

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	June 26, 2013
Time of Incident:	12:10 A.M.
Location of Incident:	9222 S. Justine, Chicago, IL 60620
Date of IPRA Notification:	June 26, 2013
Time of IPRA Notification:	3:09 A.M.

Officer [REDACTED] (“Officer [REDACTED] and Officer [REDACTED] (“Officer [REDACTED] were on patrol near the area of 91st and Ashland when they heard multiple gunshots. The officers then observed [REDACTED] ([REDACTED] running eastbound from the scene. The officers initially pursued [REDACTED] in their squad car. Shortly thereafter, Officer [REDACTED] got out of the squad car and pursued [REDACTED] on foot. According to Officer [REDACTED] as [REDACTED] climbed a fence at 9222 S. Justine, [REDACTED] fired a handgun at Officer [REDACTED] Officer [REDACTED] discharged his weapon at [REDACTED] striking him in the left hand. [REDACTED] continued to flee eastbound through a gangway and then pointed his weapon at Officer [REDACTED] upon exiting the gangway near the front of a home. Officer [REDACTED] discharged his weapon in the direction of [REDACTED] but struck Officer [REDACTED] squad car rearview window instead.

[REDACTED] continued to flee and was later apprehended in a shed in the rear yard of 9228 S. Laflin. Two handguns were recovered inside the shed where [REDACTED] was hiding and one Taurus handgun in slide-lock position was found in the front of 9222 S. Justine. [REDACTED] was transported to the hospital with a gunshot wound to his left hand. A criminal trial was held on January 20-21, 2016, in which [REDACTED] was charged with attempted murder. The jury found [REDACTED] not guilty of aggravated discharge of a firearm, not guilty of attempted first-degree murder, and not guilty of attempted murder in the first degree of a peace officer. [REDACTED] was found guilty of aggravated assault of Officers [REDACTED] and guilty of aggravated assault of Officer [REDACTED] COPA finds the officers’ actions were in accordance with CPD General Orders, Illinois State Law and the U.S. Constitution.

II. INVOLVED PARTIES

Involved Officer #1:	[REDACTED] Star # [REDACTED] Employee ID# [REDACTED] DOA: [REDACTED] 2006, Officer, Unit of Assignment [REDACTED] DOB: [REDACTED] 1983; Male, Black
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¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

Involved Officer #2: [redacted] Star # [redacted] Employee ID# [redacted] DOA: [redacted], 2000, Officer, Unit of Assignment [redacted] DOB: [redacted] 1973; Male, Black

Involved Individual #1: [redacted] DOB: [redacted] 1990; Male, Black

III. ALLEGATIONS

Any discharge of an officer’s firearm results in a mandatory notification to COPA. This investigation was initiated pursuant to such notification. Based upon this investigation, COPA determined that there was no evidence of misconduct requiring allegations against Officers [redacted] and [redacted]

IV. APPLICABLE RULES AND LAWS

General Orders

- 1. G03-02-03- Deadly Force
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Federal Law

The Fourth Amendment to the United States Constitution provides in relevant part: “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated” U.S. Const. Amend. IV. Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment’s objective reasonableness standard.

State Law

An officer’s ability to confront dangerous situations and use deadly force is further codified under 720 ILCS 5/7-5 (1986).

V. INVESTIGATION²

A. Interviews

Officer [redacted] was interviewed on June 27, 2013, at IPRA offices. According to Officer [redacted] on the date of the incident he was working beat [redacted] with his partner Officer [redacted] Officer [redacted] was in civilian dress and driving a marked squad car. Officer [redacted] had on a bulletproof vest with his shield attached to the left side of his vest. Officer [redacted] is

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

normally assigned to parking tickets, traffic violations, and traffic arrests. On the date of the incident, Officer [REDACTED] duty assignment was instead to patrol for violent activity and drug activity.

According to Officer [REDACTED] on the date of the incident he was driving on 91st Street west of Ashland Avenue, when he made a right on Ashland Avenue and approached the alley. At that point he heard multiple gunshots. Officer [REDACTED] believes he called out “shots fired”³ over the radio. He then made a left turn through the alley and headed southbound. Once Officer [REDACTED] approached the end of the block on 92nd Street, he saw a male⁴ black wearing all black clothing run past the mouth of the alley. Officer [REDACTED] followed the subject across Ashland Avenue. Once Officer [REDACTED] pulled up to the mouth of the alley between Ashland Avenue and Justine, his partner, Officer [REDACTED] got out of the vehicle and pursued the subject on foot.

Officer [REDACTED] proceeded eastbound to Justine and then made a right turn onto Justine. While Officer [REDACTED] was traveling southbound on Justine, he heard more gunshots. Officer [REDACTED] stopped the vehicle and got out, at that time he heard additional gunshots but was unable to identify their location. Officer [REDACTED] ducked down behind the police vehicle for cover because he did not know where the shots were coming from. While Officer [REDACTED] was behind the vehicle, he saw the subject come from between two houses and point a gun in his direction. Officer [REDACTED] fired one shot toward the subject’s direction. According to Officer [REDACTED] before he fired his weapon at the subject, he yelled “police, police”⁵. The shot Officer [REDACTED] fired hit the rear window of his squad car.

Officer [REDACTED] then saw three individuals wearing white tee shirts on his left side further up the block. The subject ran across the street toward the individuals. Officer [REDACTED] repositioned himself on the passenger side of the vehicle. Officer [REDACTED] never activated his emergency lights on the vehicle, but he did have the spotlight of his patrol vehicle on when he first stopped. Officer [REDACTED] waited on the passenger side of the vehicle for his partner to come. As he was waiting for his partner, more units arrived; he told them that the subject was headed eastbound.

Officer [REDACTED] finally met up with his partner at a house near 9225 S. Justine. Officer [REDACTED] also observed a male standing on a nearby porch yelling at Officer [REDACTED] Officer [REDACTED] and his partner went back and retraced their steps back to the alley to see if they could locate a weapon. Officer [REDACTED] and his partner located a weapon at 9222 S. Justine, where the gangway meets the landscaping. Officer [REDACTED] guarded the weapon until another officer arrived to relieve him. Officer [REDACTED] was not sure what type of weapon it was, but he described it as a semiautomatic handgun. Officer [REDACTED] did not observe any shell casings while they were in the alley.⁶

Officer [REDACTED] was interviewed on June 27, 2013, at IPRA offices. On the date of the incident, Officer [REDACTED] was working in the [REDACTED] District in Beat [REDACTED] with his partner Officer [REDACTED] Officer [REDACTED] stated that he is very familiar with the area where the incident

³ Page 11, line 26 of Att.26

⁴ Now known as [REDACTED]

⁵ Page 15, line 30 of Att.26

⁶ Atts. 26, 32

occurred. Officer [REDACTED] was the passenger in a marked squad car in civilian dress. Officer [REDACTED] was wearing a protective vest, and his star was displayed on a chain around his neck. According to Officer [REDACTED] he was armed with a SIG 9mm duty weapon and had no secondary weapons.

On the date of the incident, Officer [REDACTED] was on routine patrol when he heard four or five gunshots. Officer [REDACTED] and his partner were on 91st Street just past Ashland Avenue going westbound. After hearing the gunshots, Officer [REDACTED] approached the west alley of Ashland Avenue. As Officer [REDACTED] approached the alley, Officer [REDACTED] saw two subjects running eastbound on 92nd Street which was approximately a block away. Officers [REDACTED] and [REDACTED] proceeded down the alley in their vehicle. The two subjects continued running eastbound across Ashland Avenue. Officer [REDACTED] drove across Ashland Avenue and Officer [REDACTED] saw one of the subjects turn southbound into the alley on Justine. Officer [REDACTED] stopped the vehicle at the beginning of the alley, and Officer [REDACTED] got out of the vehicle to pursue the subject⁷. Officer [REDACTED] headed to Justine in his vehicle to cut the subject off.

