

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	January 15, 2017
Time of Incident:	Approximately 7:23 pm
Location of Incident:	4546 N. Kedzie Avenue
Date of IPRA Notification:	January 15, 2017
Time of IPRA Notification:	Approximately 8:34 pm

On January 15, 2017, at approximately 7:23 pm, off-duty Sergeant Elvis Ortega² was walking west on Wilson Avenue with his brother, ██████████ and their friend, ██████████ after visiting a friend. Sgt. Ortega stopped in an alley to urinate. ██████████ and ██████████ continued walking and crossed Kedzie Avenue. A southbound Toyota sedan stopped near them, and the driver, later identified as ██████████³ displayed a handgun. Someone in the Toyota made gang references. ██████████ and ██████████ raised their hands, backed away and said they were not “on that (gang) shit,”⁴ or, “We’re nothing,”⁵ referring to gang affiliation. ██████████ drove the Toyota into the parking area of a McDonald’s restaurant, 4546 N. Kedzie Avenue. Sgt. Ortega walked across Kedzie Avenue toward where his vehicle, a Ford Expedition SUV, was parked facing south in front of the McDonald’s. He had observed the interaction between the occupants of the Toyota and his brother and ██████████ and warned them something might happen if the Toyota returned.

██████████ drove the Toyota around the rear of the McDonald’s restaurant and came back out onto Kedzie Avenue heading northbound. Sgt. Ortega was now standing in front of his vehicle. The Toyota stopped north of Sgt. Ortega’s vehicle, and ██████████ looked at Sgt. Ortega and reached over. Sgt. Ortega saw a muzzle flash from the Toyota and believed the driver fired twice at him. Sgt. Ortega drew his handgun and fired at the Toyota’s driver. He also announced his office and told his brother to call the police. ██████████ drove the Toyota north on Kedzie Avenue, and Sgt. Ortega ran north along the west sidewalk using parked cars as cover. After the Toyota stopped at Wilson Avenue, Sgt. Ortega again identified himself and told the Toyota’s occupants to show their hands. The Toyota continued north on Kedzie Avenue. Sgt. Ortega returned to his vehicle, where his brother and ██████████ were located.

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

² Sergeant Ortega is now a Lieutenant, star #457, assigned to the 15th District. For this report, he will be referred to as “Sergeant Ortega” to reflect his rank at the time of the incident under investigation.

³ The spelling of ██████████ name appeared differently among different reports.

⁴ Att. 116, p. 16, lines 6, 7 within Sgt. Ortega’s account

⁵ Att. 116, p. 18, lines 10, 11 within ██████████ account

The driver of the Toyota drove to Swedish Covenant Hospital, where [REDACTED] was treated for a gunshot wound to his head. The gun [REDACTED] used, a revolver, contained two spent casings and four live rounds and was recovered on the hospital grounds. [REDACTED] and [REDACTED] a passenger, were taken into custody and arrested following this incident and were prosecuted. [REDACTED] pled guilty to Attempted Murder; [REDACTED] pled guilty to Unlawful Use of a Weapon by a felon. As part of their felony plea agreements, they stipulated under oath to facts consistent with this Executive Summary.⁶

II. INVOLVED PARTIES

Involved Officer #1:	Elvis Ortega; star #1092; employee ID#[REDACTED]; Date of Appointment: December 18, 2000; Sergeant; 19 th District; Date of Birth: [REDACTED]1975; male; Hispanic
Involved Individual #1:	[REDACTED] Date of Birth: [REDACTED] 1994; 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.

Officer	Allegation	Finding/ Recommendation
Sergeant Elvis Ortega	1. That on January 15, 2017, at approximately 7:23 p.m., at 4546 N. Kedzie Avenue, he violated General Order U-04-02, Uniform and Property/Department Approved Weapons and Ammunition, II, F, in that he had not completed the annual required qualification on his weapon, a Glock Model 30, Serial Number HP0568/HPD568, registration number R024412S.	Sustained/Violation Noted

⁶ Atts. 174-177, 185-186.

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6, "Disobedience of an order or directive, whether written or oral."
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General Orders

1. General Order G03-02-03, Deadly force. Issued February 10, 2015 (rescinded October 15, 2017).
 2. General Order U-04-02, Uniform and Property/Department Approved Weapons and Ammunition, II, F. Issued December 27, 2013.
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- 1.
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State Laws

1. 720 ILCS 5/7-5 (1986)

V. INVESTIGATION⁷**a. Interviews**

In an Electronically Recorded Interview⁸ with a detective and an assistant state's attorney (ASA) on January 16, 2017, witness ██████ said that at the time of the incident, she and her mother were in the area of the McDonald's restaurant. As they walked north on Kedzie Avenue toward the McDonald's, a northbound black sedan (determined to be the Toyota driven by ██████) drove past them, and the driver yelled to ██████ "King killer bitch!" ██████ said she was not involved in gangs but knew there were a lot of Latin King gangbangers in the area. She assumed the driver thought she and her mother were gang members. ██████ and her mother entered the McDonald's and sat in a booth.

██████ said she was about to walk outside to smoke a cigarette, looked up before going out, and did not see anyone; it was dark outside, but streetlights were lit. Approximately 30 seconds later, she saw two males, who appeared to be Hispanic, walking on the sidewalk. One male was heavy-set and in his 30s. The other male was thinner and approximately 26 or 27 years old⁹. She did not see anything in their hands. ██████ saw the same black car traveling north on Kedzie Avenue, and its driver's side faced ██████. The car's front window (apparently driver's window)

⁷ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁸ Atts. 110, 160

⁹ The heavier male apparently was Sgt. Ortega; the thinner male apparently was one of Sgt. Ortega's companions, who was not further identified.

was open, while the back windows were closed. The driver's head was sticking out of the window, and he was shouting at the two Hispanic males. ██████ looked down and then back up and both saw and then heard "gun flashes."

██████ further explained that she saw gun flashes coming from the black sedan, but could not say if the driver or a back-seat passenger was firing. The heavy-set Hispanic male (determined to be Sgt. Ortega) who had been on the sidewalk was firing at the black sedan from behind an Expedition vehicle, while the second Hispanic male¹⁰ was not firing. ██████ could not say who fired first; she was in shock and scared. ██████ told persons inside McDonald's, including children, to get away from the windows. She locked doors of the restaurant to prevent anyone from running inside.

██████ said she saw the thinner of the two male Hispanics¹¹ run north toward Wilson Avenue, and the black sedan sped off northbound. After the incident ended, ██████ heard someone say that someone from the back seat of the black sedan got into the driver's seat on top of the male driver, who had been shot, and drove the car away. She could not say where the heavy-set male Hispanic went. "Everything happened so fast," according to ██████

In an Electronically Recorded Interview¹² of witness ██████ on January 16, 2017, an ASA first summarized ██████ account of the incident, the accuracy of which ██████ confirmed. ██████ account was that at approximately 7:30 p.m. on January 15, 2017, ██████ was riding in her four-door, black, Toyota Avalon that was driven by the subject, ██████ near the McDonald's restaurant at 4546 N. Kedzie Avenue. ██████ showed a gun to two individuals on the street and then drove the car through the McDonald's parking lot and came back. ██████ stopped the car on Kedzie Avenue. ██████ pointed a gun out his window. ██████ said she heard someone say they were the police. ██████ heard ██████ shoot and then she heard several other shots and ducked down. ██████ drove off but stopped abruptly. ██████ noticed that ██████ was shot, so she jumped in front (to drive) and took him to the hospital.

