

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	May 3, 2019
Time of Incident:	8:12 pm
Location of Incident:	3715 W. Division Street
Date of COPA Notification:	May 3, 2019
Time of COPA Notification:	10:14 pm

On May 3, 2019, Officers Timothy Black and Anthony Soria, wearing plainclothes, were on routine patrol in an unmarked police vehicle in the vicinity of 3715 W. Division Street when they heard gunshots and saw muzzle flashes in the Subway parking lot at 3661 W. Grand Avenue. They observed an unknown person (hereinafter “unknown suspect”) shoot an individual, now known to be [REDACTED]. The officers continued eastbound on Division Street and heard more gunfire and observed additional muzzle flashes. When the officers arrived in the vicinity of Division Street and Lawndale Avenue, the unknown suspect ran southbound in front of their vehicle, toward Lawndale Avenue. Officer Black, who was in the passenger seat, exited the squad car and pursued the unknown suspect on foot. Officer Soria followed behind them in the squad car.

The unknown suspect ran southbound on Lawndale Avenue and then westbound in the first alley, parallel to Division Street. The unknown suspect then turned southbound into the connecting alley, parallel between the streets of Lawndale and Ridgeway. Officer Black continued pursuing the unknown suspect on foot, as Officer Soria drove toward their location in the squad car. The unknown suspect then ran toward the passenger side of a silver Nissan (hereinafter “Nissan”) parked in the alley near 1132 N. Lawndale Avenue. There was another unknown person in the driver's seat of the Nissan. As the unknown suspect entered the Nissan, Officer Black grabbed him; they briefly struggled, which caused Officer Black to fall on the ground. Officer Soria arrived at the intersection of the alleys, parked the squad car, and exited the vehicle. Officer Soria ran toward Officer Black and the unknown suspect, at approximately the same time Officer Black fell to the ground. Officer Soria looked through the rear window of the Nissan and believed the unknown suspect was in the process firing a weapon at Officer Black. Officer Soria unholstered his gun and fired once at the unknown suspect. Officer Black heard the shot and believed the unknown suspect fired a weapon at him, hence he fired his weapon at the unknown suspect. The unknown suspect fled in the silver Nissan. The officers immediately made notification of the shots fired over the radio. The unknown suspect was never apprehended.

**II. INVOLVED PARTIES**

Involved Officer #1:	BLACK, Timothy, Star #4970, Employee ID#[REDACTED], Date of Appointment: December 12, 2016, Police Officer, Unit of Assignment: 025, DOB: [REDACTED] 1993, Male, White
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Involved Officer #2:	SORIA, Anthony, Star #12875, Employee ID# [REDACTED], Date of Appointment: April 6, 2015, Field Training Officer, Unit of Assignment: 025, DOB: [REDACTED], 1991, Male, Hispanic
Involved Individual #1:	Unknown, 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 Chicago Police Department (CPD or Department) member discharges their firearm. As a result of its investigation, COPA makes the following findings and recommendations.

Officer	Allegation	Finding
Officer Black	1. Discharged your firearm at a moving vehicle in violation of General Order G03-02(III)(D)(6).	Exonerated
	2. Used deadly force by discharging your firearm in the direction of Unknown Individual(s) in violation of General Order G03-02 (C).	Exonerated
	3. Failed to timely activate your Body Worn Camera in violation of Special Order S03-14.	Exonerated
Officer Soria	1. Discharged your firearm at a moving vehicle in violation of General Order G03-02(III)(D) (6).	Exonerated
	2. Used deadly force by discharging your firearm in the direction of Unknown Individual(s) in violation of General Order G03-02(C).	Exonerated
	3. Failed to timely activate your Body Worn Camera in violation of Special Order S03-14.	Exonerated

**IV. APPLICABLE RULES AND LAWS**

Rules <sup>1</sup>
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<sup>1</sup> Police Board of Chicago, *Rules and Regulations of the Chicago Police Department, Article V. Rules of Conduct* (April 1, 2010) <https://www.chicago.gov/dam/city/depts/cpb/PoliceDiscipline/RulesofConduct.pdf>

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1. Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
  2. Rule 3: Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
  3. Rule 6: Disobedience of an order or directive, whether written or oral.
  4. Rule 10: Inattention to duty.
  5. Rule 38: Unlawful or unnecessary use or display of a weapon.
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#### General Orders<sup>2</sup>

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1. General Order 03-02: Use of Force (Effective Date: October 16, 2017- February 29, 2020)
  2. General Order 03-02-01: Force Options (Effective Date: October 16, 2017 – February 29, 2020)
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#### Special Orders

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1. Special Order S03-14: Body Worn Cameras (Effective April 30, 2018 – present)

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<sup>2</sup> Department general and special orders, also known as directives, “are official documents establishing, defining, and communicating Department-wide policy, procedures, or programs issued in the name of the Superintendent of Police.” Department Directives System, General Order G01-03; *see also* Chicago Police Department Directives System, available at <http://directives.chicagopolice.org/directives/> (last accessed November 16, 2021).

