



Log # 2020-4063

FINAL SUMMARY REPORT¹

I. EXECUTIVE SUMMARY

On August 30, 2020, at approximately 2:59 am, the Chicago Police Department's Crime Prevention and Information Center (CPIC) notified the Civilian Office of Police Accountability (COPA) of an officer-involved shooting that occurred that morning, at approximately 2:33 am, at 3309 W. Polk Street. The On Call Incident Commander, Deputy Chief Francis Valadez, informed COPA at the scene that the incident occurred after CPD officers attempted a traffic stop of an Impala, but it drove away.² Officers later observed the Impala parked at the Polk Street address and approached the car, which was on a residential parking area facing east. Initially, the officers did not see anyone inside the Impala although its engine was running, and the car's doors were locked. The officers saw a handgun on the front passenger seat and eventually saw ██████ crawl from the trunk area of the car's interior to the passenger area. The rear seat had been pulled down. ██████ went toward the front seat area, where the gun was located. The officers told ██████ to exit the car, which he did not.

Officer Luis Otero II finally broke the driver's door window with an asp. The officers opened the driver's door and pulled ██████ out. As he was pulled out, ██████ picked up the gun from the front seat and held it as he was put onto the grass north of the Impala. Officers Otero and Isaac Varela struggled with ██████ on the ground while calling for assistance. Responding officers pulled up on Polk Street, and some of them jumped over a fence along Polk Street to go to the Impala.

Officer Gabriel Cruz jumped over the fence and observed Officers Otero and Varela struggling with ██████. Officer Cruz heard a gunshot and saw one of the officers fall back. ██████ got up off the ground and ran northeast toward Polk Street, along the fence, while holding his gun. Officer Cruz fired five times at ██████ who fell and raised his gun toward Officer Cruz. Officer Cruz then fired approximately 10 more times at ██████. Two responding officers, Crystal Escobedo and Charles O'Connor,³ also fired their handguns at ██████. ██████ was wounded in his right thigh and left elbow, and he fell to the ground. His handgun was recovered three to five feet away from him. It was later determined later that Officer Otero also fired his handgun twice during the incident.

¹ Appendix A includes case identifiers such as the date, time, and location of the incident, the involved parties and their demographics, and the applicable rules and policies.

² Att. 1, pgs. 4, 5.

³ Officer O'Connor is now a Detective, but for this report, he will be referred to by the rank he held at the time of the incident.

██████████ was transported to Loyola Medical Center for medical treatment. Officers Otero and Varela were also struck by gunfire during the incident, and responding officers transported them to Stroger Hospital in CPD vehicles.

Upon review of the evidence, COPA served allegations that Officers Otero, Varela, Escobedo, O'Connor, Cruz, and responding Officers Adrian Grosvenor, Nicholas Mrozek, Alain Aporongao, Taylor Golden, Yesenia Contreras, Ivan Robles, and John Rafferty Jr. all failed to timely activate their body-worn cameras (BWCs). Additionally, COPA served an allegation that Officer Cruz did not complete the annual required qualification on his firearm. Following its investigation, COPA reached a sustained finding regarding the allegations of untimely BWC activations and of Officer Cruz not completing the required qualification on his firearm.

II. SUMMARY OF EVIDENCE⁴

In his COPA statement on November 23, 2020,⁵ Officer Adrian Grosvenor relayed that he and Officer Rafferty were driving in their SUV when ██████████ car passed in front of them with no front license plate. The officers attempted to stop the car but it continued to drive on Homan Avenue until it reached Polk Street. The officers followed the car in an attempt to obtain the rear license plate number; however, they did not pursue the car as it drove east on Polk Street. Later, the officers located the car after it parked in the lot of 3309 W. Polk St. Officer Rafferty parked behind the car and to its right. The officers turned on the SUV's lights, but the car's windows were darkly tinted, and they could not see inside.

The officers exited their SUV and issued commands for the occupant(s) to roll down their windows; however, there was no movement from the car. The officers called for an assist unit, and Officers Varela and Otero arrived. Officers Varela and Otero parked their vehicle a little ahead of the car and illuminated it with spotlights and take-down lights. While looking inside the car, Officer Grosvenor saw a handgun with an extended magazine near the center console but did not see anyone inside the car. Officer Grosvenor informed his partner about the gun, and they talked about towing and impounding the car. Officers Varela and Otero had a coat hanger and used it to try to unlock one of the car's doors, as well as the sunroof. Officer Rafferty talked with Officer Grosvenor about the possibility that someone was in the car because the rear seat was ajar. Officer Grosvenor then saw ██████████ feet inside the car kick the back seat forward.