The assistant state's attorney then showed ██████ three photographs of persons involved in the incident. ██████ identified a photo (marked #1) as being that of ██████ (last name unknown), whom she knew through a friend named ██████ or "Jelly." ██████ identified a photo (marked #2) as being that of ██████ (last name unknown), who went to the same high school as did ██████ identified another photo (marked #3) as being that of ██████ (last name unknown), whom ██████ knew because he also went to the same high school.

██████ added that on the date of the incident, she was with ██████ and ██████ driving around in ██████ car. They drank three bottles of Hennessy (cognac) from cups while in the car and consumed cocaine. They picked up ██████ At some point, ██████ drove ██████ car to ██████ house, where ██████ car also was located. At approximately 3 p.m. or 4 p.m., ██████ got into her own car, which ██████ drove. ██████ sat behind ██████ sat next to

¹⁰ It was not determined which of Sgt. Ortega's companions this person was. Sgt. Ortega and his two companions were grouped near his vehicle during the shooting.

¹¹ It was not determined whom ██████ was describing. The accounts from Sgt. Ortega, his brother and ██████ described Sgt. Ortega as running north toward Wilson Avenue.

¹² Atts. 111, 161

██████████ and ██████████ sat next to ██████████. They were going to get another bottle and return to ██████████ house, but they just bought another bottle of Hennessy and drove around.

██████████ said she knew ██████████ to be in a gang, saying he was an “Unknown,” which the detective who sat in on the interview said was an offshoot of the Latin Kings. ██████████ said ██████████ was in the “Cobra” gang. ██████████ said she heard ██████████ yell out gang slogans two or three times while he was driving her car. Before ██████████ drove near the McDonald’s, he asked a male on a sidewalk what he was. ██████████ told the male, “King killer,” and “Stone killer.” The male on the sidewalk did not respond, and ██████████ drove off. When ██████████ drove near the McDonald’s, there were some women outside, but ██████████ did not say anything to them.

When asked if ██████████ said other gang slogans, ██████████ said that ██████████ asked two other guys on Kedzie Avenue what they were wearing while he pointed a gun at them. Those two males were on the passenger side of ██████████ car. The passenger-side windows of the car were open. The two males responded by putting their hands up and backing up. ██████████ drove off. ██████████ wanted to go home, and ██████████ drove around through the McDonald’s lot, coming back onto northbound Kedzie Avenue. ██████████ saw a person on the driver’s side of her car with his hands up and placed together (she held up her clasped hands to show what the person was doing). ██████████ pointed his gun outside the window toward that person, who was standing behind a black vehicle. ██████████ slowed the car. ██████████ could not see if the person who was standing behind the black vehicle was holding anything in his hands. ██████████ said that when she saw the person standing behind the black vehicle, she squatted all the way down and heard someone outside yell, “Police!” as ██████████ pointed his black gun toward the person who had his hands clasped. ██████████ then shot the gun, which caused her ears to ring. ██████████ fired once or twice. ██████████ was looking at ██████████ gun. After ██████████ fired, she heard three or four shots. Some of those shots were coming from outside her vehicle. ██████████ closed her eyes when she heard shots. When she opened her eyes she yelled, “No, no, no!” ██████████ saw ██████████ leaning on his side, dripping blood from the top right part of his head. ██████████ drove forward but then stopped.

██████████ said, “We heard, ‘Put your hands up. Put your hands up.’” ██████████ put her hands up and “slid on top of ██████████ to be able to drive. ██████████ did not get out of the vehicle to get into the driver’s seat. She told ██████████ to pull his legs back to enable her to drive the car, which he did. She also moved the seat back. During the trip to Swedish Covenant Hospital, “Jelly” was saying, “I love you.” When ██████████ arrived at the hospital emergency room area, she pulled ██████████ out of the car. She did not see his gun and did not look for it. ██████████ was able to walk, and ██████████ said she assisted in getting him inside the hospital while yelling for a doctor. ██████████ was with her and helped. After ██████████ was in the emergency room, ██████████ exited the hospital to move her car, the engine of which was still running. A hospital guard told ██████████ not to move her car, but ██████████ took off in ██████████ car. ██████████ did not see where ██████████ went, but he eventually returned to the hospital and told her where he parked it. ██████████ drove her car home and had her mother drive her back to the hospital, where she spoke with officers.

In an Electronically Recorded Interview¹³ with a detective and an ASA on January 16, 2017, witness ██████████ was provided her Miranda rights by the ASA, who summarized ██████████ account.

¹³ Atts. 112, 162

█████ confirmed the account, which indicated that on the date of incident, █████ rode in a car with █████ and another guy and a girl, whom she did not know. They drank while they were driving around for a “good number” of hours. █████ had drunk so much that she did not remember what occurred until █████ fell on top of █████ and he was bleeding. The other girl in the car then jumped into the driver’s seat and drove to the hospital. At some point after █████ fell on █████ recalled seeing a gun around him. █████ identified a photograph the ASA showed her as depicting █████

█████ said she grew up with and dated █████ On January 14, 2017, █████ picked her up in his car at a Citgo station after sundown. An unidentified male and a girl she had seen while attending Amundsen High School were in the car with █████ who was driving. █████ identified a girl depicted in a photograph provided by the ASA as the girl who sat behind █████ in the car. █████ identified a male who was depicted in a third photograph as the unidentified male who was in █████ car. The four of them drove around and drank from three bottles of alcohol (three “fifths”). On January 15, 2017, the four of them eventually exited █████ car and entered the car of the girl in the photograph. The girl’s car had four doors.

█████ said she sat in the front passenger seat in the girl’s car. █████ drove the girl’s car. The girl was sitting behind █████ The unidentified male sat behind █████ They drove around “all of Chicago.”

█████ said she was “too drunk” to remember where the four of them traveled on January 15, 2017. She recalled being on Lake Shore Drive, someone getting cigarettes at one point, and possibly being off Lincoln Avenue and sitting in the car. She did not remember driving past a McDonald’s on Kedzie and Wilson avenues. She recalled hearing gunshots only when █████ got shot while in the driver’s seat. She did not remember if █████ window was up or down at that time. █████ heard the girl screaming inside the car, saying he (█████ was shot. █████ fell on top of █████ The girl jumped on top of █████ and drove to the hospital. While going to the hospital, persons in the car told █████ to stay awake. █████ said she thought she saw a gun near █████ adding she saw an object next to him. She also said she was not sure if it was a bottle or a gun. █████ carried █████ into Swedish Covenant Hospital. She did not see where the gun went.

In his statement to COPA¹⁴ on January 16, 2018, Sgt. Ortega said that at the time of the incident, he was off-duty and wearing a black leather jacket, a brown hooded sweatshirt, and blue jeans. He was with his brother, █████ and a friend, █████ They had visited a friend at a house on Wilson Avenue between Troy Street and Albany Avenue, where Sgt. Ortega had consumed one beer. The three men were walking west on Wilson Avenue toward Kedzie Avenue. Sgt. Ortega went into an alley to urinate. █████ and █████ walked ahead and crossed Kedzie Avenue to its west side. Sgt. Ortega stopped at Kedzie Avenue because of a stoplight. █████ and █████ went south on Kedzie Avenue, and Sgt. Ortega walked south and crossed Kedzie Avenue to the west side of that street. He was going toward his vehicle, a maroon Ford Expedition that was parked southbound on Kedzie Avenue in front of the McDonald’s.