## V. INVESTIGATION<sup>3</sup>

### a. Interviews

COPA interviewed Officer Timothy Black<sup>4</sup> on May 15, 2019. Officer Black stated that on May 3, 2019, he and his partner Officer Soria were on routine patrol. Officer Soria drove the unmarked police SUV eastbound on Division Street. As the officers approached Lawndale Avenue, Officer Black observed an unknown black male, (18-20 years of age, 5'5", wearing a hoodie and gray sweatpants) fire a handgun at another individual, now known to be ██████ near a Subway restaurant. Officer Black heard gunshots and observed five to six muzzle flashes. The unknown suspect, who was carrying a dark-colored semi-automatic weapon, fled southbound across the street in front of their squad car onto Lawndale Avenue. Officers Black and Soria reported the shots fired over the radio. Officer Black then exited the vehicle, removed his gun from his holster, and pursued the unknown suspect on foot southbound on Lawndale Avenue. During the pursuit, Officer Black gave the suspect verbal direction to the effect of "Police. Stop. Police. Stop"<sup>5</sup> but the suspect did not comply.

Instead, the unknown suspect ran westbound in the south alley of Division Street, and then southbound through an alley between Lawndale Avenue and Ridgeway Avenue. Officer Black continued to pursue the unknown suspect through the alley. When he arrived in the alley between Lawndale and Ridgeway, Officer Black observed a silver Nissan parked in the alley. Officer Black was closing the distance between him and the unknown suspect, who was running toward the Nissan. The unknown suspect entered the front passenger seat of the Nissan and Officer Black was able to get a hand on him. At this time, Officer Black noticed an unknown person in the driver's seat of the Nissan. The driver drove off, while Officer Black was still holding on to the unknown suspect in the passenger seat. Officer Black was pulled along with the moving vehicle; the momentum caused Officer Black to fall to the ground. Once Officer Black fell to the ground, he heard a gunshot. Officer Black did not know where that gunshot came from, at that time, but he believed it had come from the Nissan.

At this moment, Officer Black feared for his life because he believed the unknown suspect had just fired at him, he had observed the unknown suspect shoot and kill ██████ and he feared that the unknown suspect would fire upon him when he was in a vulnerable position. Officer Black therefore returned fire six times at the unknown suspect inside the Nissan. Officer Black was able to see the unknown suspect in the passenger seat of the Nissan when he discharged his weapon. Officer Black admitted that he did not see a weapon in the unknown suspect's hand at the time he fired at the suspect. Officer Black explained that he believed the unknown suspect was still armed because he had just witnessed the unknown suspect shoot someone, he believed the unknown suspect would shoot at him while he was in a vulnerable position, and because he had just heard a single gunshot and believed he had been fired upon.

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<sup>3</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>4</sup> Att. 16, 28

<sup>5</sup> Att. 28, page 28, line 12

The occupants fled in the Nissan southbound through the alley. Officer Black stopped firing his weapon once the threat went away. Officers Black and Soria called the shots fired over the radio. Later, Officer Black learned that Officer Soria fired his weapon once during the incident. Officer Black sustained an injury to his hip and right foot when he fell to the ground; he received medical treatment at Rush University Medical Center.

Regarding the allegation that he failed to activate his body-worn camera in a timely manner, Officer Black stated that he did so when he deemed “it was safe and feasible,”<sup>6</sup> which was after he had fired his weapon and checked himself for gunshot wounds. Officer Black did not have a chance to turn on the camera while he was in a foot pursuit with his gun in his hand.

