

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date / Time of Incident:	July 4, 2018, approximately 2:40 a.m.
Location of Incident:	920 - 956 North Massasoit Avenue, Chicago, Illinois
Date / Time of COPA Notification:	July 4, 2018, approximately 3:30 a.m.

The events under investigation involve an on-duty Chicago Police Department (Department) officer's discharge of a firearm; no persons were struck as a result of that discharge.

Video evidence shows that at the above place and time, Officers Patrick Bunyon and John Pilolli were fired upon as they advanced through a gangway on foot toward a group of persons, and that the persons then dispersed and fled on foot. The evidence shows that Officers Bunyon and Pilolli gave chase, and that Officer Bunyon then stopped and fired five times in rapid succession in the direction of two of the fleeing individuals. One of those individuals was [REDACTED]. None of Officer Bunyon's shots struck any person; however, [REDACTED] nevertheless fell to the street, and he submitted to arrest. A gun was recovered a few feet away from him.

II. INVOLVED PARTIES

Involved Officer #1:	Patrick Bunyon, Star #16768, Employee ID# [REDACTED]; Date of Appointment: April 28, 2014; Rank: Police Officer; Unit: 015; Male; White.
Involved Individual #1:	[REDACTED] Male; Black.

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. During its investigation of this incident, COPA determined that Officer Bunyon committed the following violations of Department rules and policy:

Officer	Allegation	Finding / Recommendation
Officer Bunyon	1. It is alleged that on July 4, 2018, at approximately 2:40 a.m., near 956 N. Massasoit Avenue, you discharged your firearm in violation of department policy.	Sustained / Separation.

IV. APPLICABLE RULES AND LAWS

Rules

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.
 3. Rule 6 – Disobedience of an order or directive, whether written or oral.
-

General Orders

1. G03-02: Use of Force (Eff. Oct. 16, 2017 – Feb. 28, 2020)
2. G03-02-01: Force Options (Eff. Oct. 16, 2017 – Feb. 28, 2020)
3. G03-02-03: Firearm Discharge Incidents – Authorized Use and Post-Discharge Administrative Procedures (Eff. Oct. 16, 2017 – Feb. 28, 2020)

V. INVESTIGATION¹

Summary of the Incident under Investigation and the Alleged Misconduct

Officer Patrick Bunyon discharged a firearm five times in rapid succession in the direction of two fleeing individuals, later claiming that one of those persons had pointed a gun at him as he fled. Officer Bunyon is alleged to have committed misconduct by discharging a firearm in violation of Department policy.

POD-recorded Video Evidence

POD-recorded video footage depicts some of the events that preceded and led to the firearm discharge under review.² That footage depicts a south-facing view of the street, sidewalk, and parkway that are adjacent to a residential building at 956 North Massasoit Avenue in Chicago. Beginning at 2:14 a.m., that footage depicts a suspected narcotics transaction taking place in the street – a motorist is then and there shown stopping their car and participating in a hand-to-hand exchange with a pedestrian.³ The footage then depicts similar suspected narcotics transactions at about 2:22 and 2:26 a.m., respectively.⁴ During that interval, and through about 2:40 a.m., at various times the footage depicts from four to seven persons loitering on and near the sidewalk.⁵ Beginning at about 2:27 a.m., the footage depicts one of those persons appearing to be holding a pistol in their right hand; that person is shown to be wearing light-colored shoes.⁶ At 2:40:26 a.m. the footage then shows that person firing that gun in an easterly direction.⁷ See Figure 1 below.

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

² That footage is Attachment #100, made by POD # 7602, which was at the time located near the northwest corner of the intersection of West Augusta Boulevard and North Massasoit Avenue in Chicago.

³ See *id.*, at 2:14:42.043 a.m. and immediately following.

⁴ See *id.*, at about 2:22 a.m. and immediately following and 2:26 a.m. and immediately following, respectively.

⁵ See *id.*, at 2:14 a.m. through approximately 2:40 a.m.

⁶ See *id.*, at 2:27 a.m. and immediately following.

⁷ See *id.*, at 2:40:26 a.m.

The footage then shows all of the gathered persons hurriedly dispersing on foot: the shooter and four others are shown running to the south; two other persons are shown running to the north.⁸ Within seconds, the footage then shows Officers Bunyon and Pilolli appear from the east.⁹ The officers are then depicted running southbound; Officer Bunyon is depicted to the right, running on the sidewalk, and Officer Pilolli is depicted to the left, running on the parkway.¹⁰ See Figure 2 below.

