

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	October 31, 2015
Time of Incident:	1:26 am
Location of Incident:	3933 W. Lexington Street
Date of IPRA Notification:	October 31, 2015
Time of IPRA Notification:	2:07 am

Officers [REDACTED] and [REDACTED] observed a vehicle driving erratically and initiated a traffic stop, during which multiple occupants fled from the vehicle. As Officers [REDACTED] and [REDACTED] chased the subjects on foot, an unknown subject drove the vehicle in the officers' direction, narrowly missing Officer [REDACTED] and striking Officer [REDACTED]. Both officers discharged their firearms at the vehicle. The vehicle subsequently fled the scene and crashed nearby, and the unknown driver apparently fled on foot. Three occupants who initially fled from the vehicle were subsequently arrested.

II. INVOLVED PARTIES

Involved Officer #1:	[REDACTED] star# [REDACTED] employee ID# [REDACTED] Date of Appointment: [REDACTED] 2003; Police Officer; Unit of Assignment: [REDACTED] DOB: [REDACTED] 1977; Male; White.
Involved Officer #2:	[REDACTED] star# [REDACTED] employee ID# [REDACTED] Date of Appointment: [REDACTED] 2006; Police Officer; Unit of Assignment: [REDACTED] DOB: [REDACTED] 1981; Male; White.
Involved Individual #1:	[REDACTED] 1985; Male; Black.
Involved Individual #2:	[REDACTED], 1990; Male; Black.
Involved Individual #3:	[REDACTED] 1991; Male; Black.

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.

III. ALLEGATIONS

Officer	Allegation	Finding
Officer [REDACTED]	1. It is alleged that Officer [REDACTED] discharged his firearm at an unknown person in a Chevrolet Tahoe, in violation of General Order 03-02-03. 2. It is alleged that Officer [REDACTED] discharged his firearm at or into a moving vehicle, in violation of General Order 03-02-03(III)(E).	Not Sustained Not Sustained
Officer [REDACTED]	1. It is alleged that Officer [REDACTED] discharged his firearm at an unknown person in a Chevrolet Tahoe, in violation of General Order 03-02-03. 2. It is alleged that Officer [REDACTED] discharged his firearm at or into a moving vehicle, in violation of General Order 03-02-03(III)(E). 3. It is alleged that Officer [REDACTED] improperly filled out his Tactical Response Report, in violation of Rule 10.	Not Sustained Not Sustained Exonerated

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6: Disobedience of an order or directive, whether written or oral
2. Rule 10: Inattention to duty

General Orders

1. G03-02-03: Deadly Force (effective February 10, 2015 – October 15, 2017)
2. G03-02-05: Incidents Requiring the Completion of a Tactical Response Report (effective October 30, 2014 – August 17, 2016)

V. INVESTIGATION²**a. Interviews³**

In a statement to COPA on July 18, 2019, Officer ██████ stated he was on duty in plain clothes working with his partner, Officer ██████ assigned to routine patrol when they observed a Tahoe driving at a high rate of speed and disregarding traffic signals. Officer ██████ the driver of their unmarked squad car, followed the Tahoe for approximately three or four blocks, activated the emergency lights and initiated a traffic stop. The Tahoe turned into the alley of 3900 W. Lexington and the Tahoe, now facing westbound, came to an abrupt stop. Officer ██████ stopped behind the Tahoe. Four black males subsequently exited the Tahoe, one from each door, and fled westbound down the alley. Officer ██████ stated that the Tahoe's windows were tinted, and he could not see into the vehicle nor had he been able to see into the vehicle at any point, but assumed the vehicle was empty since four doors opened and four subjects exited. Officers ██████ and ██████ chased the subjects and yelled at them to stop.

Officer ██████ was approximately 75-80 feet, or three to four houses, in front (west) of the Tahoe when he first heard an engine revving behind him. According to Officer ██████ it sounded like the gas pedal was completely floored. Officer ██████ turned and realized the Tahoe was coming toward him and Officer ██████ Officer ██████ drew his weapon and yelled at the Tahoe to stop. Officer ██████ noted that Officer ██████ and the individuals they were chasing were still in the middle of the alley. Officer ██████ had gained distance on Officer ██████ and was approximately five feet in front of him.

