.”¹⁸

Officer Bryant stated that he stopped firing because [REDACTED] went to the ground and “the threat had stopped.”¹⁹ Officer Bryant could see [REDACTED] was bleeding, rolled him over on his side, and placed handcuffs on him. [REDACTED] told Officers Bryant and Enahora he was not going to shoot Officer Bryant, he was going to “rock” him.

Officer Enahora stated that in her fifteen years of police experience, [REDACTED] actions were consistent with a person holding a gun.²⁰ Officer Enahora stated she was in fear because she believed [REDACTED] was trying to get a gun out of his pocket when he did not comply with verbal direction and kept moving his hand in his pocket.²¹

After [REDACTED] was shot, Officer Enahora, who was behind Officer Bryant went to [REDACTED] [REDACTED] stated he had a weapon in his pocket. Officer Enahora retrieved the gun from [REDACTED] jacket/vest pocket and cleared ammunition from the gun.²² The gun was a Taurus 9mm, semi-automatic handgun with a 3 inch barrel and a magazine with twelve (12) rounds.²³ The chamber was clear.²⁴ Officer Enahora reported shots fired by police over the radio and requested EMS.²⁵

¹¹ Att. 62 Bryant 47:10

¹² Att. 62 Bryant 46:10

¹³ Att. 62 Bryant 48:10

¹⁴ Att. 62 Bryant 43:00

¹⁵ Att. 62 Bryant 52:30, Officer Bryant’s description indicated Brown was turning as he approached. Officer Enahora also described Brown as very close to Officer Bryant when Brown turned. COPA SR pg 10 footnotes 39 and 40; The postal employee told detectives Brown and Officer Bryant “were right on top of each other” when Officer Bryant fired, Att. 72 Detective Supplementary Cleared Closed Report pg 25 of 27.

¹⁶ Att. 62 Bryant 53:30

¹⁷ Att. 49 Enahora 32:00

¹⁸ Att. 49 Enahora 35:00

¹⁹ Att. 62 Bryant 55:00

²⁰ Att. 49 Enahora 41:00

²¹ Att. 49 Enahora 41:10

²² Att. 49 Enahora 44:00

²³ COPA SR pg 16

²⁴ Att. 49 Enahora 46:00 and Att. 72 Detective Supplementary Cleared Closed Report page 8 of 27. The handgun did not have a round (bullet) in the chamber but did have twelve rounds in the magazine.

²⁵ Att. 49 Enahora 55:00. A female officer also related information from the scene as well as another assisting female officer identified as Beat 333. Attachment 20

After the shooting, Officer Bryant briefly spoke with a United States Postal Carrier who was working his mail route. Chicago Police Detectives were able to identify this man as [REDACTED] and he was subsequently interviewed. [REDACTED] was at 7225 S. Merrill delivering mail when he saw a squad car traveling south, the wrong way down Merrill (Officer Hernandez) with blue lights activated. He saw two Black males on the street who appeared nervous.²⁶ The shorter male [REDACTED] fled through a driveway and the tall male [REDACTED] fled southbound holding his right side. [REDACTED] saw another squad car driving northbound on Merrill and an officer exited with his gun out (Bryant). [REDACTED] saw Officer Bryant fire his gun two times when [REDACTED] and Officer Bryant were right on top of each other.²⁷ [REDACTED] stated it was obvious that Officer Bryant was a police officer because he was wearing a vest with police on it. [REDACTED] heard [REDACTED] tell the officers, "Don't shoot me again" and then said he had a gun on him. [REDACTED] heard Officer Bryant reply, "I know you do."

Detectives identified the driver of the Lexus as [REDACTED].²⁸ [REDACTED] stated he used the Letgo application to look for an iPhone X and found a seller named [REDACTED] selling a phone for \$600.²⁹ [REDACTED] contacted this person via text message and negotiated a price of \$500. He was told to meet the seller at 2132 E. 72nd Street at 1100 hours.³⁰ [REDACTED] waited 20 minutes with no response and drove away. He then received a text message saying he (the seller) was there. [REDACTED] drove back, saw two Black males standing on the sidewalk, and asked if they were selling a phone. They replied, "Yes." He asked if they had the phone and they stated they wanted to count the cash. [REDACTED] told them no, the males walked away, and [REDACTED] drove away.³¹

[REDACTED] was interviewed by Detectives in the presence of his mother.³² [REDACTED] stated he was with [REDACTED] when a man in a Lexus ([REDACTED]) asked him, "You got the phone?" Chaney said he ignored the man and [REDACTED] told [REDACTED] the man had a Chicago Police badge. [REDACTED] and [REDACTED] walked away and [REDACTED] saw police come from all directions. [REDACTED] said he ran in an opposite direction as [REDACTED] and saw a policeman draw his weapon and yell, "Freeze." [REDACTED] said that as he was running he heard two gunshots.