Figure 1¹¹Figure 2¹²

Body-worn Camera Video Footage

COPA reviewed video footage that Officers Bunyon and Pilolli recorded with body-worn cameras on the date in question.¹³ Beginning at 2:39:54 a.m., that footage depicts the views of the three of them as they walk through an alley and towards a gangway situated between the buildings located at 958 and 956 North Massasoit Avenue, respectively.¹⁴ Officer Pilolli is shown to be in front, followed by Officer Bunyon.¹⁵ At 2:40:22 a.m., Officer Pilolli is shown to enter the gangway.¹⁶ At 2:40:26 a.m., a gunshot can be heard.¹⁷ Officers Pilolli and Bunyon are then shown to run forward through the remainder of the gangway, as a voice is then heard to shout, repeatedly, words to the effect of “Shots fired at Police!”¹⁸ The two officers are then shown to exit the gangway and to turn right, southbound – Officer Bunyon runs directly on the sidewalk and Officer Pilolli runs into and on the parkway.¹⁹ A voice or voices can then be heard to shout words to the

⁸ See *id.*, at 2:40:26 a.m. and immediately following.

⁹ See *id.*, at 2:40:30 a.m.

¹⁰ See *id.*, at 2:40:30 a.m. and immediately following.

¹¹ Figure 1 is a screenshot of Attachment #100, Time stamped 2:40:26.093 AM.

¹² Figure 2 is a screenshot of Attachment #100, Time stamped 2:40:31.327 AM.

¹³ Officer Bunyon’s footage is Attachment #55; Officer Pilolli’s footage is Attachment #79. COPA gathered other BWC-recorded video footage and dashcam-recorded video footage, which, except as noted below, COPA deemed to be non-material upon review. See Attachments # 49 - 78 and 80 - 86.

¹⁴ See Attachments ## 55 and 79, at T07:39:54z and immediately following. Department body-worn camera footage is time-marked using Greenwich Mean (or “Zulu”) Time.

¹⁵ See Attachments ## 55, and 79, at T07:39:54z and immediately following.

¹⁶ See Attachment #79 at T07:40:22z.

¹⁷ See Attachment #80 (BWC footage recorded by Sgt. John Sandoval) at T07:40:26z. The sound of that gunshot is obscured in Officer Bunyon’s footage and in Officer Pilolli’s footage by the sound of the officers’ running footsteps. See Attachments ## 55 and 79 at T07:40:26z of each.

¹⁸ See Attachments ##55 and 79 at T07:40:22z and immediately following.

¹⁹ See Attachments ##55 and 79 at T07:40:22z and immediately following.

effect of “Watch out, John!” “Which one? Which one?” and “He’s running!”²⁰ At 2:40:34, Officer Bunyon is shown to stop on the sidewalk and his right arm is shown to extend forward, as five shots are heard.²¹ Officer Pilolli is shown to be in the street at the moment that those shots are heard.²² See Figures 3 and 4 below.



Figure 3²³
(View from Officer Bunyon’s BWC as the
shots are heard)



Figure 4²⁴
(View from Officer Pilolli’s BWC as the
shots are heard)

Neither of the officers’ footage then depicts any of the fleeing persons at the moment that shots are heard.²⁵ Immediately after shots are heard, Officer Pilolli is shown to stop momentarily, and a voice or voices can be heard shouting, “Where’s he at?” “He’s right here!” and “Shots fired, shots fired!”²⁶ The view from Officer Pilolli’s BWC shows that he then ran immediately southbound in the street, and that, as he did so, someone shouted words to the effect of, “He’s got the gun in his hand!”²⁷ The view from Officer Bunyon’s BWC shows that he, too, ran southbound and into the street immediately after shots are heard.²⁸ The view from Officer Pilolli’s BWC then shows a person (subsequently determined to be [REDACTED] lying in the street, prone, with his arms outstretched.²⁹ At that moment, a white metal pistol is shown near that person’s feet.³⁰ See Figure 5 below. (Department detectives subsequently determined that the depicted pistol was a fully loaded revolver.)³¹ Officer Pilolli is then shown to handcuff that person, and Officer Bunyon is shown to come upon Officer Pilolli as Officer Pilolli does so.³² The view from Officer Bunyon’s BWC then depicts the same white metal pistol in the street.³³ See Figure 6 below.

²⁰ See Attachments ##55 and 79 at T07:40:22z and immediately following.

²¹ See Attachment #55 at T07:40:34z.

²² See Attachment #79 at T07:40:35z.

²³ Figure 3 is a screenshot of Attachment #55, at T07:40:34z.

²⁴ Figure 4 is a screenshot of Attachment #79, at T07:40:35z.

²⁵ See Attachment #55 at T07:40:34z; Attachment #79 at T07:40:35z.

²⁶ See Attachment #79 at T07:40:36z and immediately following.

²⁷ See Attachment #79 at T07:40:35z and immediately following.

²⁸ See *id.*

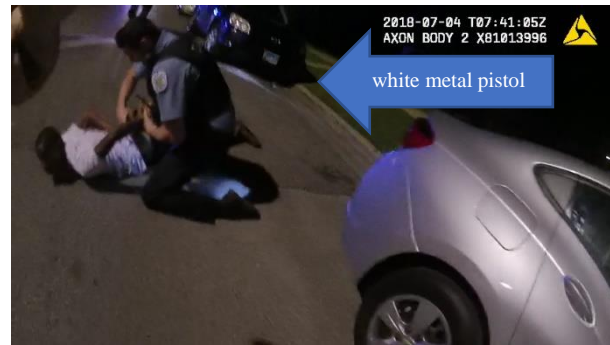
²⁹ See *id.* at T07:40:58z.