**COPA interviewed Officer Anthony Soria**<sup>7</sup> on May 15, 2019. Officer Soria stated that on May 3, 2019, he and Officer Black were on routine patrol in the vicinity of 3715 W. Division Street. Officer Soria was driving the unmarked Ford Explorer equipped with lights and sirens but no in-car camera. The officers were traveling eastbound on Division Street when Officer Soria heard gunshots and observed an unknown suspect shoot the victim, ██████████ in the Subway restaurant parking lot. Officer Soria believed the unknown suspect (black, male, 18-22 YOA, approximately 5’6”-5’9”) also fired at him and Officer Black because he observed muzzle flashes directed toward them while the unknown suspect was still in the Subway parking lot. Officers Black and Soria radioed in the shots fired. Officer Soria explained that he and Officer Black did not fire at the unknown suspect at this time because there were “a lot of people running around” and it was not “a safe environment to [...] begin a fire fight.”<sup>8</sup>

The unknown suspect ran in the officers’ direction southbound toward Lawndale Avenue holding a firearm in his hand. Officer Soria drove toward the suspect to close the distance between them. As Officer Soria drew closer to the unknown suspect, he stopped the car and Officer Black exited the vehicle to pursue the unknown suspect on foot. Officer Soria followed them in the squad car. The unknown suspect continued southbound on Lawndale Avenue and then turned west into a nearby alley. The unknown suspect then turned left into another alley, heading southbound, where a silver Nissan was waiting for him. The unknown suspect entered the Nissan. Officer Soria parked his vehicle at the mouth of the southbound alley and got out to assist Officer Black. During the chase, Officer Soria announced “Police. Stop.”<sup>9</sup> Officer Soria did not see whether the unknown suspect still had a weapon in his hand once he entered the alley, because he could only see the back of the unknown suspect.

Officer Soria observed that Officer Black was able to catch up with the unknown suspect and was attempting to pull him out of the vehicle. The Nissan drove off as Officer Black was holding onto the unknown suspect. Officer Soria believed that this caused Officer Black to be “dragged and thrown from the vehicle.”<sup>10</sup> Through the back windshield of the Nissan, Officer Soria observed the “tussle”<sup>11</sup> between Officer Black and the unknown suspect. Officer Soria then

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<sup>6</sup> Att. 28, p. 33, line 21

<sup>7</sup> Att. 20, 29

<sup>8</sup> Att. 29, page 37, lines 13-15

<sup>9</sup> Att. 29, page 33, line 23

<sup>10</sup> Att. 29, page 12, line 23-24

<sup>11</sup> Att. 29, page 30, line 22-23

observed the unknown suspect with a dark object in his left hand turn toward Officer Black. Believing the object to be a gun, Officer Soria fired once at the unknown suspect. Officer Soria then heard gunfire, which he believed came from the Nissan, and he took cover. He later learned that Officer Black had fired his weapon during that time. Officer Soria was not injured as a result of the incident.

Regarding the allegation that he failed to activate his body-worn camera in a timely manner, Officer Soria stated he did so when he deemed it was “safe and feasible to do so,”<sup>12</sup> which was after he discharged his weapon and the unknown suspect had escaped. According to Officer Soria, the incident happened so quickly that he did not have a chance to turn on the camera while he was driving. He was focused on the unknown suspect his partner was chasing because he knew the suspect had a firearm and had just used it.

#### **b. Digital Evidence**

The **Evidence Technician (ET) photographs**<sup>13</sup> depict the scene and the unknown suspect’s silver Nissan Sentra. The photographs depict what appears to be a droplet of blood on the front passenger door frame. The ET photographs depict the unknown suspect’s weapon: a silver and black 9mm, handgun, and extended black magazine, leaning against a tree.<sup>14</sup> The photographs also depict the shell casings in the alley.

The ET photographs depict Officers Soria and Black. The officers did not appear to have visible injuries.

The **Body-Worn Camera of Officer Black**<sup>15</sup> depicts him running through an alley, with his weapon in his right hand. Officer Black appeared to make a right turn into an alley and then a left turn into another alley. The video depicts a silver-colored vehicle in the alley and an unknown individual running toward that vehicle. Officer Black ran closer to the unknown individual and reached for that person. The vehicle drove forward. Officer Black ran with the vehicle for a few feet and fell to the ground. While on the ground, Officer Black fired his weapon several times in the direction of the fleeing vehicle. The gunshots were not heard on the video, but his weapon was ejecting shell casings. Officer Soria approached Officer Black and asked him if he was hit and checked Officer Black for injuries. Officer Soria was heard making radio transmissions of shots fired, and he provided a description of the unknown suspect’s vehicle and the location of the incident. Officer Black was heard telling Officer Soria, “They fired at us.”<sup>16</sup> Officer Black then announced on the radio that the unknown individual fired at them, and they fired back. Officer Black also described the unknown individual over the radio. Officer Black can be heard saying that the unknown individual pointed a weapon at him.

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<sup>12</sup> Att. 29, page 39, line 15

<sup>13</sup> Att. 36

<sup>14</sup> This weapon was recovered on the parkway at 1154 N. Lawndale.

