

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

## I. EXECUTIVE SUMMARY

Date of Incident:	September 9, 2016
Time of Incident:	11:31 pm
Location of Incident:	2546 W. Division Street
Date of IPRA Notification:	September 10, 2016
Time of IPRA Notification:	1:19 am

On September 9, 2016, at approximately 11:31 pm, [REDACTED] [REDACTED] was standing at the southwest corner of Division Street and Maplewood Avenue. [REDACTED] [REDACTED] drove a grey sedan<sup>4</sup> southbound on Maplewood, when shots were fired from [REDACTED] vehicle toward [REDACTED]. As [REDACTED] continued driving westbound on Division Street, [REDACTED] pursued the vehicle on foot and discharged a firearm multiple times toward the grey sedan. Subsequently, the grey sedan crashed<sup>5</sup> on the south side of the street. [REDACTED] was shot one time in the back of his head and died.

During the encounter between [REDACTED] and [REDACTED] Officer [REDACTED] and Officer [REDACTED] were on routine patrol near 2511 W. Division Street, when they heard multiple shots fired. The officers made a U-turn onto Division Street and drove westbound. Upon passing Maplewood Avenue, Officers [REDACTED] and [REDACTED] observed [REDACTED] standing on the northside of the street, facing west, and firing a gun at the grey sedan that had crashed. Officer [REDACTED] drove alongside [REDACTED] with the passenger side of the police vehicle closest to [REDACTED]. The officers announced their office and yelled verbal commands through the open front passenger window. [REDACTED] turned his body toward the officers with his gun still in his hand.

Officer [REDACTED] fired her weapon toward [REDACTED] four times through the open front passenger window. Simultaneously, Officer [REDACTED] while seated in the driver's seat, reached over Officer [REDACTED] with his right arm extended toward the front passenger window and discharged his weapon four times at [REDACTED].

After the officers shot at [REDACTED] walked eastbound on Division Street and entered the driver's side of a parked black SUV. Subsequently, [REDACTED] exited the SUV and was

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

<sup>2</sup> [REDACTED] previously used the name [REDACTED]. Under the last name [REDACTED] was found to be a convicted felon. Refer to Att. 10. It is unknown exactly where or when [REDACTED] changed his last name from [REDACTED] to [REDACTED].

<sup>3</sup> [REDACTED] a juvenile on the date of the incident, DOB: [REDACTED] 1998, Hispanic, Male (Att. 5, p.1 and Att. 179, p.1).

<sup>4</sup> This vehicle was later learned to be a Honda Civic reported stolen under RD # [REDACTED] (Att. 179, p. 4).

<sup>5</sup> The traffic crash was reported under RD # [REDACTED] (Att. 179, p. 4).

detained. [REDACTED] sustained six gunshot wounds and was taken to Stroger Hospital for medical treatment.

IPRA initiated this investigation on September 10, 2016. The investigation consisted of interviewing both CPD officers and civilian witnesses, as well as physical evidence, digital evidence, documentary evidence, and other evidence. A preponderance of the evidence demonstrates that Officer [REDACTED] and Officer [REDACTED] use of deadly force was objectively reasonable under the totality of the circumstances.

II. INVOLVED PARTIES

Involved Officer #1:	[REDACTED] Star # [REDACTED] Employee # [REDACTED] Date of Appointment: [REDACTED] 2001, Police Officer, Unit [REDACTED] DOB: [REDACTED] 1977, Male, Black
Involved Officer #2:	[REDACTED] Star # [REDACTED] Employee # [REDACTED] Date of Appointment: [REDACTED] 1996, Police Officer, Unit [REDACTED] DOB: [REDACTED] 1970, Female, Black
Involved Individual #1:	[REDACTED] aka: [REDACTED] DOB: [REDACTED] [REDACTED] 1983, Hispanic, Male.

III. ALLEGATIONS

Any discharge of an officer’s firearm resulted in a mandatory notification to COPA’s predecessor IPRA. This investigation was initiated pursuant to such notification. However, IPRA/COPA determined evidence did not exist which would require allegations against Officers [REDACTED] and [REDACTED]

IV. APPLICABLE RULES AND LAWS

- Rules
  - 1. **Rule 6** – Disobedience of an order/directive, whether written or oral.
- General Orders
  - 1. **General Order G03-02-03:** Deadly Force
- Federal Laws
  - 1. The Fourth Amendment to the United States Constitution
- State Laws
  - 1. 720 ILCS 5/7-5 (1986)

## V. INVESTIGATION

## a. Interviews

Attempts to interview ██████████ were unsuccessful. On September 10, 2016, ██████████ was unable to provide a statement due to his medical condition. IPRA/COPA made several attempts to obtain consent from ██████████ attorneys for an interview. However, ██████████ attorney did not respond.<sup>6</sup>

Civilian Interviews

In a statement to IPRA on September 28, 2016, witness ██████████ stated that on the date and approximate time of incident, he attended a house party at his friend ██████████ apartment on Division Street. The apartment was located slightly west from Guerrero's restaurant.

At the approximate time of incident, ██████████ was standing on the rear porch of the home. ██████████ heard a rapid succession of approximately 14 ringing or crackling noises, for approximately seven seconds. ██████████ then heard muffled voices, coming from the southeast direction, including an unknown female voice repeatedly screaming "stop" and a male voice yelling words to the effect of "get out of here." ██████████ realized he heard gunshots. ██████████ re-entered the home and heard another set of approximately 15 gunshots. ██████████ heard "conflicting shots" because some shots were louder than others. This led ██████████ to believe there was more than one shooter. While re-entering the home, ██████████ observed people move away from the front living room and call police.

According to ██████████ he walked to the living room area and the gunshots stopped. ██████████ looked out the front, southeast window and down toward the street. Upon looking out the window, ██████████ observed a handgun on the northside of Division Street laying on the ground, in the bike lane, near a parked car. ██████████ described the gun as black, "bulkier" than a revolver or a pistol, and it appeared to have a longer clip. ██████████ observed an unknown male<sup>8</sup> run across the street, from the south side of Division Street, toward that gun. The unknown male kicked the gun out of view and in front of a nearby parked car. The unknown male then grabbed the gun, put it in his waistband, and walked westbound on Division Street out of ██████████ sight.

██████████ shifted his attention east on Division Street, and observed, for the first time, a white vehicle at the intersection of Division Street and Maplewood Avenue with the rear driver's side door open. He observed police cars respond to the area. At no time did ██████████ visually observe any shots fired. ██████████ observed several bullet casings on Division Street, near the bike lane, in front of the apartment building. ██████████ moved away from the front windows and further into the apartment; he heard police sirens and observed nothing further.<sup>9</sup>

In a statement to IPRA on September 16, 2016, witness ██████████ stated that on the date and approximate time of incident, he and his girlfriend, ██████████ were at

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<sup>6</sup> Att. 71, 73, 82 and 119.

<sup>7</sup> Attempts made to interview ██████████ were unsuccessful. Refer to canvass sheet, Att. #16 and Investigator's Case Log.

<sup>8</sup> This male was later identified as ██████████ CB # ██████████ IR # ██████████ Refer to Att. 32 and Att. 194 documenting ██████████ as the individual who picked up the handgun used in this incident.

<sup>9</sup> Att. 127, 129.

house, While sitting on the couch in the front living room, heard several “loud, rapid claps”<sup>10</sup> outside that sounded like gunshots.

At that time, ran to the front window of the apartment, looked down onto Division Street, and observed a Hispanic male holding a pistol, while rapidly firing westbound. He described the man as approximately 30 years of age, tall, with a medium build, possibly bald, and wearing plaid shorts. stated that although there were trees in front of the building, none of the trees obstructed his view of the male, slightly east of the front window. stated that there were trees obstructing his view to the west of the apartment’s front window and could not observe who or what the male fired at. did not observe the male fire into a vehicle.

According to the male walked westbound in the middle of the street, while he fired his weapon. The male walked in between parked cars on the north side of the street facing westbound, then onto the sidewalk, and fired a few more shots, in a slower succession. heard approximately 15 to 20 gunshots.

stated that he recalled observing a red or dark colored sedan<sup>11</sup> vehicle driving westbound on Division Street, from Maplewood Avenue. The sedan slowly pulled up approximately 5 to 10 feet away from the male. At that time, the man with the firearm faced westbound, standing on the north sidewalk, slightly in front of “with his gun leveled.”<sup>12</sup> then observed the front passenger side window of the vehicle down and “a pistol stick out and start firing at [the male].”<sup>13</sup> observed three to four rapid muzzle flashes come from the vehicle, toward the building. ran away from window. looked back out the window before completely moving away, at which time he observed the man run eastbound, with a slight limp or a hop, and turn the corner, and go northbound on Maplewood Avenue. did not observe how the man turned around before running eastbound. did not hear anyone say, “Police.” had no knowledge where the man’s gun was when he ran. Subsequently, the police were called, and several officers responded to the scene.