Detectives interviewed [REDACTED] at the hospital.³³ [REDACTED] stated he and [REDACTED] decided to sell a phone and [REDACTED] told him he knew someone who would buy it. [REDACTED] and [REDACTED] went to 72nd and Merrill to meet this person. [REDACTED] stated he had the phone when the man in a dark vehicle drove up. When the man exited, [REDACTED] stated he "wasn't feeling it, so we bounced."³⁴ [REDACTED] stated as they walked he saw a police SUV and told [REDACTED] to run because he ([REDACTED]) had a gun. [REDACTED] said if he and [REDACTED] separated, the police would only get [REDACTED]. [REDACTED] said that while he was running he saw another police vehicle. [REDACTED] said that both officers got out of the car and he knew they were officers because they were wearing police vests and badges. [REDACTED] said he ran on an angle toward the officer (Bryant) and they would have collided if [REDACTED] did not "juke," which he described as a football move. [REDACTED] heard two gunshots and fell to the ground.

²⁶ COPA SR pg 18.

²⁷ *Id.* and Att. 72 Detective Supplementary Cleared Closed Report pg. 25 of 27.

²⁸ Att. 72 Detective Supplementary Cleared Closed Report pg. 24 of 27. COPA's SR did not include the Detectives' interviews with [REDACTED]

²⁹ *Id.* at 25 of 27.

³⁰ *Id.* [REDACTED] times are off from the observations made by the officers.

³¹ *Id.*

³² COPA SR pg 19 and Att. 72 Detective Supplementary Cleared Closed Report pg 17 of 27.

³³ COPA SR pg 19 and Att. 72 Detective Supplementary Cleared Closed Report pg 15 of 27

³⁴ COPA SR pg 19

On 10 March 2018, [REDACTED] was charged in this incident with Aggravated Unlawful Use of a Weapon and Aggravated Assault of a Police Officer with a Firearm after charges were approved by the Cook County State's Attorney's Office (CCSAO).³⁵ On 27 March 2018, [REDACTED] was again arrested and charged with Armed Robbery, Aggravated Battery with a Firearm, and Attempt Murder for the "Letgo" robbery and shooting that occurred on 03 March 2018 where two victims were shot.³⁶

II. Analysis of the Investigatory Stop

An officer is authorized to stop a suspect for temporary questioning for a reasonable period of time when the officer has reasonable articulable suspicion that the person is about to commit or has committed a crime.³⁷ Reasonable suspicion "should be founded on specific and objective facts or observations about how a suspect behaves, what the subject is seen or heard doing, and the circumstances or situation in regard to the suspect that is either witnessed or known by the officer."³⁸ "Reasonable articulable suspicion depends on the totality of circumstances which the sworn member observes and the reasonable inferences that are drawn based on the sworn member's training and experience."³⁹

An Investigatory Stop is not a voluntary contact.⁴⁰ Illinois courts have held that a suspect who flees from a lawful *Terry Stop* "does provide police with probable cause to arrest for obstructing a peace officer if, before [the suspect] fled, the officer in question was justified in detaining [the suspect] at the time of flight."⁴¹

On 9 March 2018, Officer Bryant had the following objective facts or observations that he either witnessed or were known to him:

- There were robberies around 72nd and Merrill involving a pattern where victims from outside the area were lured to drive to the area to purchase a phone before being robbed.
- The offenders were at least two Black men and one of the men was noticeably taller than the other.
- One of the robbers was armed with a gun.
- The pattern included other armed robberies/attempt armed robberies where victims had been shot.⁴²
- The robbers had not been arrested.
- Officer Bryant was aware of the pattern and was part of a team assigned to locate the robbers or get information leading to their capture.
- On 9 March 2018 at 1300 hours, a Lexus, registered to a northwest suburb to a person with a polish surname was parked in a no parking zone at 72nd and Merrill and the white male driver appeared to be waiting.
- A tall Black man [REDACTED] was walking in the area while the Lexus was parked.
- The Lexus drove off for a short distance, circled around a few blocks, returned to the same location, and parked in a manner consistent with the driver waiting or looking for someone.