<sup>15</sup> Att. 21. Officer Black activated his BWC after he discharged his weapon. Activating the camera also starts the audio recording. The weapon discharge was captured in the pre-audio buffer period.

<sup>16</sup> Att. 21 at 8:14:28

The **Body-worn camera of Officer Soria**<sup>17</sup> depicts him driving and making a right turn on what is now known to be Lawndale. Officer Soria made an immediate right turn into an alley. Officer Soria stopped at the entrance of a T-alley and exited the squad car. The video depicts a vehicle in the alley and Officer Black standing on the passenger side of the vehicle. Officer Soria ran toward the vehicle, at which point the vehicle drove forward and Officer Black fell to the ground. Officer Soria pointed his weapon at the vehicle and fired his weapon once in the direction of the vehicle. Officer Black then appeared to fire his weapon at the vehicle approximately five or six times. Officer Soria reported the shots fired by the police on the radio. Officer Soria approached Officer Black and asked him if he was shot, to which Officer Black said “no.” Officer Soria then described the unknown suspect’s vehicle and the location of the incident. During Officer Soria's radio transmissions, he stated the suspect pointed a gun at Officer Black and himself.

COPA obtained **video footage from the Subway restaurant and the Quick Stop Cellular**<sup>18</sup> that capture the unknown suspect shoot [REDACTED]

### c. Physical Evidence

The **Crime Scene Processing Report**<sup>19</sup> indicate that evidence technicians recovered a Smith & Wesson, SD40 VE, .40 caliber, Semi-Automatic, from a parkway leaning on a tree, at 1154 N. Lawndale. Inside the firearm, the evidence technicians recovered a black promag magazine. Inside the magazine were 14, .40 caliber S&W cartridges, and five PMC .40 caliber S&W cartridges. There were no live rounds in the chamber. The silver Nissan<sup>20</sup> was found abandoned at 1032 N. Lawndale.

The Evidence Technicians recovered Officer Soria’s Smith & Wesson MP9, which had 16 rounds in the 17-round capacity magazine with one round in the chamber; and Officer Black’s Glock 17, which had 11 live rounds in the 17-round magazine.<sup>21</sup> The recovering officer had cleared one live round from the chamber of Officer Black’s weapon prior to giving the weapon to the forensic staff.

The Evidence Technicians recovered six expended shell casings from the middle of the alley at 1132 N. Lawndale and one expended shell casing from the alley pavement.<sup>22</sup> The Evidence Technicians further recovered three expended PMC .40 S&W cartridge cases and two expended R-P S&W cartridges from the Subway parking lot at 3656 W. Division.

CPD tested the recovered Smith & Wesson SD40 VE and determined that the expended cartridge casings recovered from the Subway parking lot had been fired from that weapon. There were no fingerprints recovered from that weapon that were suitable for comparison.<sup>23</sup>

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<sup>17</sup> Att. 22. Officer Soria activated his BWC while he was driving from the vicinity of the Subway parking lot.

<sup>18</sup> Atts. 23 and 27

<sup>19</sup> Atts. 10, 32, 78

<sup>20</sup> The vehicle was stolen from a Wanda Jackson.

<sup>21</sup> The PMAG 17 magazine has a capacity of 17 rounds.

<sup>22</sup> There were no crime scene markers to indicate where these casings were recovered.

<sup>23</sup> Att. 78, pages 3-4

The **Illinois State Police Forensic Science Center Lab Reports**<sup>24</sup> indicate the officers' weapons and the unknown suspect's weapon were test fired and deemed operable. The six expended casings recovered in the middle of the alley were attributed to Officer Black's weapon. The one expended casing recovered on the alley pavement was attributed to Officer Soria's weapon.

#### **d. Documentary Evidence**

**Officer Timothy Black's Tactical Response Report**<sup>25</sup> indicates an unknown male Black subject, armed with a semi-automatic pistol, did not follow verbal direction. The subject presented an "imminent threat of battery with a weapon," "physical attack with a weapon," and "used force likely to cause death or great bodily harm." The subject pulled away and fled. Officer Black responded with "member presence," "verbal direction/control techniques," "tactical positioning," and a "semi-auto pistol."

**The Officer Anthony Soria's Tactical Response Report**<sup>26</sup> indicates an unknown male Black subject, armed with a semi-automatic pistol, did not follow verbal direction. The subject presented an "imminent threat of battery with a weapon," "physical attack with a weapon," and "used force likely to cause death or great bodily harm." The subject pulled away and fled. Officer Soria responded with "member presence," "verbal direction/control techniques," "tactical positioning," and "semi-auto pistol."