As Officer [REDACTED] was chasing the subject, he was constantly yelling “stop police, stop police⁸,” but the subject continued to run. When Officer [REDACTED] first got out of the vehicle, the subject was about four houses in front of him, before he began catching up with him. As the subject began to climb the fence in the alley at 9222 S. Justine Officer [REDACTED] attempted to grab him however, the subject turned around and fired one shot at Officer [REDACTED] and then fell over the fence. As the subject got up, Officer [REDACTED] saw the subject’s arm extending back toward him, and Officer [REDACTED] fired his weapon. Officer [REDACTED] initially thought he fired one shot, but he learned later that he fired three. As the subject got up, he cut between the garage and the house and ran toward a gangway along the southern side of 9222 S. Justine Street. Officer [REDACTED] ran on the opposite side of the garage. As the subject ran through the gangway, Officer [REDACTED] again yelled “stop police⁹.” The subject turned and pointed his gun again at Officer [REDACTED]. According to Officer [REDACTED] he also heard a couple more shots, and then Officer [REDACTED] fired his weapon again.¹⁰ Officer [REDACTED] thought he fired three times at that point, but it was later determined that he only fired one shot. The subject continued to run toward the front of the house and hopped over a gate in the gangway.

When Officer [REDACTED] made it to the front of 9222 S. Justine, he saw three men standing across the street. As Officer [REDACTED] ran over that way, one of the men stopped him from getting through the gangway. The same man started making threats toward the officer, saying he would “fuck him up.” Officer [REDACTED] went over the radio to request more officers. At that point, Officer [REDACTED] partner approached him, and more officers arrived. The officers that arrived started searching for the subject while Officer [REDACTED] and his partner backtracked to see if the subject dropped anything.

⁷ Now known as [REDACTED]

⁸ Page 14, line 28-29 of Att. 27

⁹ Page 16, line 8 of Att. 27

¹⁰ Although the transcript reads: “He turns the gun, points it again. I have coupla more shots,” page 16, line 10 of Att. 27, it is clear from reviewing the audio recording that Officer [REDACTED] states: “He turns the gun, points it again. I hear a couple more shots.”

According to Officer [REDACTED] Officer [REDACTED] recovered a gun in front of 9222 S. Justine. Officer [REDACTED] stood over the weapon until he was relieved, and the weapon was recovered and photographed by additional officers and evidence technicians. Officer [REDACTED] believed that the recovered gun was a .45 caliber semiautomatic weapon. Officer [REDACTED] and his partner remained in front of the house at 9222 S. Justine. Neither officer participated in the search for the subject.

In the interview, when redirected toward his firearm discharge, Officer [REDACTED] stated that he was less than five feet away from the subject when the subject first fired at him. Officer [REDACTED] indicated that the subject fired just once when he was on the gate. The subject pointed the gun at Officer [REDACTED] a second time and Officer [REDACTED] believed [REDACTED] fired two more times at him when he was in the gangway between the garage and the home at 9222 S. Justine Avenue. Officer [REDACTED] stated: “[w]hen he crossed over to the other side [other side of the fence], uh I believe he fired two more times.”¹¹ He continued: “I heard, I heard two more shots. I know my uh partner was up front. So you know I’m not sure if he fired or not. I just heard two more shots so I’m not sure if it, I know he pointed the gun at me and I’m not sure you know if he fired the, you know...”¹² When asked specifically whether the shots that he heard at the time that [REDACTED] pointed the weapon at him a second time appeared to be coming from the area where [REDACTED] was located, or close enough to believe that [REDACTED] was firing at Officer [REDACTED] Officer [REDACTED] stated yes. Officer [REDACTED] stated that the gun that was found in front of 9222 S. Justine was the same gun that the subject used to fire at him.¹³¹⁴ Officer [REDACTED] stated that after [REDACTED] had fired a shot at Officer [REDACTED] Officer [REDACTED] feared for his life and felt his only option was to return fire.

Attempts to interview [REDACTED] were made with negative results. On June 26, 2013, Investigators [REDACTED] and [REDACTED] responded to Little Company of Mary Hospital in an attempt to interview [REDACTED] Detectives informed investigators that [REDACTED] would be available for an interview when they finished interviewing him.

On June 26, 2013, Inv. [REDACTED] responded to the [REDACTED] District Station lockup in an attempt to interview [REDACTED] He declined to be interviewed, stating he wished to speak with an attorney. Unsuccessful attempts were made to contact [REDACTED] on July 30, 2013, and November 12, 2013, via telephone. Inv. [REDACTED] contacted [REDACTED] on June 27, 2016 and spoke with [REDACTED] in regard to providing a statement to IPRA. [REDACTED] declined and stated “everything is over now.” Inv. [REDACTED] reached out to [REDACTED] scheduled an interview to take place on January 3, 2018, but [REDACTED] failed to keep his appointment. [REDACTED] was also contacted on January 10, 2018, when a male picked up the phone and then hung up. When the investigator called back immediately, there was no answer.¹⁵

¹¹ Page 31, line 15-16, Att. 27.

¹² Page 31, line 25-30, Att. 27.

¹³ Atts. 27, 33

¹⁴ After the conclusion of the interview, Officer [REDACTED] stated that [REDACTED] held the weapon with his right hand when he fired at Officer [REDACTED] and also that [REDACTED] pointed the weapon at him a second time while in the backyard of 9222 S. Justine. (Att. 28)

¹⁵ Atts. 20, 21, 56, 59, 71 & 72

B. Documentary Evidence

According to a **Tactical Response Report (“TRR”) completed by Officer [REDACTED]** [REDACTED] did not follow verbal direction, was an imminent threat of battery, attacked with a weapon, and used force likely to cause death or great bodily harm. The member’s response was member presence, verbal commands, and firearm. The offender fired the first shot, and the member fired two¹⁶ shots from his 9mm Smith and Wesson 6946.¹⁷

According to a **TRR completed by Officer [REDACTED]** [REDACTED] did not follow verbal direction, was an imminent threat of battery, attacked with a weapon, and used force likely to cause death or great bodily harm. The member’s response was member presence, verbal commands, and firearm. The member fired four shots from his 9mm SIG P229.¹⁸

According to the **Officer Battery Report completed by Officer [REDACTED]** type of activity is “man with a gun” and manner of attack was “shot at”. Injury to officer was none, weather was clear.¹⁹

The **arrest Report for [REDACTED]** documents [REDACTED] was arrested on June 26, 2013, at 9228 S. Laflin St. According to the narrative, while investigating a police-involved shooting, reporting detectives learned that a male black offender had exchanged gunfire with a police officer and may be injured as a result of the incident. Detectives observed blood on the door of a locked shed in the rear of 9228 S. Laflin. After gaining permission from the owner of the shed, the detectives made entry and discovered [REDACTED] hiding inside, and he was detained.²⁰

The **preliminary report** regarding the incident documents the officers involved, the subject involved, and information obtained from Street Deputy [REDACTED]²¹ According to Street Deputy [REDACTED] Officers [REDACTED] and [REDACTED] were in the vicinity of Ashland Avenue and 91st Street when they heard gunfire. The officers proceeded to travel westbound on 91st Street, across Ashland Avenue and turned left into the alley just west of Ashland Avenue. The officers traveled southbound through the alley when they observed [REDACTED] run west through the alley and on to 92nd Street. The officers proceeded to follow [REDACTED]

Officer [REDACTED] stopped the squad car at the mouth of the alley and Officer [REDACTED] exited the vehicle and pursued [REDACTED] continued to run to the rear of 9222 S. Justine Street where he attempted to climb a fence. [REDACTED] was on top of the fence when he turned around and pointed a gun and fired two shots at Officer [REDACTED] Officer [REDACTED] returned fire by firing two shots. [REDACTED] continued to flee south through the backyard of 9222 S. Justine Street and turned

¹⁶ Officer [REDACTED] corrected this report in his statement to IPRA. In his statement he confirmed that he had made a mistake on the TRR and that he only fired one shot, not two.