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**In a statement to IPRA** on October 20, 2016, witness stated that on the date and approximate time of incident, she was walking eastbound on the south side of Division Street, west of Maplewood Avenue. As she walked past a bar, possibly Mas o Menos Lounge, she heard one “pop,” looked toward her left, and observed a gray vehicle that appeared double parked alongside another vehicle. stated, “I saw the man shooting into the car and I saw a flash, two more shots, that’s when I realized what was going on and I dropped to the ground.”<sup>15</sup> She described the man as Hispanic, tall, possibly bald, wearing an oversized plaid shirt and possibly white pants. It appeared the Hispanic man faced a northeast direction, as he fired into the front window of the gray vehicle. was unable to see anyone inside the vehicle, but there appeared

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<sup>10</sup> Att. 81, p. 4, line 17.

<sup>11</sup> On or about September 16, 2016, prior to the in-person statement with the R/I spoke to via phone to schedule the statement and during the phone call began to explain what he witnessed. He was asked if he recalled seeing a white car on the date of incident which he said he did not. An in-person interview was scheduled for further details. Refer to notes in the working file.

<sup>12</sup> Att. 81, p. 23, line 2.

<sup>13</sup> Att. 79, 18:14 or Att. 81, p. 21, lines 2-3.

<sup>14</sup> Att. 79, 81.

<sup>15</sup> Att. 131, 13:54 and Att. 134, p. 14, lines 4-7.

to be movement inside. ██████ did not observe any gunshots come out the car. No parked vehicles obstructed her view; she saw the top half of the Hispanic man and his gun.

According to ██████ after she dropped to the ground, she crawled, and heard multiple gunshots. The gunshots sounded as if they were fired from two different guns. She got on her feet and ran eastbound to Maplewood Avenue. ██████ no longer saw the male in the plaid shirt.

██████ observed a white car, on her left, drive on Division Street to Maplewood Avenue and stop at an angle. An unknown male, possibly wearing a white shirt,<sup>16</sup> exited the driver's side of the white car and faced northeast. ██████ did not see anyone else exit this vehicle. ██████ stated the unknown male held up his arms and pointed in front of him, as if he held a gun. ██████ did not see a gun. ██████ heard one more gunshot but believed there could have been more. At that time, she "dove" into an enclosed outdoor patio area of a restaurant. Two Hispanic females in skirts and heels ran northbound, and appeared to plead with the man, near the white car. ██████ hid behind a stack of chairs and could not see what took place. ██████ stated an unknown man yelled in an authoritative manner, but that she did not know what the man said.

Someone from inside the restaurant opened the door and ██████ went inside. A few moments later ██████ observed, from inside of the restaurant, blue emergency police lights. After approximately two to three minutes, she walked outside and observed a man lying in the street. She observed the man get placed on a stretcher and put inside an ambulance. She described this man as having the same stature as the Hispanic male in the plaid shirt. Subsequently, ██████ notified police officers on scene that she witnessed the incident. ██████ was taken to the police station and provided a statement to detectives. A couple nights after the incident, detectives showed ██████ a photo array and ██████ identified the man she believed she observed fire a weapon. ██████ provided a statement to the States Attorney's office.<sup>17</sup>

**In a statement to IPRA** on January 20, 2017, witness ██████ stated that on the date and approximate time of incident, she was at the Mas O Menos bar on Division Street, across the street from Guerrero's Taco restaurant. She left the bar to get food at Guerrero's and encountered a male acquaintance named ██████ and ██████ (now known to be ██████). After approximately ten minutes, she observed a gray sedan slowly drive past them while looking in their direction. Approximately five minutes later, the same gray vehicle slowly drove past again and the vehicle's front "passenger opened fire" in their direction. ██████ heard approximately four gunshots and ran toward the outside rear area of the restaurant. While she was at the back of the restaurant, she heard multiple gunshots in rapid succession, which sounded as if they were from two different guns. After a pause of approximately five to six seconds, she heard a third volley of approximately three to four gunshots.

██████ heard a lighter-skinned female yell that ██████ was her brother. ██████ began to hear police sirens, at which time she stepped away from the back of the restaurant and observed ██████ covered in blood, sitting in the front driver's side seat of a black truck on Maplewood Avenue. ██████ hands were up and he asked for help. ██████ observed a white vehicle stopped behind the black truck near the intersection of Maplewood Avenue and Division Street. A black

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<sup>16</sup> Now known to be Officer ██████

<sup>17</sup> Att. 131, 134.

<sup>18</sup> ██████ stated that she learned ██████ first name was ██████ after the incident by hearing people saying his name.

female officer and a white male officer,<sup>19</sup> both in plain clothes and wearing vests, stood near the white car. Both police officers pointed their guns at [REDACTED] while yelling verbal commands for him to exit the vehicle and get on the ground. [REDACTED] exited his vehicle and complied with the commands while yelling that he needed an ambulance. [REDACTED] yelled to call an ambulance for [REDACTED] had no knowledge of [REDACTED] injuries or how he sustained them. She did not observe the actions taken by the police when they first arrived. [REDACTED] did not hear the police announce their office. [REDACTED] was taken into custody.

[REDACTED] stated [REDACTED] “saved us kind of in a way because those young guys weren’t going to stop, they were going to continue.”<sup>20</sup> After the police responded to the scene, [REDACTED] observed the driver of the gray vehicle deceased.

[REDACTED] did not observe [REDACTED] fire a weapon, nor did she see him with a firearm. She later learned [REDACTED] “shot because they shot first so, that’s why he returned fire.”<sup>21</sup> Approximately a month after the incident, [REDACTED] provided a statement to CPD detectives.<sup>22</sup>

On September 16, 2016, IPRA spoke with [REDACTED] [REDACTED] via telephone who stated that on the date and approximate time of incident, she was at her apartment building at [REDACTED] [REDACTED] visiting her neighbor, [REDACTED] who resides on the [REDACTED] floor. [REDACTED] was with her boyfriend, [REDACTED] and roommate, [REDACTED]. While inside the apartment, [REDACTED] heard multiple shots fired. She walked to the front window of the apartment and observed an unknown man wearing plaid shorts<sup>23</sup> walking westbound on Division Street, on the sidewalk and then on the street, while shooting a firearm. [REDACTED] had no knowledge as to who or what the man fired at. The man shot toward Division Street and Rockwell Avenue. She described his firearm as a Glock with an extended clip. [REDACTED] did not observe anyone near the man nor did she hear any verbal exchange. [REDACTED] ran away from the window to the couch where [REDACTED] was. They both called the police. [REDACTED] heard approximately 40 shots. She did not see the police respond to the incident.<sup>24</sup>

### Police Interviews

In a statement to IPRA on October 19, 2016, Officer [REDACTED] # [REDACTED] stated that on the date and approximate time of incident, he and his partner, Officer [REDACTED] were on-duty assigned to Gang Investigations, Unit [REDACTED] Beat [REDACTED]. Officer [REDACTED] worked an overtime Violent Reduction Enforcement (VRE) initiative. Officer [REDACTED] and [REDACTED] were in civilian clothing. Officer [REDACTED] wore his vest with his name, star, unit, and police patch displayed. He was in unmarked white Chevy Impala, assigned to patrol the [REDACTED] District. Officer [REDACTED] drove the vehicle. While parked on Division Street, facing eastbound, Officer [REDACTED] heard approximately 10 to 15 gunshots behind him. Officer [REDACTED] made a U-turn to face westbound on Division Street. As Officer [REDACTED] drove westbound, he continued to hear shots fired and observed a male Hispanic (now known to be [REDACTED] wearing a plaid shirt and jeans, with his arms raised while firing a handgun with an extended magazine, into a vehicle. [REDACTED] faced westbound with his body slightly angled. [REDACTED] walked near the middle of Division Street, near

<sup>19</sup> The male officer inside of the white police vehicle was Officer [REDACTED]

<sup>20</sup> Att. 148, 6:15 and Att. 150, p. 7, lines 9-11.

<sup>21</sup> Att. 148, 33:45.