The Tahoe kept accelerating toward Officers ██████ and ██████ Officer ██████ stated, "...by the time it got to about maybe ten feet from me, I realized that they weren't stopping and that they wanted to run us over. That's when I actually started to shoot at the vehicle, at the driver."⁵ Officer ██████ could not see anyone inside the Tahoe as the vehicle's headlights obscured his view. Officer ██████ discharged his weapon when the vehicle was within ten feet of him, firing four rounds. Officer ██████ explained, "The first one was—I was directly in the middle of the alley, and I shot towards the driver. My next three were as I was jumping out of the way, still firing at the driver."⁶ Officer ██████ ended up on the driver's side of the Tahoe. The Tahoe continued westbound down the alley and struck Officer ██████ who was now also on the driver's side of the Tahoe and a couple steps from Officer ██████ Officer ██████ immediately discharged his weapon. The Tahoe passed Officer ██████ and turned southbound out of the alley.

Officer ██████ stated that the Tahoe posed a threat of great bodily harm or death to him, Officer ██████ and the four subjects who fled down the alley. "Because if I didn't turn around at

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

³ COPA strives to complete all relevant investigative steps, including interviews, in a timely manner. In this investigation, delays in the investigation resulted in COPA conducting the interviews of the accused officers many years after the incident impairing the reliability of the statements.

⁴ Attachments 131, 138

⁵ Attachment 138, page 23, lines 13-16

⁶ Attachment 138, page 29, lines 8-12

all, we'd all be dead. There's no doubt in my mind."⁷ Following the shooting, Officers ██████ and ██████ resumed their search for the four subjects. Officer ██████ placed ██████ into custody in a nearby gangway. Responding officers arrived on scene and placed ██████ and ██████ into custody.

In a statement to COPA on July 22, 2019, Officer ██████ provided an account consistent with Officer ██████. Officer ██████ did not recall whether he first noticed the Tahoe driving erratically, or if he and Officer ██████ simultaneously noticed the Tahoe. Officer ██████ stated when he exited the squad car, he ran along the passenger side of the Tahoe in pursuit of the four subjects. Officer ██████ described the Tahoe's windows as heavily tinted. "I assumed four doors open, four people get out. There's nobody in the car."⁹ Officer ██████ related that he ran past the Tahoe and drifted into the middle of the alley, and eventually toward the south side of the alley (driver's side of the Tahoe) in pursuit of one individual (later learned to be ██████). Officer ██████ heard an engine rev followed by gunshots. Officer ██████ heard Officer ██████ yell words to the effect of, "look out" or "move!" As Officer ██████ looked back, the front fender to the mirror area of the Tahoe struck him in his shoulder blade area, right side of his lower back, and the right side of his leg. Officer ██████ stated, "I then fire at the driver of that vehicle fearing for my life and the life of the individual I'm chasing who is in front of me by five, six, seven feet. Once the vehicle and the driver pass me, I stop firing."¹⁰ He added, "I was aiming at the driver. I was directly next to the driver when I begin to fire."¹¹

The Tahoe continued driving westbound out of the alley. Officer ██████ observed ██████ on the ground approximately ten feet in front of him, crawling under a fence. Officer ██████ pursued ██████ to a gangway and attempted to place him into custody. ██████ resisted arrest and kicked Officer ██████ in the chest and stomach. Officer ██████ pushed ██████ legs downward and used either a knee strike or a hand strike to gain control of him and place him into custody. Officer ██████ subsequently completed a Tactical Response Report to document his use of force.¹² According to Officer ██████ he completed one Tactical Response Report for two subjects because a supervisory member instructed him to. Officer ██████ believes Deputy Chief ██████ directed him to complete the Tactical Response Report that way, as Deputy Chief ██████ was standing next to him as he completed the report.

Attempts to interview ██████ and ██████ were unsuccessful.¹³

b. Documentary Evidence

The **Case Report ██████ and related Supplementary Reports**¹⁴ document that Officers ██████ and ██████ attempted to conduct a traffic stop of a silver Chevrolet Tahoe, which

⁷ Attachment 138, page 52, line 24 – page 53, lines 1-2

⁸ Attachments 137, 139

⁹ Attachment 139, page 24, lines 3-5

¹⁰ Attachment 139, page 10, lines 14-18

¹¹ Attachment 139, page 31, lines 5-6

¹² As will be explained below, Officer ██████ wrote one report for both ██████ and the unknown individual the officer believed was driving the vehicle at which whom the officer discharged.

