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David O. Brown
Superintendent of Police

March 1, 2023

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: #1090089
Police Officer Patrick Bunyon #16768

Dear Chief Administrator:

After a careful review, the Department does not concur with the sustained finding for Allegation #1 against Officer Bunyon for violation of the Department's use of force policies when he fired shots at [REDACTED]. The Department believes that the facts made available through COPA's investigation have shown Officer Bunyon'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

On 4 July 2018, Officer Bunyon was in uniform and working with his partner, Officer Pilolli. The officers were assigned to the 15th District Tactical Team on directed patrol for the holiday.¹ Officer Bunyon stated that Officer John Howard was monitoring a CPD POD for 956 N. Massasoit because of prior criminal activity at that location.² Officer Bunyon stated he made a UYW arrest at that location the week prior and a warrant arrest earlier that day.³ Officer Bunyon was familiar with some of the men who hung out at this location from previous arrests and knew the location was a gang hangout.⁴ Officer Bunyon also knew there were people at that location because there was a large group when the warrant arrest was made.⁵ Officer Howard provided information from the CPD POD to Officer Zachary Nolfi with the description of a Black man with a white shirt and blue jeans on video holding a firearm in his hand moving around in front of 956 N Massasoit.⁶ Officer Nolfi provided that information to Officer Bunyon, Officer Pilolli, Sergeant Sandoval, and other officers who

¹ Attachment 121 at 6:00

² The CPD POD was located at 5730 W. Augusta Blvd.

³ *Id.* at 6:20.

⁴ *Id.* at 6:45 (Officer Bunyon stated the Four Corner Hustler gang used 956 N. Massasoit as a hangout)

⁵ *Id.*

⁶ *Id.* at 9:00

then developed a plan to approach the location by walking through the west gangway.⁷

When Officer Bunyon and Pilolli were about halfway through the gangway with Officer Bunyon right behind Officer Pilolli, a Black man (now known to be [REDACTED] with short hair, wearing a white t-shirt and jeans, stood on the sidewalk in the middle of the gangway and fired a shot at the officers.⁸ Officer Bunyon stated it happened so fast and the shooter ran so quickly, he (Officer Bunyon) did not get a good look at the shooter and could not see the shooter's face.⁹ As soon as [REDACTED] fired, [REDACTED] ran south.¹⁰ Officers Bunyon and Pilolli pushed through the gangway and chased after the shooter. Officer Bunyon notified OEMC there were shots fired at the police.

Officer Bunyon stated that as he emerged from the gangway almost immediately after [REDACTED] fired at him, he saw two Black men dressed the same running east diagonal across the street to the east sidewalk and southbound.¹¹ At this point, Officer Bunyon did not see either man with a gun in his hand.¹² Officer Bunyon ran south on the west sidewalk and stated Officer Pilolli was trailing the two men in "their direct flight."¹³ The two men running were the only men Officer Bunyon saw and Officer Bunyon could not tell which man was the shooter.¹⁴ As soon as the two men crossed the street, Officer Bunyon lost sight of them behind the cars parked along the east curb.¹⁵ Officer Bunyon stated as soon as his view was unobstructed, he saw "*the lead individual*" (now known to be [REDACTED] with a bright chrome revolver in his right hand.¹⁶ Officer Bunyon made clear this "was a very visible gun," "a revolver."¹⁷ Officer Bunyon estimated he was one house north from these two men on the opposite side of the street.¹⁸ Officer Bunyon stated he did not have time to give [REDACTED] a warning.¹⁹ As [REDACTED] was running, Officer Bunyon could see the gun "going up and down as he ([REDACTED] was running."²⁰ Officer Bunyon stated he kept running and "paralleling" [REDACTED].²¹ At this point, Officer Bunyon did not feel threatened, so he did not shoot.²² Officer Bunyon could not tell if the two men were on the sidewalk or on the parkway grass.²³ Officer Bunyon stated he continued until [REDACTED] "blades his body right, the gun comes up, pointed in my direction."²⁴ At the COPA investigator's suggestion, Officer Bunyon estimated that [REDACTED] turned his body to *approximately "the four o'clock position."*²⁵ Officer Bunyon stopped. Officer Bunyon stated that [REDACTED] never stopped running.²⁶ Officer Bunyon stated he believed that [REDACTED] was the person who shot at him in the gangway and [REDACTED] "was going to shoot at me again, try to kill me again, so I stopped on the

⁷ *Id.* at 9:00-11:00 (Officer Bunyon explained the plan to the best of his recollection involving vehicles north and the officers approach through the gangway)

⁸ *Id.* at 11:30 and 13:20

⁹ *Id.* at 12:50 and 24:30

¹⁰ CPD POD video

¹¹ Attachment 121 at 13:30

¹² Attachment 122 at 3:40

¹³ *Id.* at 4:50

¹⁴ Attachment 121 at 13:30 and 14:20

¹⁵ Attachment 122 at 6:25

¹⁶ Attachment 121 at 14:30 (emphasis added) and Attachment 122 at 5:55-7:00

¹⁷ Attachment 122 at 13:25-14:25

¹⁸ Attachment 121 at 15:00

¹⁹ *Id.* at 20:40

²⁰ *Id.* at 15:30 and Attachment 122 at 7:30

²¹ *Id.* and Attachment 122 at 5:40

²² Attachment 122 at 8:00

²³ Attachment 121 at 18:30

²⁴ *Id.*

²⁵ Attachment 122 at 10:45 (emphasis added)

