

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	October 16, 2016
Time of Incident:	8:55 p.m.
Location of Incident:	████████████████████
Date of COPA Notification:	October 16, 2016
Time of COPA Notification:	9:21 p.m.

On October 16, 2016, at approximately 8:55 p.m., Officer ██████████ and her partner, Officer ██████████ arrived at the Citgo gas station located at ██████████ Avenue, in response to a radio call of a reported robbery in progress.

Upon their arrival, Officers ██████████ and ██████████ approached the north door of the gas station mini-mart. As they arrived at the north door, Officers ██████████ and ██████████ looked inside the mini-mart and observed a Hispanic female customer and ██████████ with an object that appeared to be a firearm² in his hand, standing by the north door. Officer ██████████ began to yell “gun” and both Officers ██████████ and ██████████ began to retreat backwards with their firearms drawn. Officer ██████████ retreated in a northeast direction and Officer ██████████ retreated westbound, both remaining within the gas station parking lot. Officer ██████████ pointed her firearm in the direction of ██████████ as she continued to retreat.

At the same time Officers ██████████ and ██████████ arrived at the gas station, two additional officers, Officer ██████████ #██████████ and Officer ██████████ #██████████ also responded to the location and approached the south side doors of the gas station mini-mart.³ As Officer ██████████ verbally engaged ██████████ immediately turned and pointed his firearm in Officer ██████████ direction. Officer ██████████ discharged his weapon at ██████████ four (4) times.

As Officer ██████████ heard the gunshots, she continued to retreat northeast and responded to the gunshots by discharging her weapon multiple times in the direction of the north door. While retreating, Officer ██████████ tripped and fell, continuing to discharge her weapon in an upward direction into the overhang of the gas station mini-mart.

¹ 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.

² ██████████ possessed a replica firearm.

³ Refer to Log #1082645 U#16-18, which is related to Log #1083269 for a thorough analysis of Officer ██████████ firearm discharge.

II. INVOLVED PARTIES

Involved Officer #1:	██████████ Star # ██████████ Employee ID# ██████████ Date of Appointment ██████████, 2013, Police Officer, Detail Unit ██████████ DOB ██████████, 1982, Female, White
Subject #1:	██████████ DOB ██████████, 1989, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding
Officer ██████████	1. Fired her weapon into a building when the person firing at was not clearly visible in violation of Rules 2, 6, and 38.	Sustained/365 days
	2. Fired her weapon multiple times into a gas station overhang in violation of Rules 2, 6, 10, and 38.	Sustained/ 5 days

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
2. Rule 6: Disobedience of an order or directive, whether written or oral
3. Rule 10: Inattention to duty.
4. Rule 38- Unlawful or unnecessary use or display of a weapon.

General Orders

1. General Order G03-02-03: Deadly Force

State Laws

1. 720 ILCS 5/7-5

Federal Laws

1. The Fourth Amendment to the United States Constitution.

V. INVESTIGATION⁴

a. Interviews

In a statement to IPRA dated October 28, 2016, under Log #1082645, U#16-18, [REDACTED] described her encounter with [REDACTED] at the mini-mart of the gas station. [REDACTED] stated that on the date and time of incident, she entered the mini-mart of the Citgo gas station to make a purchase. [REDACTED] observed [REDACTED] holding an object in his hand and recognized it to be a gun.⁷ [REDACTED] described [REDACTED] demeanor to “show no emotion.”⁸

[REDACTED] stated that [REDACTED] struck her face with his gun during the incident. [REDACTED] repeatedly asked [REDACTED] if she could leave and initially he did not verbally respond and looked at her with a “blank stare.”⁹ [REDACTED] then stated to her “ma’am, what do you have in your pockets?” [REDACTED] responded with “man, all I have is a lighter.” [REDACTED] then approached [REDACTED] and struck her on her face with his gun. After [REDACTED] struck her, she called the police. Shortly thereafter, the north door was opened and [REDACTED] observed a female officer¹⁰ standing outside of the north door. [REDACTED] recalled seeing the female officer holding a gun but did not recall how she was holding it. According to [REDACTED] was facing the direction of the north door when the female officer began to yell words to the effect of “he has a gun” while walking backward. As the north door began to close, the south entrance door suddenly opened. [REDACTED] heard a male voice say words to the effect of “put your gun down.” [REDACTED] stated that she no longer had a view of either door or of [REDACTED] as she continued to retreat down the aisle. Subsequently, [REDACTED] heard approximately two to three gunshots that sounded to be coming from inside the mini-mart, on the south side. [REDACTED] did not hear any other gun shots.¹¹

In a statement to IPRA dated October 18, 2016, under Log #1082645, U#16-18, Police Officer [REDACTED] # [REDACTED] stated that on October 16, 2016, she was the passenger of an unmarked Crown Victoria vehicle and her partner, Officer [REDACTED] was the driver. Officer [REDACTED] had not met Officer [REDACTED] before the date of this incident. Officers [REDACTED] and [REDACTED] were assigned to a Cigarette Enforcement team out of Area North. Officer [REDACTED] was in full police uniform and assigned to beat [REDACTED] Officer [REDACTED] was not wearing a body worn camera (BWC) on the date of the incident.