¹⁴ Atts. 145, 153

Sgt. Ortega continued that a black four-door Toyota car pulled up next to his brother and [REDACTED]. There was some talking, and then the Toyota pulled up into the McDonald's driveway, blocking the sidewalk. Sgt. Ortega saw the Toyota's driver reach over. [REDACTED] and [REDACTED] leaned toward the car driver to talk to him, and then [REDACTED] and [REDACTED] put up their hands and backed away from the Toyota, indicating, "We're not on that shit."¹⁵ Sgt. Ortega said his brother might have made that remark. Sgt. Ortega was not sure if his brother and [REDACTED] were being robbed. He said a gun was pulled on his brother and [REDACTED]. He started walking toward them and the Toyota, which took off. Sgt. Ortega asked his brother and [REDACTED] what happened, and, "They were like, 'The driver's awfully pissed on us.'"¹⁶ Sgt. Ortega did not exchange words with the driver. Sgt. Ortega said he later learned that the driver asked his brother and [REDACTED] "What they be about?"¹⁷ meaning what gang they were in. The driver identified himself as, "Stones" or "Stone Love."¹⁸

Sgt. Ortega said the Toyota drove into the McDonald's lot and went around the back of the restaurant. Sgt. Ortega was near the McDonald's entrance, and he told his brother and [REDACTED] "Look it, if the car comes back our way, you're gonna have to take cover, because the chances are that something might happen."¹⁹ Sgt. Ortega said when he, his brother, and [REDACTED] were near the McDonald's entrance, the Toyota was right there. The Toyota exited the McDonald's lot from the south entrance. The driver stared at Sgt. Ortega, his brother, and [REDACTED] and then drove, slowly turning northbound onto Kedzie Avenue. Sgt. Ortega then said, "Let's go."²⁰ He, his brother, and [REDACTED] walked to Sgt. Ortega's car and stood on the parkway. Sgt. Ortega stood at the front of his car. His brother and [REDACTED] went toward the middle of the car.

Sgt. Ortega stated that the Toyota stopped a little past his car. The driver stopped, looked, and reached over. Sgt. Ortega saw a muzzle flash from the Toyota. The driver had fired in Sgt. Ortega's direction from 15 to 30 feet away through his open window. He believed the driver fired twice at him. Sgt. Ortega unholstered his handgun and leaned over his car and fired at the Toyota's driver. Sgt. Ortega said he had not identified himself as a police officer before the Toyota driver fired at him or before he discharged his own weapon. Sgt. Ortega stopped firing after the Toyota driver was no longer a danger. Sgt. Ortega then announced his office, saying, "Chicago Police. Let me see your hands."²¹ He said the passengers, not the driver, in the Toyota had their hands up. Sgt. Ortega told the driver, "Police, let me see your hands."²²

Sgt. Ortega added that he then moved from in front of his car to the street, moving from a cover position. He saw movement again in the Toyota's front seat area, and he thought the driver was going to start shooting again. Sgt. Ortega fired one more shot, and the Toyota drove away. He said he did not remember if he saw the driver's gun being pointed at him when he fired his final shot. Sgt. Ortega considered the driver an active shooter because the shooter was still in the car

¹⁵ Att. 153; Page 12, Line 21.

¹⁶ Att. 153; Page 13, Lines 3-5.

¹⁷ Att. 153; Page 42, Lines 4-5.

¹⁸ Att. 153; Page 42, Line 6.

¹⁹ Att. 153; Page 13, Lines 10-12.

²⁰ Att. 153; Page 13, Line 18.

²¹ Att. 153; Page 18, Line 11.

²² Att. 153; Page 18, Line 17.

and, to Sgt. Ortega's knowledge, the gun was still in the car. His brother and ██████ took cover behind a car.

After the Toyota drove away northbound, Sgt. Ortega returned to the sidewalk. He told his brother to call the police, and Sgt. Ortega started running alongside the parked cars northbound, using them as cover. He said the Toyota stopped suddenly at Wilson Avenue. Sgt. Ortega said he stopped behind the Toyota and yelled, "Chicago Police. Let me see your hands."²³ The Toyota took off fast northbound. There were three passengers in the car, two females and one male. He said the front passenger was a female. A long-haired person and a short-haired person were sitting in the back seat.

Sgt. Ortega said he, his brother, and ██████ were not injured in the incident. He added that the driver's side rear-view mirror on his vehicle had an apparent bullet hole in it. He did not know if a bullet was recovered from the mirror. Sgt. Ortega said his brother and ██████ were not engaged in gang activity.

During his statement, Sgt. Ortega viewed several parts of videos²⁴ and identified himself, his brother and ██████

Sgt. Ortega said his Tactical Response Report should have reflected his belief that the offender in the Toyota fired twice at him, rather than the one time indicated in the TRR.

In his statement²⁵ to COPA on September 25, 2019, regarding the allegation against him for failure to qualify, Sgt. Ortega said the weapon he fired during the incident under investigation was an Alternate Prescribed Weapon²⁶ that he qualified with in 2015. He stated he thought he had qualified with the weapon in 2016. He said he did subsequently qualify with the involved weapon in May of 2019. .

COPA attempted to interview ██████ and ██████ but their attorneys declined.²⁷

b. Digital Evidence

██████ of ██████ recorded video²⁸ of part of the incident from his second-floor apartment, which had a view east toward Kedzie Avenue. The video depicts Sgt. Ortega,²⁹ who is wearing a dark-colored hooded sweatshirt. He is standing on the south side of a dark-colored SUV (later determined to be his Expedition) parked facing south at approximately 4546 N. Kedzie Avenue. The timecode at the top of the video indicates 7:20:58

²³ Att. 153; Page 21, Lines 6-7.

²⁴ Atts. 62 – cellphone video recorded by ██████ 88 – surveillance footage from North Side Automotive.

²⁵ Atts. 192, 196

²⁶ The Police Department restricts what weapons officers can carry and use. An "alternate prescribed weapon" (firearm) is a firearm that may be used/carried in lieu of a prescribed firearm.

²⁷ Atts. 114, 151

²⁸ Atts. 62, 85, 163

²⁹ Sgt. Ortega viewed this video and identified himself for COPA investigators.

p.m. hours. Sgt. Ortega is pointing a gun in the direction of a dark-colored sedan (involved Toyota) that is stopped north of him, on Kedzie Avenue, facing north. Another apparent male (later determined by Sgt. Ortega to be ██████████ who is standing near Sgt. Ortega ducks down. Movement is observed inside the dark-colored sedan, in the driver's area. Sgt. Ortega appears to fire his pistol once in the direction of the dark-colored sedan, which drives off northbound. Sgt. Ortega runs north along the west sidewalk. The male who stood near Sgt. Ortega and another male (██████████ as later identified by Sgt. Ortega), who was not visible initially but was crouched on the west side of the dark-colored SUV, follow Sgt. Ortega, but get behind a white van parked north of the dark-colored SUV. Sgt. Ortega crosses Kedzie Avenue in a northeast direction. The video ends. The video appears to have recorded one shot, fired by Sgt. Ortega.

A video file from cameras at North Side Automotive³⁰, 4535 N. Kedzie Avenue, which was located across the street from the shooting scene, depicts part of the incident.³¹ The fourth file, labeled "Ch 08 20170115190202" depicts at least two persons, ██████████ and ██████████ walking west on Wilson Avenue, across Kedzie Avenue, to the west sidewalk. Sgt. Ortega walks south on Kedzie Avenue from Wilson Avenue and crosses Kedzie Avenue westbound. The subjects' sedan drives south on Kedzie Avenue and, turns from Kedzie Avenue into a driveway on the west side of Kedzie Avenue and stops. A person (later identified by Sgt. Ortega as himself) walks alongside the driver's side of the dark-colored sedan, which drives into the parking lot. There is a dark-colored SUV or pickup truck parked facing south along the west sidewalk.