<sup>22</sup> Att. 148, 150.

<sup>23</sup> Now known to be [REDACTED]

<sup>24</sup> Att. 77.

the bike lane on the north side of the street, while he shot at the vehicle. The sedan vehicle [REDACTED] shot at was stationary and close to the north side of Division Street.

Officer [REDACTED] stopped the police vehicle, angled slightly, facing southwest and approximately 5 to 10 feet behind [REDACTED] who was slightly north of the police vehicle. Officer [REDACTED] pointed his firearm in the direction of [REDACTED] and both he and Officer [REDACTED] yelled out from the open windows, "police," "put the gun down." At that time, [REDACTED] looked, turned in the direction of the officers, while holding his firearm. [REDACTED] did not follow the command. Officer [REDACTED] stated because [REDACTED] had been shooting at someone, and in fear of his and Officer [REDACTED] lives, Officer [REDACTED] fired his weapon through the front passenger window of their police vehicle, toward [REDACTED]. Officer [REDACTED] discharged his weapon three to four times<sup>25</sup> with a one hand grip. His right hand was in front of Officer [REDACTED] when he fired his weapon. Officer [REDACTED] discharged her firearm at the same time as Officer [REDACTED] proceeded to walk toward the north sidewalk and then eastbound to a vehicle on Maplewood Avenue. Officer [REDACTED] did not observe [REDACTED] drop his firearm.

Officer [REDACTED] made another U-turn to drive eastbound on Division Street. Upon arriving at the intersection of Division and Maplewood, Officer [REDACTED] stopped his vehicle at a slight angle, facing northwest. Officer [REDACTED] observed [REDACTED] seated in the driver's seat of his vehicle, parked on the east side of Maplewood Avenue, facing northbound. Officer [REDACTED] exited the police vehicle and heard additional shots fired at which time he announced on the radio "shots fired at the police, shots fired by the police."<sup>26</sup> Officer [REDACTED] continued to face [REDACTED] approximately 7 to 10 feet in distance, with his gun drawn, announced his office and ordered [REDACTED] to exit the vehicle. [REDACTED] initially refused to comply and was attempting to leave by driving his car forward. Subsequently, [REDACTED] exited his vehicle and laid on the ground while yelling he was a paramedic and that he had his CCL. Additional police units arrived. [REDACTED] was placed in custody and transported by an ambulance. After the incident, Officer [REDACTED] looked inside the vehicle [REDACTED] fired at and observed a deceased man.

Officer [REDACTED] went to Area North.<sup>27</sup> Officer [REDACTED] provided a statement to CPD detectives as well as the States Attorney's Office. Officer [REDACTED] was also drug and alcohol tested. Officer [REDACTED] did not sustain any injuries. Officer [REDACTED] notified Officer [REDACTED] that she fell when exiting the police car and hurt her knee.

During his statement, Officer [REDACTED] noted the following corrections to his Tactical Response Report (TRR): number 32, "subject injured by member" and number 44, "did this weapon contribute to a subject injury," were both initially marked "yes." However, Officer [REDACTED] did not know if the subject was injured by the member. Therefore, no box should be checked as the only options are "yes" or "no." Number 45, "did the discharge result in a self-inflicted injury" is marked "yes" and "no" but it is unknown. Number 70, "did member use sights" was marked "yes." However, Officer [REDACTED] clarified that he did not use his sights. Sergeant [REDACTED] filled out this TRR on behalf of Officer [REDACTED].<sup>29</sup>

<sup>25</sup> According to Officer [REDACTED] TRR (Att. 9) which is corroborated by the To-From summary report titled 'Processing of Involved Officer's Firearms,' (Att. 57) Officer [REDACTED] fired four times.

<sup>26</sup> Att. 142, 45:12 and Att. 143, p.51, line 18.

<sup>27</sup> Detective Division located at 2452 W. Belmont Avenue.

<sup>28</sup> Sergeant [REDACTED] # [REDACTED]

<sup>29</sup> Att. 142, 143.

In a statement to IPRA on October 19, 2016, Officer ██████ # ██████ stated that on the date and approximate time of incident, she and her partner, Officer ██████ were on-duty assigned to Gang Investigations, Unit ██████ Beat ██████ working an overtime Violent Reduction Enforcement (VRE) initiative. Officer ██████ essentially stated the same information as Officer ██████

In addition, Officer ██████ noted that when she and Officer ██████ first heard gunshots, as they were parked on Division Street, facing eastbound, she unholstered her weapon. Upon approaching the male Hispanic (now known to be ██████ shooting into a vehicle, she focused on the firearm he held, which had an extended clip. As they approached ██████ in their police vehicle, their window was down, and Officer ██████ yelled, "Police, drop your gun." ██████ looked in their direction, while still firing his weapon toward the vehicle. Officer ██████ described his demeanor as calm. ██████ turned in the direction of the officers, with his weapon pointed forward, at which time Officer ██████ and ██████ began shooting toward ██████ Officer ██████ held her gun with a two-hand grip, pointed out her passenger window, at ██████ She discharged her weapon approximately three to four times,<sup>30</sup> while still in their police vehicle.

██████ did not drop his firearm and continued to move eastbound on Division Street. At that time, Officer ██████ made a U-turn to go eastbound on Division Street. Officer ██████ observed ██████ enter an SUV, at the intersection of Maplewood Avenue and Division Street. Officer ██████ and ██████ stopped their police car and exited. As Officer ██████ exited the passenger side, she heard shots fired and as a result, she slipped and fell, as she attempted to move behind the police vehicle for cover.

Officer ██████ and ██████ ordered ██████ to exit his vehicle. Subsequently, ██████ exited and laid on the ground. At some point, he "immediately said 'EMT' or 'paramedic' or 'CCL.'" ██████ also notified the officers that ██████ had been shot.<sup>31</sup>

Officer ██████ stated she wanted to make the following corrections of her Tactical Response Report (TRR). For number 19, "member injured" it was marked, "no," but should have been marked "yes." Officer ██████ slipped, fell, and injured her right knee. Sergeant ██████ filled out the TRR on her behalf. Officer ██████ told Sergeant ██████ about her injury. She does not know why it was marked, "no." Furthermore, number 32, "subject injured by member?" was marked, "yes;" it was unknown. Number 44, "did this weapon contribute to a subject injury" was marked, "yes" but was also unknown. In addition, number 70 asked if the member used sights was marked, "yes." It should be marked, "no." Officer ██████ stated the incident took place rapidly and she was unable to use her sights. Number 73 asked "person object struck as a result of the discharge of the members weapon" was marked "object," but should have been marked "unknown." Lastly, number 45 asked "did the discharge result in a self-inflicted injury?" was marked "yes" and "no" but should have been left blank.<sup>32</sup>

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<sup>30</sup> According to Officer ██████ TRR, which is corroborated by the To-From summary report titled 'Processing of Involved Officer's Firearms,' Officer ██████ fired six times.

<sup>31</sup> Att. 145, p. 19, line 20 and p. 20, line 2.

<sup>32</sup> Att. 144, 145.



**b. Digital Evidence**

**Evidence Technician (ET) Photographs and Video** depict the scene and the recovered evidence.<sup>33</sup>

**VIDEO**

**Video surveillance footage from Guerrero's Tacos and Pizza Restaurant**, at 2534 W. Division Street, shows multiple angles inside and outside the premises, including but not limited to, a partial external view of the intersection of Maplewood Avenue and Division Street. The video footage, in summary, depicts people, including [REDACTED] interacting inside and around the restaurant. These same people react to something (now known to be gunfire) by ducking, dropping to the floor, and/or running. Subsequently, Officers [REDACTED] and [REDACTED] arrive in a white unmarked police car. They exit their unmarked vehicle wearing civilian dress and appear to have their guns drawn. The video depicts additional responding officers arriving.<sup>34</sup>

**Video surveillance footage from La Havana Café**, at 2525 W. Division, is distant and blurry, facing westbound onto the south sidewalk of Division Street. The video depicts a partial and distant view of the north sidewalk, an enclosed outdoor front patio, on the south sidewalk, and a partial view of Division Street with vehicles driving westbound and eastbound. At approximately 11:32:56 pm, the video depicts a dark-colored sedan vehicle (now known to be [REDACTED] vehicle) driving westbound in the northern lane. At 11:32:57 pm, there is an individual (now known to be [REDACTED] on the north sidewalk who quickly moves in a southwest direction while following the vehicle. As the individual moves, there appear to be multiple muzzle flashes from, or near, this individual, who follows the vehicle. The individual continues walking westbound in the middle of the street and is no longer in view due to trees and parked vehicles obstructing the view.

