

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

## I. EXECUTIVE SUMMARY

Date of Incident:	May 2, 2017
Time of Incident:	9:10 pm
Location of Incident:	██████████ ██████████
Date of IPRA Notification:	May 2, 2017
Time of IPRA Notification:	9:58 pm

On May 2, 2017, between 6:00 and 6:30 pm, tactical officers ██████████ and ██████████ working Beat ██████████ responded to a gas station at Archer and Halsted in response to calls that three occupants of a black Nissan Murano had been victims of a shooting. The officers recognized the occupants of the Murano (██████████ Justin ██████████ and ██████████) as members of the La Raza street gang. The officers believed the men in the Murano might seek retaliation against the people who targeted them. While evidence technicians processed the Murano, Officers ██████████ and ██████████ obtained a covert black conversion van<sup>3</sup> and returned to the gas station to perform surveillance on the men. When the Murano left the gas station, they discretely followed. The officers tailed them as far as 47th Street and Loomis before deciding to return to the CPD ██████████ District.

Traveling to District █, Officers ██████████ and ██████████ were northbound on Ashland Avenue, near 44th Street, at which point a sandstone-colored Chevy Trailblazer pulled alongside their covert van. The officers recognized the occupants as also being members of La Raza. As they quickly turned east onto 43rd Street to avoid the Trailblazer, another vehicle, a silver Town and Country van, turned alongside them. The passenger of the Town and Country fired a rifle at their covert van, striking both officers multiple times. Both officers returned fire through their windshield. The Town and Country continued moving, while the officers stopped and called for backup. Chicago Police subsequently identified the passenger and shooter as ██████████ and the driver of the Town and Country as ██████████ was later arrested and admitted to driving the Town and Country van. ██████████ shot the officers apparently because he mistook them as rival gang members. ██████████ reportedly fled to Mexico and is evading arrest, while ██████████ has pending attempted murder charges. There was no evidence ██████████ or ██████████ were shot by the officers.

Surveillance video footage from a nearby security camera briefly captured the shooting. Body-worn camera worn by the officers was not activated and did not capture any part of the incident. Their covert vehicle was not equipped with in-car camera.

<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. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendations set forth herein are the recommendations of COPA.

<sup>2</sup> Officer ██████████ has since obtained the rank of Sergeant. In this report, he will be referred to as Officer ██████████

<sup>3</sup> This van contained no visible indicia of being used or occupied by CPD officers.

**II. INVOLVED PARTIES**

Involved Officer #1:	██████████ Star # ██████████, Employee ID# ██████████, Date of Appointment: ██████████ 2002, Sergeant, Unit of Assignment: ██████████, DOB: ██████████, 1978, Male, White
Involved Officer #2:	██████████ Star # ██████████, Employee ID# ██████████, Date of Appointment: ██████████, 2015, Police Officer, Unit of Assignment: ██████████, DOB: ██████████, 1992, Male, White
Involved Individual #1:	██████████ DOB: ██████████ 1999, Male, Hispanic
Involved Individual #2:	██████████ DOB: ██████████ 1998, Male, Hispanic

**III. ALLEGATIONS**

Any discharge of an officer’s firearm results in a mandatory notification to COPA. This investigation was initiated pursuant to such notification. During this full and comprehensive investigation, COPA did not uncover evidence that would require the proffer of allegations of excessive force.

**IV. APPLICABLE RULES AND LAWS**

General Orders
<ol style="list-style-type: none"> <li>1. General Order G03-02, Use of Force (eff. Oct. 1, 2002 to Oct 15, 2017)</li> <li>2. General Order G03-02-03, Deadly Force (eff. Feb. 10, 2015 to Oct 15, 2017)<sup>4</sup></li> </ol>
Statutes
<ol style="list-style-type: none"> <li>1. 720 ILCS 5/7-1, Use of force in defense of person.</li> </ol>

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

**a. Interviews**

In his COPA interview on May 6, 2019, Officer ██████████ said Officer ██████████ was not his regular partner on the date of the incident.<sup>6</sup> Officers ██████████ and ██████████ worked Beat ██████████ as part of

<sup>4</sup> Att. 182

<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.

<sup>6</sup> Atts. 190, 197

the [REDACTED] tactical team. Officer [REDACTED] was in plain clothes and wearing his Chicago Police Department bulletproof vest and body-worn camera. When they began their tour of duty at approximately 6:00 pm on May 2, 2017, Officers [REDACTED] and [REDACTED] were assigned an unmarked vehicle. They responded to the gas station at Archer Avenue and Halsted Street, after hearing a report of a person shot. At the gas station, Officers [REDACTED] and [REDACTED] observed three occupants in a black SUV (the Nissan Murano), one of whom was the shooting victim. That victim was transported by ambulance to a hospital. Officer [REDACTED] knew one of the three occupants as a La Raza gang member.

Officer [REDACTED] said he and Officer [REDACTED] saw articles of clothing in the black SUV that could have belonged to a fourth person who was no longer present. Officer [REDACTED] suspected that the possible fourth person had been armed and was dropped off before the black SUV arrived at the gas station. Officers from the [REDACTED] district, where the shooting occurred, advised they observed “multiple different shell casings”<sup>7</sup> at the scene of the shooting. Officer [REDACTED] said, “At the time of this event, there was an ongoing gang war in the area, so we knew retaliation was all but certain and going to happen quickly ...”<sup>8</sup> Officer [REDACTED] anticipated the occupants of the black SUV would be involved. Officers [REDACTED] and [REDACTED] returned to the [REDACTED] District station and switched their unmarked vehicle for a covert black cargo van.

Officer [REDACTED] stated that he and Officer [REDACTED] returned to the area near the gas station and surveilled the black SUV, while evidence technicians processed the vehicle. Officer [REDACTED] said his intention was to see if the persons in the black SUV, once they left the gas station, would pick up the possible fourth person. The officers wanted to talk to that possible fourth person to gather information about the shooting, and, if that fourth person was armed, possibly take the person into custody. After the black SUV was processed, the vehicle traveled south on Halsted Street.