¹⁷ Att. 8

¹⁸ Att. 9

¹⁹ Att. 10

²⁰ Att. 6

²¹ It should be noted that a preliminary report is information obtained by IPRA (now COPA) investigators from officers on scene and during a walk-through of the incident between On Scene Incident Commander, Deputy [REDACTED] and the responding investigator, [REDACTED], moments after the shooting, and involves multiple levels of hearsay.

left at the gangway between 9222 S. Justine and 9224 S. Justine. Officer [REDACTED] who was still in the alley, ran to the south side of the garage and observed [REDACTED] in the gangway through a chain link fence. [REDACTED] turned around and pointed his gun at Officer [REDACTED]. Officer [REDACTED] then fired three shots in the direction of [REDACTED]. [REDACTED] continued to run through the gangway and out on to Justine.

Officer [REDACTED] who was still in the squad car, drove south on Justine Street and observed [REDACTED] flee from the gangway of 9222 S. Justine Street. Officer [REDACTED] stopped the vehicle, exited and took cover behind the squad car. As [REDACTED] continued to flee, Officer [REDACTED] discharged his weapon twice. The shots from Officer [REDACTED] struck the rear window of the squad car, and [REDACTED] continued to flee eastbound across Justine Street. Both officers attempted to follow [REDACTED] but were stopped by several individuals blocking their path. Sometime later, [REDACTED] was found hiding in a shed located in the rear yard of 9228 S. Laflin Street. An additional two handguns were also found in the shed, and [REDACTED] had suffered a gunshot wound to his left hand.²²

The **Original Case Incident Report** and the **Detective Supplementary Report** documents [REDACTED] was taken into custody inside a shed located in the rear yard at 9228 S. Laflin on June 26, 2013 at 2:29A.M. [REDACTED] sustained a gunshot wound which entered the left hand and lodged near his wrist. [REDACTED] weapons were listed as a Taurus Millennium Pro ACP .45 caliber semi-automatic handgun (magazine from listed weapon was empty); a RG IND. Model RG14S .22 caliber revolver (four stamped "C" bullets recovered from listed weapon); and a Hi-Point Model JWP .45 caliber semi-automatic (magazine from listed weapon was empty).

The reporting detectives noted that there were multiple crime scenes beginning with the scene at 9155 S. Marshfield Street, where detectives observed five .45-caliber expended cartridge casings on the street in front of the residence. The reporting detectives noted one expended 9mm cartridge casing near the light pole located at 9218 S. Justine Street. They also observed two additional expended 9mm cartridge casings on the alley apron behind the residence located at 9222 S. Justine Street.

The reporting detectives observed a Taurus .45 caliber semi-automatic handgun in slide-lock underneath the front bushes at 9222 S. Justine Street. Reporting detectives proceeded to 9214 S. Justine Street where they noted the police vehicle driven by Officer [REDACTED]. The vehicle was parked facing southbound and the rear window sustained major damage from a fired bullet. An expended 9mm cartridge casing was also noted on the street several feet to the north of the vehicle at approximately 9159 S. Justine Street. Reporting detectives also discovered a Norinco Mak-90 Sporter assault rifle loaded with sixteen live rounds behind the front bushes of the residence located at 9231 S. Justine Street.

Reporting detectives discovered the offender hiding inside a shed, and he was placed into custody. A subsequent search of the shed revealed multiple handguns which included; one RG IND .22 caliber revolver recovered from behind the snow blower and a .45 caliber Hi-point semi-automatic handgun found in the rear of the shed. They also recovered a R-P .45 caliber live round on the floor of the shed as well as a black doo-rag hanging from the snow blower. Detectives also

²² Att. 4

noted that the Shiloah Baptist Church located at 9211 S. Justine Street was equipped with video cameras that faced the scene. However, the camera shot a live feed only and therefore did not record the incident.

Upon arrival to the scene, reporting detectives spoke with Sergeant [REDACTED]. According to Sergeant [REDACTED], Officers [REDACTED] and [REDACTED] were on routine patrol proceeding westbound on 91st Street when they heard approximately four to five gunshots south of their location. At this point, Officers [REDACTED] and [REDACTED] traveled southbound through the alley just east of Marshfield Street. Moments later, the officers observed an individual²³ running eastbound on 92nd Street approaching Ashland Avenue. As the subject ran through the alley, Officer [REDACTED] exited the vehicle and pursued the subject on foot while Officer [REDACTED] attempted to parallel the pursuit in the vehicle.

Officer [REDACTED] continued the foot pursuit southbound through the alley, continually instructing the offender to stop as well as announcing his office. [REDACTED] attempted to jump the fence at 9222 S. Justine Street, but his clothing appeared to catch on the fence, which allowed Officer [REDACTED] to catch up to him. In an effort to evade arrest, the offender pointed a semi-automatic handgun at Officer [REDACTED] and fired in his direction.²⁴ Officer [REDACTED] subsequently fired his duty weapon multiple times. The offender continued his flight traveling southeast through the rear yard before stopping near the residence where he once again fired in the direction of Officer [REDACTED]. Officer [REDACTED] returned fire, and the offender scaled the fence and continued to flee eastbound through the gangway.

During this time, Officer [REDACTED] parked the squad car facing south at approximately 9218 S. Justine Street where he took a tactical position behind the vehicle after hearing several gunshots. Officer [REDACTED] subsequently observed the subject fleeing on foot eastbound through the gangway at 9222 S. Justine Street at which time he announced his office. The offender looked in Officer [REDACTED] direction and pointed the handgun in his direction. Officer [REDACTED] fired what he believed to be two shots at the offender. The offender continued to flee eastbound on foot through the gangway at 9224 S. Justine Street.

In an interview with detectives,²⁵ [REDACTED] related that he was standing near 92nd Street & Marshfield Street when he heard gunshots and ran eastbound across Ashland Avenue and through the southbound alley. He further related that he realized the police were pursuing him, shouting “police freeze, police freeze.”²⁶ [REDACTED] stated that he continued to run southbound through the alley when the police fired at him. [REDACTED] subsequently hopped the fence before fleeing eastbound through a yard and across Justine where he passed a police car. [REDACTED] related that, at that point, he had eluded police and was “out of sight & forgotten about.”²⁷ [REDACTED] also claimed, “if I had a gun it would have been empty.”²⁸ [REDACTED] was then confronted with the fact that he

²³ Now known as [REDACTED]

²⁴ It should be noted that this is not testimony, but a narrative summary as outlined within the Detective Supplementary Report presumably as a conclusion to the evidence and testimony collection of the detectives and should not be taken as a summary of any testimony of either officer involved.

²⁵ This is a summary of the detectives’ interview with [REDACTED] and is not verbatim.

²⁶ Page 22 of Att. 35

²⁷ Page 22 of Att. 35

²⁸ Page 22 of Att. 35

fired at Officer [REDACTED] and pointed his weapon in the direction of Officer [REDACTED] while fleeing from police. At that point, [REDACTED] invoked his right to remain silent.

In an interview with detectives,²⁹ Officer [REDACTED] related that on the date of the incident, he was working with his partner Officer [REDACTED] in civilian dress and driving a marked squad car. As the officers traveled westbound on 91st Street just west of Ashland, Officer [REDACTED] heard approximately four to five gunshots from the south of their location. Officer [REDACTED] turned into the alley between Ashland Avenue and Marshfield Street and proceeded southbound toward 92nd Street.

The officers scanned the area while approaching the mouth of the alley at 92nd Street at which point Officer [REDACTED] observed an individual running eastbound on 92nd Street. Officer [REDACTED] pursued the subject with the vehicle across Ashland Avenue until he entered the alley in between Ashland Avenue & Justine Street and continued his flight southbound through the alley. Officer [REDACTED] subsequently exited the vehicle and pursued the subject on foot while Officer [REDACTED] paralleled the pursuit in the vehicle.

