

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	November 20, 2018
Time of Incident:	10:57 am
Location of Incident:	1625 W 87 th St., Chicago, IL 60620
Date of COPA Notification:	November 20, 2018
Time of COPA Notification:	11:38 am

On November 20, 2018, at approximately 11:00 am, Officers Fernando Soto and Luis Escobedo were patrol near the intersection of 87th Street and South Ashland Avenue when they observed a young male, ██████████ acting suspiciously and shifting an object within his clothing. Officer Soto attempted to perform a field interview of ██████████ while Officer Escobedo followed in their police SUV.

As Officer Soto approached, ██████████ ran northwest on 87th Street. Officer Soto pursued ██████████ on foot and saw that he was armed with a handgun. ██████████ crossed diagonally to the south side of 87th Street and was cut off by Officer Escobedo in the SUV. ██████████ then produced a handgun and discharged it, striking Officer Soto, who was struck in the back of his ballistic vest. Officer Soto then discharged his firearm toward ██████████ and struck him once in the neck. ██████████ was placed into custody and received medical attention. ██████████ firearm was recovered at the scene.

II. INVOLVED PARTIES

Involved Officer #1:	Officer Fernando Soto, Star #12313, Employee ID # ██████████, DOA: September 1, 2010, Unit: 006/606, Male, Hispanic.
Involved Individual #1:	██████████ ██████████ 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 in a person's direction or where a person sustains serious bodily injury as a result of police action. During its investigation of this incident, COPA did not find evidence to support allegations of excessive force related to Officer Soto's firearm discharge.

IV. APPLICABLE RULES AND LAWS

General Orders

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1. GO 03-02: Use of Force (effective October 16, 2017 – February 29, 2020)
 2. GO 03-02-01: Force Options (effective October 16, 2017 – February 29, 2020)

V. INVESTIGATION¹

a. Interviews

An **Electronic Recorded Interview** (ERI) of ██████████ taken at Area South Detective Division documents Detective Hines presenting ██████████ with a photo line-up. ██████████ made an identification.

Additionally, ██████████ told detectives that the male that walked past his vehicle was wearing a black jacket with DKNY on the sleeve. ██████████ was a passenger with two co-workers in a vehicle on Ashland Avenue waiting to turn westbound onto 87th Street. At that time, a young black male, ██████████ walked past his vehicle and into traffic. ██████████ vehicle turned onto 87th Street and saw ██████████ running from Officer Soto. ██████████ vehicle stopped on 87th Street, approximately thirty feet from the incident. ██████████ heard Officer Soto yelling, "stop, police," as he chased ██████████ across and back of 87th Street while the Officer Escobedo, in the police SUV, blocked the path of flight of ██████████

Officer Soto cornered ██████████ against the fence. At that time, ██████████ pulled a firearm from his waistband, aimed at Officer Soto, and fired four to six shots. Officer Soto turned sideways, displaying his back, and returned fire at ██████████ Officer Escobedo exited and fired several shots at ██████████ heard Officer Escobedo calls out to Officer Soto and ask if he was ok. ██████████ heard Officer Soto say that he was hit in the back. Officer Escobedo went to ██████████ and placed him in handcuffs.

An **ERI** of ██████████³ taken by Detectives Don Clark, Anthony Green, and Gregory Andras. ██████████ was standing at the bus stop on 87th Street by the bank and saw a police vehicle driving westbound and then saw Officer Soto chasing ██████████ towards a fence. ██████████ then took out a firearm from his jacket pocket and shot at Officer Soto twice. Officer Soto returned shot two or three times. ██████████ saw ██████████ fall to the ground. Officer Escobedo exited the police SUV and handcuffed ██████████ Officer Escobedo then checked on Officer Soto, and ██████████ saw him looking at Officer Soto's back.