At approximately 7:20:23 p.m., the subjects' sedan stops north of where the dark-colored SUV or pickup truck was located. Sgt. Ortega is standing south of the dark-colored SUV/pickup truck and has his arm extended as if holding a gun and pointing it in the direction of the subjects' sedan. Although no flashes from a gun discharge are observable, a northbound car immediately behind the subjects' sedan stops and suddenly reverses southbound. At approximately 7:21:12 p.m., the subjects' sedan drives off northbound. Sgt. Ortega runs north on Kedzie Avenue and on the west sidewalk as the subjects' sedan drives north.

Video from the McDonald's restaurant³² depicts a dark-colored sedan that drives west into the restaurant lot and then south out of camera range. Less than a minute later, a dark-colored sedan stops northbound on Kedzie Avenue and remains there for almost a minute. Approximately eight seconds after the sedan moves again, a person appears to run north on the sidewalk in front of McDonald's, followed by two other persons. Another video from a camera with a view of the south side of McDonald's depicts the dark-colored sedan driving toward the drive-up ordering/pickup area. The sedan drives east and then appears to turn left, or north onto Kedzie

³⁰ Atts. 88, 164

³¹ Sgt. Ortega was shown this video during his interview on January 16, 2018. He identified his brother, ██████████ and their friend, ██████████ crossing Kedzie Avenue westbound. Sgt. Ortega identified himself as crossing Kedzie Avenue westbound before the subjects' sedan pulls up. He said a gun was pointed at his brother and ██████████. The sedan pulls into the McDonald's. Sgt. Ortega said he, his brother and ██████████ are seen moving. The sedan drives onto Kedzie and stops northbound. Sgt. Ortega says shots were fired from the sedan and then he fired. The sedan drives north and stops at the light (at Wilson Avenue). Sgt. Ortega said the video shows him running north along the cars parked on the west side of Kedzie Avenue. He said his brother or ██████████ was also running with him. Att 153, pp. 48-51

³² Atts. 81, 193, 194

Avenue. An apparent police vehicle, its blue emergency lights on, drives onto the McDonald's property before the video ends.

Another video from the McDonald's³³ depicts reaction by customers and employees inside the restaurant at the time of the incident. At approximately 7:20 p.m., customers move, leave or get on the floor of the restaurant. At approximately 7:22 p.m., a man who appears to be a manager goes out the front door and then returns. At approximately 7:23 p.m., a blue light outside is observed in the dining area.

Video from POD 3051³⁴, which was located on the southeast corner of Wilson and Kedzie Avenues, possibly depicts Sgt. Ortega, [REDACTED] and [REDACTED] walking near the intersection prior to the incident, but the shooting incident is not depicted because of the camera position.

Video files from cameras at Swedish Covenant Hospital³⁵ depict relevant images. One video, at approximately 7:24 p.m., depicts a dark-colored sedan stopping at the Emergency Department entrance and a female³⁶ exiting the driver's seat. From the car, she pulls out a male³⁷ wearing a green shirt and assists him in walking toward the hospital doorway. A person, possibly male³⁸ with dark hair and holding a dark coat, exits the rear seat of the car, on the passenger side, and walks toward the front of the car, out of camera view. Another female³⁹ exits the car and runs through the hospital doorway. Two apparent security guards look in the car. At approximately 7:25 p.m., the two females [REDACTED] and [REDACTED] exit the hospital and go to the car. Apparent security guards talk to them. A male, who appears to be possibly the person who exited the rear seat of the car, walks to the driver's side of the car, talks with [REDACTED] and [REDACTED] and then drives the car away at approximately 7:28 p.m. [REDACTED] and [REDACTED] re-enter the hospital. At approximately 7:30 p.m., [REDACTED] and [REDACTED] appear to exit the hospital and walk away. [REDACTED] returns approximately two minutes later, but then goes back in the direction from where she had come.

Another video file from the driveway camera depicts [REDACTED] and [REDACTED] moving in and out of camera range, and officers and apparent security officers walking around in the same driveway outside the Emergency Department. [REDACTED] and [REDACTED] appear to enter and leave the hospital. At approximately 7:43 p.m., [REDACTED] appears to be forced out of the hospital by an officer. The officer goes back inside the hospital while [REDACTED] stands outside and motions with her hands. She walks out of camera range and then to the entrance.

Another video file from the driveway camera depicts other interaction among security guards, officers, [REDACTED] and a male in dark clothing.

Another video file, from a different camera mounted in the hospital's parking lot area, with the driveway outside the Emergency Department in the background, appears to depict the apparent

³³ Atts. 82, 193, 195

³⁴ Atts. 86, 87, 155

³⁵ Atts. 90, 166

³⁶ Now identified as [REDACTED] based on her appearance and self-described actions

³⁷ Now identified as [REDACTED]

³⁸ This person is believed to be [REDACTED]

³⁹ Now identified as [REDACTED] based on her appearance and self-described actions

male⁴⁰ who exited the rear seat of the car. At approximately 7:24 p.m., that male, after exiting the rear seat, walks in the parking lot area with what appears to be a coat over his left arm. He walks out of camera view. The same camera records an apparent male, at approximately 7:26:54 p.m., walking, left to right, in the background and to the driveway outside the Emergency Department where the subject car is still situated. Within several seconds, the car is driven from the Emergency Department driveway and out of camera range.

Two video files from a camera in the Emergency Department⁴¹ at Swedish Covenant Hospital depict ██████ and ██████ assisting a male in a green shirt (██████████) into the reception area at approximately 7:24 p.m. ██████ appears unsteady. ██████ and ██████ and ██████ move out of camera range. ██████ and ██████ move in and out of camera range, at one point motioning with their hands and arms. At approximately 7:29 p.m., ██████ pulls back ██████ toward the exit doors. ██████ and ██████ leave the reception area at approximately 7:30 p.m. and appear to return by 7:36 p.m. Officers from the hospital and at least one apparent Chicago Police Officer are observed moving in and out of camera range.

The **Evidence Technician photographs**⁴² depict the original scene, the scene at Swedish Covenant Hospital, the recovered revolver, and the location where the Toyota was recovered, a parking lot at 4444 N. Greenview Avenue. Apparent bullet holes were in the Toyota. Photographs also were taken of Sgt. Ortega and his weapon.

Additional **Evidence Technician photographs**⁴³ depict the interior of the Toyota, including the removal of door panels and a fired bullet recovered from the interior of the rear driver's side door.⁴⁴

The summary of the 911 calls⁴⁵ regarding the incident indicates that several persons called to report shots being fired near the McDonald's restaurant. Among the callers is ██████ who at 7:21:13 p.m. says there is an "emergency" with shots fired at Wilson and Kedzie Avenues. ██████ says his brother, a "cop," was chasing "him," on foot, and, "They shot at us." ██████ adds that there were four male Hispanics in a black Toyota Camry driving north on Kedzie Avenue. He says his brother was wearing a black leather jacket with a black hoodie. ██████ who provided his cell phone video to police, also called 911. In another 911 call, at approximately 7:23:31 p.m., a male identifies himself as "Sgt. Ortega" and provides his badge number, "1092." He reports shots fired by the police and says what sounds like, "Squad car here now."