With Officer [REDACTED] in the front passenger seat of the covert van, Officer [REDACTED] followed south on Halsted Street, behind the black SUV. The black SUV drove to 47<sup>th</sup> Street traveling west, before turning south in the vicinity of Loomis, Throop, or Ada streets. Officer [REDACTED] said he and Officer [REDACTED] decided to break off their surveillance because the black SUV was heading into a La Raza neighborhood at a time when a retaliatory shooting could occur. While, both officers were armed with handguns, they were aware that semi-automatic rifles were frequently being used in the gang conflict. Officer [REDACTED] thought it was unsafe to continue driving in a covert vehicle under these circumstances. Officer [REDACTED] continued westbound with the intention of driving back to the [REDACTED] District station.<sup>9</sup>

Officer [REDACTED] drove the covert van to Ashland Avenue and turned north, staying in the easternmost lane. As the covert van headed toward 46th Street, a northbound Chevy Trailblazer pulled up abruptly in the western lane. Officer [REDACTED] recognized the two men in the Trailblazer, who were looking at him and Officer [REDACTED]. The front passenger was [REDACTED] whom Officer [REDACTED] described as a “shooter,”<sup>10</sup> or an enforcer, and affiliated with La Raza. The driver was [REDACTED] a close associate of the [REDACTED] family and also affiliated with La Raza. Officer [REDACTED] alerted Officer [REDACTED] about [REDACTED] and [REDACTED] and told his partner they needed to

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<sup>7</sup> Att. 197, p. 14, line 2

<sup>8</sup> *Id.* at p. 13, lines 20-22

<sup>9</sup> The [REDACTED] District is located at [REDACTED]

<sup>10</sup> Att. 197, p. 20, lines 11-15

get away from the Trailblazer. Officer ██████ knew that if he drove east on 43<sup>rd</sup> Street, he could go to Halsted Street, turn north, and be down the street from the ██████ District station. Officer ██████ informed Officer ██████ that he would turn abruptly, hoping the Trailblazer would continue north and not be able to make the turn onto 43<sup>rd</sup> Street.

Officer ██████ said that, as he made the turn onto 43<sup>rd</sup> Street, he heard a number of gunshots and bullets flew past his head and through the covert van, creating a “deafening sound.”<sup>11</sup> Officer ██████ ducked and continued to drive, trying to protect himself and Officer ██████. Officer ██████ could not tell where the shots came from initially. More shots than he could count were fired at the covert van. Officer ██████ said he heard gunfire on his left side and felt pain to his lower back. He then knew he had been shot. Officer ██████ continued driving. He looked to his left and saw a light-colored Chrysler Town and Country minivan pull up alongside the officers’ covert van. A Hispanic man with dark hair was holding a black rifle and shooting at him and Officer ██████. The Hispanic man, whom Officer ██████ did not recognize, was shooting from the open sliding rear door area on the passenger side of the minivan. Officer ██████ saw the rifle’s muzzle flashes.

Officer ██████ said he was shot again in his left hip and twice in his left arm. The bullet impacts knocked him toward the center of the front compartment of the vehicle. Officer ██████ stated he had his “left arm on the steering wheel”<sup>12</sup> and was able to pull himself up. He saw the gunman continuing to fire at him. Officer ██████ said he drew his pistol and fired through the vehicle’s windshield at the Hispanic man who was firing at him (as the minivan pulled ahead of the officers’ vehicle). Officer ██████ estimated that when he began firing, he was between 15 and 20 feet from the Hispanic man who was firing at him. Officer ██████ also fired through their van windshield.

Officer ██████ added that the minivan, which was driving in the wrong (westbound) lane of 43<sup>rd</sup> Street, was ahead of their van and turning south. Officer ██████ believed that the minivan’s driver intended to position the minivan in front of their van so the open sliding door area, from where the gunman was firing, would be facing the officers when it turned. However, the minivan did not “commit” to the turn and instead sped away eastbound on 43<sup>rd</sup> Street.

Officer ██████ said he stopped firing his pistol, because the threat posed by the minivan was going away. Although, because he believed the Trailblazer to still be in the area, Officer ██████ believed a threat still existed. By the time Officer ██████ got his van to stop, the offenders’ vehicle was out of sight. Officer ██████ radioed a “10-1,” including that Officer ██████ had been shot. Officer ██████ parked the van. Officer ██████ knew he had been shot at least once in his left arm, his left hip, and in his back. Officer ██████ was checking for other possible wounds, while looking to see where the Trailblazer was and whether the minivan would turn around and re-engage with the officers. He did not see any pedestrians on the scene and did not observe any witnesses.

Officer ██████ and Officer ██████ were treated by paramedics at the scene. Officer ██████ was transported to ██████ Hospital and was treated for gunshot wounds to his lower back, left hip, and upper left arm. He said his left arm was broken by the gunshots. Officer ██████ was discharged from the hospital the following morning.

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<sup>11</sup> *Id.* at p. 24, line 5

<sup>12</sup> *Id.* at p. 27, line 6

Officer █████ said he did not recall knowing █████ now known to be the driver of the Town and Country, or █████ now known to be the alleged shooter (who was subsequently identified by one of the occupants of the Trailblazer as the apparent shooter). He believed the male who fired the rifle was a La Raza member, based on the circumstances. He did not hear gang slogans being shouted during the incident. Officer █████ did not know if the male Hispanic who fired at him and Officer █████ knew they were officers. Officer █████ said █████ and the Trailblazer's driver did not make an indication they knew him or Officer █████. Officer █████ said that he did not unholster his weapon until he saw the gunman in the minivan. Officer █████ was not sure how many times he fired, adding he estimated, "10 or so."<sup>13</sup> Officer █████ learned from a detective that the covert van was struck by more than 25 rounds.