²⁶ Attachment 121 at 19:20

spot and I shot five times at him [REDACTED]²⁷ Officer Bunyon estimated the second person was a car length or two behind [REDACTED] when Officer Bunyon fired.²⁸

Officer Bunyon stated that after firing, [REDACTED] was no longer looking at him and the gun was no longer pointed at him, so he stopped firing.²⁹ [REDACTED] continued to run after Officer Bunyon fired.³⁰ Officer Bunyon could still see the firearm in [REDACTED] hand as he ran west across the street.³¹ Officer Bunyon stated that [REDACTED] continued to run west, stumbled, and fell between two parked cars (on the west side of the street).³² Officer Bunyon yelled to Officer Pilolli, "He's over here."³³ Officer Bunyon stated he and Officer Pilolli converged on [REDACTED]³⁴ Officer Bunyon pointed his gun at [REDACTED] while Officer Pilolli placed handcuffs on [REDACTED] who was on his belly on the ground.³⁵ [REDACTED] was not struck by any of the rounds fired by Officer Bunyon. Officer Bunyon stated the firearm, a revolver, was on the ground right next to [REDACTED]³⁶ When Officer Bunyon reached [REDACTED] he recognized [REDACTED] because he had arrested him before.³⁷ . Officer Bunyon stated the second man continued running south toward Iowa St.³⁸

After this incident, Officer Bunyon went to the hospital for approximately one hour.³⁹ Officer Bunyon scrapped his arm after going into the concrete wall to avoid the shot fired at him.⁴⁰ Officer Bunyon returned to the scene and did "the walkthrough" with the OCIC (on-scene commander in charge).⁴¹ After the walkthrough, Officer Bunyon went to the Detective Division Area.⁴² Officer Bunyon did not learn that [REDACTED] was not the shooter until Officer Bunyon was at the Area hours after the incident.⁴³ Officer Bunyon stated while he was on-scene he learned of and later observed a semi-automatic handgun that was recovered near the gangway.⁴⁴ Officer Bunyon later learned this semi-automatic gun was the firearm used to shoot at him.⁴⁵

Officer Bunyon stated that the only report he completed for this incident was his Tactical Response Report (TRR).⁴⁶ Officer Bunyon stated that he was directed to complete only one TRR for this incident by supervisors based upon the information that was known at the time.⁴⁷ Officer Bunyon did not complete the Case Report for this incident or the Arrest Report for [REDACTED] and did not have discussions with the officers who did complete those reports.⁴⁸ Officer Bunyon saw his own and Officer Pilolli's BWC video the night of the incident while

²⁷ *Id.* at 15:50

²⁸ *Id.* at 17:40

²⁹ *Id.* at 16:30

³⁰ *Id.* at 19:50

³¹ *Id.* at 20:00

³² *Id.*

³³ *Id.* at 21:00

³⁴ *Id.*

³⁵ *Id.* at 23:15

³⁶ *Id.* at 22:00

³⁷ *Id.* at 22:00

³⁸ *Id.* at 21:30

³⁹ *Id.* at 26:50

⁴⁰ *Id.* at 27:30

⁴¹ *Id.* at 27:15

⁴² *Id.* at 27:40

⁴³ *Id.* at 27:00

⁴⁴ *Id.* at 30:15

⁴⁵ *Id.*

⁴⁶ *Id.* at 31:00

⁴⁷ Attachment 122 at 17:10

⁴⁸ Attachment 121 at 31:30-32:00

on-scene.⁴⁹ Officer Bunyon also saw the CPD POD video the night of the event, *but did not see any other video related to this incident.*⁵⁰

It should be noted that Officer Bunyon was interviewed by COPA on 15 Jan 2019, approximately six months after this incident. During this interview, COPA did not show Officer Bunyon the two third-party Ring cameras which COPA has concluded “undermines Officer Bunyon’s claim that [REDACTED] turned and pointed the weapon at him.”⁵¹

Officer Pilolli provided substantially the same account as Officer Bunyon, but with much less detail. After the shot was fired at him and Officer Bunyon in the gangway, Officer Pilolli chased after the offenders, running across Massasoit to the east sidewalk.⁵² Officer Pilolli saw two or three men running southbound away from him and stated that perhaps two men were on the east sidewalk running in front of him and one man in the street.⁵³ The men were dressed the same.⁵⁴ Officer Pilolli told COPA that he knew one of the offenders was the shooter, but he did not know which one.⁵⁵ Officer Pilolli was relating the descriptions and direction of flight.⁵⁶ Officer Pilolli was approximately one house behind the two offenders on the east sidewalk when Officer Bunyon fired.⁵⁷ Officer Pilolli turned and saw Officer Bunyon shoot, but did not know how many times he shot.⁵⁸ Officer Pilolli did not know why Officer Bunyon fired.⁵⁹ Officer Pilolli stopped when the shots were fired.⁶⁰ Officer Pilolli continued chasing and yelled questions to Officer Bunyon as to where the offenders went.⁶¹ Officer Pilolli eventually ran into the street and saw [REDACTED] in the street.⁶² When Officer Pilolli was putting handcuffs on [REDACTED] he recognized [REDACTED] from prior arrests, and saw the chrome revolver by a car tire on the ground.⁶³

After the incident, Officer Pilolli also went to the hospital, returned to the scene for the walkthrough, and then went to the Detective Area.⁶⁴ There, Officer Pilolli saw BWC and CPD POD video.⁶⁵ The only report Officer Pilolli completed was the Tactical Response Report and he did not have discussions with the officers who completed the Case Report or the Arrest Reports.⁶⁶

The Chicago Police follow-up investigation was documented by CPD Detective Timothy Murphy under

⁴⁹ Attachment 122 at 1:00

⁵⁰ *Id.* at 1:15 (emphasis added)

⁵¹ COPA SR pg 13

⁵² Attachment 123 at 11:00

⁵³ *Id.* at 13:00 and 17:00 (Officer Pilolli stated repeatedly to COPA that he was not certain where all the people were who were running from him.)