██████████ exited the trunk area and entered the car's driver's seat, where the gun was located. The officers drew their firearms and ordered ██████████ to exit, but ██████████ attempted to start the engine. Officer Grosvenor told ██████████ to keep his hands on the steering wheel because it appeared as if he were trying to put his hands near the firearm. Officer Varela then broke the

⁴ The following is a summary of what COPA finds most likely occurred during this incident. This summary utilized information from several different sources, including BWC footage, police reports, a civilian interview and officer interviews.

⁵ Atts. 107, 108. Officer Grosvenor resigned from CPD effective June 24, 2022.

driver's side window using an asp. Officer Grosvenor saw the driver's door swing open, and he asked, "Is he [REDACTED] out of the vehicle?"⁶ Within approximately 15 seconds, [REDACTED] was outside of the car. Officer Grosvenor holstered his firearm and tried to put [REDACTED] into handcuffs. Officer Grosvenor tried to apply pressure to a point behind [REDACTED] right ear, but that did not work. [REDACTED] continued to struggle and tried to defeat the arrest.

Officer Grosvenor said at that time, he heard one loud bang and someone screaming. Officer Grosvenor believed the sound was a gunshot, but he did not see anyone fire a weapon at that point and the officers' weapons were holstered. Officer Grosvenor believed [REDACTED] was shooting at the officers, and Officer Grosvenor tried to get away to seek cover. As he ran, he heard multiple gunshots and thought he was being shot at. He turned around and assessed the scene as shots were still being fired. Officer Grosvenor went back to the incident scene where he found [REDACTED] on the ground and Officers Varela and Otero shot. Officer Grosvenor did not see any officers fire their weapons during the incident.

Officer Grosvenor asserted that he did not think anyone was in the car when he saw the weapon inside and did not activate his BWC; however, once [REDACTED] jumped into the driver's seat the BWC was activated.

In his COPA statement on November 10, 2020,⁷ Officer John Rafferty Jr. provided an account of the incident that was consistent with Officer Grosvenor's account. In addition, Officer Rafferty said that during the struggle with [REDACTED] he helped bring [REDACTED] to the ground, and he tried to get [REDACTED] right arm loose from under his body. At that point, Officer Rafferty could not see [REDACTED] left hand. [REDACTED] then began shooting, and Officer Rafferty sought cover behind [REDACTED] car as a bullet went past his head. However, Officer Rafferty did not see officers fire their weapons.

Officer Rafferty explained his late BWC activation was likely because he failed to fully press the activation button; however, he checked his camera again when he heard another officer's BWC beep, at which point he activated his own BWC.

Officer Rafferty's BWC⁸ depicts most of the incident. The footage shows Officer Rafferty walking near the passenger side of [REDACTED] car while attempting to see inside it using his flashlight. At the same time, another officer worked a wire into the partly open sunroof. Before the beginning of the audio,⁹ Officer Rafferty and other officers drew and pointed their firearms at [REDACTED] car. Officer Rafferty then remarked about a gun in the car.¹⁰ The Officers told [REDACTED] to keep his hands up or keep them on the steering wheel, to unlock the door, and to get out of the car. At that point, the footage captured the sound of an officer striking one of the car's windows,

⁶ Att. 108, pg. 29, lns. 13, 14.

⁷ Atts. 20, 98. Officer Rafferty resigned from CPD effective October 6, 2022.

⁸ Att. 22.

⁹ Att. 22, at 1:36.

¹⁰ Att. 22, at 2:08.

while the engine revved and the vehicle moved a short distance backwards. [REDACTED] and at least two officers were on the driver's side of [REDACTED] car, and then on the ground.¹¹ During the struggle on the ground, a sound consistent with a gunshot was heard.¹² Several more gunshots were heard, followed by Officer Rafferty calling a "10-1 on Polk."¹³ More gunshots followed. Officer Rafferty radioed, "Officer down on Polk."¹⁴ Officer Valera appeared to check on Officer Otero, but then Officer Valera fell backwards. Assisting officers helped Officer Valera, who was wounded, walk to a squad car.¹⁵ Officers and a sergeant treated Officer Otero until he was placed into a CPD SUV and driven from the scene.¹⁶

In his COPA statement on December 11, 2020,¹⁷ Officer Luis Otero II said his partner, Officer Varela, received a cell phone call from Officer Rafferty, requesting assistance with a traffic stop. Officer Varela drove their SUV to 3309 W. Polk St. and parked on the passenger side of [REDACTED] car. Officer Otero's description of what he saw inside the car and [REDACTED] actions are consistent with Officers Grosvenor and Rafferty's accounts of the incident.