³⁰ See *id.*

³¹ Attachment 124 at pp. 17, 19, 28-29, 39, 41, 200-201

³² See Attachment #79 at T07:40:58z and immediately following; Attachment #55 at T07:41:05z.

³³ See Attachment #55 at T07:41:05z.

Figure 5 (Officer Pilolli's) view³⁴Figure 6 (Officer Bunyon's) view³⁵

Interviews of Officers Howard, Zachary Nolfi, Patrick Bunyon, and John Piolli

COPA interviewed Officers John Howard and Officer Zachary Nolfi on October 17 and 30, 2018, respectively.³⁶ The following is a non-verbatim summary of the material parts of the accounts given by them during those interviews:

Officer Howard had been conducting POD surveillance at the date and time in question; he viewed the events depicted by the above-described POD-recorded video as they occurred, in real time.³⁷ At the time, Officer Nolfi was on patrol near the incident scene, with Officers Bunyon and Pilolli.³⁸ Officers Howard and Nolfi were then in direct communication with each other.³⁹ Officer Howard then notified Officer Nolfi that he had observed and was observing a man armed with a handgun near the intersection of West Augusta Boulevard and North Massasoit Avenue.⁴⁰ Officer Howard then further notified Officer Nolfi that the man was wearing a white t-shirt and that he was among a group of other individuals who were walking back and forth from 956 North Massasoit Avenue to the adjacent street corner.⁴¹ Officer Nolfi then relayed that information to Officer Bunyon, Officer Pilolli, and other officers.⁴² Those officers then made a plan to “flush” and “corral” the assembled persons.⁴³ According to that plan, Officers Bunyon and Pilolli would approach the group on foot through a gangway adjacent to the 956 North Massasoit Avenue building, while other officers would be stationed on North Massasoit Avenue to the north and to the south, respectively.⁴⁴

³⁴Figure 5 is a screenshot of Attachment #79, at T07:40:58z.

³⁵Figure 6 is a screenshot of Attachment #55, at T07:41:05z.

³⁶ Attachment #125 is a transcription of COPA's interview of Officer Howard; Attachments ## 111 and 112 comprise an audio recording of that interview. Attachment #126 is a transcription of COPA's interview of Officer Nolfi; Attachment # 116 is an audio recording of that interview.

³⁷ Attachment #125, p. 6, line 22, through p. 13, line 5.

³⁸ Attachment #126, p. 7, line 2, though p. 11, line 13.

³⁹ Attachment #126, p. 7, line 2, though p. 11, line 13; Attachment #125, p. 8, lines 15 - 24.

⁴⁰ Attachment #126, p. 7, line 2, though p. 11, line 13; Attachment #125, p. 11, lines 1 - 18.

⁴¹ Attachment #126, p. 7, line 2, though p. 11, line 13.

⁴² *Id.*, p. 11, line 16, through p. 12, line 23.

⁴³ See Attachment 126 at p.13, line 6 through line 13.

⁴⁴ Attachment #126, p. 13, line 3, through p. 14, line 5.

COPA interviewed Officer Patrick Bunyon on January 15, 2019.⁴⁵ The following is a non-verbatim summary of the material parts of the account given by Officer Bunyon during that interview. Officer Bunyon essentially confirmed the accounts given by Officers Howard and Nolfi during their above-described interviews: that Officer Howard had reported that a person armed with a gun was among a group of individuals assembled in front of the 956 North Massasoit Avenue building, and that a plan had been created for officers to approach that person.⁴⁶ According to Officer Bunyon, as Officer Pilolli and he approached through the gangway adjacent to the building, in furtherance of that plan, a person fired one shot in the officers' direction and then fled.⁴⁷ Officer Bunyon stated that he then observed two subjects run across the street to the sidewalk situated there.⁴⁸ According to Officer Bunyon, the "lead" subject had a chrome firearm in one of his hands as that subject ran along that sidewalk.⁴⁹ Officer Bunyon stated that that subject then looked in Officer Bunyon's direction, turned with that gun in his hand, and pointed the gun in Officer Bunyon's direction.⁵⁰ Officer Bunyon further stated that he then stopped and fired five times at that subject.⁵¹ Officer Bunyon stated that the subject then continued to run, and that the subject then stumbled in the street, where he was placed in custody.⁵²

COPA also interviewed Officer John Pilolli on January 15, 2019.⁵³ The following is a non-verbatim summary of the material parts of the account given by Officer Pilolli during that interview. Like Officer Bunyon, Officer Pilolli also essentially confirmed the accounts given by Officers Howard and Nolfi during their interviews.⁵⁴ Officer Pilolli stated that as he led Officer Bunyon through the gangway in accordance with that plan, Officer Pilolli stated a person pointed a firearm in their direction and fired one round.⁵⁵ Officer Pilolli stated that he then gave chase to a group of two or three subjects who ran eastbound across North Massasoit Avenue and then southbound.⁵⁶ Officer Pilolli said that Officer Bunyon then fired in the direction of the fleeing subjects.⁵⁷ Officer Pilolli stated that he then continued to chase until he came upon one of the subjects, who was in the street and whom he recognized to be [REDACTED].⁵⁸ According to Officer Pilolli, he did not discharge his own firearm because he did not observe a gun in the possession of any of the fleeing subjects as he was running.⁵⁹

⁴⁵Attachments ##121 and 122 comprise an audio recording of that interview; Attachment #127 is a transcription of that recording.