While monitoring Zone [REDACTED] radio communications, she heard a call of an armed robbery near their location, at the Citgo gas station on [REDACTED] and [REDACTED] Dispatch stated that “one male was inside, and one male was outside.”

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

⁵ Refer to Att. 41 under Log #1082645, U#16-18, for [REDACTED] full statement to IPRA.

⁶ [REDACTED] is the involved civilian subject under Log #1082645, U#16-18.

⁷ [REDACTED] referred to the replica firearm as a gun.

⁸ Refer to Att. 22, at approximately 29 minutes and 30 seconds.

⁹ Refer to Att. 22, at approximately 31 minutes and 42 seconds.

¹⁰ It is not known if [REDACTED] observed Officer [REDACTED] or Officer [REDACTED]

¹¹ Att. 22

¹² Att. 18

Officer [REDACTED] drove to the Citgo Gas Station on [REDACTED] and parked on the east side of the street, slightly northwest of the gas station. Officers [REDACTED] and [REDACTED] did not activate emergency sirens as they responded to the scene; however, upon their arrival, Officer [REDACTED] radioed in their location. Before exiting their vehicle, Officer [REDACTED] looked for a person standing outside the gas station but did not see anyone. Officer [REDACTED] then walked toward the north door of the gas station. Officer [REDACTED] stated that Officer [REDACTED] was somewhere behind her, but she did not know her exact position. As Officer [REDACTED] approached the north door, she observed people inside the mini-mart, at which time she unholstered her weapon. Officer [REDACTED] saw a Hispanic female, now known to be [REDACTED] standing where the aisles and pay counter meet, near the north door. [REDACTED] stared at Officer [REDACTED] with a “scared look” on her face. Officer [REDACTED] also saw the back shoulder and head area of a taller, larger man, now known to be [REDACTED]. A pole and wall partially obstructed her view. Officer [REDACTED] could not see [REDACTED] hands.

Officer [REDACTED] reached to open the north door with her left hand, at which point [REDACTED] turned his body toward her. While approximately five feet from [REDACTED] Officer [REDACTED] observed a firearm¹³ in [REDACTED] right hand pointed down at his side. According to Officer [REDACTED] she saw the black slide and sights of the gun, as well as brown packing tape on the handle. Officer [REDACTED] yelled “gun” and let the door go to backpedal in a northwest direction. Officer [REDACTED] yelled for [REDACTED] to “drop it” and yelled “gun” to inform her partner. [REDACTED] did not drop the gun or lift it; rather, he was “kinda swaying it around” while looking around.

As Officer [REDACTED] continued to walk backward, she observed Officer [REDACTED] approximately fifteen feet east of the door, walking backward toward the northeast corner of the gas station with her gun in her right hand. Suddenly, Officer [REDACTED] heard gunshots and observed Officer [REDACTED] firing her weapon toward the direction of the “building.” According to Officer [REDACTED] as Officer [REDACTED] fired her weapon she continued to move backward, when suddenly she tripped and stumbled, at which time her firearm was pointed upward into the air. Officer [REDACTED] did not observe Officer [REDACTED] completely fall to the ground. Officer [REDACTED] stated that she believes she saw a “muzzle flash” come from Officer [REDACTED] gun as she stumbled backward, after she tripped. Officer [REDACTED] stated that she heard additional gunshots coming from inside the gas station. Officer [REDACTED] continued to move westbound, where she attempted to take cover near an ice machine, near the west external wall of the mini-mart. As Officer [REDACTED] attempted to take cover she lost sight of Officer [REDACTED]

Officer [REDACTED] heard a total of approximately ten to fifteen gunshots and did not know where the first gunshots came from. Officer [REDACTED] described the cadence of the shots fired as “all successive, kind of at the same time.” Once the gunshots stopped, Officer [REDACTED] looked inside the mini-mart and observed [REDACTED] on the ground and other unknown officers trying to handcuff him. Officer [REDACTED] then re-holstered her weapon and entered the gas station. Officer [REDACTED] observed the gun that [REDACTED] held in an aisle on the floor near the beverage coolers. She also observed what appeared to be a firearm magazine in the aisle. Officer [REDACTED] stood over the gun as other officers struggled to handcuff [REDACTED] while he was lying on his left side, with his left arm tucked underneath him.

¹³ Officer [REDACTED] referred to the replica firearm as a gun.

Officer ██████ stated that she did not fire her weapon because ██████ stood next to ██████ and there were too many obstructions. Officer ██████ did not feel she had a clear shot and tried to create some distance.