Officer █████ said his body-worn camera was not turned on at the time of the incident.<sup>14</sup> There was no in-car camera or other surveillance equipment in his covert vehicle.

**In his COPA interview on May 6, 2019, Officer █████ said Officer █████ was not his regular partner, but he had worked with him in the past.<sup>15</sup> Officer █████ was in civilian dress, and his protective vest had the CPD insignia, embroidered with his name and star. He and Officer █████ began their tour in an unmarked Ford Explorer.**

Officer █████ said that, on the date of the incident, he believed a shooting had occurred in the █ District, and the shooting victims drove to Archer Avenue and Halsted Street, where they called the police. Several officers, including Officers █████ and █████ responded to Archer Avenue and Halsted Street. Officers █████ and █████ observed an extra hoodie inside the victims' SUV, and the officers concluded there might have been a shooter in that SUV who had been dropped off by the three other victims, before they called police. Officers █████ and █████ decided to switch their unmarked vehicle for a covert van and surveil the victims' SUV to see if they would pick up the person they might have dropped off. The two officers drove to the █ District station, obtained the covert van and drove back to Archer Avenue and Halsted Street to watch the SUV, which was being processed for evidence.

After evidence technicians released the SUV, the victims drove south on Halsted Street. Officer █████ drove the covert van with Officer █████ as passenger as they surveilled the SUV. The SUV went west on 47<sup>th</sup> Street and turned south onto a street west of Halsted and east of Ashland, possibly Loomis or Throop. The SUV was heading into the victims' neighborhood, which was a La Raza gang stronghold. As a result, the two officers decided not to enter that area rather to return to the █ District station via northbound Ashland Avenue.

Officer █████ said as he and Officer █████ traveled northbound on Ashland Avenue, a Trailblazer raced up to the covert van. As the Trailblazer's occupants stared at the two officers, Officer █████ recognized the front passenger as a male named █████ nicknamed "█████"<sup>16</sup>, who he knew as a "very violent gang member."<sup>17</sup> █████ was rumored to be a shooter for

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<sup>13</sup> Att. 197, p. 33, line 6

<sup>14</sup> Due to how quickly the incident unfolded, COPA did not serve allegations for failure to activate body worn camera. Att. 193.

<sup>15</sup> Atts. 187, 198

<sup>16</sup> Att. 198, p. 19, line 11

<sup>17</sup> *Id.* at lines 22-23

the La Raza gang. The Trailblazer drove erratically. When the officers reached 43<sup>rd</sup> Street and Ashland Avenue, “I immediately tell [Officer ██████] ‘Turn,’ or he turns. I’m not sure. One of us said something.”<sup>18</sup> Officer ██████ turned eastbound on 43<sup>rd</sup> Street, and Officer ██████ lost sight of the Trailblazer.

Officer ██████ estimated that within 15 seconds after they turned onto 43<sup>rd</sup> Street, the covert van “erupts. We begin getting just heavy fire directed at us and we’re both shot.”<sup>19</sup> The gunfire was coming from what later was identified as a Chrysler Town and Country minivan. Officer ██████ continued that the minivan was “kind of mirroring us” as the covert van turned onto 43<sup>rd</sup> Street. He saw a muzzle flash coming from the minivan’s passenger-side sliding door.

Officer ██████ said he almost immediately opened fire to stop the threat against him, his partner and the “Back of the Yards”<sup>20</sup> neighborhood. Officer ██████ said he fired through the front window of his covert van, emptying his magazine.<sup>21</sup> He thought his weapon carried 16 rounds. Officer ██████ estimated he was 15 to 25 feet from the guy who was firing at him and Officer ██████ Officer ██████ said he was struck multiple times, including in his back, where he now has pieces of bullet lodged. He said he has a 5.56mm round lodged in his rib cage close to his lungs. Officer ██████ stated that he was hit 18 times by shrapnel and bullets. One bullet went through his vest and through the passenger door of the covert van. When he fired, he aimed at where the muzzle flash was coming from, where he knew the guy was sitting, although he could not see him. From his military service, Officer ██████ said the muzzle flash indicated the shooter was firing a rifle at him. The minivan angled toward the southeast as it turned in front of the covert van. Officer ██████ also fired through the covert van’s windshield. Officer ██████ recalled seeing Officer ██████ blood everywhere and believed he heard Officer ██████ say he was hit.

Officer ██████ said that, after the minivan passed the covert van and headed east on 43<sup>rd</sup> Street, he and Officer ██████ ceased firing because the threat had ended. Officer ██████ reloaded but did not fire again. Officer ██████ did not see where the minivan went. He said he was afraid the offenders would come back and shoot him. He and Officer ██████ exited their van and radioed for help, including an ambulance. Officer ██████ tried to put a tourniquet on Officer ██████ whose left arm was bleeding profusely. Gasoline was pouring out of the covert van, apparently from the gas tank having been struck by a bullet. An ambulance arrived within a minute to transport Officer ██████ to the hospital. Paramedics transported Officer ██████ to ██████ Hospital, where he was treated and released the next morning.

Officer ██████ could not tell how many persons were in the offender’s van. He assumed it was “50/50” whether those in the offender’s van assumed he and his partner were police officers.<sup>22</sup>

Officer ██████ did not know ██████ or ██████ one of the Trailblazer’s occupants, before the incident. Officer ██████ said when ██████ (█████) stared at him and Officer ██████ Officer ██████ knew something bad was going to happen. The hair on his neck stood up. Officer ██████ added that when he suspected something was going to happen, he

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<sup>18</sup> *Id.* at p. 20, line 6

<sup>19</sup> *Id.* at lines 9-10

<sup>20</sup> *Id.* at p. 22, line 5

<sup>21</sup> The magazine’s capacity was 15 rounds, according to Crime Scene Processing Report # ██████, Att. 14

<sup>22</sup> *Id.* at p. 33, lines 10-22

drew his weapon and kept it at the low-ready position. Officer ██████ did not see the offender's van at the same time he saw the Trailblazer. He did not know of any witnesses.

