

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	August 13, 2017
Time of Incident:	5:06 a.m.
Location of Incident:	XXXXXX S. Hermosa Avenue
Date of COPA Notification:	August 13, 2017
Time of COPA Notification:	6:07 a.m.

On August 13, 2017, at approximately 5:06 a.m., off duty Sergeant A, #XXX, was alone and driving to his residence, located at XXXXX S. Hermosa Avenue. Sergeant A was driving a burgundy Chevrolet Tahoe with Indiana license plates northbound on Hermosa Avenue. Sergeant A observed an African American male, now known to be Involved Civilian 1,² near XXXXX S. Hermosa Avenue by a parked vehicle.

After likely observing Sergeant A, Involved Civilian 1 ran south on Hermosa Avenue. Sergeant A remained in his vehicle, made a U-turn, and followed Involved Civilian 1 southbound on Hermosa Avenue. Involved Civilian 1 stopped running in the middle of the street, looked back, and continued running southbound on Hermosa Avenue. Involved Civilian 1 stopped in front of XXXXX S. Hermosa Avenue. Sergeant A remained in the SUV and stopped in front of XXXXX S. Hermosa Avenue. Sergeant A then spoke to Involved Civilian 1. Involved Civilian 1 made a grunting noise, and Sergeant A repeated himself. Involved Civilian 1 then reached towards his back pocket and took several steps towards Sergeant A’s vehicle. Sergeant A fired two shots.³ Involved Civilian 1 yelled, “Fuck!” and ran south on Hermosa Avenue towards School.

Sergeant A pursued Involved Civilian 1 in his vehicle, towards School. Near School, Sergeant A exited his vehicle and detained Involved Civilian 1. Sergeant A then called 911 from his cell phone. Involved Civilian 1 was transported to Hospital for medical treatment.

No firearm was ever found on Involved Civilian 1 or along the path of his flight between where he was shot and School. Between the sidewalk and street in front of XXXXX S. Hermosa Avenue, a resident, Involved Civilian 2, recovered a black cell phone from the lawn, which was later determined to belong to Involved Civilian 1. No criminal charges were brought against Involved Civilian 1.

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 At the time of the incident, Involved Civilian 1 was 19 years old. However, due to his mental capacity, Involved Civilian 1 was a ward of the state at the time of the incident. Involved Civilian 1 will remain a ward of the state until his 21st birthday.

³ At least one of Sergeant A’s shots struck Involved Civilian 1.

II. INVOLVED PARTIES

Involved Officer #1:	Sergeant A, star #XXX, employee ID# XXXXX, DOA: XXXXXX XX, 2000, Sergeant, unit of assignment: XXX, DOB: XXXXXXXX XX, 1971, male, black
Involved Individual #1:	Involved Civilian 1, DOB: XXXXXXXXXX X, 1998, male, black

III. ALLEGATIONS

Officer	Allegation	Finding
Sergeant A	1. It is alleged that on August 13, 2017, at approximately 5:06 a.m., at or near XXXXX S. Hermosa Avenue, Sergeant A used unjustified deadly force by shooting Involved Civilian 1, in violation of General Order 03-02-02 and Rules 2,3,6 and 38.	Sustained
	2. It is alleged that on August 13, 2017, at approximately 5:06 a.m., at or near XXXXX S. Hermosa Avenue, Sergeant A failed to identify himself as a police officer, in violation of Rules 2 and 3.	Not Sustained

IV. APPLICABLE RULES AND LAWS

Rules
<ol style="list-style-type: none"> 1. Rule 2- Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department. 2. Rule 3- Any failure to promote the Department's efforts to implement its policy or accomplish its goals. 3. Rule 6- Disobedience of an order or directive, whether written or oral. 4. Rule 38- Unlawful or unnecessary use or display of a weapon.
General Orders
<ol style="list-style-type: none"> 1. General Order 03-02-02
Federal Laws
<ol style="list-style-type: none"> 1. The Fourth Amendment to the United States Constitution
State Laws
<ol style="list-style-type: none"> 1. 720 ILCS 5/7-5

V. INVESTIGATION⁴

a. Interviews

Civilian Interviews: IPRA interviewed witness Involved Civilian 2 on August 14, 2017.⁵ Involved Civilian 2 stated that he was at his residence located at XXXXX S. Hermosa Avenue on the morning of August 13, 2017. He explained he was awake at approximately 5:00 a.m. and, at the time, was in the second-floor bedroom, which has a window overlooking Hermosa Avenue.

Involved Civilian 2 stated that at approximately 5:00 a.m. on August 13, 2017, the window was open, and the television was on at a low volume. Involved Civilian 2 heard a male voice. He was not able to make out exactly what the voice said, but believed it was something along the lines of, “What are you doing over here?”⁶ Involved Civilian 2 stated that he then heard two gunshots in quick succession. In a follow up phone call on August 18, 2017, Involved Civilian 2 said that he did not hear the male voice say “police” or anything similar.⁷

After Involved Civilian 2 heard the gunshots, he ducked and went into the bathroom because it was darker, and he was concerned the shooter might be able to see into the bedroom. He heard a car drive away as he was moving from the bedroom to the bathroom. After Involved Civilian 2 realized the shooting had stopped, he looked out the window and noticed a white Nissan parked on the street with its hazard lights flashing. Involved Civilian 2 recognized that the white Nissan belonged to his brother-in-law, Involved Civilian 6.⁸ Involved Civilian 2 stated proceeded outside to try to find his brother-in-law. Involved Civilian 2 checked near the white Nissan but did not see his brother in law. Involved Civilian 2 then went around the corner at the intersection of Chelsea Place, Wood Street, and Hermosa Avenue to look for his brother-in-law but did not see him. When Involved Civilian 2 did not find his brother-in-law, he returned to his house and found his brother-in-law asleep in the basement.

Involved Civilian 2 stated that, as he was walking back to his house, he saw a phone on the ground, “right in front of the tree on the sidewalk.”⁹ Involved Civilian 2 believed the phone could belong to his brother-in-law and picked it up. Involved Civilian 2 stated that approximately twenty minutes later, police were taping off the area. Involved Civilian 2 said he went outside to smoke when a CPD member in a white shirt, now known to be Sergeant B,¹⁰ asked him if he picked up a phone. Involved Civilian 2 told Sergeant B that he did pick up a cell phone and gave the phone to Sergeant B.

⁴ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁵ Att. 20, 127

⁶ Att. 127, p. 31, lines 2-3

⁷ Att. 128

⁸ Involved Civilian 2 referred to Involved Civilian 3’s brother, Involved Civilian 6, as his brother-in-law. However, both Involved Civilian 2 and Involved Civilian 3 stated that they were not married.

⁹ *Id.*, p. 12, line 5.

¹⁰ COPA interviewed Sergeant B, #XXXX, on September 21, 2017, and October 27, 2017, Att. 105 and Att. 120. Sergeant B confirmed that he recovered a cell phone from XXXXX S. Hermosa Avenue the morning of the incident.

IPRA interviewed witness Involved Civilian 3 on August 14, 2017.¹¹ Involved Civilian 3 stated that she was at her residence, which she shares with Involved Civilian 2, located at XXXXX S. Hermosa Avenue on the morning of August 13, 2017. Involved Civilian 3 explained that her alarm went off that morning at 4:45 a.m. as that is the time she sets her alarm every morning.

Involved Civilian 3 said she was in her bedroom, which faces Hermosa Avenue, with the windows open and the television on when she heard a man yell something and then she heard two gunshots. Involved Civilian 3 explained that she has difficulty hearing and could not make out what the man said. Involved Civilian 3 stated that the gunshots were so loud that she believed they might have been fired from her front porch. She stated that after the gunshots, she heard a “yelp”¹² and that it sounded like someone was in pain. Involved Civilian 3 subsequently heard a vehicle drive away.

