

**SUMMARY REPORT OF INVESTIGATION<sup>1</sup>****I. EXECUTIVE SUMMARY**

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|----------------------------|--|
| Date of Incident:          | March 16, 2013                             |
| Time of Incident:          | Approximately 2:55a.m.                     |
| Location of Incident:      | 3317 West Wilson Avenue, Chicago, Illinois |
| Date of IPRA Notification: | March 16, 2013                             |
| Time of IPRA Notification: | 4:15a.m.                                   |

On March 16, 2013, at approximately 2:55a.m., Chicago Police Department (CPD) Officers [REDACTED] ( [REDACTED] ) and [REDACTED] ( [REDACTED] ) left the [REDACTED] District office and were en-route to the location of a previous arrest. The officers drove their assigned, unmarked Chevrolet Tahoe and proceeded east on Wilson Avenue.

On Wilson Avenue, approximately two to four blocks ahead of the officers' vehicle, the officers observed a vehicle traveling at a high-rate of speed when it turned right from Monticello Avenue onto Wilson Avenue and proceeded east.<sup>2</sup> Officer [REDACTED] increased his vehicle's speed and began to follow the vehicle while Officer [REDACTED] monitored the radio for recent criminal activity — the area was known for gang activity and both officers thought the vehicle may be fleeing from a recent crime. As the officers followed behind, the vehicle proceeded through stop signs without stopping and reached estimated speeds of eighty to one-hundred mph. The officers followed behind at speeds of fifty to seventy mph, never activated their vehicle's emergency lights, and were unable to establish any radio communications with the Office of Emergency Management and Communications (OEMC). They briefly lost sight of the vehicle as it crossed over Kimball Avenue.

Once east of Kimball Avenue, the officers again observed the vehicle ahead of them on Wilson Avenue. The vehicle had crashed, was facing north and perpendicular to the flow of traffic and came to rest just east of Christiana Avenue. The officers parked their Chevrolet Tahoe approximately twenty-five feet west of the crash. Officer [REDACTED] activated the emergency lights. Next, both officers aimed their vehicle-mounted spotlights at the crash. Together, they exited their Chevrolet Tahoe, drew their weapons, and approached the crashed vehicle. The officers advanced to within seven to fifteen feet of the vehicle as the driver sat facing north with his eyes wide open. Both announced their office and commanded the driver to show his hands. The driver turned to his left and towards both officers. At that very instant, the officers perceived what they believed was a blue-steel revolver come up from the bottom of the driver side window. Officer [REDACTED] dove to his right and heard two gunshots as he went to the ground. Officer [REDACTED] saw Officer [REDACTED]

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

<sup>2</sup> This vehicle is now known to be a 1991 Honda Civic driven by [REDACTED]

dive to the ground, crossing in front of Officer [REDACTED] which was followed by glass being blown out of the driver side window. Officer [REDACTED] fired from his position in the street and then dove to his right towards Officer [REDACTED]. Officer [REDACTED] began yelling that he was shot and felt blood on his face. Officer [REDACTED] saw Officer [REDACTED] holding his head, saw the blood, and heard Officer [REDACTED] state that he believed he was shot.

Both officers sought cover behind the vehicles parked along the south side of Wilson Avenue. Believing the driver was armed and still a threat, Officer [REDACTED] got up and focused his attention on the driver. The driver continued to track Officer [REDACTED] with a dark object, which Officer [REDACTED] believed was the blue-steel revolver he just saw. He then moved counterclockwise around the vehicle and through the parkway, shooting fifteen times at the driver as the driver continued to track both officers. Once the driver's arms came down, which both officers estimated was a matter of seconds, Officer [REDACTED] stopped firing.

Also perceiving the driver as a threat, Officer [REDACTED] took cover in the parkway southwest of the crash and fired four times at the driver as the driver continued to track both officers. He stopped shooting once the driver lowered his arms and stopped moving. The driver suffered fatal gunshot wounds. After the shooting, officers approached the driver, handcuffed him, and waited for additional CPD personnel to arrive. A gun was never recovered from the vehicle or its immediate vicinity.

## II. INVOLVED PARTIES

|                     |  |
|---------------------|--|
| Accused Officer #1: | Police Officer [REDACTED] Star# [REDACTED] Employee ID# [REDACTED]<br>[REDACTED] Date of Appointment: [REDACTED] 2007, Unit of Assignment: [REDACTED] District, DOB: [REDACTED] 1973, White, male    |
| Accused Officer #2: | Police Officer [REDACTED] Star# [REDACTED] Employee ID# [REDACTED]<br>[REDACTED] Date of Appointment: [REDACTED] 1998, Unit of Assignment: [REDACTED] District, DOB: [REDACTED] 1970, Hispanic, male |
| Subject #1:         | [REDACTED] DOB: [REDACTED] 1981, Hispanic, male  |

## III. ALLEGATIONS<sup>3</sup>

| Officer                   | Allegation   | Finding |
|---------------------------|--|---------|
| Police Officer [REDACTED] | The following allegations were alleged by the Civilian Office of Police Accountability (COPA) against Officer [REDACTED] |         |

<sup>3</sup> IPRA previously served allegations relative to this incident. COPA re-served allegations relative to the same incident. As a matter of clarity, only those allegations served by COPA are being addressed.

|                           |   |  |
|---------------------------|---|--|
|                           | <ol style="list-style-type: none"><li>1. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] operated a department vehicle and proceeded through a posted stop sign, without stopping, in violation of department policy.</li><li>2. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] operated a department vehicle and proceeded through a traffic signal, without stopping, in violation of department policy.</li><li>3. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] operated a department vehicle over the legally permitted speed limit in violation of department policy.</li><li>4. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] unnecessarily displayed a firearm.</li><li>5. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] used deadly force against [REDACTED] in a manner that was inconsistent with department policy.</li><li>6. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] used deadly force against [REDACTED] and then failed to de-escalate his use of force in a manner consistent with department policy.</li></ol> | Sustained<br>Sustained<br>Sustained<br>Exonerated<br>Not Sustained<br>Exonerated |
| Police Officer [REDACTED] | <p>The following allegations were alleged by of the COPA against Officer [REDACTED]</p> <ol style="list-style-type: none"><li>1. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] unnecessarily displayed a firearm.</li></ol>  | Exonerated   |

|   |               |
|---|---------------|
| 2. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] used deadly force against [REDACTED] in a manner that was inconsistent with department policy.                                      | Not Sustained |
| 3. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] used deadly force against [REDACTED] and then failed to de-escalate his use of force in a manner consistent with department policy. | Exonerated    |

#### IV. APPLICABLE RULES AND LAWS

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##### Rules<sup>4</sup>

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1. Rule 8 — Disrespect to or maltreatment of any person, while on or off duty.
  2. Rule 9 — Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
  3. Rule 38 — Unlawful or unnecessary use or display of a weapon.
  4. Rule 6 — Disobedience of an order or directive, whether written or oral.
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##### General Orders

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1. Force Options, G03-02-03
  2. Emergency Vehicle Operations — Pursuits, G03-03-01
  3. Emergency Vehicle Operations — Nonpursuits, G03-03-02
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##### State Laws

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<sup>4</sup> Rules 8 and 9 prohibit the use of any excessive force by any member. These rules prohibit all brutality, and physical or verbal maltreatment of any citizen while on or off duty, including any unjustified altercation of any kind.

1. 720 ILCS 5/7-5
2. 625 ILCS 5/11-205

## V. INVESTIGATION<sup>5</sup>

### a. Interviews

#### *Involved Officer Interviews and Depositions*

A Deposition of involved Officer [REDACTED] was taken on January 29, 2015. Officer [REDACTED] explained that during the early morning hours of March 16, 2013, he, along with his partner Officer [REDACTED] was traveling eastbound on Wilson Avenue when he first encountered [REDACTED] ( [REDACTED] turned right from Monticello Avenue onto Wilson Avenue and drove east at a high rate of speed. Clear traffic prevailed with no vehicles between the officers' vehicle and [REDACTED] vehicle. The officers followed [REDACTED] who drove at an estimated eighty to one-hundred mph. Because of known gang activity in the area, the officers' first impression was that [REDACTED] was fleeing from a recent crime, so they actively monitored the radio communications for recent crimes in the area. [REDACTED] continued to drive erratically and sped through stop signs as the officers followed behind at speeds of approximately fifty to seventy mph. As they followed [REDACTED] the officers did not activate their emergency lights.

After crossing Kimball Avenue, Officer [REDACTED] saw [REDACTED] wrecked vehicle just ahead on Wilson Avenue. [REDACTED] 1991 Blue Honda Civic came to rest facing north and perpendicular to the direction of travel on Wilson Avenue. Officer [REDACTED] parked the Chevrolet Tahoe in the center of Wilson Avenue approximately twenty-five to fifteen feet west of the crash. The Honda's engine revved, the tires were still spinning, and smoke emanated from the vehicle. With a clear view of [REDACTED] Officer [REDACTED] saw him sitting in the driver seat with his eyes open and facing north. His hands appeared to be in his lap. For the first time, Officer [REDACTED] activated the emergency lights and then focused his vehicle-mounted spotlight on [REDACTED]. Officer [REDACTED] exited the Chevrolet Tahoe and then drew his weapon.

Yelling something to the effect of, "Chicago Police, let me see your hands," Officer [REDACTED] moved in closer towards [REDACTED]. At seven to fifteen feet from the Honda, [REDACTED] suddenly "... does a quick turn, turns towards me, [a]nd as he's turning towards me, I see a gun being pointed at me." Officer [REDACTED] dove to his right and heard two gunshots — but never saw any muzzle flashes — as he went to the ground. He described the gun as a blue-steel revolver. Unsure of who fired these initial shots, Officer [REDACTED] admitted it was possible that Officer [REDACTED] fired them.

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<sup>5</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

Initially, Officer [REDACTED] believed he was shot in the head — he experienced pain at his right temple and felt blood when he touched the area. He then yelled out to his partner that he had been hit. Coming up off the street, he sought cover behind the vehicles parked along the south side of Wilson Avenue. When he looked back at [REDACTED] Officer [REDACTED] watched [REDACTED] turn and track him and his partner with a dark object. Officer [REDACTED] was unsure what the dark object was, but at the time of the shooting, he believed it to be the blue-steel revolver he initially saw at the window of [REDACTED] vehicle.

Additionally, Officer [REDACTED] was not sure if it was [REDACTED] who was pointing the dark object at him or if it was possibly a second person in the vehicle. However, at the time of the shooting, Officer [REDACTED] believed it was [REDACTED] who pointed the dark object at him and the potential presence of any additional individual in the vehicle with [REDACTED] never crossed his mind, nor did he raise that possibility in any initial report or interview.

From his first position of cover, Officer [REDACTED] fired two shots from a kneeling position in the direction of [REDACTED] upper body. To then gain a better view, and to evade being tracked, Officer [REDACTED] then relocated further southwest of the crash and took cover behind a light pole located in the parkway. From his second position of cover, Officer [REDACTED] fired a third and fourth shot. At no point during the first, second, third or fourth shot did Officer [REDACTED] recall providing any additional verbal commands to [REDACTED]. Officer [REDACTED] had no recollection of assessing whether [REDACTED] was injured from the gunfire; however, he continued to shoot as [REDACTED] continued to track him and his partner with a dark object.

After firing the four shots, Officer [REDACTED] stopped shooting because he felt the threat was eliminated when he no longer saw [REDACTED] turning or tracking in the direction of himself and/or Officer [REDACTED]. Officer [REDACTED] then contacted OEMC for the first time regarding the incident to communicate a 10-1<sup>6</sup> emergency for shots fired by the police.

Both officers controlled the scene until assisting officers arrived, which Officer [REDACTED] estimated was thirty seconds to five minutes later. As they waited, both officers approached [REDACTED] vehicle together from the rear. Officer [REDACTED] covered his partner who reached into the vehicle to handcuff [REDACTED]. Officer [REDACTED] briefly looked into the vehicle for a gun but did not notice a gun in [REDACTED] hands or anywhere within the passenger compartment.

In hindsight, Officer [REDACTED] strongly felt that another individual was in the car with [REDACTED] during the shooting who fled and evaded detection. This theory only came about after the shooting and was never considered by Officer [REDACTED] at the time of the incident or for nearly two years thereafter. The theory was documented for the first time in this deposition.<sup>7</sup>

**Officer [REDACTED] was interviewed by Special Agents from the Federal Bureau of Investigation at his residence on July 25, 2013. A written summary completed by the agents**

<sup>6</sup> “10-1” is radio shorthand indicating a high-level emergency and that officers need assistance.

<sup>7</sup> Attachment 134.

documented the interview. The FBI interview with Officer [REDACTED] was consistent with his deposition.<sup>89</sup>

Officer [REDACTED] was interviewed by IPRA investigators on August 9, 2016. The interview was consistent with Officer [REDACTED] previous testimony with some additional clarifications. Officer [REDACTED] told investigators that during the early morning hours of March 16, 2013, he was driving eastbound on Wilson Avenue with Officer [REDACTED] when they observed a vehicle, now known to be driven by [REDACTED] ahead driving at a high rate of speed. Initially, they saw the vehicle two to four blocks ahead turn right onto Wilson Avenue from Monticello. Officer [REDACTED] decided not to activate the emergency lights because [REDACTED] was too far ahead and he feared that if [REDACTED] saw the emergency lights he might flee. Trying to keep [REDACTED] within sight, Officer [REDACTED] increased his speed to approximately fifty to sixty mph and followed [REDACTED] who was traveling at an estimated eighty to one-hundred mph. When he approached stop signs and traffic signals Officer [REDACTED] slowed his vehicle and proceeded through intersections safely.

Meanwhile, Officer [REDACTED] attempted to ‘get over the air’ to gather information or let OEMC know of their current situation, but Officer [REDACTED] attempts were unsuccessful due to unrelated radio traffic by other officers. The officers continued to follow [REDACTED] — losing sight of [REDACTED] briefly when he crossed Kimball Avenue — until [REDACTED] crashed his vehicle near 3317 Wilson Avenue. Officer [REDACTED] pulled up to the crash and stopped his vehicle approximately twenty-five to fifteen feet west of the crash location. At this point, Officer [REDACTED] activated his vehicle’s emergency lights and then the side-mounted spotlight, which he pointed at [REDACTED] appeared uninjured as he sat in his vehicle looking straight ahead. Some smoke had collected around the vehicle and the tires appeared as if they were spinning. Officer [REDACTED] exited the vehicle, drew his weapon, and slowly advanced towards [REDACTED]. He commanded [REDACTED] to show his hands, which was when [REDACTED] turned his body in Officer [REDACTED] direction and pointed a gun — described as a blue-steel revolver — at Officer [REDACTED]. The officer dove to his right and heard two distinct gunshots as he went to the ground. With blood on his face and pain at his temple, the officer believed he had been shot and alerted his partner of the same.