¹³ Attachments 95-98, 119-121, 123-127, 141-144, 146

¹⁴ Attachments 7, 39, 94

was driving erratically in the general area of Independence Boulevard to Pulaski Road, and Harrison to Polk Streets. The officers followed the Tahoe into the alley of the 3900 block of W. Lexington Street, where the Tahoe came to an abrupt stop in front of the officers. All four of the Tahoe's doors opened, and four black males, three of them now identified as [REDACTED] and [REDACTED] exited the Tahoe and ran westbound through the alley along the south edge. Officers [REDACTED] and [REDACTED] ran after the subjects, with Officer [REDACTED] ahead of Officer [REDACTED].

Officer [REDACTED] told detectives that as he ran after a subject in a red outfit, now identified as [REDACTED] Officer [REDACTED] heard an engine revving and believed it to be responding police vehicles coming to assist. Officer [REDACTED] next heard Officer [REDACTED] say, "Stop," and then heard four booms which he believed were gunshots. Officer [REDACTED] related that he was facing west, ahead of Officer [REDACTED] when he heard Officer [REDACTED] say, "look out," or "get out of the way."¹⁵ As Officer [REDACTED] turned around to look, he was struck on the right side of his body by the front driver's side of the Tahoe. Officer [REDACTED] then raised his gun and fired at the Tahoe approximately five to six times. Officer [REDACTED] stated that the Tahoe continued westbound through the alley and turned southbound into the vacant lot at the end of the block. Officer [REDACTED] then observed [REDACTED] trying to crawl under a fence into a nearby yard. Officer [REDACTED] stated that he attempted to get on top of [REDACTED] to handcuff him and a struggle ensued. Officer [REDACTED] ultimately gained control of [REDACTED] and handed [REDACTED] over to other officers for transport. With the assistance of a CPD Helicopter Unit, [REDACTED] District officers located and arrested [REDACTED] in the gangway of 3933 W. Flournoy Street.

Officer [REDACTED] provided detectives an account consistent with Officer [REDACTED] account. Officer [REDACTED] stated that the Chevrolet Tahoe was driving "crazy," as if someone were committing the offense of Driving Under the Influence (DUI). Officer [REDACTED] followed the vehicle to the alley of 3900 W. Lexington Street where four people fled, running westbound through the alley toward Pulaski. Officer [REDACTED] related that [REDACTED] was wearing red and exited the Tahoe from the passenger side.¹⁶ Officer [REDACTED] stated that he ran a short distance from his squad car, and then heard the loud sound of an engine revving. Officer [REDACTED] who was standing in the center of the alley, turned facing eastbound and observed the Tahoe coming toward him at a high rate of speed. Officer [REDACTED] stated that Officer [REDACTED] was also in the center of the alley, further west of Officer [REDACTED] Officer [REDACTED] drew his weapon and yelled, "Stop," at the approaching Tahoe. The Tahoe continued toward Officer [REDACTED] and Officer [REDACTED] discharged his weapon four times at the front of the Tahoe. Officer [REDACTED] stated that he first struck the Tahoe in the front of the vehicle, and his last gunshot struck the driver's side of the Tahoe. Officer [REDACTED] stated that he stopped firing because he was now aiming in Officer [REDACTED] direction. Officer [REDACTED] then observed the Tahoe strike Officer [REDACTED] In response, Officer [REDACTED] fired his weapon at the Tahoe. Officer [REDACTED] continued running after the subjects who initially fled from the Tahoe. Officer [REDACTED] observed the Tahoe turn southbound into the vacant lot at the west end of the block.