In a statement to IPRA dated November 17, 2016, and taken **under Log #1082645**, which is related to this investigation, **Police Officer ██████ # ██████** stated that on October 16, 2016, she was on duty, in uniform, working a Violence Reduction Initiative (VRI). The VRI was an overtime detail assignment. She and her partner, Officer ██████ were patrolling in the 15th District's perimeter of ██████ and ██████ to the east and west; and ██████ and ██████ to the north and south.¹⁵

Officer ██████ was the driver of an unmarked Crown Victoria. They were parked in a parking lot at ██████ and ██████ when dispatch called out a robbery in progress. Dispatch provided descriptions of two male offenders. Officer ██████ remembered one description as a heavysset black male wearing a hoodie, with a gun. Officer ██████ then drove to the location of the robbery at ██████ and ██████. Enroute to the scene, Officer ██████ asked Officer ██████ to turn on the emergency lights of the vehicle, but she does not remember if Officer ██████ activated the emergency lights. When Officers ██████ and ██████ arrived at the scene a few seconds after hearing the dispatch, Officer ██████ parked the vehicle northwest of the Citgo gas station for tactical purposes. Neither Officer ██████ nor Officer ██████ transmitted a radio message that they were responding to the scene.

As Officers ██████ and ██████ approached the gas station, there was an unoccupied gray civilian vehicle parked along the west wall. Officer ██████ stated that there was no one on the other side of the gas station and that they were the only ones on scene. Officer ██████ did not hear any voices or see any other officers at the location. As Officers ██████ and ██████ approached the north door of the gas station, Officer ██████ went to the west side of the north door and Officer ██████ went to the east side. As Officer ██████ approached, she could see through the window into the gas station because the door of the mini-mart and half the building were made of glass. Officer ██████ stated that through the glass she saw a man, now known to be ██████ fitting the description provided by dispatch¹⁶ standing inside the gas station holding a gun.¹⁷ She also saw a woman, now known to be ██████ who she believed to be a civilian, standing in front of ██████ facing him. Officer ██████ saw the left side of ██████ body in profile.

Officer ██████ saw the gun in ██████ hand and yelled at ██████ to "Drop the gun. Let me see your fucking hands. Let me see your fucking hands." Officer ██████ stated that she could see the "dark frame of the gun." As Officer ██████ yelled commands, she had her weapon drawn and pointed in ██████ direction. However, Officer ██████ did not recall when she unholstered the weapon. Officer ██████ lost sight of ██████ but saw ██████ left shoulder move and then heard

¹⁴ Att. 5

¹⁵ Officer ██████ was not wearing a body worn camera (BWC) on the date of this incident as she explained that during any VRI initiative she does not wear a BWC, is not required to wear it and is unaware of any policy requiring a BWC to be worn during a VRI detail.

¹⁶ Refer to OEMC transmissions under Log #1082645, Att. # 16 and Event Queries under Att. #14 in which the offender of the robbery was described to be wearing all black.

¹⁷ Officer ██████ referred to the replica firearm as a gun.

multiple gunshots.¹⁸ Officer [REDACTED] fired in [REDACTED] direction. Officer [REDACTED] stated that she fired because she thought that [REDACTED] was either shooting at [REDACTED] or he was shooting at herself or Officer [REDACTED]. Officer [REDACTED] stated that at the time she fired, she “could still see part of his shoulder,”¹⁹ but stated she lost sight of [REDACTED] while retreating.²⁰

As Officer [REDACTED] shot, she created distance by moving back. As Officer [REDACTED] retreated, she tripped and fell backward. As she fell backward, her gun was pointed upward because she struggled to maintain balance and she unintentionally discharged her weapon several times. While Officer [REDACTED] was on the ground, with her knee and hand positioned on the ground, the shots stopped. Officer [REDACTED] then got up and holstered her weapon.

When Officer [REDACTED] stood up, she reached for her radio and attempted to make a notification of “Shots fired”, however, she was unsure if this transmission went through. Officer [REDACTED] then saw Officer [REDACTED] running from behind a fixed object on the northwest corner of the mini-mart. Officer [REDACTED] ran inside the mini-mart and Officer [REDACTED] followed her. Officer [REDACTED] walked in and saw multiple officers on top of [REDACTED]

Officer [REDACTED] was taken to Resurrection Hospital for treatment of minor scrapes and abrasions. At the hospital, Officer [REDACTED] spoke to an unidentified detective²¹ from Area North about the incident. After returning to the scene from the hospital, Officer [REDACTED] spoke to the OCIC about the incident.

In a second statement to IPRA on February 15, 2017, **Officer [REDACTED]** stated that she stood by her initial statement under Log #1082645 U#16-18, which is related to this investigation.