Officer [REDACTED] then heard several gunshots at which point he stopped the squad car at approximately 9218 S. Justine Street. Officer [REDACTED] subsequently took a tactical position behind his vehicle, using it as cover. Moments later, Officer [REDACTED] observed the subject running eastbound through a gangway at 9222 S. Justine Street. Officer [REDACTED] announced his office multiple times. At this same point, Officer [REDACTED] observed the subject armed with a handgun which he pointed in Officer [REDACTED] direction. Officer [REDACTED] fired what he believed were two shots at the offender then moved to his right for additional cover. The offender continued his flight running eastbound through the gangway at 9224 S. Justine Street. Officer [REDACTED] then observed his partner exit the same gangway, at which point they initiated efforts tracking the offender but were met with negative results. They subsequently requested additional police assistance before securing the scene and notifying supervisory personnel.

In an interview with detectives,³⁰ Officer [REDACTED] related that on the date of the incident, he was working with his partner Officer [REDACTED] in plain clothes and in a marked vehicle. As the officers traveled westbound on 91st Street just west of Ashland Avenue, Officer [REDACTED] heard approximately four to five gunshots. Officers [REDACTED] and [REDACTED] traveled southbound through the alley just east of Marshfield Street. Moments later, Officer [REDACTED] observed two male black individuals running eastbound on 92nd Street approaching Ashland Avenue. Officer [REDACTED] monitored one individual after turning eastbound onto 92nd Street from their location though he lost sight of the second subject. Officers [REDACTED] and [REDACTED] continued eastbound crossing Ashland Avenue where Officer [REDACTED] observed the subject look in their direction then turn and flee southbound through the alley.

The offender ran down the alley at which point Officer [REDACTED] exited the vehicle and pursued the offender on foot while Officer [REDACTED] attempted to parallel the pursuit in the vehicle. Office [REDACTED] continued the foot pursuit southbound through the alley continually instructing the offender to stop as well as announcing his office multiple times. At this point, the offender

²⁹ This is a summary of the detectives' interview with Officer [REDACTED] and is not verbatim.

³⁰ This is a summary of the detectives' interview with Officer [REDACTED] and is not verbatim.

attempted to jump the fence at 9222 S. Justine Street, though his clothing appeared to catch on the fence, which allowed Officer ██████ to close the distance between himself and the offender. The offender then pointed a semi-automatic handgun at Officer ██████ and fired in his direction. Officer ██████ subsequently fired his duty weapon multiple times.

The offender continued his flight, traveling southeast through the rear yard before stopping near the residence where once again he fired in the direction of Officer ██████. Officer ██████ returned fire but the offender scaled the fence and continued to flee eastbound through the gangway. A short time later, Officer ██████ heard additional gunshots before he was able to exit the rear yard. He subsequently observed his partner at which point they began searching for the offender, though these efforts were met with negative results. They subsequently requested additional police assistance before securing the scene and notifying supervisory personnel.³¹

C. Court Testimony

Court Records (13CR ██████)³² document that a jury trial was held on January 20-21, 2016. ██████ was charged with attempted murder, attempted murder of a peace officer, aggravated discharge of a firearm, and aggravated assault. The jury found ██████ not guilty of aggravated discharge of a firearm, attempted first degree murder, or attempted murder in the first degree of a peace officer. ██████ was found guilty of aggravated assault of Officers ██████ and guilty of aggravated assault of Officer ██████.³³ The following is a summary of the relevant testimony from the trial.³⁴ ██████ did not testify.³⁵

1. Testimony of Officer ██████

On direct examination, Officer ██████ testified that he was working with his partner Officer ██████ in plain clothes in a marked squad car. They were on routine patrol in the ██████ district. Officer ██████ was armed with his duty weapon which is a Sig Sauer 9mm P229 handgun. While on patrol, just after 12 A.M., he heard four to five gunshots. Officer ██████ was on 91st Street and Ashland Avenue when he heard the shots. After hearing the gunshots, Officer ██████ turned westbound on 91st Street and Ashland Avenue and then turned southbound through the alley between Marshfield Avenue and Ashland Avenue. As the car was travelling through the alley, Officer ██████ observed two men running eastbound from 92nd Street. Officer ██████ called out shots fired over the radio.

³¹ Att. 7 & 35

³² Att. 66 & 67

³³ A person commits the offense of aggravated assault when he engages in conduct which places another person in reasonable apprehension of receiving bodily harm and in doing so knows the individual assaulted is a peace officer who at the time was engaged in the execution of his official duties.

³⁴ The state filed a motion in limine, in which both parties agree that the only weapon that would be discussed during the trial was the Taurus weapon.

³⁵ It should be noted that while the criminal standard for burden of proof is “beyond a reasonable doubt,” COPA’s standard is “preponderance of the evidence,” which is considerably lower; it could be analogized to “it is more likely than not.” Therefore, as a general principle, even if a person is not convicted in a criminal case, COPA may still find that they did the action they were accused of.

When the officers came out on 92nd Street from the alley, they drove toward Ashland Avenue, and Officer ██████ saw a male, now known as ██████ running toward Justine Street by the mouth of the alley between Ashland Avenue and Justine Street. Officer ██████ pulled up to mouth of the alley, and Officer ██████ exited the vehicle. Officer ██████ continued westbound while Officer ██████ ran southbound through the alley. Officer ██████ yelled toward ██████ who was continuing to run, “stop police.”³⁶ While ██████ was running, Officer ██████ never saw a weapon in his hands. Officer ██████ continued to chase ██████ down the alley to approximately 9222 S. Justine Street where ██████ proceeded to climb over a fence into a backyard. When ██████ first started to climb the fence, Officer ██████ was approximately two houses from ██████ but ██████ got tangled up on the fence, and Officer ██████ was able to close the gap. Officer ██████ continued to yell for ██████ to stop and continued to announce that he was a police officer.

Officer ██████ closed the gap to ██████ to within feet. Officer ██████ stated: “[a]s he’s still tangled over the fence, I’m getting closer. I’m getting ready to reach for him, and he come back with his arm and fired a shot.”³⁷ ██████ fired one shot at Officer ██████. The shot did not hit Officer ██████. Officer ██████ stated: “I kind of stepped back, and at that point, he fell over the fence and onto the ground and he’s still getting up with the gun in his hand. I’m still ducking down. It looked like it was pointed towards me again and I fired my weapon.”³⁸ According to Officer ██████ it looked like the gun was pointed toward him again and he fired his weapon three times.³⁹ Officer ██████ identified ██████ in open court as the person he saw fire a gun at him. After Officer ██████ discharged his weapon, ██████ continued to run and limp. ██████ ran between the garage and the house going back southbound. Officer ██████ lost sight of ██████ when he cut between the garage and the house because the garage blocked Officer ██████ view of ██████. Officer ██████ ran to the other side of the garage beside another chain link fence and that is when Officer ██████ saw ██████ again.

At that point in time, ██████ was running eastbound through a gangway with a gun in his hand. Officer ██████ stated: “At that point I yelled for him to stop again, and he raised his hand up and fired another shot.”⁴⁰ Officer ██████ was direct in stating that ██████ raised the gun towards Officer ██████ and fired in Officer ██████ direction. Officer ██████ discharged his weapon a second time at ██████ continued to run eastbound and climbed another fence at the front of the house towards the front yard. Officer ██████ lost sight of ██████ after he climbed the second fence. Officer ██████ ran toward the smaller back gate to jump over and make his way up to the front of the house. Officer ██████ heard additional shots after he could no longer see ██████ when ██████ was running toward the front of the yard through the gangway and Officer ██████ was attempting to scale the gate and make his way into the backyard of 9222 S. Justine.⁴¹ Officer ██████ stated that the shot or shots were coming from the front of the house.⁴² When Officer ██████ made it to the front of Justine Street, he saw three males standing across the street in front of a building. Officer ██████ ran over towards the three males to go through the

³⁶ Line 14 on page 40 of Att. 66.