⁵⁴ *Id.*

⁵⁵ *Id.* at 31:00

⁵⁶ *Id.* at 13:50

⁵⁷ *Id.* at 14:30

⁵⁸ *Id.* at 39:15

⁵⁹ *Id.* at 21:50

⁶⁰ *Id.*

⁶¹ *Id.* at 16:00

⁶² *Id.* at 18:20

⁶³ *Id.* at 19:00

⁶⁴ *Id.* at 24:30

⁶⁵ *Id.*

⁶⁶ *Id.* at 25:00 to 27:30

Record Number JB- [REDACTED] (Assault/Aggravated PO Handgun).⁶⁷ A CPD Detective completed a gunshot residue kit on [REDACTED]. Detective Murphy conducted the on-scene walkthrough.⁶⁸ Detective Murphy told COPA investigators that Officer Bunyon stated during the walkthrough that [REDACTED] turned and pointed the revolver at him (Officer Bunyon). Detective Murphy's report stated that Officer Bunyon was interviewed and related that he observed [REDACTED] armed with a firearm and, fearing for his life and his partner's life, discharged his weapon while pursuing [REDACTED].⁶⁹

COPA investigator Jacqueline Hennard responded to the scene on 4 July 18 at 0412 hours and attended a walkthrough.⁷⁰ The investigator qualified the report by stating the walkthrough was "based on multiple levels of hearsay and not verbatim."⁷¹ This report related the OCIC, Deputy Chief Nagode, Officer Bunyon and Pilloli were shot at, six to eight people ran northbound and southbound on Massasoit, Officer Bunyon pursued a man with a gun, and "fired in the direction of the black male with a gun."⁷² The COPA investigator then went to the Detective Area where Deputy Chief Nagode informed the COPA investigator that additional investigation of the CPD POD video revealed [REDACTED] did not fire at the officers.

Detective Murphy interviewed [REDACTED] who denied the weapon recovered was his and denied he knew anyone else running with him.⁷³ Detectives showed [REDACTED] a still photograph from the CPD POD video of the shooter and [REDACTED] identified this person "[REDACTED] who was recently paroled and on electronic monitoring. With this information, additional video evidence, and additional interviews, [REDACTED] was identified as the shooter."⁷⁴

[REDACTED] was ultimately charged with Unlawful Use of a Weapon, a Class 3 felony, on 05 July 2018 at 9:42am approved by Cook County ASA Ondera.⁷⁵ [REDACTED] was arrested by Chicago Police at his home on 05 July 2018 at 1:20pm and was charged with three counts of Attempted Murder approved by ASA Kent on 5 July 18 at 5:44pm.

Illinois State Police analysis matched DNA recovered from revolver to [REDACTED].⁷⁶ The results also stated [REDACTED] DNA was excluded from DNA recovered from the revolver.

COPA interviewed Detective Murphy during this investigation and asked Detective Murphy if Officer Bunyon told him [REDACTED] turned and pointed a handgun at him. Detective Murphy stated, "Yes. When he was running down the street."⁷⁷ COPA asked, "When did [Officer Bunyon] tell you that?" Detective Murphy responded, "During the walkthrough."⁷⁸ COPA also asked why [REDACTED] was not charged with a separate offense

⁶⁷ Attachment 124 pg. 15-55, Cleared Closed (Arrest and Prosecution) Supplementary Report JB334585 (total 30 pages) (further references cite the pages of this report)

⁶⁸ *Id.* at 22 of 30, A walk through is a responsibility of the Designated Exempt-Level Incident Commander (i.e. OCIC) for the initial public safety investigation, if deemed necessary, conducted individually with involved Department member(s) and separately with COPA investigators to provide a narrative of the incident. G03-06-VIII-A-4 and B-2-a

⁶⁹ *Id.* at 25 of 30

⁷⁰ Attachment 4 at 1

⁷¹ *Id.* (emphasis added)

⁷² *Id.* at 2

⁷³ *Id.* at 26 of 30

⁷⁴ *Id.* at 27 of 30.

⁷⁵ Attachment

⁷⁶ Attachment 135

⁷⁷ Attachment 132 at 6:10

⁷⁸ *Id.*

for Aggravated Assault to Officer Bunyon.⁷⁹ Detective Murphy explained that the normal procedure for charging offenders was to seek the highest charge during the arrest, knowing the CCSAO had the authority to indict additional charges.⁸⁰ Detective Murphy explained that the Class 3 felony for Unlawful Use of a Weapon (UW) by a felon was the highest charge.⁸¹

Based on these facts, COPA's conclusion that Officer Bunyon never told anyone that [REDACTED] pointed a gun at him is factually incorrect.⁸² First, Officer Bunyon went to the hospital after this incident and returned for a walkthrough. Detective Murphy told COPA that Officer Bunyon told him and Deputy Chief Nagode that [REDACTED] pointed a gun at him and Detective Murphy included that information in his report. Second, the only report Officer Bunyon completed was his TRR. At the time, the investigation had not concluded that there were two separate offenders in this incident. Both Officers Bunyon and Pilloli stated that at the direction of supervisors only one TRR for one offender, [REDACTED] was completed with the initial understanding that [REDACTED] was the shooter. Detective Murphy's investigation later determined there were two offenders. Finally, Detective Murphy explained to COPA that [REDACTED] was not charged with aggravated assault because [REDACTED] was charged with the highest criminal charge with the understanding that lesser charges would be charged at a later date at the CCSAO's discretion.⁸³ In this case, the highest charge was UW by a felon (Class 3).