Officer ██████ said the covert van did not have an in-car camera. He believed he was equipped with a body-worn camera but did not recall if it fell off during the incident.<sup>23</sup>

### b. Digital Evidence

The **evidence technician photographs**<sup>24</sup> depict the incident scene at 43<sup>rd</sup> Street and Ashland Avenue, the Town and Country van, the Nissan Murano, the officers' covert van, the recovered .223-cal. rifle, fired cartridge casings, the officers' duty equipment and the two involved officers. The E.T. photographs depict the extensive bullet damage to the driver's side of the covert van and includes at least 20 bullet holes. The exterior bullet hole damage on the driver's side of the covert van extends from the rear cargo door and the taillight area to the driver's door, where the door window was shattered. (See Figures 1, 2, below.) Photographs of the covert van's interior depict apparent blood and bullet damage.



Figure 1.

<sup>23</sup> COPA searched for all BWC from the incident and none from Officer ██████ was located. Att. 192. Due to how quickly the incident unfolded, COPA did not serve allegations for failure to activate their camera's.

<sup>24</sup> Atts. 88, 89



Figure 2.

The **Crime Scene Processing Reports** indicate that there were 27 bullet holes to the exterior of the covert van.<sup>25</sup> Two copper fragments were recovered from inside the covert van, and a lead fragment was recovered from the lower right front of Officer [REDACTED] outer ballistic carrier (vest). A fired bullet was recovered from the interior of the rear lift gate door of the Town and Country minivan, along with two fired bullets recovered from its passenger-side tires.<sup>26</sup>

The **video from [REDACTED]**,<sup>27</sup> depicts the incident at 43<sup>rd</sup> Street and Ashland Avenue. Both Camera [REDACTED] and Camera [REDACTED] are located on the part of the building overlooking 43<sup>rd</sup> Street, facing east towards Ashland Avenue. Camera [REDACTED] depicts the covert Chicago Police Department (CPD) van turning east onto 43<sup>rd</sup> Street from Ashland Avenue as another vehicle, the Town and Country van, turns east onto 43<sup>rd</sup> Street, next to the covert van. It appears that, as the two vehicles drive east on 43<sup>rd</sup> Street, a long, thin object is placed outside the Town and Country van pointed towards the CPD van. Flashes of light occur between the two vehicles. Eventually, police vehicles arrive on the scene. Video from camera [REDACTED], which is slightly east of camera [REDACTED], also depicts the two vehicles traveling east on 43<sup>rd</sup> Street. The Town and Country van passes the covert van, and possible puffs of smoke appear near the driver's side windows of the

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<sup>25</sup> Att. 14, CSPR # [REDACTED]

<sup>26</sup> Att. 15, CSPR # [REDACTED]

<sup>27</sup> Atts. 115, 116; in the video, Att. 116, at approximately 9:09:56 pm, Camera [REDACTED] depicts the two vehicles driving east onto 43<sup>rd</sup> Street and the apparent gunfire. An object consistent with a rifle pointing out the passenger side of the Town and Country towards the CPD cargo van is visible at 9:10:03. At approximately 9:10:07 pm, Camera [REDACTED] depicts the Town and Country van passing the covert van and possible puffs of smoke.

covert vehicle. The videos also depict an SUV, which appears to be the Trailblazer, travelling northbound on Ashland Avenue then doing a u-turn to follow the vehicles onto 43<sup>rd</sup> Street. When the covert van comes to a stop, the SUV also stops for a few seconds, then turns around and drives back to Ashland Avenue.

**Forty body-worn camera videos** recorded onto five discs,<sup>28</sup> were reviewed depicting responding officers in the aftermath of the shooting. None of the videos depict the incident under investigation. The majority of the videos depict officers' activities in response to the incident, such as stopping cars or looking in vacant property for evidence. Videos depict responding officers and supervisors.<sup>29</sup> Injuries to both officers are visible on the videos. A video<sup>30</sup> depicts Officer ██████ being treated for his injuries by officers as he sat on a curb. Paramedics/firefighters take over treating him. Another video<sup>31</sup> depicts Officer ██████ being placed on a gurney and into an ambulance. Video<sup>32</sup> shows Officer ██████ on the scene, describing the incident to officers and a CPD supervisor. During that description, Officer ██████ says he and his partner came down Ashland Avenue from 47<sup>th</sup> Street. The sandstone Trailblazer acted erratically and pulled in front of the officers as they turned onto 43<sup>rd</sup> Street. The sandstone Trailblazer stopped, and a silver minivan came up and "starts smokin' us,"<sup>33</sup> according to Officer ██████

**Three in-car camera videos**<sup>34</sup> were reviewed, and they depict officers responding to the incident scene at 43<sup>rd</sup> Street and Ashland Avenue and a unit driving to the vicinity of ██████ Hospital, where Officers ██████ and ██████ were transported.

The **audio transmissions from the Office of Emergency Management and Communications** include an officer screaming, "My partner's hit!" and descriptions of the search for the Town and Country van, the Trailblazer, the offenders, and the recovered rifle.<sup>35</sup>

### c. Physical Evidence

**Crime Scene Processing Reports**<sup>36</sup> document the recovery of twenty-five .223-cal. casings, fifteen .40-cal. casings and ten 9mm casings. The .223-cal. casings were recovered on street pavement at 1525, 1527, 1531, 1541 and 1555 W. 43<sup>rd</sup> Street. Five of the .40-cal. casings were recovered from the street at 1458 W. 43<sup>rd</sup> Street; ten of the .40-cal. casings were recovered from the interior of the covert van. Four of the 9mm casings were recovered from the street at 1458 W. 43<sup>rd</sup> Street; six 9mm casings were recovered from inside the covert van. A canine unit

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<sup>28</sup> Att. 152

<sup>29</sup> Att. 152, fourth disc, its seventh video, at approximately 9:35, 11:30 and 12:20 minutes, Officer ██████ describes the incident to a number of supervisors, standing on the scene.