At approximately 11:33:11 pm the video depicts a white vehicle (now known to be the Officer [REDACTED] and [REDACTED] unmarked vehicle) driving westbound on Division. The white vehicle appears to slow down until it is no longer in view due to trees and parked vehicles. Unknown individuals are then observed running in the area.

At approximately 11:33:24 pm a man and a woman run east on the south sidewalk. The man runs past the view of the video camera and the woman (now known to be [REDACTED] jumps over a fenced outdoor patio area and drops to the ground. Seconds later, a white vehicle drives eastbound on Division Street, appears to make a quick left turn and is no longer in view. Shortly thereafter, the woman runs out of the camera view. The remainder of the video depicts responding police units on scene and unknown individuals crowding around the area.<sup>35</sup>

**Video surveillance footage from Architechs, Inc.**<sup>36</sup> at 2541 W. Division Street starts on September 9, 2016, at 22:24:58 hours. Camera 1 faces the front window of the business and onto the south sidewalk of Division Street. There is a partial view of parked vehicles on the north and south sides of the street. Camera 4 faces eastbound on Division Street and depicts the south

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<sup>33</sup> Att. 55.

<sup>34</sup> Att. 97.

<sup>35</sup> Att. 101.

<sup>36</sup> Architechs, Inc. is an architectural and general construction business.

sidewalk and a partial view of the street. The video footage is in black and white, grainy, and partially obstructed by trees and/or parked vehicles. The following summarization includes information relative to the incident:<sup>37</sup>

### Camera 1<sup>38</sup>

The video shows a partial view on the top right corner of the screen of a man (now known to be ██████) on the north sidewalk of the street, moving westbound. ██████ continues to move quickly west on Division Street with his right arm extended straight, at chest level and pointed west.<sup>39</sup> The video depicts what appears to be ██████ shooting a firearm as multiple muzzle flashes come from his right hand/arm area.

At approximately 22:55:25 hours, the video depicts a partial view of a white vehicle, driving westbound.<sup>40</sup> The vehicle stops behind and slightly east of ██████ who was still walking and appears to continue to fire his weapon.



Figure 1

<sup>37</sup> The timestamp on the video is in military time and as such will be documented that way. Furthermore, the timestamp appears to be one hour behind than the time of incident.

<sup>38</sup> Att. 102

<sup>39</sup> See Figures 1 and 2

<sup>40</sup> See Figure 2



Figure 2

██████████ appears to turn his body to the right, now facing east onto Division Street, and walks eastbound. At 22:55:28 hours the video depicts the top of ██████████ head and a partial view of the white vehicle.<sup>41</sup>



Figure 3

In the video, ██████████ appears to duck as he moves eastbound in the direction of the white vehicle and then appears to run past the vehicle to the north sidewalk where he continues to run east.<sup>42</sup>

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<sup>41</sup> See Figure 3

<sup>42</sup> See Figure 4



Figure 4

The remainder of the video depicts police units responding and events other than the officer-involved shooting itself.

#### **Camera 4**<sup>43</sup>

At approximately 22:55:07 hours, the video depicts an unknown woman (now known to be ██████) walking eastbound on the south sidewalk of Division Street and dropping to the ground. In the top left corner of the screen, there appears to be an unknown person (now known to be ██████) in the street with what appears to be their arm extended, facing westbound. This same person then begins to run westbound.

At approximately 22:55:44 hours, a white vehicle is depicted driving eastbound on Division Street and then making a left turn. There appears to be movement in the top left corner of the video. Within seconds, multiple police units arrive.

**Portable Observation Device (POD) video #3009**, at 2531 W. Division Street, between the hours of 11:00 pm to 11:59 pm on September 9, 2016, and 12:00 am to 12:30 am on September 10, 2016, depicts a distant view, facing eastbound, of the intersection of Division Street and Maplewood Avenue. The video depicts a partial view of Guerrero's restaurant at the northwest corner of the intersection. This POD video depicted similar events as other videos obtained in this case. This is a summary of relevant information, not depicted in the other videos. The video depicts what appears to be a dark-colored sedan driving southbound on Maplewood Avenue, turn west on Division Street. Several people drop to the ground for and/or run north on Maplewood Avenue or behind the restaurant. At 11:12:37 pm, a white sedan drives westbound on Division Street. At 11:12:51 pm, a man (now known to be ██████) runs northeast toward a dark-colored truck parked, at the northeast corner of Maplewood Avenue and Division Street. The man appears to limp. He enters the driver's side of the truck. Seconds later, a white vehicle drives up to the intersection of Maplewood on Division Street, facing northeast toward the man.

The video depicts two individuals, who appear to be in plainclothes (now known to be Officer ██████ and Officer ██████) exit the white vehicle with their weapons drawn toward the man sitting in the truck. The front passenger of the white vehicle, falls backward, as the officers

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<sup>43</sup> Att. 102.

exit the vehicle. The man seated in the truck appears to exit the vehicle and then lies on the pavement with his hands up. Shortly thereafter, the video depicts additional police units responding to the scene. An ambulance responds shortly after and takes the man away. The area is cordoned off by tape.<sup>44</sup>

**Snapchat video clips (2)**, recorded by an unknown male,<sup>45</sup> were provided to IPRA from the **City of Chicago Department of Law (DOL)**. Video footage from clip #1 is approximately 10 seconds in length, appears to be outdoors on the street, includes audio, and is in color. The video footage is blurred, and the lighting conditions are dark. The video depicts what appears to be one or two unknown individuals walking in the street near parked cars. A female voice is heard crying and screaming words to the effect of “Oh my God.” An unknown male voice is heard stating “damn we just got shot up, we just got shot up right now, fuck.” A second unknown male voice is heard repeatedly stating “stay there” and “they’re police, they’re police.” The video then comes to an end.

Video footage from clip #2 is approximately 10 seconds in length, appears to be outdoors on the street, includes audio and is in color. The video footage is blurred, and the lighting conditions are dark. The video depicts what appears to be people walking around. There is a white, sedan vehicle parked diagonally near an intersection. Blue emergency lights are observed near the area of the white car and police sirens can be heard. There is an unknown female voice heard yelling words to the effect of “move that fucking (inaudible) motherfucker, please.” The video then comes to an end.<sup>46</sup>

Multiple **Body-worn camera (BWC)** videos were obtained from responding officers to include video depicting on-scene police activity after the incident took place, as well as unrelated police activity. None of the body-worn camera footage obtained capture the shooting incident.<sup>47</sup> Neither Officer [REDACTED] or Officer [REDACTED] were issued body-worn cameras at the time of this incident.

Multiple **In-Car camera video** clips were captured from police units that do not arrive until after the shooting has concluded. The in-car camera footage of Beat [REDACTED] beginning at 23:24:39 hours on the date of the incident depicts the intersection of Division and Maplewood, facing northeast, and depicts Officer [REDACTED] and Officer [REDACTED] point their weapons at [REDACTED] as he is in a vehicle parked on the southside of Maplewood Avenue. [REDACTED] exits the vehicle, places his hands up, and surrenders to the officers. Subsequently, [REDACTED] is placed in custody. The unmarked vehicle that Officer [REDACTED] and Officer [REDACTED] were assigned to was not equipped with an in-car camera.

All other video captured, including from Beats [REDACTED] [REDACTED] provide police response to the scene, not the shooting incident.

## AUDIO

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<sup>44</sup> Att. 22.

<sup>45</sup> It was later learned that [REDACTED] captured video on his phone and handed over his phone to police. Refer to GPRs under Att. 190, p. 111 and Detective Supplementary Report under Att. 181, p. 5.