Involved Civilian 3 explained that she tried to look out the bedroom window, but that her boyfriend, Involved Civilian 2, told her to stay back. Involved Civilian 2 told Involved Civilian 3 that he believed her brother was outside, because he could see the lights on in his car. Involved Civilian 2 ran out of the house. Involved Civilian 3 stayed in the room until Involved Civilian 2 returned to the house. When Involved Civilian 2 returned, he told Involved Civilian 3 that he saw a phone on the ground and that he picked it up. Involved Civilian 3 stated that she did not actually look at the phone Involved Civilian 2 brought back.

IPRA interviewed witness Involved Civilian 4 on August 24, 2017.¹³ Involved Civilian 4 stated that on August 13, 2017, at approximately 5:00 a.m., she was home at her residence, located at XXXXX S. Hermosa Avenue. Involved Civilian 4 stated that shortly after 5:00 a.m., she was in her bedroom with the windows closed when she heard two loud noises that sounded like gunshots. Involved Civilian 4 said that the noises sounded as if they came from the immediate vicinity of her home. Involved Civilian 4 stated that she did not hear any arguments or other noises.

After she heard the noises that sounded like gunshots, she looked out the side window but did not see anything. Involved Civilian 4 said that she then went to the front window and called 911¹⁴. While on the phone with the 911 operator, Involved Civilian 4 saw her neighbor outside checking a car and then return to his house.

On November 22, 2017, COPA and the Cook County State’s Attorneys’ Office (CCSAO) conducted an interview with witness Involved Civilian 5.¹⁵ Involved Civilian 5 is Involved Civilian 1’s foster mother, and he has been living with her since February 2006. Involved Civilian 5 explained that Involved Civilian 1 has been a ward of the state since February 2006 and that he will remain a ward of the state until he turns 21 years old. Involved Civilian 5 said that

¹¹ Att. 23, 128

¹² *Id.*, page 12, line 22

¹³ Att. 53, 131

¹⁴ This call is recorded as Chicago Police Department Event Query #XXXXXXXXXXXX, Att. 44.

¹⁵ Att. 126. This interview was not audio recorded because Involved Civilian 5 would not consent to a recording. However, a COPA investigator took contemporaneous notes.

around the time Involved Civilian 1 started living with her, he was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), Impulsive Disorder, mild mental retardation and Autism Spectrum Disorder.

Involved Civilian 5 explained that these diagnoses impact Involved Civilian 1's daily life because his memory is not reliable, and he becomes frustrated very easily. Involved Civilian 5 stated that Involved Civilian 1 cannot relay things that happened to him to other people accurately. Involved Civilian 5 explained that if Involved Civilian 1 is in a calm state he is more accurate, but if he becomes frustrated he has a difficult time. Involved Civilian 5 said that Involved Civilian 1 cannot relay events in the correct chronological order. Involved Civilian 5 said that Involved Civilian 1 has problems differentiating between facts he knew at a specific time and things he learned later. Involved Civilian 5 also said that Involved Civilian 1 tends to tell people what he believes they want to hear.

Involved Civilian 5 stated that the night before the shooting, Involved Civilian 1 snuck out of the house to go try to talk to a girl. Involved Civilian 5 called the police to report Involved Civilian 1 missing, but explained she was not overly worried because Involved Civilian 1 has run away in the past. Involved Civilian 5 said that on the morning of August 13, 2017, a detective arrived at her house and informed her that Involved Civilian 1 had been shot, was at Hospital, and would be taken to a police station¹⁶ before she would be able to get to the hospital.

Involved Civilian 5 said that even prior to the shooting, Involved Civilian 1 tended to hide from the police. Involved Civilian 5 was not certain why Involved Civilian 1 often hides from the police. Involved Civilian 5 explained that Involved Civilian 1 had not previously been arrested and his primary interactions with the police involved officers returning him after he ran away from home.

Involved Civilian 5 said that she did not believe Involved Civilian 1 knew the person who shot him was a police officer at the time of the shooting, but rather that he told people that because he learned it later. Involved Civilian 1 told her that he knew the man who shot him was a police officer because of his vest, but she was not sure that Involved Civilian 1 would have seen the vest prior to the shooting.¹⁷ She also stated that she did not fully understand the timeframe in which Involved Civilian 1 ran from the officer.

¹⁶ An IPRA Investigator observed Involved Civilian 1 in handcuffs at Hospital on the morning of the incident. During an interview with COPA on October 13, 2017, Registered Nurse A stated that Involved Civilian 1 was not restrained while receiving medical treatment. On October 19, 2017, October 30, 2017, and November 8, 2017 respectively COPA interviewed CPD Officers Turney, Burnette, and Newell, who were assigned to guard Involved Civilian 1 at the hospital and/or transport him to the police station, Att. 116, Att. 121 and Att. 122. Officer Newell stated that he handcuffed Involved Civilian 1 to walk from the hospital bed to the squadrol and that Involved Civilian 1 was no longer handcuffed after entering the squadrol. Officer Newell stated that he handcuffed Involved Civilian 1 because he always handcuffs people in police custody for safety reasons. Officer Newell stated that Involved Civilian 1 was not handcuffed after leaving the hospital because Involved Civilian 1 was clearly not a threat.

¹⁷ COPA notes that the investigation revealed that Sergeant A was not wearing a vest at all during the incident.

On October 10, 2017, COPA Investigators, an Investigator with the CCSAO, and two Assistant State's Attorneys conducted a meeting with Involved Civilian 1 and his attorney¹⁸

Involved Civilian 1 stated that he was “not doing anything,” before the person now known to be Sergeant A shot him. Involved Civilian 1 explained that prior to being shot, he was walking around the area near School and talking to people on his cell phone. Involved Civilian 1 said that he usually keeps his cell phone in the back pocket of his pants.

Involved Civilian 1 said that he knew the man who shot him was a police officer because he had a badge and was wearing a blue and black uniform. Involved Civilian 1 explained that Sergeant A was driving a red truck. According to Involved Civilian 1, Sergeant A did not say anything to him prior to firing his weapon.

Involved Civilian 1 stated that he heard two shots, felt a pain from the shots, but afterward he “didn’t do anything.” Involved Civilian 1 also said that he was running home after he was shot. Involved Civilian 1 stated he was running towards the park because the police could not see him in the park. When asked what happened after he was shot, Involved Civilian 1 responded that he “laid down in the park.”¹⁹ Involved Civilian 1 said that “firemen came to help him.”²⁰ Involved Civilian 1 stated that he went to the hospital in an ambulance.

Involved Civilian 1 said that he dropped his cell phone. During the meeting, Involved Civilian 1 demonstrated with his wallet how he was holding his phone. Involved Civilian 1 removed his wallet from the back pocket of his pants and held it at approximately hip height. When asked if reached for his phone during the incident to make a phone call, Involved Civilian 1 explained that the phone was broken. Involved Civilian 1 was then asked why he took his phone out of his pocket if it was broken, but he did not answer.

When asked where he was shot, Involved Civilian 1 pointed to his arm and his ribcage. Involved Civilian 1 was asked where the phone was located when he was shot. In response, Involved Civilian 1 said that the police officer told him to put his hands up and that the phone was on the ground. Involved Civilian 1 stated that after he was shot, the police officer told him to get on the ground and that the police officer chased him. When asked if the police officer was in his car during the chase, Involved Civilian 1 said that the police officer never got out of the car.

Chicago Fire Department Interviews

On September 14, 2017, IPRA interviewed witness Lieutenant A.²¹ Lieutenant A said that he is employed by the Chicago Fire Department (CFD) and responded to a shooting at School on August 13, 2017. Lieutenant A was returning from Hospital when he received a call over the

¹⁸ Att. 114. This meeting was not audio recorded because Involved Civilian 1's and his attorney would not consent to a recording. However, a COPA investigator took contemporaneous notes. Involved Civilian 1 did not sign an affidavit prior to meeting with COPA and CCSAO. The allegations against Sergeant A are based on other evidence and were drafted and were served prior to the meeting with Involved Civilian 1.