The **Office of Emergency Management and Communications (OEMC) records**,<sup>27</sup> including audio transmissions and Event Queries, indicates that in the vicinity 1199 N. Lawndale Avenue/3699 W. Division Street, shots were fired by and at Officers Black and Soria. It was reported that the unknown suspects took off in a silver Nissan. It was further reported that the suspect pointed a weapon at Beat 2561A. The description of the unknown suspect was reported as a black male, 5'5", wearing a dark hoodie, and gray sweatpants. An EMS was called to the scene for 2561A (Officer Black), for chest pains. The OEMC report states that someone inside the silver Nissan might have been struck, which was later retracted.

It further notes a male, now known as [REDACTED] was shot four times in front of a Subway restaurant by the unknown suspect that fled in the silver Nissan. People called 911 and stated they heard gunshots in the vicinity of Lawndale Avenue and Division Street, but none of the callers observed the shots fired by the involved officers.

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<sup>24</sup> Att. 30, 75, 80. The reports also indicate DNA samples and latent prints were collected from several items in an effort to identify the unknown suspect. Possible matches were made on the DNA samples from the Combined DNA Index System. As of the date of this report, CPD had not been able to locate the people indicated in the possible matches to further investigate what, if any, involvement they had. See Attachment 81, page 26.

<sup>25</sup> Att. 7

<sup>26</sup> Att. 8

<sup>27</sup> Atts. 9, 41 - 71



In the **Detective Supplementary Case Report**<sup>28</sup>, Officers Soria<sup>29</sup> and Black<sup>30</sup> gave interviews to the reporting detectives. Officer Soria and Black related in essence the same information they gave to COPA during their interviews.

#### e. Additional Evidence

The COPA **canvass**<sup>31</sup> conducted in the vicinity of 1132 N. Lawndale Avenue did not reveal any additional witnesses.

## VI. LEGAL STANDARD

### a. Use of Deadly Force<sup>32</sup>

“Department members may only use force that is objectively reasonable, necessary, and proportional in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent escape.”<sup>33</sup> The primary concern in assessing the 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.<sup>34</sup> Factors determinative of whether use of force is reasonable include but are not limited to: (1) whether the subject is posing an imminent threat to the officer or others; (2) the risk of harm, level of threat or resistance presented by the subject; and (3) the subject’s proximity or access to weapons.<sup>35</sup>

The discharge of a firearm in the direction of a person or at a vehicle in which the person is riding constitutes the use of deadly force under Department policy.<sup>36</sup> The use of deadly force is permitted only as a “last resort” when “necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person.”<sup>37</sup> A Department member may use deadly force in only two situations: (1) to prevent “death or great bodily harm from an imminent threat posed to the sworn member or to another person”; (2) to prevent “an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay.”<sup>38</sup>

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<sup>28</sup> Att. 74, 81

<sup>29</sup> Att. 74, pages 36-37 and Att. 79 (RD#JC-249015)

<sup>30</sup> Att. 74, pages 75-76

<sup>31</sup> Att. 25

<sup>32</sup> On October 16, 2017, the Department materially modified its Use of Force policy. The Department’s current Use of Force Policy prohibits the use of deadly force under circumstances that would be permissible under the Fourth Amendment to the United States Constitution and Illinois state law. COPA’s analysis focuses solely on whether Officers Black and Soria complied with General Order 03-02. COPA cites case law solely for guidance on how to interpret common concepts or terms.

<sup>33</sup> G03-02.III.B

<sup>34</sup> G03-02.III.B.1

<sup>35</sup> G03-02.III.B.1

<sup>36</sup> G03-02.III.C.1 (Eff. October 16, 2017)

<sup>37</sup> G03-02.III.C.3

<sup>38</sup> G03-02.III.C.3; 720 ILCS 5/7-5 (Eff. Prior to July 1, 2021)

A threat is considered imminent “when it is objectively reasonable to believe that: (a) the subject’s actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; **and** (b) the subject has the means or instruments to cause death or great bodily harm; **and** (c) the subject has the opportunity and ability to cause death or great bodily harm.”<sup>39</sup>

Moreover, Department policy places prohibitions on the use of firearms in certain enumerated situations.<sup>40</sup> In pertinent part, this policy prohibits: “Firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person, unless such force is reasonably necessary to prevent death or great bodily harm to the sworn member or to another person.”<sup>41</sup>

During all use of force incidents, Department members will strive to use **de-escalation techniques** to prevent or reduce the need for force, based on the totality of the circumstances.<sup>42</sup> Officers must continually assess the situation to determine