<sup>46</sup> Att. 112, 192

<sup>47</sup> Att. 151-172

OEMC 911 calls and CPD transmissions are consistent with OEMC Event Queries. Such information relayed includes 911 callers reporting shots fired. CPD transmissions include a report of shots fired at and by the police and on-scene response by multiple police units.<sup>48</sup>

**c. Physical Evidence**

A **Chicago Fire Department (CFD) Ambulance Report**, # [REDACTED] documents that Ambulance 44 arrived at Division Street and Maplewood Avenue, on September 9, 2016, at 11:37:02 pm. The incident type was documented as “shot, gunshot victim.” Upon arrival, CFD encountered [REDACTED] lying on his stomach. They documented multiple gunshot wounds to the left back, left neck, left foot and right forearm.<sup>49</sup>

The **Medical Records** from **Stroger Hospital** of Cook County, document that on September 9, 2016, at approximately 11:55 pm, [REDACTED] was admitted and attended to by Dr. [REDACTED] for multiple gunshot wounds, to include his left foot, right arm, the side of his neck, and his center back. [REDACTED] reported he was “exiting a restaurant when he saw a car turn a corner and heard multiple gunshot[s] fire[d].”<sup>50</sup> [REDACTED] was discharged from Stroger on September 14, 2016, to Cook County Department of Corrections.<sup>51</sup>

The **Medical Examiner’s (ME) Report**, for [REDACTED] under # [REDACTED] documents his date of death as September 10, 2016, and he was examined on September 11, 2016, at 8:30 am, by Dr. [REDACTED]. The evidence of injury was a penetrating gunshot wound to the head. The entrance wound was found to be to the right of the head, from back to front, and right to left. “Between the skull and the scalp there is a lodged deformed metal jacket bullet.” Examination of the gunshot wound entrance did not reveal evidence of close-range firing. An internal examination was documented as well as specimens, evidence inventories to include articles of clothing, DNA card, buccal swabs, and a bullet in a sealed envelope which was submitted to CPD with a receipt. Toxicology results were negative and found to be “non-contributory.” The manner of death was documented as a Homicide.<sup>52</sup>

**CPD Crime Scene Processing Reports include report #'s [REDACTED] and [REDACTED]** all document evidence identified, collected and inventoried in connection with the incident. In addition, a plat “not to scale” and index of marked evidence, to include measurements, is documented. It is essentially depicted in the plat that; multiple expended shell casings were recovered on the street and north sidewalk near 2536 W. Division Street, on the street near [REDACTED] and a few shell casings were recovered inside the white Chevrolet Impala police vehicle. In addition, one expended shell casing was recovered on the street at 1200 N. Maplewood Avenue and on the street at 2534 W. Division. One (1) fired bullet was recovered on the floor inside of 2534 W. Division, one (1) metal fragment was recovered on the street at 2540 W. Division and on the street at 2552 W. Division, one (1) copper fragment was recovered at 2546 W. Division and one (1) copper jacket was recovered on the street at 2559 W. Division Street. Furthermore,

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<sup>48</sup> Att. 24-31, 33-46, 48-53

<sup>49</sup> Att. 110

<sup>50</sup> Att. 115, p. 40-41

<sup>51</sup> Att. 115

<sup>52</sup> Att. 118

two (2) metal fragments suspected of being fire bullets were recovered inside the business office at ██████████<sup>53 54</sup>

**Illinois State Police (ISP) Forensic Science Laboratory Reports** dated January 4, 2017 of Firearm laboratory results documents the following:

Examination of inventory # ██████████ documents Exhibit 10, a Glock, model 19, semi-automatic pistol, 9mm Luger, belonging to Officer ██████████ was operable as received and test fired.

- Nine Winchester 9mm Luger + P cartridges, one (1) Winchester 9mm Luger + P and one detachable box magazine were examined and inventoried under this firearm.<sup>55</sup>
- Two fired bullets, under inventory # ██████████ - Exhibit #19 and inventory # ██████████ – Exhibit #31 were fired from Officer ██████████ firearm.
- Two 9mm Luger +P fired cartridge cases, under inventory # ██████████ were fired by Officer ██████████ firearm.

Examination of inventory # ██████████ documents Exhibit 14, a Glock, model 30, semi-automatic pistol, .45 caliber, belonging to Officer ██████████ was operable as received and test fired.<sup>56</sup>

- Six Winchester .45 cartridges, one Winchester .45 cartridge and one detachable box magazine were examined and inventoried under this firearm.
- Four Winchester .45 fired cartridge casings, under inventory # ██████████ – Exhibit #20, were fired from Officer ██████████ firearm.

In addition, an ISP report dated July 12, 2018 of DNA results documents examination of; Exhibit 2 - a Buccal Standard from ██████████ under inventory # ██████████ Exhibit 3 - swabbing of a left-hand glove under inventory # ██████████ Exhibit 4 - swabbing from a right hand glove under inventory # ██████████ Exhibits 5 and 6 – swabs from the front driver and front passenger area of a vehicle under # ██████████ and, Exhibit 9 – a portion of a cigarette under inventory # ██████████ A mixture of human DNA profiles was identified of at least three to five people in exhibits 3, 4, 5 and 6. A major DNA profile from ██████████ was identified in the right-hand glove and the portion of cigarette.<sup>57</sup>

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

An **CPD Arrest Report** under **RD #** ██████████ documents that on the September 9, 2016, at 11:33 pm, ██████████ was arrested and charged with a Felony U UW (Unauthorized Use of a Weapon). The victim was documented as ██████████ who was deceased due to gunshot wounds. ██████████ blue 2015 Chevrolet Traverse was impounded and held for investigation. The

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<sup>53</sup> Att. 68

<sup>54</sup> Per Inventory sheet # ██████████, a fired bullet was recovered at the Medical Examiner's office during the autopsy of ██████████ ME # ██████████

<sup>55</sup> This information is consistent with Att. 57, the summary report titled 'Processing of Involved Officer's Firearms.

<sup>56</sup> This information is consistent with Att. 57, the summary report titled 'Processing of Involved Officer's Firearms.

<sup>57</sup> Att. 200 and 202

narrative of the arrest report documents essentially the same information provided by Officer ██████ and Officer ██████ in their statements to IPRA.

The “Watch Commander Comments” document that per Detective ██████ # ██████ on September 11, 2016, Assistant States Attorney (ASA) ██████ rejected Murder charges against ██████. Furthermore, ██████ has an alias of ██████ with IR# ██████<sup>58</sup>

**Original Case Incident Reports for RD # ██████** by Reporting Officer (R/O) ██████ #1 ██████ document essentially the same information to include the date of incident, time of incident, location of incident, and involved parties. In addition, the narrative section documents information from “...an area north detective division line-up supplementary report.” A photo-array presented to witness, ██████ was documented in which she identified ██████ as the person that appeared to be “shooting outside of the car” and that was placed in an ambulance. It was further documented in summary, the R/O responded to a “10-1”<sup>59</sup> by Beat ██████. He notified Medical Examiner ██████ # ██████ at 2:30 am. Other responding units were identified by beat number.<sup>60</sup>

**General Progress Reports (GPRs)**<sup>61</sup> document police activities and investigative actions taken by CPD Detectives and Forensic Investigators. Such information includes but is not limited to: witness identifiers and notes of statements, evidence observed and recovered, canvass information, video surveillance notes, notes of Stroger hospital timeline and treatment for ██████ and notes from an interview provided to Detectives from ██████ while at Stroger Hospital.

The following information includes documented statement notes by CPD Detectives of any civilians not interviewed IPRA. The following information from the GPRs is in summary and not verbatim.

Detective ██████ # ██████ documented that at 1:30 am, while at Stroger Hospital, ██████ was provided his Miranda rights. ██████ told detectives that he was standing outside, near his vehicle, a blue Chevy SUV, parked on Maplewood Avenue. Another vehicle, a small silver car, drove slowly past the restaurant where his sister ██████ her friend ██████ and others were finishing eating. Someone said, “Watch that car.” ██████ then observed the front passenger of the silver car point a gun out the window toward the group and fire. ██████ was in the line of fire and “froze” for a minute. ██████ realized he was shot in the foot. ██████ stated he has a “CCL” and carried a Glock 19, with three extra magazines. ██████ stated once he realized he was shot, he pulled out his weapon and returned fire. The “passenger/shooter” of the silver car opened the vehicle door and fired two more shots toward ██████ who emptied the magazine in his pistol, reloaded, and continued to return fire. The passenger fled and ran westbound. ██████ did not recall if he continued firing at the fleeing passenger. ██████ was approximately 15 feet from the shooting vehicle. ██████ stated a white unmarked police car pulled up and yelled, “Police, police, drop the gun.” ██████ placed his gun on the street, near the curb. ██████ stated the police then had their attention on the shooting vehicle and were not talking to him anymore. ██████ walked back to his truck to retrieve a “medic pack” to treat his gunshot wounds. He sat in his vehicle with the door open<sup>62</sup> and “unsnapped” his duty belt. The police ordered him out of his truck and onto

<sup>58</sup> Att. 4

<sup>59</sup> Per General Order G03-01-01, titled Radio Communications, it documents that the code 10-1 for CPD signifies an officer’s need for emergency assistance.