³⁵ Attachment 8

³⁶ Attachment 72 pg 65

³⁷ 725 ILCS 5/107-14 and Department S04-13-09-II-A (current)

³⁸ S04-13-09-II-C

³⁹ *Id.*

⁴⁰ S04-13-09-II-A

⁴¹ *People v. Eyler*, 2019 IL App (4th) 170064 ¶23; quoting *People v. Johnson*, 408 Ill. App. 3d 107, 122, 348 (2010) and also *People v. Moore*, 286 Ill.App.3d 649, 654 (1997).

⁴² Officer Enahora cites 7515 S. Champlain and Officer Hernandez cites 69th and MLK Drive.

- [REDACTED] and a shorter Black man [REDACTED] were walking toward the Lexus.
- Chaney waved his arms as if he was talking to the driver.
- Officer Ramirez told Officers Bryant and Enahora there was reasonable suspicion [REDACTED] and [REDACTED] were attempting an armed robbery.
- When [REDACTED] saw unmarked police vehicles they immediately fled, splitting up as they ran.
- [REDACTED] ran directly at Officer Bryant.
- As [REDACTED] ran, he put and kept his left hand in his vest pocket.
- [REDACTED] tugged at his jacket pocket trying to remove an object that was not coming out.
- Officer Bryant yelled twice at [REDACTED] to get on the ground and [REDACTED] disregarded those commands while continuing toward Officer Bryant.
- As [REDACTED] ran toward Officer Bryant, [REDACTED] had a look on his face that in Officer Bryant's experience indicated that [REDACTED] was not going down without a fight.
- In Officer Bryant's experience, the fact that [REDACTED] was not running with both hands indicated that [REDACTED] had a gun in his pocket and he was trying to get the gun out of his pocket to cause harm to him or another officer.

These circumstances, taken in their totality, gave Officer Bryant reasonable articulable suspicion to believe that [REDACTED] was armed and was attempting to commit an armed robbery as part of a pattern of robberies around 72nd and Merrill. Officer Bryant was therefore authorized to stop [REDACTED] and temporarily detain him for questioning.

Under Illinois law, [REDACTED] was not free to avoid that stop. [REDACTED] could not lawfully avoid or defeat the stop by fleeing from Officer Bryant. [REDACTED] could not lawfully avoid or defeat the stop by threatening to use force against Officer Bryant in order to make Officer Bryant desist from stopping him. Under Illinois Law, Officer Bryant did not have to retreat or desist from stopping [REDACTED] if the act of stopping [REDACTED] would require the use of force.⁴³

III. Analysis of Officer Bryant's Use of Deadly Force under Department Orders

Officer Bryant's use of his firearm to shoot Anthony Brown was the use of deadly force as defined by Department Policy.⁴⁴ Department Policy requires that all uses of force must be "1) objectively reasonable, 2) necessary, and 3) proportional in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent an escape."⁴⁵

The use of deadly force is determined to be objectively reasonable, not by a "precise or mechanical definition," but when multiple factors are considered.⁴⁶ The subject must first pose an imminent threat to the officers or others.⁴⁷ The threat is imminent when it is objectively reasonable to believe that 1) the subject's actions are immediately likely to cause death or great bodily harm (GBH), 2) the subject has the means or instruments to cause death or GBH, and 3) the subject has the opportunity and ability to cause death or GBH.⁴⁸

⁴³ 720 ILCS 5/7-5 Peace Officer's Use of Force in making an arrest

⁴⁴ G03-02-III-C-1-a (effective 16 Oct 2017 and rescinded 28 Feb 2020)

⁴⁵ G03-02-III-B

⁴⁶ G03-02-III-B-1

⁴⁷ G03-02-III-B-1-a

⁴⁸ G03-02-III-C-2

A Objectively Reasonable

In this case, Officer Bryant's actions were objectively reasonable. First, [REDACTED] actions were immediately likely to cause death or GBH for the following reasons:

- Officer Bryant reasonably believed that [REDACTED] was in the act of attempting an armed robbery immediately prior to being stop.
- Officer Bryant reasonably believed that [REDACTED] was involved in a pattern of armed robberies where victims had been shot.
- [REDACTED] was running toward Officer Bryant while disregarding commands to get down.
- [REDACTED] hand was inside his pocket as he ran, attempting to remove an object that Officer Bryant and Officer Enahora in their experience reasonably believed was a firearm.
- Brown continued running at Officer Bryant and never stopped trying to get this object out of his pocket up until he was less than two feet away from Officer Bryant.
- In Officer Bryant's experience, [REDACTED] had a look on his face that he was not going down without a fight.
- Brown continued to run at Officer Bryant, disregarding his commands while attempting to get an object out of his pocket and Officer Bryant did not fire until [REDACTED] was less than two feet away from him.