Officer [REDACTED] rose and moved to a position of cover behind the vehicles parked along the south side of Wilson Avenue. [REDACTED] turned towards him and his partner and tracked them with a dark object, which Officer [REDACTED] believed was the gun he just saw earlier. From this position, Officer [REDACTED] fired twice at [REDACTED]. He then moved to a safer position of cover that provided a clearer view of [REDACTED] continued to track both officers, so Officer [REDACTED] fired two additional shots at [REDACTED]. After Officer [REDACTED] fired the fourth shot, [REDACTED] stopped moving, and Officer [REDACTED] perceived the threat against him as gone.

Throughout entire incident, Officer [REDACTED] never saw muzzle flashes or observed anyone, except Officer [REDACTED] shoot a gun. Following the shooting, both officers approached the vehicle to secure [REDACTED] and briefly search for a weapon. Finally, Officer [REDACTED] was asked to explain why he was in fear of his life, to which he replied, “I saw Mr. [REDACTED] pointing a

<sup>8</sup> Attachment 156.

<sup>9</sup> There have been no subsequent federal criminal charges as a result of the FBI’s investigation.

gun at my face and as I'm diving, I hear two distinct gunshots and, at that same time, as I'm getting off the ground I feel pain and I feel blood to the side of my head. . .”<sup>10</sup>

Officer [REDACTED] was interviewed by COPA investigators on November 13, 2017. Officer [REDACTED] provided information consistent with his prior interviews and/or depositions; however, the interview provided some additional detail.

On March 16, 2013, as Officer [REDACTED] approached [REDACTED] wrecked vehicle, he initially drew his weapon because the situation appeared threatening, in that, [REDACTED] just fled from an area known for gang violence, there were recent shootings in the area, and the vehicle still appeared as if attempting to flee: the vehicle appeared lodged, however, the vehicle smoked, the wheels were spinning, the engine revved, and it was possible that the vehicle could become dislodged and surge towards the officers.

Despite smoke in the area, Officer [REDACTED] told investigators that it did not impact his view of [REDACTED] as he approached him in the vehicle. He further indicated that smoke never affected his view at any point during the entire incident.

Officer [REDACTED] first observed the gun as [REDACTED] brought his right arm up and pointed the gun, which was now chest high and approximately four inches from [REDACTED] chest, towards the driver side window. Officer [REDACTED] dove to the right, out of the line-of-fire, and heard two gunshots as he fell to the pavement. Immediately, Officer [REDACTED] felt pain and blood at the side of his head, which led him to believe that he was shot.

Officer [REDACTED] continued to evaluate the situation as he jumped up from the ground. He observed [REDACTED] tracking him, which he defined as a situation where an individual follows you with a gun or an object as they keep you within their sights. When asked, Officer [REDACTED] agreed that [REDACTED] movements could be interpreted to mean something else, but at the time of the shooting, he perceived [REDACTED] movements as tracking the officers with a gun.

Officer [REDACTED] was shown CPD's Use of Force Model policy, which requires an officer to de-escalate his use of force in response to a diminished threat. In response, Officer [REDACTED] explained that during all four of his shots [REDACTED] continued to track the officers as he pointed a dark object at them, which Officer [REDACTED] believed was the gun he first observed. Officer [REDACTED] explained that he de-escalated when [REDACTED] stopped tracking. Only then did he perceive the threat as gone. Additionally, Officer [REDACTED] acknowledged an inconsistency in the FBI report indicating that he began a pursuit of the vehicle with his lights and sirens activated. Officer [REDACTED] indicated that the FBI report was inaccurate, and that he never stated he pursued the vehicle with lights and sirens; instead, he confirmed that his lights were activated only after stopping at the crash site.<sup>11</sup>

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<sup>10</sup> Attachment 190.

<sup>11</sup> Attachments 228 and 229.

Officer [REDACTED] was interviewed by CPD detectives on March 16, 2013, at approximately 4:10a.m. The detectives' short summary of the interview was generally consistent with Officer [REDACTED] deposition and interviews with IPRA and COPA investigators.<sup>12</sup>

**A Deposition of involved Officer [REDACTED]** was taken on February 10, 2015. During this deposition Officer [REDACTED] shared the following account.

His encounter with [REDACTED] started as both officers were returning to a previous arrest location to retrieve evidence to inventory. The officers drove east on Wilson Avenue. As the officers approached Lawndale Avenue they noticed [REDACTED] vehicle approximately two blocks ahead of them when [REDACTED] turned right without stopping onto Wilson Avenue from Monticello Avenue and continued east at a high-rate of speed. Without activating their emergency lights, the officers followed the vehicle. As Officer [REDACTED] drove, Officer [REDACTED] attempted to get over the radio and "find out if anything was happening in the area." As they continued east on Wilson Avenue, [REDACTED] vehicle traveled eighty mph or greater as he disregarded stop signs. To stay with [REDACTED] Officer [REDACTED] increased his speed and followed behind, traveling from thirty up to approximately seventy mph.

The officers lost sight of [REDACTED] as he crossed over Kimball Avenue. Once over Kimball Avenue, Officer [REDACTED] saw [REDACTED] vehicle crashed on Wilson Avenue approximately two blocks ahead. The officers pulled up and parked approximately seven to twenty feet from [REDACTED] vehicle, which was resting perpendicular to the flow of traffic on Wilson Avenue. The vehicle was smoking, the engine revved, and the tires appeared as if they were still spinning. Officer [REDACTED] pointed the vehicle-mounted spotlight on [REDACTED] and then exited the vehicle with his gun drawn. Perceiving [REDACTED] as a threat, because of the way he just saw him driving, the engine revving, and the smoking tires, the officers approached the driver side of the vehicle where [REDACTED] sat staring straight ahead. Initially, Officer [REDACTED] impression was that [REDACTED] was trying to flee based on his observation of the vehicle, (i.e. the engine revving and tires smoking), so the officers announced their office and commanded [REDACTED] to show his hands. At approximately five to twelve feet from [REDACTED] Officer [REDACTED] "... saw a gun come up, and I saw Mr. [REDACTED] turn his head in our direction." Officer [REDACTED] further explained, "I can't tell you for certain that I saw Mr. [REDACTED] holding a gun," but he was certain that he saw a blue-steel revolver in the driver side window right next to [REDACTED]. Officer [REDACTED] then heard two gunshots and saw the glass blow out of the driver side window, but he never saw any muzzle flashes from the blue-steel revolver. Officer [REDACTED] fired from his current position — shooting as he dove right and to the ground. The officer scrapped his forearm and knee, and he also observed Officer [REDACTED] grab the side of his head and yell out that he was hit.

At the time of the deposition and based on everything he has come to learn of the event, it was highly possible in Officer [REDACTED] opinion that a second person was in the vehicle with [REDACTED] but at the time of the shooting he never saw anyone else. After he dove for cover and looked back at [REDACTED] Officer [REDACTED] saw [REDACTED] twisting and turning as he sat in the vehicle with his arms extended, still inside the vehicle, with a dark object in hand, which Officer [REDACTED] perceived as tracking.

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<sup>12</sup> Attachment 232.

Officer [REDACTED] then moved to the rear of [REDACTED] vehicle and through the parkway along the south side of the street. Meanwhile, [REDACTED] continued to track the officer with his arms extended. Officer [REDACTED] stated, "I just remember him twisting and turning with his arms extended, and I perceived it as a threat and I continued to fire to neutralize the threat." Officer [REDACTED] shot a total of fifteen times, aiming at the upper part of [REDACTED] body. He fired the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth shot without evaluating if [REDACTED] was injured because he stated he continued to perceive the threat. When asked, "[w]hat did you do to verify that you had incapacitated or did not incapacitate Mr. [REDACTED] before firing a twelfth bullet?"<sup>13</sup> Officer [REDACTED] stated, "I didn't do anything. I shot again." Officer [REDACTED] explained that he just continued to shoot the thirteenth, Fourteenth and Fifteenth bullets. "What made you stop shooting?" Officer [REDACTED] replied, "[t]he arms came down." Officer [REDACTED] continued to shoot until the perceived threat was gone: [REDACTED] tracking of him with a dark object perceived to be a gun.

Once the shooting stopped, both officers approached [REDACTED] from the southwest as he sat inside his vehicle. [REDACTED] appeared unconscious, because his eyes were closed, but he was breathing. Officer [REDACTED] handcuffed [REDACTED] as Officer [REDACTED] provided cover. Believing there was a gun in the vehicle, Officer [REDACTED] briefly looking around the passenger compartment of the vehicle but did not see a gun. Once assisting officers arrived, Officer [REDACTED] was taken to the hospital by ambulance but returned to the scene later to conduct a walkthrough of the shooting with detectives.<sup>14</sup>

**Officer [REDACTED] was interviewed by IPRA investigators** on August 8, 2016. Officer [REDACTED] provided information consistent with his prior deposition; however, the interview provided some additional detail.

At the intersection of Monticello and Wilson Avenues, [REDACTED] went through a stop sign and turned right onto Wilson Avenue where he continued east at a high-rate of speed. Believing that something was going on, Officer [REDACTED] told his partner they needed to stay with the vehicle. Officer [REDACTED] then followed the vehicle as Officer [REDACTED] attempted to go over the radio to gather information and inform dispatch of the officers' developing situation. Officer [REDACTED] tried twice to notify OEMC as they followed [REDACTED] but the "air traffic was all tied up." Officer [REDACTED] drove an estimated fifty to seventy mph behind [REDACTED] vehicle, which was traveling an estimated eighty to over one-hundred mph. They never activated their emergency lights because the officers were unsure if [REDACTED] would see them, or if he would even stop or just flee.

Officer [REDACTED] was directly asked why he was not in a pursuit, to which he replied, "[b]ecause we know that we're not allowed to by Department policy to pursue a vehicle. You need to have a marked vehicle. It's Department policy. I guess you need to have your lights on, lights and sirens and you need the communication with OEMC to let them know that you have a vehicle going at a high rate of speed." Officer [REDACTED] further explained that he complied with Department policies because an emergency was afoot, he was gathering information, and he attempted to put this information out over the air.

<sup>13</sup> The 11<sup>th</sup> bullet was not specifically addressed during the deposition questioning.

<sup>14</sup> Attachment 135.

Once east of Kimball Avenue, [REDACTED] crashed his vehicle at 3317 Wilson Avenue. The Officers pulled up and parked approximately five to fifteen feet west of the crash site where they observed [REDACTED] vehicle facing north and perpendicular to the flow of traffic. The vehicle's engine continued to rev, the tires were spinning, and there was smoke around the crash. Officer [REDACTED] activated the emergency lights while [REDACTED] sat in the driver's seat looking straight ahead. Next, both officers focused their vehicle-mounted spotlights on [REDACTED]

With his gun drawn, Officer [REDACTED] exited his vehicle and approached [REDACTED]. He announced his office and commanded [REDACTED] to show his hands. After two or three commands, [REDACTED] turned his head towards both officers, which is when Officer [REDACTED] saw a gun come up behind the glass of the driver side window. Officer [REDACTED] yelled to get down as he crossed in front of Officer [REDACTED] and dove to the ground. Officer [REDACTED] heard two distinct gunshots and saw the glass blow out of the driver side window. He then fired once from the street and then dove to his right and to the ground. Officer [REDACTED] never saw [REDACTED] shoot a gun, nor did he ever see any muzzle flashes.

As Officer [REDACTED] got up he heard Officer [REDACTED] yell out, "I'm hit, I'm hit." He observed Officer [REDACTED] clutch the side of his head, and he also saw blood. Officer [REDACTED] started to shoot at [REDACTED] as he moved around the rear of the vehicle and through the parkway along the south side of Wilson Avenue. [REDACTED] continued to track the officer with his arms extended holding a dark object. Through the rear tinted window of [REDACTED] vehicle, Officer [REDACTED] saw the silhouette of [REDACTED] moving with extended arms. Believing that [REDACTED] was trying to kill him, the officer continued to fire his weapon a total of fifteen times at [REDACTED] until he stopped tracking the officers.

Once [REDACTED] stopped moving, Officer [REDACTED] provided cover as Officer [REDACTED] approached the vehicle and handcuffed an unconscious [REDACTED]. Officer [REDACTED] briefly looked into the vehicle's passenger compartment for a gun but found nothing.

Officer [REDACTED] was asked why he was in fear of his life, to which he replied, "I saw a gun and I heard the gunshots and the glass being blown out. My partner communicated to me [that he was hit]. Based on the totality of the circumstances, at that point in time, I believed there was a gun and I was actually in fear of my life and my partner's life."<sup>15</sup>

**Officer [REDACTED] was interviewed by COPA investigators** on November 13, 2017. Officer [REDACTED] provided information consistent with his prior interviews and/or depositions; however, the interview provided additional details based on the specific allegations.

Initially, the decision to draw his weapon was based upon a totality of the circumstances. Officer [REDACTED] was unsure of what [REDACTED] intentions were as he approached the vehicle. Additionally, the vehicle's engine revved as the wheels were spinning, there was smoke near vehicle, and Officer [REDACTED] was unsure if [REDACTED] was going to flee. According to Officer [REDACTED] the vehicle appeared capable of being used against the officer if it started moving and perhaps striking one of them.

<sup>15</sup> Attachment 189 and 184.

The revving engine was described as loud, i.e., like someone had the accelerator to the floor. Nevertheless, Officer [REDACTED] stayed focused on [REDACTED] as he approached him. Despite some smoke in the area, the officer's view of [REDACTED] was clear. As Officer [REDACTED] neared [REDACTED] Officer [REDACTED] yelled "get down." Officer [REDACTED] then crossed in front of Officer [REDACTED] and then immediately thereafter, Officer [REDACTED] heard two gunshots and saw the glass blow out of the driver side window. Officer [REDACTED] fired once from the street towards [REDACTED] and dove to the ground. As he came up off the ground, he heard Officer [REDACTED] say, "I'm hit, I'm hit," as he clutched the side of his bloody head.

Officer [REDACTED] was asked to describe the term tracking that was consistently used to describe [REDACTED] actions. Officer [REDACTED] told investigators that "tracking" is when someone looks in your direction. The officer then explained that he saw a combination of actions from [REDACTED] that resembled tracking, which placed him in fear for his life: [REDACTED] was turning his body and head as his arms appeared to be extended with a dark object. Officer [REDACTED] first noticed [REDACTED] tracking him when he got up off the ground after he dove. At the same time, Officer [REDACTED] heard his partner, who had blood on his face, yell "I'm hit, I'm hit." Officer [REDACTED] felt out in the open in the parkway so he continued to move counterclockwise through the parkway and around [REDACTED] vehicle as he evaded the tracking. Officer [REDACTED] believed he had just saw a gun, heard gunshots, and therefore, perceived the dark object as a gun.

