

SUMMARY REPORT OF INVESTIGATION<sup>1</sup>

I. EXECUTIVE SUMMARY

Date of Incident:	September 10, 2017
Time of Incident:	12:50 a.m.
Location of Incident:	XXXX N Laramie Avenue, Chicago IL
Date of COPA Notification:	September 10, 2017
Time of COPA Notification:	1:26 a.m.

On September 10, 2017, Officers A (“Officer A”), star #XXXXXX and B (“Officer B”), star #XXXXXX were on routine patrol in a marked Chicago Police Department (“CPD”) SUV vehicle, in a two-man car, working Beat #XXXXX. Officers A and B observed Involved Civilian 1, driving a Honda Pilot without its headlights on near the intersection of Grand and Armitage Avenues. Officer A, who was the driver, made a U-turn to head in the same direction as Involved Civilian 1, but lost sight of Involved Civilian 1. Officers A and B began searching for Involved Civilian 1 and gained sight of Involved Civilian 1 at Palmer Avenue. Officers A and B began driving behind Involved Civilian 1 as he accelerated westbound down an alley north of Grand Avenue. Involved Civilian 1 turned northbound onto Laramie Avenue then turned into a driveway located at XXXX N. Laramie Avenue. Officers A and B stopped their CPD vehicle, which was facing north on Laramie Avenue, and exited. As Officer B exited, he walked towards the front of the CPD vehicle when Involved Civilian 1 suddenly reversed the Honda Pilot striking Officer B and pinning Officer B between the back end of the Honda Pilot and the front right hood of the CPD vehicle. Involved Civilian 1 continued driving the Honda Pilot in reverse and spun the vehicle from facing west to facing east on Laramie Avenue, pinning Officer B between the front end of the CPD vehicle and the passenger side of the Honda Pilot. While still pinned between the two vehicles, Officer B fired five (5) times into the passenger side window of Involved Civilian 1’s vehicle, fatally striking Involved Civilian 1. COPA’s investigation demonstrates that Officer B’s use of deadly force complied with CPD policy.<sup>2</sup>

<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

<sup>2</sup> Allegations of failure to take appropriate police action and failure to follow radio procedures, which resulted from the hours leading up to this incident, are addressed under log number 1086814.

**II. INVOLVED PARTIES**

Involved Officer #1:	Officer B, star #XXXXXX, employee ID#XXXXXX, Date of Appointment XX/XX/2015, Police Officer, Unit of Assignment XXX, DOB: XX/XX/1988, Male, White
Involved Individual #1:	Involved Civilian 1, DOB: XX/XX/1998, Male, Hispanic

**III. ALLEGATIONS**

Any discharge of an officer's firearm results in a mandatory notification to COPA. This investigation was initiated pursuant to such notification. However, COPA determined evidence did not exist which would require allegations of excessive force against Officer B.

**IV. APPLICABLE RULES AND LAWS**


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 General Orders
 

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1. General Order 03-02-03<sup>3</sup>

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 Federal Laws
 

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1. The Fourth Amendment to the United States Constitution

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 State Laws
 

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1. Illinois State Statute, 720 ILCS 5/7-5 (1986)

**V. INVESTIGATION<sup>4</sup>****a. Interviews****Police Interviews****1. Officer A**

In an **interview with IPRA on September 11, 2017, witness Officer A, #XXXXXX** stated that on September 10, 2017, he was on routine patrol with Officer B near the intersection of Grand and Armitage Avenues. Officer A was driving a marked CPD vehicle and Officer B was the passenger. Officer A stated at approximately 12:45 a.m., he was driving east bound on Grand Avenue when he observed a silver Honda Pilot without its headlights on, now known to be driven by Involved Civilian 1, heading northwest on Grand and Armitage Avenues. Officer A stated he began making a U-turn and once completed, the Honda Pilot was no longer in sight. Officer A

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<sup>3</sup> This report references the version of the order in effect on September 10, 2017.