Additionally, once [REDACTED] was in the driver's seat, Officer Otero ordered [REDACTED] to unlock the door. [REDACTED] did not comply and his right hand was not visible. Officer Varela broke the car window and unlocked the door. After Officer Otero holstered his firearm, he and Officer Varela grabbed [REDACTED] and escorted him from the car. Officer Otero then saw [REDACTED] trying to stand in a possible attempt to flee. Officer Otero used an emergency takedown on [REDACTED] and he ended up on top of [REDACTED] legs, while Officer Varela was on [REDACTED] left arm. Officer Rafferty approached on the right side and tried to control [REDACTED] right arm, however, [REDACTED] was able to get his left arm free. Officer Otero then felt pressure on his left arm and heard gunshots. Officer Otero threw himself back and felt more pressure in his abdomen area and pain in his back.¹⁸ Officer Varela had a grip on [REDACTED] left hand or left arm, and he was trying to bring the hand back so [REDACTED] could be handcuffed. Officer Otero saw [REDACTED] body twist as if he were trying to roll onto his back, causing Officer Otero to be on his back. At this point, Officer Otero saw [REDACTED] raise his firearm toward Officer Varela.

Officer Otero drew his own firearm and fired at [REDACTED] who was approximately 15 to 20 feet away. Officer Otero then re-holstered his firearm, closed his eyes, and laid flat on the ground. Officer Varela assisted in dragging Officer Otero to safety. Officers and Sgt. Matthew Schaller provided first aid to Officer Otero, who was then transported to the hospital by Officer Colucci.

¹¹ Att. 22, at 3:19.

¹² Att. 22, at 3:29.

¹³ Att. 22, at 3:38. "10-1" is radio code for "Officer needs help."

¹⁴ Att. 22, at 3:53.

¹⁵ Att. 22, at 6:12.

¹⁶ Att. 22, at 11:33 to 12:26.

¹⁷ Atts. 126, 153.

¹⁸ This was a result of Officer Otero being struck by [REDACTED] gunfire.

Officer Otero did not see any officer fire their weapon during the incident. Additionally, Officer Otero explained that, initially, he did not activate his BWC because he was not sure if he would be doing police duties when he and his partner arrived at the scene; however, after activity began, he realized his camera was not on, and he activated it.¹⁹

Officer Otero's BWC²⁰ depicted essentially the same information as the officer's statement and other BWC footage. Additionally, the footage captured Officer Valera breaking the driver's door window as ██████ looked out from the driver's seat with his hands up, holding a cell phone in his left hand. An officer opened the driver's door and ██████ was taken out of the car while he appeared to be holding a metal object. After an officer and ██████ were on the ground, a shot was heard, and Officer Otero screamed in pain and fell backward. Numerous additional shots were then heard.

In his COPA statement on December 9, 2020,²¹ Officer Isaac Varela provided an account that was consistent with the other officers' statements, as well as BWC footage. Additionally, Officer Varela said that he broke the driver's door window because ██████ was not obeying verbal commands and was in close proximity to the gun. Officer Varela gave ██████ the opportunity to cooperate by telling him to exit the vehicle; however, ██████ instead revved the car's engine. Officer Varela reached into the car, opened the driver's door, and he and Officer Otero pulled ██████ out of the car. The officers performed an emergency take-down of ██████ bringing him face-down onto the ground.

Officer Varela said that when he holstered his firearm to handcuff ██████ he saw a muzzle flash in front of him from the direction of ██████ Officer Varela did not see ██████ firing a gun; however, he looked up and saw ██████ hit the ground near the fence and a firearm drop by his side. Officer Varela got up and heard Officer Otero screaming. Officer Varela moved Officer Otero out of the line of possible fire, without realizing he had been shot as well.²²

Officer Varela did not see anyone fire their weapon during the incident. Additionally, Officer Varela explained that he did not think he was going to take police action at the scene because he did not see anyone inside ██████ vehicle, which is why he did not activate his BWC until he realized he was going to have to take police action.²³

In his COPA statement on September 15, 2020,²⁴ Officer Gabriel Cruz provided an account that was consistent with those of the other officers. Officer Cruz was working with Officers Aporongao and Golden when they responded to the request for assistance with a traffic

¹⁹ Officer Otero stated that he did not author his TRR and could not explain why it did not indicate he had discharged his firearm.

²⁰ Att. 25.

²¹ Atts. 110, 127.

²² Officer Varela was stuck by gunfire in his left armpit.

²³ Officer Varela explained that it was a mistake to not have activated his BWC when he used a coat hanger to try to enter ██████ car.

²⁴ Atts. 14, 100.

stop involving an armed person. Upon arrival at the scene, Officer Cruz saw officers trying to gain control of ██████████ was being pulled out of his car on the driver's side, down to the ground. Officer Cruz jumped over a fence and heard shots being fired.