An **ERI** of ██████████⁴ was taken on scene by Detective Brian Tedeschi. ██████████ was a passenger in a vehicle with two co-workers. As his vehicle turned onto 87th Street, he saw ██████████ being chased on foot by Officer Soto on the north side of 87th. A police SUV followed and forced ██████████ to cross to the south side of the street. The police SUV then cut off ██████████ which made him turn back east. ██████████ pulled out a silver-colored firearm from his

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

² Att. 39; *also see* Att. 59, pgs. 21 and 22.

³ Att. 40; *also see* Att. 59, pg. 19.

⁴ Att. 41; *also see* Att. 59, pgs. 18 and 19.

jacket and shot at Officer Soto, who was chasing him on foot. Officer Soto then shot back at [REDACTED]

In a **statement to COPA** on December 7, 2018, **Officer Fernando Soto**⁵ stated that he and Officer Luis Escobedo were patrolling the southwest end of the 6th District, known for gang conflicts. While in traffic, Officer Soto observed [REDACTED] walking through a gas station parking lot towards 87th Street and Ashland Avenue intersection. As [REDACTED] observed the officers, he redirected his travel and held his hands in his pockets.

[REDACTED] walked westbound and in front of another vehicle while looking down at his waistband and over his shoulder at Officers Soto and Escobedo. [REDACTED] continued to walk to the southwest corner while holding his waistband and looking toward the officers. While Officer Escobedo drove westbound on 87th Street, Officer Soto observed that [REDACTED] walk towards the bus stop on the southwest corner and kept visual on the location. Officer Soto told Officer Escobedo that he believed [REDACTED] possessed a firearm or other illegal contraband. Officer Escobedo drove westbound, made a U-turn to return to the bus stop, and observed [REDACTED] walking westbound on 87th Street.

Officer Soto remarked to Officer Escobedo that [REDACTED] appeared young. Officer Soto exited the police SUV, approached [REDACTED] on foot, and identified himself as a police officer. Officer Soto asked [REDACTED] his age and observed what appeared to be a heavy-weighted cylindrical object in his jacket pocket.⁶ Officer Soto pointed to [REDACTED] pocket and asked him what the object was. [REDACTED] fled westbound on foot. Officer Soto called out to Officer Escobedo that [REDACTED] was running as he began to chase [REDACTED]. [REDACTED] ran diagonally in a northwest direction across 87th Street. Officer Soto saw [REDACTED] digging in his clothing and saw [REDACTED] elbow moving up and down as if attempting to pull out an object.⁷

Officer Soto screamed to Officer Escobedo, "it's a gun, it's a gun," but he was not sure if Officer Escobedo heard him.⁸ Officer Soto saw the police SUV pass their position and make a U-turn as [REDACTED] ran diagonally to the south of 87th Street and turn eastbound after being blocked by the SUV. At this point, Officer Soto ran across 87th Street to intercept [REDACTED]. Officer Soto, fifteen to twenty feet away, saw [REDACTED] pulling out an object, prompting him to draw his firearm and turn away from [REDACTED] to create distance and blade⁹ himself. [REDACTED] pointed and discharged his firearm toward Officer Soto at least once. Officer Soto saw a muzzle flash and felt a bullet strike him in the back.¹⁰ Officer Soto discharged his firearm four times toward [REDACTED] saw [REDACTED] collapse, and drop the firearm. Officer Soto knelt on the sidewalk next to [REDACTED] firearm, where it was recovered.

⁵ Atts. 47 (audio) and 48 (transcript).

⁶ Att. 48, pg. 9.

⁷ Att. 48, pg. 11.

⁸ Att. 48, pg. 11.

⁹ Blading is a tactical positioning technique to make oneself a smaller target by turning sideways towards the direction of the threat.

¹⁰ Att. 48, pgs. 11 and 12.