Perceiving this as a threat, Officer [REDACTED] moved through the parkway and fired his weapon in the direction of [REDACTED] arm(s) appeared extended straight out from his body at chest level holding a dark object pointed in Officer [REDACTED] direction. Officer [REDACTED] thought [REDACTED] was "trying to kill [him]." With spotlights focused on [REDACTED] Officer [REDACTED] clearly saw [REDACTED] silhouette continuously track him until the officer fired his fifteenth shot. Officer [REDACTED] only de-escalated his use of force once [REDACTED] arms came down and he no longer perceived [REDACTED] as a threat.<sup>16</sup>

**Officer [REDACTED] was interviewed by CPD detectives** on March 16, 2013, at approximately 5:00am. The detectives' short summary was generally consistent with Officer [REDACTED] deposition and interviews with IPRA and COPA investigators.<sup>17</sup>

**Officer [REDACTED] was approached for an interview by FBI Agents** at his residence on July 26, 2013. The agents informed Officer [REDACTED] that there was a federal investigation into the shooting of [REDACTED] and they wanted to question [REDACTED] about the incident. After initially pretending he was not [REDACTED] he identified as [REDACTED] Officer [REDACTED] declined to discuss the matter and directed the agents to speak with his legal representation.<sup>1819</sup>

#### *Witness Officer Interviews*

<sup>16</sup> Attachment 226 and 227.

<sup>17</sup> Attachment 232.

<sup>18</sup> Attachment 157.

<sup>19</sup> No subsequent federal criminal charges have been filed as a result of the FBI's investigation.

Officer [REDACTED] was interviewed by CPD detectives on March 16, 2013, at approximately 11:00p.m. Officers [REDACTED] and his partner Officer [REDACTED] heard a 10-1 call over the radio for officers in need of assistance at the 3300 block of Wilson Avenue. The officers responded and drove towards the 3300 block of Wilson Avenue by heading North on Spaulding Avenue to Wilson Avenue where they turned left onto Wilson Avenue and headed west.<sup>20</sup>

On Wilson Avenue, the officers parked their vehicle ten to fifteen feet east of a crash. There was smoke in the area emanating from the crashed vehicle, the crashed vehicle's engine was revving, and the officers had a clear view of the crash. Officer [REDACTED] exited his vehicle and took a position of cover behind vehicles parked along the north side of Wilson Avenue. From this vantage point, he observed officers on the south side of the street and realized that he was in their line-of-fire. Officer [REDACTED] broke cover and moved to the south side of Wilson Avenue where he took cover behind Officers [REDACTED] and [REDACTED]. From the south side of Wilson Avenue, the four officers ([REDACTED] and [REDACTED]) yelled at [REDACTED] to show his hands as the four officers approached and handcuffed [REDACTED]. At no point during the incident did Officer [REDACTED] observe any gunshots.<sup>21</sup>

Sergeant [REDACTED] was interviewed by COPA investigators on October 12, 2017.<sup>22</sup> Immediately prior to the interview, Sergeant [REDACTED] reviewed the written summary of his March 16, 2013 interview and confirmed that the summary was true and accurate. During his October 12, 2017 interview, Sergeant [REDACTED] provided some additional details. Sergeant [REDACTED] was near Sunnyside and Spaulding Avenues when he heard several distinct gunshots, which sounded nearby. He described the shooting as a "shit ton" of shots. Expounding, the sergeant described a smaller caliber gun report first, then a small pause,<sup>23</sup> followed by sounded like two different larger caliber gunshots. He recalled hearing a 10-1 over the radio not long after he heard the gunshots. Sergeant [REDACTED] and Officer [REDACTED] then responded to the shots and drove north on Spaulding Avenue and then west on Wilson Avenue towards the crash. He estimated his arrival at the crash was ten to thirty seconds after he heard 10-1 over the radio. No one was observed along the route to the shooting.

Once at the shooting scene, Sergeant [REDACTED] saw an individual sitting in a crashed vehicle just ahead of him on Wilson Avenue. Immediately, the sergeant exited his vehicle and moved to the north side of Wilson Avenue for cover. From his position of cover, the sergeant had a clear view into the front of the vehicle where he saw a single individual who appeared to be deceased sitting in the front driver side seat. Following the shooting, Sergeant [REDACTED] remained at the scene

<sup>20</sup> Attachment 232.

<sup>21</sup> Officer [REDACTED] was interviewed by COPA investigators on October 13, 2017. Officer [REDACTED] provided information that was consistent with his prior interview on March 16, 2013, by CPD detectives. Officer [REDACTED] merely added that he and Officer [REDACTED] were at a call for service near Spalding and Sunnyside Avenues when they heard two volleys of shots. Both officers were standing outside when the shots occurred, which sounded close and seemed to be from a location just north of them. The two volleys had a different pitch, like two different caliber weapons. They returned to their vehicle and drove north on Spaulding Avenue and then headed west on Wilson Avenue. Unsure of exactly where the shots came from, the officers were actively looking around as they drove. Neither officer saw nor talked to anyone along the route to the crash scene (attachment 210 and 231).

<sup>22</sup> Sgt. [REDACTED] had previously provided an account on March 16, 2013, to CPD Detectives. Sgt. [REDACTED] COPA interview was consistent with his previous statement, and he was asked additional questions (Attachment 232).

<sup>23</sup> Sergeant [REDACTED] described this pause as anywhere from one to thirty seconds.

for approximately six to eight hours. Sergeant [REDACTED] assisted other officers as they searched for a gun along Wilson Avenue.<sup>24</sup>

#### *Independent Witness Interviews and Depositions*

**An interview of [REDACTED] ( [REDACTED])** was taken by IPRA on March 19, 2013.

[REDACTED] was traveling west on Wilson Avenue, and as he approached Kimball Avenue, he saw a vehicle coming towards him at a high rate of speed<sup>25</sup>. [REDACTED] started to pull his vehicle to the side of the road to avoid a collision, but the on-coming vehicle still managed to sideswipe [REDACTED] car. After the collision, the vehicle continued past [REDACTED] and struck multiple cars parked along Wilson Avenue.

[REDACTED] then noticed a dark colored SUV pass by him. Soon after the SUV passed, [REDACTED] heard gunshots. [REDACTED] said he heard “one shot, and then there were a few more shots fired, and then after that there was a series of shots fired.” Instantly, [REDACTED] ducked for cover and did not break his cover until he noticed vehicles with flashing lights arriving.<sup>26</sup> <sup>27</sup>

**An interview of [REDACTED] ( [REDACTED])** was taken by IPRA on May 20, 2014.

[REDACTED] was at his friend’s residence just west of the crash site along Wilson Avenue. A little before 3:00a.m. [REDACTED] heard sirens going off, then heard a collision, which was followed by more sirens. [REDACTED] stepped outside his friend’s home and observed an unmarked vehicle chasing a suspect until the suspect’s vehicle died out approximately five-hundred feet from [REDACTED] location.

[REDACTED] then heard three gunshots, which he believed sounded as if fired through a windshield. He instantly turned away from the gunfire and ran towards his friend’s house. All together he heard six to eight gunshots – three of the shots he believed came from the died-out car, while the others came from two officers who shot from behind some trees while they shouted commands for the suspect to come out of the car.<sup>28</sup><sup>29</sup>

**A deposition of [REDACTED] ( [REDACTED])** was taken on June 16, 2015. On the night of the incident [REDACTED] was at the residence of [REDACTED] ( [REDACTED]) located at West [REDACTED] where he played video games with [REDACTED] and [REDACTED]. Around 3:00a.m., [REDACTED] heard a crash outside and followed [REDACTED] to the front door. Without stepping outside, [REDACTED] peered through a screen less storm door and observed a vehicle stopped slanted

<sup>24</sup> Attachments 230 and 212.

<sup>25</sup> [REDACTED] estimated the vehicle was traveling at approximately fifty mph.

<sup>26</sup> Responding CPD detectives interviewed [REDACTED] on March 16, 2013 at approximately 2:55am. The detective’s summary of [REDACTED] interview was consistent with this interview.

<sup>27</sup> Attachment 11.

<sup>28</sup> Attachment 103.

<sup>29</sup> Responding CPD detectives also interviewed civilian witness [REDACTED] was at a friend’s home at [REDACTED] playing video games. He got up to go outside when he heard a crash. On his way out of the house he saw a small sedan traveling east on Wilson Avenue with a police Tahoe, lights and sirens activated, following behind. The sedan crashed a block east of [REDACTED] friend’s house. Shortly after the crash, [REDACTED] heard someone yell “get down” or “get out of car,” followed by approximately three gunshots and then approximately five additional gunshots. Meanwhile, [REDACTED] ran back into the house and never saw the shooter(s) (attachment 232).

in the street. Just west of the vehicle was a police Chevrolet Tahoe with the emergency lights activated. Inside the slanted vehicle [REDACTED] saw the front seat passenger and muzzle flashes emanating from the same location. This passenger was the only person he saw in the vehicle, nor did he notice anyone fleeing from the vehicle. Clarifying, [REDACTED] explained he could not really tell if the muzzle flashes came from inside or outside the vehicle. After hearing the shots, [REDACTED] became frightened and retreated further into the home.<sup>30</sup><sup>31</sup>

**A deposition of [REDACTED] ( [REDACTED])** was taken on April 29, 2015. At the time of the incident, [REDACTED] lived in a second-floor apartment, located at [REDACTED] [REDACTED] with his wife, daughter, and brother-in-law. That night, [REDACTED] was asleep when the sounds of a car accident — a series of three to four crashes — woke him. Instantly, he went straight to his bedroom window, which faced south and looked out onto Wilson Avenue. Out the window A. [REDACTED] saw a smoky vehicle with spinning tires in the street facing North, four to five officers (some in uniform and some not) and, multiple police vehicles. [REDACTED] thought, but was not sure, he heard the officers yell, “drop your weapon.” Suddenly, they [officers] were just shooting, which was when he heard an engine rev up and saw a cloud of smoke appear. He recalled an officer shooting in the sidewalk from behind the rear of the north facing car. Numerous gunshots occurred all in sequence. Chronologically, he described the incident as a screeching loud pop, several gunshots, followed by someone yelling “drop your weapon.” [REDACTED] never saw anyone exit the North facing car in the street, nor did he see any individual inside the car.<sup>32</sup> <sup>33</sup>

**A deposition of [REDACTED] ( [REDACTED])** was taken on April 29, 2015. C. [REDACTED] woke to sounds of a car crash, followed by a single gunshot, and then a few more gunshots. One or two minutes after hearing the crash, she got up and looked out the window. Outside she saw a blue or grey car in the street facing north, towards her building. An SUV was parked just right of the car facing east. She also saw officers everywhere, six or eight of them in police uniform. Two officers were on the south side of the street shooting into the blue/grey car. She then noticed a third officer approach the blue/grey car from the east as officers yelled “drop your weapon.” When the gunfire ceased, an officer approached the blue/grey car, opened the front passenger side door, and turned the vehicle off. [REDACTED] only saw uniformed officers fire their weapons.<sup>34</sup> <sup>35</sup>

**An interview of [REDACTED] ( [REDACTED])** was taken by IPRA on March 16, 2013. [REDACTED] was the owner of the building located as [REDACTED] where he occupied the first-floor apartment. He was home that morning when the sound of two gunshots woke him. After a brief break, he heard three to five additional gunshots. Then, as he walked towards the front of the apartment, [REDACTED] heard even more gunshots. Peering out of the front window, [REDACTED]

<sup>30</sup> Attachment 129.

<sup>31</sup> [REDACTED] was also interviewed by IPRA on May 22, 2014. His testimony was consistent (Attachment 108).

<sup>32</sup> Responding CPD detectives interviewed [REDACTED] on March 16, 2013 at an unknown time. The detective’s summary of A. [REDACTED] interview was consistent with this interview except he initially alleged that the muzzle flash seemed to possibly come from within the crashed vehicle.

<sup>33</sup> Attachment 130.

<sup>34</sup> Responding CPD detectives interviewed [REDACTED] on March 16, 2013 at an unknown time. The detective’s summary of C. [REDACTED] interview was consistent with this interview.

<sup>35</sup> Attachment 131.

saw an officer moving east along Wilson Avenue as he fired three to five more shots into a vehicle parked perpendicular to traffic on the street. The officer appeared to shoot into the vehicle's driver side window. However, [REDACTED] did not know what the officer was shooting at inside the car because it was too dark out for him to see inside the vehicle. Finally, [REDACTED] believed officers were yelling during the shooting, but he could not recall what, if anything, they were yelling.<sup>36</sup> <sup>37</sup>

**An interview of [REDACTED] ( [REDACTED])** was taken by IPRA on March 16, 2013. [REDACTED] was asleep at home, located at [REDACTED] when he was woken by two gunshots. As he jumped from bed, [REDACTED] heard two more gunshots. Still hearing gunshots, [REDACTED] walked to the front window and peered out. He saw an officer standing on Wilson Avenue shooting into a wrecked vehicle on the street. Officers on scene appeared to be yelling at the vehicle. [REDACTED] also saw an officer standing with his arms straight out, and approximately twenty feet away from the crashed vehicle, who shot four to five times at the vehicle. Upon the officer firing his last shot, [REDACTED] saw three to four officers approach the vehicle from the east. [REDACTED] never saw anyone in the crashed vehicle, nor did he see anyone exit the vehicle.<sup>38</sup> <sup>39</sup>

**A deposition of [REDACTED] ( [REDACTED])** was taken on April 27, 2015. At the time of the shooting [REDACTED] lived alone at [REDACTED]. This address is located on the west side of Spaulding Avenue, but the unit has a north-facing window that looked out onto Wilson Avenue. [REDACTED] heard crashing sounds and some loud, screeching engine noises. After that, he heard five to six gunshots. Once the shots finished, [REDACTED] went towards his apartment's north-facing window to peer out. At the window, [REDACTED] saw two police cars arriving and heard someone yell, "he shot at us!" He also observed a smaller vehicle to the west of his building that faced south on Wilson Avenue. An officer reached into this vehicle and turned the engine off. Finally, [REDACTED] never witnessed any officers shooting at the vehicle, nor did he see anyone flee from the scene.<sup>40</sup> <sup>41</sup>

**Responding CPD detectives interviewed civilian witness [REDACTED]** heard someone yell, "Drop the gun! Drop the gun!" Then he heard two to three gunshots followed by more of the same yelling, which was followed by another three to five gunshots. He did not observe the shooting.<sup>42</sup>

**Responding CPD detectives interviewed civilian witness [REDACTED]** Hearing a car crash, [REDACTED] went to the front window to check on his car, which was parked on the street. When he peered out the window he saw a small blue car parked sideways with its tires spinning

<sup>36</sup> The recorded interview abruptly ends. IPRA investigators failed to capture the remainder of the interview with their digital voice recorder. Neither investigator made any attempt to interview [REDACTED] again, nor did they prepare any written summary of the unrecorded portion of the interview.