Officer Cruz heard words to the effect of, "I'm shot," or "My partner's shot,"²⁵ so he knew an officer had been shot. Officer Cruz then saw the still-armed ██████████ break free from the officers. Officer Cruz, who was at most 10 feet from ██████████ drew his firearm and fired at ██████████ fell to the ground, and Officer Cruz stopped firing because he thought the threat had ended. As Officer Cruz approached ██████████ rolled over on the ground and aimed his gun in the officer's direction. Officer Cruz then fired at ██████████ again. Officer Cruz said he saw ██████████ gun fly into the air and land approximately a foot away from ██████████

Officer Cruz did not see any other officers fire their weapons during the incident. Officer Cruz explained that he picked up ██████████ firearm to create distance between the gun and ██████████ Additionally, Officer Cruz added that he activated his BWC when the shooting stopped, and he was approaching ██████████ Officer Cruz stated that he did not have a chance to activate his BWC beforehand, as he was trying to get over the fence and heard one or two shots. Officer Cruz further explained that he intended to qualify with his firearm in 2020, but because of COVID, the civil unrest, and the 12-hour shifts, he could not find the time to do the qualification.

Officer Cruz's BWC video²⁶ is consistent with his statement. Additionally, the footage captured Officer Cruz draw his firearm and pursue ██████████ on foot.²⁷ At one point,²⁸ after ██████████ was lying on the ground, a pinpoint of light appeared at least once from ██████████ position as he faced Officer Cruz. The officer immediately told OEMC, "shots fired, I got the weapon," and he requested that they send an ambulance and notify his sergeant.²⁹ Officer Cruz then picked up a handgun³⁰ from the ground near ██████████ Officer Cruz cut away some of ██████████ clothing, apparently looking for any injury, before he helped place ██████████ into handcuffs.

In her COPA statement on September 9, 2020,³¹ **Officer Crystal Escobedo** provided an account consistent with the other officers and the BWC footage. Additionally, Officer Escobedo stated that, upon arrival at the scene, she sprinted toward the other officers on the ground with ██████████ Officer Escobedo heard three muffled gunshots, but she did not see anyone fire a gun. When she heard the shots, she took cover while she drew her firearm and moved toward the right front tire of ██████████ car. Officer Escobedo peeked out from her position of cover and saw ██████████ on his feet, firing his gun in the direction of officers. Officer Escobedo told ██████████

²⁵ Att. 100, pg. 15, ln. 22.

²⁶ Att. 26.

²⁷ The audio does not begin until after the shots were fired.

²⁸ Att. 26, from 1:48.

²⁹ Att. 26, from 2:06-2:08.

³⁰ Att. 26, from 2:52.

³¹ Att. 15, 96.

twice to drop his weapon.³² Officer Escobedo heard more shots as [REDACTED] fired toward her, and she responded by returning fire one time. [REDACTED] then fell to the ground near the fence. After Officer Escobedo fired, she saw [REDACTED] discard his firearm while lying on the ground. Officer Escobedo said she yelled something like, “Gun down,” or “He threw the gun,”³³ and she holstered her gun while approaching [REDACTED] and assisted in handcuffing.

Officer Escobedo explained that she failed to timely activate her BWC because she thought she and her partner were just going to pass by the traffic stop. However, as soon as she realized she was going to get involved in the incident, she activated her BWC.

Officer Escobedo’s BWC³⁴ is consistent with her statement and the other BWC footage. Additionally, her BWC captured four gunshots,³⁵ followed by additional gunshots. Officer Escobedo yelled, “Drop the gun,”³⁶ then fired once.³⁷

In her COPA statement on November 10, 2020,³⁸ Officer Yesenia Contreras provided an account of the incident that was consistent with the other officers’ statements and the BWC footage. Additionally, Officer Contreras relayed that she heard approximately 20 gunshots, but she did not know if the shots were from [REDACTED] or officers because she did not see anyone fire a gun. Officer Contreras explained that she failed to timely activate her BWC because she had not expected to take any police action before exiting her vehicle.

In his COPA statement on September 18, 2020,³⁹ Officer Charles O’Connor was consistent with the other officers, as well as the BWC footage. Officer O’Connor reported that he was standing on the sidewalk, outside of the fence, when he heard approximately three gunshots that sounded very muffled and a distance away. Officer O’Connor then heard louder gunshots but did not see who fired them. Officer O’Connor took cover behind a car parked on the south side of Polk Street, and he reported 12 to 14 gunshots to OEMC. Officer O’Connor, who had already drawn his firearm, stood up from behind cover. He saw Officer Cruz firing at [REDACTED] and [REDACTED] exchanging gunfire with Officer Cruz. [REDACTED] then fled, and Officer O’Connor aimed his gun and fired one round at [REDACTED] who was approximately 20 to 30 feet away.

Officer O’Connor denied that he failed to timely activate his BWC. He explained that he activated his BWC as soon as possible, but because of the situation, he did not check to make sure it was activated.

³² Att. 96, pg. 50, lns. 2 to 3.

³³ Att. 96, pg. 36, lns. 15 to 16.

³⁴ Att. 27.

³⁵ Att. 27 at 1:59.

³⁶ Att. 27 at 2:04.

³⁷ Att. 27 at 2:05.