In addition, Officer [REDACTED] responded to Allegation #1 by stating that on the date of the shooting, events happened quickly, and she did not recall “how much of [REDACTED] [she] saw”²³ as she was firing in his direction. Officer [REDACTED] further stated that there were several details that she did not recall, “especially when it came to firing into Mr. [REDACTED]”²⁴ Officer [REDACTED] was directed to her initial statement to IPRA,²⁵ in which she was asked if she could see [REDACTED] as she retreated, still firing her weapon, and she responded with “not anymore.” Officer [REDACTED] then stated that she stood by her statement and further reiterated that she did not remember what she saw as she discharged her weapon. Officer [REDACTED] did not recall when she lost sight of [REDACTED]. However, her intended target when shooting her weapon, before falling, was [REDACTED]

Officer [REDACTED] responded to Allegation #2 by stating that she fired her weapon multiple times into a gas station overhang as a result of tripping and falling on her left knee and left hand as she was retreating. However, she did not believe that she was inattentive to her duty, but rather,

¹⁸ Refer to page 7 of Att. 5

¹⁹ Refer to page 41, line 24 of Att. 5

²⁰ Later in the statement Officer [REDACTED] stated she could not remember seeing [REDACTED]

²¹ According to a Detective Supplemental Report, Officer [REDACTED] spoke to Detective [REDACTED] # [REDACTED]

²² Att. 13

²³ Refer to 3 minutes into the audio recorded statement of Officer [REDACTED] under Att. 13.

²⁴ Refer to 2 minutes and 47 seconds into the audio recorded statement of Officer [REDACTED] under Att. 13.

²⁵ Officer [REDACTED] initial statement to IPRA was on November 17, 2016.

it was an accident. Furthermore, she stated that it was not intentional to fire into the overhang of the gas station. Officer ██████ was asked if she paid attention to her actions while falling, including her finger being on the trigger of her firearm, and she responded that she was multi-tasking. Officer ██████ did not remember her finger on the trigger but stated “obviously it had to be since I was falling and as I’m falling my gun is pointed upward and I hear gunshots going off from my own gun.”²⁶

Officer ██████ did not recall the total number of times she discharged her weapon but stated that it was more than once. She documented on her TRR that she fired 10 times because she was told that 10 rounds were missing from her magazine. Officer ██████ recalled firing at least three (3) shots prior to falling. However, she did not recall how many shots she fired while falling.

When asked how many of the rounds she fired were accidental, she stated that the rounds discharged while falling were accidental. However, she stated that the rounds that she fired prior to falling were not accidental and that her intended target was ██████. Furthermore, Officer ██████ stated that she was aware that her firearm was pointed upward, and she heard shots [coming from her firearm] as it was pointed upward. According to Officer ██████ when she fired the accidental shots into the gas station overhang, her intended target was still ██████ “but unfortunately because I’m backing up, creating distance and then I fall, I no longer had control over it, it was an accident. I shot into the ceiling of the gas station.”²⁷

Officer ██████ stated that she is familiar with the Use of Force policy and she first learned of it when she started at the police academy in 2013.

b. Digital Evidence

Video Surveillance Footage from the Citgo gas station²⁸ located at ██████ depicts video from six cameras located at different positions inside the gas station mini-mart. The video was recorded on one DVD and consisted of six video files labeled Camera 1, Camera 2, Camera 3, Camera 4, Camera 6, and Camera 7.²⁹ These videos do not contain audio. Under Log #1082645, U# 16-18 there is a summary of each video camera. For purposes of this investigation, the portions depicting the female officers in the video surveillance footage are as follows:

Camera 1: View of a small section of the interior of the gas station store. The video starts at 20:40:00 hours.³⁰

- At 20:51:05 a female (now known to be ██████) wearing black, comes in and out of view near the refrigerated cases.

²⁶ Refer to 6 minutes and 54 seconds into the audio recorded statement of Officer ██████ under Att. 13.

²⁷ Refer to 12 minutes and 50 seconds into the audio recorded statement of Officer ██████ under att. 13.

²⁸ This video is also a part of Log #1082645, U#16-18, as Att. 31 and Att. 69 which is the AVI converted version of the video for viewing purposes only as Att. 31 was no longer functioning.

²⁹ The DVD did not include a clip labeled “Camera 5.”

³⁰ The original video Att. 23 was unplayable, and the Department created a converted AVI version of the video for viewing purposes only, Att. 24. This version does not contain the entire video but covers approximately fifteen minutes before the shooting incident until approximately fifteen minutes after the shooting incident.

- At 20:54:30 a white vehicle appears through the window and a uniformed male officer enters through the glass door. The male officer stops in the doorway and draws his weapon, pointing it forward from his position. Smoke comes from the officer's weapon, as he fires, then the officer immediately crouches down. The male officer then moves forward in the direction he points his weapon and steps out of view.
- At 20:54:52 an object that appears to be a handgun slides across the floor of an adjacent aisle and stops near the bottom of a refrigerated case. Another uniformed male officer enters through the glass door and moves toward the first officer.
- At 20:55:08 a uniformed female officer enters the view of the camera and stands over the object that appears to be a handgun near the refrigerated cases, then moves toward the other officers. Shortly thereafter, several other officers arrive.

Camera 4: Partial view of the interior of the store. The video starts at 20:48:10 hours.