³⁷ Page 41, Line 9-11, Att. 66.

³⁸ Lines 4-8, page 42, Att. 66.

³⁹ Lines 4-10 on page 42 of Att. 66.

⁴⁰ Lines 14-15, on page 44, Att. 66.

⁴¹ Lines 12-17 on page 46 of Att. 66.

⁴² Lines 18-21 on page 46 of Att. 66.

gangway, but one of the men was standing their impeding Officer [REDACTED]. The males started shouting profanities at Officer [REDACTED]. Officer [REDACTED] called for more police. At that point, Officer [REDACTED] looked back and saw his partner walking over to him.

After more police arrived, Officer [REDACTED] and Officer [REDACTED] returned to the yard at 9222 S. Justine Street. The officers retraced their steps and found a handgun by the bushes. The officers called for an evidence technician to retrieve the weapon. After pointing out the location of the gun, Officer [REDACTED] and Officer [REDACTED] were told to sit in separate squad cars. While Officer [REDACTED] was on the scene, other officers let him know that they had [REDACTED] in custody.

On cross examination, Officer [REDACTED] testified that he was traveling the same path as he had on direct examination, and that he heard four or five gunshots. Officer [REDACTED] did not see the shots being fired and he also did not see anybody standing in the area where the shots seemed to be coming from. According to Officer [REDACTED] he could not tell exactly where the shots were coming from, but he could tell they were coming from somewhere on Marshfield. Officer [REDACTED] did not see any weapons as the two men were running. Officer [REDACTED] lost sight of the two men for a period of time while he was going down the alley in the vehicle. Officer [REDACTED] did not see the second man after they came out onto 92nd Street. Officer [REDACTED] did not see [REDACTED] with a weapon until he was in the alley. [REDACTED] fired one shot as he was climbing over the fence. After [REDACTED] jumped over the fence, he made a right turn in front of the garage going toward the gangway. [REDACTED] ran diagonally to the south side of the house at 9222 S. Justine Street. According to Officer [REDACTED] he observed [REDACTED] fire two total shots.⁴³ [REDACTED] fired the first shot when he was on the back fence.⁴⁴ The second shot was when [REDACTED] was at the gangway in between the two houses, near the mouth of the gangway.⁴⁵

2. Testimony of Officer [REDACTED]

On direct examination, Officer [REDACTED] testified that on the date of the incident he was working in the [REDACTED] District with his partner Officer [REDACTED]. Officer [REDACTED] was in civilian dress and driving a marked squad car. The officers were on routine patrol driving southbound on Ashland Avenue when Officer [REDACTED] heard about four or five gunshots. Officer [REDACTED] drove down the alley between Marshfield Avenue and Ashland Avenue in the direction of where he thought he heard the gunshots. As Officer [REDACTED] approached the mouth of the alley, he saw a male running across the mouth of the alley.

Officer [REDACTED] followed the subject with his vehicle going eastbound on 92nd toward Ashland Avenue. Officer [REDACTED] observed the subject wearing blue jeans with a white patch on the back of the jeans later identified as [REDACTED]. After Officer [REDACTED] crossed Ashland Avenue, he stopped between Justine Street and Ashland Avenue, and Officer [REDACTED] got out of the car to follow the subject on foot. Officer [REDACTED] proceeded to the next street which was Justine Street. Officers [REDACTED] made a right-hand turn and went southbound down Justine Street. Officer [REDACTED] heard gunshots as he drove down Justine Street. Officer [REDACTED] then stopped the vehicle near 9218 S. Justine Street after hearing more gunshots. Officer [REDACTED] shined his spotlight over

⁴³ Line 24 on page 74 of Att. 66 and lines 1-4 on page 75 of Att. 66.

⁴⁴ Lines 5-8 on page 75 of Att. 66.

⁴⁵ Lines 11-17 on page 75 of Att. 66.

to the direction where he thought the gunshots were coming from, then exited the vehicle and positioned himself near the rear license plate area of the vehicle.

Officer ██████ was looking toward the houses on his right when he heard multiple gunshots. Right after Officer ██████ heard the gunshots, he saw a male come out of a gangway between two houses and raise a weapon toward him.⁴⁶ Officer ██████ fired his weapon once, but his shot struck the rear windshield of his police vehicle.⁴⁷ Officer ██████ then saw the male limping across the street in front of the police car to the other side of the street. Officer ██████ moved to the other side of the vehicle because he saw three males on his left side. According to Officer ██████ the male who pointed the gun at him did not fire at him.⁴⁸ After more police cars started to arrive, Officer ██████ finally saw his partner. Officer ██████ and Officer ██████ retraced Officer ██████ steps and found a weapon in front of 9222 S. Justine Street.

On cross examination, Officer ██████ testified that he saw the subject run out from between the houses and raise a weapon.⁴⁹ Officer ██████ also restated his travel path, which was the same path he testified to on direct examination. When Officer ██████ was parked in front of 9218 S. Justine Street, he heard multiple gunshots. The subject was a little outside the gangway, between the two houses, when he pointed the weapon at Officer ██████.

3. Testimony of Sgt. ██████

On direct examination, Sergeant ██████ testified that, at the time of the incident, he was a homicide detective. He has since been promoted to sergeant. Sergeant ██████ was the lead detective on the case. Once at the scene, Sergeant ██████ took an overall view of the area and the surrounding area. He ensured that there was crime scene tape up and police officers guarding the area. He also spoke to the on-scene sergeant from the ██████ District. There was a canvass done of the area to identify witnesses. Unfortunately, no witnesses saw the underlying incident between the officers and ██████. There was also an attempt to obtain video surveillance, but there was none available.

At the scene at 9155 S. Marshfield, Sergeant ██████ located five expended .45-caliber cartridge casings on the street just west of the house at 9155. After documenting the casings, Sergeant ██████ continued to walk the rest of the scene to Justine Street. Sergeant ██████ proceeded to the alley located just west of Ashland Avenue and east of Marshfield Avenue. From there, he went across Ashland Avenue on foot, documenting the area. Then he proceeded eastbound on 92nd Street across Ashland Avenue, until he approached the alley which is located just east of Marshfield Avenue and just south of 92nd Street. Sergeant ██████ then entered the alley and proceeded down to 9222 S. Justine Street. Sergeant ██████ observed two 9mm cartridge casings. One casing was on the pavement just north of the 9222 S. Justine Street. The other casing was on the apron in line with the garage at 9222 S. Justine Street.

⁴⁶ Lines 5-6 on page 93 of Att. 66.

⁴⁷ Lines 12-14 on page 93 of Att. 66.

⁴⁸ Lines 7-9 on page 94 of Att. 66.

⁴⁹ Lines 5-14 on page 104 of Att. 66.

⁵⁰ Lines 6-10 on page 113 of Att. 66.

Sergeant ██████ entered the backyard area of 9222 S. Justine. He observed blood on the grass and on the rear of the building on a corner. Sergeant ██████ kept walking the scene through the gangway where he observed more blood. He climbed a fence and continued toward the front of 9222 S. Justine Street. At that point, he observed a weapon, the Taurus .45 in slide lock position, which had been placed underneath the bushes at 9222 S. Justine Street. He then proceeded to the vehicle Officer ██████ was driving which was located at 9218 S. Justine Street. Sergeant ██████ observed the rear window of the squad car had been damaged from a fired bullet. There was also a casing at approximately 9159 S. Justine Street.