¹⁹ Att. 114

²⁰ *Id.*

²¹ Att. 98, 137

radio to respond to School. Lieutenant A estimated that it took him approximately a minute and a half to arrive at the school. Lieutenant A was the first member of the CFD to arrive.

Lieutenant A stated that upon arrival at the high school, he was “waved or flagged down”²² by an African American male with a flashlight, now known to be Sergeant A. Lieutenant A said that he assumed Sergeant A was a member of the CPD because of the pants he was wearing, but nothing about his shirt indicated he was a police officer. Lieutenant A also observed a young African American male, now known to be Involved Civilian 1, laying on his stomach on the ground in pain, with Sergeant A standing near him. Lieutenant Involved Civilian 1 observed “a little bit of blood on his [Involved Civilian 1] side.”²³ Lieutenant A stated “[Involved Civilian 1] kept repeating the same things over and over, ‘Why was I shot? All I had was a phone.’ And then he kept saying ‘I’m sorry. All I had was a telephone.’”²⁴

IPRA conducted an interview with witness Paramedic A on September 5, 2017.²⁵

Paramedic A is employed by the CFD as a Firefighter Paramedic. Paramedic A stated that on August 13, 2017, at 4:00 or 5:00 a.m., a call came in to provide care to a gunshot victim near School.

Paramedic A stated that when she arrived at School, she saw a young African American male, now known to be Involved Civilian 1, lying on the grass near the west side of the high school. Paramedic A guessed his age to be approximately eighteen years old. Paramedic A added that a fire company was already present and had bandaged an injury to Involved Civilian 1’s left chest. Paramedic A also observed an injury to his left inner arm.

Paramedic A said that she asked Involved Civilian 1 what happened, and he told her that he was taking his cell phone out of his pocket and “they”²⁶ shot him. Paramedic A stated that at the time she was providing care to Involved Civilian 1, she did not know who he was referring to when he said, “they shot”²⁷ him. Paramedic A explained that she later learned an off-duty officer shot Involved Civilian 1. Paramedic A said that Involved Civilian 1 told her that he lives with his mother and he snuck out of the house to see some friends.

Paramedic A described Involved Civilian 1 as “skittish”²⁸ and stated that he seemed immature for his age and distracted. Paramedic A added that Involved Civilian 1 kept repeating that he was taking his phone out of his pocket.

IPRA conducted an interview with witness Paramedic B on September 5, 2017.²⁹

Paramedic B stated that he is employed by the CFD as a Paramedic in Charge. On August 13, 2017, Paramedic B responded to a call to provide care to a shooting victim near School.

²² *Id.*, Page 6, line 9

²³ *Id.*, page 8, line 5

²⁴ *Id.*, page 8, lines 22-24, page 9, line 1

²⁵ Att. 68, 133

²⁶ Att. 133, page 6, line 10

²⁷ *Id.*, page 6, line 10

²⁸ *Id.*, page 7, line 15

²⁹ Att. 72, 132

Paramedic B stated that the victim was a young African American male, now known to be Involved Civilian 1. Paramedic B guessed that Involved Civilian 1 was in his late teens. Paramedic B stated that when he arrived at School, he observed Involved Civilian 1 lying face down in the grass near the west side of the school. Paramedic B observed that Involved Civilian 1 had sustained two gunshot wounds. Paramedic B described one of the wounds as “through and through on the left side, more like the flank area,”³⁰ and the other as a gunshot wound to the arm. Paramedic B said that Involved Civilian 1 informed him that he only heard one shot and based on that, Paramedic B assumed that both wounds were caused by the same shot.

Paramedic B stated that Involved Civilian 1 “appeared slow,”³¹ in the way he was answering questions and believed Involved Civilian 1 might have a mental disability. Involved Civilian 1 told Paramedic B he was taking medication for Attention Deficit Disorder. Paramedic B explained that Involved Civilian 1 kept saying, without being asked, “I don’t know why he shot me. I was reaching for my phone.”³² Paramedic B described Involved Civilian 1 as “scared.”³³

IPRA conducted an interview with witness Paramedic C on September 5, 2017.³⁴ Paramedic C is employed by the CFD as a Firefighter Paramedic. Paramedic C stated that in the early morning of August 13, 2017, CFD received a call for a gunshot victim near School. Paramedic C stated that when they arrived, there was an African American male, approximately 16-19-year-old, gunshot victim, now known to be Involved Civilian 1, laying in a “semi-curved position.”³⁵ Paramedic C stated that he observed an entry/exit wound on the left side of Involved Civilian 1’s body and a “cut under his left arm pit,”³⁶ which might have been a laceration caused by a bullet.

Paramedic C stated that when he arrived, he observed the victim, a Chevrolet Tahoe parked on the walkway, and an African American man with a flashlight who “flagged us [Truck #42] over.”³⁷ Paramedic C stated that the man identified himself as an off-duty police officer, now known to be Sergeant A. Paramedic C stated that Sergeant A was in civilian dress but might have been wearing a duty belt. Paramedic C added that Sergeant A appeared “calm.”³⁸

Paramedic C said that Involved Civilian 1 was “not calm.”³⁹ Paramedic C described Involved Civilian 1’s behavior as “kind of erratic.”⁴⁰ According to Paramedic C, Involved Civilian 1 told him, “This guy shot me for no reason. I had my phone, maybe that is why he did it.”⁴¹

³⁰ Att. 132, page 6, lines 18-19

³¹ *Id.*, page 8, line 4

³² *Id.*, page 8, line 24, page 9, line 1.

³³ *Id.*, page 12, line 7

³⁴ Att. 76, 135

³⁵ *Id.*, page 8, line 11.

³⁶ *Id.*, page 5, line 21

³⁷ *Id.*, page 6, line 10.

³⁸ *Id.*, page 11, line 20.

³⁹ *Id.*, page 7, line 14.

⁴⁰ *Id.*, page 8, line 21.

⁴¹ *Id.*, page 8, lines 17-18.

On September 5, 2017, IPRA conducted an interview with witness Firefighter A.⁴² Firefighter A is employed by the CFD as a firefighter. Firefighter A stated that on August 13, 2017, they received a call of a shooting near School. Firefighter A said that when they arrived at the high school there was a victim, who had been shot, now known to be Involved Civilian 1, lying on the ground.

Firefighter A stated that he observed Involved Civilian 1 sustained gunshot wounds. Firefighter A asked Involved Civilian 1 what happened, and Involved Civilian 1 told him that he did not know why he was shot, that he was just holding a cell phone. Firefighter A explained that Involved Civilian 1 was getting “worked up and hyper”⁴³ and that the responding members of the CFD were trying to calm him down. Firefighter A said that Involved Civilian 1 kept repeating, “It was a cell phone. Why did I get shot?”⁴⁴

Firefighter A stated that he was aware that the person who shot Involved Civilian 1, now known to be Sergeant A, was present when they arrived. Firefighter A described Sergeant A to be in civilian dress. Firefighter A asked Sergeant A what happened, and Sergeant A informed him that Involved Civilian 1 had been shot. Firefighter A stated, “I asked, [...] Did you shoot him? Because he’s standing there in street clothes. And, he’s, ‘Oh, yeah. I’m off-duty CPD.’ I said, Okay. So, what happened? ‘Well, I saw him prowling cars...I told him to stop; he didn’t stop.”⁴⁵ Firefighter A explained that at this point in his conversation with Sergeant A, the CPD responded, and he decided to let the CPD address the situation.

On September 14, 2017, IRPA interviewed witness Firefighter B.⁴⁶ Firefighter B is employed by the CFD as a Firefighter/EMT. Firefighter B said that on August 13, 2017, between 4:30 and 5:30 a.m., he responded to a call to provide care to a shooting victim near School.