- At 20:48:57 a male, who appears to be black, wearing a black hooded jacket with a gray stripe on the sleeves and jeans, enters through the door and moves outside of view.
- At 20:51:00 the same black male subject holds a black and silver object, which appears to be a handgun, in his right hand, and a Hispanic female is in the rear of the store.
- At 20:54:40 a uniformed male officer enters through the south door and raises and points his weapon northbound, toward where the male black subject walked out of the camera's view. The male subject is not in the video during this time.
- The Hispanic female stands in the aisle closest to the north door, looking in the direction of where the male black subject walked out of the camera's view.
- After the officer points his firearm, smoke comes from the officer's weapon as he appears to fire. The officer appears to crouch down, as he points his firearm in the same direction. The black male subject then appears within the camera view and falls to the floor. The officer moves toward the subject, grabs his arm, then kicks an object down the aisle toward the rear of the store. A second uniformed male officer enters and moves toward the first officer and subject, who are on the floor and physically engaged. Shortly thereafter, several other male and female officers enter the store and join the other officers in physically engaging the subject.

Camera 7: Narrow view of the refrigerated beverage case. The video starts at 20:50:55 hours.

- At 20:51:05 a Hispanic female passes the refrigerated case and looks inside, then walks out of view.
- At 20:54:55 an object that appears to be a handgun comes into frame at the bottom of the screen. Shortly thereafter, a female officer enters from the left of the screen and stands over the object that appears to be a handgun, then moves from view. A second female officer stands over the object that appears to be a handgun for the remainder of the video.

A **warehouse surveillance video**, located at [REDACTED] ve.,³¹ is stationary on the outside of the warehouse, to the north of the Citgo gas station, on the east side of [REDACTED] Ave., with the camera pointed westward. The camera view captures an asphalt driveway or alley in the foreground extending diagonally from the bottom left of the frame to the upper right background of the frame. The recording is time-stamped beginning at “10-16-2016 07:43:14 PM” and ending “10-16-2016 08:43:11 PM.”³² There is no audio. Under Log #1082645, U# 16-18 the video and a summary of the video footage is included. For purposes of this investigation, the most material portion of the video surveillance footage is as follows:

Beginning at 07:57 p.m., the video captures an unmarked police vehicle with oscillating headlights driving northbound on [REDACTED] Avenue and a marked police vehicle driving southbound on [REDACTED] Avenue, responding to the location of incident. Two officers in uniform³³ exit the unmarked police vehicle and approach the store of the gas station. At approximately 7:58 p.m., one of the uniformed officers retreats backward, slightly crouching down, and moves west and then south near the east sidewalk of [REDACTED] Avenue. Within seconds, multiple police vehicles, both marked and unmarked, enter and exit the camera view, continuing to do so throughout the remainder of the video. The recording also captures the arrival of an ambulance and fire truck. CPD personnel and vehicles remain on the scene until the recording ends.

c. **Physical Evidence**

Evidence Technician (ET) Photographs and Video depict the scene and the recovered evidence as well as the officers, subject, and victims. Multiple spent shell casings are depicted and identified by marker #'s 7-16 in the parking lot area east of the north door. Bullet strikes are depicted to include, but not limited to; the glass and doorframe of the north door, the rooftop area of the gas station over the north door, an icebox that was located west of the north door and, along the north wall of the gas station.³⁴ In addition, Officer [REDACTED] injuries were photographed.³⁵

An **ISP Laboratory Report**,³⁶ dated December 2, 2016, documents that Officer [REDACTED] gun, a Glock, model 17, 9mm Luger caliber semiautomatic pistol, Serial # [REDACTED] was examined and found operable. This firearm was documented as Exhibit #3. ISP examined Officer [REDACTED] gun (Exhibit #8) a Glock, model 17, 9mm Luger caliber semiautomatic pistol, Serial # [REDACTED] and found it operable. According to the report, ten Winchester 9mm Luger +P caliber fired cartridge cases, Exhibit #14, were fired from Officer [REDACTED] firearm. Unfired cartridges were not tested.

d. **Documentary Evidence**

A **Tactical Response Report (TRR)**, prepared by Officer [REDACTED] # [REDACTED] documents that the incident occurred on October 16, 2016 at 8:55 p.m. The incident location was

³¹ Refer to Log #1082645 U#16-18, Att. 35

³² The timestamp of this video appears to be one hour behind the actual time of incident.

³³ These officers are now known to be Officer [REDACTED] # [REDACTED] and Officer [REDACTED] # [REDACTED]

³⁴ Refer to pages 45, 47-48, 70, 72-73, 76, 78, 81, 83 and 98 of Att. 17

³⁵ Att. 17 (Log #1082645 U#16-18, Atts. 25, 67)

³⁶ Att. 16

³⁷ Att. 6

██████████ Ave. Officer ██████████ was on duty and in uniform. She was injured during the incident. The subject was ██████████ a black male armed with a semi-automatic pistol who was not injured by Officer ██████████

Officer ██████████ reports that ██████████ did not follow verbal direction. Officer ██████████ further reports that ██████████ presented an imminent threat of battery in that he refused to disarm himself. In response, Officer ██████████ provided her presence, gave verbal commands, and used her firearm. Officer ██████████ discharged her Glock 17 9mm pistol ten (10) times. Officer ██████████ did not fire the first shot, drew the handgun from her strong side, used her sights, and stood approximately 5-10 ft away from ██████████ when she shot at him. Officer ██████████ rounds struck an object and not ██████████

An **IAD Synoptic Report**³⁸ documents that Officer ██████████ # ██████████ and Officer ██████████ # ██████████ were given alcohol and drug testing. Both officers submitted to breath testing that resulted in a reading of .000 Br.A.C.³⁹ Both officers submitted to urine drug analysis which returned negative results.