II. Video Evidence

COPA's investigation contains numerous videos including body worn camera videos from multiple officers on the scene. This review addresses COPA's confusion regarding the two third party videos.⁸⁴ The third party videos are best understood by first looking back at the Chicago Police POD video showing [REDACTED] shooting at Officers Bunyon and Pilloli.

⁷⁹ *Id.* at 10:20

⁸⁰ *Id.* at 10:20-13:10

⁸¹ Attachment 6. Note that Aggravated Assault to a Police Officer with a Handgun is a Class 4 (lower) felony.

⁸² COPA SR pg. 13

⁸³ Aggravated Assault to a Police Officer is a Class 4 felony (lower than Class 3)

⁸⁴ COPA SR pg 14

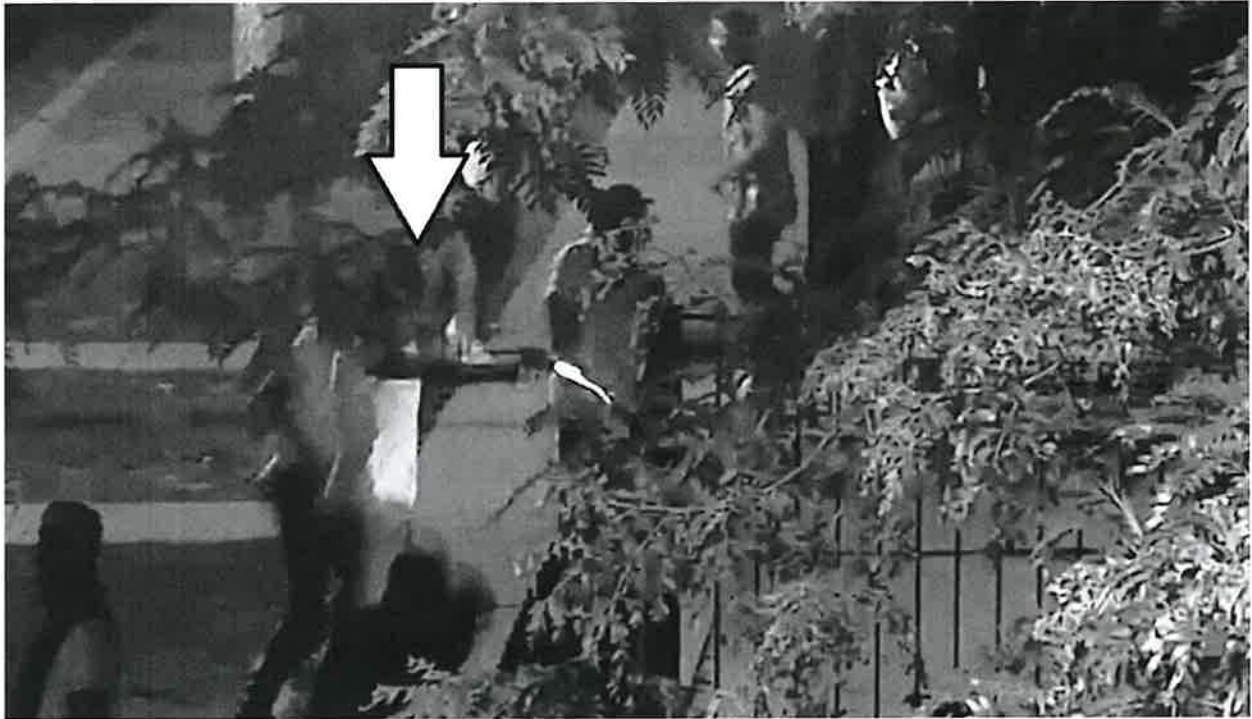


Figure 1: CPD POD video, [REDACTED] fires a shot toward Officers Bunyon and Pilolli and Sergeant Sandoval.

In Figure 1, the arrow added identifies [REDACTED] when he is shooting. At this point, there were people south of [REDACTED] (up) and the north of [REDACTED] (down). The POD video showed that the people south of [REDACTED] ran south and the people north of [REDACTED] ran north immediately after or just prior to [REDACTED] firing the shot.



Figure 2: CPD POD video, [REDACTED] ran south and east toward the east sidewalk, behind the entire group of [REDACTED] men running south. In this picture, [REDACTED] is the last person running southbound in the group

In Figure 2, immediately after [REDACTED] dropped his gun, he ran on a southeast diagonal behind the group of people already running south. Officers Pilloli and Bunyon were in immediate pursuit of [REDACTED] as [REDACTED] entered the street running south and east *behind* the entire group running southbound. Here, Officer Bunyon's statement provided context to identify the people running. Officer Bunyon told COPA that when he emerged from the gangway, he saw two men, and only two men, running east across the street, then south on the east sidewalk or parkway grass. Officer Bunyon stated that he knew one of these two men was the shooter, but at that point, he did not see either of the men with a gun and he did not know which man was the shooter. Officer Bunyon's body camera showed Officer Bunyon yelling to his partner, "Which one?"