⁴⁶ See Attachment #127, p. 8, line 14, through p. 16, line 8.

⁴⁷ See *id.*, p. 8, line 18, through p. 9, line 3.

⁴⁸ See *id.*, p. 20, line 5, through p. 22, line 9.

⁴⁹ See *id.*, p. 22, line 11, through p. 24, line 6.

⁵⁰ See *id.*, p. 24, line 7 through line 17.

⁵¹ See *id.*

⁵² See *id.*, p. 25, lines 5 through 13.

⁵³ Attachment #123 is an audio recording of that statement; Attachment #128 is a transcript.

⁵⁴ See Attachment #128, p. 9, line 7, through p. 15, line 19.

⁵⁵ See *id.*, p. 16, line 12, through p. 17, line 22.

⁵⁶ See *id.*, p. 18, lines 18 through 24.

⁵⁷ See *id.*, p. 21, line 23, through p. 22, line 3.

⁵⁸ See *id.*, p. 24, line 10, through p. 29, line 9.

⁵⁹ See *id.*, p. 30, line 21, through p. 31, line 4.

Department reports show that Detective Timothy Murphy interviewed Officer Bunyon after the incident and the reports contain a summary of that interview.⁶⁰ That summary states that Officer Bunyon told Detective Murphy that he discharged his firearm because he was in fear of his life and the life of his partner, Officer Pilolli, but it does not memorialize or document any statement, made by Officer Bunyon, to the effect that any fleeing subject turned or pointed a firearm at either officer.⁶¹

Depiction of the Incident Scene

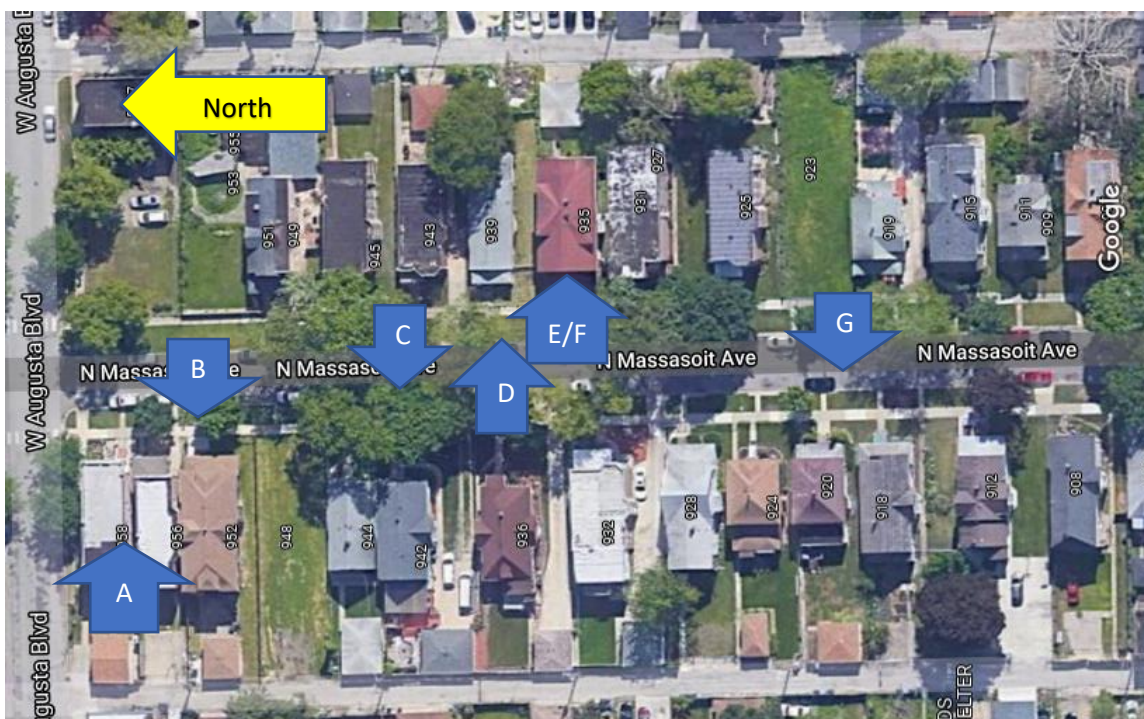


Figure 7 (depiction of the incident scene – not to scale and for illustrative purposes only)

Figure 7 Legend:

- A: Gangway situated between 958 and 956 N. Massasoit Ave.
- B: Semi-automatic pistol recovered near sidewalk at 952 N. Massasoit Ave.
- C: Two fired bullets recovered from vehicle parked at 942 N. Massasoit Ave.
- D: Bullet hole discovered in tree in parkway at 939 N. Massasoit Ave.
- E: Fired bullet recovered from inside house at 935 N. Massasoit Ave.
- F: Fired bullet recovered from porch at 935 N. Massasoit Ave.
- G: Revolver recovered in the street at 920 N. Massasoit Ave.