<sup>37</sup> Responding CPD detectives interviewed [REDACTED] on March 16, 2013 at an unknown time. The detective's summary of [REDACTED] interview was consistent with this interview (Attachment 232).

<sup>38</sup> Responding CPD detectives interviewed [REDACTED] on March 16, 2013 at approximately 5:05 am. The detective's summary of [REDACTED] interview was consistent with this interview.

<sup>39</sup> Attachment 67.

<sup>40</sup> Responding CPD detectives interviewed [REDACTED] on March 16, 2013 at an unknown time. The detective's summary of [REDACTED] interview was consistent with this interview.

<sup>41</sup> Attachment 125.

<sup>42</sup> Attachment 232.

and smoking. A police SUV was stopped in the street with sirens and lights activated. Someone was yelling, “[G]et out of the car!” or “[T]urn off the car!” There were two officers in positions of cover on the street: one behind the driver’s door of the police SUV and the other behind a silver car parked on the south side of the street. [REDACTED] ducked as he heard seven to nine gunshots. He never saw anything further, but heard additional commands yelled after the shooting stopped.<sup>43</sup>

**A deposition of [REDACTED] (the uncle of [REDACTED])** was taken on September 29, 2015. [REDACTED] was at home drinking on the evening before [REDACTED] death when [REDACTED] arrived around 11:00p.m. Around 11:20p.m., [REDACTED] and [REDACTED] went to pick-up [REDACTED] daughter from work at the Burger King located near the intersection of Lincoln and Kimball Avenue. All three then returned to [REDACTED] home located at [REDACTED] where [REDACTED] and [REDACTED] enjoyed alcoholic drinks and discussed [REDACTED] new delivery business. This continued for hours until [REDACTED] left alone around 3:00a.m.<sup>44</sup>

**A deposition of [REDACTED] (the cousin of [REDACTED])** was taken on September 29, 2015. On the night of the incident [REDACTED] was picked up from work at Burger King by her father [REDACTED] and [REDACTED]. Upon returning home, [REDACTED] did not stay up that night with [REDACTED] and [REDACTED]. Instead, she went to sleep to ready herself for an ACT prep class in the morning. [REDACTED] woke her up when he shut the apartment door as he left around 2:00a.m. or later.<sup>45</sup>

### b. Digital Evidence

**In-Car Camera Footage** was requested for vehicle # [REDACTED] (assigned to Officers [REDACTED] and [REDACTED] and vehicle # [REDACTED] (assigned to Officers [REDACTED] and [REDACTED]). No video footage was recovered from either vehicle.<sup>46</sup>

**Police Observation Device (POD)** video footage was reviewed. Two different PODs were located within the vicinity of the incident - POD # [REDACTED] at 4652 North Kimball Avenue and POD # [REDACTED] at 3401 West Sunnyside Avenue. Both PODs are located over a block away from Wilson Avenue and blocks away from the shooting location. POD footage did not capture the police shooting or anything of significance to this investigation. Footage from POD # [REDACTED] was also requested, but per OEMC POD # [REDACTED] was out of service at the time of the incident.<sup>47</sup>

### c. Physical Evidence

#### 1. CPD Crime Scene Processing Reports

According to **multiple CPD crime scene processing reports** multiple items of evidentiary value were recovered by CPD evidence technicians. As a summary, the weapons possessed by

<sup>43</sup> Attachment 232.

<sup>44</sup> Attachment 247.

<sup>45</sup> Attachment 234.

<sup>46</sup> Attachment 52 and 53.

<sup>47</sup> Attachments 33, 34, 35, 138 and 139.

Officers [REDACTED] and [REDACTED] were recovered. As were all shell casings fired from Officers [REDACTED] and [REDACTED] weapons in consistent locations to their testimony. A total of nineteen shell casings were recovered from the scene. Multiple fired bullets were also recovered, including a fired bullet recovered from the street pavement at 3313 West Wilson Avenue, which fell from [REDACTED] clothing [presumably when he was removed from the vehicle]. A fired bullet was also recovered from the front driver seat of the blue 1991 Honda Civic after [REDACTED] was removed from the vehicle.

The following additional relevant items were collected: a T-Mobile, Galaxy SII, Model SGH-T989, cell phone was recovered from under the front driver seat of the 1991 blue Honda Civic; an “Alpine” automotive radio face plate that was black in color was recovered from the front driver’s floorboard of the blue 1991 Honda Civic; and, a gray knit skull cap covered in blood was recovered from the front passenger side floorboard of the 1991 blue Honda Civic. Additionally, multiple photographs were taken of the vehicle and scene, as well as [REDACTED] body and wounds. A sample of photos of the scene and positioning of the vehicles are as follows:





The report narrative indicated that Detective Spain responded to a shooting at 3317 West Wilson Avenue. The scene was video recorded, photographed, and searched for physical evidence. It was noted that [REDACTED] had his hands handcuffed, but he was tested for gunshot residue, photographed and fingerprinted. The guns of Officers [REDACTED] and [REDACTED] were recovered at Area Central. In total, three hundred and sixty-five digital images of the incident were taken.<sup>48 49</sup>

**Further processing of the 1991 Honda was completed on April 17, 2015.** Additional biological material was collected for testing during this process. The associated processing report indicated as follows:

- 1.) The following sections of the 1991 blue Honda Civic's front passenger seat were removed:**

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<sup>48</sup> Attachment 20.

<sup>49</sup> Additional processing of the 1991 Honda driven by [REDACTED] was completed at the City of Chicago's impound lot on March 21, 2013. Multiple fired bullets and biological material was collected for testing. One fired bullet was recovered from the driver's side roof. One fired bullet was recovered from the rear passenger side floor of the Honda Civic. One fired bullet was recovered from the inside rear driver's side door. DNA swabs for testing were taken from the front passenger area, the rear passenger side area, and the rear driver's side area. A single blood swab was taken from a red stain on the lower door frame of the front passenger side. Additional digital photos were also taken. Finally, A GSR kit was administered with samples taken from the interior door panels and the surrounding areas of all four doors of the 1991 blue Honda Civic. (Attachment 142).

A 1"x1" section of a stained area to the middle of the front passenger seat was cut out. A 1"x1" section of a stained area to the rear of the front passenger seat was cut out. The samples taken during this processing were done by order of the United States District Court of the Northern District of Illinois.<sup>50</sup>

## 2. *Illinois State Police Forensic Reports*

### a. An ISP Lab Report dated April 9, 2013, documented the following:

A GSR kit was administered to [REDACTED]. Tested samples were taken from the back of the right and left hands of [REDACTED]. The report concluded that [REDACTED] discharged a firearm, contacted a gunshot residue related item, or had both hands in the environment of a discharged firearm.<sup>51</sup>

FBI Special Agent [REDACTED] conducted an interview of [REDACTED] [REDACTED] in the presence of IPRA Investigator [REDACTED] on October 13, 2013. [REDACTED] was a Forensic Scientist III employed by the Illinois State Police. [REDACTED] completed a laboratory report on April 9, 2013, testing for Primer Gunshot Residue (PGSR) particles on [REDACTED] and indicated that the possible results of a PGSR test are either positive or negative. A positive result meant particles of the elements antimony, barium, and lead were found within the sample. [REDACTED] further noted that it was possible to obtain a positive PGSR sample by an individual who did not fire a gun, i.e. someone discharges a weapon then immediately touches another person's hands, such as to handcuff the person, potentially transferring GSR particles; or a person stood within proximity to someone who discharged a weapon; or, a person stands approximately eight to twelve feet downwind from someone who discharged a weapon.<sup>52</sup>

### b. An ISP Lab Report dated September 11, 2013, documented the following:

A Radio Faceplate and a Cell Phone were submitted for latent print comparison. Neither item revealed any latent prints suitable for comparison.<sup>53</sup>

### c. An ISP Lab Report dated September 24, 2013, documented the following relevant information to this investigation:

A Smith & Wesson, Model 6946<sup>54</sup>, 9mm Luger Semiautomatic Pistol, Serial # [REDACTED] was submitted and found to be in firing condition. Four Speer 9mm Luger cartridges tested were fired from this weapon. A single bullet tested was fired from this weapon. This weapon was fired by Officer [REDACTED]

A Smith & Wesson, Model M&P 9<sup>55</sup>, 9mm Luger Semiautomatic Pistol, Serial # [REDACTED] was submitted and found to be in firing condition. Fifteen Winchester 9mm Luger +P

<sup>50</sup> Attachment 146

<sup>51</sup> Attachment 81.

<sup>52</sup> Attachment 159.

<sup>53</sup> Attachment 86.

<sup>54</sup> This weapon belonged to Officer [REDACTED]

<sup>55</sup> This weapon belonged to Officer [REDACTED]

cartridges tested were fired from this weapon. Additionally, seven bullets or bullet fragments tested were fired from this weapon. This weapon was fired by Officer [REDACTED]

A black CPD ballistic vest cover and bullet proof panel were submitted and examined for physical damage. There were three holes to the lower left vest pocket and a scratch to the upper left vest pocket of the ballistic vest cover. All noted damage tested negative for the presence of copper and lead. The absence of copper and lead suggest that the damage to the vest did not result from a fired projectile. No damage was documented to the bulletproof vest panel. Below is a photograph of the Officer [REDACTED] black ballistic vest which shows the lower left vest pocket and the three holes.<sup>56</sup> A photograph of the bulletproof vest damage is depicted below.



**d. ISP Lab Reports dated February 16, 2016, and April 5, 2016, documented the following relevant information to this investigation:**

DNA testing was performed on four different samples taken from inside the passenger compartment of [REDACTED] vehicle. The four samples were as follows: 1) Swabs from the front passenger side area; 2) Swabs from the rear passenger side area; 3) Swabs from the rear driver's side area; and, 4) Swabs from the driver's side area. The results showed sample number four as a human DNA profile identified which matched the DNA profile of [REDACTED]. Sample numbers two and three indicated no human profile was identified. Sample number one showed low levels of human DNA; however, the sample was unsuitable for comparison.<sup>57</sup>

**3. FBI Forensic Reports**

**On November 12, 2013, Members of the Chicago FBI Evidence Response Team** examined a 1991 Blue Honda Civic LX, Plate [REDACTED]. The objective of this examination was to determine the direction of impact of two suspected bullet holes in the vehicle's windshield. The examination determined that the initial impact of both suspected bullets struck the inside of the

<sup>56</sup> Attachment 88.

<sup>57</sup> Attachments 154 and 155.

windshield first and then exited through the exterior of the windshield. Such a determination was made by examination of the bullet holes visually and by taking measurements of both the inside and outside of the windshield. Measurements showed that the size of the interior holes, both in length and width, were smaller than the exterior measurements. These measurements indicated that the interior side of the glass was struck first.<sup>58 59</sup>

#### ***4. Independent Expert Reports and Depositions of Experts***

**A GSR Report Completed by McCrone Associates, Inc. (MCI)** was completed on August 3, 2015. MCI was specifically asked if a gun was fired from within the vehicle.<sup>60</sup> According to the report, GSR particles were detected on all four samples. MCI concluded that the multiple gunshots fired into the vehicle helped explain the quantities of lead-rich particles detected on the sample stubs. A large cluster of GSR particles were found on the sample taken from the rear driver area of the passenger compartment. MCI concluded that such a cluster would typically be found in an area that was in very close proximity to a gun when fired, such as a shooter's hand after firing; therefore, such a large cluster could be an indication that a gun was fired from within the passenger compartment of the vehicle. Nevertheless, MCI's conclusion indicated that published studies do show that GSR particles may be transported on a projected bullet, and upon impact, can be deposited into an object. In other words, such a cluster, as found in the rear passenger compartment, could have been deposited from a bullet fired into the vehicle. Consequently, MCI could not definitively determine that a weapon was discharged from within the passenger compartment of the vehicle.

The expert opinion of [REDACTED] was commissioned by the law firm of O'Connor & Nakos, LTD, lawyers for the plaintiff, [REDACTED]. This report was associated with the case of [REDACTED] v. Chicago Police Officers [REDACTED] and [REDACTED] and the City of Chicago.<sup>61</sup> Upon the review of various documents and photographs related to the shooting of [REDACTED] concluded that based on the bullet holes to the front windshield and roof, shots were fired from the front of the vehicle by the officers. In conclusion, [REDACTED] highlighted that there was no gun or shell casings recovered from inside [REDACTED] vehicle; no evidence of a second person in the vehicle with [REDACTED] never exited his vehicle to move towards the officers in a threatening manner; and, the officers retreated to areas of cover and safety. Therefore, according to [REDACTED] the officers used excessive force while investigating a traffic accident during which [REDACTED] should not have been shot and killed.<sup>62 63</sup>

<sup>58</sup> Attachment 118 and 162.

<sup>59</sup> This evidence suggests and will be discussed in detail in the analysis below, that at least two bullets struck the inside of the windshield first. However, this FBI report made no finding regarding whether the bullets that entered the windshield from the inside out were in fact fired from within the vehicle, or perhaps were fired from behind the vehicle and traveled inside the vehicle from the rear, through the vehicle, and out through the windshield.

<sup>60</sup> Attachment 166.

<sup>61</sup> This case settled prior to trial.

<sup>62</sup> Attachment 239.

<sup>63</sup> A deposition of [REDACTED] was conducted on March 1, 2016. His testimony was consistent with his written report. [REDACTED] admitted he had no excessive force investigatory experience, and he had no working knowledge of CPD's general orders, rules and policies. [REDACTED] agreed that when approaching a car, seeing something they thought was as a gun, and then hearing shots, the officers could have found such a situation threatening. Specifically, [REDACTED] stated, "I would – I would perceive that – that you could perceive that as a threat, yes." In conclusion, he felt that

**The expert Opinion of [REDACTED]** ( [REDACTED] was commissioned by the law firm of O'Connor & Nakos, LTD, lawyers for the plaintiff, [REDACTED]. This report was associated with the case of [REDACTED] S. [REDACTED] v. Chicago Police Officers [REDACTED] and [REDACTED] and the City of Chicago. [REDACTED] report was based upon reviewed documents and photographs received from O'Connor & Nakos. [REDACTED] concluded that Officers [REDACTED] and [REDACTED] used excessive force in the shooting death of [REDACTED]. She concluded that no evidence existed that [REDACTED] possessed or fired a firearm, and that there was no evidence that either officer was shot. Moreover, the expert challenged the credibility of the officers based on their inconsistent descriptions of the weapon that [REDACTED] was reported to have.<sup>64</sup>

**The expert Opinion of [REDACTED]** ( [REDACTED] was commissioned by the City of Chicago Department of Law. This report was associated with the case of [REDACTED] S. [REDACTED] v. Chicago Police Officers [REDACTED] and [REDACTED] and the City of Chicago. In preparation of the report, [REDACTED] reviewed a substantial number of documents, interviewed both involved officers, test fired the officers' weapons, visited the scene of the shooting (restaging the scene at night with similar vehicles and artificial light), and personally inspected [REDACTED] car. He opined that the three gunshot wounds sustained by [REDACTED] were consistent with the accounts of both officers and the positioning that the allege they were in when they fired. Due to the deteriorated condition of the vehicle at the time of his inspection, [REDACTED] was unable to determine the direction of travel of the two bullets responsible for the two bullet holes in the vehicle's front windshield. However, both holes could easily have been from the continuation of bullets shot from a position to the rear of the vehicle that travel through the passenger compartment and exited through the front windshield, which would be consistent with both officers' accounts.