<sup>30</sup> Att. 152, fourth disc, its sixth video, at approximately 3:00 minutes

<sup>31</sup> Att. 152, fourth disc, its third video, at approximately 4:00 minutes

<sup>32</sup> Att. 152, fourth disc, its sixth video, at approximately 3:00 minutes, a male voice, now known as Officer ██████ can be heard and seen providing information about the incident, at multiple points, in the video. At approximately 11:13 minutes, Officer ██████ face appears in the video, as he describes the incident.

<sup>33</sup> Att. 152, fourth disc, its sixth video, at approximately 11:50

<sup>34</sup> Atts. 151, 180. The officers' covert van was not equipped with in car camera.

<sup>35</sup> Atts. 27-49 (audio), 183

<sup>36</sup> Atts. 14, 87; Of the 25 casings of .223-caliber, six were PSD (S. Korean, Poong-San Defense brand) 16 casings, without a caliber marking.

discovered the .223-cal. rifle in a vacant lot at 1051 W. 37<sup>th</sup> Street. Both officers' weapons were inventoried. Officer [REDACTED] weapon had a 15-round capacity (total, 15+1).<sup>37</sup> Officer [REDACTED] weapon had a 17-round capacity (total, 17+1). Eight rounds were recovered from Officer [REDACTED] weapon (chamber and magazine), so his weapon was fully loaded.

**Illinois State Police Division of Forensic Services (ISP) Report**<sup>38</sup> indicates the twenty-five .223-cal. casings were fired from the recovered .223-cal. rifle, which was operable.

Another **ISP Report**<sup>39</sup> reflects the weapons of Officers [REDACTED] and [REDACTED] were operable, and they were test fired. The (15) fifteen .40-cal. casings recovered from the scene were fired from Officer [REDACTED] weapon. The (10) ten 9mm casings from the scene were fired from Officer [REDACTED] weapon.

**Another ISP Report**<sup>40</sup> indicates analyzed DNA swabs from the .223-cal. rifle contained profiles that were a mixture of at least four people, and the mixture was not suitable for comparisons or entry into the DNA index.

The **Ambulance Report** for Officer [REDACTED] reflects that when paramedics arrived, he complained of pain in his right shoulder. He had several small lacerations to his right shoulder and a possible gunshot wound from a shotgun.

The **medical records** from [REDACTED] Hospital for Officer [REDACTED] indicate he had multiple lacerations/abrasions to the right side of his back and a superficial abrasion to the left side of his back. It was possible a small object was in the lateral right back area. He was discharged on May 3, 2017, at 6:39 am.

The **Ambulance Report** for Officer [REDACTED] indicates that, when paramedics observed him at the scene, he had a tourniquet on his left arm. He had a single gunshot wound and an abrasion to his left hip and two large circular bruise marks to his back. An entrance gunshot wound was on the right side of his back.

The **medical records** from the same hospital for Officer [REDACTED] reflect he had gunshot wounds to the left arm, left hip, and right abdominal area, and two abrasions along the left back area. Bullet fragments were retained in the right chest wall, the left gluteal region, and the flexor compartment of the left arm. He was discharged on May 3, 2017, at 11:30 am.

#### d. Documentary Evidence

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<sup>37</sup> Because Officer [REDACTED] re-loaded his weapon during the incident, it could not be determined if his weapon was fully loaded prior to the incident. It is not possible to determine if all of his fired casing were recovered.

<sup>38</sup> Att. 105

<sup>39</sup> Att. 108, interpreted in conjunction with Att. 14, Crime Scene Processing Report

<sup>40</sup> Att. 127, interpreted in conjunction with Att. 87, Crime Scene Processing Report

<sup>41</sup> Att. 176

<sup>42</sup> Att. 103

<sup>43</sup> Att. 176

<sup>44</sup> Att. 104

The **Tactical Response Report (TRR)** completed by Officer [REDACTED] indicates he was attacked by an assailant with a firearm and that offender fired first. Officer [REDACTED] reported that he fired 16 shots from his .40-cal. pistol, and he reloaded.

The **Tactical Response Report (TRR)** completed by Officer [REDACTED] indicates he was attacked by an assailant with a firearm and that offender fired first. Officer [REDACTED] fired 10 shots from his 9mm pistol.

The **Arrest Report** for [REDACTED] indicates he was in the Trailblazer that was stopped at 1739 N. Harding Avenue and that he is a documented member of the La Raza street gang. After further investigation by detectives, [REDACTED] was released without charges on May 4, 2017.

The **Arrest Report** for [REDACTED] indicates he was also in the Trailblazer stopped at 1739 N. Harding Avenue. He also is a documented member of La Raza and was released without charges on May 4, 2017.

The **Arrest Report** for [REDACTED] indicates he, a self-admitted La Raza gang member, was arrested on May 5, 2017, at [REDACTED] after being identified as one of two offenders involved in the shooting of Officers [REDACTED] and [REDACTED]. He was arrested and transported to [REDACTED] for further processing. He was charged with aggravated battery and attempted murder.

The **Injury On Duty Report** for Officer [REDACTED] reflects the rifle fire hitting his vehicle caused glass and steel fragments to imbed in and cut his upper back.

The **Injury On Duty Report** for Officer [REDACTED] indicates he sustained multiple gunshot wounds to his left arm, back, and hip.

