



Brandon Johnson
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Fred L. Waller
Interim Superintendent of Police

June 15, 2023

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, IL 60622

RE: Complaint Register Number: #2020-0004833
Superintendent's partial Non-Concurrence with COPA's findings and proposed penalty:
Police Officer Roberto Gomez #11353
Superintendent's Concurrence with COPA's findings and proposed penalty:
Police Officer Casimir Janus #16424

Dear Chief Administrator:

After a careful review of COPA's recommendation, the Chicago Police Department (CPD) concurs with the finding and with the penalty recommendation for both Police Officers Roberto Gomez and Casimir Janus's failure to timely activate their body worn cameras and believes that the proposed penalty of three days suspension should be given to each officer. As stated more fully below, however, CPD does not concur with the proposed findings or penalty recommendation for Police Officer Roberto Gomez for using deadly force in violation of GO3-02. Based on the preponderance of evidence standard, the evidence in this matter does not support a sustained finding.

I. Summary of the facts

On 23 October 2020, PO Gomez was working with PO Janus on a mission team. PO Gomez stated he has worked in patrol on the mission team in the 10th District and was very familiar with the district.¹ PO Gomez described to COPA the purpose of his mission, which was set to a specific location that would change based on shootings in the district.² The purpose of the mission team was to respond to calls of persons with guns and other calls related to violence and narcotics sales.³ On this date, PO Gomez was driving with Janus as the passenger in an unmarked police SUV. Gomez heard shots fired near 25th and Lawndale, then saw a speeding Ford Focus commit traffic violations driving west on 25th Street. Gomez turned on his lights, drove up next to the Ford and told [REDACTED] (the driver) to pull over. [REDACTED] sped off with the officers in pursuit and Janus providing information to OEMC. The pursuit continued through intersections and down an alley.

¹ Att. 71 at 23:30

² *Id.* at 7:00

³ *Id.* at 7:30

PO Gomez stated he believed the Ford was involved in a shooting. PO Gomez told COPA he told PO Janus the Ford was involved in the shooting.⁴ PO Gomez told COPA the following facts led him to that conclusion:

1. The vehicle was traveling at a high rate of speed from the location where he heard shots fired.
2. The rear window was down in cold weather during rain, which he believed was down in order to shoot from the vehicle.
3. The person in the rear seat was wearing a "hoody," which PO Gomez stated had been used by shooters to conceal their identity.
4. When PO Gomez turned on his lights, pulled next to the vehicle, told ██████ to pull over, and viewed the three people in the vehicle, ██████ immediately "took off."⁵

PO Gomez pursued the Ford through alleys and over speed bumps. The Ford ultimately struck a truck on 26th Street and hit a utility pole. ██████ immediately stepped out, then "bent at the waist," reached back into the vehicle and grabbed what PO Gomez later saw was a black revolver from the driver's side floorboard.⁶ PO Gomez described ██████ actions as "stepping out" and "ducking back in."⁷ PO Gomez was already running toward ██████ and "was already within feet of him," when he saw ██████ had a revolver, PO Gomez continued to run toward ██████ to "apprehend him" or "tackle him."⁸ PO Gomez stated that he didn't have his gun in his hand when he ran toward ██████ and his intent was to grab him.⁹