Second, [REDACTED] had the instrument to cause death or GBH for the following *additional* reason:

- [REDACTED] had a firearm in his pocket.

Third, [REDACTED] had the opportunity and ability to cause death or GBH for the following *additional* reasons:

- Officer Bryant saw two robbery offenders. One fled away from police officers. The second, [REDACTED] ran directly toward Officer Bryant.
- In light of the totality of [REDACTED] actions established by his own admissions, [REDACTED] was armed, was attempting to pull a firearm out of his pocket, and was intentionally running directly at Officer Bryant, who he knew was a police officer.

B. Necessary

Department policy mandates that "the use of deadly force is a last resort only when necessary to protect against an imminent threat to life or prevent GBH to the member or another person" and used only when there is 1) an imminent threat of death or GBH, or 2) an arrest being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or GBH.⁴⁹

In this case, Officer Bryant used deadly force as a last resort. [REDACTED] threat was imminent as he ran at Officer Bryant while trying to pull a firearm out of his pocket. Officer Bryant gave commands to [REDACTED] to get on the ground while [REDACTED] ran at him. Officer Bryant did not use deadly force until [REDACTED] was less than two feet away from him. Additionally, [REDACTED] was attempting to defeat Officer Bryant from lawfully stopping him by running at Officer Bryant while attempting to pull a firearm out of his pocket, an action clearly posing an imminent threat of death or GBH.

⁴⁹ G03-02-III-C-3

C. Proportional

The use of deadly force must be “proportional to the threat, actions, and level of resistance offered by a subject.”⁵⁰ “This may include using greater force...than that used by the subject.”⁵¹ “The more likely the *threat* will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it.”⁵² “When a subject offers less resistance...the member will decrease the amount of force accordingly.”⁵³ In accordance with the proportional requirement, Department policy restricts deadly force against fleeing persons unless the subject poses an imminent threat of death or GBH.⁵⁴

In this case, [REDACTED] was not fleeing from Officer Bryant, but was instead running at Officer Bryant. Even if [REDACTED] was turning away from or about to begin running away from Officer Bryant at the exact moment that Officer Bryant fired, [REDACTED] continued to pose an imminent threat of death or GBH. Officer Bryant stated that in his experience he reasonably believed that [REDACTED] was “not just trying to get away.”⁵⁵ [REDACTED] ran away from the officers [REDACTED] ran toward Officer Bryant and continued to run at Officer Bryant until he was less than two feet away when he turned, or “rocked,” or “canted,” or “did a football move” which a reasonable police officer would interpret not as a surrender, but as an attempt to clear the firearm he was holding in his pocket or, at worst, an indication that he had finally cleared that firearm from his pocket.

IV. Analysis of Officer Bryant’s Use of Deadly Force under COPA Rules and Regulations

COPA Rules and Regulations 3.10.3.5 provide an “assessment of reasonableness based on the totality of circumstances related to the incident.” The analysis includes thirteen (13) factors to evaluate an officer’s use of force under the Fourth Amendment.⁵⁶ This analysis will simply include how those factors pertain directly to Officer Bryant’s use of force.

1. [REDACTED] was reasonably suspected of committing an attempt armed robbery at the time of this incident and his involvement in that crime presented reasonable suspicion he was involved in other armed robberies where victims were shot.
2. [REDACTED] level of threat was indicating he was armed while he ran at Officer Bryant.
3. [REDACTED] posed an immediate threat to Officers Bryant and Enahora and a general threat to the community at the time Officer Bryant used force.
4. Officers Bryant and Enahora were facing potential death or GBH.
5. [REDACTED] posed a risk because if he was attempting to escape, his means of escape was to run directly at Officer Bryant while trying to remove a firearm from his pocket.
6. [REDACTED] conduct posed a risk because he was not using his hands to run, which Officer Bryant explained was not consistent simply with fleeing. His left hand, was in his pocket trying to remove an object later determined to be a firearm.