In a **statement to COPA** on December 7, 2018, **Officer Luis Escobedo**¹¹ said that he and Officer Soto were on patrol in an unmarked SUV. As Officer Escobedo drove westbound on 87th Street, they stopped at the corner of Ashland Avenue for a red light. While stopped Officer Escobedo observed [REDACTED] walking towards the intersection with his right hand in his jacket pocket and held tight against his body. As [REDACTED] walked towards his SUV to cross the street he appeared to realize the unmarked SUV was a police vehicle, and abruptly turned around and walked away. [REDACTED] crossed the street and looked over his shoulder to see the Officers' position. As [REDACTED] moved to the south side of 87th Street and Ashland Avenue, he looked over his shoulder again. [REDACTED] removed his right hand from his pocket but covered the area with his left hand as he walked towards the bus stop on the southwest corner. Officer Escobedo believed [REDACTED] movements were suspicious, given that the area is known for violent gang conflicts and recent homicides.

Officer Escobedo drove westbound after the light turned green and made a U-turn to conduct a field interview of [REDACTED]. However, [REDACTED] had left the bus stop and was walking westbound on the south side of 87th Street. Officer Soto exited the vehicle's passenger side and attempted to speak with [REDACTED]. Officer Escobedo heard Officer Soto yell that [REDACTED] was running and saw them both running westbound. Officer Escobedo made another U-turn and followed.

Officer Escobedo saw Officer Soto and [REDACTED] cross northwest over 87th Street and continue westbound on the north side of the street. At this time, Officer Escobedo saw [REDACTED] digging into his clothes which caused him to believe [REDACTED] was trying to retrieve a gun from his waistband. [REDACTED] then crossed back to the south side of 87th Street, and Officer Escobedo made another U-turn to cut off his path. [REDACTED] turned and began to run eastbound on the sidewalk, where he exchanged gunfire with Officer Soto. Officer Escobedo saw two muzzle flashes from [REDACTED] firearm, recalled that Officer Soto fired three to four times in return, saw [REDACTED] fall to the sidewalk and drop his firearm.¹²

Officer Escobedo exited the police vehicle and handcuffed [REDACTED]. Officer Soto knelt on the sidewalk and told him that [REDACTED] firearm was lying nearby and that he was shot and hit in the back.¹³ Officer Escobedo came to aid Officer Soto and saw one bullet entry hole in the rear of his vest. Officer Escobedo then returned to aid [REDACTED] and saw an exit wound to the right side of his neck. Officer Escobedo requested medical assistance. Sergeant Kevin Sellers arrived and applied gauze from his medical kit to [REDACTED] neck.

In a **statement to COPA**¹⁴ on December 20, 2018, **Sergeant Kevin Sellers** said that he was near 87th Street and Ashland Avenue when he heard the transmission of a foot pursuit by officers in the area. At some point, Sergeant Sellers heard one of the officers say they were on 86th Street over the radio, and he drove towards the location. As Sergeant Sellers neared the location, he heard another radio transmission to the effect that an officer was shot. Sergeant Sellers turned westbound onto 87th Street and saw Officers Soto and Escobedo, and [REDACTED] on the south

¹¹ Atts. 45 (audio) and 46 (transcript).

¹² Att. 46, pgs. 11 and 13.

¹³ Att. 46, pgs. 11 and 12.

¹⁴ Atts. 43 (audio) and 44 (transcript).

side of the street. Sergeant Sellers exited his vehicle and checked the condition of Officer Soto, who did not appear to be critically wounded. He then administered aid to [REDACTED] by placing QuickClot¹⁵ gauze on the wound on his neck, which was bleeding significantly. Sergeant Sellers radioed for two ambulances and directed responding officers to cordon off the crime scene.

b. Digital Evidence

OEMC Radio Transmissions¹⁶ from Zone 8 and Zone 9 document the reports of a foot pursuit, [REDACTED] being armed, the exchange and report of gunfire between [REDACTED] and Officer Soto, and a request for medical treatment for [REDACTED]

Evidence Technician Photographs¹⁷ documented the crime scene, recovered weapon,¹⁸ [REDACTED] in the hospital,¹⁹ Officer Soto,²⁰ the damage to Officer Soto's vest,²¹ and the recovered projectile from Officer Soto's vest.²²

A **Red Light Camera**²³ video captured the initial encounter between Officers Soto and Escobedo and [REDACTED] and the resulting foot pursuit. However, it does not capture the exchange of gun fire.