Figure 3: When Officer Bunyon (left) is stopped in a shooting stance on the west sidewalk, [REDACTED] and [REDACTED] (upper right) are running on the east sidewalk/parkway grass just passed the silver sedan and not yet at the silver SUV parked on the east curb. [REDACTED] is the person closer the parked vehicles. (Note: Time stamps between cameras are not consistent)

Officer Bunyon told COPA that as the two men ran southbound on the east side of the street, he (Officer Bunyon) was paralleling them on the west sidewalk. Officer Bunyon saw *the lead individual* ([REDACTED] with a gun in his hand. Officer Bunyon initially did not shoot because he did not feel threatened. When [REDACTED] *bladed his body right to the four o'clock position* and pointed the gun at Officer Bunyon, he believed [REDACTED] was the man who had fired at him and was going to shoot again, so Officer Bunyon fired five times at [REDACTED]. By a preponderance of the evidence, the man behind [REDACTED] was the last man running southbound and video from the CPD POD would support that the last man running southbound was [REDACTED].

Figure 3 is from one of the two third-party videos showing Officer Bunyon (upper left corner) in a shooting stance while the two men running on the east side of the sidewalk/parkway (upper right corner) are just passed a silver sedan and not yet at a silver SUV parked on the east side of the street.



Figure 4: When [REDACTED] (left) and [REDACTED] (right) are just passed the silver sedan and not yet at the silver SUV, [REDACTED] the lead individual, has his right arm up and across his upper body in a position consistent with blading his body right at approximately a four o'clock position, looking back and west toward Officer Bunyon while raising his right arm. (Note: Time stamps between cameras are not consistent)

Figure 4 is from the second third-party video (further south). When the two men running on the east side of Massasoit are just passed the silver sedan and not yet at the silver SUV parked on the east side of the street, the *lead individual* ([REDACTED] on the right) had his body *bladed right and turned to the four o'clock position* with his right arm up. Therefore, at the moment when Officer Bunyon fired, [REDACTED] was in the position Officer Bunyon described. This video then showed [REDACTED] run west into the street and stumble to the ground, where he taken into custody just out of view from this camera. [REDACTED] continued running southbound on the east sidewalk or parkway grass.

The review of the video evidence revealed inaccuracies in COPA's Summary Report that must be addressed. The confusion is likely the result of COPA's decision not to discuss the video evidence with Officer Bunyon during his interview.

First, COPA erroneously identified a third man, running down the middle of Massasoit as [REDACTED] and then appeared to conclude that this was the person Officer Bunyon intended to shoot.⁸⁵ The CPD POD video showed that [REDACTED] was last man to run south. Officer Bunyon also told COPA that he saw two men run across the street immediately after the shot was fired at him and he believed one of the men was the shooter, but because they both looked almost exactly alike, he did not know which one.⁸⁶ A careful review of all of the evidence shows by a preponderance that the two men running were [REDACTED] and [REDACTED]. When [REDACTED] turned and pointed a gun at Officer Bunyon, Officer Bunyon fired specifically at [REDACTED] and no one else.

⁸⁵ COPA SR pg. 14, "...the angle, trajectory and location of Officer Bunyon's bullets indicate that he was not aiming at [REDACTED]. 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 road way...Officer Bunyon's use of deadly force was objectively unreasonable in light of the totality of the circumstances he faced."

⁸⁶ Attachment 121 at 13:30 and 14:20

Second, COPA concluded that [REDACTED] never turned.⁸⁷ COPA stated, “Officer Pilloli’s lack of corroboration undermines Officer Bunyon’s claim that [REDACTED] pointed a firearm.”⁸⁸ The still photograph from the third-party video in Figure 4 refutes COPA’s conclusion. Officer Pilloli did not see [REDACTED] turn because from Officer Pilloli’s perspective, [REDACTED] did not turn.⁸⁹ [REDACTED] *bladed his body right to the four o’clock position* toward Officer Bunyon, who was not right behind [REDACTED] but was paralleling [REDACTED] across the street on the west sidewalk. The video evidence fully supports Officer Bunyon’s description of the events that took place.

III. Officer Bunyon’s use of deadly force was objectively reasonable, necessary, and proportional to the imminent threat presented by [REDACTED]

Officer Bunyon’s use of his firearm to shoot at [REDACTED] was the use of deadly force as defined by Department Policy.⁹⁰ 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.”⁹¹

The Department recognizes that a decision to use deadly force is often a split-second decision in circumstances that are tense, uncertain, and rapidly evolving.⁹² For this reason, an officer’s decision to use force must be “judged based on the totality of circumstances *known by the member at the time* 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*.”⁹³ Officers are further instructed, “Nothing in this policy requires members to take actions, or fail to take actions, that unreasonably endanger themselves or others.”⁹⁴

III-A. Officer Bunyon’s use of deadly force was objectively reasonable because [REDACTED] actions presented an imminent threat of death.

All five of the shots Officer Bunyon fired were each objectively reasonable because [REDACTED] presented an imminent threat of death or great bodily harm (GBH) when Officer Bunyon fired.

The use of deadly force is determined to be objectively reasonable, not by a “precise or mechanical definition,” but when multiple factors are considered.⁹⁵ The subject must first pose an imminent threat to the officers or others.⁹⁶

⁸⁷ COPA SR pg. 13 “Third-party video footage indicates that [REDACTED] was in headlong flight from the police and ...undermines Officer Bunyon’s claim that [REDACTED] turned and pointed the weapon at him.”

⁸⁸ COPA SR pg. 13

⁸⁹ Attachment 123 (Officer Pilloli’s interview) at 32:55, COPA’s investigator told Officer Pilloli that he (the investigator) “understood you guys were in different positions and had a different perspective at the time.”