In addition, a nurse from the emergency room at Swedish Covenant Hospital calls 911 and says a patient, ██████ says he was shot in the forehead. ██████ says he heard gunfire at Foster and Kedzie Avenues near a McDonald's. Another caller from the same hospital says an "out of control" member of a gunshot victim's family is in the emergency room. She requests the

⁴⁰ Believed to be ██████

⁴¹ Atts. 89, 165

⁴² Att. 66

⁴³ Att. 80

⁴⁴ Analysis by ISP could not determine from what weapon the bullet had been fired; See Att. 120.

⁴⁵ Atts. 25-51, 83,84, 181

police. A male caller from the hospital says police were needed because two females were “impeding” treatment of the victim, [REDACTED].” The two females were in the waiting room. Another male, calling from the hospital, says family members were causing a “huge scene.”

The Police Department radio transmissions on Zone 1 reflect the 911 calls. The Zone 1 transmissions include the dispatcher announcing which units were assigned to which duties at the scene. The radio transmissions on Zone 11 include the dispatcher referencing the disturbance at the hospital. A police supervisor, Beat 2010, told the dispatcher officers are looking for a black, four-door Toyota Camry with a license number that sounded like, “[REDACTED].” Beat 2020 says the Toyota Camry will have at least three bullet holes in its rear driver’s side door.

The city’s Department of Law provided additional phone calls⁴⁶ that sought service related to the incident. The summary of the calls indicates that in one call, at approximately 8:11 p.m., a woman from Swedish Covenant Hospital’s emergency room called the Fire Department because a victim of a gunshot wound to the head had to be transferred to Illinois Masonic Hospital. Illinois Masonic had asked Swedish Covenant to ask the CFD to provide the transfer. During another phone call, a private ambulance is chosen to make the transport.

c. Physical Evidence

Sgt. Ortega’s TRR⁴⁷ reflects that he fired five shots from his .45-cal. semi-automatic Glock Model 30 pistol. [REDACTED] fired once at Officer Ortega.

COPA observed the breakdown of **Sergeant Ortega’s .45-cal pistol⁴⁸** When the pistol was examined at Area North headquarters after the incident, the magazine contained 5 rounds, with one in the chamber, a total of 6 live rounds. The pistol had a magazine capacity of 10 rounds. There were five .45-cal. casings recovered at the scene, indicating all expended and live rounds were located.

The Bureau of Internal Affairs Synoptic Report⁴⁹ about Sgt. Ortega’s breath analysis indicates he tested at .000 at 11:42 pm on January 15, 2017.

Records from Swedish Covenant Hospital⁵⁰ indicate [REDACTED] was registered in the emergency room at approximately 7:28 pm with a gunshot wound to his head. He was cooperative and told medical staff he was at a McDonald’s when he heard a single gunshot and instantly felt pain in the right side of his head. A physical exam indicates that [REDACTED] had an approximately 6-centimeter-gaping, 2-centimeter-deep scalp wound over his right temporal region, with “a clear bony defect with active bleeding.” There was a skull fracture of the right frontal bone and hemorrhaging in the right frontal and temporal lobes. He was to be transferred as a trauma patient to Illinois Masonic Hospital. The ambulance arrived at 8:55 pm for the transfer.

⁴⁶ Att. 178

⁴⁷ Att. 12

⁴⁸ Atts. 5, 148

⁴⁹ Att. 22

⁵⁰ Att. 93

Records from Illinois Masonic Hospital⁵¹ indicate [REDACTED] was admitted at approximately 11:29 p.m. He was operated on for his skull fracture and a right forehead laceration. Hospital records included [REDACTED] account of the incident, in which he said he was walking in the street and felt something in the right side of his head and then noticed blood in his hands.

A **Crime Scene Processing Report**⁵² reflects that a Miroku Liberty Chief .38 Special revolver was recovered from a ground-level window well in the emergency room parking lot of Swedish Covenant Hospital. Two fired casings and four live rounds were in the revolver's cylinder. Sgt. Ortega's .45-cal. Glock Model 30 semi-automatic pistol was recovered from him at Area North Detective Division. Six live rounds were recovered from Sgt. Ortega's weapon. Five .45-cal. casings were recovered from the parking lane in front of the McDonald's restaurant. A fired bullet was recovered from the sidewalk in front of a store at 4554 N. Kedzie Avenue. A through-and-through bullet hole was found on the driver's side rear-view mirror of Sgt. Ortega's truck. The Toyota sedan was found to have three bullet holes to the driver's side rear door and one bullet hole in the windshield.

Another **Crime Scene Processing Report**⁵³ indicates a gunshot residue test was administered inside the Toyota, described as a black, 2008, four-door Avalon that had been re-located from 4444 N. Greenview Avenue to Police Pound 4 at 5555 W. Grand Avenue. The GSR test was administered to the front driver's door interior door panel and the roof liner above the front driver's area. One fired bullet was recovered from the rear driver's side door interior, next to a door speaker.

A **report from the Illinois State Police Division of Forensic Services**⁵⁴ indicates that the sampled areas of the Toyota's interior had contacted a primer gunshot residue-related item or were in the environment of a discharged firearm.

Another **ISP report**⁵⁵ indicates that examination of the revolver, as well as of the two fired casings and the four live cartridges, recovered on the grounds of Swedish Covenant Hospital did not reveal latent impressions suitable for comparison.

Another **ISP report**⁵⁶ indicates that the recovered .38 Special revolver was operable as received and was test fired. The two fired casings from the revolver were not examined further. The report also indicates that Sgt. Ortega's weapon was operable as received and was test fired. Five .45-caliber casings recovered at the scene on Kedzie Ave., had been fired from Sgt. Ortega's weapon. Three recovered bullets could not be identified or eliminated as having been fired from Sgt. Ortega's weapon or from the same weapon. The three bullets were not fired from the recovered revolver.

⁵¹ Att. 94

⁵² Att. 53

⁵³ Att. 54

⁵⁴ Att. 118

⁵⁵ Att. 119

⁵⁶ Att. 120

A separate **ISP report**⁵⁷ reflected that swabs from the wooden grip of the recovered revolver contained DNA profiles that were a mixture of at least three people. The mixture was not suitable for comparison. Swabs from the Toyota's front driver's seat contained a DNA profile matching that of [REDACTED] and not that of [REDACTED]. Swabs from the steering wheel contained a DNA profile from which [REDACTED] could not be excluded. [REDACTED] was excluded from having contributed to the DNA profile in the steering wheel swabs.

The Firearms Trace Summary⁵⁸ from the Bureau of Alcohol, Tobacco, Firearms and Explosives notes that the Miroku .38 Special revolver that was recovered on the grounds at Swedish Covenant Hospital was traced to a federal firearms licensee who was an importer. The identity of the importer was not provided to ATF, so the agency could not provide a history of the weapon. The Summary states, "No [additional] record of this firearm was found."

d. Documentary Evidence

A **Case Supplementary Report**⁵⁹ includes detectives' interviews of **Sgt. Ortega**, his brother, [REDACTED] and other witnesses.