4. Testimony of Forensic Investigator ██████

██████ testified that he is, and was at the time of the incident, a forensic investigator for the Chicago Police Department. Before becoming a forensic investigator, he was an evidence technician. Investigator ██████ arrived at the scene at 1:40A.M. Investigator ██████ videotaped the multiple scenes, starting in the alley at 9222 S. Justine Street. According to Investigator ██████ he went to the location a second time after arriving at the police station and determining that there were unaccounted cartridge cases from Officer ██████ weapon. He went back to the alley scene at 7:00A.M., where it was now raining.

Investigator ██████ also processed blood that was located on the siding of the house during his first visit to the scene. He also processed the weapon he found at 9222 S. Justine Street, which was the .45 Taurus. When he collected the weapon, it was already empty and in slide-lock position.

Investigator ██████ recovered several shell casings from the crime scene. Investigator ██████ recovered five .45-caliber cartridge casings from 9155 S. Marshfield Avenue. Those five casings were the only .45-caliber casings recovered that day. He also recovered three cartridge casings and a fired bullet at 9222 S. Justine Street and 9218 S. Justine Street in the alley. These casings were 9mm casings.⁵¹ Investigator ██████ also recovered a fourth 9mm shell casing in the rear of 9224 South Justine.⁵² Investigator ██████ found an additional 9mm casing further down on Justine Street, at the corner of Justine Street and 92nd Street, which he photographed and inventoried.⁵³ Investigator ██████ recovered a cartridge casing in front of 9229 S. Justine, which was also a 9mm casing.⁵⁴

⁵¹ These casings and fired bullet correspond with the general location of where Officer ██████ indicated he initially fired at ██████ three times after ██████ allegedly pointed his weapon and fired at him while ██████ was straddling a fence at 9222 S. Justine.

⁵² This casing corresponds with the general location of where Officer ██████ indicated he fired his weapon a second time after ██████ allegedly turned and pointed his firearm and fired at Officer ██████ when ██████ was in the gangway between the home at 9222 S. Justine and the garage.

⁵³ This casing corresponds with the general area in which Officer ██████ fired his weapon from a position of cover behind his police vehicle after ██████ allegedly came out of the gangway between 9222 S. Justine and 9224 S. Justine and pointed his weapon in Officer ██████'s direction.

⁵⁴ This casing does not appear to be relevant to this shooting incident because Officer ██████ does not indicate that ██████ fired in front of 9229 S. Justine and ██████ had already thrown his weapon, which was in slide lock position, in front of 9222 S. Justine Street. 9229 S. Justine Street appears on a map to be on the opposite side of the street from where the officers indicate ██████ discharged his weapon, and where the other evidence of discharge, the shell casings from ██████ weapon, were located.

On cross examination, Investigator ██████ confirmed that that no .45 shell casings were found in the immediate vicinity, of 9222 S. Justine Street. Investigator ██████ also testified that there could have been difficulty recovering evidence. He stated that evidence could be smashed down into the grass or dirt if multiple officers or evidence technicians are looking for evidence. He also testified it was raining at times when he was processing the scene. He confirmed that he did a diligent search that failed to turn up any additional evidence or shell casings.

5. Testimony of ISP Scientist ██████

Diana ██████ testified that she is employed with the Illinois State Police as a scientist specializing in firearms identification. She testified concerning the weapons she received regarding the current case. She determined that the four cartridge cases found in the rear of 9222 S. Justine or immediate vicinity were fired from Officer ██████ weapon. She also determined that one cartridge case found in the area surrounding Officer ██████ police vehicle was fired from Officer ██████ weapon. She also determined that five cartridge cases found at 9155 S. Marshfield Avenue were fired from the Taurus weapon later found in the bushes in front of 9222 S. Justine.

6. Testimony of Trace Evidence Analyst ██████

██████ testified that he is employed with the Illinois State Police as a trace evidence analyst. He analyzed the Gunshot Residue (“GSR”) test. The results indicated that ██████ had either handled, fired, or been in close proximity to a weapon when it was discharged.⁵⁵

D. Digital Evidence

The **Evidence Technician’s Photographs**, taken on June 26, 2013, depict the four weapons recovered from the scene in regard to RD # ██████ and also the scene in general.⁵⁶

⁵⁵ Att. 67

⁵⁶ Att. 48-50



Figure 1- Taurus .45 auto semiautomatic pistol, found under the bushes in front of 9222 S. Justine Street.



Figure 2- The Taurus weapon found in front of 9222 S. Justine Street.



Figure 3- Hi-Point JWP .45 auto semiautomatic pistol, found in the shed with [REDACTED] when he was apprehended.



Figure 4- Gate [REDACTED] hopped over to get into the backyard of 9222 S. Justine Street. The yellow evidence markers denote spent shell casings and a fired bullet. Markers 1, 2, & 4 are expended shell casings from Officer [REDACTED] weapon. Marker 3 is a fired bullet.



Figure 5- Taller gate which is located on the other side of the garage located at 9222 S. Justine.



Figure 6- Backyard at 9222 S. Justine

E. Physical Evidence

Chicago Fire Department EMS Report documents [REDACTED] was alert and oriented and had one gunshot wound to his left hand.⁵⁷

Medical Records from Little Company of Mary Hospital indicated [REDACTED] had a gunshot wound to his left hand with compound fracture to his third metacarpal and a comminuted fracture to his second metacarpal. He also sustained a laceration and rupture of the extensor tendon of the third finger.⁵⁸

Illinois State Police (ISP) Laboratory Report, inventory # [REDACTED] documents that Officers [REDACTED] and [REDACTED] duty weapons were tested and found to be in firing condition. It was also documented that four fired cartridges were determined to be fired from Officer [REDACTED] weapon and one fired cartridge was determined to be fired from Officer [REDACTED] weapon.⁵⁹⁶⁰

⁵⁷ Att. 39

⁵⁸ Att. 30

⁵⁹ Att. 51

⁶⁰ Officer [REDACTED] weapon had a capacity of 13 bullets in the magazine and 1 in the chamber. Officer [REDACTED] weapon had a capacity of 11 bullets in the magazine and 1 in the chamber. The lab found 10 unfired bullets in [REDACTED] weapon and 11 unfired bullets in [REDACTED] weapon.

The ISP lab report (inventory # [REDACTED]) further documents that a gunshot residue test was administered to [REDACTED]. The sample from his right hand contained a minimum of three tri-component and additional consistent primer gunshot residue particles. The sample from his left hand was apparently not used to sample any surface.⁶¹ The results indicate that [REDACTED] discharged a firearm, contacted a PGSR related item, or had his right hand in the environment of a discharged firearm.⁶²

The ISP lab report (inventory # [REDACTED]) documents the four weapons that were found on scene: a Norinco 7.62 x 39mm semiautomatic rifle,⁶³ which was operable as received and test fired; a Taurus .45 auto semiautomatic pistol,⁶⁴ which was operable as received and was test fired; a RG .22 long rifle revolver,⁶⁵ which was inoperable as received and was not test fired⁶⁶; a Hi-Point .45 auto semiautomatic pistol,⁶⁷ which was operable as received and was test fired. Each of the test fired bullets were entered into the IBIS database, however, no identification was made. Two Herter's .45 Auto fired cartridge cases and three Remington .45 auto fired cartridge cases were also tested and all five⁶⁸ casings were fired from the Taurus gun.⁶⁹

The ISP lab report (inventory # [REDACTED]) documents that a buccal standard was taken from [REDACTED]. The Taurus gun (inventory # [REDACTED]) was also swabbed and blood was indicated on the slide area and the grip of the gun. A mixture of human DNA profiles was identified on the Taurus gun, which was interpreted as a mixture of at least two people. A major human male DNA profile was identified on the Taurus gun, and [REDACTED] cannot be excluded. Approximately 1 in 65 quadrillion black, 1 in 11 quadrillion white or 1 in quintillion Hispanic unrelated individuals cannot be excluded from having contributed to the DNA profile on the Taurus gun.⁷⁰

The ISP lab report documents that the four weapons recovered from the scene revealed no latent fingerprint impressions suitable for comparison.⁷¹

VI. LEGAL STANDARD

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;

⁶¹ Att. 12, a Crime Scene Processing Report, states that [REDACTED] left hand was not tested due to the injury.