Firefighter B stated that, when he arrived at the high school, he observed a black male who appeared to be a teenager, now known to be Involved Civilian 1, lying down and only wearing one shoe. Firefighter B described Involved Civilian 1 as “agitated” and “not responding normally,”⁴⁷ and that he did not want his new shirt cut. Firefighter B stated that there was a black male present when he arrived, who identified himself as an off-duty police officer.

Chicago Police Department Interviews

On August 25, 2017, IPRA conducted an interview with witness Officer A, #XXXX.⁴⁸ Officer A stated that on August 13, 2017, at approximately 4:45 a.m., he was assigned to routine patrol, in full uniform, with his partner, Officer B. Officer A stated that, just prior to the shooting, he and Officer B were near Chelsea Place when they received a call over the radio. Officer A stated that, just after they started driving, he observed an African American male with lighter skin and a

⁴² Att. 79, 135

⁴³ *Id.*, page 7, lines 9-10.

⁴⁴ *Id.*, page 7, lines 7-8.

⁴⁵ *Id.*, page 9, lines 21, 23-24, page 10, lines 1-3.

⁴⁶ Att. 136

⁴⁷ *Id.*, page 6, lines 17-18

⁴⁸ Att. 55, 130

slim build wearing a red and white patterned shirt and shorts, whom he now believes to be Involved Civilian 1, running northbound on Hermosa Avenue.

Officer A stated that Involved Civilian 1 stopped running for a second, looked at their car, and continued running. Officer A explained that he did not stop Involved Civilian 1 because “at the moment he really hadn’t done anything...besides stopping and look at us ... wasn’t anything to really stop him for at that moment.”⁴⁹

Officer A stated, shortly afterwards, he was assigned to respond to the scene of an officer involved shooting. Officer A explained that after he finished that assignment, he went to Area South detectives’ division. Officer A said that he observed someone in an interview room who he recognized to be the same person he saw running on Hermosa Avenue earlier that morning. Officer A said that person in the interview room had a similar physical description and was wearing dark colored shorts but was no longer wearing a shirt.

On August 25, 2017, IPRA conducted an interview with witness Officer B, #XXXXX.⁵⁰ Officer B stated that on August 13, 2017, at approximately 4:45 a.m., she was assigned to routine patrol, in full uniform, with her partner, Officer A, #XXXX. Officer B stated that at approximately 4:45 a.m., she saw a person wearing a red and black striped shirt whom she later learned to be to be Involved Civilian 1, running northbound on Hermosa Avenue, near School. Officer B explained that she learned Involved Civilian 1’s name from one of the reports generated following the shooting. Officer B was in a marked vehicle, driving westbound on Chelsea Place when she observed Involved Civilian 1. Officer B stated that she found Involved Civilian 1’s presence to be “weird”⁵¹ but that she did not stop him because she was on her way to another call.

Officer B stated that later, during her shift, she responded to an officer involved shooting involving Sergeant A. Officer B explained that she was assigned to block off the scene. Officer B explained that at approximately 9:00 or 10:00 a.m. she returned to the Xth District,⁵² where she observed Involved Civilian 1 again. She believed he was waiting to speak to IPRA Investigators.

On September 22, 2017, COPA conducted in interview with Sergeant A, #XXX.⁵³ Sergeant A is assigned to the Xth District. Sergeant A stated that on August 12, 2017, he started his shift at 3:30 p.m. and normally ends his shift at 2:00 a.m. On the date of the incident, an unrelated event extended Sergeant A’s work hours and he left the Xth District at approximately 4:50 a.m. on August 13, 2017. Sergeant A was driving directly to his home in his girlfriend’s maroon Chevrolet Tahoe. Sergeant A stated that the vehicle has an Indiana license plate.

Sergeant A said he drove westbound on Chelsea Place and then turned right onto Hermosa Avenue. Sergeant A said that after he turned onto Hermosa Avenue, he noticed a white vehicle with the lights on, parked on the east side of the street. Sergeant A stated, “I never seen [sic] the car before, so it kind of caught my attention. And I’m driving past, I see down the block, by my

⁴⁹ *Id.*, page 21, lines 5-8.

⁵⁰ Att. 54, 129

⁵¹ Att. 129, page 10, line 18.

⁵² The Xth District and Area South are housed in the same building.

⁵³ Att. 145

neighbor's car, on the east side of the street, there's a guy just kind of just in the area, like suspicious to me, because I knew that wasn't his vehicle. I'd never seen this guy before."⁵⁴ Sergeant A described the person as a male black, likely in his early 20s. Sergeant A explained that he observed this person directly in front of his next-door neighbor's vehicle, which was parked directly in front his next-door neighbor's home. Sergeant A could not remember what the person was wearing. Sergeant A stated that it seemed as if he was, "kind of going behind it [the neighbor's vehicle], maybe."⁵⁵

Sergeant A stated that he had the windows rolled down. Sergeant A explained that he "roll[ed] up on the guy,"⁵⁶ now known to be Involved Civilian 1. Sergeant A stated that Involved Civilian 1 was approximately five to seven feet away to his left side. Sergeant A stated, "I pull up on him and say, 'Hey, I'm the police, what are you doing?'"⁵⁷ Sergeant A said that he believed Involved Civilian 1 looked at him once, he said something, and then ran southbound on Hermosa Avenue.

Sergeant A explained that he attempted to make a U-turn but due to a truck parked to his right, he had to proceed further north on Hermosa Avenue to make the turn. Sergeant A said that as he attempted to turn he tried to watch Involved Civilian 1. As Involved Civilian 1 ran, he turned back to look at Sergeant A. Sergeant A stated that he was concerned Involved Civilian 1 had a vehicle nearby was trying to return to that car. Sergeant A was aware that an officer who lived nearby had her gun and wallet stolen from her vehicle and expressed concern that Involved Civilian 1's presence in the area could be related to that incident.

Sergeant A stated that, as Involved Civilian 1 ran southbound, he went from the street onto the sidewalk. Sergeant A stated, "I believe he's still facing south...and I announce my office, 'Hey, Chicago Police, let me see your hands. Chicago police, let me see your hands.' [...] At some point he turns towards me. As he's turning towards me, he reaches back with his right hand in his waistband area, and he starts to pull something, a dark object, out of his waistband, which to me was consistent with someone pulling a weapon."⁵⁸ Sergeant A stated that, at this point, he pulled out his firearm and shot twice. Sergeant A stated that he believed Involved Civilian 1 was going to kill him.

Sergeant A explained that he is left handed and had his duty weapon, a Glock 19, in a pancake holster on his left side waistband. Sergeant A explained that when he unholstered the weapon it was between his body and the driver's door of the Tahoe. Sergeant A stated he unholstered his weapon immediately before discharging it. Sergeant A stated that he had a one-handed grip on the weapon when he fired from the driver's seat of his girlfriend's Chevy Tahoe. After he fired, a dark object "flipped up in the air,"⁵⁹ and Involved Civilian 1 started running southbound again.

⁵⁴ *Id.*, page 10, lines 12-18.

⁵⁵ *Id.*, page 13, line 19.

⁵⁶ *Id.*, page 15, line 19.

⁵⁷ *Id.*, page 15, lines 22-23.

⁵⁸ *Id.*, page 21, lines 11-22.

⁵⁹ *Id.*, page 31, line 21.

Sergeant A stated that, at that point, he put the vehicle in park and got out to see where Involved Civilian 1 went. Sergeant A stated, “I know he’s going towards the corner, so I didn’t want to commit to either chasing him or jumping back in the vehicle until he either passed Chelsea, or he made a turn on Chelsea.”⁶⁰ Sergeant A stated that when he saw Involved Civilian 1 pass Chelsea Place, he got back into the vehicle and followed him in the vehicle.