Responding detectives observed Officer [REDACTED] and [REDACTED] squad car parked in the center of the alley facing west at 3914 W. Lexington Street. Detectives noted that the Tahoe crashed into a tree on the north parkway at 3852 W. Lexington Street, facing west and slightly south. The

¹⁵ Attachment 39, page 11

¹⁶ Officer [REDACTED] could not say whether [REDACTED] exited from the front or rear passenger door.

vehicle had the following suspect bullet holes: 1 in the driver's side quarter panel, just rear of the rear driver's side door; 1 in the upper region of the driver's side quarter panel, just forward of the driver's door; 1 to the lower front bumper of the vehicle, slightly to the driver's side of center; 1 in the rear driver's side seat; 1 to the passenger side frame post between the front and rear doors; 1 to the lower side of the front windshield; 1 to the passenger side rear tail light; and 1 to the front passenger roof handle. The following items were recovered from the Tahoe: a Glock 17 semi-automatic pistol with no magazine; a black thirteen (13) capacity magazine containing nine (9) live 9mm rounds; one (1) live 9mm round on the front passenger side floor area; and one (1) fired bullet on the front passenger side floor.

██████████ told detectives that he was a passenger in the Tahoe, seated in the rear cargo area. His brother, ██████████ was seated in the middle passenger compartment; and his cousin, ██████████ was seated in the front passenger seat. ██████████ now identified as ██████████ was seated in the rear cargo area. The vehicle was driven by a black male in his mid-twenties. ██████████ and ██████████ were both armed with handguns. ██████████ observed the police behind their vehicle. The driver refused to stop and drove west into the north alley of Lexington. The vehicle stopped in the middle of the alley. The "front passenger"¹⁷ fled out of the driver side door; ██████████ fled out of the passenger side door; ██████████ climbed over the seat and fled out of the second compartment passenger side door and fled east in the alley toward St. Louis. ██████████ heard four to five gunshots. ██████████ was ultimately taken into custody by CPD officers.

██████████ told detectives that his brother, ██████████ picked him up from the train station. ██████████ was a passenger in a beige-colored SUV. Also, inside the vehicle were ██████████ and the driver, an unknown black male. ██████████ related that the group drove around in the vehicle and consumed alcohol. At some point, people in the group started panicking because a Chicago Police car was behind their vehicle. The driver of the Tahoe drove fast and made several turns to lose the police vehicle. The driver stopped in an alley and ██████████ fled from the vehicle because he knew ██████████ had a gun and wanted no involvement. ██████████ hid in a gangway, where he heard gunshots fired in the alley; ██████████ did not see who fired the gunshots. Officers subsequently found ██████████ hiding in the gangway.

██████████ told detectives that ██████████ picked him up in an SUV. ██████████ sat in the front passenger seat. Also, in the vehicle were ██████████ and ██████████ and the group consumed liquor, and ██████████ fell asleep inside the vehicle. When ██████████ awoke, ██████████ brother, ██████████ was also inside the vehicle. ██████████ told detectives that the police attempted to pull over their vehicle. ██████████ drove in circles and attempted to find a place where they could "bail" out of the car. ██████████ stated that once the vehicle stopped, he fled on foot in the alley. ██████████ heard gunshots and fell on his face near a garage. ██████████ heard additional gunshots as he lay on the ground. ██████████ attempted to get up and run but a police officer grabbed him and took him to the ground.

¹⁷ This is directly from the detective supplementary report. It is possible that the detective who wrote it meant that the driver went out the driver's side door. ██████████ did not provide a statement to IPRA/COPA to confirm or clarify any of the information he gave to the detectives.

██████████ told detectives that she rented the involved Tahoe from Enterprise Rental Car and loaned the vehicle to her child's father, ██████████ called ██████████ on October 31, 2015, at approximately 1:31 a.m. and told ██████████ to report the rental car stolen. ██████████ went to the area of Pulaski and Lexington and observed that her rental car had been in an accident.

Officers ██████████ # ██████████ and ██████████ # ██████████ told Detectives that they responded to a foot chase by police, shots fired by the police, a request for officer assistance, and a report of an officer struck by a car. The officers arrived in the area and located ██████████ who matched the general description of the offender(s), at 3858 W. Flournoy Street.

Officers ██████████ # ██████████ and ██████████ # ██████████ stated they were traveling westbound on the 3900 block of W. Lexington Street when they heard a radio call for officer assistance and shots-fired by the police. The officers also stated that they heard gunshots coming from the alley north of their position. The officers then observed a silver, Chevrolet Tahoe drive onto Lexington Street from the vacant lot at the west end of the block. As the officers turned around their squad car to stop the Tahoe, they heard an apparent car crash from the same intersection and observed the Tahoe crashed into a tree at 3852 W. Lexington Street. The officers did not observe anyone inside the Tahoe and did not see anyone flee from the Tahoe.