⁶² Att. 51

⁶³ This weapon was found behind the bushes at 9231 S. Justine Avenue.

⁶⁴ This weapon was found under the front bushes at 9222 S. Justine Avenue.

⁶⁵ This weapon was recovered inside the shed that [REDACTED] was hiding in at 9228 S. Laflin Street.

⁶⁶ There were four unfired cartridges found inside.

⁶⁷ This weapon was recovered inside the shed that [REDACTED] was hiding in at 9228 S. Laflin Street.

⁶⁸ These casings were recovered from 9155 S. Marshfield.

⁶⁹ Att. 51

⁷⁰ Atts. 51, 55

⁷¹ Atts. 42, 57

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 occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, 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. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). 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." *Id.* at ¶ 28.

VII. ANALYSIS

A Chicago Police Officer's use of deadly force is governed by: the Chicago Police Department's Policy regarding the use of deadly force; Illinois state statutory law; and applicable standards within the United States Constitution. Based on the totality of the circumstances, the involved officers were in compliance with Chicago Police Department policy in using deadly force because it was reasonable for them to believe that they were in imminent danger of death or great bodily harm, given that a suspect they were pursuing pointed and fired a weapon at one of the officers. Therefore, COPA recommends a finding of WITHIN POLICY.

A. Applicable Rules and Law

1. Chicago Police Department General Order

According to the Chicago Police Department's General Order 03-02-03, Section II, A:

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

2. Illinois and United States Case Law

An officer's use of deadly force is a seizure within the meaning of the Fourth Amendment. When applying the Constitutional standard to a Fourth Amendment analysis, the question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them. Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)).

The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). Consequently, "when an 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, the officer can reasonably exercise the use of deadly force." *Muhammed v. City of Chicago*, 316 F.3d 380, 383 (7th Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (*en banc*) (omitting emphasis)). Finally, the analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020; see also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003).

3. Illinois Statutory Law

Chicago Police officers are bound by the legal standard in Illinois regarding the use of deadly force, as codified in Illinois State Statute 720 ILCS 5/7-5. The pertinent portion 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 effect 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...

Additionally, Illinois law regarding self-defense is relevant. Self-defense, available to all persons, is codified in Illinois State Statute 720 ILCS 5/7-1(a):

A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

The use of deadly force by Officer [REDACTED] and Officer [REDACTED] against [REDACTED] was objectively reasonable under the totality of the circumstances, and, therefore, within the bounds of CPD policy as outlined by the General Order. Furthermore, Officer [REDACTED] and Officer [REDACTED] use of force also complied with the applicable Illinois law and United States Constitution.

B. Application of Law to Facts

Accordingly, the relevant question is whether a reasonable officer in Officer [REDACTED] and Officer [REDACTED] position would have believed the use of deadly force was necessary to prevent death or great bodily harm. COPA applies the same analysis to all four of Officer [REDACTED] discharges, as well as Officer [REDACTED] one discharge. COPA makes its factual and legal determinations using a preponderance of the evidence standard. A proposition is proved by a preponderance of the evidence when it is found to be more probably true than not. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005). A preponderance of evidence shows that Officer [REDACTED] and Officer [REDACTED] reasonably believed that deadly force was necessary to prevent death or great bodily harm to themselves.

1. [REDACTED] presented an imminent risk of death or great bodily harm to Officer [REDACTED] when he pointed his firearm and fired at or in the direction of Officer [REDACTED]

Under the General Order, a sworn member is justified in using deadly force when he or she reasonably believes that such force is necessary to prevent death or great bodily harm to the sworn member. In the present case, Officer [REDACTED] was on routine patrol with his partner when they heard multiple gunshots and saw [REDACTED] running from the area where the shots were heard. Officer [REDACTED] pursued [REDACTED] to 9222 S. Justine where [REDACTED] attempted to climb over a fence. (See Figure 7) Officer [REDACTED] continued to give [REDACTED] verbal direction to stop, and indicated several times that he was a peace officer. According to Officer [REDACTED] when [REDACTED] was climbing the fence, and just as Officer [REDACTED] was approaching [REDACTED] to apprehend him, [REDACTED] turned around and fired one shot at the officer. [REDACTED] then fell over the fence to the opposite side. After [REDACTED] fell over the chain-link fence, Officer [REDACTED] saw [REDACTED] arm coming back toward him and Officer [REDACTED] fired three shots at [REDACTED] Officer [REDACTED] asserted that he fired his weapon because he was in fear of his life.



Figure 7- Approx. location where ██████ attempted to jump the fence in the alley of 9222 S. Justine

The evidence, for the most part, matches the testimony of Officer ██████ regarding these first three shots. Specifically, Officer ██████ testified both at a criminal trial and during an IPRA interview that ██████ fired at him once at this location. ██████ although not affirmatively stating that he had a weapon or that he fired at either officer, stated to the detectives that if he had a gun, it would have been empty.⁷² This statement on top of the evidence that a firearm, which contained blood⁷³ was found immediately in front of 9222 S. Justine Avenue, along the direct path of ██████ flight from the police, indicates by a preponderance that ██████ was at the very least in possession of a firearm.

The photograph above also depicts the three shell casings fired from Officer ██████ weapon at ██████. Although no shell casings were found from the .45 Taurus firearm that ██████ possessed in the area where Officer ██████ alleges that ██████ fired the weapon, it is likely that at the very least, ██████ pointed the firearm at Officer ██████. In fact, the jury in ██████ criminal trial found ██████ guilty beyond a reasonable doubt of aggravated assault of Officer ██████ i.e. pointing a firearm in the direction of Officer ██████ and placing the officer in reasonable apprehension of receiving bodily harm.

Although no shell casings were found to confirm Officer ██████ story relative to the first shot that ██████ allegedly fired at the officer, COPA finds it more likely than not that, at the very least, ██████ pointed his firearm in the direction of Officer ██████ to avoid apprehension as he

⁷² Att. 35.

⁷³ Att. 51.

fled over the fence and away from Officer [REDACTED]. It is reasonable to believe that an officer with similar experience and training would have used deadly force to stop the threat of a suspect pointing a weapon in his direction.

The pursuit of [REDACTED] continued after Officer [REDACTED] fired the first three shots. According to Officer [REDACTED] after Officer [REDACTED] fired his first three shots at [REDACTED] retreated into the backyard of 9222 S. Justine Street. [REDACTED] then took a diagonal path in the backyard of 9222 S. Justine Street between the garage and the house toward a gangway on the southern side of the home. Officer [REDACTED] instead of pursuing [REDACTED] blindly, took a different approach and went to the southern side of the garage and looked through a taller gate to attempt to identify [REDACTED] location. Officer [REDACTED] saw [REDACTED] in the gangway between the home at 9222 S. Justine Avenue and the garage, approximately at the mouth of the gangway. Officer [REDACTED] yelled again for [REDACTED] to stop. It is here where the story has had some inconsistent testimony that needs further explanation.

Officer [REDACTED] IPRA Statement

In Officer [REDACTED] statement to IPRA he said that [REDACTED] ran through the gangway, where the subject turned and pointed a gun at Officer [REDACTED]. According to Officer [REDACTED] he also heard a couple of gunshots, and he immediately returned fire on [REDACTED]. When pressed further during his IPRA statement, Officer [REDACTED] stated: “[w]hen he crossed over to the other [other side of the fence], uh I believe he fired two more times.”⁷⁴ He continued: “I heard, I heard two more shots. I know my uh partner was up front. So you know I’m not sure if he fired or not. I just heard two more shots so I’m not sure if it, I know he pointed the gun at me and I’m not sure you know if he fired the, you know...”⁷⁵ When asked specifically whether the shots that he heard at the time that [REDACTED] pointed the weapon at him a second time appeared to be coming from the area where [REDACTED] was located, or close enough to believe that [REDACTED] was firing at Officer [REDACTED] Officer [REDACTED] responded yes.