Sergeant A said that he knew Involved Civilian 1 was behind the school because Involved Civilian 1 would not have been unable to run in another direction without ending up at the XXnd District Police Station. Therefore, Sergeant A proceeded in his vehicle over the sidewalk. Sergeant A said that he eventually felt “trapped”⁶¹ in the vehicle and, believing it to be safer outside, he exited the vehicle. Sergeant A stated that he again announced his office and said, “Chicago Police, get on the ground. Get on the ground.”⁶² Sergeant A explained that Involved Civilian 1 then put his hands up and got on the ground. Sergeant A stated that he did not remember Involved Civilian 1 saying anything to him.

Sergeant A said that, at this point of the encounter, he did not know if Involved Civilian 1 had a weapon and that he might have done a cursory search. Sergeant A explained that he did not have handcuffs on him and therefore held Involved Civilian 1 down while he called 911.⁶³ Sergeant A stated that, after medical attention arrived, he called Lieutenant B at the Xth District to inform her of the situation. He then called the Chief of Patrol, Chief of Patrol A.

Sergeant A stated that he later learned what the dark object Involved Civilian 1 pulled from his waistband was when he heard someone say it was a cell phone. He also heard afterwards that the cell phone was retrieved from a neighbor.

On October 11, 2017, COPA conducted a second interview with Sergeant A.⁶⁴ At the onset of this interview, Sergeant A viewed the video footage obtained from XXXXX S. Hermosa Avenue. Sergeant A stated he remembered it being darker at the time of the incident than it appears on video. Sergeant A believed it was likely due to the artificial lighting on the exterior of the house.

When asked about what is heard on the video, Sergeant A stated that the video speaks for itself and that he stands by his previous statement. When asked about his actions after firing his weapon and exiting the vehicle, Sergeant A stated, “After seeing the video for the first time, I noticed that I did appear to walk a little further than I previously noted,”⁶⁵ referring to the portion of the video after the shooting. Sergeant A maintained that when he got out of the vehicle, he only watched Involved Civilian 1. Sergeant A stated that, after watching the video, he remembered going to the trunk of the vehicle to look for a flashlight.

Sergeant A stated that he believed his statement was consistent with the video footage, including where he details announcing his office.

⁶⁰ *Id.*, page 34, lines 1-4.

⁶¹ *Id.*, page 36, line 12.

⁶² *Id.*, page 36, lines 15-16.

⁶³ This call is documented as Chicago Police Department Event Query #XXXXXXXXXXXX, Att. 43.

⁶⁴ Att. 150

⁶⁵ *Id.*, page 44, lines 11-12.

b. Digital Evidence

IPRA obtained **security camera footage directly from the homeowners of XXXXX S. Hermosa**. This footage includes three camera angles taken from the residence on the morning of August 13, 2017.⁶⁶

Camera 3:

Camera 3 appears to be placed on the north end of the house near the rear. The camera captures a vacant lot and an unobstructed view of Hermosa Avenue.

At 03:45:57,⁶⁷ a person, now known to be Involved Civilian 1, is shown walking north on Hermosa Avenue. Involved Civilian 1 appears to hide behind a car. At 03:46:51, an SUV, now known to be the vehicle Sergeant A was driving, is seen driving north on Hermosa Avenue. The SUV drives past Involved Civilian 1 without stopping. At 03:46:52, Involved Civilian 1 appears from behind the vehicle and runs south on Hermosa Avenue and goes off camera view at 03:46:58. At 03:47:14, the SUV is observed making a U-turn and driving south on Hermosa Avenue.

Camera 4:

Camera 4 appears to be placed on the front of the residence. The camera captures an unobstructed view of Hermosa Avenue.

At 03:44:51, Involved Civilian 1 is shown walking north on Hermosa Avenue. Involved Civilian 1 stops at a car parked on the street, stops at the front door, stops at the back door, and stops near the trunk. Involved Civilian 1 then walks to the next car parked on the street and repeats the same behavior. Involved Civilian 1 is no longer visible on camera at 03:45:23.

At 03:46:34, an SUV is shown driving north on Hermosa Avenue. The vehicle drives off camera view at 03:46:40. At 03:47:00, Involved Civilian 1 is seen running south on Hermosa Avenue. At 03:47:07, Involved Civilian 1 stops in the street south of XXXXX S. Hermosa Avenue and stands in the street, Involved Civilian 1 then walks a few steps to the south and then runs south. The SUV is seen driving southbound on Hermosa Avenue at 03:47:21 and is off camera view at 03:47:30.

Camera 5:

The camera appears to be placed at or near the front of the house. It captures the front yard and Hermosa Avenue. Spider webs partially obstruct the view. The frame speed for this camera angle is not consistent.

⁶⁶ Att. 95

⁶⁷ The homeowner of XXXXX S. Hermosa Avenue informed IPRA that the times shown on the security cameras are not correct.

At 3:46:36, the SUV drives north on Hermosa Avenue. At 03:46:58, Involved Civilian 1 is seen running south on Hermosa Avenue with an SUV following at 03:47:17.

IPRA obtained motion activated **security camera footage from XXXXX S. Hermosa Avenue** directly from the homeowner and directly from Vivant Home Security.⁶⁸

The camera is located on the front porch of XXXXX S. Hermosa Avenue. At the onset of the video, the SUV is shown driving northbound on Hermosa Avenue and drives off camera view. Less than 60 seconds into the footage, Involved Civilian 1 is seen running south in the street on Hermosa Avenue. The SUV is observed driving south on Hermosa Avenue. Immediately in front of XXXXX S. Hermosa Avenue, Involved Civilian 1 runs from the street to the sidewalk, stops, and faces north. The SUV stops in front of XXXXX S. Hermosa Avenue.

A male voice, now known to be Sergeant A, speaks to Involved Civilian 1. Sergeant A says a few words. It is difficult to discern the exact phrase, but Sergeant A says something to the effect of “What are you doing here, man?” or “Come over here, man.”⁶⁹ In response, Involved Civilian 1 says, “Huh?” and Sergeant A speaks again. It is unclear what Sergeant A says at this point, but it is at most a few syllables. Involved Civilian 1 appears to move his right hand towards his back right pocket of his shorts and takes several steps towards the SUV. Sergeant A fires two shots. Involved Civilian 1 yells, “Fuck!” and runs south on Hermosa Avenue towards School.

Sergeant A exits the vehicle, walks over to the sidewalk near where Involved Civilian 1 was standing and looks around. He then goes to the trunk of the SUV, opens the trunk, and then gets back in the vehicle and drives south.

Approximately three minutes into the video, a male, now known to be Involved Civilian 2, exits the residence. Involved Civilian 2 goes north on Hermosa Avenue and stops near a vehicle parked on the street. Involved Civilian 2 then walks southbound on Hermosa Avenue, stops and picks up an item from the sidewalk near the area Involved Civilian 1 was standing and continues southbound on Hermosa Avenue. Approximately 4:36 into the video, Involved Civilian 2 enters the residence.

IPRA obtained **surveillance footage from School**⁷⁰ directly from Chicago Public Schools. The footage includes nine camera angles taken from School taken on August 13, 2017. Only one camera angle provides relevant footage.

Exit- West End of Library

This camera shows Hermosa Avenue and the adjacent sidewalk next to the tennis courts near the school. The view is obstructed by a tree.

⁶⁸ Att. 140, 141. The video was submitted to the Federal Bureau of Investigation’s Regional Forensic Computer Laboratory for audio and video enhancements, the enhanced version is documented as Att. 124.

⁶⁹ This portion of the recording does not reflect Sergeant A identifying himself as a police officer or stating words to the effect of “let me see your hands.”

⁷⁰ Att. 93. Chicago Public Schools provided all available security footage from School. However, only the footage showing the immediate aftermath of the shooting is summarized.

At 05:03:18 a.m., Involved Civilian 1 is seen running south on the sidewalk. At 05:03:23 a.m., the SUV is seen driving south on Hermosa Avenue.