“(1) if any use of force is necessary; (2) the authorized force option based on the totality of the circumstances; (3) if the seriousness of the situation requires an immediate response or whether the member can employ other force options or the Force Mitigation Principles; and (4) if the level of force employed should be modified based upon the subject’s actions or other changes in the circumstances.”<sup>9</sup>

The concepts of force mitigation include but are not limited to establishing and maintaining verbal communication; using verbal control techniques and persuasion, advice, and warning prior to the use of physical force; using time distance and cover to isolate and contain a subject; and creating a zone of safety for security of officers and the public.<sup>43</sup>

Department Policy recognizes that Department members must make “split-second decision” in “tense, uncertain, and rapidly evolving” circumstances.<sup>44</sup> As such, their decisions must be “judged based on the totality of the circumstances known by the member at the time and from the perspective of a reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight.”<sup>45</sup>

## **b. Body Worn Cameras**

To increase transparency and improve the quality and reliability of investigations, CPD policy mandates all law-enforcement-related encounters to be electronically recorded on the

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<sup>39</sup> G03-02.III.C.2 (emphasis added)

<sup>40</sup> G03-02(D)

<sup>41</sup> G03-02(D)(6). The prohibition further requires that “a member will not place themselves in the path of the moving vehicle and will make every effort to move out of the path of the vehicle.”

<sup>42</sup> G03-02-01.II.B

<sup>43</sup> G03-02.III.4

<sup>44</sup> G03-02.II.D

<sup>45</sup> G03.02.II.D

officers' body worn camera ("BWC").<sup>46</sup> Law-enforcement-related encounters include, but are not limited to, foot and vehicle pursuits, arrests, use of force incidents, high risk situations, emergency driving situations and emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene.<sup>47</sup> The recording of law-enforcement-related encounters is mandatory.<sup>48</sup> Officers must activate their BWCs at the beginning of an incident and record the entire incident.<sup>49</sup> If there are circumstances preventing the activation of the BWC at the beginning of an incident, the officer "will activate the BWC as soon as practical."<sup>50</sup>

### c. Standard of Proof

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

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

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that a proposition is true.<sup>51</sup> If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, or that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense.<sup>52</sup> Clear and convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true."<sup>53</sup>

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<sup>46</sup> Special Order S03-14.II.A (Eff. April 30, 2018)

<sup>47</sup> Special Order S03-14.III.2 (Eff. April 30, 2018)

<sup>48</sup> Special Order S03-14.III.1 (Eff. April 30, 2018)

<sup>49</sup> Special Order S03-14.III.2 (Eff. April 30, 2018)

<sup>50</sup> Special Order S03-14.III.2 (Eff. April 30, 2018)

<sup>51</sup> 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.").

<sup>52</sup> See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

<sup>53</sup> *Id.* at ¶ 28.

## VII. ANALYSIS

### *ALLEGATION 1*

COPA finds the allegation that Officers Black and Soria discharged their firearms at a moving vehicle in violation of CPD policy is Exonerated. It was objectively reasonable for the officers to fire their weapons at the unknown suspect in the moving vehicle to prevent death or great bodily harm to Officer Black. The prohibition against firing a gun at a moving vehicle specifies that such firing is prohibited if the “vehicle is the only force used against the sworn member.”<sup>54</sup> Here, however, the officers reasonably believed that the unknown suspect riding inside of the Nissan was armed and posed a threat to Officer Black’s life. As such, the officers reasonably believed that the Nissan was not the only force used against Officer Black. Therefore, under the totality of the circumstances, the evidence supports the officers’ reasonable belief at the time of the incident that the use of deadly force was necessary to prevent death or great bodily harm to Officer Black.

The officers’ belief was reasonable where both officers observed the suspect shoot ██████████ and flee with the gun in his hand, and where there is no evidence that either officer observed the suspect drop or discard the weapon during the foot chase. Although the unknown suspect’s weapon was later recovered on the suspect’s path of flight, this information was not available to Officer Soria and Officer Black during their pursuit. Both officers reasonably believed at the time they confronted the unknown suspect that he was armed and dangerous.

Moreover, Officer Soria observed his partner being “dragged and thrown from the vehicle”<sup>55</sup> and saw the unknown suspect with a dark object in his hand turned toward Officer Black following a “tussle” during which Officer Black attempted to arrest the suspect. COPA finds that Officer Soria reasonably believed that the dark object in the unknown suspect’s hand was a gun, and that Officer Black was in danger. Officer Soria’s decision to fire his weapon one time at the moving vehicle was objectively reasonable to protect his partner.