Detective Supplementary Report

In an interview with the detectives after this incident, summarized in the detective supplementary report, Officer [REDACTED] stated that the offender continued his flight [after jumping over the fence] traveling southeast through the rear yard before stopping near the residence where once again he fired in the direction of Officer [REDACTED]. Officer [REDACTED] returned fire but the offender scaled the fence and continued to flee eastbound through the gangway.

Criminal Trial Testimony

Finally, Officer [REDACTED] testified at [REDACTED] criminal trial. Officer [REDACTED] stated that he ran to the other side of the garage beside another chain link fence and that is when Officer [REDACTED] saw [REDACTED] again. At that point in time, [REDACTED] was running eastbound through a gangway with a gun in his hand. Officer [REDACTED] stated: “[a]t that point I yelled for him to stop again, and he

⁷⁴ Page 31, line 15-16, Att. 27.

⁷⁵ Page 31, line 25-30, Att. 27.

raised his hand up and fired another shot.”⁷⁶ Officer ██████ was direct in stating that ██████ raised the gun towards Officer ██████ and fired in Officer ██████ direction. Officer ██████ discharged his weapon a second time at ██████ continued to run eastbound and climbed another fence at the front of the house towards the front yard.

On cross examination, Officer ██████ stated that after ██████ jumped over the fence, he made a right turn in front of the garage going toward the gangway. ██████ ran diagonally to the south side of the house at 9222 S. Justine Street. According to Officer ██████ he observed ██████ fire two total shots.⁷⁷ ██████ fired the first shot when he was on the back fence.⁷⁸ The second shot was when ██████ was at the gangway in between the two houses, like at the mouth of the gangway.⁷⁹

Officer ██████ statements, although inconsistent, do not change the final analysis for COPA. Here, outside of the preliminary report, which is hearsay and not directly from Officer ██████ himself but instead through Deputy Chief ██████ all other statements indicate that Officer ██████ saw ██████ fire his gun a second time at Officer ██████ Officer ██████ stated to IPRA that he saw ██████ point the gun in his direction a second time, then heard multiple shots which he believed were coming from ██████ handgun. He affirmatively stated in that interview that he believed ██████ fired two more times. The detective statement and trial testimony are both more direct. The detective interview indicates clearly that Officer ██████ saw ██████ fire a second time in the direction of Officer ██████ The criminal trial testimony is even more direct, in which Officer ██████ testified that ██████ raised his arm up and fired another shot.

All three statements indicated that Officer ██████ was fired upon a second time. All three give the exact same location for where ██████ was located when he fired a second time. Although, again, no shell casing from the .45 Taurus was found at or near the location of where Officer ██████ stated that ██████ fired his weapon the second time, the analysis is unchanged. It is likely, once again, that at the very least, ██████ pointed the firearm at Officer ██████ a second time. Again, the jury in ██████ criminal trial found ██████ guilty beyond a reasonable doubt of aggravated assault of Officer ██████ i.e. pointing a firearm in the direction of Officer ██████ and placing the officer in reasonable apprehension of receiving bodily.

It is relevant that the jury found ██████ not guilty of attempted murder, and not guilty of aggravated discharge of a firearm. This clearly means that there was a reasonable doubt as to whether or not ██████ fired the weapon. However, COPA’s burden is preponderance of the evidence, not beyond a reasonable doubt. A proposition is proved by a preponderance of the evidence when it is found to be more probably true than not. *Avery*, 216 Ill. 2d at 191. COPA find it is more probably true than not that ██████ had a firearm and pointed it at or in the direction of Officer ██████ on the two different occasions. COPA needs not determine whether ██████ fired his gun by a preponderance of the evidence, because it is reasonable to believe that an officer with similar experience and training would have used deadly force to stop the threat of a suspect pointing a weapon in his direction.

⁷⁶ Lines 14-15, on page 44, Att. 66.

⁷⁷ Line 24 on page 74 of Att. 66 and lines 1-4 on page 75 of Att. 66.

⁷⁸ Lines 5-8 on page 75 of Att. 66.

⁷⁹ Lines 11-17 on page 75 of Att. 66.

Even if ██████ did not actually fire his weapon at the officers, this would not affect the analysis. Courts, in this jurisdiction and across the country, have repeatedly and broadly accepted the notion that officers are not required to wait to act until an armed person actually uses deadly force against the officer. *Montoute v. Carr*, 114 F.3d 181, 185 (11th Cir. 1997) (“... an officer is not required to wait until an armed and dangerous felon has drawn a bead on the officer or others before using deadly force”); see also *Leong v. City of Detroit*, 151 F.supp.2d 858 (E.D.Mich. 2001), holding that regardless of whether the suspect actually pointed his gun at the officers, or instead remained with his back turned, he was quite capable of leveling the weapon at an officer or a bystander and inflicting severe injury or death in an instant, and therefore the use of deadly force was permitted; see also *Anderson v. Russell*, 247 F.3d 125 (4th Cir. 2001), holding that an officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action; see also *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

b. ██████ presented an imminent risk of death or great bodily harm to Officer ██████ when he pointed his firearm at or in the direction of Officer ██████

Officer ██████ partner, Officer ██████ also fired one shot at ██████ According to Officer ██████ came from between two houses and pointed a gun in the officer’s direction, and Officer ██████ fired one shot at ██████ Officer ██████ stated that he fired his weapon because he was in fear of his life. The gun that Officer ██████ and Officer ██████ both say ██████ possessed was found just feet from where both Officer ██████ and Officer ██████ state that ██████ appeared out of the gangway between 9222 S. Justine Street and 9224 S. Justine Street. This weapon was a Taurus .45 semiautomatic pistol. This weapon was sent to the ISP and the results were that ██████ DNA cannot be excluded from being on the weapon. ██████ right hand was also tested for gunshot residue and the test revealed that ██████ had discharged a weapon or had been in the environment of a discharged firearm.⁸⁰

Based on both officers’ assertions and the evidence, it is reasonable to believe that an officer with similar experience and training would have used deadly force to stop the threat. COPA finds that all shots fired by Officer ██████ and Officer ██████ were objectively reasonable. ██████ posed an imminent risk of death or great bodily harm when he pointed a gun in the officers’ direction.

VIII. CONCLUSION

Based on the analysis set forth above, Officer ██████ and Officer ██████ belief that ██████ presented an imminent threat was objectively reasonable, and the officers were permitted to use deadly force against ██████ Moreover, COPA finds that an officer with similar training and experience as Officer ██████ and Officer ██████ would reasonably believe that ██████ posed an immediate threat of death or serious bodily harm when he pointed a gun at the officers. Considering the totality of the circumstances confronting Officer ██████ and Officer ██████ COPA finds the use of deadly force was objectively reasonable under Chicago Police

⁸⁰ Officer ██████ statement to IPRA, statement to detectives, and trial testimony are all consistent.

Department's General Order 03-02-03, Illinois law, and United States Constitution. Accordingly, COPA recommends a finding of WITHIN POLICY.

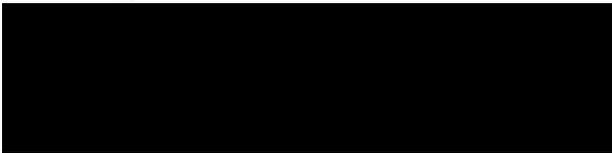
Approved:



9-11-19

Sydney Roberts
Chief Administrator

Date



9-11-19

Angela Hearts-Glass
Deputy Chief Administrator – Chief Investigator

Date

Appendix A

Assigned Investigative Staff

Squad#:	█
Investigator:	██████████
Supervising Investigator:	██████████
Deputy Chief Administrator:	Angela Hearts-Glass