In-car camera taken from beat #XXXXXX shows a person running north across Hermosa Avenue at 04:49 a.m., on August 13, 2017.⁷¹

Chicago Police Department Event Query #XXXXXXXXXX⁷² for August 13, 2017, at approximately 5:04 a.m.,⁷³ documents a 911 call from Sergeant A. Involved Civilian 1 is heard in the background saying, “That’s all. That’s all I was doing.” Involved Civilian 1 is also heard in the background mentioning a phone. The caller identifies himself as Sergeant A and requests an ambulance and CPD units to respond to School for “a person down.” Sergeant A is transferred to CFD dispatch. Involved Civilian 1 is heard yelling and groaning in the background. The dispatcher asks Sergeant A what happened and Sergeant A states, “The guy pulled, like he was going to pull a gun on me, walked up to the car and I had to shoot.”

Chicago Police Department Event Query #XXXXXXXXXX⁷⁴ for August 13, 2017, at approximately 5:07 a.m., documents a call from a female caller, now known to be Involved Civilian 4. Involved Civilian 4 reports, “Somebody just fired two shots over here next to my house at XXXth and Hermosa.” The dispatcher informs Involved Civilian 4 they will send the police. Involved Civilian 4 states, “It came from the second house off the corner. Right here, I think. I just saw this guy running.” Involved Civilian 4 described the man she saw running as a black man with dreadlocks pulled back and a grey or blue shirt.⁷⁵

The **Evidence Technician Photographs**⁷⁶ document Involved Civilian 1, Involved Civilian 1’s injuries, Involved Civilian 1’s clothing, Involved Civilian 1’s cell phone, the scene, the Chevrolet Tahoe, Sergeant A and his firearm. Photographs documenting Involved Civilian 1’s cell phone and Sergeant A’s clothing are included below.

⁷¹ Att. 92. IPRA Investigators who responded to the incident viewed the in-car camera at Area South and were informed by Sergeant C, #XXXXX that the person running in video is Involved Civilian 1.

⁷² Att. 43.

⁷³ COPA acknowledges the inconsistency with the time, however the general order of events is not in dispute and no other documents reflect Sergeant A calling 911 before the reported time of incident.

⁷⁴ Att. 44

⁷⁵ Involved Civilian 4 later learned that the man she saw running was her neighbor, Involved Civilian 2.

⁷⁶ Att. 82



Figure 1: Photograph of Sergeant A's clothing.



Figure 2: Involved Civilian 1's cell phone.

c. Physical Evidence

The Medical Records for Involved Civilian 1 obtained from Hospital⁷⁷ document that Involved Civilian 1 was admitted to the hospital at 5:36 a.m. on August 13, 2017, to receive treatment for two gunshot wounds, one through and through wound to the left armpit, directed through the muscle body of the pec major and a graze wound to the upper left arm.⁷⁸ The registered nurse providing treatment documented that Involved Civilian 1 told him, “I was shot by police. I was pulling a black object out of my pocket and turned to run. I dropped my cell phone and left it there.”⁷⁹ A medical resident providing treatment documented, “Per his report, he was standing by a black car, face to face, in front of a police officer who was standing by a police vehicle. He raised his hands as directed by the officer and then heard two gunshots and was struck by two bullets, fired by the officer.”⁸⁰ Involved Civilian 1 was discharged from the hospital at approximately 7:55 a.m. the same day.

d. Documentary Evidence

Sergeant A’s **Tactical Response Report (TRR)**⁸¹ documents that Involved Civilian 1 did not follow verbal direction, fled, presented an imminent threat of battery using “an unknown dark object perceived as a gun,” and used force likely to cause death or great bodily harm using a weapon, specifically “an unknown dark object perceived as a gun.” Sergeant A reported that he fired two shots from a distance between 10-15 feet from the subject. Sergeant A identified himself as off-duty, in civilian dress. He noted that he was not injured.

Sergeant A’s **Officer Battery Report (OBR)**⁸² documents that he was off-duty and wearing citizen’s dress at the time of the incident. Sergeant A lists the activity as “investigating [a] suspicious person” at the time of the incident. Sergeant A classified the manner of attack as “other” and the type of weapon/threat as “other: displayed dark object perceived to be a gun.” Sergeant A did not sustain any apparent injuries.

The **Crime Scene Processing Report**⁸³ documents the inventoried and photographed evidence, including one (1) fired cartridge case recovered from the street at XXXXX S. Hermosa Avenue and one (1) fired cartridge case recovered from the sidewalk at XXXXX S. Hermosa Avenue, a pair of headphones recovered from the sidewalk at XXXXX S. Hermosa Avenue, and a black cell phone recovered from the crime scene.

IPRA’s Preliminary Report documents that IPRA investigators observed Sergeant A’s weapon being processed.⁸⁴ Sergeant A’s firearm had one (1) live 9mm Luger Winchester cartridge

⁷⁷ Att. 65

⁷⁸ It is unclear if the two wounds were caused by the same bullet or two separate bullets.

⁷⁹ On October 13, 2017 COPA interviewed Registered Nurse A, who stated the information contained in the medical records was consistent with what he remembers from his interaction with Involved Civilian 1, Att. 112.

⁸⁰ Att. 65, p. 38. The medical records do not specifically state who provided this report, but the reporting party is clearly Involved Civilian 1 as the records reflect his medical treatment. IPRA subpoenaed this medical resident, Doctor A. Doctor A did not appear on the scheduled date to provide a statement.

⁸¹ Att. 6

⁸² Att. 7

⁸³ Att. 59

⁸⁴ Att. 4

in the chamber. The magazine has a fifteen (15) -round capacity with thirteen (13) live 9mm Luger Winchester cartridges.

Chicago Police Department Inventory Sheet #XXXXXXXX documents that CPD recovered one (1) Glock 19 Gen 4, 9mm semi-automatic firearm, one (1) 9mm Luger P Win round recovered from the chamber of the firearm, one (1) Glock 9mm magazine and thirteen (13) 9mm Luger P Win live rounds recovered from the magazine. **Inventory Sheet #XXXXXXXX** documents that CPD recovered one (1) UMX cell phone. **Inventory Sheet # XXXXXXXXX** documents that CPD recovered one (1) 9mm Luger +P fired cartridge case from the street pavement at XXXXX S. Hermosa Avenue. **Inventory Sheet #XXXXXXXX** documents that CPD recovered one (1) 9mm Luger +P expended shell from the sidewalk at XXXXX S. Hermosa Avenue.⁸⁵

The Illinois State Police Laboratory Report documents the results of test firing Sergeant A's weapon, a Glock model 19 Gen 4, 9-millimeter semiautomatic pistol.⁸⁶ The report concludes that the two (2) recovered fired cartridge cases were fired from Sergeant A's weapon.

VI. ANALYSIS

a. Applicable Law

1. Use of Deadly Force

Consistent with Illinois state law as codified at 720 ILCS 5/7-5, according to the Chicago Police Department's General Order 03-02-03, Section II, A.⁸⁷

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

1. to prevent death or great bodily harm to the sworn member or to another person, or:
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:

⁸⁵ Att. 31. The casing located at XXXXX S. Hermosa likely fell inside the Chevy Tahoe or on Sergeant A after the shooting and subsequently fell out of the vehicle or off of Sergeant A when he exited his vehicle to detain Involved Civilian 1.

⁸⁶ Att. 158

⁸⁷ This report references the version of General Order 03-02-03 in effect on the date of incident. The Department has subsequently amended its Use of Force Policy.

- a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
- b. is attempting to escape by use of a deadly weapon or;
- c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). 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." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). The analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020; see also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003).