[REDACTED] met with both officers at the CPD Academy's range and had them duplicate the positions they fired from on the night of the shooting. The ejection patterns from each gun were measured. Considering the many variables which may influence the ejection of a casing, and the fact that both officers may not recall exactly where they were positioned for each shot, [REDACTED] found that the recovered shell casing locations from the shooting scene were consistent with both officers' accounts. Finally, [REDACTED] concluded that Officers [REDACTED] and [REDACTED] accurately described their perceptions of what occurred during the early morning of March 16, 2013. He further found their use of deadly force was reasonable, in that, another reasonable officer would have used the same level of force under the same totality of circumstances as confronted by Officers [REDACTED] and [REDACTED]<sup>65</sup>

### **5. Medical Reports**

The **Chicago Fire Department Ambulance Reports** documented that Ambulance # [REDACTED] was called to 3317 Wilson Avenue for gunshot wounds. This report documented that Officers [REDACTED] and [REDACTED] were trying to pull a vehicle over when it crashed. As the officers approached the vehicle they heard two gunshots and dove to the ground. Both officers had abrasion

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after all the years of police experience between Officers [REDACTED] and [REDACTED] "something set these two guys off. This wasn't let's drive around and shoot and kill some guy." (Attachment 233).

<sup>64</sup> Attachment 240.

<sup>65</sup> Attachment 167.

injuries, which were cleaned, and the bleeding controlled. The officers were transported to Illinois Masonic Hospital.<sup>66</sup>

**Medical Records** from **Illinois Masonic Hospital** indicated that Officer [REDACTED] arrived at the emergency room on March 16, 2013, at approximately 4:01a.m. Officer [REDACTED] reported that he was involved in a shooting incident, and that he dove for cover and now complains of low back pain, a right wrist contusion, and left lower leg pain and abrasions. The clinical diagnosis for Officer [REDACTED] was abrasions at multiple sights and acute low-back pain. Specifically, abrasions and/or friction burns were documented to the hip, thigh, leg, elbow, forearm and wrist. No bullet wounds were documented. To follow are photographs of the injuries to Officer [REDACTED] leg.<sup>67</sup>

**Medical Records** from **Illinois Masonic Hospital** indicated that Officer [REDACTED] arrived at the emergency room on March 16, 2013, at approximately 4:02a.m. Officer [REDACTED] reported that he was involved in a shooting and that he went to the ground to avoid gunfire and hit the concrete. He also reported a possible graze wound to the right side of his head but was uncertain as to how the trauma was caused to the right side of his head. The clinical diagnosis for Officer [REDACTED] was abrasions at multiple sites. Specifically, abrasions and/or friction burns were documented to the hip, thigh, legs, ankle, hands, fingers, neck and scalp. No bullet wounds were documented. Photographs of the injuries to Officer [REDACTED] are depicted below.<sup>68</sup>



A postmortem examination of [REDACTED] was conducted by Dr. [REDACTED] on March 17, 2013 at approximately 8:50p.m. A total body x-ray revealed a fracture of the superior frontal bone of the skull and the presence of a projectile in the chest. Three separate gunshot wounds were documented as follows. A gunshot injury was documented to the forehead. Numerous portions of fractured bone were present within the left frontal lobe of the brain. A second gunshot wound to the chest was documented, which entered on the right side of the chest, 16.5 inches beneath the top of the head and 7.9 inches to the right of the anterior midline, and then exited the right side of the back, 9.5 inches beneath the top of the head and 2.5 inches to the right of the posterior midline. The wound course did not enter the chest cavity. A third gunshot wound to the back was documented, which entered the right side of the back, 12.5 inches beneath the top of the head and 7.8 inches to the right of the posterior midline. The wound course traveled into the chest cavity passing through the right upper lobe of the lung, fractured the right mainstem

<sup>66</sup> Attachments 119 and 120.

<sup>67</sup> Attachment 119.

<sup>68</sup> Attachment 120.

bronchus, involved the right atrium of the heart, and then coursed into the superior vena cava. A deformed, medium caliber, copper jacket bullet was recovered from the superior vena cava. The course of the wound was back to front and towards the left.

Urine analysis was negative for cocaine, opiates, benzodiazepines, methamphetamine and oxycodone. It was the opinion of the assistant medical examiner that [REDACTED] died as the result of multiple gunshot wounds.<sup>69</sup> <sup>70</sup>

#### ***6. Tactical Response and Officer Battery Reports***

A **Tactical Response Report (TRR)**, was completed by Officer [REDACTED] and then approved by Deputy Chief [REDACTED] on March 16, 2013 at approximately 1:29p.m. The TRR indicated that the subject did not follow verbal commands and presented an imminent threat of battery with an apparent handgun. Officer [REDACTED] responded to this threat with member presence, verbal commands, and his firearm. The TRR's rationale section stated, "[. . .] in fear of his life and the life of his partner, [Officer [REDACTED]] fired at the direction of an assailant who in effort to defeat his arrest, pointed a dark object at the officers after ignoring officers' demands to drop the gun and show his hands which placed Officer [REDACTED] in reasonable apprehension of being shot by the assailant."<sup>71</sup> <sup>72</sup>

A **Tactical Response Report (TRR)** was completed by Officer [REDACTED]. The information documented in this report was consistent with the information documented in the TRR completed by Officer [REDACTED]<sup>73</sup>

An **Officer's Battery Report (OBR)** was completed by Officer [REDACTED] and then approved by Deputy Chief [REDACTED]. The OBR indicated that Officer [REDACTED] was on duty, in citizen's dress, with one partner, when the subject pointed an unknown handgun at him and shot. The subject was a male, White Hispanic, with unknown drug activity and gang affiliation. Officer [REDACTED] sustained nonfatal injuries. The weather was clear with poor artificial light.<sup>74</sup>

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<sup>69</sup> Attachments 84 and 85.

<sup>70</sup> A deposition of Dr. [REDACTED] was taken on August 19, 2015. It was consistent with her report. The only additional detail was that Toxicology testing returned positive for the presence of alcohol in [REDACTED] body. The testing included two separate tests for presence of alcohol. One test resulted in a blood alcohol level of .212, and the other resulted in a blood alcohol level of .187. Both results were over twice the legal limit in the State of Illinois for driving. Dr. [REDACTED] also indicated that the shots to [REDACTED] back and head could have been fatal (attachment 238).

<sup>71</sup> When completing a TRR, current CPD General Order 03-02-02 requires an officer to indicate the actual weapon used, and, if different than the actual weapon, what the officer perceived it to be. Effective General Orders at the time of this incident did not require an officer to indicate the perceived and actual weapon used when completing a TRR. Both officers completed their TRRs and OBR with CPD practice that was customary at the time by indicating what the perceived weapon was as the actual weapon was not found.

<sup>72</sup> Attachment 25.

<sup>73</sup> Attachment 23.

<sup>74</sup> Attachment 26.

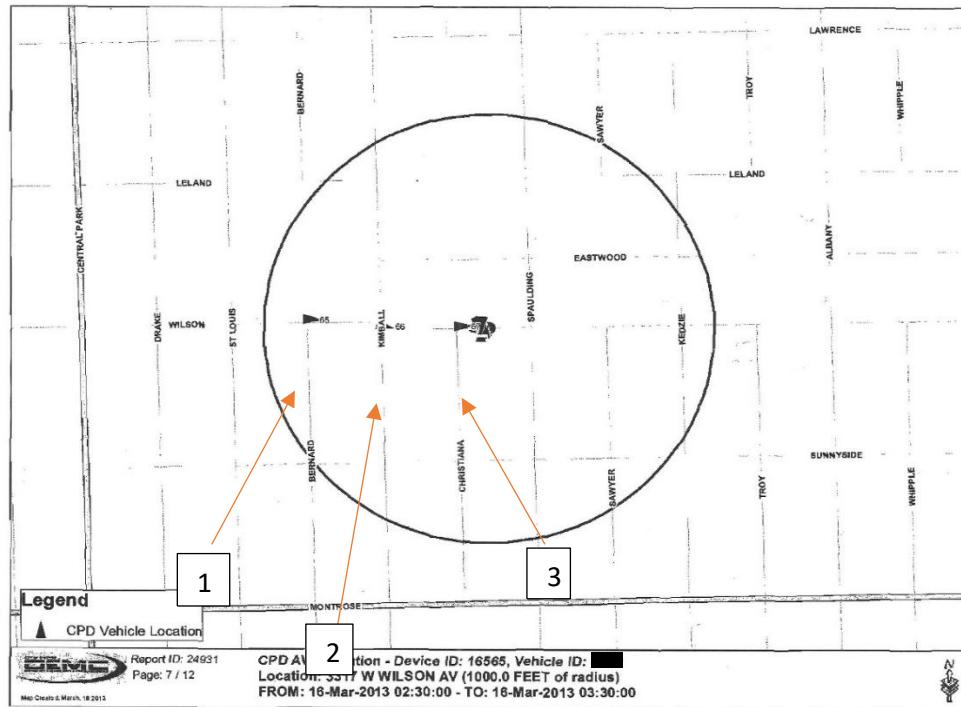
An Officer's Battery Report (OBR) was completed by Officer [REDACTED]. The information documented in this report was consistent with the information documented in the OBR completed by Officer [REDACTED].

#### *7. The Office of Emergency Management and Communications (OEMC) Records*

**GPS Records** were searched for all CPD vehicles within a 1000-foot radius of 3317 West Wilson Ave. from 2:30a.m. through 3:30a.m. The results produced three relevant records. Each record captured the location, speed, and direction of Officers [REDACTED] and [REDACTED] vehicle as they followed [REDACTED] just prior to shots fired.

- 1.) Location: Intersection of Bernard Avenue and Wilson Avenue; Speed: 54 mph, Direction of travel: East; Time: 02:54:31.
- 2.) Location: Intersection of Kimball Avenue and Wilson Avenue; Speed: 28 mph, Direction of travel: East, Time: 02:54:37.
- 3.) Location: Intersection of Christiana Avenue and Wilson Avenue; Speed: 27 mph, Direction of travel: East, Time: 02:54:43.

Below is a copy of OEMC GPS records which show the locations of Officers [REDACTED] and [REDACTED] vehicle just before the shooting. GPS records 1, 2 and 3 above correspond to the points below.



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<sup>75</sup> Attachment 24

<sup>76</sup> Attachment 32.

## VI. ANALYSIS

We first address both officers' use of deadly force against [REDACTED] in which the officers collectively fired their weapons at [REDACTED] nineteen times.

### Legal Standard

The applicable Chicago Police Department General Order is 03-02-03, II<sup>77</sup>, which states as follows:

"A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. To prevent death or great bodily harm to the sworn member or to another person, or:
2. To prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
  - b. is attempting to escape by use of a deadly weapon or;
  - c. otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay."

Additionally, Chicago Department General Order 03-02-01, IIC<sup>78</sup> states as follows:

"When force is applied, a sworn member will escalate or de-escalate to the amount of force which is reasonably necessary to overcome the subject's resistance and to gain control.

1. Members are not required to start at the lowest levels of the Use of Force Model; they will select the appropriate level of force based on the subject's actions.
2. Members will modify their level of force in relation to the amount of resistance offered by the subject.
  - a. As the subject offers less resistance, the member will lower the amount or type of force used.
  - b. As the subject increased resistance, the member may increase the amount or type of force used."

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<sup>77</sup> General Order 03-02-03, *Deadly Force*, effective date: October 1, 2002.

<sup>78</sup> General Order 03-02-01, *The Use of Force Model*, effective date: May 16, 2012.

In addition, an officer's ability to confront dangerous situations and use deadly force is further codified under 720 ILCS 5/7-5 (1986). The relevant part of the statute states:

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. . .

Finally, an officer's use of deadly force is a seizure within the meaning of the Fourth Amendment. When applying the Constitutional standard to a situation, 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*, 490 U.S. at 397; 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 objectively 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)). This reasonableness calculation "must embody allowance 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." *Graham*, 490 U.S. at 396-97.

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)). The analysis of the reasonableness of an officer's conduct 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), quoting *Tennessee*, 471 U.S. at 1, internal quotation marks omitted.

### **APPLICATION OF THE LAW TO THE FACTS**

The issue is whether Officer [REDACTED] and [REDACTED] shots were justified under the first prong of General Order 03-02-03, II. As previously detailed, the relevant question is whether an objectively reasonable officer in Officers [REDACTED] and [REDACTED] same position would have believed the use of deadly force was necessary to prevent death or great bodily harm.

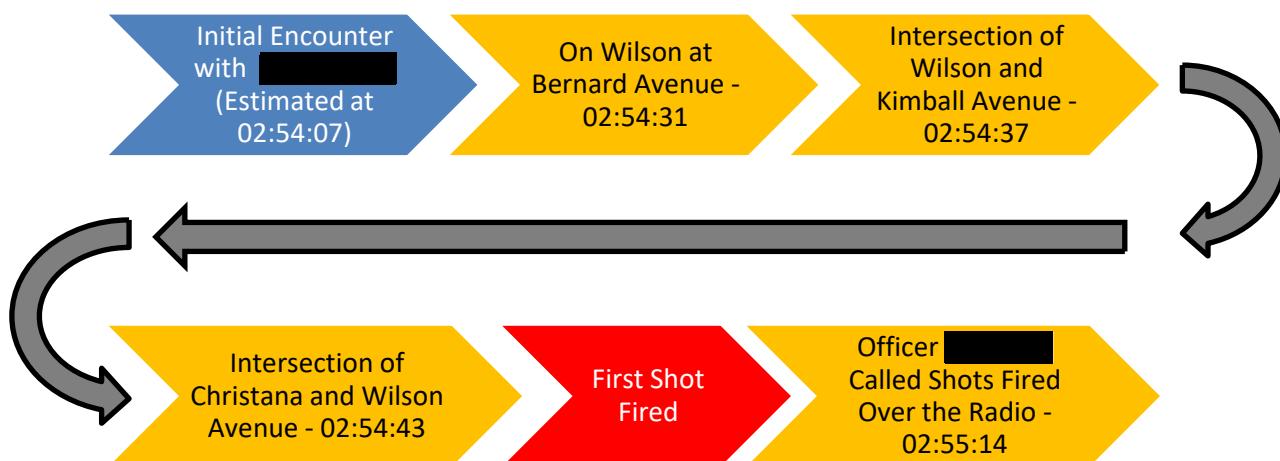
To determine whether a reasonable officer in Officers [REDACTED] and [REDACTED] position would have believed the use of deadly force was necessary, we must first make certain factual determinations. We made our factual determinations using a preponderance of the evidence standard. A proposition is proved 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).