⁴ *Id.* at 18:25

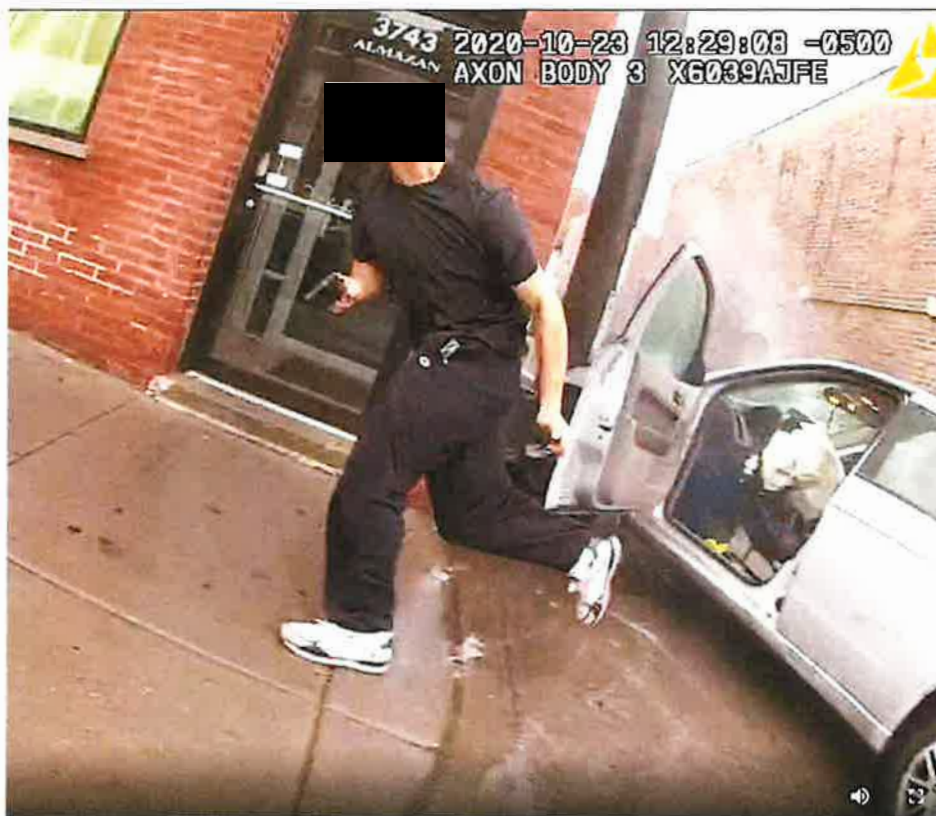
⁵ *Id.* at 18:30-19:30

⁶ *Id.* at 27:00

⁷ *Id.* at 28:00

⁸ *Id.* at 29:00-31:30

⁹ *Id.* at 34:50



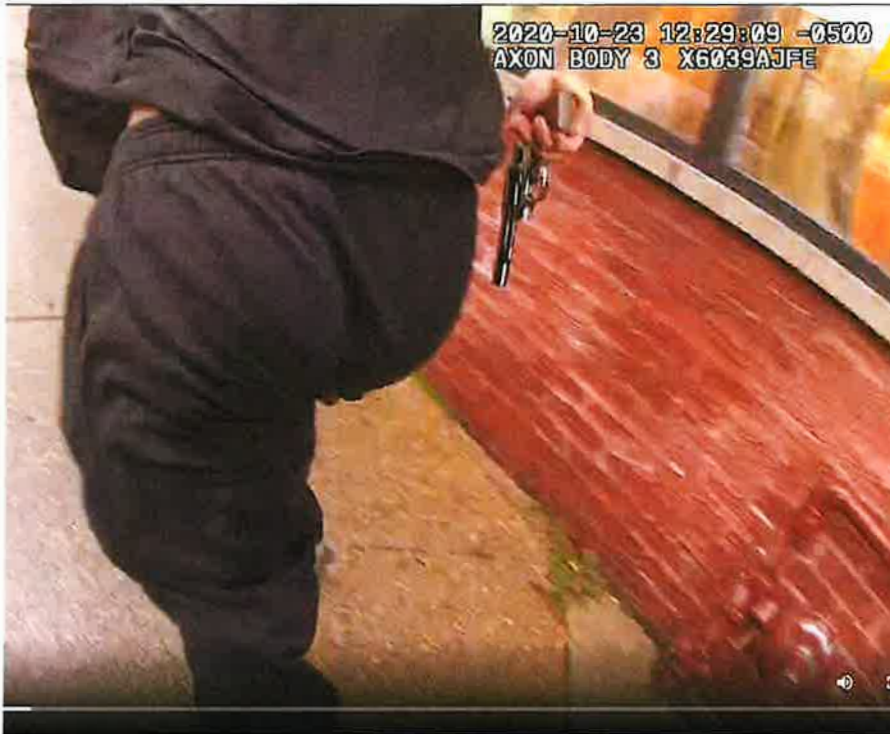
At this point, PO Gomez stated that [REDACTED] was acting too quickly for PO Gomez to give him commands to stop.¹⁰ PO Gomez saw [REDACTED] point his gun at him.¹¹ PO Gomez still had his duty weapon in his holster as he ran at [REDACTED] PO Gomez was not able to grab or tackle [REDACTED]