**Other Detective Supplementary Reports** are materially consistent with other evidence in this investigation.

Other information included in one Detective Supplementary Report<sup>52</sup> was that twenty-five .223-cal. casings were recovered along approximately a quarter of a block on 43<sup>rd</sup> Street. The detectives noted numerous bullet holes in the officers' covert van on both the driver's side and passenger's side. There were approximately 20 holes in the windshield. The driver's door window was shattered, and fired casings were recovered inside the covert van. Detectives located the Town and County van at [REDACTED] and observed that it had two bullet holes and flattened

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<sup>45</sup> Att. 6

<sup>46</sup> Att. 7

<sup>47</sup> Att. 10, pp. 2, 5

<sup>48</sup> Att. 11, pp. 2, 5

<sup>49</sup> Att. 96, p. 2

<sup>50</sup> Att. 82, p. 1

<sup>51</sup> Att. 83, p. 1

<sup>52</sup> Att. 93

passenger-side tires. The two bullet holes were on the front passenger door near the top and in the lift gate.

The same Detective Supplementary Report includes information provided to the detectives by Officers [REDACTED] and [REDACTED]. Officer [REDACTED] said, after Officer [REDACTED] turned the covert van onto 43<sup>rd</sup> Street from Ashland Avenue, Officer [REDACTED] saw a silver minivan<sup>53</sup> in his side passenger mirror. Officer [REDACTED] had his gun in his hand; he then saw the flash on his side of the van and realized the van was being “riddled with bullets.”<sup>54</sup> He ducked and returned fire, through his windshield, after the Town and Country van passed and drove east.

After he was treated at the hospital and released, Officer [REDACTED] went to [REDACTED] where metal fragments were recovered from the hood of the red sweatshirt he wore.

Officer [REDACTED] account is materially consistent with that of Officer [REDACTED]. Officer [REDACTED] also said he felt pain in his back, arm, and hip as the shots were fired at the covert van. The offenders’ van passed on the driver’s side of the covert van, and Officer [REDACTED] saw the front passenger, a young male Hispanic with dark hair, firing a rifle in Officer [REDACTED] direction.

**Another Detective Supplementary Report**<sup>55</sup> includes summarized interviews of the Trailblazer’s occupants: [REDACTED] the passenger, and [REDACTED] the driver. [REDACTED] was a La Raza gang member, and [REDACTED] associated with the gang. [REDACTED] knew [REDACTED] [REDACTED] had been shot near Ambrose gang territory.

[REDACTED] continued that [REDACTED] drove the Trailblazer to a gas station at 39<sup>th</sup> and Morgan Streets, and the Town and Country van also pulled in there. [REDACTED] was driving the Town and Country van, with [REDACTED] in the rear seat. [REDACTED] asked [REDACTED] for gas money, after which both vehicles drove toward Ashland Avenue near the stockyards area. [REDACTED] said [REDACTED] drove north on Ashland Avenue, and [REDACTED] saw the Town and Country van behind a black van near 49<sup>th</sup> Street and Ashland Avenue. The black van turned east on 43<sup>rd</sup> Street, and the Town and Country van followed the black van. [REDACTED] turned the Trailblazer around on Ashland Avenue and drove east on 43<sup>rd</sup> Street. Seconds later, [REDACTED] heard shots. [REDACTED] made a U-turn, and [REDACTED] and [REDACTED] drove back west toward Ashland Avenue. [REDACTED] saw shots coming from the passenger side of the Town and Country van. The people in the black van were shooting through their windshield.

[REDACTED] told detectives that after the Trailblazer and Town and Country van met at 39<sup>th</sup> and Morgan Streets, [REDACTED] spoke with [REDACTED] over the phone. After [REDACTED] drove past the black van, the Town and Country van and the black van turned east onto 43<sup>rd</sup> Street. [REDACTED] turned the Trailblazer around on Ashland Avenue and went east on 43<sup>rd</sup> Street. The Town and Country van was beside the black van, when [REDACTED] heard gunshots coming from the passenger side of the Town and Country van, where he had seen [REDACTED] seated. [REDACTED] saw smoke come from the windshield of

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<sup>53</sup> Later identified as the Town and Country van. Att. 15, p. 5

<sup>54</sup> Att. 93, p. 18

<sup>55</sup> Att. 94

the black van and heard shots. █████ stopped the Trailblazer and turned back toward Ashland Avenue, eventually driving on I-55 to Cicero Avenue.

A **Detective Supplementary Report** includes a summary of the detectives' interview of █████<sup>56</sup> In an Electronically Recorded Interview (ERI) video, █████ first said he was home in bed when the two officers were shot. He later said █████ gave a "chopper"<sup>57</sup> to █████ █████ indicated that █████ shot at the black van containing the two officers, but █████ denied being the driver of the Town and Country van. During a later conversation, █████ admitted he was the driver of the minivan (Town and Country), during the shooting. He said █████ told him to follow the black van when it turned onto 43<sup>rd</sup> Street. The black van was on the passenger side of the minivan. █████ said █████ started shooting at the black van from the front passenger seat. █████ moved to the rear passenger seat and opened the rear sliding door and continued to fire at the black van until he emptied the rifle's magazine. █████ drove past the black van, and the occupants of the black van fired at █████ and █████ turned left at the next street. As █████ drove away, █████ received a phone call from █████ and █████ "yelled" at █████ he "fucked up" because he shot at the police.<sup>58</sup> █████ told █████ he listened to the scanner and he heard there was an "officer down call."<sup>59</sup>

█████ told the detectives he stopped the stolen van at an angle. █████ exited with the rifle and fled. █████ jumped out of the van and ran in a different direction. █████ made his way to Packers Avenue, went home, and went to sleep. █████ initially lied to police officers about his involvement. █████ said he never observed █████ or █████ in another vehicle before or after the incident.<sup>60</sup>

On May 6, 2017, █████ was charged with two counts of aggravated battery/discharge of a firearm and two counts of attempted murder, first degree. On May 8, 2017, a judge signed an arrest warrant for █████

The **Synoptic Report**<sup>61</sup> from the Bureau of Internal Affairs indicates no sobriety tests were performed on the two wounded officers at the direction of the On-Call Incident Commander (OCIC) Commander █████ Bureau of Patrol – █████

#### e. Additional Evidence

The **Criminal Court case**, █████<sup>62</sup> against █████ is pending. █████ is charged with two counts of attempted murder, multiple counts of aggravated battery, and multiple counts of aggravated discharge of a firearm.