## I. Factual Determinations

Based upon our investigation, including the physical evidence and witness statements, we have determined by a preponderance the following facts: (A) the entire encounter lasted approximately sixty-seven seconds; (B) [REDACTED] did not have a gun; (C) there was no one else in the vehicle with [REDACTED]; (D) the officers made credible statements which were consistent with their actions; and, (E) it was reasonable for Officers [REDACTED] and [REDACTED] to approach [REDACTED] with caution.

### A. The Entire Encounter Lasted Approximately Sixty-Seven (67) Seconds.

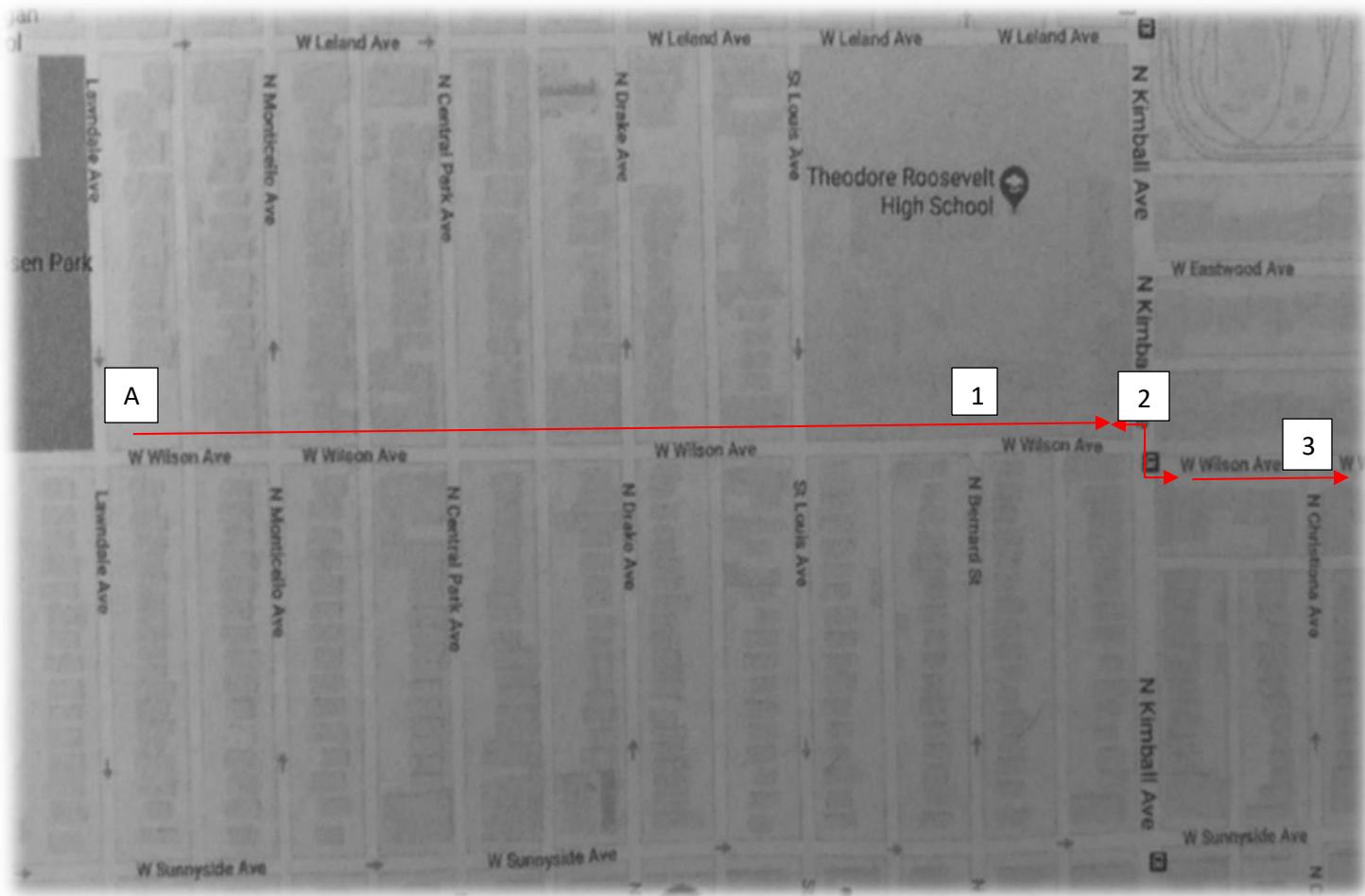
Any fair and objective analysis of Officers [REDACTED] and [REDACTED] actions must consider the timeframe in which they acted. Based upon our investigation, including OEMC records, officer and witness interviews, and GPS records, we have determined by a preponderance that entire incident — from the moment that the officers first observed [REDACTED] vehicle near Monticello and Wilson Avenues, until Officer [REDACTED] called shots fired over the radio — lasted approximately sixty-seven seconds.



The above figure displays known times in yellow and extrapolated times in blue and red. Working backwards through the timeline, OEMC records established that Officer [REDACTED] called shots fired at 02:55:14, which Officer [REDACTED] indicated during his interview was immediately following the last shot fired by him, but before the officers approached and handcuffed [REDACTED]. This point in the timeline established a final endpoint for when all shots had been fired by both Officers. The next known time is from a GPS record which placed the officers' Chevrolet Tahoe, still moving at approximately Twenty-seven mph, at the intersection Wilson and Christiana Avenues at 02:54:43. Only thirty-one seconds passed between the officers' vehicle still being in motion and all shots having been fired. This includes every observation, assessment,

movement, and action by each officer. Furthermore, neither officer spent the entire thirty-one seconds firing their weapon.

Next, when extrapolating the time and distance from the three known GPS points back to the beginning of the incident, an approximate estimate is possible that the entire encounter, meaning the moment that Officers [REDACTED] and [REDACTED] saw [REDACTED] vehicle near the corner of Monticello Avenue and Wilson Avenue to the moment Officer [REDACTED] called shots fired over the radio, took place within approximately sixty-seven seconds.



The above diagram shows the officers' approximate location, point A, when they first observed [REDACTED] turn right onto Wilson Avenue. The diagram also shows the three known GPS data points from the officers' Chevrolet Tahoe, points 1, 2, and 3 above. The distance between points 1 and 3 equals one-tenth of a mile, which, per GPS records, the officers covered in twelve seconds. The distance between points A and 1 is equal to two-tenths of a mile. A conservative extrapolation of the officers' speed and time between points 1 and 3 over the distance between points A and 1 suggests the officers covered the distance between points A and 1 in approximately twenty-four seconds. Combining the known and extrapolated times, it took the officers approximately thirty-six seconds to travel from point A to point 3 in the diagram above.

Ultimately, when considering known and extrapolated points in time, we find that it is more probable than not that the entire encounter lasted approximately sixty-seven seconds from start to finish. Further, it is likely that thirty-one seconds passed between when the officers exited their Chevrolet Tahoe until the officers fired their final shots. Thus, it is likely that every shot fired by both officers occurred within a span of time less than thirty-one seconds.

**B. [REDACTED] Did Not Have a Gun**

The evidence shows that it is more probable than not that [REDACTED] did not have a gun in his possession. Some evidence did support the proposition that a gun was fired from within the vehicle's passenger compartment. This evidence includes Officers [REDACTED] and [REDACTED] statements, forensic testing, and witness accounts. Both officers were interviewed by CPD detectives, deposed, and interviewed twice by IPRA/COPA investigators. Officer [REDACTED] was also interviewed by Special Agents from the FBI. During all these interviews both officers maintained, emphatically, that they observed what was described by both as a blue-steel revolver in close proximity to [REDACTED] as they approached the driver side door. In fact, in response to seeing a blue-steel revolver, Officer [REDACTED] fired his weapon and dove for cover. Officer [REDACTED] dove for cover as well upon seeing the weapon. From then on, both officers continued to focus intently on [REDACTED] actions and movements. They each described [REDACTED] as tracking them with a dark object, which they both believed was the blue-steel revolver they just saw seconds ago, but after diving for cover, both officers could no longer specifically identify the object in [REDACTED] hand with the same clarity they had when they were approximately ten (10) feet away.

Both officers also indicated in their OBR and TRR reports that [REDACTED] posed a threat described in the reports as an apparent handgun and/or weapon. Additionally, gunshot residue testing, specifically the testing completed by McCrone Associates, returned positive results from swabs taken from within the passenger compartment of [REDACTED] vehicle. The McCrone Associates report concluded that the positive results were likely the result of a weapon fired from within the vehicle but stopped short of definitively concluding such. Gunshot residue testing completed by ISP also returned positive results from swabs taken of [REDACTED] hands. But, [REDACTED] of the Illinois State Police, the evidence technician who conducted the GSR test of swabs taken from [REDACTED] hands, confirmed that gunshot residue could transfer from someone who just shot a weapon to another person through physical contact, i.e. when Officer [REDACTED] handcuffed [REDACTED] just following the shooting.

Witnesses [REDACTED] and [REDACTED] likely were the only witnesses to the first shots that were fired during this incident. [REDACTED] saw muzzle flashes around [REDACTED] vehicle but could not determine if they came from within the vehicle. [REDACTED] stated that three shots traveled through the windshield, which he determined from hearing sounds of the windshield cracking. Furthermore, the physical evidence showed only two shots through the windshield, which an FBI forensics team established as having traveled through the windshield from inside the vehicle to outside.

On the other hand, substantial evidence clearly supports the proposition that [REDACTED] did not have a gun. First, no gun was ever recovered from [REDACTED] person, from within the vehicle compartment, or from anywhere on scene. Equally important, Officer [REDACTED] and

Sergeant [REDACTED] remained on scene for hours following the shooting and assisted in the search for a gun along Wilson Avenue. Additionally, CPD evidence technicians and detectives combed the scene afterwards and never recovered a gun despite a diligent search.

Multiple witnesses located along Wilson Avenue near the shooting did not see any shots fired from within [REDACTED] Honda or even a person within the vehicle. Officer [REDACTED] and Sergeant [REDACTED] never witnessed any shots fired from within the Honda nor did they ever see anyone with a gun in the Honda at any point during their involvement with the shooting, including when they approached the Honda with Officers [REDACTED] and [REDACTED] and looked inside the passenger compartment of the Honda for a weapon. Additionally, no discharged shell casings were recovered from within the Honda. All identified shell casings and bullet fragments recovered by CPD Evidence Technicians linked back to Officers [REDACTED] and [REDACTED] weapons. Finally, both Officers [REDACTED] and [REDACTED] despite standing within ten feet of [REDACTED] when they observed what they believed was a blue-steel revolver and heard gunshots fired from someone other than themselves, never saw a muzzle flash or anyone fire a weapon from inside the passenger compartment of the vehicle at any point during the entire encounter.

In conclusion, a deceased [REDACTED] would have been incapable of concealing or removing any gun from the scene. This fact, combined with a lack of physical and independent eyewitness evidence placing a gun on or around [REDACTED] or even within the passenger compartment of the vehicle, leads us to conclude that it is more likely than not that [REDACTED] did not have a gun in his possession.

### C. There Was No One Else in The Vehicle with [REDACTED]

The evidence shows that it is more likely than not that there was no one else in the vehicle with [REDACTED]. In the section immediately above, we determined [REDACTED] more than likely did not have a gun. However, in the course of that discussion some evidence did support the possibility that a gun was fired from within the passenger compartment of [REDACTED] vehicle. When considering this evidence in conjunction with the theory that another individual was in the vehicle with [REDACTED] further discussion is clearly warranted on the possibility of a second individual in the vehicle.

First, according to [REDACTED] family members, [REDACTED] was alone when he left J. [REDACTED] house just before the shooting. [REDACTED] was at [REDACTED] house from approximately 11:00pm until just before 3:00a.m. The shooting occurred at approximately 2:56 a.m. While it is possible that [REDACTED] met up with someone during the short timeframe it took him to walk from [REDACTED] house to his vehicle and then drive to Wilson Avenue where he encountered Officers [REDACTED] and [REDACTED] we believe the possibility of such meeting is improbable when considering what little time [REDACTED] had to meet another individual.

Secondly, not a single witness, including both shooting officers, ever saw another individual in the vehicle with [REDACTED] or an individual flee from the scene. These witnesses also included Officer [REDACTED] and Sergeant [REDACTED] (on scene just as the shooting ended), and every eyewitness interviewed along Wilson Avenue. Although the majority of the witnesses along Wilson Avenue would have only seen the incident after the initial shot, none indicated the presence

of a second individual in [REDACTED] vehicle. Additionally, as Officer [REDACTED] and Sergeant [REDACTED] approached the shooting scene from the east as they drove north on Spaulding Avenue and then west on Wilson towards the shooting, neither recalled seeing anyone along their route along or as they pulled up and parked just east of [REDACTED] vehicle.

Multiple items of evidence and swabs taken from [REDACTED] vehicle were submitted for DNA testing in an apparent attempt to establish the presence of an individual in the Honda with [REDACTED]. The DNA testing results were inconclusive, and thus failed to support the possible presence of someone other than [REDACTED] in the vehicle. Nevertheless, the results would not have been helpful in determining whether a specific individual was in fact in the vehicle that evening as opposed to at another point.

Finally, although the FBI and [REDACTED] expert reports indicated that the bullet holes in the windshield came from the inside of the vehicle out, which at least [REDACTED] argued was potentially a result of shots coming from inside the vehicle, we believe it far more likely that those bullet holes are attributed to Officer [REDACTED] who shot at [REDACTED] from behind the vehicle. While slight evidence gives life to the theory of a second individual in the vehicle with [REDACTED], we find that the weight of evidence contrary to such a theory is far greater, therefore, we determine by a preponderance of the evidence that [REDACTED] was alone in the vehicle.

#### D. The Officers Made Credible Statements Consistent with Their Actions

The evidence shows that it is more likely than not that both Officers [REDACTED] and [REDACTED] were credible during their interviews and depositions when they told interviewers their account of the shooting.

While evidence of [REDACTED] having a weapon is lacking, strong evidence did support the officers' belief that they perceived a gun, and therefore they reasonably believed they had to make a life or death decision. COPA agrees with [REDACTED] assertion that "something set these two guys off. This wasn't 'let's drive around and shoot and kill some guy.'" In other words, [REDACTED] believed, and COPA concurs, that Officers [REDACTED] and [REDACTED] reacted to what they perceived as a threat to their safety and lives when they used deadly force against [REDACTED]. The following is a list of known facts garnered during this investigation which support our finding that the officers were credible in their accounts of the incident.