<sup>4</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

stated he turned north onto Leclaire Avenue then west onto Palmer Avenue. Officer A stated he was driving westbound down Palmer Avenue when he noticed the Honda Pilot, driving towards his vehicle without its headlights on. Officer A stated Involved Civilian 1 turned southbound into the alley between Leamington and Leclaire Avenues and sped off at an estimated speed of about 35-40 mph. Officer A stated that he followed Involved Civilian 1 down the alley, turned westbound at Dickens Street and then northbound on Laramie Avenue.<sup>5</sup> Officer A stated Officer B reported Involved Civilian 1 driving down the alley to the Office of Emergency Management & Communications (“OEMC”) over the radio.

Once on Laramie Avenue, Involved Civilian 1 immediately turned left into a driveway at XXXX N. Laramie Avenue and stopped, facing westbound. Officer A explained that he stopped the squad car on an angle, directly facing the Honda Pilot as a precaution so that if an incident did occur, it would be captured on the in-car camera. Officer A and Officer B got out of their vehicle to approach Involved Civilian 1, who remained inside the Honda Pilot. Officer A drew his weapon when he exited the squad car and ordered Involved Civilian 1 to get out of his car. Officer A stated he believed Involved Civilian 1 observed him in full uniform because Involved Civilian 1 looked right at him, just as he placed the Honda Pilot in reverse at full speed. Officer A stated that Officer B was standing near the front-right side of the squad car when Involved Civilian 1 reversed into him, pinning Officer B between the squad car and the Honda Pilot. Officer A described the Honda Pilot as having spun in a 180 degree turn at a high rate of speed.

Officer A jumped out of the way and heard three to four gunshots. Officer A then saw Officer B tap his hands against the hood of the squad car and yell “I’m pinned!! I’m Pinned!!”<sup>6</sup> Officer A got back into the squad car and reversed it to release Officer B from between the two vehicles. Upon reversing the squad car, Officer B fell to the ground and the Honda Pilot idled forward and came to a stop. Officer A then called for emergency assistance for Officer B and Involved Civilian 1. Officer A stated he had not heard calls over the radio related to Involved Civilian 1 or the Honda Pilot prior to the incident. Officer A stated he did not activate lights and sirens because he experienced “tunnel vision”<sup>7</sup> and was concentrating on keeping his sights on the Honda Pilot.<sup>8</sup>

## 2. Officer B

In an **interview with COPA on May 21, 2018, involved Officer B,<sup>9</sup> #XXXXX** stated that on September 10, 2017, he was assigned to Beat XXXXX with Officer A when he observed the subject, Involved Civilian 1, driving a Honda Pilot facing northwest at the traffic light on Grand and Armitage Avenues without its headlights on. Officer B stated Officer A was the driver of their squad car and that Officer A immediately made a U-turn to approach the subject vehicle. Officer B stated that once Officer A completed the U-turn, he noticed the Honda Pilot was no longer at

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<sup>5</sup> Review of the in-car camera footage shows that Officer A did not activate his emergency lights and sirens; however, the CPD vehicle’s spot light was on and aimed at Involved Civilian 1’s vehicle.

<sup>6</sup> Att. #58, minute 23:17

<sup>7</sup> Att. #58, minute 18:51

<sup>8</sup> Att. #58

<sup>9</sup> Officer B was on an injury on duty leave from September 11, 2017 through December 5, 2017

the traffic light, but that the light was still red. Officer B stated that he believed that the Honda Pilot had run the red light and turned down a residential street.

Officer B stated that Officer A headed north on LeClaire Avenue and then turned west on Palmer Avenue, when he saw the Honda Pilot headed towards them. Officer B stated the subject accelerated towards them on Palmer Avenue and Officer A slammed on the brakes in fear that the subject was going to hit them. Officer B stated that as the subject was driving towards them, he shined his spot light into the subject vehicle and could observe that the only occupant was the driver, a white Hispanic male with short hair. Officer B stated at that moment, he began collecting information of the subject vehicle to report over the radio, such as the description of the vehicle, a description of the subject, the license plate number, and last known direction of travel.<sup>10</sup> Officer B explained that the emergency lights were never activated, and he was unsure why. The Honda Pilot suddenly turned south down an alley and proceeded at approximately 35 mph. Officer B stated the Honda Pilot turned west at the end of the alley then north onto Laramie Avenue. Once on Laramie Avenue, the Honda Pilot made a sudden left turn into a driveway.