A **Detective Supplementary Report** under RD# ██████████ titled “Cleared Closed (Arrest and Prosecution)” documents information collected and reported by CPD regarding the October 16, 2016 police-involved shooting of ██████████⁴¹ Identifiers of all involved parties, evidence collected, and investigative actions taken by CPD detectives are documented.

The report documents that Officer ██████████ firearm, a Glock model 17, 9mm, semi-automatic pistol, was inventoried under # ██████████ Her firearm was recovered with one magazine marked with a 17 capacity; seven bullets, described as Win 9mm Luger +P, were recovered from the magazine. It is documented as “(one) bullet/ ammo Win 9mm luger +P cartridge, recovered from the above handgun...”

It is further documented that oral statements of Officer ██████████ and Officer ██████████ were taken on October 17, 2016 by Assistant State’s Attorney ██████████ and in the presence of a detective. The statements of Officer ██████████ and Officer ██████████ as reported in the Detective Supplementary Report are essentially that same as stated to IPRA.⁴³

According to the **Clerk of the Circuit Court of Cook County** records, under case # ██████████ documents that ██████████ was charged with two (2) counts of Attempted Armed Robbery; one (1) count of Aggravated Battery/Use Deadly Weapon; two (2) counts of Aggravated Unlawful Restraint; six (6) counts of Aggravated Assault/ Peace Officer; and, one count of Possession of a Controlled Substance. On June 28, 2017, ██████████ entered a plea of Guilty to

³⁸ Att. 20

³⁹ This is an acronym for Breath Alcohol Content.

⁴⁰ Att. 15

⁴¹ Refer to Log #182645, U#16-18

⁴² Statements of other involved parties were also taken as they relate to Log#1082645, U#16-18

⁴³ Att. 15

Aggravated Unlawful Restraint. On this same day, ██████ was found guilty and sentenced to six (6) years at the Illinois Department of Corrections. All other charges were dismissed.⁴⁴

VI. ANALYSIS

a. Applicable Directives and Law

1. Use of Deadly Force

Consistent with Illinois state law as codified at 720 ILCS 5/7-5, according to the Chicago Police Department's General Order 03-02-03, Section II, A:⁴⁵

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;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

General Order 03-02-03, Section III, titled "Department Prohibitions for Use of Deadly Force," states that use of firearms in the following ways is prohibited:

C. Firing into buildings or through doors, windows, or other openings when the person lawfully fired at is not clearly visible . . .

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 during 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

⁴⁴ Att. 25

⁴⁵ This report utilizes the Chicago Police Department General Orders in effect on October 16, 2016.

considering 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 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 consider 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 Evidence Standard

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 conduct complied with Department policy. 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 conduct complied with Department policy than that it did not, even if by a narrow margin, then the standard of proof has been met.⁴⁶

b. Analysis of the Allegations Against Officer ██████

A preponderance of evidence demonstrates Officer ██████ use of deadly force against ██████ was not objectively reasonable under the circumstances confronting her and violated General Order 03-02-03(III)(C).

1. Officer ██████ fired her weapon into a building when ██████ was not clearly visible in violation of Rules 2, 6, and 38.

Officer ██████ initially saw the left side of ██████ body in profile, holding what appeared to be a gun.⁴⁷ Officer ██████ asserted that she opened fire when she saw ██████ shoulder move, but admitted that she lost sight of ██████ as she continued to fire while retreating.⁴⁸ While Officer

⁴⁶ 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 ██████ in its analysis which would be inadmissible in a criminal case. See *Garrity v. New Jersey*, 385 U.S. 493 (1967).

⁴⁷ Att. 5 at 25.

⁴⁸ *Id.* at 43-44.

█████ later attempted to assert that she simply could not recall whether she saw █████ as she continued to retreat, COPA places significantly more weight on Officer █████' initial explicit admission. Importantly, Officer █████ never asserted that she recalled seeing █████ as she continued to fire while retreating. The last observation of █████ during the shooting incident that Officer █████ recalled was seeing █████' shoulder move right before she discharged her firearm the first time.⁴⁹ It is unlikely that Officer █████ would be able to clearly recall her observations of █████ right when she first discharged her firearm and not be able to recall, even generally, if she observed █████ as she continued to fire. Moreover, there were bars and signage on the north door that would have blocked Officer █████' clear view of █████ as she retreated to her northeast.⁵⁰ Finally, as evidenced by the ET photographs and COPA's investigators' own personal observations, it becomes significantly more difficult to see clearly through the north door of the Citgo mini-mart as a person moves northeast from the north door.⁵¹



⁴⁹ *Id.* at 43-44; Att. 14 at 7-10.