<sup>60</sup> Att. 5 and Att. 6

<sup>61</sup> Att. 190.

<sup>62</sup> ██████ stated he left his door open because he expected the officers were going to come and speak to him.



the ground. ██████ described he had tunnel vision, including not hearing any shots fired by the passenger or himself. ██████ stated he did not know when he sustained his other gunshot wounds.<sup>63</sup>

Detective ██████ # ██████ documented ██████ was interviewed while at Stroger Hospital. ██████ stated she lived in the neighborhood<sup>64</sup> and still visits. She was with her friend, ██████ eating at Guerrero's, in the patio area. Her brother, ██████ arrived at the restaurant. A few minutes after he arrived, they were exiting the patio area of the restaurant. A small silver vehicle drove past the restaurant westbound on Division Street. ██████ observed the front seat passenger begin to shoot a firearm, approximately 30 times in their direction. ██████ ran and did not see where others went. ██████ stated "at some point"<sup>65</sup> ██████ began to return fire. ██████ and ██████ ended up at ██████ truck. The police arrived at the intersection of Maplewood and Division in a white unmarked vehicle. The police yelled at ██████ and ██████ to get on the ground and put their hands up. ██████ stated while the police were there, a vehicle driving westbound, "busted a U-Turn [and] came back shooting again."<sup>66</sup> The police officers did not return fire and it was unknown where this vehicle went. ██████ noticed ██████ was shot, when she observed blood on the back of his shirt.

Detective ██████ # ██████ documented ██████<sup>67</sup> was interviewed at Area North. ██████ stated, at the time of incident, he was alone at a bar on Maplewood Avenue and Division Street, when he heard multiple gunshots. He looked outside the front window of the bar and observed an unknown male run westbound toward Rockwell Street and then northbound, where ██████ lost sight of him. Multiple people ran out the bar and ██████ was "ducking down."<sup>68</sup> ██████ saw a small gray car across the street with a man in the driver's seat with his head hanging out the driver's side window. ██████ heard a female say that an unknown man picked up a gun and ran.

Detective ██████ # ██████ documented ██████ ██████ was interviewed at Area North. ██████ worked security at a bar on the south side of Division Street. While inside the bar he heard 10 or more shots. He looked out the window on the front door and observed a male Hispanic, walk westbound on Division Street, across the street from the bar, with his arm extended and a gun in his hand. The man was shooting in a westbound direction. The man did not speak. He stopped shooting, turned around, and walked eastbound on Division Street. ██████ secured the bar. Several minutes later police arrived at the scene.<sup>69</sup>

Detective ██████ # ██████ documented ██████ stated he was on the ██████ floor apartment of ██████ with friends and neighbors. ██████ heard multiple shots and walked to the front window, where he observed a man walking westbound on the sidewalk of Division Street and then in the street while shooting a gun with an extended clip. A white vehicle with flood lights pulled up behind and then alongside the male. The passenger fired four to five shots at the man, who was firing the gun. The man dropped the gun, with the extended

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<sup>63</sup> Att. 190, p. 9-11.

<sup>64</sup> This is in reference to the location of incident.

<sup>65</sup> Att. *Id.* at p. 37.

<sup>66</sup> Att. *Id.* at p. 38.

<sup>67</sup> An ISR was issued on ██████ on the night of incident under Att. 70.

<sup>68</sup> Att. *Id.* at p. 46.

<sup>69</sup> Att. *Id.* at p. 48

<sup>70</sup> Att. *Id.* at p.58

clip, on the street, and walked eastbound. The white vehicle went westbound. ██████ walked to the rear of the apartment and called 911.

Detective ██████ # ██████ documented ██████ (“█████ was the passenger of an Uber vehicle westbound on Division Street. The Uber vehicle parked near Maplewood Avenue and Division Street, in front of her boyfriend’s residence (name not provided) when she heard approximately a dozen shots. ██████ did not know where the shots came from. She observed a white vehicle pull up to an SUV, at the corner of Maplewood. ██████ observed a female shoot possibly one or two times toward the SUV. ██████ believed the female to be an officer because she saw her with a holster.”<sup>71</sup>

Detective ██████ # ██████ documented ██████ told detectives, while at the ██████ district, on December 5, 2016, at the time of incident, he was seated outside the taco restaurant, when a gray sedan vehicle drove past and begin to shoot. ██████ dropped to the ground. He then began filming “whatever he could with his cell phone.”<sup>73</sup> In addition, it was documented that there was a Consent to Search presented at ██████ which is documented as the residence of ██████. However, no entry was made, and ██████ freely turned over his cell phone to detectives.<sup>74 75</sup>

Detective ██████ # ██████ documented, on November 2, 2017, ██████ was arrested in the ██████ District for an unrelated case. While at the ██████ District, ██████ was interviewed about this incident. On the date of incident, ██████ was on the restaurant patio, at Maplewood and Division Street, with ██████ ██████ also known as ██████ and ██████. A silver car drove past the restaurant and as it went westbound on Division Street, ██████ observed multiple gunshots, coming from the silver car, in their direction. ██████ fell to the ground. He heard someone from the silver car say, “let’s get up, we got ‘em.”<sup>76</sup> ██████ heard more shots. He did not see the ██████ shoot back. ██████ and ██████ were stopped by the police; they were told they fit the description of the shooter. ██████ went to St. Mary Hospital because he thought the ██████ was there. He then returned to the scene to pick up his vehicle, but the police did not allow him to do so.

Detectives interviewed Officer ██████ and Officer ██████. The officers provided essentially the same statements to IPRA and the ASA.<sup>77</sup>

**Detective Supplementary Reports** for RD# ██████ document information collected and reported by CPD regarding the September 9, 2016, officer-involved shooting of ██████ and the Homicide of ██████. The reports should be read in conjunction with one another. All Detective Supplementary Reports essentially provide the same information as documented in the General Progress Reports (GPRs). In addition;

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<sup>71</sup> Att. *Id.* at p. 81

<sup>72</sup> An Investigatory Stop Report was issued on ██████ the night of incident under Att. 70.

<sup>73</sup> Att. *Id.* at p. 112

<sup>74</sup> Per Detective Supplementary report under Att. 181, p. 5, ██████ signed a Consent to Search form granting permission to the detectives to view footage recorded on his phone. ██████ relocated with the detectives to his residence at ██████. ██████ freely turned over his phone to detectives.

<sup>75</sup> Att. *Id.* at p. 111

<sup>76</sup> Att. *Id.* at p. 114

<sup>77</sup> Att. 190, p. 61-66.

A Detective Supplementary Report, titled “Exceptional Cleared Closed (Other Exceptional)” dated January 27, 2017, documents the “paper car”<sup>78</sup> from the incident was Beat [REDACTED]. The officers assigned to this beat, Officers [REDACTED] # [REDACTED] and [REDACTED] # [REDACTED] were interviewed. In essence, Officers [REDACTED] and [REDACTED] essentially provided the same information. Officers [REDACTED] and [REDACTED] were in their vehicle, on patrol near Division Street and Leavitt, when they heard a “10-1” call. Within seconds they arrived at the location of incident and observed an unmarked police vehicle at northwest corner of Maplewood Avenue and Division Street. Both Officers [REDACTED] and [REDACTED] were outside the vehicle, with their weapons drawn and pointed at [REDACTED] who was on the street in a prone position. Officer [REDACTED] kept citizens from approaching [REDACTED]. Officer [REDACTED] asked [REDACTED] if he had a gun and [REDACTED] responded he threw his gun by a car and pointed to the west side of Maplewood Avenue. Officer [REDACTED] did not observe a gun. In addition, Officer [REDACTED] spoke to [REDACTED] on scene. [REDACTED] stated she observed a silver car shooting on Division Street. The silver car drove westbound on Division Street, made a U-turn, and began shooting a second time.<sup>79</sup>

At Stroger Hospital CPD detectives provided [REDACTED] his Miranda rights. [REDACTED] provided additional details in a “shorter interview segments conducted in between medical procedures.”<sup>80</sup> After the drive-by shooting, [REDACTED] was shot in the foot, at which time he positioned himself behind the shooting vehicle and returned fire. He and the passenger of the shooting vehicle were shooting at each other. [REDACTED] could not recall when he sustained the other gunshot wounds. [REDACTED] recalled the back windshield of the vehicle shattering while he fired.