Officer B stated Officer A stopped their squad car at a 45-degree angle behind the subject. Officer B exited his vehicle quickly because he did not know if Involved Civilian 1 was going to get out and run. Officer B added that while he did not have his weapon drawn, he did have his hand on his weapon with the retention<sup>11</sup> loosened and ready to draw. Officer B stated that as he exited the vehicle, he noticed the reverse lights of the Honda Pilot go on. Officer B explained that he paused for a moment near the front right fender of the squad car and waited for the subject to put the vehicle in park. As Officer B paused, Involved Civilian 1 suddenly reversed his vehicle into him.

Officer B stated he turned and attempted to jump onto the hood of his squad car but was pinned by the legs between the Honda Pilot and the squad car. Once struck, Officer B felt an extreme amount of pain and felt the Honda Pilot pulling him downward. At that moment, Officer B believed he was going to die if he did not do something to stop the Honda Pilot. Officer B was facing the squad car, then he looked over his shoulder, saw an outline of the subject, lined up his weapon as best as he could, and then fired at Involved Civilian 1 through the front passenger side of the Honda Pilot with his left hand.

Officer B believed he shot three to four (3-4) times but later learned he shot four to five (4-5) times. Officer B stated that after discharging his firearm he no longer felt that he was being pulled down by the Honda Pilot, but that he was still pinned between the two vehicles. Officer B banged on the hood of the squad car and Officer A reversed the squad car, releasing Officer B. Officer B attempted to run to the other side of the squad car but collapsed on the ground. Officer B was transported to Hospital A for medical treatment.<sup>12</sup>

### **Civilian Witness Interviews**

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<sup>10</sup> Att. #49, Event Query Report reflects that a description of the driver (now known as Involved Civilian 1) was reported to OEMC as well as the subject vehicle (Silver Honda Pilot) before reporting shots fired and the location of the incident (XXXX Laramie).

<sup>11</sup> The term "retention" refers to the locking mechanism on the gun holster, which keeps the weapon in place.

<sup>12</sup> Att. #97

## 1. Involved Civilian 2

In an **Electronically Recorded Interview (ERI) with CPD Detective A #XXXXX, on September 10, 2017, Involved Civilian 2<sup>13</sup>**, a minor, stated she looked out of her front living room window when she witnessed a CPD vehicle pursuing a truck which she recognized as the Honda Pilot belonging to her mother. Involved Civilian 2 stated her older brother, Involved Civilian 1 drove the Honda Pilot into the driveway alongside their home. Involved Civilian 2 stated the pursuing CPD vehicle stopped behind the Honda Pilot and Involved Civilian 1 also momentarily stopped the Honda Pilot in the driveway. Involved Civilian 2 explained that when the police officers began exiting their vehicle, and Involved Civilian 1 suddenly reversed the Honda Pilot and that the Honda Pilot spun around.

Involved Civilian 2 stated when Involved Civilian 1 spun the Honda Pilot around, he smashed one officer with the front end of the Honda Pilot and the CPD vehicle. Involved Civilian 2 stated the officer, known now as Officer B, was pinned by the legs between both vehicles. Involved Civilian 2 stated she heard Officer B screaming in pain when he was struck and yelling “Stop! Stop!” to Involved Civilian 1. Involved Civilian 2 stated the Honda Pilot was practically on top of Officer B and that is when Officer B fired his weapon approximately four (4) times at Involved Civilian 1.