⁵⁰ G03-02-III-B-3

⁵¹ *Id.*

⁵² *Id.*(emphasis added)

⁵³ *Id.*

⁵⁴ G03-02-III-C-4

⁵⁵ Att. 62 Bryant 46:00, Officer Bryant stated that if [REDACTED] was just trying to get away from him then his hands would have been moving, but instead [REDACTED] was trying to get something out of his pocket that was not coming out.

⁵⁶ *Graham v. Connor*, 490 U.S. 386 (1989)

7. Officer Bryant's conduct did not increase the risk because Officer Bryant was "standing his ground" as [REDACTED] was moving quickly toward him.
8. The time available for Officer Bryant to make a decision was described by all witnesses as taking as long as it took for [REDACTED] to run about two car lengths.
9. The resources available were the four officers in two vehicles that were attempting to stop two suspects, who had suddenly split up as they ran. Officer Bryant had no time to request additional resources.
10. Officer Bryant had five years on the Chicago Police Department at the time of this shooting. Officer Enahora had six years on, but also had additional law enforcement experience giving her fifteen years of total law enforcement experience.
11. The subject, [REDACTED] had access to a weapon being a handgun in his pocket.
12. The size and strength characteristics are not relevant to this use of force as Officer Bryant reasonably believed he was being threatened with a firearm.
13. This incident is straightforward. There were no other exigent circumstances for Officer Bryant's use of force other than the threat [REDACTED] posed to him and his partner, Officer Enahora.

Analyzing these factors based on the totality of circumstances without the benefit of hindsight and with the understanding that Officer Bryant was forced to make a split-second decision in a tense, uncertain, and rapidly evolving circumstance, Officer Bryant's use of force was reasonable. Both Officer Bryant and Officer Enahora observed the same threat and both stated that in their experience they reasonably believed that [REDACTED] was attempting to get a firearm out of his pocket to use to harm the officers as he ran at Officer Bryant.

V. Analysis of Officer Bryant's De-Escalation Attempts

Department members are required to "use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so based on the totality of the circumstances."⁵⁷ The order has since been updated since this incident clarifying that officers will use de-escalation "unless doing so would place a person or Department member in immediate risk of harm, or de-escalation techniques would be clearly ineffective under the circumstances."⁵⁸ De-escalation is accomplished by using the following principles of force mitigation: 1) Continual Communication, 2) Tactical Positioning, and 3) Time as a Tactic.⁵⁹

In this case, Officer Bryant used continual communication. Officer Bryant, Officer Enahora, and Chaney stated Officer Bryant gave [REDACTED] verbal commands to stop. Officer Bryant used the force migration technique that was safe and feasible in the seconds it took for [REDACTED] to get within two feet of him while attempting to get a firearm out of his pocket.

COPA argued that Officer Bryant "ignored his obligation to use de-escalation techniques."⁶⁰ COPA did not address Officer Bryant's communication, but stated he failed to "consider tactical positioning" by failing to use a blue truck or houses for cover and "increase the space" between he and [REDACTED].⁶¹ COPA's arguments use the benefit of 20/20 hindsight and, given how suddenly and surprisingly this incident unfolded, COPA's suggestions were not feasible. COPA assumes that Officer Bryant knew or should have predicted that [REDACTED]

⁵⁷ G03-02-01-II-B

⁵⁸ G03-02-01-II-B (effective 15 April 2021)

⁵⁹ G03-02-01-III

⁶⁰ COPA SR pg. 25

⁶¹ *Id.*

chosen path of escape was to run right through him. Once [REDACTED] made this surprisingly aggressive and dangerous choice, Officer Bryant used the only mitigation technique available to him, communication.

VI. COPA's Analysis

COPA put forth the following standard for their analysis:

"COPA acknowledges that shooting at an officer is an imminent threat justifying the use of deadly force. But the standard to use deadly force *requires us to determine* not what the officers say they feel is possible but *objectively if a reasonable member on the scene would feel he or she was facing an imminent threat*, or as in this case, going to be shot."⁶²

The standard under Illinois Law is worded different than COPA's standard:

"The decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time of the decision, rather than with the benefit of hindsight, and that the totality of circumstances shall account for occasions when officers may be forced to make quick judgments about using force."⁶³

Department Orders put forth a standard in accordance with Illinois Law and is also different than COPA's standard in this case:

"The Chicago Police Department recognizes that Department members are often forced to 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. *These decisions must therefore be judged based on the totality of the circumstances known by the member at the time and from the perspective of a reasonable Department member on the scene*, in the same or similar circumstances, and not with the benefit of 20/20 hindsight."⁶⁴