An additional **Case Supplementary Report**¹⁸ documents that ██████████ told detectives that his girlfriend, ██████████ gave him the car keys. ██████████ refused to provide any additional information regarding the incident.

Additional **Case Supplementary Reports**¹⁹ document that ██████████ initially refused to speak to detectives about the incident. ██████████ later told detectives that he did not recall the incident, and denied knowing ██████████ or ██████████. The reports further note that there were no investigative leads to support a charge or identify the driver of the vehicle that struck Officer ██████████.

The **Arrest Reports**²⁰ document that ██████████ was charged with Reckless Conduct; ██████████ was charged with Reckless Conduct, Possession of Cannabis, and Issuance of a Warrant for an unrelated parole violation; and ██████████ was charged with Aggravated Battery to a Peace Officer and Aggravated Unlawful Use of a Weapon.²¹ It is reported that as Officer ██████████ detained ██████████ failed to follow Officer ██████████ verbal commands, kicked Officer ██████████ multiple times about his chest and abdomen, flailed his arms, stiffened, and pulled away.

¹⁸ Attachment 108

¹⁹ Attachments 113, 117

²⁰ Attachments 4-6

²¹ Officers recovered a Glock 17, 9mm semi-automatic handgun with an extended magazine from the front passenger floor of the Chevy Tahoe. ██████████ who had been sitting in that seat, admitted to having touched the gun while they were in the vehicle but denied it was his. The Glock had been reported stolen in 2013. (See Attachment 150.)

The **Tactical Response Reports**²² document that an unknown subject driving a Chevy Tahoe attempted to strike Officer [REDACTED] and struck Officer [REDACTED] with the vehicle. Both officers discharged their firearms in response.

Officer [REDACTED] report²³ further documents that [REDACTED] was an assailant and kicked Officer [REDACTED] multiple times. In response, Officer [REDACTED] gave verbal commands, performed a takedown/emergency handcuffing and utilized a closed hand strike/punch and knee strike to place [REDACTED] into custody. Officer [REDACTED] Tactical Response Report notes that the report pertains to two separate offenders: the unknown subject driving the Chevy Tahoe and [REDACTED]²⁴

c. Digital Evidence²⁵

Evidence Technician photographs²⁶ depict Officers [REDACTED] and [REDACTED] and [REDACTED] and various angles of the scene.

The **Office of Emergency Management and Communications (OEMC) transmissions**²⁷ document that Beat [REDACTED] Officers [REDACTED] and [REDACTED] notified the dispatcher that they were following a Tahoe for DUI. Beat [REDACTED] provided the Tahoe's license plate and gave the direction of travel. Beat [REDACTED] provided a cursory description of the involved individuals, and moments later announced shots fired by the police. Beat [REDACTED] announced that they had one person in custody but there were three others involved. One of the officers related, "My partner got hit by the car." An unknown unit announced that the involved vehicle stopped at 3852 W. Lexington.

d. Physical Evidence

The **Chicago Fire Department (CFD) Ambulance Report**²⁸ documents that Officer [REDACTED] told CFD personnel that a vehicle attempted to run him down as he was chasing subjects. Officer [REDACTED] reported that the vehicle's mirror and driver's bumper struck him but did not knock him to the ground, causing back pain and right shoulder pain. Officer [REDACTED] refused transport to a medical facility.

The **Chicago Police Crime Laboratory Reports**²⁹ document that Officer [REDACTED] firearm, a Sig-Sauer P226, 9mm semi-automatic pistol, was loaded with a fifteen (15) capacity magazine. The magazine contained nine (9) Win 9mm Luger+P cartridges, with one (1) Win 9mm Luger+P cartridge in the chamber.

²² Attachments 16, 18

²³ Attachment 18

²⁴ Sgt. [REDACTED] and Deputy Chief [REDACTED] approved Officer [REDACTED] Tactical Response Report.

²⁵ Officers [REDACTED] and [REDACTED] were not equipped with body-worn cameras at the time of the incident. Detectives searched for surveillance cameras in the area but did not find any.