Recovered Firearms and Bullets

The pistol depicted in the above-described body-worn camera video footage was a fully-loaded five-shot revolver; it was recovered at 920 North Massasoit Avenue.⁶² A second firearm

⁶⁰ Attachment #124, at pp. 49 through 50.

⁶¹ See *id.*

⁶² See Attachment #124, pp. 29, 39 and 71.

was recovered, on the lawn in front of a house at 952 North Massasoit Avenue: a semi-automatic pistol with eight live rounds in a magazine having a ten-round capacity.⁶³ That weapon contained a fired cartridge case in its ejection port chamber.⁶⁴ Two fired bullets were recovered from a vehicle parked at 942 North Massasoit Avenue.⁶⁵ A bullet hole was discovered in a tree located in the parkway at 939 North Massasoit Avenue.⁶⁶ A fired bullet was recovered from inside a house having an address of 935 North Massasoit Avenue.⁶⁷ A fired bullet was also recovered from that house's exterior front porch.⁶⁸

ISP Lab Report

An Illinois State Police Lab Report shows that DNA recovered from the recovered revolver matched DNA taken from ████████⁶⁹

Doorbell Camera Recorded Video Footage

COPA accessed and reviewed video footage recorded by a doorbell camera affixed to a house having an address of 942 North Massasoit Avenue.⁷⁰ At 2:40:33 a.m., that footage depicts two persons running southbound on or along the sidewalk, across the street from and slightly to the south of the camera; they are shown to be running within a few feet of each other, one behind the other.⁷¹ See Figure 8 below. Immediately afterward, the footage's depiction of the lead runner is obscured by a tree situated in the eastern parkway.⁷² The footage then appears to depict the moment that a vehicle parked in front of the house is struck by gunfire.⁷³ At that moment, the two persons are shown to be in close proximity to each other.⁷⁴ See Figure 9 below.



Figure 8⁷⁵



Figure 9⁷⁶

⁶³ See *id.*, p. 39 and 71.

⁶⁴ See *id.*, p. 39.

⁶⁵ See *id.*, pp. 46, 61, 74, 216 and 217.

⁶⁶ See *id.*, pp. 61, 74, 216 and 217.

⁶⁷ See *id.*, pp. 46, 61, 74, 216 and 217.

⁶⁸ See *id.*, pp. 46, 61, 74, 216 and 217.

⁶⁹ See Attachment 135.

⁷⁰ That footage is Attachment #34.

⁷¹ See Attachment #34, at 2:40:33 a.m.

⁷² See *id.*, at 2:40:34 a.m.

⁷³ See *id.*, at 2:40:34 a.m.

⁷⁴ See *id.*

⁷⁵ Figure 8 is a screenshot taken from Attachment #34, at 2:40:33 a.m.

⁷⁶ Figure 9 is a screenshot taken from Attachment #34, at 2:40:35 a.m.

COPA also accessed and reviewed video footage recorded by a doorbell camera affixed to the house immediately to the south, having an address of 936 North Massasoit Avenue.⁷⁷ That footage also depicts two persons running southbound on or along the sidewalk, across the street from and slightly to the south of the camera.⁷⁸ See Figure 10 below. The footage's depiction of the two runners is at times obscured by a trellis and by parked cars; however, the footage nevertheless shows the persons running within close proximity to each other.⁷⁹



Figure 10

VI. LEGAL STANDARD

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

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence.
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence.
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

⁷⁷That footage is Attachment #33.

⁷⁸ See Attachment #35, at 15:24:05.

⁷⁹ See *id.*

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that a proposition is proved.⁸⁰ For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, 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.⁸¹ 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.”⁸²

VII. ANALYSIS AND CONCLUSION

i. Applicable Policy

1. Use of Deadly Force⁸³

The Department’s stated “highest priority is the sanctity of human life.”⁸⁴ In all aspects of their conduct, the Department expects that its members act with the foremost regard for the preservation of human life and the safety of all persons involved.⁸⁵ Department members are only authorized to use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, to ensure the safety of a member or a third person, stop an attack, make an arrest, control a subject, or prevent escape.⁸⁶ This means Department members may use only the amount of force necessary to serve a lawful purpose.⁸⁷ The amount and type of force used must be proportional to the threat, actions, and level of resistance a person offers.⁸⁸

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.⁸⁹ Factors to be considered in assessing the reasonableness of force include, but are not limited to, (a.) whether the subject was posing an imminent threat to the officer or others; (b.) the risk of

⁸⁰ 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).