Detective [REDACTED] and Detective [REDACTED] reported they interviewed [REDACTED] at Stroger Hospital. [REDACTED] was at the restaurant with [REDACTED] and [REDACTED] brother, [REDACTED] (now known to be [REDACTED]) heard multiple gunshots and ran northbound, on Maplewood Avenue, to the restaurant parking lot. She heard several more gunshots. When the shooting stopped, she observed an unmarked white Impala drive north on Maplewood Avenue and stop. A male officer and a female officer exited the vehicle and approached [REDACTED] exited his vehicle, laid on the ground, and additional police units responded.

Detective [REDACTED] arrived at Stroger hospital with video recording equipment to allow interviews to be recorded. [REDACTED] refused to be recorded and, during the interview stated that he did not want to answer any further questions. [REDACTED] interview concluded.<sup>81</sup>

A Detective Supplementary Report, titled “Exceptional Cleared Closed (Other Exceptional),” dated March 13, 2017, documents that on September 11, 2016, [REDACTED] viewed a photo line-up. [REDACTED] identified [REDACTED] as the person shooting into the gray vehicle.<sup>82,83</sup>

**A Major Incident Notification Report (MIN)** documents substantially the same information as other relevant CPD reports. In addition, it documents the recovered vehicle,

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<sup>78</sup> The “paper car” is a term used for the reporting officers that are assigned to obtain/complete paperwork for an incident.

<sup>79</sup> Refer to page 7 of Att. 179.

<sup>80</sup> Att. 179, p. 11.

<sup>81</sup> Att. 179, 12-13.

<sup>82</sup> Att. 180.

<sup>83</sup> Att. 7, 32, 47, 178-185, 194.

occupied by ██████ was a 2011 Gray Honda Civic stolen from 1363 N. Bell Avenue under RD# ██████ ██████ was charged with “UW by a felon.”<sup>84</sup>

**Tactical Response Reports (TRRs)** completed by Officer ██████ and Officer ██████ document ██████ was armed, sustained non-fatal injury, and treated at Cook County, Stroger Hospital. ██████ did not follow verbal direction, fled, was an imminent threat of battery, attacked with a weapon, and used force likely to cause death or great bodily harm with a weapon. Officer ██████ and Officer ██████ responded with member’s presence, verbal commands, and use of their firearms.

Officer ██████ used a semi-auto pistol, Glock 30, .45 caliber; he fired four times. Officer ██████ used a semi-auto pistol, Glock 19, 9 mm caliber; she fired six times. The “offender” shot first.

In addition, the narrative of the TRRs state the “member observed offender/assailant firing a handgun at occupant of vehicle, striking him. Member fired his handgun in direction of offender in defense of this victim’s life. It is not known if assailant was struck by officer or additional offender(s).” The reporting member, for both TRRs, is Sergeant ██████ # ██████.<sup>85</sup>

The **Office of Emergency Management and Communications (OEMC) Event Queries** document multiple 911 callers heard shots fired, and CPD transmissions including, but not limited to, activity by responding units after the incident including crowd control, traffic control, medical service requests, and response and identifiers of ██████ and ██████.<sup>86</sup>

A **Canvass Report** documents IPRA investigators canvassed the area of incident on September 10, 2016, and September 13, 2016, to identify additional witnesses, video footage or other pertinent information. No additional witnesses were identified. Business cards were left. Businesses with observed video cameras were documented and available business owners were spoken to attempt to obtain video footage.<sup>87 88</sup>

**Investigatory Stop Reports (ISR); # ██████** and ██████ document street stops made by CPD shortly after the incident, with individuals, who fit the description of a possible offender, who fled the scene, with a gun.<sup>89</sup>

#### e. Additional Evidence

A **To-From summary report** titled **Processing of Involved Officer’s Firearm** documents on September 10, 2016, at approximately 2:57 am, while at the location of incident, inside a CPD forensic vehicle, IPRA Investigator, ██████<sup>90</sup> observed the processing and clearing of Officer ██████ and Officer ██████ firearms involved in the incident.

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<sup>84</sup> Att. 83.

<sup>85</sup> Att. 8, 9.

<sup>86</sup> Att. 65.

<sup>87</sup> Refer to video footage section of SRI for a summary of video footage obtained.

<sup>88</sup> Att. 15, 16.

<sup>89</sup> Att. 70.

<sup>90</sup> Since the initiation of COPA, Investigator ██████ titled has changed to Major Case Specialist.

Officer [REDACTED] firearm was a Glock .45 caliber, model 30. There were seven unfired Winchester .45 cartridges recovered from the firearm, with six fired cartridges in the magazine and one unfired cartridge in the chamber. The magazine capacity was 10. The firearm was swabbed for DNA and inventoried.

Officer [REDACTED] firearm was a Glock 9mm, model 19. There were 10 unfired WIN 9mm Luger +P cartridges recovered from the firearm, with nine unfired cartridges in the magazine and one unfired cartridge in the chamber. The magazine capacity was 15. The firearm was swabbed for DNA and inventoried.

An **Internal Affairs Division (IAD) Synoptic Report** documents Officer [REDACTED] # [REDACTED] and Officer [REDACTED] # [REDACTED] took alcohol and drug tests. Both officers' tests resulted in .000 Br.A.C and negative for drugs.<sup>91</sup>

The **City of Chicago Department of Law (DOL)** provided civil case material to IPRA, including OEMC event queries, unit queries, CPD and CFD audio transmissions and third party video.<sup>92</sup>

In a **Query Report** ran on September 10, 2016 via the **Illinois State Police (ISP), Law Enforcement Agencies Data System (LEADS)**, it is documented that an Illinois Concealed Carry License (CCL) was issued to [REDACTED] on July 13, 2015, was still active, and scheduled to expire on July 12, 2020. The license number is # [REDACTED]<sup>93</sup>

According to the **Circuit Court of Cook County court documents**, [REDACTED] was charged with multiple counts of Armed Habitual Criminal, Felony Possession/Use of Firearm,<sup>94</sup> Purchase of 2 – 5 Firearms/False, one count of Perjury<sup>95</sup> and one count of UUW – Weapon, Felon.<sup>96</sup> It is documented that on October 27, 2016, [REDACTED] entered a plea of not guilty. The case remains pending.<sup>97</sup>

According to **United States District Court for the Northern District of Illinois court documents**, [REDACTED] filed a civil lawsuit against Officers [REDACTED] and the City of Chicago on September 1, 2018 alleging excessive force.

Specifically, [REDACTED] alleges that on the date and location of incident, while standing outside of a restaurant, a vehicle drove down the street at which time the driver and passenger of such vehicle began to fire weapons towards [REDACTED] and individuals outside. [REDACTED] was shot in his foot. [REDACTED] whom was carrying a weapon with his FOID card and Conceal and Carry License, “pulled out his weapon and started firing at the individuals who were shooting” in defense of himself and others. [REDACTED] fired numerous times killing the driver who crashed the vehicle.

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<sup>91</sup> Att. 67.

<sup>92</sup> Att. 192.

<sup>93</sup> Att. 11.

<sup>94</sup> Refer Cook County case #16CR [REDACTED]

<sup>95</sup> Refer to Cook County case #16CR [REDACTED]

<sup>96</sup> Refer to Cook County case # [REDACTED] that was superseded by a Direct Indictment under #16CR [REDACTED] and transferred to the Criminal Division.

<sup>97</sup> As of January 3, 2019, it is documented in court records that [REDACTED] criminal case is pending its next court date on January 18, 2019.

██████████ alleges that Officer ██████████ and ██████████ arrived in an unmarked vehicle. Officer ██████████ and ██████████ “screamed for the Plaintiff [██████████] to drop his weapon.” According to the court documents, ██████████ then “tossed down his weapon sliding it away from him. [██████████] raised his hands above his head.” Officer ██████████ and ██████████ then pulled out their weapons, while still inside of their vehicle, and shot ██████████ multiple times.

The court records further document that Officer ██████████ and ██████████ admit to screaming at ██████████ to drop his weapon. They deny that ██████████ tossed his weapon, slid it away from him and then placed his hands above his head. They admit to shooting ██████████ from within their vehicle but deny all remaining allegations of wrongdoing including that their use of deadly force was excessive and unreasonable. The case remains pending.<sup>98</sup>

## VI. ANALYSIS

### a. Legal Standard

#### 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.<sup>99</sup>

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.

In addition, the use of deadly force is codified under 720 ILCS 5/7-5 (1986). The pertinent part of the statute states that:

...a peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to affect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person or such other person, or when he reasonably believes both that:

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<sup>98</sup> Att. 202.