The **Body-Worn Camera of Officer Soto**²⁴ captured the incident and depicted Officer Soto exiting the passenger side of the police SUV and approaching [REDACTED] Officer Soto pointed to [REDACTED] pocket, to which [REDACTED] began to run. Officer Soto pursued [REDACTED] across 87th Street and west along the north sidewalk. [REDACTED] changes direction and cuts across 87th Street to the south. [REDACTED] flight was blocked by Officer Escobedo in the police SUV causing [REDACTED] to run east towards Officer Soto.

Officer Soto appeared to run parallel and away from [REDACTED] raised his arm toward Officer Soto, and a smoke cloud was visible from the discharge.²⁵ Several simultaneous gunshots are heard, and Officer Soto stated he was hit.²⁶ Officer Soto continued to the sidewalk and knelt over [REDACTED] firearm. Officer Escobedo exited the SUV and placed [REDACTED] into custody.

The **Body-Worn Camera of Officer Escobedo**²⁷ captured [REDACTED] lying on the sidewalk with a large amount of blood on his neck. Sergeant Sellers knelt beside [REDACTED] and applied a bandage to the wound.

¹⁵ QuickClot is the brand name for a hemostatic dressing that contains an agent that promotes blood clotting.

¹⁶ Att. 33.

¹⁷ Att. 53.

¹⁸ Att. 53, pg. 47.

¹⁹ Att. 53, pgs. 54 to 67.

²⁰ Att. 53, pgs. 87 to 89; 92 to 97.

²¹ Att. 53, pgs. 70 to 80; 90 and 91.

²² Att. 53, pgs. 68 to 70.

²³ Att. 34, file 20181120_105500.

²⁴ Att. 38, file Soto_AXON_Body_2_Video_2048-11-20_1056.

²⁵ Att. 38, file Soto_AXON_Body_2_Video_2048-11-20_1056 at 00:49.

²⁶ Att. 38, file Soto_AXON_Body_2_Video_2048-11-20_1056 at 00:50.

²⁷ Att. 38, file Escobedo - AXON_Body_2_Video_2018-11-20_1059.

A **Cell Phone Video**²⁸ from November 30, 2018, depicts Detective Tedeschi attempting to interview ██████████ who was lying in a hospital bed and wearing a neck brace. ██████████ informed Detective Tedeschi that he was suicidal, that the officers should have killed him, and his intent was to go to his residence to kill himself.²⁹

c. Documentary Evidence

The **Synoptic Report**³⁰ state that Officer Soto did not have any drugs or alcohol in his system.

The **Medical Records**³¹ for ██████████ document his admission to the emergency room on November 20, 2018, with a gunshot wound to the neck, a laceration to the left cheek, a nasal fracture, a spine fracture, and a spinal cord contusion. There were several pertinent entries made by attending medical staff:

██████████, ██████████, and ██████████, completed a consultation with ██████████ and documented that ██████████ reported he planned to die last night, which influenced his decision to fire a gun. ██████████ presented indication of current suicidal ideation with a desire to die. ██████████ was documented stating; I wished they killed me.³²

██████████ completed a consultation with ██████████ and documented ██████████ said as he was walking a police truck approached him. ██████████ remembered police asked him what was in his pocket, that he ran from the police, and thought the officers would probably shoot him. ██████████ denied recollection of being shot or shooting anyone else. When discussing why he is in police custody, ██████████ became distraught to learn he allegedly shot a police officer. ██████████ confirmed he did not care if he was shot and wished he had died.³³

██████████, and ██████████ completed a consultation with ██████████. During ██████████ interaction with police, ██████████ said he knew it was a life-or-death situation. He denied intending to get shot per se, but he remembers thinking, they might as well take me out.³⁴

The **Arrest Report**,³⁵ **Original Case Incident Report**,³⁶ **Detective Supplementary Report**,³⁷ and **Crime Scene Processing Report**³⁸ detailed that Officers Soto and Escobedo observed ██████████ walking westbound with his right hand in his jacket pocket and

²⁸ Att. 42.