⁸¹ See e.g., *People v. Coan*, 2016 IL App (2d) 151036.

⁸² *Id.* at ¶ 28.

⁸³ On October 16, 2017, the Department materially modified its Use of Force policy. The Department’s current Use of Force Policy prohibits the use of deadly force under circumstances that would be permissible under the Fourth Amendment to the United States Constitution and Illinois state law. COPA’s analysis focuses solely on whether Officer Bunyon complied with General Order 03-02. COPA cites case law solely for guidance on how to interpret common concepts or terms.

⁸⁴ G03-02 (II)(A).

⁸⁵ G03-02 (II)(A).

⁸⁶ *Id.* at (III)(B).

⁸⁷ *Id.* at (III)(B)(2).

⁸⁸ *Id.* at (III)(B).

⁸⁹ G03-02(III)(B)(1).

harm, level of threat or resistance presented by the subject; (c.) the subject's proximity or access to weapons.⁹⁰

Discharging a firearm is deadly force under Department policy.⁹¹ Department policy dictates that "[t]he use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person."⁹² Thus, a Department member may use deadly force in only two situations. First, deadly force may be used to prevent death or great bodily harm from an imminent threat posed to the sworn member or another person. Second, deadly force may be used to prevent an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay.⁹³

A threat is imminent when it is objectively reasonable to believe that:

- a. the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; and
- b. the subject has the means or instruments to cause death or great bodily harm; and
- c. the subject has the opportunity and ability to cause death or great bodily harm.⁹⁴

Department policy places prohibitions on the use of deadly force in certain situations.⁹⁵ In pertinent part, this policy prohibits the use of deadly force "on a fleeing person unless the subject poses an imminent threat."⁹⁶ In addition, although Department policy does not prohibit the use of deadly force against a person who is near or among other people, the policy limits the use of such force to circumstances "when such force is reasonably necessary to prevent death or great bodily harm to the sworn member or another person, and no reasonable alternative exists."⁹⁷ "In such circumstances, the use of deadly force is permissible only if the member has identified the appropriate target prior to discharging the firearm and has taken reasonable precautions to ensure that people other than the target will not be struck."⁹⁸

Department 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."⁹⁹ 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."¹⁰⁰

⁹⁰ *Id.*

⁹¹ *Id.* at (III)(C)(1)(a).

⁹² *Id.* at (III)(C)(3).

⁹³ *Id.*

⁹⁴ *Id.* at (III)(C)(2).

⁹⁵ *Id.* at (III)(B)(5).

⁹⁶ *Id.* at (III)(C)(4).

⁹⁷ G03-02(III)(D)(4).

⁹⁸ G03-02(III)(D)(4).

⁹⁹ G03-02(II)(D).

¹⁰⁰ *Id.*

b. Analysis**i. Allegation #1 that Officer Bunyon discharged his firearm in violation of Department policy is SUSTAINED.**

Following a review of the record, COPA finds by a preponderance of the evidence that Officer Bunyon's use of deadly force violated Department policy. First, Officer Bunyon failed to identify the appropriate target prior to firing his weapon. Second, Officer Bunyon fired his weapon even though he faced no imminent threat. Third, Officer Bunyon failed to take reasonable precautions to ensure that people other than ██████ would not be struck. Based on the totality of the circumstances, COPA finds that Officer Bunyon's use of deadly force was not objectively reasonable, necessary or proportional to the threat he faced. As such, Allegation #1 is sustained.

First, COPA finds by a preponderance of the evidence that Officer Bunyon failed to identify the appropriate target prior to firing his weapon. Specifically, Officer Bunyon misidentified ██████ as the shooter.¹⁰¹ Prior to discharging his weapon, on his BWC, Officer Bunyon can be heard asking his partner "Which one? Which one?"¹⁰² after they had been shot at in the gangway. Nevertheless, within approximately 4 seconds of his apparent confusion, Officer Bunyon discharged his weapon five times in the direction of ██████ and an unknown man.¹⁰³ Officer Bunyon later admitted to having made the misidentification.¹⁰⁴ Specifically, he stated that although he initially believed that ██████ had been the shooter, he eventually learned that it had been ██████¹⁰⁵ His failure to ensure that he correctly identified the shooter led Officer Bunyon to target and shoot at ██████ and an unknown man. COPA finds that Officer Bunyon's decision to use deadly force against ██████ was unwarranted and objectively unreasonable in light of the circumstances he faced.

Specifically, after ██████ fired at the officers, he and the other men dispersed in various directions. The three men that ran southbound on North Massasoit all wore white tops and jeans. The only distinguishing characteristics visible from a distance were their shoes. ██████ and the unknown man wore white shoes, while ██████ wore dark shoes.¹⁰⁶ Officer Bunyon observed that the shooter wore a white t-shirt and jeans.¹⁰⁷ Officer Bunyon admitted to not having seen the face of the individual who had shot at him and his partner¹⁰⁸ and admitted that he only saw two men – ██████ and the unknown male – running across the street.¹⁰⁹ Nevertheless, shortly after emerging from the gangway, Officer Bunyon fired five shots at the two fleeing men. His decision to use deadly force under these circumstances was objectively unreasonable.