⁵⁰ Att. 17.

⁵¹ *Id.*





- i. General Order 03-03-02(III)(C) only permits CPD officers to fire into a building when the target is not clearly visible if the failure to fire would unreasonably endanger another officer or person.

CPD General Order 03-02-03 must be interpreted sequentially and as a whole. Section I of General Order 03-02-03 sets forth the purpose of the directive. Section II of General Order 03-02-03 lays out specific circumstances when the use of deadly force is justified. However, Section III of General Order 03-02-03 then expressly prohibits CPD officers from using firearms in specific situations.

Section III of General Order 03-02-03 unambiguously and explicitly prohibits officers from “[f]iring into buildings or through doors, windows, or other openings when the person lawfully fired at is not clearly visible.” 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 building or through doors, windows, or other openings when the person fired at is not clearly visible.

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. 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 buildings where the target is not clearly visible contained in Section IV of General Order 03-02-03 must be read in context of General 03-02-03 as a whole. 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. This inverted phrasing is not accidental,

and it is a tenet of statutory interpretation that “[e]ach word, clause, and sentence should be given effect so as not to be rendered superfluous.” *Chicago Teacher’s Union, Local No. 1. v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 15.

To apply the exception to the prohibition on firing into buildings where person fired at is not clearly visible broadly would make the prohibition entirely meaningless and superfluous. Therefore, read in context, COPA applies the exception narrowly to cases where specific, unusual facts and circumstances demonstrate that complying with the prohibition would unreasonably endanger the officer or another person.

- ii. In light of General Order 03-02-03’s prohibition on firing into a building when the target is not clearly visible, a reasonable officer would not have discharged his or her firearm under the facts and circumstances that confronted Officer [REDACTED]

COPA finds that, based on the totality of the circumstances facing Officer [REDACTED] at the time she discharged her firearm, a reasonable officer would not have believed that complying with CPD General Order 03-02-03’s prohibition would unreasonably endanger himself/herself or another person and therefore would have complied with the prohibition. Thus, a reasonable officer, under the totality of the circumstances confronting Officer [REDACTED] would not have fired into the Citgo mini-mart when, as acknowledged by Officer [REDACTED] was not clearly visible.⁵²

First, a reasonable officer would not fire at or into a building without continuously assessing the risk of causing death or great bodily injury to people in proximity to the person targeted. Officer [REDACTED] knew that [REDACTED] was inside and reported that she last observed [REDACTED] standing near [REDACTED]. Moreover, Officer [REDACTED] did not know if any other people were inside Citgo minimart, such as store clerks, other customers, and/or other police officers.⁵³ A reasonable officer would properly account for the serious risk firing into the Citgo minimart posed to [REDACTED] and other potential completely innocent bystanders.⁵⁴ Officer [REDACTED] faced a similar set of circumstances and determined that she did not have a “clear shot” because [REDACTED] was standing too close to [REDACTED] and there were too many obstructions.⁵⁵ General Order 03-02-03, Section IV carves out an exception to Section III when conforming to Section III would unreasonably endanger an officer or civilian. But in this instance, Officer [REDACTED] decision to fire into the building when [REDACTED] was not clearly visible was inconsistent with the actions of a reasonably trained officer and could have endangered [REDACTED] Officer [REDACTED] and others who Officer [REDACTED] knew to be in the vicinity.⁵⁶

⁵² Because the prohibition on firing into buildings when the person is not clearly visible expressly applies even when the person is “lawfully fired at,” this report does not address whether Officer [REDACTED] use of deadly force otherwise complied with General Order 03-02-03, Illinois law, and the Fourth Amendment to the United States Constitution.

⁵³ Other people were, in fact, present in the minimart including two uniformed officers and a store clerk.

⁵⁴ COPA notes that one of Officer [REDACTED] bullets appears to have struck the icebox, which was in the vicinity of where Officer [REDACTED] was taking cover.

⁵⁵ COPA recognizes that Officer [REDACTED] was standing at a different location outside the Citgo and therefore had a different angle than Officer [REDACTED] but nonetheless her observations are relevant. Officer [REDACTED] appropriately took into account the obstructions and [REDACTED] presence consistent with CPD policy.

⁵⁶ Officer [REDACTED] asserted that she properly accounted for [REDACTED] and Officer [REDACTED] Att. 5 at 48.

Second, Officer ██████ did not even know if ██████ was the person discharging a firearm. Officer ██████ admitted that she did not see ██████ discharge the firearm and simply heard gunshots. Indeed, ██████ did not discharge a firearm because he possessed only a replica firearm, and the gunshots Officer ██████ heard came from Officer ██████.⁵⁷ A reasonable officer would not disregard the Department's clear prohibition on firing into buildings when the person is not clearly visible with such limited information.

Third, at the time Officer ██████ discharged her firearm, she was retreating and would not have had the time or opportunity to carefully aim which only increased the risk that firing into the Citgo mini-mart—when she did not have a clear view of ██████—posed to innocent bystanders. Careful aim is even more paramount when firing into a building with limited visibility.