³⁸ Atts. 18, 102. Officer Contreras resigned from CPD effective October 6, 2022.

³⁹ Atts. 16, 97.

In his COPA statement on November 23, 2020, Officer Nicholas Mrozek,⁴⁰ was consistent with other officers and the BWC footage. Additionally, Officer Mrozek stated that he checked ██████ car for additional weapons and occupants. While checking the car, Officer Mrozek heard several gunshots but did not see anyone fire a weapon. Officer Mrozek then took protective cover. When he got up to try to assess the situation, he heard multiple rounds being fired and went for cover behind a car. Officer Mrozek explained that he believed he had activated his BWC; however, after the scene was secure, he realized he had not activated it.

In his COPA statement on November 10, 2020,⁴¹ **Officer Ivan Robles** provided an account that was consistent with the other officers and the BWC footage. Officer Robles reported that he was next to Officer O'Connor when Officer O'Connor fired a single shot; however, Officer Robles took cover and could not see what or whom Officer O'Connor fired at. Officer Robles also saw Officer Cruz fire his weapon, but he did not see the ██████ fire. Officer Robles explained that he forgot to activate his BWC despite normally activating it when he exits his squad car. Once he realized his BWC was not activated, he activated it.

In her COPA statement on October 23, 2020,⁴² **Officer Taylor Golden** was consistent with the other officers and the BWC footage. Officer Golden stated that she did not see anyone fire a gun; however, during a break in the gunshots, she attempted to see what was occurring and heard a bullet go past her. Officer Golden also saw Officer Cruz near ██████ who was on the ground with a firearm nearby. Officer Golden denied that she failed to timely activate her BWC. She explained that she did not turn on her BWC when her vehicle's emergency lights were activated because she thought she and her partners were just going to check with the officers on the traffic stop and keep going.

In his COPA statement on October 23, 2020,⁴³ **Officer Alain Aporongao** provided an account that was consistent with those of the other officers and the BWC footage. Additionally, Officer Aporongao stated that he heard multiple gunshots. When there was a break in the gunfire, Officer Aporongao attempted to check the area from his cover position, but a bullet struck the street about a foot in front of him. Officer Aporongao returned to cover and heard more gunshots. When the shots stopped, he looked out and saw Officer Cruz standing over ██████ who was on the ground, with a firearm a few inches away. Officer Aporongao then went over the fence with the help of Officer Golden. Officer Aporongao explained that he failed to timely activate his BWC because, while he was enroute to the scene, he did not think he would have to take police action.

In a telephone interview with COPA on December 23, 2020,⁴⁴ ██████ reported that he observed officers looking into ██████ car and banging on the car windows. The car's parking lights came on, which prompted ██████ to think someone was in the car. ██████ also heard

⁴⁰ Atts. 106, 109.

⁴¹ Atts. 21, 99.

⁴² Atts. 19, 103. Officer Taylor resigned from CPD effective October 5, 2022.

⁴³ Atts. 17, 101

⁴⁴ Atts. 129, 135.

the car's engine as its driver pressed the accelerator. The brake lights came on, then went off. The officers continued to bang on the car, and ██████ saw one of the car doors open. At that point, the officers pulled ██████ from the front driver's side. ██████ then heard gunshots but did not see anyone fire a weapon.

CPD detectives video-interviewed witness ██████⁴⁵ who provided an account consistent with the officers, ██████ and the BWC footage. While ██████ heard gunfire, he did not see anyone fire a gun.

A Detectives' Case Supplementary Report⁴⁶ summarized the interviews that detectives conducted with ██████ and ██████ who also provided accounts consistent with the officers, other civilian witnesses, and BWC footage. Both ██████ and ██████ recounted hearing 15 and 20 gunshots respectively, but they did not see who fired.

The medical records for ██████ reflect that he had gunshot wounds to his left elbow, which was fractured, and to his right thigh, with the femur fractured. Bullet fragments were retained in the wounds. ██████ was alert and oriented at the hospital. In one part of the medical records,⁴⁸ ██████ told medical personnel that he did not know what happened, only that he got shot by the police. Following treatment, he was released from the hospital on September 15, 2020, and remained in police custody.

Officer Otero's Tactical Response Report (TRR)⁴⁹ did not reflect that he fired his weapon; however, because of Officer Otero's injuries, Sergeant Michael Krueger completed the TRR before interviewing Officer Otero.

The **TRRs of Officers Varela, Cruz, Escobedo, O'Connor, Golden, Grosvenor, Rafferty, and Aporongao⁵⁰** were consistent with the statements of the officers and civilians witnesses, the BWC footage, and each other.

A report from the Illinois State Police (ISP) Division of Forensic Services⁵¹ noted that ██████ tested positive for gunshot residue, indicating that he had discharged a firearm, contacted a primer gunshot residue-related item, or had both hands in the environment of a discharged firearm.