When Officer Black heard the single gunshot (now attributed to Officer Soria), he believed that the shot had come from the unknown suspect. Based on this reasonable belief, Officer Black, who was in a vulnerable position on the ground with no available cover, fired his weapon six times in the direction of the moving vehicle until the vehicle and its occupants no longer posed a threat.

Given the totality of the circumstances, at the time the officers fired their weapons at the moving vehicle, they reasonably believed that the unknown suspect riding in that vehicle was armed and posed a threat of death or great bodily harm to Officer Black. As such, the deadly force used by the officers was reasonably necessary to prevent death or great bodily harm to Officer Black. COPA has therefore determined by clear and convincing evidence that the officers complied with CPD policy when they discharged their weapons at the unknown suspect in the Nissan. For these reasons, Allegation 1 is **Exonerated** against both officers.

### *ALLEGATION 2*

COPA finds the allegation that Officers Black and Soria violated the Department’s deadly force policy is likewise Exonerated. As previously discussed, the officers’ decision to use deadly

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<sup>54</sup> G03-02.III.D.6

<sup>55</sup> Att. 29, page 12, line 23-24

force was objectively reasonable based on the totality of the circumstances to prevent death or great bodily harm to Officer Black. In addition, the officers only used deadly force as a last resort and only in response to an imminent threat to Officer Black's life.

First, the evidence shows that the officers used deadly force only in response to an imminent threat to Officer Black's life. The officers reasonably believed that the unknown suspect's actions were immediately likely to cause death or great bodily harm to Officer Black unless action was taken.<sup>56</sup> Officer Soria believed the suspect was about to shoot at Officer Black and Officer Black believed that the suspect had just shot at him. Officer Black was in a vulnerable position close to the armed suspect, where he was exposed and unable to take cover.

The officers also reasonably believed that action had to be taken swiftly, because the unknown suspect had the means to cause death or great bodily harm to Officer Black.<sup>57</sup> As previously discussed, the officers had a reasonable belief that the unknown suspect was still armed when they encountered him in the alley. Given Officer Black's vulnerable position and lack of cover, the officers had to act swiftly to protect Officer Black. Lastly, the officers reasonably believed that the unknown suspect had the opportunity and ability to cause death or great bodily harm.<sup>58</sup> Specifically, when the suspect entered the Nissan, the officers believed that he was still armed. Officer Black was exposed and in a vulnerable position on the ground in the alley after tussling with the suspect and being dragged by the Nissan, giving the suspect the opportunity and ability to cause death or great bodily harm. The threat to Officer Black was therefore imminent.

Second, the evidence shows that the officers used deadly force only as a last resort. Officer Soria only discharged his firearm because he believed that the unknown suspect had a firearm in his hand and was about to use it against his partner Officer Black. Similarly, Officer Black only discharged his weapon at the fleeing suspect because he believed that the single gunshot had come from the suspect and he did not have another option, such as taking cover to protect himself or attempt to de-escalate the situation.

COPA finds that it was not feasible to de-escalate the situation in the alley under the circumstances facing the officers. The officers were confronted with a suspect whom they had just observed shooting [REDACTED] several times and who, they believed, was pointing a weapon at and shooting at Officer Black.

However, the evidence does show that the officers used de-escalation techniques during the incident whenever possible. For instance, Officer Soria and Officer Black did not fire at the unknown suspect while he was exiting the Subway parking lot after shooting [REDACTED] because there were "a lot of people running around" and it was not "a safe environment to [...] begin a fire fight."<sup>59</sup> Moreover, during their COPA interviews, both officers stated that they gave verbal directions to the fleeing suspect to stop and identified themselves as the police, but the suspect refused to stop. Officer Black then caught up to the suspect and attempted to subdue him without the use of his firearm.

It is evident that the officers continually assessed the evolving situation to determine the amount of force necessary under the circumstances and considered and tried to preserve the safety

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<sup>56</sup> G03-02.III.C.2.a

<sup>57</sup> G03-02.III.C.2.b

<sup>58</sup> G03-02.III.C.2.c

<sup>59</sup> Att. 29, page 37, lines 13-15

of all present. Specifically, they took into consideration that the suspect was fleeing from a busy area and, at that moment of flight, appeared to not pose an imminent threat to the nearby civilians or the officers requiring deadly force. Consequently, they decided to pursue the fleeing suspect instead of firing at him.

However, the circumstances changed when the suspect appeared to aim a weapon at Officer Black in the alley. At that point, the officers reasonably believed the suspect was still armed. They observed no one other than the Nissan's driver and the unknown suspect in the area. There was also no evidence of other vehicular traffic in the alley. At that point, Officer Soria reasonably believed that the unknown suspect was about to fire at Officer Black, and Officer Black reasonably believed that the suspect fired a weapon at him. Only then did the officers discharge their firearms to protect Officer Black's life.