2. Preponderance of the Evidence

The standard of proof in administrative cases investigated by COPA is a preponderance of the evidence. A preponderance of evidence can be described as evidence that makes it more likely than not that the alleged misconduct took place. See *Avery 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 has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred than that it did not occur, even if by a narrow margin, then the standard of proof has been met.⁸⁸

b. Analysis of the Allegations Against Sergeant A

The evidence conclusively demonstrates that Sergeant A discharged his firearm two times at Involved Civilian 1 on August 13, 2017. Sergeant A asserts that he discharged his firearm at

⁸⁸ In criminal cases the standard of proof is beyond a reasonable doubt, which is a significantly higher evidentiary standard than the preponderance of the evidence standard that applies to COPA's administrative findings. Furthermore, COPA may rely on the compelled statement of Sergeant A in its analysis which would be inadmissible in a criminal case. See *Garrity v. New Jersey*, 385 U.S. 493 (1967).

Involved Civilian 1 because Involved Civilian 1 put him in fear of his life by pulling a dark object from his waistband area in a manner that he believed to be consistent with someone pulling a weapon.⁸⁹ However, as outlined below, a preponderance of the evidence demonstrates that Sergeant A's decision to discharge his firearm at Involved Civilian 1 was objectively unreasonable and violated General Order 03-02-03.

Sergeant A's decision to discharge his firearm at Involved Civilian 1 was objectively unreasonable.

First, Sergeant A was off-duty, driving a civilian vehicle with Indiana license plates, and not otherwise readily identifiable as a law enforcement official and therefore could not reasonably expect Involved Civilian 1 to immediately submit to his authority.

Second, Sergeant A did not have probable cause to believe that Involved Civilian 1 had committed any crime, let alone a violent crime.

Third, Sergeant A did not have any basis to believe that Involved Civilian 1 was armed and dangerous.

Fourth, Involved Civilian 1 did not reasonably pose an immediate threat of death and/or a great bodily harm to Sergeant A.

1. Sergeant A was not readily identifiable as a Chicago police officer or any type of law enforcement official.

To the extent Sergeant A expected and required Involved Civilian 1 to immediately submit to his authority in the same manner most people would immediately submit to the authority of a uniformed police officer, his belief was entirely unreasonable. Sergeant A could not be readily identified as a Chicago police officer or any other type of law enforcement official during the incident.

- i. Sergeant A was not visually identifiable as a police officer or any other type of law enforcement official

Sergeant A approached Involved Civilian 1 alone in a burgundy Chevrolet Tahoe with Indiana civilian license plates which - in no way - indicated that he was a Chicago police officer or any other type of law enforcement official. A reasonable person would not have identified Sergeant A's vehicle as belonging to a law enforcement official.

Sergeant A's clothing also did not indicate that he was a Chicago police officer or any other type of law enforcement official.⁹⁰ On the night of the incident, Sergeant A was wearing blue pants

⁸⁹ Att. 145 at 21-22.

⁹⁰ Involved Civilian 1 told COPA investigators during his informal statement that he knew Sergeant A was a police officer prior to the shooting because of Sergeant A's "vest." However, Sergeant A was not wearing a vest. Involved

and a white Sergeant's shirt that was covered by a blue and grey hoodie with the stars from the City of Chicago flag on the front.⁹¹ Only Sergeant A's hoodie would have been visible to Involved Civilian 1 while Sergeant A was seated in the driver's seat of the vehicle, and the hoodie would not have identified Sergeant A as a law enforcement official to a reasonable person. It is undisputed that Sergeant A's badge was not visible. While Sergeant A noted that there was a Chicago Police memorial star on his hoodie, it is extremely unlikely that Involved Civilian 1 could have seen the star because the star was located on the sleeve of Sergeant A's hoodie and was small. More importantly, even assuming *arguendo* that the star was visible to Involved Civilian 1, Sergeant A was still not readily identifiable as a police officer. Indeed, Paramedic C and Firefighter A, CFD employees described Sergeant A as in civilian dress.⁹² Furthermore, Lieutenant A expressly stated that nothing about Sergeant A's hoodie indicated he was a police officer.⁹³ Finally, even Sergeant A's own TRR reported that he was in civilian dress.⁹⁴

- ii. There is insufficient evidence to prove or disprove that Sergeant A verbally identified himself as a police officer

Sergeant A asserted that he announced his office (i.e. verbally identified himself as a police officer) to Involved Civilian 1 prior to the shooting. Sergeant A asserts that upon his initial encounter with Involved Civilian 1, he stated, "Hey, I'm the police. What are you doing?"⁹⁵ Sergeant A stated that upon his second encounter with Involved Civilian 1 he stated, "Chicago Police, let me see your hands. Chicago Police, let me see your hands."⁹⁶ COPA need not merely accept Sergeant A's account of the events at issue. *Cruz v. City of Anaheim*, 765 F.3d 1076, 1079 (9th Cir. 2014) ("[I]n the deadly force context, we cannot simply accept what may be a self-serving account by the police officer.") (quoting *Scott v. Henrich*, 39 F.3d 912, 915 (9th Cir. 1994)). COPA does not find Sergeant A credible on this issue.⁹⁷

First, there is no reliable independent evidence to corroborate Sergeant A's assertion that he identified himself as a police officer prior to the shooting.

Civilian 5, Involved Civilian 1's foster mom, stated that Involved Civilian 1 has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), Impulsive Disorder, mild mental retardation and Autism Spectrum Disorder. Att. 126. Involved Civilian 5 also stated that Involved Civilian 1's memory is not reliable. Involved Civilian 5 also stated that Involved Civilian 1 has problems differentiating between facts he knew at a specific time and things he learned later. Numerous witnesses reported that Involved Civilian 1 acted erratically after the shooting and COPA's investigators' own observations of Involved Civilian 1 make it apparent that he cannot accurately recall the incident. For these reasons, COPA places almost no weight on Involved Civilian 1's informal statement except for Involved Civilian 1 identification of his own cell phone.

⁹¹ Att. 145 at 9. See Section V(a) above for a picture of Sergeant A on the night of the incident.

⁹² Att. 134 at 9; Att. 135 at 9.

⁹³ Att. 137 at 10.

⁹⁴ Att. 6.

⁹⁵ Involved Civilian 1 denied that Sergeant A identified himself as a police officer. Att. 114. COPA is not relying on Involved Civilian 1's informal statement because of concerns that his cognitive and emotional impairments make his statement unreliable.

⁹⁶ Att. 145 at 15.

⁹⁷ Involved Civilian 1 recollection of the events was inconsistent. Involved Civilian 1 stated that Sergeant A did not speak to him at all prior to shooting him (i.e. did not identify himself as a police officer), but later stated Sergeant A told him to show his hands. Att. 114. As explained above, COPA places almost no weight on Involved Civilian 1's informal statement.

Second, as outlined below, circumstantial evidence demonstrates that Sergeant A did not identify himself as a police officer to Involved Civilian 1 prior to the shooting incident.

The surveillance video from XXXXX S. Hermosa Avenue circumstantially contradicts Sergeant A's version of the initial encounter. Sergeant A stated that, as he initially approached Involved Civilian 1, he "pull[ed] up" on him and said, "Hey, I'm the police. What are you doing?"⁹⁸ The footage shows that Sergeant A drove past Involved Civilian 1 and did not come to a complete stop.⁹⁹ Sergeant A did not clearly articulate what he meant by the phrase "pull up", but common-sense and human experience would suggest that Sergeant A would have stopped his vehicle before or while saying to Involved Civilian 1 "Hey, I'm the police, what are you doing?" to allow Involved Civilian 1 time to respond and engage in conversation with him. However, the surveillance video demonstrates that Sergeant A did not stop or even substantially slow down despite Involved Civilian 1 not running away until *after* Sergeant A had driven past him.¹⁰⁰ Nonetheless, audio is not available and the video, alone, cannot sufficiently demonstrate that Sergeant A did not identify himself during his initial encounter with Involved Civilian 1 near XXXXX S. Hermosa.