[REDACTED] told detectives that after he and [REDACTED] were on the west side of Kedzie Avenue, north of the McDonald's driveway, the Toyota pulled alongside them. The driver extended his right arm and pointed a black revolver through the front passenger window at him and [REDACTED]. The driver said, "King killer, Familia Stones. What you about?" [REDACTED] and [REDACTED] raised their hands and said, "We're nothing," several times. The Toyota turned into the McDonald's driveway as the driver continued to point the handgun at him and [REDACTED]. The Toyota briefly stopped in the driveway, blocking the sidewalk. A female in the front passenger seat said, "Leave them alone," to the driver. The Toyota continued into the parking lot and drove through the McDonald's drive-through.

[REDACTED] said his brother walked across Kedzie Avenue and joined him and [REDACTED]. [REDACTED] told his brother what had happened, including that the occupants of the Toyota pointed a gun at him and [REDACTED]. [REDACTED] noticed the Toyota was coming out of the south driveway, and he pointed that out to Sgt. Ortega. When the Toyota turned onto northbound Kedzie Avenue, Sgt. Ortega told them to "take cover." [REDACTED] and [REDACTED] positioned themselves on the sidewalk at the rear of Sgt. Ortega's Expedition, using it as cover. [REDACTED] said he and [REDACTED] ducked while Sgt. Ortega, at the front of the Expedition, had drawn his gun. Sgt. Ortega yelled, "I'm a cop." [REDACTED] heard the first shot, which came from the street, where he last saw the Toyota. [REDACTED] saw and heard his brother return fire at the Toyota and saw him run after the vehicle as it moved north on Kedzie Avenue.

[REDACTED] account of the incident was consistent with [REDACTED] account.⁶¹

⁵⁷ Att. 159

⁵⁸ Att. 52

⁵⁹ Att. 116

⁶⁰ Att. 116, Pages 18, 24-25; detective summaries of interviews of [REDACTED] IPRA determined not to interview [REDACTED] or [REDACTED]

⁶¹ Att. 116, Pages 17-18, 23-24; detective summaries of the interviews of [REDACTED]

Witness [REDACTED] who provided the cell phone video to officers, told detectives that he was in his second-floor apartment at [REDACTED] Avenue when he heard a commotion and yelling outside. He heard at least three gunshots, looked out his window, and used his cell phone to make the recording. He said a man with a gun pointed it at a dark sedan facing northbound on Kedzie Avenue. The man fired one shot at the vehicle before it drove north on Kedzie Avenue.

[REDACTED] [REDACTED] told detectives he was in his second-floor apartment when he heard three loud reports. After his wife said she thought the noises were gunshots, he looked out and saw a black sedan stopped on Kedzie Avenue facing north. He saw people moving inside the car. Someone in the front of the vehicle was holding a handgun. The rear seat passenger climbed into the driver's seat and sat on top of the driver. The vehicle drove north on Kedzie Avenue. [REDACTED] said he saw two males run after the vehicle, but they then walked back south on Kedzie Avenue. He believed one of the males was a police officer because he saw police insignias on one of the males' chests.

[REDACTED] told detectives he was on the west sidewalk of Kedzie Avenue, by the McDonald's, with his son. [REDACTED] said he saw a dark-colored Buick on Kedzie Avenue whose occupants were yelling at three persons on the west sidewalk of Kedzie Avenue by McDonald's. After the Buick drove through the McDonald's lot, it stopped northbound on Kedzie Avenue. He heard three gunshots, a pause, then another gunshot. He did not see who was shooting or see any guns or muzzle flashes.

[REDACTED] [REDACTED] son, who was 14 years old, provided an account consistent with his father's. In addition, [REDACTED] said that the driver of the double-parked vehicle shot at the three persons on the west sidewalk. [REDACTED] said he did not see a gun and did not see muzzle flashes, but assumed the driver of the double-parked vehicle was shooting because he heard gunshots and saw smoke coming from the driver's window.

Detectives interviewed [REDACTED] a security guard at Swedish Covenant Hospital, who said he saw a black car arrive at the emergency room doors. Two females exited the car and helped a male into the emergency room. A second male exited the vehicle and appeared to be holding an unknown item wrapped in a piece of clothing. That male walked toward the shipping and receiving area and out of sight. That male returned, spoke to the two females, got in the car and drove away. [REDACTED] and other security officers searched the area where the male had walked to but did not find anything. When Chicago Police officers arrived, [REDACTED] told them what he had seen, and the officers searched the area and found a handgun by a window.⁶² The male was taken into custody.

A detective interviewed [REDACTED] while he was being treated at Swedish Covenant Hospital. [REDACTED] told the detective that he was driving by a McDonald's when he was shot. [REDACTED] said, "I lived. It's over with. Fuck you, I'm good. I survived. I'm good. Fuck off." [REDACTED] refused to speak any further.

Detectives interviewed [REDACTED] at Area North Headquarters on the night of the incident. [REDACTED] said he was a back-seat passenger in a car driven by [REDACTED] was sitting next

⁶² Recovery of this weapon is documented in Att. 168.

to him, and [REDACTED] was in the front passenger seat. They drove around until [REDACTED] pulled into the entrance of a McDonald's restaurant and tried to "check" two or three unknown males who were on the sidewalk. [REDACTED] told the unknown males, "What you on," and pointed a gun at them. [REDACTED] told [REDACTED] to, "Drive off. They ain't shit." [REDACTED] drove around the McDonald's parking lot and returned to Kedzie Avenue. After he drove onto Kedzie Avenue, he stopped.

[REDACTED] continued that [REDACTED] fired an unknown number of shots at the persons he was "gangbanging" at. [REDACTED] said the guys on the street fired back. [REDACTED] was shot, and [REDACTED] jumped on top of [REDACTED] and drove to the hospital. After everyone exited the car, [REDACTED] and [REDACTED] helped [REDACTED] into the hospital. [REDACTED] said he took the gun that [REDACTED] used and put it under what he thought was an air conditioning unit. [REDACTED] entered the car and parked it around the block. He returned to the hospital and was arrested.

A Case Supplementary Report⁶³ indicates that on January 16, 2017, detectives and an assistant state's attorney met with [REDACTED] at Illinois Masonic Hospital, where he was interviewed. [REDACTED] said that he was driving by a McDonald's when he saw three males on the sidewalk. The males yelled gang slogans at him, and one male told another one to "Get him," while pointing at [REDACTED]. One of the males then began shooting. [REDACTED] recalled being hit in the head and that someone in the car drove him to the hospital. After detectives told [REDACTED] that persons on the scene said he was armed with a handgun, [REDACTED] said he was not going to change his story and "put myself in jail." The detectives told [REDACTED] that the person who shot at him was a police officer. [REDACTED] said he did not want to speak any further.

Multiple **Case Supplementary Reports** document the presentation of photo arrays to witnesses.⁶⁴

COPA canvassed⁶⁵ the scene of the shooting. Some of the persons contacted said they heard gunshots. Two of the men contacted said they saw a man on Kedzie Avenue wearing a dark or black hoodie holding a gun at the time of the incident.

The Arrest Reports for witnesses [REDACTED] and [REDACTED] indicate they were initially suspected of participating in the aggravated assault of a police officer. They were subsequently released without charging because of insufficient evidence.

[REDACTED] Arrest Report⁶⁷ indicates that he was arrested at Illinois Masonic Hospital and charged with the attempted murder of Sgt. Ortega.

⁶³ Att. 117; see also Att. 133, page with word [REDACTED] on top.