Involved Civilian 2 stated that after the shots were fired, she watched as the Honda Pilot idly rolled forward and come to a stop. Involved Civilian 2 further stated that additional officers responded to the scene and Involved Civilian 1 was taken out of the vehicle. Involved Civilian 2 stated that she ran outside and confirmed that the driver of the Honda Pilot was her brother, Involved Civilian 1. Involved Civilian 2 attempted to approach the scene, but officers did not allow her to get close. Involved Civilian 2 also added that minutes prior to the incident, she overheard a telephone call her parents received from Involved Civilian 1, requesting them to pick him up because he did not have the keys to his vehicle, the Honda Pilot. Involved Civilian 2 explained that her parents left to pick up Involved Civilian 1 and she was awake in the living room waiting for their return when she observed the incident.<sup>14</sup>

## 2. Involved Civilian 3

On September 10, 2017, IPRA conducted an **interview of Involved Civilian 3**, who resides in the first-floor apartment of XXXX N. Laramie Avenue. Involved Civilian 3 was home, in his front living room area at the time of the incident. Involved Civilian 3 heard approximately three (3) gun shots followed by a loud crash. Involved Civilian 3 stated he looked out of his front window and saw an officer “pinned down”<sup>15</sup> against the right side of his squad car and another vehicle which was slowly starting to move forward before hitting a parked white vehicle. Involved Civilian 3 explained the officer appeared to have been pinned by the waist.

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<sup>13</sup> Sister of Involved Civilian 1, DOB: XX/XX/2000. Involved Civilian 2’s father provided consent to CPD to conduct interview in the ERI. COPA attempted to interview Involved Civilian 2, but her father would not provide consent to COPA investigators to conduct an interview. COPA Major Case Specialist translated the Spanish speaking interview for this report.

<sup>14</sup> Att. #89

<sup>15</sup> Att. #43; minute 2:24 of 10:07

Involved Civilian 3 stated he observed the officer fall over and his partner run to assist and call for help. Involved Civilian 3 stated he was the only one home and, once he saw responding officers arrive to the scene, he stopped looking out the window.<sup>16</sup>

### 3. Involved Civilian 4

On September 10, 2017, IPRA conducted an **interview of Involved Civilian 4**, who resides in the second-floor apartment of XXXX N. Laramie Avenue. Involved Civilian 4 was home, watching television in his bedroom on the date of the incident when he heard “an altercation”<sup>17</sup> with unintelligible loud voices followed by gunshots. Involved Civilian 4 stated when he looked out of his front living room window, he saw a man on the ground holding something and scooting on the ground, yelling “Oh it hurts! Oh, it hurts!”<sup>18</sup>, while an officer ran over to the man and called for backup. Involved Civilian 4 also saw the Honda slowly move forward, as if it were in neutral, toward a white vehicle parked on the street. Involved Civilian 4 added that responding officers arrived and rushed to the aid of the driver of the Honda and placed him on the ground. Involved Civilian 4 stated paramedics arrived on the scene shortly after.<sup>19</sup>

#### b. Digital Evidence

**Officers A and B’s in-car camera** from September 10, 2017, depicts the officers on routine patrol driving eastbound on Grand and Leamington Avenues. As the officers approach Grand and Leclair Avenues, a silver Honda Pilot is seen at the light on Grand and Armitage Avenues, facing northwest on Grand Avenue, without its headlights on. The officers make a U-turn on Grand and Leclair Avenues, begin driving west on Grand Avenue then north on Leclair Avenue. The officers continue driving north on Leclair Avenue then turn west on Palmer Avenue, where the same Honda Pilot is observed heading east on Palmer Avenue.

The Honda Pilot appears to drive directly towards Officers A and B’s vehicle, and the CPD vehicle’s spotlight is shined towards the Honda Pilot. The Honda Pilot quickly turns south down an alley and appears to begin traveling at a high rate of speed. Officers A and B follow the Honda Pilot down the alley as well, still shining the spot light into the Honda Pilot.

The Honda Pilot turns west on Dickens Avenue then north on Laramie Avenue before suddenly turning west into a driveway at XXXX N Laramie Avenue and coming to a stop. Officer A stops the CPD vehicle facing northwest on Laramie Avenue, directly facing the Honda Pilot in the driveway. The Honda Pilot abruptly reverses into the CPD vehicle, striking the front right side of the CPD vehicle. Upon impact, the video also shows Officer B’s hand hit the front hood of the CPD vehicle while holding his service weapon.