PO Gomez stated that [REDACTED] got away from him and began running eastbound on the south sidewalk of 26th Street. PO Gomez stated [REDACTED] pointed the gun at him a second time. PO Gomez stated he "saw the gun come back toward him with [REDACTED] finger on the trigger" and PO Gomez stated he thought "[REDACTED] was going to shoot me."¹²

¹⁰ *Id.* at 31:30

¹¹ *Id.* at 33:00

¹² *Id.* at 36:45



PO Gomez stated [REDACTED] again moved the gun toward him a second time as he was running away and PO Gomez could see that [REDACTED] finger was on the trigger of the gun, inside the trigger guard.¹³ PO Gomez took out his weapon and as he ran after [REDACTED] giving him several verbal directions to "drop the fucking gun several times."¹⁴ PO Gomez stated that [REDACTED] started to bring the gun back a third time and at that point there was "no cover for me, I had nowhere to go."¹⁵ PO Gomez estimated he was ten feet away from him. PO Gomez stated that [REDACTED] swung the gun back at him a fourth time. PO Gomez yelled, "Don't point the gun at me," and fired his weapon three times.¹⁶ PO Gomez stated he fired center mass, as he was trained to do.¹⁷ [REDACTED] landed in the street and his [REDACTED] gun was in the street near him.

¹³ *Id.* at 34:30 and 36:30

¹⁴ *Id.* at 37:10

¹⁵ *Id.* at 37:30

¹⁶ *Id.* at 39:00

¹⁷ *Id.* at 41:00



PO Gomez told COPA that he was also afraid for the people on the street and in cars in the area. PO Gomez saw people on the street duck into doorways, but these people were not in PO Gomez' "sight picture" when he fired at [REDACTED].¹⁸ He stated that if [REDACTED] started to shoot at him, he could hit people in the street, carjack someone, hold someone hostage, barricade himself inside a business, or shoot someone in the area.

PO Gomez told COPA, "[REDACTED] was involved in a drive-by. I had to stop him."¹⁹

PO Gomez initially believed [REDACTED] was going to fight when he saw him on the ground. PO Gomez pulled him toward the curb and put handcuffs on him.²⁰ PO Gomez notified OEMC of the shooting, requested an ambulance, signaled to surrounding officers where [REDACTED] firearm was, and told responding units to check on his partner, PO Janus. PO Gomez saw [REDACTED] wound, gave another officer gloves, and provided first aid to [REDACTED] wound. PO Gomez held onto [REDACTED] wound to stop the bleeding until the ambulance arrived.²¹

[REDACTED] was transported to the hospital and died from his wounds. [REDACTED] sustained one gunshot wound to his posterior right arm and one gunshot wound to his left buttock.

Chicago Police IRT investigated the original shooting involving [REDACTED] and obtained a statement from Julio Dominguez that shots were fired at him from someone in a silver vehicle from the rear passenger window grazing his head and back.

The rear seat passenger in the silver Ford driven by [REDACTED] was [REDACTED] was arrested

¹⁸ *Id.* at 44:50

¹⁹ *Id.* at 43:00

²⁰ *Id.* at 46:00

²¹ *Id.* at 51:30

on the scene by PO Janus and a rifle was recovered from the rear seat.