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<sup>56</sup> Att. 95, p. 7

<sup>57</sup> Detectives reported that "chopper" refers to the street term, for a rifle or large-caliber firearm. Att. 95, p. 7

<sup>58</sup> Att. 95, p. 8

<sup>59</sup> Att. 95, p. 8

<sup>60</sup> The detectives' written summary of the interview was consistent with the audio recording from █████ ERI. Att. 154.

<sup>61</sup> Att. 81; OCIC █████ waived the tests because the officers had been administered unknown pain medication. Medical records (Atts. 103, 104) did not indicate a blood alcohol level for either officer. COPA issued an Advisory Letter to CPD Superintendent █████ objecting to this practice on June 26, 2019.

<sup>62</sup> Att. 203

On May 3, 2019, ██████ filed a complaint in U.S. District Court against the city of Chicago and the Police Officers involved in his arrest and subsequent interview, alleging that they did not have probable cause to arrest him and forced him to involuntarily confess to involvement in the incident. The lawsuit also alleges the officers did not intervene to prevent the officers' misconduct. The lawsuit has been stayed, pending possible resolution of the criminal case.

## VI. LEGAL STANDARD

### a. Use of Deadly Force<sup>63</sup>

The main issue in evaluating every use of force is whether the amount of force the officer used was objectively reasonable in light of the totality of the circumstances faced by the officer.<sup>64</sup> The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation."<sup>65</sup>

At the time of this incident, the factors to be considered in assessing the reasonableness of force included, but were not limited to, (1) the severity of the crime at issue; (2) whether the subject was posing an immediate threat to the safety of officers or others; and (3) whether the subject was actively resisting arrest or attempting to evade arrest by flight.<sup>66</sup> In all uses of force the goal of a Department member's response is to "resolve the incident with the foremost regard for the preservation of human life and the safety of all persons involved."<sup>67</sup>

At the time of this incident, Department members were permitted to use deadly force<sup>68</sup> in only two situations. First, deadly force may be used to prevent death or great bodily harm from an imminent threat posed to the sworn member or another person. Second, deadly force may be used to prevent an arrest from being defeated by resistance or escape, where the officer 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;
- b. Is attempting to escape by use of a deadly weapon; or

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<sup>63</sup> COPA's analysis focuses solely on whether the officers complied with department policy on the Use of Force and the Use of Deadly Force. COPA cites case-law solely for guidance on how to interpret common concepts or terms.

<sup>64</sup> General Order G03-02(III)(B), effective October 1, 2002-October 15, 2017.

<sup>65</sup> *Plumhoff v. Rickard*, 572 U.S. 765, 775 (2014) (internal quotations and citation omitted).

<sup>66</sup> G03-02 at (III)(C)(1).

<sup>67</sup> General Order G03-02 (II)(A).

<sup>68</sup> Deadly Force is defined by Department Policy as "force which is likely to cause death or great bodily harm and includes (1) the firing of a firearm in the direction of the person to be arrested, even though no intent to kill or inflict great bodily harm; and (2) the firing of a firearm at a vehicle in which the person to be arrested is riding." General Order G03-02-03 at p. 2.

- c. Otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.”<sup>69</sup>

Moreover, Illinois statute, as adopted within Department Policy, dictates that officers “need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. [The officer] 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.”<sup>70</sup>

Additionally, Illinois statute grants civilians the right to use deadly force in self-defense:

“A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.”<sup>71</sup>

#### **b. Standard of Proof**

When evaluating Officer Involved Shootings, COPA follows a **preponderance of the evidence** standard to determine whether the officer has violated department policy and whether allegations are required to be brought against the officer. If a preponderance of the evidence does not show that the officer violated department policy, COPA will find the shooting to be within policy.

A preponderance of evidence is evidence indicating that it is more likely than not that the conduct reviewed complied with Department policy.<sup>72</sup> If the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

## **VII. ANALYSIS**

- a. COPA finds Officers ██████ and ██████ Credible.

COPA evaluated all evidence to weigh the credibility of the involved parties. This included all interviews, reports, crime scene investigation, physical evidence, and Illinois State Police Laboratory results. COPA finds that the statements of Officer ██████ and Officer ██████ were credible. Neither of the officers were impeached by any available evidence. Their explanation of the shooting is corroborated by the available evidence, including the interview of the driver of the Town & Country minivan. ██████ electronically recorded interview corroborates the officers' explanation of the incident. The physical damage to the covert van, caused by bullet holes, as

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<sup>69</sup> General Order G03-02-03(II)A)(2), effective February 10, 2015-October 15, 2017.

<sup>70</sup> General Order G03-02(II) quoting 720 ILCS 5/7-5.

<sup>71</sup> 720 ILCS 5/7-1(a).

<sup>72</sup> *Avery v State Farm Mutual Automobile Insurance Co.*, 216 Ill.2d 100, 191 (2005).

well as the wounds to the officers, are consistent with the location of the Town & Country, as described by the officers and ██████████<sup>73</sup>

b. The Passenger of the Van Fired First.

COPA finds by a preponderance of the evidence that the passenger of the Town and Country van fired upon the officers, before the officers used any force. Crucially, ██████████ admitted in an electronically recorded interview that this was the case — that he was driving the Town and Country when ██████████ opened fire on the covert van. Additionally, both officers describe that the passenger in the van shot at them first. Officer ██████████ explanation to responding officers, while still on scene and captured on BWC of those responding officers, stated that the van came up on them and “starts smokin’ us.”<sup>74</sup>

Moreover, the evidence corroborates this explanation. At least twenty exterior bullet holes in the covert van spanned from the rear cargo door across to the driver’s side door, along with a broken driver’s side window. The path of the bullet holes suggests that the passenger in the Town & Country began firing first as it approached the covert van from the rear and continued to fire as the Town & Country paralleled and nearly overtook the covert van.<sup>75</sup> The video from ██████████ appears to show muzzle flashes occurring between the two vehicles, and puffs of smoke coming from the front of the covert van as the Town and Country drives farther east. The video also depicts the Town and Country overtaking the covert van in a manner consistent with the officers’ and ██████████ explanations.