⁶⁴ Atts. 96-101

⁶⁵ Atts. 7, 9, 11

⁶⁶ Atts. 198, 199

⁶⁷ Att. 14

██████████ **Arrest Report**⁶⁸ indicates he was charged with attempted murder and unlawful use of a weapon as a paroled felon. He was arrested at Swedish Covenant Hospital. The Report included the information that officers responded to the hospital because of a report of a person shot and a disturbance there. The responding officers learned that ██████████ was observed driving a vehicle that brought the shooting victim to the hospital. Officers observed the video, which they said showed ██████████ exiting the vehicle and walking with a dark object that appeared to be a handgun in his right hand. He then hid the handgun by bushes on hospital property. ██████████, a hospital security guard, said he followed ██████████ and saw him hide the handgun. ██████████ returned to the hospital, and a detective directed the officers to detain him. The report said ██████████ was a Spanish Cobra.

The Cook County Criminal Court Docket for 17CR0258701, indicates that ██████████ was initially charged with Attempt Murder, Aggravated Discharge of a Firearm, and multiple counts of unlawful use of a weapon.⁶⁹ On May 17, 2018, he pleaded guilty to one count of Aggravated Unlawful Use of a Weapon, with a prior conviction, 720 ILCS 5/24-1.6(A)(1). As reflected in the **Transcript**⁷⁰ of the hearing on his plea, ██████████ stipulated to facts that are consistent with Sgt. Ortega's recollection of the incident, including that ██████████ fired first. ██████████ was sentenced to nine years in prison.⁷¹

The Cook County Criminal Court Docket⁷² for 17CR0258702 indicates that ██████████ was initially charged with two counts of attempted murder, one count of aggravated discharge of a firearm, and numerous firearm possession charges. As evidenced in the hearing **Transcript**⁷³, on July 31, 2018, he pleaded guilty to one count of attempted murder. As part of the plea agreement, the count to which he pleaded was amended to no longer reflect the use of a firearm.⁷⁴ The stipulation of the facts included that he intended to kill Sgt. Ortega, however, it provided no specificity to his conduct.⁷⁵ ██████████ was sentenced to seventeen years in prison.⁷⁶

The qualification record⁷⁷ for Sgt. Ortega's pistol, as an Alternate Prescribed Weapon, indicates he qualified on his Glock Model 30 pistol on May 12, 2015.

Information from the Education and Training Division⁷⁸ indicates that Sgt. Ortega would have had to re-qualify with the Glock Model 30 pistol no later than December 31, 2016, to have been in compliance.

⁶⁸ Att. 123

⁶⁹ Att. 177

⁷⁰ Att. 185

⁷¹ Att. 177. *See also*, Att. 175 (IDOC Records).

⁷² Att. 176

⁷³ Att. 186

⁷⁴ *Id.* at p. 2

⁷⁵ *Id.* at p. 6

⁷⁶ Att.176. *See also*, Att. 174 (IDOC Records).

⁷⁷ Att. 91

⁷⁸ Att. 158

Additional information from the Education and Training Division⁷⁹ documents that Sergeant Ortega qualified on the involved weapon on May 21, 2018, and again on May 21, 2019. This weapon was inventoried following the incident. According to the **Chain of Custody Report** in CLEAR, Commander Robert Cesario approved the turnover of the weapon to Lt. Ortega on April 27, 2018.⁸⁰

VI. LEGAL STANDARD

a. Use of Deadly Force⁸¹

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.⁸² 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."⁸³

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.⁸⁴ 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."⁸⁵

At the time of this incident, a Department member was permitted to use deadly force⁸⁶ 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

⁷⁹ Atts. 200, 201

⁸⁰ Att. 264

⁸¹ 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.

⁸² General Order G03-02(III)(B)(effective October 1, 2002 to October 15, 2017).

⁸³ *Plumhoff v. Rickard*, 572 U.S. 765, 775 (2014) (internal quotations and citation omitted).

⁸⁴ G03-02 at (III)(C)(1).

⁸⁵ General Order G03-02 (II)(A).

⁸⁶ 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.”⁸⁷

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.”⁸⁸

Additionally, justifiable use of self-defense is codified under 720 ILCS 5/7-1, which states:

A person is justified in the use of force against another when and to the extent that 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 felony⁸⁹.

b. Firearm Qualification

CPD Members are permitted to use firearms which are properly registered, and on which they are properly qualified.⁹⁰ Pursuant to CPD Directive U04-02, Members are required to qualify on their alternate prescribed firearms annually prior to carrying the firearm on or off duty.⁹¹ Records of these qualifications are maintained by the Training Division.⁹²

c. 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 requiring allegations 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.

If COPA determines that allegations are to be served, 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;

⁸⁷ General Order G03-02-03(II)A)(2).

⁸⁸ General Order G03-02(II) *quoting* 720 ILCS 5/7-5.

⁸⁹ The definition of “forcible felony” includes robbery and “any other felony which involves the use or threat of physical force or violence against any individual.” 720 ILCS 5/2-8.

⁹⁰ U04.02.

⁹¹ U04-02.D.4.a.

⁹² U04-02.D.4 NOTE.

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 is evidence indicating that it is more likely than not that the conduct reviewed complied with Department policy.⁹³ 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.

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.⁹⁴ Clear and Convincing is 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."⁹⁵

VII. ANALYSIS

a. Sergeant Ortega's Use of Deadly Force was Objectively Reasonable and therefore Within CPD Policy.

Sergeant Ortega's use of deadly force was objectively reasonable to prevent death or great bodily harm to himself, his brother [REDACTED] and [REDACTED]. In making the determinations herein, COPA evaluated all available statements, as well as all other documents and evidence discussed above, to weigh the credibility of all involved parties. As part of this review, COPA found Sgt. Ortega to be credible. His statement is consistent with the video evidence, as well as the statements of other witnesses. This includes the video-recorded statement of [REDACTED] passenger, made shortly after the event, as well as [REDACTED] and [REDACTED] guilty pleas, under oath. To the contrary, [REDACTED] initial denial of these facts to CPD detectives lacks credibility. The CPD interview is inconsistent with the other evidence. Crucially, he pleaded guilty to attempted murder, while acknowledging that he intended to kill Sgt. Ortega, which undermines his initial statement of facts and circumstances surrounding this incident.

Pursuant to this review, COPA finds that [REDACTED] made threatening comments to [REDACTED] and [REDACTED] and [REDACTED] both stated that shortly before the shooting incident, [REDACTED] had driven past them and yelled gang slogans and asked what gang they were in. Sgt. Ortega says that they conveyed this to him, prior to [REDACTED] returning. Sgt. Ortega knew at the time he fired his first shots, that [REDACTED] had already made threats.

⁹³ *Avery v State Farm Mutual Automobile Insurance Co.*, 216 Ill.2d 100, 191 (2005).

⁹⁴ See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

⁹⁵ *Id.* at ¶ 28.

Moreover, COPA finds that ██████ fired first, a fact that is mostly undisputed. Sgt. Ortega said that he saw muzzle flashes inside the car, and believes the driver fired twice, prior to unholstering his own weapon and returning fire. Crucially, both ██████ and ██████ who were in the car with ██████ admit that it was ██████ who fired first. The only statement to the contrary was made by ██████ himself, however, COPA does not find ██████ to be credible, as discussed above. Therefore, COPA finds that ██████ fired first.⁹⁶

Moreover, Sgt. Ortega reasonably believed deadly force was necessary to prevent ██████ from escape after committing a forcible felony involving the use of force likely to cause death or great bodily harm. By the time Sgt. Ortega used deadly force, ██████ had already committed a forcible felony by firing at Sgt. Ortega and his brother and friend. ██████ was in a vehicle, and Sgt. Ortega could have reasonably believed that he was about to drive off and escape. This is especially true for the final shot that Sgt. Ortega fired. Sgt. Ortega saw movement in the front seat (later determined to be ██████ moving into the driver's seat), and the car began to move right as Sgt. Ortega fired. Thus, it was reasonable for him to believe that ██████ who had just committed a forcible felony, was attempting to escape.