⁴⁵ Att. 79

⁴⁶ Att. 148.

⁴⁷ Atts. 133, 134.

⁴⁸ Att. 133, pg. 39.

⁴⁹ Att. 8.

⁵⁰ Att. 9.

⁵¹ Att. 152.

A **CPD Evidence Submission Form** indicated that 22 fired cartridge casings were recovered from the scene, along with one fired bullet.⁵² **ISP reports**⁵³ detailed the examination and testing of the ballistics evidence, with the following results:

- Two 9mm Luger +P casings were fired from Officer Otero’s firearm;
- One 9mm Luger +P casing was fired from Officer O’Connor’s firearm;
- One 9mm Luger +P casing was fired from Officer Escobedo’s firearm;
- Sixteen 9mm Luger +P casings were fired from Officer Cruz’s weapon;
- Two .40 caliber casings were fired from the weapon recovered near [REDACTED] and
- One fired bullet was fired from the weapon recovered near [REDACTED]⁵⁴

CPD CLEAR records⁵⁵ showed that the last date Officer Cruz completed the annual prescribed weapon qualification was January 30, 2019.

III. ALLEGATIONS

Officers Luis Otero, Isaac Varela, Gabriel Cruz, Charles O’Connor, Crystal Escobedo, Adrian Grosvenor, Nicholas Mrozek, Alain Aporongao, Taylor Golden, Yesenia Contreras, Ivan Robles, and John Rafferty

1. Failed to timely activate your body-worn camera in violation of Special Order S03-14.
 - Sustained, violation of Rules 2, 3, 5, and 6.

Officer Gabriel Cruz

2. Violated General Order U-04-02, Uniform and Property/Department Approved Weapons and Ammunition, in that you did not complete the annual required qualification on your weapon, a Springfield Armory USA, XDM.
 - Sustained, violation of Rules 5 and 6.

IV. CREDIBILITY ASSESSMENT

This investigation did not reveal any evidence that caused COPA to question the credibility of any of the individuals (sworn or unsworn) who provided statements.

⁵² Att. 33.

⁵³ Att. 131, 151.

⁵⁴ ISP described the gun recovered near [REDACTED] as “inoperable.” Att. 151. A COPA evidence specialist confirmed with ISP on October 30, 2023, that a replacement barrel was used to test-fire the cartridges in the gun.

⁵⁵ Att. 197.

V. ANALYSIS⁵⁶

a. The firearm discharges of Officers Otero, Cruz, Escobedo, and O'Connor

i. CPD policy governing the use of deadly force.

CPD members are expected to gain the voluntary compliance of subjects, when consistent with personal safety, to eliminate the need to use force or reduce the force that is needed.⁵⁷ Members may only use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject or prevent escape.⁵⁸ The main issue in evaluating every use of force is whether the amount of force used by the member was objectively reasonable considering the totality of the circumstances faced by the member on the scene. Factors to be considered include but are not limited to a) whether the subject is posing an imminent threat to the member or others; b) the risk of harm, level of threat or resistance presented by the subject; and c) the subject's proximity or access to weapons.⁵⁹

The use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person.⁶⁰ A threat is imminent when it is objectively reasonable to believe that 1) the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; **and** 2) the subject has the means or instruments to cause death or great bodily harm; **and** 3) the subject has the opportunity and ability to cause death or great bodily harm.⁶¹ Officers may use deadly force to prevent an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay. Deadly force may not be used on a fleeing person unless the subject poses an imminent threat.⁶²

ii. The officers' use of deadly force complied with CPD policy.

COPA finds it was objectively reasonable for Officers Otero, Cruz, Escobedo, and O'Connor to discharge their firearms during this incident. The officers' use of deadly force complied with CPD policy, as it was objectively reasonable to believe that [REDACTED] actions were immediately likely to cause death or great bodily harm unless action was taken. [REDACTED] was armed with a firearm and had the means or instruments to cause death or great bodily harm. He also had the opportunity and ability to cause death or great bodily harm, as demonstrated by his repeated firearm discharges at the officers. Further, [REDACTED] continued to present a threat as he

⁵⁶ For a definition of COPA's findings and standards of proof, *see* Appendix B.

⁵⁷ Att. 190, General Order G03-02 II(C), Use of Force (effective February 29, 2020 – April 15, 2021).

⁵⁸ Att. 190, G03-02 III(B).

⁵⁹ Att. 190, G03-02 III(B)(1).

⁶⁰ Att. 190, G03-02 III(C)(3).

⁶¹ Att. 190, G03-02 III(C)(2) (emphasis added).

⁶² Att. 190, G03-02 III(C)(4)(a).

fled from the officers. The officers were justified in using deadly force to prevent [REDACTED] arrest from being defeated by resistance or escape, as [REDACTED] was still armed and posed an imminent threat of death or great bodily harm unless arrested without delay.