While Officer ██████ undoubtedly had to make a quick decision on whether to fire into the mini-mart under circumstances that were tense, uncertain, and rapidly evolving, this alone cannot justify her actions. CPD officers are prohibited from firing into a building when the person fired at is not clearly visible, and they cannot simply disregard the prohibition every time the target potentially poses a threat of death or bodily injury or just because they hear gunshots, when they are unable to identify the source of the gunfire.

Considering the prohibition and the specific facts uncovered in this investigation, a reasonable officer in Officer ██████ position would not have fired into the Citgo mini-mart.⁵⁸

2. Officer ██████ fired her weapon multiple times into a gas station overhang in violation of Rules 2, 6, 10, and 38.

In addition to firing her weapon into the mini-mart at ██████ Officer ██████ discharged her weapon numerous times into the gas station overhang. The evidence technician photographs document multiple bullet holes in the overhang.⁵⁹ Furthermore, multiple shell casings were identified in the northeast external area where Officer ██████ was retreating as she discharged her weapon.⁶⁰ Officer ██████ stated that firing into the gas station overhang was unintentional, and occurred as she fell to the ground.⁶¹ COPA does not doubt that the chaotic circumstances, the sound of gunfire, and sudden fall may have caused Officer ██████ to become startled and clutch her weapon. However, these facts do not negate the importance of and duty to maintain proper control

⁵⁷ Nonetheless, as set forth in COPA's report summarizing Officer ██████ use of deadly force under Log # 1082645, a reasonable officer would believe that ██████ possessed an operable firearm. ██████ replica firearm had the main characteristics of an operable firearm: it had (1) a handle; (2) a barrel; and (3) a trigger.

⁵⁸ COPA found Officer ██████ use of deadly force against ██████ justified under CPD policy under Log # 1082645. Specifically, COPA found by a preponderance of the evidence that Officer ██████ reasonably believed that a severe crime (armed robbery) was being committed, that ██████ was armed and dangerous, and that ██████ posed an immediate threat of death or serious bodily harm by pointing the replica firearm at him when he entered the Citgo minimart. However, Officer ██████ unlike Officer ██████ was bound by General Order 03-02-03(III)(C) because she was outside the building, and ██████ was not clearly visible to her. Furthermore, Officer ██████ had significantly less information than Officer ██████ Officer ██████ had a clear line of sight, could properly account for bystanders, and observed ██████ point the replica firearm in his direction.

⁵⁹ Att. 17.

⁶⁰ Id.

⁶¹ Att. 14 at 10-11.

and trigger discipline over one's firearm at all time. Officer █████ failure of due care resulted in the unintentional discharge of multiple shots from her firearm into the gas station overhang.⁶²

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Complimentary and Disciplinary History

Officer █████ complimentary history consists of the following: one (1) Attendance Recognition Award, one (1) Department Commendation, and seven (7) Honorable Mentions.

In 2018, Officer █████ received a "Reprimand" for a preventable accident.⁶³ Officer █████ has no further disciplinary history.

b. Recommended Penalty, by Allegation

COPA recommends a **Suspension of 365 days** for Allegation #1 against Officer █████ firing her weapon into a building when █████ was not clearly visible. Officer █████ actions were reckless. Officer █████ did not properly account for the obstructions or the the presence of █████ Officer █████ and other bystanders. Officer █████ intentional gunfire could have caused death or great bodily injury to bystanders.

COPA recommends a **Suspension of 5 days** for Allegation #2 against Officer █████ firing her weapon multiple times into a gas station overhang. Officer █████ did not maintain proper trigger discipline.

⁶² It appears that Officer █████ also discharged one shot into the icebox outside the Citgo mini-mart. It is not clear if this occurred when Officer █████ was intentionally firing into the Citgo or was part of the unintentional discharge.

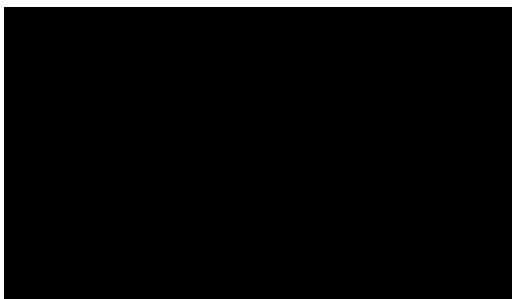
⁶³ Log #554251.

VII. CONCLUSION

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

Allegation	Finding
Officer [REDACTED] # [REDACTED]	
1. Fired her weapon into a building when the person firing at was not clearly visible in violation of Rules 2, 6, and 38.	Sustained/365 days
2. Fired her weapon multiple times into a gas station overhang Rules 2, 6, 10, and 38.	Sustained/5 days

Approved:



Chief Administrator

February 25, 2019

Date

Appendix A

Assigned Investigative Staff

Squad#:

7

Major Case Specialist:

Supervising Investigator:

Deputy Chief Administrator:

