

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	June 19, 2019
Time of Incident:	8:00 A.M.
Location of Incident:	████████████████████ Chicago, Illinois ██████
Date of COPA Notification:	June 19, 2019
Time of COPA Notification:	10:30 A.M.

On June 19, 2019, Officer Gabriel Gamino (PO Gamino) was off-duty and in his bed asleep. PO Gamino’s wife, ██████████ stopped at home in between two job sites, parking her black Ford Explorer in front of their home. When ██████████ got back into her vehicle, she was robbed at gunpoint by two unknown male black individuals in a white Ford Expedition. One robber stayed in the driver’s seat of the white Ford Expedition while the other robber approached ██████████ with a gun pointed at her. ██████████ fled from the robbery to her front door and rang the doorbell, which activated the doorbell camera. The robber with the gun entered ██████████ black Ford Explorer and attempted to steal the vehicle.

PO Gamino came outside with his service weapon drawn as the robbers attempted to escape. One of the robbers was driving ██████████ vehicle in reverse; the other was trailing along the side of the stolen vehicle in the white Ford Expedition. The robber who was driving ██████████ vehicle rolled the rear passenger window down and fired at PO Gamino and ██████████ who were standing in their yard. PO Gamino discharged his firearm one time, and then his gun jammed. At that point, the robber exited ██████████ vehicle and got back into the white Ford Expedition with his partner. As the white Ford Expedition sped away from the scene, the robber(s) fired several more shots at the ██████████. ██████████ immediately called the police while PO Gamino entered his wife’s vehicle, which was abandoned in the middle of the street, and moved it to its original parking spot.

**II. INVOLVED PARTIES**

Involved Officer #1:	Gabriel Gamino, Star #16046, Employee #████████, Date of Appointment: February 2, 2015, PO, 6 <sup>th</sup> District, DOB: ██████, 1990, Male, Hispanic
Involved Individual #1:	Unknown, Male, Black
Involved Individual #2:	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 (Department) member discharges their firearm. During its investigation of this incident, COPA did not find evidence to support allegations of excessive force related to PO Gamino’s firearm discharge. COPA did determine that PO Gamino committed the following violations of Department rules and policy:

Officer	Allegation	Finding/ Recommendation
Officer Gabriel Gamino	1. It is alleged that on or about June 19, 2019, at approximately 8:00 am, in the vicinity of [REDACTED], PO Gabriel Gamino failed to ensure that an item of evidentiary value (a black Ford Explorer) was secured at the scene as found until recovered by Forensics Services Division personnel, in violation of General Order 03-02-03(V)(B)(6).	Sustained/ Reprimand
	2. It is alleged that on or about June 19, 2019, at approximately 8:00 am, in the vicinity of [REDACTED], PO Gabriel Gamino failed to immediately notify the Office of Emergency Management and Communications of the firearms discharge, in violation of General Order 03-02-03(IV)(A).	Exonerated

**IV. APPLICABLE RULES AND LAWS**

General Orders<sup>1</sup>

1. G03-02 – Use of Force (effective October 16, 2017 – February 28, 2020)
2. G03-02-01 – Force Options (effective October 16, 2017 – February 28, 2020)
3. G03-02-03 – Firearms Discharge Incidents Involving Sworn Members (effective October 16, 2017 – February 28, 2020)

**V. INVESTIGATION<sup>2</sup>**

**a. Interviews**

On June 24, 2019, COPA interviewed **neighbor and witness** [REDACTED] ([REDACTED]) at his home at [REDACTED], Chicago, Illinois [REDACTED]. [REDACTED] reported he

<sup>1</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 August 26, 2021).

<sup>2</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>3</sup> Audio Att. 16, transcript Att. 31.

was in his basement on June 19, 2019, at approximately 8:00 A.M., when he heard a noise. He went upstairs and heard approximately two or three gunshots, all from what sounded like the same weapon.<sup>4</sup> He went outside and observed a black vehicle parking the wrong way on the street. ██████ thought someone had gotten shot because the vehicle was in the middle of the street, parked facing the wrong direction. The police arrived quickly, followed by an ambulance. ██████ said he heard the owner of the vehicle, now known to be PO Gabriel Gamino, say someone was attempting to rob his wife. He then observed PO Gamino move the vehicle back to the front of his house.

On July 2, 2019, **PO Gabriel Gamino**,<sup>5</sup> Star #16046, provided a statement to COPA. PO Gamino reported that on June 19, 2019, at approximately 8:00 A.M., he was off-duty and sleeping when he awoke to loud music. He looked out the window, which faces ██████, where his wife, ██████ had parked. PO Gamino observed a white SUV with a black male in the driver's seat. Simultaneously, ██████ suddenly rang the doorbell and screamed that someone pointed a gun at her and robbed her. PO Gamino grabbed his service weapon, opened the front door, and went outside, at which time ██████ ran inside. PO Gamino observed his wife's vehicle, a black Ford Explorer, being reversed toward ██████ with a white Ford Expedition trailing it toward ██████, where the vehicles collided. The robber of ██████ vehicle then rolled down the rear passenger window of the black Ford Explorer.<sup>6</sup>

PO Gamino, who was in boxer underwear shorts and standing in the front yard, realized he had no cover and began retreating towards his front door, where he observed his wife at his left side. After PO Gamino heard two shots coming from the direction of his wife's vehicle, he returned fire one time and then his gun jammed.<sup>7</sup> PO Gamino and his wife ran into their house and PO Gamino heard three more gunshots north of his residence. PO Gamino told his wife<sup>8</sup> to call 911 and report shots fired by and at police.<sup>9</sup>

PO Gamino then went outside and saw his wife's black Ford Explorer parked on ██████, where a woman whom PO Gamino had never seen was on her cell phone inside the vehicle. PO Gamino identified himself to the woman as a Chicago Police Officer, said they had just been robbed, and the woman got out of the driver's seat. PO Gamino then moved the black Ford Explorer to the front of his home where it was originally parked. PO Gamino said he moved the vehicle because his adrenaline was at an all-time high, he didn't recognize the woman in the vehicle and, the situation was chaotic.<sup>10</sup> PO Gamino reported the police arrived a short time later.

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<sup>4</sup> Att. 31, pg. 8, line 20.

<sup>5</sup> Audio Att. 24, transcript Att. 30.

<sup>6</sup> Att. 30, pg. 17, line 3.

<sup>7</sup> Att. 29. PO Gamino last qualified with this weapon on January 17, 2019.

<sup>8</sup> PO Gamino later stated that he recognized it was his responsibility to call the police, and he could not recall what specific information he told ██████ to relay to the dispatcher beyond what had just happened. PO Gamino said his wife knows his star number but probably did not remember it during the stress of the incident. See Att. 30, pg. 29, lines 23-24; pg. 30, lines 12-13; pg. 11, line 7.

<sup>9</sup> Att. 30, pg. 9, line 20.

<sup>10</sup> Att. 30, pg. 27, lines 6-8.

On July 26, 2019, witness ██████████ ██████████,<sup>11</sup> provided a statement to COPA. ██████████ ██████████ is the wife of PO Gamino. ██████████ ██████████ reported that on June 19, 2019, at approximately 8:00 A.M., she had stopped at home between job sites and was leaving for her second job site. ██████████ ██████████ entered her black Ford Explorer, which faced westbound on ██████████ ██████████, and started the vehicle. As she was closing her driver's side door, a black male exited a white Ford Expedition parked adjacent to her vehicle, facing eastbound, and approached her with a gun in his hand. The man told ██████████ ██████████ to "get out of the car" and "give me everything you've got."<sup>12</sup> ██████████ ██████████ responded that she had nothing on her and exited her vehicle. The robber then entered ██████████ ██████████ black Ford Explorer as she attempted to escape by running toward her home. She rang the doorbell repeatedly, which activated the doorbell camera. ██████████ ██████████ screamed through the door, stating she had been robbed at gunpoint. As the robber attempted to steal ██████████ ██████████ black Ford Explorer, PO Gamino came outside with his gun in his right hand and ran down the front stairs toward the vehicle.

The robber reversed ██████████ ██████████ vehicle eastbound and then northbound. The white Ford Expedition trailed alongside the stolen reversing black Ford Explorer. ██████████ ██████████ recalled she came outside with her husband and was yelling "give me my fucking car"<sup>13</sup> when the robber driving her vehicle rolled down the rear passenger window and fired two shots toward her and PO Gamino. PO Gamino discharged his firearm one time but his gun then jammed.<sup>14</sup> At that point, the white Ford Expedition struck ██████████ ██████████ vehicle as it was reversing. PO Gamino told ██████████ ██████████ to go inside, call 911, and report shots fired. ██████████ ██████████ called 911 and told the dispatcher shots were fired. ██████████ ██████████ also provided descriptions of the robbers and their vehicle. ██████████ ██████████ looked outside and observed a woman, whom ██████████ ██████████ believed was her neighbor, peering into the abandoned black Ford Explorer. ██████████ ██████████ saw the woman get into the black Ford Explorer, at which point PO Gamino told the woman to get out of the vehicle. PO Gamino then moved the vehicle to the front of the Gamino's residence where it was originally parked.

#### b. Digital Evidence

The **Body-Worn Camera**<sup>15</sup> footage of responding officers does not capture the incident, only the post-incident scene response.

The **doorbell camera from** ██████████ ██████████<sup>16</sup> recorded a seventeen-second video clip that shows ██████████ ██████████ running down the front stairs of her home, toward her husband. PO Gamino is standing in the yard with his gun in his right hand, pointed at a black Ford Explorer that is reversing as a white Ford Expedition trails the vehicle. ██████████ ██████████ says something unintelligible, followed by, "fuck you, give me my mother fucking car." At that point, the audio

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<sup>11</sup> Audio Att. 22, transcript Att. 32.

<sup>12</sup> Att. 32, page 6 lines 8-11.

<sup>13</sup> Att. 32, pg. 31, lines 7-8.

<sup>14</sup> Att. 32, pg. 30, lines 19-20.

<sup>15</sup> Att. 38.

<sup>16</sup> Att. 36.

captures two gunshots<sup>17</sup>, and PO Gamino and [REDACTED] run into the house. PO Gamino tells his wife to stay inside and asks her if she is shot.



Figure 1. Screenshot from the doorbell camera at [REDACTED] showing PO Gamino with his gun pointed in the direction of the robbers. Attachment 36 at 0:01 seconds.



Figure 2. Screenshot from the doorbell camera at [REDACTED] showing PO Gamino and [REDACTED] running into their house. Attachment 36 at 0:08 seconds.

<sup>17</sup> At :07 seconds, the video captures a dust cloud appear near what appears to be an empty flower bed. This may have been a shot fired by the robber or PO Gamino. Att. 36.

The **doorbell camera from [REDACTED]**<sup>18</sup> recorded a forty-second long video clip that shows a white Ford Expedition speeding away from a black Ford Explorer with its driver's side door open. As the white Ford Expedition drives away, someone inside the vehicle appears to fire three shots. The vehicle then makes a left turn, and a person inside the house opens the screen door and says, "They just shot this man in front of my house. They just killed this man in front of my house, oh my god."



Figure 3. Screenshot from the doorbell camera at [REDACTED]. Attachment 36 at 0:17 seconds.

The **OEMC radio transmissions and 911 calls**<sup>19</sup> capture [REDACTED] report, "Hey I just got robbed at gunpoint, [REDACTED], they tried to steal my car, this is an officer's house, shots fired 10-1." [REDACTED] goes on to describe her black Ford Explorer, the robber's white Ford Expedition, the robbers, and the direction of flight. [REDACTED] identifies her husband's last name and states he is a police officer. She also indicates that the robbers fired at them, and her husband fired back.

The **Evidence Technician photos**<sup>20</sup> depict the scene, the black Ford Explorer, the white Ford Expedition<sup>21</sup>, and the evidence recovered.

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<sup>18</sup> Att. 36. 10706 S. Morgan

<sup>19</sup> Att. 35.

<sup>20</sup> Att. 40.

<sup>21</sup> The white Ford Expedition was later recovered, but no arrests were made.

### c. Physical Evidence

**Crime Scene Processing Reports**<sup>22</sup> document that Evidence Technicians (ETs) were assigned to process the scene of the incident, which consisted of taking digital photographs and video of the scene and taking photographs of the involved vehicles and other evidence.<sup>23</sup> ETs also took field measurements of the evidence, then recovered and inventoried the evidence under RD # [REDACTED]. A drawing (also referred to as a plat) of the scene was also created to mark the locations of the recovered evidence.<sup>24</sup>

The recovered evidence included, but was not limited to, PO Gamino's weapon, evidence potentially left behind by the robbers (including money and a candy wrapper recovered from the grass), and biological swabs of PO Gamino's weapon. From the crime scene, ETs recovered one 9mm Luger + P live round<sup>25</sup> from PO Gamino's front doorstep. Additionally, ETs recovered two 9mm expended shell casings<sup>26</sup> and one fired bullet<sup>27</sup> from the black Ford Explorer. Three expended shell casings<sup>28</sup> were recovered from the street.

The **CPD weapons breakdown**<sup>29</sup> took place in the living room of [REDACTED]. PO Gamino's weapon was a Smith and Wesson, Model MP, 9mm semi-automatic blue steel handgun with a black frame and black handle. The magazine had a capacity of seventeen rounds. One Winchester 9mm Luger live round was recovered from the chamber of the firearm, fifteen Winchester 9mm Luger live rounds were recovered from the magazine, and one live round was recovered from the front porch of the Gamino's residence. This is consistent with PO Gamino's report that he fired one round and attempted to fire a second round, but his gun jammed.

The **Chicago Police Department (CPD) Ballistics and Fingerprint Laboratory Reports**<sup>30</sup> document the examination of latent fingerprints lifted from [REDACTED] black Ford Explorer, as well as the examination and testing of the recovered firearms evidence, including PO Gamino's weapon. An analysis of the reports shows the following facts relevant to this investigation: PO Gamino's firearm was test-fired and determined to be operable. Two test-fired cartridge casings from PO Gamino's weapon were compared to three fired cartridge casing from the vehicle (CSMs 5, 6 and 7), and were not a match. The expended shells found in the vehicle were found to have been fired from a different weapon. Latent fingerprint lifts<sup>31</sup> from the black Ford Explorer were found to match PO Gamino's fingerprints.

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<sup>22</sup> Att. 41-45.

<sup>23</sup> Att. 40.

<sup>24</sup> Att. 54.

<sup>25</sup> Att. 41, CSMs 1.

<sup>26</sup> Att. 41. CSM. 2 and 3.

<sup>27</sup> Att. 41. CSM 4.

<sup>28</sup> Att. 41. CSMs 5, 6, and 7.

<sup>29</sup> Att. 21.

<sup>30</sup> Att. 45 and 46.

<sup>31</sup> Att. 42 and 46.

#### d. Documentary Evidence

The **Original Case Incident (“Incident”) Report for RD # [REDACTED]**<sup>32</sup> documents that on June 19, 2019, at 8:04 A.M., a traffic collision occurred at [REDACTED]. The narrative reports the black Ford Explorer was stolen during an armed carjacking by the occupants of a white 2017 Ford Expedition, owned by [REDACTED]. The white Ford Expedition struck the black Ford Explorer, owned by [REDACTED], then fled the scene. The black Ford Explorer was recovered by the owner on the scene. During the investigation, it was determined that the white Ford Expedition was reported stolen under Chicago police report (RD # [REDACTED]) at the time of the accident.

The **Incident Report for RD # [REDACTED]**<sup>33</sup> reports that on June 17, 2019, at 6:55 A.M., the owner of the white Ford Expedition reported the vehicle stolen at [REDACTED]. The report identifies the victim of the theft as [REDACTED] and states that [REDACTED] related that he dropped his keys to the vehicle at the location.

The **Incident Report for RD # [REDACTED]** reports that on June 19, 2019, at 8:07 A.M., there was a robbery/aggravated vehicular hijacking and an aggravated battery with a handgun at [REDACTED]. The victims are reported as [REDACTED] and Gabriel Gamino. The narrative lists multiple responding beat numbers and references a Detective Supplemental report<sup>35</sup>, but that report does not include additional information.

The **Tactical Response Report (TRR)**<sup>36</sup> completed by PO Gabriel Gamino states he was off-duty when an offender used force likely to cause death or great bodily harm and posed an imminent threat of danger with a weapon. PO Gamino responded with member presence, tactical positioning, and by discharging his semi-automatic pistol. The offender fired first, and PO Gamino fired back at the offender, who was inside the stolen black Ford Explorer. No injuries occurred during the incident.

#### e. Additional Evidence

COPA investigators conducted a **canvass**<sup>37</sup> of the neighborhood on June 24, 2019. Of the neighbors COPA made contact with, only some reported hearing shots. None of the neighbors reported they observed the incident, except for witness [REDACTED] who saw PO Gamino move the black Ford Explorer after the robbers fled the scene.<sup>38</sup>

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<sup>32</sup> Att. 1.

<sup>33</sup> Att. 34.

<sup>34</sup> Att. 33.

<sup>35</sup> Att. 4.

<sup>36</sup> Att. 13.

<sup>37</sup> Att. 17.

<sup>38</sup> Refer to Attachment 31.

## VI. LEGAL STANDARD

### a. Use of Force.

Department policy states that the “Department’s highest priority is the sanctity of life.”<sup>39</sup> Department members are expected to act with the utmost regard for preserving human life and must comply with Department use of force orders.<sup>40</sup> Department policy in place on the date of the incident provides that a Department member’s use of force must be evaluated based on the totality of the circumstances known by the member at the time of the incident, from the perspective of a reasonable Department member in the same or similar circumstances, and without the benefit of 20/20 hindsight.<sup>41</sup> Department policy recognizes that Department members must “make split-second decisions – in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation.”<sup>42</sup>

CPD General Order entitled “Use of Force” provides that a member’s use of force must be “objectively reasonable, necessary, and proportional.”<sup>43</sup> Each of these elements is further explained in Department policy, as follows:

- Objectively Reasonable: In evaluating use of force, Department policy provides that the key issue is whether the Department member’s use of force was objectively reasonable under the totality of the circumstances at the time force is used. Although “reasonableness” cannot be precisely defined, Department policy states the following non-exclusive list of factors can be considered:
  - “whether the subject is posing an imminent threat;
  - the risk of harm, level of threat, or resistance presented by the subject; and
  - the subject’s proximity or access to weapons.”<sup>44</sup>
- Necessary. Department members are limited to using “only the amount of force required under the circumstances to serve a lawful purpose.”<sup>45</sup>
- Proportional. A Department member’s use of force must be proportional to the “threat, actions, and level of resistance offered by a subject.”<sup>46</sup>

To reduce or avoid the need for use of force, Department policy directs members to use de-escalation techniques known as “Principles of Force Mitigation” when it is safe and feasible under the circumstances.<sup>47</sup> These techniques include:

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<sup>39</sup> General Order G03-02 (effective October 16, 2017 — February 28, 2020).

<sup>40</sup> Questions as to the propriety of a police officer’s use of force, including excessive or deadly force, are also typically evaluated under state law as well as the 4<sup>th</sup> Amendments to the United States Constitution and Illinois state Constitution. However, CPD policy in place at the time of the incident in this case prohibited the use of deadly force under circumstances that may have been permissible under state law and 4<sup>th</sup> amendment law, meaning that CPD policy is more restrictive than state law and federal 4<sup>th</sup> amendment law. COPA’s analysis therefore focuses solely on whether the officers use of deadly force complied with Department policy in place at the time of the incident. COPA cites to case law to aid in interpretation of common concepts (such as the meaning of “objectively reasonable”).

<sup>41</sup> General Order G03-02(II)(D).

<sup>42</sup> General Order G03-02(II)(D).

<sup>43</sup> General Order G03-02(III)(B).

<sup>44</sup> General Order G03-02, sections (III)(B)(1)(a) to (III)(B)(1)(c).

<sup>45</sup> General Order G03-02(III)(B)(2).

<sup>46</sup> General Order G03-02(III)(B)(3).

<sup>47</sup> General Order G03-02(III)(B)(4); *see also* G03-02-01(III).

- “Continual Communication,” which means using verbal control techniques to avoid or minimize confrontations before resorting to physical force. This includes using persuasion, advice, instruction, and warning prior to any use of force;
- “Tactical Positioning,” which involves use of positioning, distance, and cover to contain a subject and create a zone of safety for officers and the public; and
- Using “Time as a Tactic” to, among other things, permit the de-escalation of a subject’s emotions and provide time for the subject to comply with police orders, provide time for continued communication, and allow for the arrival of additional members or special units and equipment.<sup>48</sup>

While attempting to de-escalate an encounter, Department members are required to continually assess the situation and modify their use of force in ways that ensure officer safety as circumstances develop.<sup>49</sup>

#### **b. Use of Deadly Force.**

A Department member’s use of deadly force, which includes the discharge of a weapon at or in the direction of a person subject to arrest, is controlled by Department policy restrictions in addition to those described above. In particular, Department members may only use deadly force 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>50</sup> A threat is defined as “imminent” when it is objectively reasonable to believe that:

- the subject’s actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken;
- the subject has the means or instruments to cause death or great bodily harm; and
- the subject has the opportunity and ability to cause death or great bodily harm.

The Department’s definition of “last resort” re-enforces the principle that a Department member may only use deadly force when presented with an “imminent threat.”<sup>51</sup>

The Force Options Order outlines the force options available to Department members when met with resistance or threats.<sup>52</sup> The Force Options Order authorizes the use of deadly force in situations involving an “assailant,” which is defined as a subject whose actions constitute an imminent threat of death or great bodily harm to a Department member or another person.<sup>53</sup>

#### **c. Response to Firearm Discharge**

Department policy dictates the immediate response of a Department member who has discharged his or her firearm.<sup>54</sup> In any firearm-discharge incident, the discharging member shall, among other things, immediately notify OEMC of the incident, providing all relevant information

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<sup>48</sup> General Order G03-02-01(III).

<sup>49</sup> General Order G03-02(III)(B)(4).

<sup>50</sup> General Order G03-02(III)(C)(3).

<sup>51</sup> *Id.*

<sup>52</sup> General Order G03-02(III)(C).

<sup>53</sup> General Order G03-02-01(IV)(C)(2).

<sup>54</sup> General Order G03-02-03, Firearms Discharge Incidents Involving Sworn Members, Section V(B).

and requesting additional resources.<sup>55</sup> Department policy also states that, unless there is a public safety reason necessitating the immediate recovery of evidence, members will secure all weapons or items of evidentiary value at the scene as found until Forensic Services can recover the items.<sup>56</sup>

#### d. 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 the conduct reviewed complied with Department policy.<sup>57</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, 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>58</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>59</sup>

## VII. ANALYSIS

### a. Use of Force Analysis.

COPA finds a preponderance of the evidence demonstrates that PO Gamino’s use of deadly force was objectively reasonable under the totality of the circumstances. Video footage clearly shows that PO Gamino fired only one shot, and only after he was fired upon multiple times. Accordingly, PO Gamino’s use of deadly force was a last resort and was necessary to prevent the imminent threat of death or great bodily harm posed to him and his wife.

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<sup>55</sup> General Order G03-02-03(IV)(A).

<sup>56</sup> General Order G03-02-03, Sections (V)(B)(6).

<sup>57</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>58</sup> See, e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

<sup>59</sup> *Id.* at ¶ 28.

In making its determination on the use of deadly force, COPA evaluated all available statements from both PO Gamino and civilian witnesses, as well as all other evidence discussed above. As part of this review, COPA found PO Gamino to be credible. The statements from PO Gamino and the civilian witnesses are materially consistent with each other and are supported by video and physical evidence.

**i. PO Gamino’s use of force was authorized under Department policy.**

COPA finds the preponderance of the evidence establishes that PO Gamino’s use of force was objectively reasonable under the totality of the circumstances, complied with Department policy regarding necessity and proportionality, and complied with Department policy with respect to the use of de-escalation techniques.

First, the robbers who were attempting to steal [REDACTED] vehicle pointed a firearm at her and shot at PO Gamino. By doing so, the robbers would appropriately have been considered “assailants” under the Department’s use of force model.<sup>60</sup> PO Gamino was reasonable in concluding that the robbers posed an imminent threat to him and his wife, and his use of deadly force against them was authorized by Department policy.

Additionally, Department policy requires that each use of force be “necessary,” meaning that officers will use only the amount of force required to serve a lawful purpose.<sup>61</sup> Similarly, the policy provides that officers will use only the force that is proportional to the threat and resistance offered by a subject.<sup>62</sup> Courts have stated that “[f]orce...becomes increasingly severe the more often it is used; striking a resisting suspect once is not the same thing as striking him ten times.”<sup>63</sup> In this case, COPA can clearly conclude that PO Gamino fell within the necessary and proportional standard: he fired one shot in response to robbers who had fired multiple times towards him and his wife.

Lastly, Department policy requires that members decrease their level of force when the resistance they face is lessened.<sup>64</sup> Here, PO Gamino fired once and stopped. He did not continue to fire after the robbers ceased shooting, but merely ran with his wife back towards their house.

**ii. PO Gamino’s use of force was permissible under Department policy.**

PO Gamino’s actions demonstrate that he used deadly force as a last resort based on a reasonable belief that the robbers posed an imminent threat of death or great bodily harm. As discussed above, COPA finds that the robbers’ actions created an imminent threat because: (1) the firearm discharge in the direction of PO Gamino and his wife was likely to cause death or great bodily unless officers took action; (2) the robbers had the means to cause death or great bodily harm through the possession of a firearm; and (3) the robbers had the opportunity and ability to cause death or great bodily harm as demonstrated by their firearm discharge at PO Gamino. Again,

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<sup>60</sup> General Order G03-02-1(IV)(C)(2).

<sup>61</sup> General Order G03-02(III)(B)(2).

<sup>62</sup> General Order G03-02(III)(B)(3).

<sup>63</sup> *Cyrus v. Town of Mukwonago*, 624 F.3d 856, 863 (7th Cir. 2010).

<sup>64</sup> General Order G03-02(III)(B)(4).

the robbers' actions put them into the category of an "assailant" under Department policy. PO Gamino was authorized to use deadly force as a result.

Further, COPA finds that PO Gamino used deadly force as a last resort, as he did not initiate the use of deadly force and only resorted to deadly force after shots had been fired in his and his wife's direction.