²⁹ Att. 42 at 00:24; 00:35; and 04:16.

³⁰ Att. 50.

³¹ Att. 52.

³² Att. 52, Page 141.

³³ Att. 52, Pages 143-144.

³⁴ Att. 52, Page 192.

³⁵ Att. 6.

³⁶ Att. 7.

³⁷ Att. 59.

³⁸ Att. 18.

immediately changed his direction once alerted to the Officers' presence. [REDACTED] then continued to walk westbound and looked several times over his right shoulder at the Officers. [REDACTED] then removed his right hand from his pocket and used his left hand to retain an object along his waist area.

The Officers believing [REDACTED] to be armed with a firearm, approached him for a field interview. The Officers announced their office, and the [REDACTED] fled on foot. During the foot pursuit, [REDACTED] raised a firearm toward Officer Soto and fired in his direction, striking Officer Soto in the back of his vest. Officer Soto returned fire, striking [REDACTED]. The weapon used by [REDACTED] was a chrome plated finish colt cobra 38 special six-shot revolver serial [REDACTED] with three live rounds. Three spent casings were located and recovered on the scene.

[REDACTED] spoke with the detectives and said that he found the gun used in the incident in an alley on 87th and Ashland near two dumpsters. [REDACTED] stated that he put the gun in his jacket's right front pocket and walked to the gas station to purchase "swishers"⁴⁰ because he wanted to smoke marijuana. [REDACTED] stated that he heard a person yell from a nearby car at some point as he was walking. [REDACTED] stated that he saw a male exit from the car, which he knew was the police. [REDACTED] stated that Officer Soto tried to stop him, but he fled on foot to get away. [REDACTED] said that initially he did not pull the gun from his pocket because the police could grab it.

[REDACTED] stated that as he was running away from Officer Soto, he pulled the gun from his pocket and pointed and fired at Officer Soto. [REDACTED] said that he shot first and hoped Officer Soto would shoot him in return because his life is not good since a close friend was murdered.

[REDACTED] stated that he recalled feeling pain and falling to the ground after he fired at Officer Soto. [REDACTED] stated that he recalled waking up in the hospital after regaining consciousness.

Detective Tedeschi completed an initial interview with [REDACTED] before completing a recorded statement. COPA Investigator Adam Burns was present during the interview.⁴¹

The **OEMC Event Queries**⁴² detail the initial report of the foot pursuit, the ultimate exchange of gunfire, and requests for additional units and medical assistance.

Officer Soto's **Tactical Response Report**⁴³ detailed [REDACTED] actions as not following verbal direction, fleeing, physical attack with a gun, imminent threat of a battery with a gun, and using force likely to cause death or great bodily harm by shooting at Officer Soto. Officer Soto detailed his response as member presence, verbal direction and control techniques, tactical

³⁹ Att. 59, Page 16.

⁴⁰ Cigars commonly used to roll and smoke marijuana.

⁴¹ [REDACTED] attorney denied COPA's requests for a statement. Att. 54.

⁴² Atts. 9 to 11.

⁴³ Att. 8.

positioning, and additional unit members. Officer Soto detailed his force as four discharges of his semi-automatic weapon.

Finally, the TRR detailed all the required notifications and that Sergeant Nicholas Vasselli determined that Officer Soto's weapon discharge complied with Department policy.

VI. LEGAL STANDARD

The applicable standard of proof is preponderance of the evidence. A **preponderance of evidence** has been satisfied when the evidence indicates that it is more likely than not that the conduct occurred and violated Department policy. If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

VII. ANALYSIS AND CONCLUSION

a. Applicable Department Policies

i. G03-02: Use of Force⁴⁴

The Department's highest priority is the sanctity of human life. In all aspects of their conduct, Department members will act with the foremost regard for the preservation of human life and the safety of all persons involved. 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.⁴⁵

Factors to be considered by the officer include but are not limited to: whether the subject is posing an imminent threat to the officer or others; the risk of harm, level of threat or resistance presented by the subject; and the subject's proximity or access to weapons.