²⁶ Attachments 48-84

²⁷ Attachments 26-38

²⁸ Attachment 22

²⁹ Attachment 41

Officer [REDACTED] firearm, a Glock 30, .45 caliber semi-automatic pistol, was loaded with a thirteen (13) capacity magazine. The magazine contained nine (9) Winchester .45 cartridges, with one (1) Winchester .45 cartridge in the chamber.³⁰

A **Crime Scene Processing Report**³¹ indicates nine fired cartridge cases located at various locations: three expended Winchester .45 caliber cartridge cases on garage apron leaves at 3930 W. Lexington (Crime Scene Markers # 1, 2 and 3);³² five expended Winchester 9mm Luger+P cartridge cases on the garage apron at 3937 W. Flournoy Street (Crime Scene Markers # 4, 5, 6, 7 and 8); and one expended Winchester 9mm Luger+P cartridge case on the alley pavement at 3938 W. Lexington Street (Crime Scene Marker # 9). Forensic Investigators also recovered a fired bullet from a second-floor apartment at 4010 W. Lexington. A defect on the window awning and corresponding window frame are consistent with a round originating from the scene of occurrence, and consistent with where Officer [REDACTED] was standing and aiming when he discharged his weapon. Based on the physical evidence, it appears that Officer [REDACTED] fired his weapon six times; and Officer [REDACTED] fired his weapon four times, which includes the fired bullet recovered from 4010 W. Lexington.

VI. ANALYSIS

a. Legal Standard

1. Use of Deadly Force

The applicable Chicago Police Department General Order is General Order 03-02-03, II,³³ which states:

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

³⁰ CPD conducted the functionality test. It does not appear that they did any testing on the fired evidence, presumably because this was a no-hits shooting.

³¹ Attachment 47

³² COPA believes there is one Winchester .45 caliber cartridge case that was not recovered. Officer [REDACTED] reported that he fired four times, which is consistent with the number of rounds left in his weapon.

³³ This report references the version of General Order 03-02-03 II in effect on the date of the incident. The Department subsequently amended its use of force directives.

Additionally, General Order G03-02-03 Deadly Force, Section III, (E) prohibits Department members from firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person.

Finally, General Order 03-02-03, Section IV, titled “Affirmation of Protection of Life Policy” states that “[s]worn members will not unreasonably endanger themselves or another person to conform to the restrictions of this directive.”

2. Standard of Proof

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

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

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct 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 been 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.

b. Analysis of the Allegations**1. Use of Deadly Force****a. Department Members May Only Fire at or Into a Moving Vehicle When Complying with the Prohibition Would Unreasonably Endanger a Department Member or Another Person.**

CPD General Order 03-02-03 must be interpreted sequentially and as a whole. Section III of General Order 03-02-03 unambiguously and explicitly prohibits officers from “[f]iring at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person.”³⁴ In other words, even when the use of deadly force is otherwise justified and permitted pursuant to Section II of General Order 03-02-03, Section III still prohibits officers from firing at or into a moving vehicle when the vehicle itself is the only force used against the officer or another person. Finally, Section IV of General Order 03-02-03 provides that officers shall not unreasonably endanger themselves or another person in order to comply with the prohibitions contained in Section III.³⁵ Therefore, CPD officers do not have to comply with the prohibitions contained in Section III of General Order 03-02 when the failure to use their firearm would unreasonably endanger the officer or another person.

The exception to the prohibition on firing into moving vehicles contained in Section IV of General Order 03-02-03 must be read in context of General Order 03-02-03 as a whole.³⁶ Unlike Section II which permits the use of deadly force when the officer reasonably believes deadly force is necessary to prevent death or great bodily harm to the sworn member or to another person, Section IV applies only when the officer’s failure to use deadly force would *unreasonably* endanger the officer or a third party. This inverted phrasing is not accidental, and it is a tenant of statutory interpretation that “[e]ach word, clause, and sentence should be given effect so as not to be rendered superfluous.” *Chicago Teacher’s Union, Local No. 1. v. Board of Education of the City of Chicago*, 2012 IL 112566, ¶ 15. Indeed, the Department specifically modified General Order 03-02-03 earlier in 2015 to remove language that permitted officers to fire into a moving vehicle simply to prevent death or seriously bodily injury to an officer or another person.³⁷

To apply the exception to the prohibition on firing at or into a moving vehicle broadly would make the prohibition entirely meaningless. The use of a vehicle as force inevitably puts officers and civilians at risk of death or great bodily harm. The exception would swallow the rule. COPA cannot interpret General Order 03-02-03 to make the prohibition on firing at or into a moving vehicle superfluous.³⁸ Read in context, the exception applies narrowly to cases where

³⁴ General Order 03-02-03(III)(E).