All in all, under the totality of the circumstances present in this case, the officers' discharge of their firearms was objectively reasonable, necessary, and proportional to the threat they reasonably believed they faced. COPA has therefore determined by clear and convincing evidence that Officer Black and Officer Soria complied with CPD deadly force policy when they discharged their weapons at the unknown suspect. For these reasons, Allegation 2 is **Exonerated** against both officers.

### ***ALLEGATION 3***

Lastly, COPA finds the allegation that Officers Black and Soria violated CPD policy by failing to timely activate their BWCs is also Exonerated. This incident involved multiple law-enforcement-related activities that CPD policy identifies as requiring the activation of BWC, including but not limited to foot and vehicle pursuits, arrests, use of force incidents, high risk situations, emergency driving situations and emergency vehicle responses where fleeing suspects or vehicles may be captured on video leaving the crime scene.<sup>60</sup> In this case, Officer Soria's BWC video-recorded nearly the entire incident, including the foot pursuit and weapons discharge by both officers, and began audio-recording immediately prior to Officer Soria discharging his weapon. Officer Black's BWC video-recorded a portion of the incident, including the foot chase and weapons discharge, and audio-recorded the immediate aftermath of the incident. Both officers indicated that they activated their BWCs as soon as was safe for them to do so. Although Officers Black and Soria did not activate their BWCs at the beginning of the incident when they observed the unknown suspect shooting at [REDACTED] each officer activated his BWC as soon as was practical under the circumstances.

Both officers stated during their COPA interviews that they activated their BWCs as soon as "it was safe and feasible"<sup>61</sup> following the discharge of their weapons. Officer Black stated that he activated his BWC after he checked himself for gunshot wounds, and Officer Soria stated that he activated his BWC after the unknown suspect had escaped and no longer posed a threat. Officer Black further explained that he could not have turned his BWC on earlier during the incident because he was involved in a foot pursuit with the suspect and had his weapon in his right hand. Officer Soria likewise explained that he was unable to activate his BWC earlier because he did not believe it was safe. Specifically, Officer Soria stated that the unknown suspect was armed and

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<sup>60</sup> Special Order S03-14.III.2 (Eff. April 30, 2018)

<sup>61</sup> Att. 28, p. 33, line 21; Att. 29, p. 39, line 15.

fleeing, and he had to place all of his attention on the suspect while he was driving in pursuit and later when he engaged in a foot chase. Moreover, neither officer had to be reminded to turn on his BWC<sup>62</sup> and both activated them once the unknown suspect no longer posed an immediate threat.<sup>63</sup>

Given that the officers found themselves in a quickly evolving high-pressure situation involving a shooting and foot pursuit of the suspect, COPA finds that they activated their BWCs as soon as was practical under the circumstances. COPA therefore does not find that the officers violated CPD policy. As such, COPA finds that Allegation 3 for both officers is **Exonerated**.

### VIII. CONCLUSION

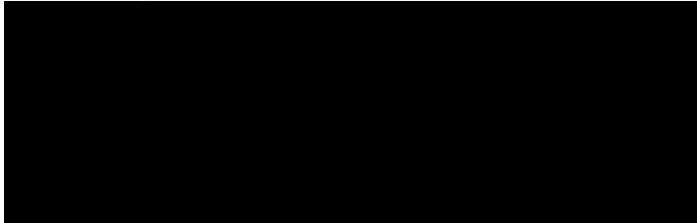
Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer Black	1. Discharge your firearm at a moving vehicle in violation of General Order G03-02(III) (D) (6).	Exonerated
	2. Used deadly force by discharging your firearm in the direction of Unknown Individual(s) in violation of General Order G03-02 (C).	Exonerated
	3. Failed to timely activate your Body Worn Camera in violation of Special Order S03-14.	Exonerated
Officer Soria	1. Discharged your firearm at a moving vehicle in violation of General Order G03-02 (III) (D) (6).	Exonerated
	2. Used deadly force by discharging your firearm in the direction of Unknown Individual(s) in violation of General Order G03-02 (C).	Exonerated
	3. Failed to timely activate your Body Worn Camera in violation of Special Order S03-14.	Exonerated

<sup>62</sup> Att. 28, p. 34, lines 17-18; Att. 29, p. 40, lines 14-16.

<sup>63</sup> Att. 28, p. 34, lines 1-15; Att. 29, p. 40, lines 1-13.

Approved:



1/6/2023

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Andrea Kersten  
*Chief Administrator*

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Date