The Honda Pilot continues in reverse turning the vehicle from facing west on Laramie Avenue to facing east on Laramie Avenue. The in-car camera video also depicts what appears to

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<sup>16</sup> Att. #43

<sup>17</sup> Att. #41; minute 2:38 of 14:51

<sup>18</sup> Att. #41; minute 3:56 of 14:51

<sup>19</sup> Att. #41

be Officer B being struck and pinned between the front passenger side of the Honda Pilot and the front right corner of the CPD vehicle. Officer B is then seen using his left hand, over his right shoulder, to shoot into the Honda Pilot. Officer B then taps on the hood of the CPD vehicle with his right hand, appearing to prompt Officer A to reverse and release him from between the two vehicles. The Honda Pilot slowly rolls forward and out of the frame of the video and Officer B collapses to the ground in front of the CPD vehicle. Responding officers quickly arrive and begin securing the scene.<sup>20</sup>

**Evidence Technician (ET) photographs** of the scene on September 10, 2017, were taken. In the photographs, the Honda Pilot has several dents near the front right corner and the passenger side of the vehicle and what appears to be a bullet hole in the driver's side, rear passenger door. Photos were taken of a lodged bullet in the front passenger door of the Honda and the shattered glass inside of the vehicle.

The photographs taken of Officers A and B's CPD vehicle show several dents. Additional photographs were taken inside of the first floor living room located at XXXX N Laramie Avenue, where Involved Civilian 2 witnessed the incident. Photographs were also taken inside of the first and second floor living rooms located at XXXX N Laramie Avenue where Involved Civilian 4 and Involved Civilian 3 witnessed the incident.

Photographs were also taken of Officer A and Officer B. The photographs of Officer B show injuries he sustained from the incident.<sup>21</sup>

### c. **Physical Evidence**

The **Medical Examiner Report #XXXXXX-XXXXX**, detailed the results of Involved Civilian 1's autopsy which was performed on September 11, 2017, by Doctor A. Involved Civilian 1's injuries included four (4) gunshot wounds. Involved Civilian 1 was found to have a Blood Alcohol Concentration (BAC) of 0.165 at his time of death. The medical examiner also recovered two (2) fired bullets from Involved Civilian 1's body. One projectile was recovered from his anterior mediastinum and the second projectile from the left side of the back. The cause of death was determined as multiple gunshot wounds and the manner of death was homicide.<sup>22</sup>

The **Medical Records for Officer B** detailed the injuries that Officer B sustained and the treatment he received at Hospital A. According to the medical records, Officer B was treated for a "crush injury" and his injuries included bilateral shin and knee pain. Officer B was treated by Doctor B and discharged with an ace wrap on his right knee and prescribed pain medication.<sup>23</sup>

The **Crime Scene Processing Report #XXXXXX** documents five bullet casings were found and recovered at the scene.<sup>24</sup> All of the recovered casings were 9mm Luger. The first

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<sup>20</sup> Att. #59

<sup>21</sup> Att. #45

<sup>22</sup> Att. #66

<sup>23</sup> Att. #87

<sup>24</sup> During the processing of Officer B's weapon (Att. #27), it was reported that his duty weapon (Glock 17, 9mm) contained a total of twelve (12) unfired rounds and has a capacity of seventeen (17; 16 in the magazine and 1 in the chamber).

expended shell casing was recovered from the street pavement near the curb at XXXX N. Laramie. The second was recovered from the street pavement, just under the front driver's side bumper of the CPD vehicle. The third was recovered from the street pavement, just under the front passenger side door of the CPD vehicle. The fourth was recovered from the passenger side windshield wiper blade of the CPD vehicle. The fifth was recovered from the driver's side windshield wiper housing of the CPD vehicle.<sup>25</sup>

**d. Documentary Evidence**

The Office of Emergency Management and Communications **Event Query Report #XXXXXXXXXX** indicates that Officer B provided a physical description of a male, Hispanic with short black hair, as well as the description of a silver Honda Pilot to dispatch. The report also indicates that Officer A reported shots fired by police to dispatch.<sup>26</sup>