Second, COPA finds by a preponderance of the evidence that Officer Bunyon fired his weapon at ██████ while ██████ posed no imminent threat. Officer Bunyon claimed that he fired at

¹⁰¹ See Attachment #127 at pp. 35, 38.

¹⁰² See Attachments ##55 and 79 at T07:40:22z and immediately following.

¹⁰³ See Attachments ##55 and 79 at T07:40:22z and immediately following.

¹⁰⁴ See Attachment #127 at pp. 35, 38.

¹⁰⁵ See Attachment #127 at pp. 35, 38.

¹⁰⁶ See Attachments ##33, 34.

¹⁰⁷ See Attachment #127 at p. 18.

¹⁰⁸ See Attachment #127 at p. 35.

¹⁰⁹ See Attachment #127 at pp. 21 through 23.

█████ in response to █████ pointing the gun at him. COPA, however, does not find sufficient evidence to show that █████ pointed the gun at Officer Bunyon prior to Officer Bunyon's use of deadly force. This conclusion is supported by the record. Third-party video footage indicates that █████ was in headlong flight from the police and attempting to flee. The video footage thus undermines Officer Bunyon's claim that █████ turned and pointed the weapon at him. Officer Pilolli likewise could not corroborate Officer Bunyon's claim that █████ was running with or had pointed a firearm. Specifically, Officer Pilolli, who was running down the east sidewalk of North Massasoit directly behind █████ and the unknown man denied seeing either of the men or the person running down the road with a firearm, although he may have seen at least one of the men turn and look back.¹¹⁰ Officer Pilolli explained, however, that he may not have seen any of the men with a gun because he was not necessarily focused on all of the men at the same time.¹¹¹ The third-party video along with Officer Pilolli's lack of corroboration undermine Officer Bunyon's claim that █████ pointed a firearm.

Further undermining Officer Bunyon's claim is the fact that there is lack evidence in the record that on the night of the incident Officer Bunyon reported that █████ had pointed a firearm at him. Rather, immediately following the shooting, Officer Bunyon reported to Deputy Chief Nagode and IRT Detective Murphy that he had fired at █████ for running while armed with a weapon.¹¹² Similarly, Officer Bunyon's TRR contains no reference to pointing.¹¹³ █████ arrest report, which forms the basis of the charges against him, likewise makes no mention of pointing.¹¹⁴

In fact, prior to Officer Bunyon's COPA interview, there is no mention of Officer Bunyon reporting that █████ pointed a firearm at him. The only reference to █████ pointing a firearm can be found in a detective supplemental report, which provides that "[i]t has been established through witness identification and video media images that [. . .] █████ while fleeing from arresting officers pointed a handgun in the direction of officers Bunyon and Pilolli."¹¹⁶ This report, however, does not indicate that the information was learned from Officer Bunyon.¹¹⁷ Officer Bunyon's apparent initial failure to report that he used deadly force in response to █████ pointing a firearm at him undermines his later claim that █████ did so. If Officer Bunyon had fired at █████ simply because █████ was running away while holding a firearm, his use of deadly force would have contravened Department policy. Department policy explicitly prohibits the use of deadly force "on a fleeing person unless the subject poses an imminent threat."¹¹⁸ If █████ was merely running away with a weapon, under Department policy, his actions would not have qualified as an

¹¹⁰ Attachment 128 at pp.20, 30-31, 44-45, 47-50.

¹¹¹ Attachment 128 at pp.20, 30-31, 44-45, 47-50. COPA, however, finds it more likely that a pursuing officer who believes he had just been fired at by those he is pursuing would not have failed to note if the men possessed or pointed a firearm.

¹¹² Attachment 4 at p. 2; Att. 124 at p. 50.

¹¹³ Attachment 8

¹¹⁴ Attachment 6 at p. 2.

¹¹⁵ Involved civilian's first name is misspelled in Attachment 124, the correct spelling of his first name is █████ and found on his State ID (See Attachment 48).

¹¹⁶ Attachment 124 at p. 54.

¹¹⁷ Moreover, this information appears to be a misidentification of a third person, possibly █████ who can be seen on third-party video footage running down the center of North Massasoit and appears to turn and look directly behind him as he continues to run. █████ and the unknown man can be seen directly behind █████ when █████ initially turns. See Attachment 34.