³⁵ *Id.*

³⁶ *See Kraft, Inc. v. Edgar*, 138 Ill. 2d 178, 188 (1990) (“[I]n ascertaining the meaning of a statute, the statute should be read as a whole with all relevant parts considered.”). Courts apply the same rules of construction to administrative rules and regulations as they do to statutes. *Hetzer v. State Police Merit Board*, 49 Ill. App. 3d 1045, 1047 (1977).

³⁷ Compare CPD General Order 03-02-03 (effective date 10 February 2015) to CPD General Order 03-02-03 (effective date 1 October 2002).

³⁸ *See Kraft, Inc.*, 138 Ill. 2d at 188 (“A statute should be construed so that no word or phrase is rendered superfluous or meaningless.”).

specific, unusual facts and circumstances demonstrate that complying with the prohibition would *unreasonably* endanger the officer or another person.

b. The Tahoe Was the Only Force Used or Threatened to Be Used Prior to Officers [REDACTED] and [REDACTED] Discharging Their Firearms

It is undisputed that the Tahoe was the only force used or threatened to be used prior to Officers [REDACTED] and Officers [REDACTED] discharging their firearms. Therefore, the prohibition regarding firing at or into a moving vehicle when the vehicle itself is the only force used against the officer or another person is applicable to this incident.

C. There is Insufficient Evidence to Determine Whether Officers [REDACTED] and [REDACTED] Would have Unreasonably Endangered Themselves by Complying with the Department's Prohibition Regarding Firing at or Into Moving Vehicles

COPA finds that there is insufficient evidence to prove or disprove that Officers [REDACTED] and [REDACTED] would have unreasonably endangered themselves or another person by complying with the prohibition on firing at or into a moving a vehicle.

To determine whether the Tahoe unreasonably endangered Officers [REDACTED] and [REDACTED] and that all of their shots complied with Department policy, COPA would, at a minimum, need to be able to determine: (1) the approximate speed of the Tahoe during the incident throughout the incident; (2) the approximate locations of Officer [REDACTED] Officer [REDACTED] and the involved civilians throughout the incident; and (3) the Tahoe's approximate location in relation to Officers [REDACTED] Officer [REDACTED] and the involved civilians at the time each shot was fired.

Officer [REDACTED] asserted that as he chased the four individuals who had previously exited the Tahoe, he heard an engine revving as if a gas pedal was being completely floored. Officer [REDACTED] stated he observed the Tahoe accelerating in his direction and that he believed the Tahoe was trying to run over himself and Officer [REDACTED] Officer [REDACTED] stated the vehicle posed an imminent risk of death or great bodily harm to himself, Officers [REDACTED] and the individuals they were chasing. Officer [REDACTED] stated he fired four shots, one shot towards the driver from the middle of the alley and then three times as he was jumping out of the way. Officer [REDACTED] stated the vehicle continued towards Officer [REDACTED] he was a few feet in front of him and struck Officer [REDACTED] who subsequently discharged his weapon at the driver of the Tahoe.

Similarly, Officer [REDACTED] stated he heard an engine rev followed by gunshots as he chased the individuals who exited the Tahoe. Officer [REDACTED] stated he heard Officer [REDACTED] yell words to the effect of, "look out" or "move!" and as he looked back, the front fender to the mirror area of the Tahoe struck him in his shoulder blade area, right side of his lower back, and the right side of his leg. Officer [REDACTED] asserted he then discharged his weapon six times at the driver of the Tahoe fearing for his own life and the life of one of the individuals he was chasing.