The **OEMC transmission** from Beat XXXXX reported a "car driving erratically"<sup>27</sup> and not stopping for police. The reporting officer provided a description of the vehicle (Silver Honda Pilot) and its direction of travel as well as a description of the driver. The reporting officer also confirmed traveling behind the silver Honda Pilot before suddenly reporting "shots fired by police."<sup>28</sup>

An officer then reported his partner had been hit by a vehicle but did not specify which vehicle. The OEMC dispatcher confirmed with Beat XXXXX that the offender was "down" and advised that two ambulances were in route to the scene.

The **Original Incident Case Report and Tactical Response Report for RD #XXXXXXXXXX** documents that on September 10, 2017, at approximately 12:50 a.m. the offender, Involved Civilian 1, struck Officer B with his vehicle, pinning Officer B between Involved Civilian 1's vehicle and the marked squad car.<sup>29</sup>

The **Traffic Crash Report for RD #XXXXXXXXXX** documents that on September 10, 2017, at approximately 12:50 a.m., Involved Civilian 1 backed his vehicle into Officer B causing him to be pinned between the police vehicle and the offending vehicle. The traffic crash report further indicates that this incident caused damage to the right front and right front fender of the police vehicle.<sup>30</sup>

The **Major Incident Notification Report** documents Involved Civilian 1 struck Officer B with his vehicle, and Officer B discharged his weapon fatally wounding Involved Civilian 1.<sup>31</sup>

**Illinois State Police (ISP) Forensic Science Laboratory Reports** document the examination of the recovered ballistic evidence in comparison to the firearm belonging to Officer

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<sup>25</sup> Att. #99

<sup>26</sup> Att. #49

<sup>27</sup> Att. #60; minute 1:29 of 1:01:11

<sup>28</sup> Att. #60; minute 2:22 of 1:01:11

<sup>29</sup> Att. #3, Att. #4

<sup>30</sup> Att. #16

<sup>31</sup> Att. #113



B. It was determined that the two (2) recovered fired bullets (recovered by the medical examiner) were 9mm/38 class caliber and exhibited a right-hand twist. The fired bullets are consistent with having six land and groove impressions and possible polygonal rifling. Furthermore, the two (2) recovered fired bullets could not be identified or eliminated as having been fired from the same firearm. Therefore, they could not be identified as having been fired from Officer B's firearm.

Officer B's Glock 17, Gen 4, 9mm semi-automatic pistol; Serial Number XXXXXX, was received operable and test fired. The firearm has rifling characteristics of six polygonal lands and grooves with a right-hand twist.<sup>32</sup>

## VI. ANALYSIS

### a. Legal Standard

#### 1. Deadly Force

The applicable Chicago Police Department's General Order is 03-02-03, II,<sup>33</sup> which states; A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or;
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
  - b. is attempting to escape by use of a deadly weapon or; otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

Additionally, General Order G03-02-03 Deadly Force, Section III, (E) applies. This section of General Order G03-02-03 prohibits Department members from firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person. Finally, General Order 03-02-03, Section IV, titled "Affirmation of Protection of Life Policy" states that "[s]worn members will not unreasonably endanger themselves or another person to conform to the restrictions of this directive."

Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of*

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<sup>32</sup> Atts. #74, 75

<sup>33</sup> This report references the version of General Order 03-02-03 II in effect on the date of the incident. The Department subsequently amended its use of force directives.

*Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). The analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020; see also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003).

## 2. Preponderance of the Evidence

The standard of proof in administrative cases investigated by COPA is a preponderance of the evidence. A preponderance of evidence can be described as evidence that makes it more likely than not that the alleged misconduct took place. 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). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred than that it did not occur, even if by a narrow margin, then the standard of proof has been met.<sup>34</sup>

### b. Legal Analysis

The evidence demonstrates that Officer B discharged his firearm five (5) times into the Honda Pilot and at Involved Civilian 1. The evidence demonstrates that Officer B's actions were objectively reasonable in light of the facts and circumstances confronting him.