<sup>99</sup> This report references the version of General Order 03-02-03 in effect on the date of incident. The Department has subsequently amended its Use of Force Policy.

(1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and

(2) The person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict<sup>100</sup>

Finally, determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.<sup>101</sup> 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."<sup>102</sup> 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."<sup>103</sup> The analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors.<sup>104</sup>

## 2. Preponderance of the Evidence

The standard of proof in administrative cases investigated by COPA is a preponderance of the evidence. A preponderance of evidence can be described as evidence that makes it more likely than not that the alleged misconduct took place.<sup>105</sup> If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred than that it did not occur, even if by a narrow margin, then the standard of proof has been met.

### b. Legal Analysis

The evidence demonstrates that Officers ██████ and ██████ reasonably believed that deadly force was necessary to prevent ██████ from causing death or bodily harm, and their decision to discharge their firearms at ██████ was objectively reasonable under the totality of the circumstances.

First, Officers ██████ and ██████ had probable cause to believe that ██████ was committing a forcible felony<sup>106</sup> and to believe that ██████ was armed and dangerous. Officers

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<sup>100</sup> 720 ILCS 5/7-5 (1986).

<sup>101</sup> *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).

<sup>102</sup> *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)).

<sup>103</sup> *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted).

<sup>104</sup> *Plumhoff*, 134 S. Ct. at 2020; see also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003).

<sup>105</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>106</sup> "Forcible felony means treason, first degree murder, second degree murder, predatory criminal sexual assault of a child, aggravated criminal sexual assault, criminal sexual assault, robbery, burglary, residential burglary, aggravated arson, arson, aggravated kidnapping, kidnapping, aggravated battery resulting in great bodily harm or permanent

██████████ and ██████████ initially heard gun shots behind them and did not know the source of the gun fire. Officer ██████████ made a U-turn to face westbound on Division Street and observed ██████████ holding a firearm with an extended clip firing multiple rounds into ██████████ vehicle.<sup>107</sup> Officers ██████████ and ██████████ did not observe any gun fire emanating from ██████████ vehicle and had no reason to know that gun shots had previously been fired from ██████████ vehicle prior to their arrival.<sup>108</sup> Therefore, Officers ██████████ and ██████████ had probable cause to believe that ██████████ was armed and dangerous was committing a forcibly felony.<sup>109</sup>

Second, a preponderance of the evidence demonstrates that ██████████ did not comply with Officers ██████████ and ██████████ lawful commands for him to drop his firearm and turned towards the officers. Officers ██████████ and ██████████ assert that upon approaching ██████████ they identified themselves as police officers and ordered ██████████ to drop his firearm. Officers ██████████ and ██████████ assert that ██████████ did not comply with their commands and that ██████████ looked and turned his body towards the officers. In contrast, ██████████ asserted in his civil lawsuit that after Officers ██████████ and ██████████ ordered him to drop his gun, he dropped his firearm and raised his hands above his head.<sup>110</sup> ██████████ account is inconsistent with the video evidence. Specifically, in the Architechs, Inc. video footage ██████████ does not appear to drop the firearm and clearly does not raise his hands above his head. Therefore, Officer ██████████ and ██████████ accounts of their encounter with ██████████ are more credible.

Although there is insufficient evidence to demonstrate that ██████████ pointed his firearm in the direction of Officers ██████████ and ██████████ police officers are permitted to utilize deadly force when the officer “believes that a suspect’s actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury.”<sup>111</sup> There is no requirement that an officer wait until a shot is fired in his or her direction before employing deadly force to protect himself or herself.<sup>112</sup> Officers ██████████ and ██████████ were forced to make an immediate decision under circumstances that were tense, uncertain, and rapidly evolving. Numerous courts have found the use of deadly force reasonable under similar or significantly less

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disability or disfigurement and any other felony which involves the use or threat of physical force or violence against any individual.” 720 ILCS 5/2-8

<sup>107</sup> ██████████ admitted to firing multiple rounds into ██████████ vehicle to police detectives and in his civil lawsuit.

<sup>108</sup> ██████████ asserts that he had a lawful concealed carry license on the date of the incident. The criminal charges against ██████████ are based, in part, on allegations that ██████████ obtained his concealed carry license improperly through false pretenses. Regardless, whether ██████████ lawfully possessed a concealed carry license is irrelevant because this information was not available to Officers ██████████ and ██████████ at the time of the incident. However, a reasonable officer with police training in Illinois would account for the possibility that any person with a firearm may have a concealed carry license and is lawfully possessing the firearm before using deadly force. A reasonable officer would also consider the possibility that a firearm is being lawfully used (e.g. in self -defense). However, whether this possibility would ultimately impact the objective reasonableness of the use of deadly force depends on the totality of the circumstances (e.g. factors present indicating the use of the firearm is lawful). In the instant case, Officers ██████████ and ██████████ did not have

<sup>109</sup> See, e.g., 720 ILCS 5/12-2(c)(2) (aggravated with assault with a firearm, other than from a vehicle); 720 ILCS 5/24-1.2 (aggravated discharge of a firearm).

<sup>110</sup> Detective ██████████ General Progress Report indicates that ██████████ provided a different account when speaking to detectives at Stroger Hospital after the incident. Specifically, the report that reflects that ██████████ asserted that after he placed his gun on the street, near the curb, the officers then had their attention on the shooting vehicle and were not talking to him anymore. The report reflects that ██████████ then asserted he walked back to his truck to retrieve a “medic pack” to treat his gunshot wounds. Att. 190, p. 9-11. ██████████ did not address in his civil suit complaint whether Officers ██████████ and ██████████ identified themselves as police officers, but Detective ██████████ General Progress Report indicates that ██████████ told responding detectives that they shouted “police.”

<sup>111</sup> *Edinburg*, 346 F.3d at 758, (quoting *Berry*, 856 F.2d at 805 (internal quotation marks omitted)).

<sup>112</sup> *Thompson v. Hubbard*, 257 F.3d 896 (8th Cir. 2001).



threatening circumstances.<sup>113</sup> Based on the totality of the circumstances, Officers ██████████ and ██████████ use of deadly force against ██████████ was objectively reasonable under the totality of the circumstances.

**VII. CONCLUSION**

The evidence demonstrates that an officer with similar training and experience under the totality of the circumstances would have reasonably believed that ██████████ posed an immediate threat of death or great bodily harm and that the use deadly force was necessary to prevent death or great bodily harm. Accordingly, Officer ██████████ and ██████████ use of deadly force was objectively reasonable as outlined by the Chicago Police Department’s General Order 03-02-03, II, the Illinois state statute, and the United States Constitution.

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

<b>Officer</b>	<b>Allegation</b>	<b>Finding/ Recommendation</b>
Officer ██████████ ██████████	1. N/A	Within policy
Officer ██████████ ██████████	1. N/A	Within policy

**Approved:**

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████████████████████  
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Andrea Kersten  
*Deputy Chief Administrator*

Date: October 30, 2019

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Sydney Roberts  
*Chief Administrator*

Date: October 30, 2019

<sup>113</sup> See, e.g., *Blanford v. Sacramento County*, 406 F.3d 1110, 1116 (9th Cir. 2005) (concluding that officers did not use excessive force in shooting a suspect who was carrying a sword, failed to comply with orders to drop the sword, and was attempting to enter a house that may or may not have been empty, even though the suspect was at all times walking away from the officers and did not actually threaten the officers — or anyone else — with the weapon); *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007) (“Even if we accept that the threat posed by Long to Deputy Slaton was not immediate in that the cruiser was not moving toward Slaton when shots were fired, the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.”) *Hammitt v. Paulding Cty., Ga.*, 875 F.3d 1036 (11th Cir. 2017) (Affirming summary judgment for an officer who fired in a suspect’s direction when he heard two shots fired in the suspect’s home and saw an officer “fall to the ground,” even though he did not know if it was the suspect or fellow officers who had fired the shots); *Berube v. Conley*, 506 F.3d 79 (1st Cir. 2007) (officers granted summary judgment after hearing gun shots and observing a man refuse to drop a hammer); *Carvajal v. Mihalek*, 453 Fed. Appx. 69 (2nd Cir. 2011) (unpublished)

Appendix A

**Assigned Investigative Staff**

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<b>Squad#:</b>	█
<b>Major Case Specialist:</b>	██████████
<b>Supervising Investigator:</b>	██████████
<b>Deputy Chief Administrator:</b>	Andrea Kersten