⁹⁰ G03-02-III-C-1-a (effective 16 Oct 2017 and rescinded 28 Feb 2020)

⁹¹ G03-02-III-B

⁹² G03-02-II-D

⁹³ *Id.* (emphasis added)

⁹⁴ *Id.*

⁹⁵ G03-02-III-B-1

⁹⁶ G03-02-III-B-1-a

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.⁹⁷

In this case, Officer Bunyon was fired upon by a man in a white t-shirt. Officer Bunyon stated when he ran after this man, he saw two men both wearing white t-shirts running toward the east sidewalk. Officer Bunyon did not see a gun and stated at that point in time he did not know which man fired at him. As Officer Bunyon paralleled the men on the west sidewalk, he saw one of the men, [REDACTED] produce a chrome revolver and hold it in his right hand as he was running. Officer Bunyon stated that he still did not fire at [REDACTED] because he was not threatened. When [REDACTED] bladed his body right and raised the gun toward Officer Bunyon, Officer Bunyon believed [REDACTED] was going to shoot him and he fired five times at [REDACTED]

COPA concluded Officer Bunyon admitted to "misidentifying" [REDACTED] and Officer Bunyon's "failure to ensure that he correctly identified the shooter led Officer Bunyon to target and shoot at [REDACTED] and an unknown man."⁹⁸

There are multiple problems with COPA's conclusion. First, Officer Bunyon fired at [REDACTED] He did not shoot at two different people at the same time.

Second, Officer Bunyon did not admit to misidentifying anyone. During his interview with COPA, Officer Bunyon provided his observations and the conclusions he drew from those observations *at the time he was making those observations*. Officer Bunyon did not shoot at [REDACTED] as revenge for [REDACTED] shooting at him. In fact, Officer Bunyon did not shoot at [REDACTED] when he first saw [REDACTED] running with a gun in his hand. Officer Bunyon shot at [REDACTED] after [REDACTED] turned and pointed the gun at him because based on all of his observations to that point, Officer Bunyon believed [REDACTED] was going to use that gun to shoot him.

Third, COPA's conclusion exists only in hindsight. The fact that Detective Murphy's investigation later determined [REDACTED] was not the person who shot at Officer Bunyon is information that we now know that Officer Bunyon could not possibly have known in the few seconds this encounter unfolded. We now know by a preponderance of the evidence that [REDACTED] was armed with a semi-automatic handgun and fired at Officers Bunyon and Pilolli. We now know that [REDACTED] dropped his semi-automatic handgun immediately after shooting and then fled behind his associate, [REDACTED] who was armed with his own revolver.

An officer's decision to use deadly force must be judged from the perspective of a reasonable member on the scene based on the totality of circumstances *known by the member at the time and not with the benefit of 20/20 hindsight*.⁹⁹ It was objectively reasonable for Officer Bunyon to believe that [REDACTED] a man with the same physical description, including the same gender, same race, same hair style with the same height and build, wearing the same clothes, running down the street with a gun in his hand, was the shooter.¹⁰⁰ Therefore, COPA's conclusion that Officer Bunyon violated the Department's use of force policies because he "misidentified [REDACTED] as the shooter" is an improper, and, in fact, a directly prohibited method of assessing

⁹⁷ G03-02-III-C-2

⁹⁸ COPA SR pg 12

⁹⁹ G03-02-II-D (Effective 2017 – 2020) (emphasis added)

¹⁰⁰ Attachment 6 ([REDACTED] was a Black man, 21 years old, 5'09", 130 lbs, medium complexion, short hair style); Attachment 7 ([REDACTED] was a Black man, 24 years old, 5'08", 160 lbs, black complexion, short hair style)

Officer Bunyon's decision to use deadly force.¹⁰¹

Finally, it is important to understand that *under the law*, Officer Bunyon had **probable cause** to arrest [REDACTED] for shooting at him based on the facts that were known to him at the time, even though his belief was later discovered to be incorrect. In *Hill v. California*, the US Supreme Court held "when the police [have] probable cause to arrest one party, and they reasonably mistake the second party for the first party, then the arrest of the second party is a valid arrest."¹⁰² In *Hill*, officers had probable cause to arrest Hill and went to his residence where they found a man named Miller, who matched Hill's description and provided an unconvincing story of how he came to be in Hill's apartment. The Court found the officers reasonably believed Miller was Hill; therefore, Miller's arrest was valid and the resulting search properly obtained evidence ultimately used against Hill. The Court held, "[S]ufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment."¹⁰³

Illinois courts agree and have ruled that the U.S. Supreme Court's holding in *Hill* is also valid under the Illinois Constitution.¹⁰⁴

As stated in *Hill*, Officer Bunyon had sufficient probability to reasonably believe that [REDACTED] running away from him with a gun in his hand, was the person who fired at him in the gangway. Officer Bunyon was pursuing [REDACTED] not just for the weapon [REDACTED] was holding, but also because **at the time** Officer Bunyon had probable cause to arrest [REDACTED] for attempted murder. Officer Bunyon acted reasonably and within the scope of the Fourth Amendment, the Illinois Constitution, and Department Orders when he applied his belief that [REDACTED] was the shooter to his overall assessment of the imminent threat [REDACTED] presented when [REDACTED] turned toward him and raised the gun in his direction.

Officer Bunyon had an objectively reasonable belief that 1) [REDACTED] actions were immediately likely to cause death, 2) [REDACTED] had a firearm capable of causing death, and 3) [REDACTED] had the opportunity, ability, and the apparent intent to cause death. For all of these reasons, Officer Bunyon's decision to use deadly force was objectively reasonable under the totality of circumstances without the benefit of hindsight because [REDACTED] actions presented an imminent threat of death to Officer Bunyon and his partner, Officer Pilloli.