#### 1. Officer B reasonably believed that deadly force was necessary to prevent Involved Civilian 1 from causing death or great bodily harm to himself

There is a preponderance of evidence showing that Officer B reasonably believed that deadly force was necessary to prevent Involved Civilian 1 from causing death or great bodily harm to himself. Officer B's statement to COPA investigators was materially corroborated by Officer A's statement to IPRA investigators, Involved Civilian 3's statement to IPRA investigators, Involved Civilian 4's statement to IPRA investigators, Involved Civilian 2's statement to CPD officers, the In-Car Camera Footage, and the physical evidence. The evidence clearly demonstrates that the Honda Pilot reversed rapidly striking Officer B and that Officer B was pinned between the Honda Pilot and his CPD vehicle. Furthermore, the evidence demonstrates that the Honda Pilot

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<sup>34</sup> In criminal cases the standard of proof is beyond a reasonable doubt, which is a significantly higher evidentiary standard than the preponderance of the evidence standard that applies to COPA's administrative findings. Furthermore, COPA may rely on the compelled statement of Officer B in its analysis which would be inadmissible in a criminal case. See *Garrity v. New Jersey*, 385 U.S. 493 (1967).

continued to reverse while Officer B was pinned between the Honda Pilot and his CPD vehicle. Officer B credibly explained that he felt the Honda Pilot pulling him downward as it continued to reverse with his legs pinned and that he believed the Honda Pilot would kill him unless he immediately stopped the vehicle by discharging his firearm. There is no evidence that Officer B had any other realistic or viable alternative to stop the Honda Pilot other than by discharging his firearm at the driver, Involved Civilian 1. Under the totality of the circumstances, it was objectively reasonable for Officer B to believe that the use of deadly force was necessary to prevent his own death or great bodily injury.

**2. Involved Civilian 1's Vehicle was the Only Force Used Against Officer B**

There is no evidence that Involved Civilian 1 possessed a firearm or any other weapon during the incident. Thus, the evidence demonstrates that the only force Involved Civilian 1 used against Officer B was the Honda Pilot he was driving.

**3. Conforming to the General Order G03-02-03(III)(E) prohibition on Firing at or Into a Moving Vehicle Would Have Unreasonably Endangered Officer B**

CPD General Order 03-02-03 must be interpreted sequentially and as a whole. Section III of General Order 03-02-03 unambiguously and explicitly prohibits officers from “[f]iring at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person.”<sup>35</sup> In other words, even when the use of deadly force is otherwise justified and permitted pursuant to Section II of General Order 03-02-03, Section III still prohibits officers from firing at or into a moving vehicle when the vehicle itself is the only force used against the officer or another person. Finally, Section IV of General Order 03-02-03 provides that officers shall not *unreasonably* endanger themselves or another person in order to comply with the prohibitions contained in Section III.<sup>36</sup> In other words, CPD officers do not have to comply with Section III of General Order 03-02-03's prohibitions when the failure to use their firearm would unreasonably endanger the officer or another person.

The exception to the prohibition on firing into moving vehicles contained in Section IV of General Order 03-02-03 must be read in context of General 03-02-03 as a whole.<sup>37</sup> Unlike Section II which permits the use of deadly force when the officer *reasonably* believes deadly force is necessary to prevent death or great bodily harm to the sworn member or to another person, Section IV applies only when the officer's failure to use deadly force would *unreasonably* endanger the officer or a third party.<sup>38</sup> This inverted phrasing is not accidental and it is a tenant of statutory interpretation that “[e]ach word, clause, and sentence should be given effect so as not to be

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<sup>35</sup> General Order 03-02-03(III)(E).

<sup>36</sup> *Id.*

<sup>37</sup> See *Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 188 (1990) (“[I]n ascertaining the meaning of a statute, the statute should be read as a whole with all relevant parts considered.”). Courts apply the same rules of construction to administrative rules and regulations as they do to statutes. *Hetzer v. State Police Merit Board*, 49 Ill. App. 3d 1045, 1047 (1977).