- Officer [REDACTED] dove to the ground immediately upon seeing what he perceived as a blue-steel revolver. (This is corroborated by the officer's injuries.)
- Officer [REDACTED] shot from his position in the street on Wilson Avenue upon seeing what he perceived to be a blue-steel revolver.
- Officer [REDACTED] dove to the ground immediately after he fired his first shot. (The dive is corroborated by the officer's injuries.)
- Immediately following the shooting, both officers indicated to detectives that they yelled commands during the shooting.
- Witness [REDACTED] thought he heard someone yell "get down" just after the accident but before any shots were fired. This could have been Officer [REDACTED] yelling

<sup>79</sup> Expert hired by the estate of [REDACTED] in the lawsuit filed against the City of Chicago.

- initially upon seeing what he perceived to be a blue-steel revolver. [REDACTED] also heard two officers yell commands as they shot their weapons towards the Honda.
- Witness [REDACTED] heard officers yell "drop your weapon" as they pointed their weapons at the Honda.
  - After several gunshots, witness [REDACTED] heard officers yell "drop your weapon."
  - Just following the shooting, witness [REDACTED] heard someone yelling, "He shot at us! He shot at us!"
  - After diving to the ground Officer [REDACTED] yelled out that he was shot to Officer [REDACTED] and Officer [REDACTED] saw him grabbing his head and could see blood.

We find it more likely than not that Officers [REDACTED] and [REDACTED] provided credible accounts of how they perceived the events of March 16, 2013. This, nonetheless, does not answer the question of whether the officers' perceptions were in fact reasonable, which will be discussed in detail below.

#### **E. It Was Reasonable for Officers [REDACTED] and [REDACTED] to Approach [REDACTED] with Caution**

Both officers approached [REDACTED] in the framework of a situation that was possibly building towards a threat, i.e., the officers just witnessed [REDACTED] driving erratically in violation of numerous traffic laws in an area of high-gang activity; [REDACTED] just wrecked his vehicle; the vehicle still appeared operational as it revved and the tires spun; and, [REDACTED] was not complying with the officers' verbal commands. As the officers perceived the situation, [REDACTED] displayed a disregard for the law and continued to do so by not responding to the officers' presence or commands and appeared attempting to flee the scene.

While none of these facts taken independently would justify the use of deadly force, they still must be considered when reviewing the totality of the circumstances which led to the officers' use of force. Based on the foregoing, we believe that when considering [REDACTED] own erratic actions in conjunction with his lack of response to the officers' presence, both officers were reasonable in their cautious approach of [REDACTED] with their weapons-drawn.

#### **II. Whether Officer [REDACTED] First Shot from the Street Was Objectively Reasonable**

An objective analysis based upon known facts, not the officer's subjective perception, is required to establish whether Officer [REDACTED] actions were reasonable. We now turn to whether Officer [REDACTED] initial shot was objectively reasonable. To answer this question, we must determine whether an objectively reasonable officer in the same position as Officer [REDACTED] would have believed he was in imminent danger of death or great bodily, and therefore justified in firing his weapon.<sup>80</sup>

Considering that no blue-steel revolver was recovered from the scene, the question remains, what did the officers perceive as blue-steel revolver in or near [REDACTED] hand(s)? Our

<sup>80</sup> See General Order 03-02-03, II; 720 ILCS 5/7-5 (West 2014); *Muhammed*, 316 F.3d at 383.

investigation did consider multiple possibilities as to what the perceived blue-steel revolver might have been.

First, we considered a detachable Alpine radio faceplate recovered by CPD evidence technicians from the driver side, front, floor board of [REDACTED] vehicle. The recovery location puts the faceplate below [REDACTED] legs and directly in front of him as he sat in the car.<sup>81</sup> The proximity, the dark color, and the circular, metallic-finished features of this face plate all support the possibility that this could have been the object [REDACTED] was holding which was perceived as a blue-steel revolver by both officers. The faceplate was considered because of its placement and proximity to [REDACTED]. It is also plausible that during a high-speed crash, the faceplate may have been displaced from the radio and that [REDACTED] may have had it in his hand as he attempted to place it back on the radio. It may have been reflexive for [REDACTED] to see if it was broken or attempt to fix it. Because of [REDACTED] intoxicated state, we cannot assume his actions were necessarily logical. The photo below shows this Alpine radio faceplate as it was recovered from the front, driver side floorboard.



Second, a Samsung smartphone with a black screen and a white, glossy body was also recovered by CPD evidence technicians from within [REDACTED] vehicle. The phone was found on the driver side, rear floorboard next to right seat track of the front driver's seat. Again, the proximity to [REDACTED] and the glossy-exterior finishes of the smartphone support the possibility that this could have been the object perceived by the officers as a blue-steel revolver. It also stands to reason that [REDACTED] may have been attempting to use his cell phone. The below photo shows the Samsung smartphone as recovered from the driver side, rear floorboard.<sup>82</sup>

<sup>81</sup> Detective Supplementary Reports indicate that the faceplate was initially in [REDACTED] lap following the shooting but was moved when [REDACTED] was removed from the vehicle. This initial location of the faceplate in [REDACTED] lap was never photographed.

<sup>82</sup> A second phone was found in [REDACTED] pants pocket. We did not consider this phone found in [REDACTED] pocket further, as it would have been nearly impossible, or least impractical, to believe [REDACTED] placed this back into his pocket as he was being fired upon by Officers [REDACTED] and [REDACTED]



Taking our analysis to the next step, we consider that both officers not only perceived a blue-steel revolver, but also indicated that they heard gunshots, or loud reports, before they fired. First, we find it is possible a noise emanated from a mechanical issue within [REDACTED] vehicle. The vehicle had just wrecked at high speeds. Following the accident, the engine was revving, and the tires appeared to spin. With what was described as moving parts on a severely damaged car, the possibility of a loud mechanical sound emanating from the damaged vehicle cannot be excluded.

Second, the chronological sequence of events described by both officers in proximity to when Officer [REDACTED] took his first shot does provide another possibility as to what the officers heard and then perceived as a blue-steel revolver firing at them. When directly asked, neither officers denied the possibility that the initial shot(s) heard by either officer was fired by their partner. In fact, the first shots Officer [REDACTED] heard occurred as he was looking away from [REDACTED] and diving to the ground. Clearly not seeing who fired these initial shots, Officer [REDACTED] recollection only establishes a point of reference as to when the first shot occurred, without any actual insight as to who fired the shot. However, Officer [REDACTED] who was standing and facing [REDACTED] when the first shot occurred, provided further explanation. First, Officer

[REDACTED] clearly saw Officer [REDACTED] cross in front of him before he heard the first shots fired. Next, after Officer [REDACTED] had passed in front of him, Officer [REDACTED] heard the first shots as he stood facing [REDACTED]. It is at this point, with Officer [REDACTED] standing in the street and Officer [REDACTED] on his way to the ground, that both officers agreed the first shots were fired.

This sequence described by both officers indicates a distinct possibility that Officer [REDACTED] fired these first shots. Officer [REDACTED] admitted to firing from the street. Additionally, a shell casing recovered from the center of the street just west of [REDACTED] vehicle came from Officer [REDACTED] weapon. Officer [REDACTED] heard his partner yell "get down" and observed what he believed was a gun. Instinctively, he then reacted by firing at [REDACTED] which was the gunfire Officer [REDACTED] heard as he dove to the ground. Finally, Officer [REDACTED] described glass being blown out of the driver side window, which could have resulted from his own firearm discharge. This is likely based on the majority of the glass from the driver's side window being inside the vehicle and not on the street, indicating that the bullet damage to the driver's side window was caused by a discharge outside the vehicle going in, as opposed to inside the vehicle going out.

Officer [REDACTED] was clear that he first fired his weapon after hearing the first shots. However, this belief may be the result of a memory distortion under stress and the resulting limited ability of someone to recall a stressful event with complete accuracy. An expert report prepared by The Peregrine Corporation<sup>83</sup> at the request of the City of Chicago's Law Department discussed such memory deficiencies by officers involved in stressful life or death decisions. The expert applied this phenomena to Officers [REDACTED] and [REDACTED] situation when he provided the following example in his report:

I note that Officer [REDACTED] says Officer [REDACTED] yelled for him to "get down," but he [Officer [REDACTED]] himself doesn't recall yelling out that warning. In my experience, and based on my training in this field, it is not at all unusual for an officer not to remember what he yelled out while he is faced with a perceived deadly threat, or while he is in the process of trying to escape, take cover, or fire at that threat.

Just as Officer [REDACTED] did not recall yelling to Officer [REDACTED] to get down, we find it possible and probable that Officer [REDACTED] shot in reaction to a perceived gun, but during his interviews, incorrectly recalled that he shot after first initially hearing gunfire. This situation was rapidly evolving and lasted only tenths of seconds. It is more than possible that Officer [REDACTED] memory distortion relative to whether he first heard gunfire or a saw a gun is a result of a memory deficiency which resulted from an incident that lasted likely tenths of seconds, meaning the specific moment of time of hearing and perceiving a firearm.

In reality, the possibilities outlined above do not include every plausible explanation as to what the officers perceived as a blue-steel revolver or what they perceived as sounds of gunfire prior to firing their weapons. These are just our best deductions. With such a huge void of evidence through a complete lack of videos, photos, or eye witnesses to the initial shooting sequence, and without any weapon or any non-officer-fired shell casings to compare, we are left in a difficult position when tasked with determining what occurred. Given all this, when asked to decide not only what the officers could have seen, but also what they could have heard, we find that the

<sup>83</sup> Attachment 167.

complexities and probabilities of this question are far too numerous for us to select any one possibility by a preponderance of the evidence.

Therefore, because we are unable to answer the question as to what the officers perceived as a blue-steel revolver, we are unable to make any determination as to what an objectively reasonable officer in the same position as Officer [REDACTED] would do. To do so would require far too much conjecture. Without any probable answer to this question, we are left with little objective evidence to rely upon in support of a conclusion. We find that any finding outside of not sustained would require us to rely entirely too much upon the officers' subjective perceptions. Accordingly, we are unable to make any determination as to whether Officer [REDACTED] first shot was reasonable. We do not have adequate evidence to either prove or disprove the officers' assertions relative to the first shot.

### **III. Whether the Remainder of Officer [REDACTED] Shots and All of Officer [REDACTED] Shots Were Reasonable**

After Officer [REDACTED] fired his first shot, he continued to fire his weapon at [REDACTED] an additional fourteen times. Additionally, Officer [REDACTED] fired his weapon four times at [REDACTED] during this same period. To determine the reasonableness of these additional shots, we must determine whether a reasonable officer in Officers [REDACTED] and/or [REDACTED] position would have believed he was in imminent danger of death or great bodily harm at the time he fired each shot.

Immediately after perceiving a blue-steel revolver, both officers found themselves laying in the street just southwest of [REDACTED]. Bleeding, with pain to his head, Officer [REDACTED] thought he was shot. Next to him, Officer [REDACTED] heard Officer [REDACTED] yell, "I'm hit, I'm hit," and saw blood on the side of Officer [REDACTED] face as Officer [REDACTED] clutched his head. The officers scrambled to get up as they perceived [REDACTED] tracking them with his arms raised and holding what was described by both officers as a dark object. Both officers moved further away from [REDACTED]. Officer [REDACTED] moved to the southwest of [REDACTED] and positioned himself between some vehicles parked along the south side of Wilson Avenue. Officer [REDACTED] moved to the south of [REDACTED] and into the parkway to the rear of [REDACTED] vehicle.

From these positions, both officers fired their weapons at [REDACTED] as they continued to move. Officer [REDACTED] moved to the east and counterclockwise around the rear of [REDACTED] vehicle as Officer [REDACTED] moved slightly further to the southwest of [REDACTED] and took a new position by a light pole in the parkway. From these various positions both officers had clear views of [REDACTED] that were unobstructed by smoke and solid objects. Both described [REDACTED] as twisting and turning as he sat in the front seat. They saw [REDACTED] arm(s) raised as he appeared to be holding what both officers again describe as a dark object, and not specifically a blue-steel revolver. During their interviews, both officers expressed a belief that they feared for their life because [REDACTED] tracked them with this dark object and both continued to fire their weapons up until the point when [REDACTED] stopped tracking them with the dark object and his arms came down, which was estimated at a matter of seconds.

When asked what they believed the dark object to be, both officers unequivocally answered a blue-steel revolver. When asked why they thought the dark object was a blue steel revolver, both officers unequivocally explained that their belief was rooted in their prior perception of seeing a blue-steel revolver when they saw [REDACTED] turn towards them and a gun appear.

Once the initial perception occurred, the original perception of a blue-steel revolver by both officers affected every subsequent perception and action by both officers. Initially, after seeing the blue-steel revolver, Officer [REDACTED] thought he was shot, and Officer [REDACTED] thought his partner had been shot. This is because Officer [REDACTED] got up from the ground, clutching his head, bleeding and stating "I'm hit. I'm hit." The original perception of the blue-steel revolver played extensively into Officer [REDACTED] belief that he had been shot. Similarly, Officer [REDACTED] explained that the blood and apparent injury to Officer [REDACTED] head appeared to him as a gunshot wound amid the shooting because he had just observed and perceived a blue-steel revolver. Both officers are heard gunshots, and Officer [REDACTED] heard and saw glass being shot out of the vehicle's front driver seat window.

The same rationale regarding the importance of the initial perception of a blue-steel revolver applies to [REDACTED] movement and tracking of the officers. [REDACTED] twisting and turning along with raised arms by itself may not necessarily be threatening. However, with the addition of the dark object to the calculation — which both officers could not clearly see but believed was the blue-steel revolver — impacted the officers' decisions to fire at the perceived threat, which was mistakenly believed to be [REDACTED] with a blue-steel revolver. Under these circumstances, we find both officers were undoubtedly more inclined to conclude that the dark object they perceived [REDACTED] holding to be a blue-steel revolver.

As discussed above, we are ultimately unable to determine what the officers perceived as a blue-steel revolver. As stated above, the lawfulness Officer [REDACTED] first shot has been not sustained for lack of a preponderance of the evidence that objectively supports his and Officer [REDACTED] subjective perception of a blue-steel revolver. As such, we are similarly unable to determine whether the remaining shots by Officer [REDACTED] and Officer [REDACTED] were objectively reasonable. Furthermore, while officer [REDACTED] head injury and declaration that he was struck are additional intervening facts, as discussed above, we considered the weight of both slightly diminished by the officers' initial perception of a blue-steel revolver.

For the above stated reasons, there is insufficient evidence to prove or disprove what an objectively reasonable officer would have done in the same position of either Officer [REDACTED] or [REDACTED] when they fired their additional shots at [REDACTED]. Accordingly, we have reached a finding of **NOT SUSTAINED**<sup>84</sup> for **ALLEGATION 2 against Officer [REDACTED]** and **ALLEGATION 5 against Officer [REDACTED]**.