III-B. Officer Bunyon's use of deadly force was necessary and used as a last resort.

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 great bodily harm [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.¹⁰⁵ Department members are instructed to use the minimum amount of force to effect an arrest and must continually assess the situation to determine if other alternatives are available.¹⁰⁶

¹⁰¹ COPA SR pg 12 compared to G03-02-II-D (Assessing Uses of Force will not have the benefit of 20/20 hindsight)

¹⁰² *Hill v. California*, 401 US 797, 802 (1971) citing the California Supreme Court decision, *People v. Hill* (1968)

¹⁰³ *Id.* at 804.

¹⁰⁴ *People v. Gordon*, 311 Ill.App.3d 240, 248 (2nd Cir 2000)

¹⁰⁵ G03-02-III-C-3

¹⁰⁶ G03-02-III-B-2

In this case under these circumstances, Officer Bunyon used deadly force as a necessary last resort. Officer Bunyon reasonably believed that [REDACTED] was the person who had shot at him. When Officer Bunyon saw [REDACTED] with a gun, Officer Bunyon had probable cause to arrest [REDACTED] for attempted murder. When [REDACTED] turned and raised a gun at him, Officer Bunyon reasonably believed [REDACTED] was immediately likely to shoot him, so Officer Bunyon had no other reasonable alternative to respond immediately other than to use deadly force to defend his life and his partner's life.

COPA concluded "Officer Bunyon failed to take reasonable precautions to ensure that people other than [REDACTED] would not be struck" and he could have taken cover or used time as a tactic.¹⁰⁷

It is important to remember that Officer Bunyon had probable cause to arrest [REDACTED] for attempted murder. Under Illinois Law, [REDACTED] could not lawfully avoid or defeat his arrest by threatening to use force against Officer Bunyon in order to make Officer Bunyon retreat. Officer Bunyon also did not have to desist from arresting [REDACTED] if arresting him required the use of force, even deadly force.¹⁰⁸

There is no evidence in this case indicating that Officer Bunyon was shooting at anyone other than [REDACTED]. Officer Bunyon identified his target, [REDACTED] who was armed. [REDACTED] firearm was recovered upon his arrest and DNA from that firearm was matched to [REDACTED].

Department Orders authorize officers to use deadly force when directed at a specific person who is among other people when:

1. The use of deadly force is reasonably necessary to prevent death,
2. No reasonable alternative exists,
3. The officer has identified the appropriate target, *and*
4. The officer takes reasonable precautions to ensure people other than the target will not be struck.¹⁰⁹

Officer Bunyon's actions met all of these requirements in this case. [REDACTED] pointed a gun at Officer Bunyon, an action *immediately likely* to cause the death of Officers Bunyon and/or Pilloli. Officer Bunyon reasonably believed [REDACTED] had already attempted to kill him and, under those circumstances, had no reasonable alternative but to *immediately* defend himself as he pursued [REDACTED] to arrest him. Officer Bunyon specifically identified [REDACTED] as the threat, described [REDACTED] actions, and those descriptions have been corroborated with independent video evidence. Finally, Officer Bunyon stated that [REDACTED] and the other man ([REDACTED] were approximately one to two car lengths apart when Officer Bunyon identified the threat, took a fixed stance, and fired five shots in rapid succession at [REDACTED] while [REDACTED] was pointing a gun at him. Given the split-second Officer Bunyon had to make this decision while in extreme danger just seconds after being shot at and based on the information he had at the time, Officer Bunyon took reasonable precautions to ensure no person other than [REDACTED] would be struck.

¹⁰⁷ COPA SR pg. 12 and 14

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

¹⁰⁹ G03-02-III-D-4, "...this prohibition does not preclude the use of deadly force directed at a specific person who is near or among other people, but the use of deadly force in such circumstances is only permitted in the limited circumstances when such force is reasonably necessary to prevent death or great bodily harm to the sworn officer or another person and no reasonable alternative exists. In such circumstances, the use of deadly force is permissible only if 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."

III-C. Officer Bunyon's use of deadly force was proportional to [REDACTED] threat to shoot him

The use of deadly force must be "proportional to the threat, actions, and level of resistance offered by a subject."¹¹⁰ "This may include using greater force...than that used by the subject."¹¹¹ "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."¹¹² "When a subject offers less resistance...the member will decrease the amount of force accordingly."¹¹³ 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.¹¹⁴

Here, Officer Bunyon's use of force was proportional to the threat [REDACTED] presented. When [REDACTED] was holding the gun and running, Officer Bunyon saw the "very visible" chrome revolver in [REDACTED] hand going up and down as [REDACTED] ran. Officer Bunyon stated that he did not shoot because he did not feel [REDACTED] was threatening him. However, when [REDACTED] bladed to a four o'clock position, raised and pointed the gun at Officer Bunyon, Officer Bunyon fired five times in rapid succession. Officer Bunyon did not hit [REDACTED] Immediately after [REDACTED] stopped pointing the firearm at Officer Bunyon, Officer Bunyon stopped firing. Officer Bunyon reassessed the threat, giving [REDACTED] time to run into the street and stumble to the ground. The third party video showed [REDACTED] arms in the air as he ran into the street. Officer Bunyon's careful assessment and reassessment during this extremely dangerous encounter allowed [REDACTED] to be arrested without injury.