██████████ was charged with UUC and Attempt First Degree Murder. On 07 Feb 2023, ██████████ pled guilty to one charge of aggravated battery with a firearm and was sentenced to eleven years IDOC.²²

II. Analysis

a. Officer Gomez had probable cause to arrest ██████████ for aggravated discharge of a firearm and reasonably suspected ██████████ shot or was shooting at a person or people.

In Illinois, a person commits aggravated discharge with a firearm when they discharge a firearm at a person or occupied building or vehicle.²³ When PO Gomez heard shots fired at noon around 25th and Lawndale, there was sufficient probability for PO Gomez to believe an offender was shooting at someone.

Moments later, PO Gomez saw the silver Ford driven by ██████████ speeding and committing traffic violations. PO Gomez observed the rear window in the Ford was down, even though it was raining, and the person in the back seat was wearing a hooded sweatshirt in a manner that concealed his identity. PO Gomez had extensive experience patrolling the streets in the 10th District and he told COPA that in his experience he was aware that shooters used hooded sweatshirts to conceal their identity. When PO Gomez activated his emergency equipment and pulled next to the Ford, ██████████ sped away. PO Gomez pursued the Ford and when the Ford crashed, ██████████ exited the driver's seat, stopped, reached back into the Ford, and took a revolver from the driver's side floor.

At this point, PO Gomez had sufficient probability to believe that ██████████ fired the shots he heard in the area of 25th and Lawndale and had probable cause to arrest ██████████ for that crime.²⁴

b. Officer Gomez' decision to use deadly force must be assessed under the totality of circumstances from the perspective of a reasonable officer.

Department Orders and well-settled constitutional law demand that an officer's decision to use deadly force must be assessed using the totality of circumstances from the perspective of a reasonable officer on the scene.²⁵ Court have held, "This perspective is critical...[and] must consider the amount and quality of the information known to the officer at the time...[including] the level of duress involved; and the need to make split-second decisions under intense, dangerous, uncertain, and rapidly changing circumstances."²⁶

COPA's analysis failed to evaluate this incident based on the totality of circumstances and instead COPA selected individual facts that PO Gomez could or could not "rely on" to determine whether ██████████ presented an imminent threat of death.²⁷ COPA repeatedly speculated that ██████████ was just trying to get away and any observation PO Gomez made outside of ██████████ flight could not be considered by PO Gomez to

²² 20CR1215901 and IDOC Inmate #M34646

²³ 720 ILCS 5/24-1.2, Class 1 or Class X felony

²⁴ *Hill v. California*, 401 US 797, 802 (1971), "[S]ufficient probability, not certainty, is the touchstone of reasonableness under the Fourth Amendment

²⁵ G03-02-II-D

²⁶ *Smith v. Finkley*, 10 F.4th 725, 736 (7th Cir 2021) (internal citations omitted)

²⁷ "Officer Gomez cannot rely on the fact that ██████████ may have previously pointed his weapon in his direction to support his later use of deadly force." COPA SR pg 22

establish the level of danger [REDACTED] posed to him or other people.

COPA's analysis also failed to evaluate this incident from the perspective of a reasonable officer and instead COPA speculated that when [REDACTED] pointed his gun at PO Gomez, it was accidental.²⁸ COPA also speculated that PO Gomez did not "really believe" [REDACTED] pointed a gun at him despite the video evidence showing he did (see Figure 1).²⁹

All of this speculation is improper and has no place in a properly conducted use of force analysis. An officer's use of force is not evaluated under a subjective standard where the investigator guesses what the officer and offender were thinking. An officer's use of force is evaluated from the perspective of a reasonable officer in the same position as PO Gomez, taking into account the totality of circumstances, described by the Illinois Supreme Court as "the whole picture."³⁰