For the foregoing reasons, Sgt. Ortega's use of deadly force was reasonable. He reacted quickly to a threat of death or great bodily harm to both himself and his friends. He himself was barely able to duck for cover behind his car. Although he had also taken steps toward force mitigation, he was not sure whether his brother and ██████ had successfully taken cover,⁹⁷ and therefore, it was still reasonable to believe that deadly force was necessary to protect himself and others. Likewise, it was reasonable to believe that deadly force was necessary to prevent ██████ from escaping, after committing a forcible felony.

While he was firing at a vehicle, which was occupied by three other people, he had a clear line of sight on ██████ who was in the driver's seat. Additionally, since ██████ was using a deadly weapon and not using the vehicle as force, Sgt. Ortega was not prohibited by policy from firing at a moving vehicle.

Moreover, even though he did not identify himself as an officer prior to his initial shots, he did so immediately thereafter, and repeated doing so. It was reasonable for him to fail to say something prior to shooting, since he was quickly reacting to shots being fired at him.

The final shot that Sgt. Ortega fired, approximately thirty seconds after the initial volley, was also a reasonable use of deadly force. According to Sgt. Ortega, and corroborated by ██████ by the time Sgt. Ortega fired this shot, he had repeatedly been yelling to the people in the Toyota that he was a police officer and for them to put their hands up. The passengers complied, but ██████ did not. Thus, because ██████ was not complying with commands, Sgt. Ortega thought ██████ was likely still armed and reasonably concluded ██████ was still a threat. Then, just prior to Sgt. Ortega firing that last shot, he saw movement within the car. This movement is corroborated by the civilian cell-phone video as well as the interview of ██████

⁹⁶ Under Chicago Police Directives, he is considered an "assailant," using force likely to cause death or great bodily harm. G03-02-02.IV.3.a.

⁹⁷ See G03-02-02.III.E.1.

While COPA now knows that the movement was from ██████ climbing into the front seat to drive to the hospital, it was reasonable for Sgt. Ortega to believe that it was from ██████ moving to fire another shot, or beginning to escape, and that it was necessary for him to fire a final shot.⁹⁸

COPA has also analyzed Sgt. Ortega's use of deadly force under 720 ILCS 5/7-1. Because Sgt. Ortega was off-duty and stated that he did not have the chance to identify himself as a police officer prior to his use of force, it is reasonable to question whether COPA's analysis and conclusions are wholly based upon Sgt. Ortega's role as a police officer. They are not. The provisions and guidance provided by 720 ILCS 5/7-1 are applicable to civilians, as well as police officers. Therefore, the question remains whether Sgt. Ortega reasonably believed that his deadly use of force was necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony. The answer to both questions is in the affirmative, as illustrated by interviews and evidence specified above. Under this statutory provision, it is also important to consider that ██████ was in the process of committing a variety of forcible felonies, including aggravated discharge of a firearm and attempted murder, and likely would have severely injured or killed someone had Sgt. Ortega not used force.⁹⁹ Therefore, COPA finds that an officer with similar training and experience as Sgt. Ortega would reasonably believe that the ██████ posed an immediate threat of death or great bodily harm.

Therefore, considering the totality of the circumstances, the preponderance of the evidence shows that Sgt. Ortega fired all the shots under the objectively reasonable belief that deadly force was necessary to prevent death or great bodily harm, and COPA finds the use of deadly force to be **Within Policy**.

b. Sergeant Ortega was not in Compliance with the Annual Qualification Requirements for His Alternate Prescribed Weapon.

Sergeant Ortega used a Glock Model 30 pistol during this incident. He informed COPA that this was his Alternate Prescribed Weapon¹⁰⁰, which is also how the weapon is listed in his qualification record.

While Sgt. Ortega believed that he had last qualified on this weapon in 2016, CPD records indicate that he had last qualified with it on May 12, 2015. Sgt. Ortega did not produce any records to substantiate his belief that he had qualified with this weapon in 2016. Records further indicate that he would have been required to qualify no later than December 31, 2016.¹⁰¹ Therefore, COPA finds that on January 15, 2017, Sgt. Ortega had not qualified on the Glock Model 30 for over 20 months.

⁹⁸ *Plumhoff*, 572 U.S. 775 (force must be evaluated from the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight").

⁹⁹ See 720 ILCS 5/24-1.2 and 720 ILCS 5/8-4, both of which are Class X felonies.

¹⁰⁰ A firearm which may be used/carried by a sworn officer in lieu of a prescribed firearm.

¹⁰¹ CPD mandates that all sworn Department members must qualify with their weapons prior to the end of the fourth police period of the current year.

Pursuant to CPD Directives, Members are required to qualify on their alternate prescribed firearms annually.¹⁰² Therefore, on January 15, 2017, Sgt. Ortega was not properly qualified on the Glock Model 30 that he used in this incident, and COPA finds that Allegation 1 is **Sustained**.

¹⁰² U04-02.D.4.a., Att. 182.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**a. Lieutenant Elvis Ortega, #457, 15th District****i. Complimentary and Disciplinary History****Complimentary History**

1 - Emblem of Recognition-Physical Fitness
1 – Presidential Election Deployment Award 2008
4 – Attendance Recognition Award
1 - 2004 Crime Reduction Award
78 – Honorable Mention
1 – Department Commendation
1 - 2019 Crime Reduction Award
4 – Complimentary Letter
1 – Honorable Mention Letter
1 - NATO Summit Service Award
1 – 2009 Crime Reduction Awards

Disciplinary History

CR – None
SPAR – None

ii. Recommended Penalty, by Allegation**1. Allegation No. 1**

The recommended penalty is Violation Noted.

IX. CONCLUSION

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

Officer	Allegation	Finding/ Recommendation
Sergeant Elvis Ortega	1. That on January 15, 2017, at approximately 7:23 p.m., at 4546 N. Kedzie Ave., he violated General Order U-04-02, Uniform and Property/Department Approved Weapons and Ammunition, II, F, in that he had not completed the annual required qualification on his weapon, a Glock Model 30, Serial Number HP0568/HPD568, registration number R024412S.	Sustained/Violation Noted

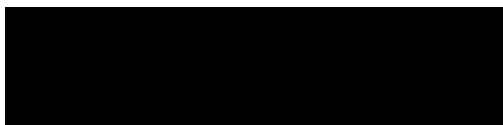
Approved:



8-28-2020

 Angela Hearts-Glass
 Deputy Chief Administrator

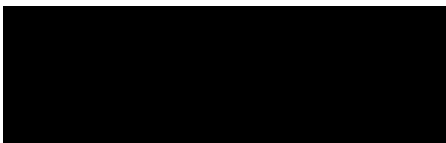
 Date



8-28-2020

 Andrea Kersten
 Deputy Chief Investigator

 Date



8-28-2020

 Sydney R. Roberts
 Chief Administrator

 Date

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Appendix A

Assigned Investigative Staff

Squad#:	8
Major Case Specialist:	Jim Lukas #38
Supervising Investigator:	Robert Coleman/Sherry Daun
Deputy Chief Administrator:	Angela Hearts-Glass