#### IV. Whether Officers [REDACTED] and [REDACTED] De-escalated Their Use of Force

Independent of an officer's justification for their use of force, all officers are obligated to de-escalate their use of force in proportion to the threat perceived. General Order 03-02-01 requires an officer to modify their level of force in relation to the amount of resistance by the subject. The

<sup>84</sup> A finding of "Not Sustained" is used when there is insufficient evidence to either prove or disprove the allegation.

Supreme Court has also offered guidance on when officers should de-escalate their use of force. As stated in *Plumhoff*, “. . . if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended.”<sup>85</sup> See also *Murphy v. Demings*, 2014 U.S. Dist. LEXIS 185865, at \*17 (M.D. Fla. Aug. 14, 2014) (“[The deputy] was not required to interrupt a volley of bullets until he knew that [the armed suspect] had been disarmed.”) In the case at hand, the relevant question is whether Officer [REDACTED] and [REDACTED] adjusted their use of force in accordance with the level of resistance they perceived by [REDACTED]

After their initial perception of a blue-steel revolver, both officers found themselves on the ground laying in the street just to [REDACTED] southwest. With pain to his head, and blood on the side of his head, Officer [REDACTED] thought he was shot. Officer [REDACTED] heard his partner yell, “I’m hit, I’m hit,” and observed blood on the side of Officer [REDACTED] head as Officer [REDACTED] clutched his head. From this position, both officers got up and focused their attention back on [REDACTED] Both officers described [REDACTED] as continuing to track them, essentially describing [REDACTED] turning his body to follow the officers as he extended his arms in their direction, pointing a dark object. As [REDACTED] continued to twist and turn with raised arms, both officers believed [REDACTED] was tracking them with a gun. In a matter of seconds, the officers reacted to this threat and continued to shoot at [REDACTED] as they moved to evade the threat — Officer [REDACTED] ran counterclockwise around the rear of the vehicle as Officer [REDACTED] retreated behind a light pole further to the southwest. Both officers continued to evaluate [REDACTED] “tracking” as a deadly threat; and, therefore, they both continued to use deadly force. Once [REDACTED] arms come down and he stopped twisting and turning, which was estimated at a matter of seconds, both officers discontinued their use of deadly force. Once his arms came down, both officers perceived the threat as diminished. We have no evidence to contradict the officers’ statements of halting their firearm discharges after [REDACTED] stops tracking them and his arms come down.

We find the officers did de-escalate their use of force in accordance with CPD directives. Therefore, based on the forgoing, a finding of **EXONERATED** has been reached for **ALLEGATION 3 against Officer [REDACTED]** and **ALLEGATION 6 against Officer [REDACTED]**

## PURSUIT AND EMERGENCY VEHICLE OPERATION

Within seconds of encountering [REDACTED] driving erratically on Wilson Avenue, Officer [REDACTED] made the decision to increase his vehicle’s speed and follow [REDACTED] Officer [REDACTED] admitted to accelerating to estimated speeds of fifty to seventy mph, and disregarding traffic signals and stop signs. Meanwhile, [REDACTED] continued onward without stopping. COPA determined that Officer [REDACTED] and Officer [REDACTED] were not engaged in a pursuit as defined by CPD Policy.

### CPD Policy

The applicable Chicago Police Department order is General Order 03-03-01, in which the relevant portions state as follows:

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<sup>85</sup> *Plumhoff, supra* at 2022.

The decision to initiate a pursuit rests with the individual officer when encountering a motor vehicle operator who refuses to voluntarily stop after having been lawfully directed or signaled to do so. The Department member will only engage in a motor vehicle pursuit when:

- 1.) A motor vehicle pursuit is authorized after applying the balancing test and other restrictions of this directive; and,
- 2.) if in a marked vehicle, the emergency-roof lights and siren are activated or if in an unmarked vehicle, the high-beam flashing headlights and siren are activated; and,
- 3.) notification has been made to the OEMC dispatcher regarding the facts concerning the pursuit.

Additionally, General Order G03-03-01 defines a “Motor Vehicle Pursuit” as:

An active attempt by a sworn member operating an authorized emergency vehicle to apprehend any driver or operator of a motor vehicle who, having been given a visual and audible signal by the officer directing such driver or operator to bring his or her vehicle to a stop, fails or refuses to obey such directions, increases or maintains his or her speed, extinguished his or her lights, or otherwise flees or attempts to elude the officer.

#### **a. Whether Officer [REDACTED] Engaged in a Pursuit**

One of the requirements of a pursuit is the activation of emergency lights. Both officers asserted that they never activated their emergency lights. This assertion was corroborated by an independent witness, [REDACTED]. Additionally, both officers never contacted OEMC to properly notify the dispatcher of a pursuit, which also would have been required of them to engage in a pursuit. This absence of radio communications was independently verified by an audio recording of OEMC communications. A review of OEMC radio transmissions clearly showed some radio traffic among officers communicating with OEMC dispatch, but nothing from Officers [REDACTED] or [REDACTED] regarding a pursuit on Wilson Avenue.

Both officers stated that because they were not following the requirements of General Order 03-03-01, they were not in a pursuit. Additionally, both explained how they only observed [REDACTED] commit traffic infractions, which would not provide sufficient justification for a pursuit. Finally, both believed that their unmarked Chevrolet Tahoe was also prohibited for use in a pursuit, and that a marked car would be needed for a pursuit.

General Order G03-03-01 specifically defines what constitutes a “pursuit.” Upon reading this definition of a pursuit, it becomes immediately clear that before any following converts to an actual pursuit, there must be a signal by an officer directing someone to stop, which is then disregarded by the person directed to do so. We find a complete lack of evidence supporting that Officers [REDACTED] and [REDACTED] ever directed and/or signaled [REDACTED] to stop. Furthermore,

[REDACTED] would have been incapable of failing to yield to such a direction or signal that never occurred. Instead, the officers tried the opposite. During their interviews, both officers reasoned that they never turned on the emergency lights because they did not want [REDACTED] to see or detect them. Because of [REDACTED] erratic and dangerous driving, they feared he possibly would flee and even increase speed if signaled to stop.

Because these officers' actions never fully rose to the level of satisfying CPD's definition of a pursuit, COPA elected not to serve allegations relative to a pursuit.

**b. Whether Officer [REDACTED] Emergency Use of a Department Vehicle Was Within Policy**

Despite not satisfying General Order 03-03-01's definition of a pursuit, Officer [REDACTED] driving still fell within the scope of a General Order 03-03. This General Order prohibits an officer from disregarding Illinois traffic laws unless he or she does so with the proper care, and with their vehicle in the proper configuration.

**CPD Policy**

The applicable Chicago Police Department order is General Order 03-03, in which the relevant portions state as follows:

3. The driver of an authorized emergency vehicle may:
  - a. Park or stand, irrespective of the provisions of this Chapter;
  - b. Proceed past a red or stop signal or stop sign, but only after slowing down as may be required and necessary for safe operation;
  - c. Exceed the maximum speed limits so long as he does not endanger life or property;
  - d. Disregard regulations governing direction of movement or turning in specified directions.

The Glossary Section of the G03-03 defines an Authorized Emergency Vehicle as:

A marked police vehicle that has in operation emergency-roof lights and siren or an unmarked vehicle that has in operation flashing headlights and siren that are used to respond to an emergency situation or to pursue an actual or suspected law violator.

The officers came upon a potential emergency situation when they initially encountered [REDACTED] was driving erratically and was observed committing egregious traffic violations in plain view of both officers. Additionally, and partly based upon their familiarity with crime and general gang activity in the area, both officers thought

[REDACTED] was maybe actively fleeing from recent crime. In an attempt to gain information, the officers monitored radio traffic for a possible incident in the area involving [REDACTED] blue Honda. Furthermore, Officer [REDACTED] tried twice to communicate their current situation to OEMC but explained that he failed to do so because others were communicating over the radio traffic at simultaneous points in time during both of Officer [REDACTED] short attempts.<sup>86</sup>

Because of [REDACTED] actions, and a suspicion that a crime was possibly afoot, the officers decided to follow [REDACTED] attempting to keep him within sight as they continued to evaluate the situation. Without ever activating the Chevrolet Tahoe's emergency lights as required by G03-03, Officer [REDACTED] accelerated to estimated speeds of fifty to seventy mph and proceeded through posted stop signs and traffic signals. Driving at such speeds and through stop signs is clearly prohibited by G03-03 unless a vehicle is configured as an Authorized Emergency Vehicle with activated lights and sirens; therefore, we have reached a finding of **SUSTAINED<sup>87</sup>** for **ALLEGATIONS 1, 2 and 3 against Officer [REDACTED]**

**c. Whether the Officers' Approach of [REDACTED] Vehicle with Firearms Drawn Was Reasonable**

**Legal Standard/Policy**

Rule 38 of CPD's rules of conduct prohibits an officer from displaying a weapon without necessity. However, beyond Rule 38 we identified no specific written policy which addressed the display of an officer's weapon or any requirement for an officer to document why they displayed their weapon in response to a situation.

**Application of the Policy to the Facts**

An officer's choice to display their weapon should arguably be reasonable when considering the totality of circumstances in which the weapon was brandished, and an officer must be capable of specifically articulating what facts or observations lead them to display their weapon as a show of force and authority.

Working as partners, Officers [REDACTED] and [REDACTED] actions somewhat mirrored each other as they first approached [REDACTED] sat in his crashed vehicle, while Officer [REDACTED] activated his emergency lights, aimed his spotlight at [REDACTED] exited the driver's side of the Chevrolet Tahoe, drew his weapon, and proceeded towards [REDACTED]. Concurrently, Officer [REDACTED] did the same from the passenger side of the Chevrolet Tahoe. Both officers announced their office and commanded [REDACTED] to show his hands as they advanced towards him.

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<sup>86</sup> Officer [REDACTED] indicated during interviews that he attempted to go over the radio twice as they followed [REDACTED] but there was radio traffic at the exact moments when he attempted to go over the radio.

<sup>87</sup> A finding of "Sustained" is used when the allegation is supported by substantial evidence.

According to the officers, the car appeared as if it was trying to flee, i.e., the vehicle's engine continuously revving, the tires were spinning, and smoke was in the area. This perception is further supported by multiple independent witnesses and officers that also described [REDACTED] vehicle as smoking with spinning tires and a revving engine. Furthermore, both officers indicated during their interviews that they feared that the Honda could flee at any time and possibly strike them in the process.

The Supreme Court has unambiguously stated that, for the purposes of determining whether a law enforcement officer acted reasonably in using deadly force, a reasonable belief that danger exists may be formed by reliance on appearances.<sup>88</sup> The Court specifically noted that "no right is guaranteed by federal law that one will be free from circumstances where he will be endangered by the misinterpretation of his acts." *Ford v. Childers, supra* at 1276, citing *Sherrod v. Berry, supra* at 805 (quoting *Young v. Killeen*, 775 F.2d 1349, 1353 (5th Cir. 1985) (internal quotation marks omitted).

Because the officers' perception that the vehicle appeared as if it was attempting to flee after the accident was objectively reasonable, we find that an objectively reasonable officer may have also drawn their weapon when placed in the same situation with the same timeframe. Accordingly, we have reached a finding of **EXONERATED** for **ALLEGATION 4 against Officer [REDACTED]** and **ALLEGATION 1 against Officer [REDACTED]**

## VII. CONCLUSION

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

| Officer                   | Allegation   | Finding                           |
|---------------------------|--|-----------------------------------|
| Police Officer [REDACTED] | <p>The following allegations were alleged by COPA against Officer [REDACTED]</p> <p>1. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] operated a department vehicle and proceeded through a posted stop sign, without stopping, in violation of department policy.</p> <p>2. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] operated a department vehicle and proceeded through a traffic signal, without stopping, in violation of department policy.</p> | <p>Sustained</p> <p>Sustained</p> |

<sup>88</sup> "Even though Officer Childers did not actually see a weapon in the suspect's hand (a post obstructed his view of the suspect's hand), given the information he possessed at that particular time and the observations he made, Childers reasonably concluded that the suspect was armed and dangerous." *Ford v. Childers*, 855 F.2d 1271, 1275 (7th Cir. 1988), citing *Davis v. Freels*, 583 F.2d 337, 341 (7th Cir. 1978).

|                           |   |  |
|---------------------------|---|--|
|                           | <p>3. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] operated a department vehicle over the legally permitted speed limit in violation of department policy.</p> <p>4. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] unnecessarily displayed a firearm.</p> <p>5. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] used deadly force against [REDACTED] in a manner that was inconsistent with department policy.</p> <p>6. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] used deadly force against [REDACTED] and then failed to de-escalate his use of force in a manner consistent with department policy.</p> | Sustained<br><br>Exonerated<br><br>Not Sustained<br><br>Exonerated |
| Police Officer [REDACTED] | <p>The following allegations were alleged by of the COPA against Officer [REDACTED]</p> <p>1. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] unnecessarily displayed a firearm.</p> <p>2. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] used deadly force against [REDACTED] in a manner that was inconsistent with department policy.</p> <p>3. On March 16, 2013, at approximately 2:55am, Officer [REDACTED] used deadly force against [REDACTED] and then failed to de-escalate his use of force in a manner consistent with department policy.</p>  | Exonerated<br><br>Not Sustained<br><br>Not Sustained               |

## VIII. RECOMMENDED DISCIPLINE

### a. Officer [REDACTED]

#### i. Complimentary and Disciplinary History

Officer [REDACTED] complimentary history consists of 2 Department Commendations, 64 Honorable Mentions, 9 Complimentary Letters, 1 Life Saving Award, 1 Unit Meritorious Performance Award, and 2 Other Awards. Officer [REDACTED] has no prior disciplinary history.

#### ii. Recommended Penalty, by Allegation

1. **Allegation No. 1 – Sustained/Violation noted and training**
2. **Allegation No. 2 – Sustained/Violation noted training**
3. **Allegation No. 3 – Sustained/Violation noted and training**

COPA has considered the age of the case, Officer [REDACTED] complimentary history and lack of disciplinary history, as well as noting that the sustained allegations did not directly contribute to the subsequent use of deadly force. Accordingly, COPA recommends re-training on Emergency Vehicle Use.

Approved:



December 30, 2019

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Andrea Kersten  
*Deputy Chief Administrator*

Date



December 30, 2019

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Sydney Roberts  
*Chief Administrator*

Date

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**Appendix A**

**Assigned Investigative Staff**

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|                                    |                |
|------------------------------------|----------------|
| <b>Squad# 4</b>                    |                |
| <b>Investigator:</b>               | [REDACTED]     |
| <b>Supervising Investigator:</b>   | [REDACTED]     |
| <b>Deputy Chief Administrator:</b> | Andrea Kersten |