There is substantial video evidence in the case and the whole picture does not require speculation. PO Gomez had probable cause to arrest [REDACTED] for shooting a gun on the streets of Chicago. When he tried to stop [REDACTED] fled and crashed. At the moment [REDACTED] stepped out of his car, he did not take headlong flight. Instead, [REDACTED] stopped, turned, reached back into the car, pulled a revolver from the driver's side floorboard, then pointed that gun at PO Gomez as he turned to run. A reasonable police officer viewing this act would conclude that [REDACTED] was not "just trying to get away" because [REDACTED] intentionally delayed his escape to go back into his vehicle to arm himself.

c. Officer Gomez' use of deadly force was objectively reasonable, necessary, and proportional to the imminent threat presented by Marc [REDACTED]

Officer Gomez' use of his firearm to shoot Marc [REDACTED] was the use of deadly force as defined by Department Orders.³¹ The Department requires that all uses of force are "1) objectively reasonable, 2) necessary, and 3) proportional in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent an escape."³²

The use of deadly force has additional restrictions. The person must pose an imminent threat of death or great bodily harm (GBH) to the officers or others.³³ Officers are prohibited from firing at a fleeing person unless that person poses an imminent threat of death or GBH.³⁴ And, the use of deadly force must be a necessary last resort to prevent death or GBH, *or to prevent an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or GBH to the officer or another person unless arrested without delay.*³⁵

²⁸ "...[REDACTED]'s weapon momentarily swung in Officer Gomez' direction." COPA SR pg 18. [REDACTED] was "simply swinging [his gun] back and forth, consistent with a running motion." COPA SR pg. 20-21. "[REDACTED] was in headlong flight and did not pose an imminent threat to anyone when Officer Gomez shot him." COPA SR pg. 26

²⁹ "COPA finds by a preponderance of the evidence that Officer Gomez' movement toward [REDACTED] instead of seeking cover or calling for backup, shows that Officer Gomez did not, as he later claimed, see [REDACTED] 'pointing' the firearm or fear for his life when he shot [REDACTED] COPA believes a reasonable officer would not choose to run directly at an individual pointing a weapon at him, but would instead seek cover or take other steps to avoid harm." COPA SR pg. 19 (emphasis added)

³⁰ *Graham v. Connor*, 490 U.S. 386 (1989) and *People v. Timmsen*, 2016 IL 118181 ¶14

³¹ G03-02-IV-A-1 (effective 15 April 2021)

³² G03-02-III-B

³³ G03-02-IV-B

³⁴ G-03-02-IV-D-1-a

³⁵ G03-02-IV-C (emphasis added)

Illinois Law defines imminent threat:

“A threat of death of serious bodily injury is ‘imminent’ when, based on the totality of circumstances, a reasonable officer in the same situation would believe that *a person has the present ability, opportunity, and apparent intent to immediately cause death* or great bodily harm to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”³⁶

i. PO Gomez' use of deadly force was objectively reasonable.

██████████ presented an imminent threat of death or GBH during the entire encounter because his actions were immediately likely to cause death, he had the instrument to cause death *and* he had the opportunity and ability to cause death.³⁷

During the incident, PO Gomez was aware there were shots fired and ██████████ flight from the area provided PO Gomez with probable cause to believe ██████████ fired those shots. ██████████ was clearly aware that PO Gomez was a police officer and when signaled and verbally ordered to stop his vehicle, ██████████ fled, providing sufficient probability that ██████████ was the shooter.

After crashing his vehicle, ██████████ did not immediately flee. He exited the car, then stopped, turned, reached into the Ford, and removed a black revolver from the floorboard. ██████████ turned back, pointing the gun at PO Gomez. ██████████ had his hand on the trigger as PO Gomez pursued him and ██████████ repeatedly swung the barrel of the gun back at PO Gomez. During all of this, PO Gomez saw there were other people ahead of ██████████ on the sidewalk and PO Gomez believed that ██████████ had the *ability, opportunity, and apparent intent* to shoot him or other people in order to escape arrest.