More specifically, the evidence shows that Officer Otero had holstered his firearm and was attempting to handcuff [REDACTED] when Officer Otero was shot. Officer Otero then drew his weapon and fired at [REDACTED] as he observed [REDACTED] raising his firearm toward Officer Varela. Officer Cruz heard officers say they had been shot, and he saw [REDACTED] fleeing while still armed. At that point, Officer Cruz discharged his own firearm at [REDACTED]. After [REDACTED] fell to the ground, Officer Cruz stopped firing because he believed the threat had ended. Officer Cruz then began to approach [REDACTED] but [REDACTED] rolled over on the ground and aimed his gun in Officer Cruz's direction. Officer Cruz again fired at [REDACTED] who posed an imminent threat of death or great bodily harm to Officer Cruz and everyone else in the vicinity. Officer Escobedo took cover and ordered [REDACTED] to drop his gun, but [REDACTED] fired at her and she returned fire. Finally, Officer O'Connor also fired once at [REDACTED] after he saw [REDACTED] and Officer Cruz exchange gunfire.

The officer statements, eyewitness accounts, BWC videos, and physical evidence all support the conclusion that [REDACTED] discharged his firearm at officers during the encounter, causing both Officer Otero and Officer Varelas to sustain gunshot wounds. Under these circumstances, COPA finds the officers' use of deadly force was objectively reasonable, necessary, and proportional to the circumstances they faced, and their actions complied with CPD policy.

b. Failure to Timely Activate BWCs

COPA finds that Allegation #1 against Officers Otero, Varela, Cruz, O'Connor, Escobedo, Grosvenor, Mrozel, Aporongao, Golden, Contreras, Robles, and Rafferty, that they failed to timely activate their BWCs, is **sustained**. CPD members are required to activate their BWCs "at the beginning of an incident," or "as soon as practical," for "all law-enforcement-related activities."⁶³ Here, COPA finds law-enforcement-related activities commenced when the officers first approached [REDACTED] parked car. Despite this, all 12 officers failed to activate their respective BWCs until after [REDACTED] emerged from the trunk of his car and/or the officer observed fellow officers engaging with [REDACTED]. These failures violated CPD policy and Rules 2, 3, 5 and 6.

c. Failure to Annually Qualify with a Firearm

COPA finds Allegations #2 against Officer Cruz, that he failed to properly qualify with his firearm, is **sustained**. CPD members are required to "qualify annually with all prescribed, alternate

⁶³ Law-enforcement-related activities include but are not limited to: "calls for service; investigatory stops; traffic stops; traffic control; foot and vehicle pursuits; arrest; use of force incidents; seizure of evidence; interrogations; searches, including searches of people, items, vehicle, buildings, and places; statements made by individuals in the course of an investigation; requests for consent to search; emergency driving situations; emergency vehicle responses were fleeing suspects or vehicle may be captured on video leaving the crime scene; high-risk situations; any encounter with the police that becomes adversarial after the initial contact; arrestee transports; any other instance when enforcing the law." Att. 191, S03-14 III(A)(2) (a-r), Body Worn Cameras (effective April 30, 2018, to December 29, 2023).

prescribed, or auxiliary firearms....”⁶⁴ Here, it is undisputed that Officer Cruz did not qualify with his prescribed firearm as required by policy. This failure violated CPD policy and Rules 5 and 6.

VI. DISCIPLINARY RECOMMENDATION

a. Complimentary and Disciplinary Histories

Officer Otero II has received 63 various awards and has no discipline history in the last five years.⁶⁵

Officer Varela has received 47 various awards and two SPARS in 2023, one for a preventable traffic accident and the other for being absent from an assignment or duty.⁶⁶

Officer Cruz has received 104 various awards. Additionally, in 2021, Officer Cruz received a reprimand for a traffic violation.⁶⁷

Officer O’Connor has received 116 various awards. In 2021, Officer O’Connor received a reprimand for failing to inventory arrestee property. In 2022, Officer O’Connor received a reprimand for insubordination. In 2023, Officer O’Connor received a three-day suspension for threatening enforcement action as retaliation.⁶⁸

Officer Escobedo has received 27 various awards. Additionally, in 2023, Officer Escobedo received a SPAR for failure to perform an assigned task.⁶⁹

Officer Mrozek has received 10 various awards. Additionally, in 2022, Officer Mrozek received a SPAR for a preventable accident.⁷⁰

Officer Aporongao has received 99 various awards. Additionally, in 2023, Officer Aporongao received two SPARs for inattention to duty and an improper search.⁷¹

Officer Robles has received 70 various awards. Additionally, in 2023, Officer Robles received four SPARs, two for failure to perform an assigned task, one for inattention to duty, and one for a preventable accident.⁷²

⁶⁴ Att. 188, U04-02 II(D)(4), Department Approved Weapons and Ammunition (effective February 29, 2020, to May 6, 2021).