Department members will use only the force that is proportional to the threat, actions, and level of resistance offered by a subject. This may include using greater force or a different type of force than that used by the subject. The greater the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that maybe necessary to overcome it. When or if the subject offers less resistance, however, the member will decrease the amount or type of force accordingly.

Deadly force is force by any means that is likely to cause death or great bodily harm. It includes but is not limited to: firing of a firearm in the direction of the person to be arrested; firing of a firearm at a vehicle in which the person to be arrested is riding; intentional striking of a subject's head with an impact weapon; and application of a chokehold, defined as applying direct pressure to a person's trachea (windpipe) or airway (front of the neck) with the intention of reducing the intake of air.

⁴⁴ G03-02, Use of Force, effective October 16, 2017, to February 29, 2020.

⁴⁵ *Id.* at (III)(B)(1).

A threat is imminent when it is objectively reasonable to believe that: the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; the subject has the means or instruments to cause death or great bodily harm; and the subject has the opportunity and ability to cause death or great bodily harm.

ii. G03-02-01: Force Options⁴⁶

Per Department policy, all uses of force must be objectively reasonable, necessary under the circumstances, and proportional to the threat, actions, and level of resistance offered by a subject.

An assailant is a subject who is using or threatening the use of force against another person or themselves which is likely to cause physical injury. Assailants are divided into two categories: (1) a subject whose actions are aggressively offensive with or without weapons; and (2) a subject whose actions constitute an imminent threat of death or great bodily harm to a Department member or to another person. When dealing with an assailant whose actions constitute an imminent threat of death or bodily harm, Department policy authorizes the use of firearms and other deadly force responses.

b. Analysis

A preponderance of the evidence demonstrates that Officer Soto's use of deadly force was objectively reasonable in light of the totality of circumstances he faced in this incident. Officer Soto's use of deadly force was a last resort and was necessary to prevent the imminent threat of death or great bodily harm presented by ██████████. Based upon the below factors, COPA finds that ██████████ posed an imminent threat of death or great bodily harm.

First, it was objectively reasonable for Officer Soto to believe that ██████████ actions were immediately likely to cause death or great bodily harm to unless action was taken. Here, as Officer Soto pursued ██████████ he and Officer Escobedo observed ██████████ attempting to remove a heavy object from his pocket. Further, as ██████████ was cornered near the fence, he produced a firearm and discharged it at Officer Soto striking him the back. Officer Soto's firearm discharge was in direct response to ██████████ firing at him.

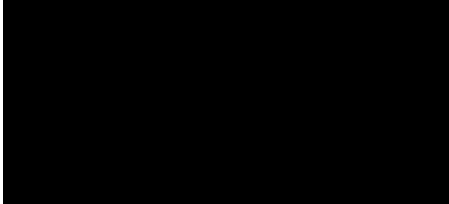
Second, it was objectively reasonable for Officer Soto to believe that ██████████ had the means or instruments to cause death or great bodily harm. Officer Soto was directly aware that as ██████████ fled he acted in a manner consistent with an armed person. Once ██████████ was cornered he fired directly and struck Officer Soto. The interviews, documentary, and digital evidence support a conclusion that ██████████ had a gun and fired it at Officer Soto.

Third, it was objectively reasonable for Officer Soto to believe that ██████████ had the opportunity and ability to cause death or great bodily harm. Officer Soto saw ██████████ shooting at him and was struck with by the gun fire. The interviews, documentary, and digital evidence support that ██████████ fired at Officer Soto which prompted Officer Soto to discharge his weapon.

⁴⁶ G03-02-01, Force Options, effective October 16, 2017, to February 29, 2020.

Based on the analysis set forth above, COPA finds that Officer Soto’s use of deadly force in this incident was authorized under Department policy.

Approved:



Matthew Haynam
Deputy Chief Administrator – Chief Investigator

12/16/2022

Date



Andrea Kersten
Chief Administrator

12/16/2022

Date