In *Tennessee v. Garner*, the U.S. Supreme Court held that policies allowing the use of deadly force to prevent the escape of **all** felony suspects was unreasonable, however the Court understood there would be situations where officers would have to use deadly force against dangerous, armed suspects using weapons to escape arrest:

“Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”³⁸

The situation PO Gomez faced was the situation the Court described. Taking the whole picture into account from the perspective of a reasonable officer in PO Gomez' position, ██████████ was dangerous, was armed, and showed he had the apparent intent to shoot either PO Gomez or someone else to evade arrest. PO

³⁶ 720 ILCS 5/7-5-h-2 (emphasis added)

³⁷ G03-02-IV-B

³⁸ *Tennessee v. Garner*, 471 US 1, 11-12 (1985)

Gomez was not addressing some future harm [REDACTED] might pose, he was instantly confronting the imminent threat of harm [REDACTED] posed as [REDACTED] repeatedly swung the barrel of a firearm at him with his finger on the trigger while running toward a group of people on the street.

ii. PO Gomez' use of deadly force was necessary and used as a last resort.

Department members are instructed to use the minimum amount of force to effect an arrest and must continually assess the situation to determine if other alternatives are available.³⁹ In this case, there were no alternatives, other than to simply let [REDACTED] escape.

[REDACTED] armed himself *after* PO Gomez began his approach to arrest [REDACTED]. Despite this, PO Gomez still attempted to de-escalate by attempting to take physical control of [REDACTED] and, when that did not work, commanding [REDACTED] to drop his gun. PO Gomez gave [REDACTED] ample time to disarm. [REDACTED] instead kept his finger on the trigger while swinging his firearm back at PO Gomez. PO Gomez could then see that [REDACTED] was running toward a group of people on the street. While this intense, dangerous, uncertain, and rapidly changing encounter unfolded, PO Gomez fired only as a necessary last resort to prevent [REDACTED] from shooting him or someone else *and also* to stop [REDACTED] from using his firearm to escape arrest.

iii. PO Gomez' use of deadly force was proportional to [REDACTED] threat to shoot in order to escape arrest.

The use of deadly force must also be “proportional to the threat, actions, and level of resistance offered by a subject.”⁴⁰ “This may include using greater force...than that used by the person.”⁴¹ “The more likely the *threat* will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it.”⁴²

An officer’s use of force is proportional even when an officer uses greater force than used by the suspect to overcome the *threat* posed by the suspect.⁴³ Under an objective standard from the perspective of a reasonable officer in the same situation as PO Gomez, [REDACTED] was *threatening* the deadly use of force when he armed himself as PO Gomez approached, pointed his gun at PO Gomez, refused to drop his gun, and kept his gun in his hand with his finger on the trigger, while swinging the barrel back at PO Gomez and running toward a group of people on the street. [REDACTED] clearly presented an imminent threat that he had the *ability, opportunity, and apparent intent* to immediately cause death or great bodily harm so he could escape arrest.

III. Conclusion

The Department concurs with COPA’s *Sustained* findings for Officer Gomez's Allegation #2 and Officer Janus's Allegation #1, failure to timely activate their Body Worn Cameras and agrees that a 3 day suspension should be given for this violation of S03-14.

³⁹ G03-02-III-B-2

⁴⁰ G03-02-III-B-3

⁴¹ *Id.*

⁴² *Id.*(emphasis added)

⁴³ “[The use of force] may include using greater force or a different type of force than that used by the subject. The greater the threat and the more likely the threat will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it.” G03-02-III-B-3 (emphasis added)

The Department does not concur with Allegation #1 that Officer Gomez used deadly force without justification in violation of G03-02. The evidence presented in this matter does not meet the preponderance of evidence standard and this allegation should be not sustained.

CPD looks forward to discussing this matter with you pursuant to MCC-2-78-130(a)(iii).

Sincerely,



Fred L. Waller
Interim Superintendent of Police
Chicago Police Department