Additionally, both officers mentioned that the shooter may not have recognized them as officers. Their efforts to be covert may have been so effective that the occupants of the Town & County did not notice the CPD insignias on their bullet proof vests, which was the only conspicuous sign that they were CPD officers. Additionally, the officers’ knowledge of the gang war and expectation of retaliation for the original shooting to which they were responding, combined with their awareness of increased vulnerability in their particular geographic location, combine to provide a plausible context for the brazen act of shooting at these officers at least 25 times.

c. **Officers ██████████ and ██████████ Were Objectively Reasonable in Their Use of Deadly Force.**

The evidence supports a finding that both Officer ██████████ and Officer ██████████ were objectively reasonable in their use of deadly force in response to the use of deadly force upon them. Based

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<sup>73</sup> COPA relied upon the electronically recorded interview (ERI) of ██████████ and did not personally interview him. ██████████ initially lied about his involvement in this incident, and his self-motivation to minimize his role cannot be discounted, considering his pending criminal case. However, ██████████ statements relevant to this administrative investigation – specifically the actions of ██████████ and both officers - have been independently corroborated by physical evidence and other interviews, and, therefore been found credible and reliable. COPA specifically references those statements within the analysis.

<sup>74</sup> Att. 152, fourth disc, its sixth video, at approximately 11:50.

<sup>75</sup> This also corroborates the initiation of the gunfire, as described by ██████████ and both officers, as well as illustrates how the officers suffered gunshot wounds to their backs. The Town & Country was essentially in the driver’s “blind spot” of Officer ██████████ when the gunfire began.

upon the evidence, COPA finds that both officers encountered the same threat and that both officers were equally vulnerable in their proximity to the passenger shooting from the side door of the Town and Country. Officer [REDACTED] was perhaps even more vulnerable, considering that he was both attempting to continue to drive the covert van and because he had less distance between himself and the passenger shooter. Neither officer reasonably had the ability to seek cover from the passenger shooter to avoid this encounter. Both officers returned fire to both protect their own lives as well as each other's, as demonstrated in Officer [REDACTED] statement in which he acknowledged awareness that his partner had been shot while still engaged in this encounter. Additionally, considering that the physical evidence demonstrates the passenger shooter fired a rifle at least 25 times, COPA applies its findings that both officers were objectively reasonable in their use of deadly force to all of the shots fired by Officers [REDACTED] and [REDACTED]. Their use of a combined 26 bullet discharges is proportionate to the use of deadly force they encountered, and even as such, was not successful in stopping the initial escape of both the occupants of the Town and Country.

Not only were the officers presented with an imminent threat of deadly force likely to cause death or great bodily harm, that threat was executed. Both officers, in fact, were being caused great bodily harm by being shot multiple times. It was clear to the officers that [REDACTED] was actively using deadly force capable of causing death or great bodily harm, and it was objectively reasonable for them to use deadly force under G03-02-03(II)(A)(2). In addition, while neither officer articulated that the Town and Country was attempting to "defeat arrest," the facts demonstrate that the officers reasonably used deadly force being additionally justified under all three prongs of G03-02-03(II)(A)(2). In fact, even civilians confronted with this situation would be justified in using deadly force in self-defense pursuant to Illinois Statute, 720 ILCS 5/7-1.

As the preponderance of the evidence demonstrates, (1) the passenger shooter used deadly force capable of causing death or great bodily harm to both officers, (2) the passenger shooter did not immediately cease fire, even after both officers fired upon him, and (3) both officers, in fact, suffered great bodily harm when each of them were shot during this encounter. Considering a totality of the circumstances, the evidence demonstrates that an officer with similar training and experience as Officers [REDACTED] and [REDACTED] would reasonably believe the passenger shooter posed an immediate – and actual – threat of death or great bodily harm and that the use of deadly force was necessary to prevent their deaths or further great bodily harm.

### VIII. CONCLUSION

Based on the analysis set forth above, COPA finds the decisions of Officers [REDACTED] and [REDACTED] to discharge their weapons in the direction of the passenger shooter were objectively reasonable and complied with the Chicago Police Department's General Order G03-02-03 Deadly Force and Illinois state statute and were, therefore, Within Policy.

Approved:



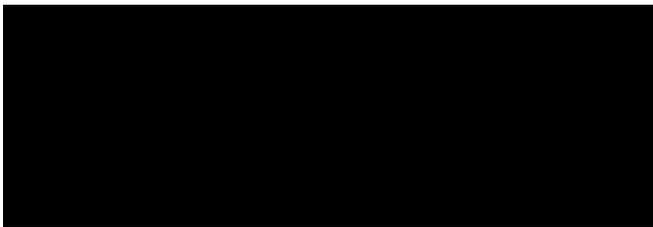
7-24-2020

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Angela Hearts-Glass  
Deputy Chief Administrator

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Date



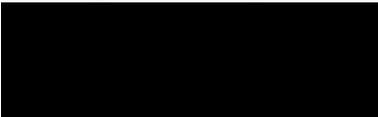
7-24-2020

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Andrea Kersten  
Deputy Chief Investigator

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Date



7-24-2020

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Sydney Roberts  
Chief Administrator

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Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	█
<b>Investigator:</b>	██████████
<b>Supervising Investigator:</b>	██████████████████
<b>Deputy Chief Administrator:</b>	Angela Hearts-Glass