<sup>38</sup> Notably, Section IV also does not include any language that tracks the second prong of Section II which permits officers to use deadly force to prevent an arrest from being defeated by resistance or escape under specified circumstances.

rendered superfluous.” *Chicago Teacher’s Union, Local No. 1. v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 15. Furthermore, the Superintendent specifically modified General Order 03-02-03 to remove language that permitted officers to fire into a moving vehicle simply to prevent death or seriously bodily injury to an officer or another person.<sup>39</sup>

To apply the exception to the prohibition on firing at or into a moving vehicle broadly would make the prohibition entirely meaningless. The use of a vehicle as force inevitably puts officers and civilians at risk of death or great bodily harm. The exception would swallow the rule. COPA will not interpret General Order 03-02-03 to make the prohibition on firing at or into a moving vehicle superfluous.<sup>40</sup> Read in context, the exception applies narrowly to cases where specific, unusual facts and circumstances demonstrate that complying with the prohibition would *unreasonably* endanger the officer or another person.

Nonetheless, the situation that confronted Officer B is a case where specific, unusual facts and circumstances demonstrate that Officer B would have unreasonably endangered himself by not firing into Involved Civilian 1’s vehicle.

First, Officer B had no realistic possibility of moving out of the way of Involved Civilian 1’s vehicle or finding protective cover. The evidence demonstrates that the Honda Pilot reversed at a high rate of speed and that Officer B did not have the opportunity or time to move out of the way. Officer B credibly stated that he attempted to jump onto the hood of his police vehicle, but that he was unable to do so prior to being hit. Although Officer B is not clearly visible in the in-car camera footage immediately prior to being struck, the footage reflects that Officer B’s upper body was on the hood of his squad car after the Honda Pilot struck him. However, Officer B could not move out of the way of the Honda Pilot as it continued to reverse at a high rate of speed because his legs were pinned between the Honda Pilot and his CPD vehicle. In other words, at the time Officer B discharged his firearm, he was physically trapped.

Second, Officer B had to make a split-second judgment under circumstances that were particularly tense, uncertain, and rapidly evolving. There is no evidence to demonstrate that Involved Civilian 1 was in the process of stopping or even slowing down at the time Officer B discharged his firearm. Indeed, all the evidence demonstrates that Involved Civilian 1 was continuing to attempt to escape in a reckless fashion and at a high rate of speed until Officer B discharged his firearm at Involved Civilian 1.

For these reasons, the specific, unique circumstances that confronted Officer B justified Officer B firing into the Honda Pilot at Involved Civilian 1 despite the general prohibition contained in General Order 03-02-03. Importantly, Officer B quickly stopped firing after the Honda Pilot ceased moving (i.e. the Honda Pilot no longer posed a threat of death or great bodily injury) as required by CPD General Order 03-02-03. Furthermore, Officer B knew that Involved Civilian 1, the driver of the Honda Pilot, was the only occupant of the Honda Pilot at the time he

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<sup>39</sup> Compare CPD General Order 03-02-03 (effective date 10 February 2015) to CPD General Order 03-02-03 (effective date 1 October 2002).

<sup>40</sup> See *Kraft, Inc.*, 138 Ill. 2d at 188 (“A statute should be construed so that no word or phrase is rendered superfluous or meaningless.”).

discharged his firearm. Therefore, Officer B’s use of deadly force did not put other civilians at risk.

Accordingly, Officer B’s use of deadly force was objectively reasonable and complied with CPD policy.

**VII. CONCLUSION**

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding</b>
Officer B	No allegation of misconduct	Use of deadly force was within CPD policy.

Approved:

\_\_\_\_\_  
COPA Chief Administrator  
*Chief Administrator*

\_\_\_\_\_  
Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	X
<b>Major Case Specialist:</b>	COPA Major Case Specialist
<b>Acting Supervising Investigator:</b>	COPA Acting Supervising Investigator
<b>Deputy Chief Administrator:</b>	COPA Deputy Chief Administrator