⁶⁵ Att. 218.

⁶⁶ Att. 217.

⁶⁷ Att. 215.

⁶⁸ Att. 220.

⁶⁹ Att. 219.

⁷⁰ Att. 210.

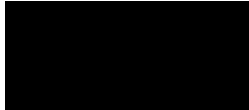
⁷¹ Att. 212.

⁷² Att. 213.

b. Recommended Discipline⁷³

COPA has found that Officers Otero, Varela, Cruz, O'Connor, Escobedo, Mrozek, Aporongao, and Robles violated Rules 2, 3, 5, and 6 by failing to timely activate their BWCs during this incident. Additionally, Officer Cruz violated Rules 5 and 6 by failing to qualify with his firearm in accordance with CPD's Uniform and Property directive. In light of the circumstances of this incident, combined with the officers' complimentary and disciplinary histories, COPA recommends that each officer receive a **reprimand and retraining**.

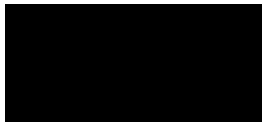
Approved:



Steffany Hreno
Deputy Chief Administrator – Chief Investigator

1/18/2024

Date



Andrea Kersten
Chief Administrator

1/18/2024

Date

⁷³ COPA's disciplinary recommendations do not include Officers Grosvenor, Rafferty, Contreras, or Golden, due to their resignations from CPD.

Appendix ACase Details

Date/Time/Location of Incident:	August 30, 2020 / 2:33 am/ 3309 W. Polk St., Chicago, IL.
Date/Time of COPA Notification:	August 30, 2020/ 2:59 am
Involved Member #1:	Officer Luis Otero II / Star #3276 / Employee ID # [REDACTED] / DOA: November 27, 2018 / Unit: 012 / Male / Hispanic.
Involved Member #2:	Officer Gabriel Cruz / Star #2844 / Employee ID # [REDACTED] / DOA: July 15, 2013 / Unit: 011 / Male / Hispanic.
Involved Member #3:	Officer Crystal Escobedo / Star #5259 / Employee ID # [REDACTED] / DOA: June 25, 2018 / Unit 025/714 / Female / Hispanic.
Involved Member #4:	Officer Charles O'Connor / Star #8546 / Employee ID # [REDACTED] / DOA: August 29, 2016 / Unit 011 / Male / White.
Involved Individual #1:	[REDACTED] / Male / Black.

Applicable Rules

- Rule 2:** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.
- Rule 3:** Any failure to promote the Department's efforts to implement its policy or accomplish its goals.
- Rule 5:** Failure to perform any duty.
- Rule 6:** Disobedience of an order or directive, whether written or oral.
- Rule 8:** Disrespect to or maltreatment of any person, while on or off duty.
- Rule 9:** Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 10:** Inattention to duty.
- Rule 14:** Making a false report, written or oral.
- Rule 38:** Unlawful or unnecessary use or display of a weapon.
- Rule __:** *[Insert text of any additional rule(s) violated]*

Applicable Policies and Laws

- General Order G03-02, Use of Force (effective February 29, 2020 – April 14, 2021).⁷⁴
- Uniform and Property U04-02 Department Approved Weapons and Ammunition (effective February 29, 2020 – May 6, 2021).⁷⁵
- Special Order S03-14, Body Worn Cameras (effective April 30, 2018 – December 28, 2023).⁷⁶

⁷⁴ Att. 190.

⁷⁵ Att. 188.

⁷⁶ Att. 191.

Appendix B

Definition of COPA's Findings and Standards of Proof

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

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

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that a proposition is proved.⁷⁷ For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with CPD policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the “beyond-a-reasonable doubt” standard required to convict a person of a criminal offense. Clear and convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.”⁷⁸

⁷⁷ See ██████ v. *State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005) (a proposition is proved by a preponderance of the evidence when it is found to be more probably true than not).

⁷⁸ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4th ed. 2000)).

Appendix C**Transparency and Publication Categories**

Check all that apply:

- Abuse of Authority
- Body Worn Camera Violation
- Coercion
- Death or Serious Bodily Injury in Custody
- Domestic Violence
- Excessive Force
- Failure to Report Misconduct
- False Statement
- Firearm Discharge
- Firearm Discharge – Animal
- Firearm Discharge – Suicide
- Firearm Discharge – Unintentional
- First Amendment
- Improper Search and Seizure – Fourth Amendment Violation
- Incidents in Lockup
- Motor Vehicle Incidents
- OC Spray Discharge
- Search Warrants
- Sexual Misconduct
- Taser Discharge
- Unlawful Denial of Access to Counsel
- Unnecessary Display of a Weapon
- Use of Deadly Force – other
- Verbal Abuse
- Other Investigation