While Officer [REDACTED] and [REDACTED] accounts of the incident would justify their actions, there is no independent evidence to materially corroborate Officers [REDACTED] and [REDACTED] accounts of the incident.³⁹ COPA did not locate any audio or video evidence of the shooting incident and did not find any independent witnesses to the shooting the incident. Furthermore, the physical evidence, such as the location of the bullet strikes⁴⁰ and the location of the casings does not sufficiently prove or disprove Officer [REDACTED] and Officer [REDACTED] accounts of the incident. Finally, the fact that Officer [REDACTED] was reportedly struck by Tahoe, but Officer [REDACTED] did not sustain any apparent injury or even fall to the ground suggests that the Chevrolet Tahoe *may* not have been traveling in the manner and speed Officers [REDACTED] and [REDACTED] described.⁴¹

For these reasons, there is insufficient evidence to determine by a preponderance of the evidence that Officers [REDACTED] and [REDACTED] violated Department policy by discharging their firearms at the Tahoe during the incident or to determine by clear and convincing evidence that that Officers [REDACTED] and [REDACTED] complied with the Department policy. Therefore, Allegations #1 and #2 against Officers [REDACTED] and [REDACTED] are **Not Sustained**.

2. Failure to Properly Complete the TRR

Officer [REDACTED] asserted that he completed the TRR to encompass the force used against two separate subjects (the unknown driver and [REDACTED] and two distinct use of force incidents (the firearm discharge at the Tahoe and the arrest of [REDACTED] at the direction of Deputy Chief [REDACTED]. The applicable general order, General Order 03-02-05, does not expressly require Department members to complete two separate TRRs when two subjects are involved, and the use of force involves two separate incidents. In the absence of a directly applicable Department directive, Officer [REDACTED] was reasonable in relying on the direction of a high-ranking Department member in completing the TRR. The fact that Deputy Chief [REDACTED] approved Officer [REDACTED] TRR, as evident both by Deputy Chief [REDACTED] narrative preliminary determination that both use of force incidents complied with Department policy (Box 76) and by his electronic signature (Box 78), sufficiently corroborates Officer [REDACTED] assertion to prove by clear and convincing evidence that he completed the TRR to encompass the force used against two separate subjects and two distinct use of force incidents at the direction of Deputy Chief [REDACTED].⁴² Therefore, Allegation #3 against Officer [REDACTED] is **Exonerated**.

³⁹ As explained above, a preponderance of the evidence is necessary to prove allegations of misconduct against Department members, but clear and convincing evidence—a higher standard of proof than preponderance of the evidence—is required to exonerate allegations of misconduct against Department members.

⁴⁰ Both Officer [REDACTED] and Officer [REDACTED] asserted that they discharged their weapons at the driver before or as the Tahoe passed them, but at least some of the bullet strikes are inconsistent with this description. For example, one bullet struck the passenger side rear tail light.

⁴¹ To be clear, Officer [REDACTED] lack of injury and ability to remain on his feet, is certainly not sufficient, alone, to prove that the Tahoe did not unreasonably endanger Officer [REDACTED] Officer [REDACTED] or any other person, or that the Tahoe was not being driven in the manner described by Officers [REDACTED] and [REDACTED].

⁴² COPA notes that Deputy Chief [REDACTED] has since retired from the Chicago Police Department. Accordingly, no allegations were brought against him regarding this issue.

VII. CONCLUSION

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

Officer	Allegation	Finding
Officer [REDACTED] [REDACTED]	1. It is alleged that Officer [REDACTED] discharged his firearm at an unknown person in a Chevrolet Tahoe, in violation of General Order 03-02-03. 2. It is alleged that Officer [REDACTED] discharged his firearm at or into a moving vehicle, in violation of General Order 03-02-03(III)(E).	Not Sustained Not Sustained
Officer [REDACTED] [REDACTED]	1. It is alleged that Officer [REDACTED] discharged his firearm at an unknown person in a Chevrolet Tahoe, in violation of General Order 03-02-03. 2. It is alleged that Officer [REDACTED] discharged his firearm at or into a moving vehicle, in violation of General Order 03-02-03(III)(E). 3. It is alleged that Officer [REDACTED] improperly filled out his Tactical Response Report, in violation of Rule 10.	Not Sustained Not Sustained Exonerated

Approved:

[REDACTED]

 Andrea Kersten
 Deputy Chief Administrator – Chief Investigator

December 17, 2019
 Date

[REDACTED]

 Sydney Roberts
 Chief Administrator

December 17, 2019
 Date

Appendix A

Assigned Investigative Staff

Squad#:

Major Case Specialist:

Supervising Investigator:

Deputy Chief Administrator:

Andrea Kersten