**b. Allegations against PO Gamino**

**i. PO Gamino failed to ensure that an item of evidentiary value was secured at the scene until the arrival of Forensic Services.**

COPA finds that PO Gamino failed to ensure an item of evidentiary value was secured at the scene as found until the arrival of Forensic Services Division personnel, in violation of General Order G03-02-03(V)(B)(6). This is undisputed as PO Gamino admitted that, after the robbers had fled, he promptly got into and moved his wife's black Ford Explorer. PO Gamino said he observed a woman he had never seen before talking on her cell phone inside his wife's vehicle. PO Gamino identified himself to the woman as a Chicago Police Officer, said they had just been robbed, and the woman got out of the driver's seat. PO Gamino then moved the vehicle to the front of his home where it was originally parked, which he stated he did due to high adrenaline, the fact that he had not recognized the woman in his wife's car, and the chaos of the situation. Additionally, PO Gamino stated that the vehicle was, at that point, abandoned in the middle of the street with the driver's side door open, obstructing neighborhood traffic. While COPA understands this was a high-stress situation for all parties, the requirement that evidence be secured as found is essential to preserve the crime scene, and in this situation there was no discernable public safety concern created by a vehicle obstructing light neighborhood traffic. Officer-involved shootings are subject to a high level of scrutiny and failing to secure evidence may have serious consequences in any future criminal or civil proceedings. PO Gamino, to his credit, recognized this and acknowledged that he should not have moved the vehicle. Accordingly, COPA finds this allegation **Sustained** as a violation of Rule 6.

**ii. PO Gamino did not fail to immediately notify the Officer of Emergency Management and Communications of a firearms discharge by an off-duty police officer.**

COPA finds that, although PO Gamino did not personally notify OEMC, he did not do so in violation of General Order G03-02-03(IV)(A) based on the totality of the circumstances. Immediately after PO Gamino fired at the robbers, his wife called OEMC. [REDACTED] informed OEMC of shots fired at and by the police, her husband's name, that he was an off-duty police officer. The reporting requirement for officer-involved shootings is for the safety of both the community and the officers involved, and as such should be adhered to in all circumstances. Although PO Gamino did not personally make the call to OEMC, he ensured the call was made while he was outside pursuing the robbers who were still present and at large. In considering the totality of the circumstances, that [REDACTED] promptly made the call, and that all essential information was timely reported to OEMC, COPA finds this allegation is **Exonerated**.

**VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

**a. PO Gabriel Gamino**

COPA has considered PO Gamino’s training, complimentary and lack of disciplinary history in recommending discipline. COPA has found that PO Gamino violated Rule 6 by failing to secure evidence (a black Ford Explorer) as found at the scene. Under the circumstances, PO Gamino’s decision to move the vehicle was understandable. He had just experienced a traumatic event in which he and his wife were shot at in front of their home. Immediately thereafter, PO Gamino observed an unknown person enter his wife’s vehicle for an unknown reason. In those moments, PO Gamino’s state of mind was that of a victim, not a sworn officer, and his decision to move the vehicle rather than preserve the scene was understandable. Based on PO Gamino’s statements and the totality of the circumstances, COPA recommends a **written reprimand**.

**IX. CONCLUSION**

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding / Recommendation</b>
Officer Gabriel Gamino	1. It is alleged that on or about June 19, 2019, at approximately 8:00 am, in the vicinity of [REDACTED] PO Gabriel Gamino failed to ensure that an item of evidentiary value (a black Ford Explorer) was secured at the scene as found until recovered by Forensics Services Division personnel, in violation of General Order 03-02-03(V)(B)(6).	Sustained/ Reprimand
	2. It is alleged that on or about June 19, 2019, at approximately 8:00 am, in the vicinity of [REDACTED] PO Gabriel Gamino failed to immediately notify the Office of Emergency Management and Communications of the firearms discharge, in violation of General Order 03-02-03(IV)(A).	Exonerated

Approved:



9/13/2021

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Matthew Haynam  
*Deputy Chief Administrator – Chief Investigator*

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Date



9/13/2021

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Andrea Kersten  
*Interim Chief Administrator*

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Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	6
<b>Major Case Specialist:</b>	Emily Pierce
<b>Supervising Investigator:</b>	Steffany Hreno
<b>Attorney:</b>	Hannah Kalogriopoulos
<b>Deputy Chief Administrator:</b>	Matthew Haynam