In COPA's analysis, the investigator judged the reasonableness of Officer Bryant's perceptions by offering alternative non-threatening hypothetical reasons why Officer Bryant's perceptions of Mr. [REDACTED] conduct could have been wrong.⁶⁵ But, the investigator's hypotheticals are not based in reality. Officer Bryant's perceptions were. By a preponderance of the evidence, this investigation clearly showed Mr. [REDACTED] was the shooter and armed robber Officer Bryant and his team were looking for. Mr. [REDACTED] was attempting to rob [REDACTED] in a matching pattern with other robberies involving cell phone sales for cash. Mr. [REDACTED] was armed with a firearm. And, Mr. [REDACTED] was trying to get the firearm out of his pocket as he ran directly at Officer Bryant.

⁶² COPA SR pg. 23 (emphasis added)

⁶³ 720 ILCS 5/7-5(f) (emphasis added)

⁶⁴ G03-02-II-D Assessing Uses of Force (emphasis added)

⁶⁵ "But it is just as likely to have been contraband that Mr. Brown wanted to abandon." COPA SR pg 24; "Mr. [REDACTED] could have been holding his side or his pocket so he would not drop something as he ran." COPA SR pg 24 "Officers Bryant and Enahora at most describe Mr. [REDACTED] as trying to pull a purported weapon out of his pocket..." COPA SR pg 23. "At the time, the officers did not have any evidence that there had been a planned sale of a cell phone sale for cash, matching the set-up of the other robberies." COPA SR pg. 24

The distinction between COPA's analysis and the analysis required under Illinois Law and Department Orders is not insignificant. The issue is not whether the officer's observations have other explanations that would make his perception of a threat "unreasonable." This is a subjective standard. The issue is whether or not a reasonable officer facing the same situation would perceive the same threat. This is an objective standard.

In COPA's subjective analysis, the investigator becomes "the reasonable officer" who now knows a very important fact that Officer Bryant did not know in the few seconds leading up to his decision to shoot. The investigator now knows that Mr. [REDACTED] did not shoot Officer Bryant and, knowing this, the investigator improperly concluded there was *no* evidence this would have or could have occurred.⁶⁶ Officer Bryant did not have the luxury of hindsight and neither should an evaluation from the perspective of a reasonable officer in the same situation.

COPA is correct when stating that "shooting at an officer is an imminent threat justifying the use of deadly force," but officers do not have to wait for that to occur before they protect themselves.⁶⁷ Department orders clearly state an officer's use of force is proportional even when an officer uses greater force than that used by the suspect to overcome the *threat* posed by the suspect.⁶⁸ Under an objective standard from the perspective of a reasonable officer in the same situation as Officer Bryant, Mr. [REDACTED] was *threatening* the deadly use of force by *attempting* to pull a firearm out of his pocket while running toward Officer Bryant. Officer Bryant's use of deadly force was objectively reasonable, necessary, and proportional to Mr. [REDACTED] *threat* to use deadly force against Officer Bryant.

VII. Conclusion

The Department concurs with the *Sustained* finding and penalty of a five (5) day suspension for Sergeant Ramirez and Officer Enahora.

The Department concurs with the *Sustained* finding for Officer Bryant for Allegations #2 and #3 and based upon Officer Bryant's complimentary and disciplinary history, recommends a penalty of a fifteen (15) day suspension.

The Department believes the evidence obtained in COPA's investigation pertaining to Allegation #1 against Officer Bryant has shown that his use of deadly force was in compliance with Department Orders and, therefore, Allegation #1 should be classified as *Unfounded*.

⁶⁶ "There is no indication Mr. [REDACTED] was manipulating a firearm in a way that could shoot Officers Bryant or Enahora." COPA SR pg. 23 "There is no evidence that Mr. [REDACTED] was even attempting to point a firearm at the officers." COPA SR pg. 23 "There is no evidence, nor does anyone even claim, that Mr. [REDACTED] actions were consistent with trying to shoot Officer Bryant or Enahora." COPA SR pg. 23 "Mr. [REDACTED] was not in a position to shoot at Officer Bryant, and not 'immediately likely' to cause death or great bodily harm." pg. 23

⁶⁷ COPA SR pg.

⁶⁸ "[The use of force] 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 the threat will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it." G03-02-III-B-3

CPD looks forward to discussing this matter with you pursuant to MCC-2-78-130(a)(iii).

Sincerely,



David O. Brown
Superintendent of Police
Chicago Police Department