Along with factual inaccuracies, COPA's Summary Report strongly implied that because we now know [REDACTED] was not the shooter, he presented less of a threat to Officer Bunyon.¹¹⁵ This is incorrect. Officer Bunyon fired at [REDACTED] because [REDACTED] was pointing a gun at him. Given the circumstances of this encounter, [REDACTED] presented an imminent threat of death to Officer Bunyon whether [REDACTED] had earlier shot at him or whether he did not.

Officer Bunyon knew he was approaching a group of men in front of a residence that Officer Bunyon was familiar with through prior arrests in order to arrest one of the men, [REDACTED] who was captured on video holding a gun. [REDACTED] was one of the men with [REDACTED] but what Officer Bunyon did not know before his approach was that [REDACTED] had his own gun. [REDACTED] saw [REDACTED] shoot at Officer Bunyon and then ran away with [REDACTED] knowing that police officers were chasing them. [REDACTED] dropped his gun, but [REDACTED] kept his. The evidence showed that [REDACTED] was considering his own options as he ran from Officer Bunyon, while keeping hold of his own handgun in his right hand. [REDACTED] action of turning and pointing a handgun at Officer Bunyon clearly presented an imminent threat of death to Officer Bunyon because [REDACTED] was aware of what occurred and had time to drop his gun; but instead, chose to keep his gun and point it at Officer Bunyon. Officer Bunyon's use of deadly force in this case with all of the information he reasonably knew at the time was proportional to [REDACTED] threat to shoot him, whether or not [REDACTED] was the original shooter.

¹¹⁰ G03-02-III-B-3

¹¹¹ *Id.*

¹¹² *Id.*(emphasis added)

¹¹³ *Id.*

¹¹⁴ G03-02-III-C-4

¹¹⁵ COPA SR pg. 14, "...the angle, trajectory and location of Officer Bunyon's bullets indicate that he was not aiming at [REDACTED] 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 road way...Officer Bunyon's use of deadly force was objectively unreasonable in light of the totality of the circumstances he faced."

IV. Officer Bunyon's Use of Deadly Force was reasonable as assessed 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.¹¹⁶ This analysis will simply include how those factors pertain directly to Officer Bunyon's use of force.

1. [REDACTED] was reasonably suspected of shooting at Officers Bunyon and Pilloli when Officer Bunyon pursued him and [REDACTED] on foot and saw [REDACTED] holding a chrome revolver in his hand.
2. [REDACTED] level of threat was pointing a gun at Officer Bunyon.
3. [REDACTED] posed an immediate threat of death to Officers Bunyon and Pilloli.
4. Officer Bunyon was facing potential death or great bodily harm.
5. [REDACTED] posed a risk because he was using a firearm to attempt to escape when Officer Bunyon was attempting to arrest him for shooting at him and other uniformed police officers.
6. [REDACTED] conduct *as reasonably perceived by Officer Bunyon*: [REDACTED] was armed with a chrome revolver, was running from officers to escape arrest, turned and pointed the revolver at Officer Bunyon, all while Officer Bunyon was pursuing [REDACTED] with probable cause to arrest [REDACTED] for attempted murder.
7. Officer Bunyon was approximately one to two city lots behind [REDACTED] and across a city street when [REDACTED] turned in his direction and pointed a gun at him. Officer Bunyon's only conduct that would increase the risk that [REDACTED] would engage in violence was pursuing [REDACTED] to arrest him for attempted murder.
8. Video established that Officer Bunyon had one second, or less, to react to [REDACTED] pointing a gun at him.
9. The resources available to Officer Bunyon was the team of officers responding to stop [REDACTED]. Officer Bunyon had no time to request additional resources.
10. Officer Bunyon had just over four years on the Chicago Police Department at the time of this shooting.
11. The subject, [REDACTED] had access to a chrome revolver in his right hand.
12. The size and strength characteristics are not relevant to this use of force because [REDACTED] was threatening Officer Bunyon with a firearm.
13. The exigent circumstances were the confusion created by [REDACTED] and [REDACTED] both fleeing from this incident together, both armed, both having the same physical description, and both dressed the same. As Officer Bunyon attempted to arrest [REDACTED] for a weapon violation based on video from a CPD POD, [REDACTED] fired at Officer Bunyon, dropped his gun, and fled with [REDACTED] armed with his own firearm, produced that gun and held onto that gun as he ran. Officer Bunyon reasonably believed [REDACTED] was the person who shot at him. When [REDACTED] pointed his gun at Officer Bunyon, Officer Bunyon reasonably believed at the time that [REDACTED] was the shooter and was going to shoot at him again.

Analyzing these factors based on the totality of circumstances without the benefit of hindsight and with the understanding that Officer Bunyon was forced to make a split-second decision in a tense, uncertain, and rapidly evolving circumstance, Officer Bunyon's use of force was reasonable.

¹¹⁶ *Graham v. Connor*, 490 U.S. 386 (1989)

V. Conclusion

Officer Bunyon's observations were verified with the video evidence obtained and his belief during the incident that [REDACTED] was the person who shot at him was objectively reasonable. Officer Bunyon, therefore, had probable cause to arrest [REDACTED] for attempted murder and his use of deadly force when [REDACTED] turned and pointed a gun at him was objectively reasonable, necessary, and proportional to [REDACTED] threat to shoot.

The Department believes the evidence made available through COPA's investigation has shown that Officer Bunyon's use of deadly force was in compliance with Department Orders and, therefore, Allegation #1 should be classified as *Unfounded*.

The Department looks forward to discussing this matter with you pursuant to MCC 2-178-130(a)(iii).

Sincerely,



David C. Brown
Superintendent of Police
Chicago Police Department