¹¹⁸ G03-02 at (III)(C)(4).

imminent threat. For a threat to be imminent, [REDACTED] actions must have been “immediately likely to cause death or great bodily harm.”¹¹⁹ [REDACTED] fleeing from the police while holding a firearm, absent any other action, would not have sufficed. Officer Bunyon’s firearm discharge was therefore not objectively reasonable, necessary, or proportional to the threat he faced from [REDACTED]

COPA recognizes that third party video footage appears to show that a third man, possibly [REDACTED] may have turned and looked behind him while running southbound on North Massasoit. This evidence, however, would not exonerate Officer Bunyon. Officer Bunyon did not claim that he saw [REDACTED] pointing a weapon and never claimed that he was targeting [REDACTED]. Moreover, the angle, trajectory and location of Officer Bunyon’s bullets indicate that he was not aiming at [REDACTED].¹²⁰ Rather, the evidence supports the conclusion that Officer Bunyon fired five times at [REDACTED] and an unknown man running on the east sidewalk of North Massasoit, while [REDACTED] was running southbound on the roadway, farther south and west of [REDACTED] and the unknown man.¹²¹ Officer Bunyon’s use of deadly force was objectively unreasonable in light of the totality of the circumstances he faced.

Third, COPA finds by a preponderance of the evidence that Officer Bunyon failed to take reasonable precautions to ensure that people other than [REDACTED] would not be struck. The third-party video footage shows [REDACTED] running within feet of an unknown man while Officer Bunyon fires in [REDACTED] direction. Although Department policy does not prohibit the use of deadly force against a person who is near or among other people, the policy does limit the use of such force to circumstances “when such force is reasonably necessary to prevent death or great bodily harm to the sworn member or another person, and no reasonable alternative exists.”¹²² “In such circumstances, the use of deadly force is permissible only if the member has identified the appropriate target prior to discharging the firearm and has taken reasonable precautions to ensure that people other than the target will not be struck.”¹²³ Here, Officer Bunyon’s use of deadly force was not reasonably necessary to prevent death or great bodily harm, and other alternatives to deadly force were available to him. Specifically, there is no evidence that the unknown man running near [REDACTED] posed an imminent threat to Officer Bunyon, and Officer Bunyon did not claim that he did. As previously explained, the use of deadly force against [REDACTED] was not reasonably necessary under the circumstances faced by Officer Bunyon. Moreover, Officer Bunyon had reasonable alternatives, including taking cover and using time as a tactic, available to him. Officer Bunyon was across the street from [REDACTED] and the unknown man and could have taken cover behind a tree or one of the cars parked along the street. Officer Bunyon also could have used time as a tactic to notify his nearby partners of [REDACTED] direction of flight and waited for reinforcements before advancing. Officer Bunyon failed to do so. Instead, Officer Bunyon discharged five shots at the two men. In addition, Officer Bunyon failed to take reasonable precautions to ensure no one other than [REDACTED] would be hit by gunfire. Specifically, Officer Bunyon fired in close vicinity of the unknown man and placed innocent residents in danger by firing bullets through a parked car, a porch beam, and a window of a nearby home.

¹¹⁹ G03-02(III)(C)(2)(a). [REDACTED] would have satisfied the other two prongs of the definition for imminent threat.

¹²⁰ See Figure 11.

¹²¹ See Figure 11.

¹²² G03-02(III)(D)(4).

¹²³ G03-02(III)(D)(4).

Based on the totality of the circumstances in this case, COPA finds Officer Bunyon's use of deadly force violated Department Policy and Rules 2, 3, 6, 8, and 9.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Patrick Bunyon

i. Complimentary and Disciplinary History

Officer Bunyon has received 103 total awards included 85 Honorable Mentions, 2 police Officer of the Month Awards, 1 Life Saving Award, and 3 Department Commendations. Officer Bunyon has no applicable disciplinary history within the past 5 years.

ii. Recommended Penalty

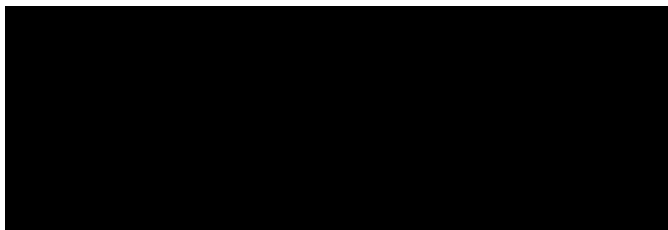
Here, COPA has found that Officer Bunyon's weapon's discharge was in violation of Department policy. Officer Bunyon's decision to discharge his weapon directly placed [REDACTED] who presented no imminent threat of death or great bodily harm, and other citizens nearby at risk of significant harm and possibly death. It is for these reasons, combined with his complimentary and disciplinary history, COPA recommends that Officer Bunyon be **separated**.

CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Bunyon	1. On July 4, 2018, at approximately 2:40 a.m., near 956 N. Massasoit Avenue, the accused discharged his firearm in violation of department policy and Rule 6 of the CPD Rules of Conduct.	SUSTAINED /SEPARATION

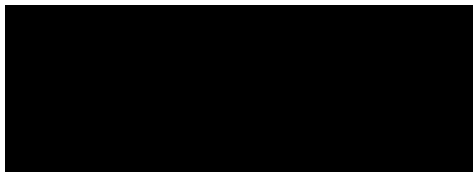
Approved:



Andrea Kersten
Chief Administrator

11/30/2022

Date



Matthew Haynam
Deputy Chief Administrator – Chief Investigator

11/30/2022

Date