Similarly, the surveillance video from XXXXX S. Hermosa Avenue also circumstantially contradicts Sergeant A's version of his second encounter with Involved Civilian 1. Sergeant A asserted that he announced his office after Involved Civilian 1 ran southbound on Hermosa Avenue. Sergeant A alleged that after Involved Civilian 1 stopped on the sidewalk, he said, "Chicago Police, let me see your hands. Chicago Police, let me see your hands."¹⁰¹ The audio portion of the surveillance video from XXXXX S. Hermosa Avenue likely contains the entire verbal interaction between Sergeant A and Involved Civilian 1 in front of XXXXX S. Hermosa. Sergeant A's tone and inflection, as reflected on the surveillance footage, is inconsistent with him identifying himself as a police officer.¹⁰² Rather, Sergeant A states words to the effect of "What are you doing here, man?" or "come on over here, man."¹⁰³ Furthermore, in the initial portion of verbal exchange, Sergeant A does not identify himself as a police officer or state words to the effect of "let me see your hands." Although Sergeant A speaks again to Involved Civilian 1, he clearly did not use enough words to have possibly said "Chicago Police, let me see your hands. Chicago Police, let me see your hands" at this point of the interaction. Involved Civilian 2, a resident of XXXXX S. Hermosa Avenue, stated that he heard the interaction and believed he heard a male voice state words to the effect of "What are you doing over here?" but that he was not certain.¹⁰⁴ Involved Civilian 2 also stated that he did not hear Sergeant A say "police" or otherwise identify himself as law enforcement.¹⁰⁵

A preponderance of the evidence demonstrates that Sergeant A did not announce his office on two separate occasions in the manner he alleges. Nonetheless, there is insufficient evidence to

⁹⁸ Att. 145 at 15

⁹⁹ Att. 95

¹⁰⁰ *Id.*

¹⁰¹ Att. 145 at 21

¹⁰² Atts. 140-141

¹⁰³ *See* Att. 124.

¹⁰⁴ Att. 127 at 31

¹⁰⁵ Att. 128.

confirm or dispel that Sergeant A did not in *any way* verbally identify himself as a police officer at *any point* prior to shooting Involved Civilian 1.¹⁰⁶

However, regardless, even assuming *arguendo* Sergeant A verbally identified himself as a police officer on two times in the exact manner he asserted, a proposition that is extremely unlikely, a reasonable person would not just unquestionably immediately believe that a stranger driving a civilian vehicle with an out-of-state license plate and wearing civilian clothing was a police officer simply because the stranger asserts it. It is undisputed that Sergeant A did not show his badge or otherwise provide any evidence that he was, in fact, a law enforcement official to Involved Civilian 1 prior to the shooting Involved Civilian 1. A reasonable officer would take into account, as part of the totality of the circumstances, that he or she was off-duty and not readily identifiable as a police officer and evaluate and interpret the subject's actions and behavior with this in mind. Sergeant A failed to do so.

The encounter between Sergeant A and Involved Civilian 1 is quite distinguishable from the normal police-citizen interaction where the police officer is on-duty and readily identifiable as law enforcement. Because Sergeant A could not be readily identified as a police officer, Sergeant A could not have reasonably expected Involved Civilian 1 to immediately and unquestionably submit to Sergeant A's authority as a police officer. Sergeant A approached Involved Civilian 1 on a relatively dark street prior to sunrise. A reasonable officer would recognize that a reasonable person would be extremely apprehensive and nervous about an encounter with a stranger under these circumstances and could react in a number of ways, including reaching for a cell phone to call for help. The fact that Sergeant A was not readily identifiable as a police officer weighs against the objective reasonableness of his decision to shoot Involved Civilian 1.

3. Sergeant A did not observe Involved Civilian 1 commit any crimes and did not have probable cause to believe that Involved Civilian 1 had committed any crime, let alone a violent crime.

Sergeant A had no information from which to discern that Involved Civilian 1 had committed or would commit any crime prior to encountering Involved Civilian 1 at approximately 5:05 a.m. on August 13, 2017. Sergeant A was off-duty and simply returning home after his shift ended.¹⁰⁷ Sergeant A did not know Involved Civilian 1¹⁰⁸ and did not have any specific information—such as calls to OEMC or information from an informant—from which to discern that criminal activity had recently occurred or was occurring near his residence.

Sergeant A stated that he initially became suspicious because he observed a vehicle that he did recognize with its lights on parked on S. Hermosa Avenue near his residence.¹⁰⁹ Sergeant A stated he then saw a black male “going behind” another vehicle which he recognized as belonging

¹⁰⁶ For this reason, COPA recommends a finding of Not Sustained for Allegation #2 against Sergeant A.

¹⁰⁷ *Id.* at 5-7. Sergeant A's shift ended at 2:00 a.m. *Id.* at 6. However, Sergeant A did not leave the Xth District until approximately 4:50 a.m. *Id.* at 7.

¹⁰⁸ *Id.* at 12.

¹⁰⁹ *Id.* at 10-11 .

to his next-door neighbor.¹¹⁰ Sergeant A knew the man he observed “going behind” the vehicle was not his next-door neighbor.¹¹¹ Sergeant A also stated that another officer in the area had a weapon and possibly a wallet stolen from her personal vehicle parked near her house.¹¹² Finally, Sergeant A noted that Involved Civilian 1 ran after he “pull[ed] up” on him.

Sergeant A did not have probable cause to believe that Involved Civilian 1 had committed *any* crime.¹¹³ “Probable cause to arrest exists when the totality of the facts and circumstances known to a police officer would lead a person of reasonable caution to believe that the person apprehended has committed a crime.” *People v. Johnson*, 408 Ill. App. 3d 107, 119 (1st Dist. 2010). The totality of the facts and circumstances known to Sergeant A did not establish probable cause to believe Involved Civilian 1 had committed any crime.

First, Involved Civilian 1 clearly did not commit any crime by “going behind” a vehicle that did not belong to him even if this occurred early in the morning while it was still dark. Sergeant A did not even assert to COPA investigators that he suspected that Involved Civilian 1 was breaking into his neighbor’s vehicle. Regardless, Sergeant A did not observe Involved Civilian 1 with any tools or other instruments that an officer would normally associate with an individual attempting to break into a vehicle nor did he observe any evidence of break-ins in the area.¹¹⁴

Second, even viewing the evidence in the light most favorable to Sergeant A, Involved Civilian 1 lawfully ran away from Sergeant A. Sergeant A asserted that he “pull[ed] up” on Involved Civilian 1 and said, “Hey, I’m the police. What are you doing?” and Involved Civilian 1 then ran away.¹¹⁵ Sergeant A’s description of his initial encounter with Involved Civilian 1 unequivocally constitutes a consensual encounter between an off-duty police officer and a civilian. Sergeant A did not order Involved Civilian 1 to stop or otherwise attempt to detain him through a show of authority.¹¹⁶ Therefore, Involved Civilian 1 could lawfully run away from Sergeant A.¹¹⁷

¹¹⁰ *Id.* at 12-13 .

¹¹¹ *Id.*

¹¹² *Id.* at 19.

¹¹³ Involved Civilian 1 was never charged with any crime.

¹¹⁴ Video footage from XXXXX S. Hermosa Avenue shows that Involved Civilian 1 was pulling car handles in the area, likely to check to see if the vehicles were unlocked, but Sergeant A did not report observing this to COPA investigators. Facts that were unknown to Sergeant A are irrelevant to the use of force analysis.

¹¹⁵ Att. 145 at 18. As explained above, there is insufficient evidence to prove or disprove that Sergeant A verbally identified himself as a police officer to Involved Civilian 1.

¹¹⁶ In contrast, a person who flees from an officer who has initiated a lawful investigatory (*Terry*) stop or an arrest may be guilty of resisting arrest or obstructing a peace officer. *See* 720 ILCS 5/31-1.

¹¹⁷ COPA recognizes that unprovoked flight from the police may be an “additional factor” in determining whether probable cause to arrest exists and/or reasonable suspicion to conduct an investigatory stop. *People v. Jones*, 196 Ill. App. 3d 937, 956, (1990) (finding that the officer had probable cause to arrest when an eyewitness had identified the defendant in a detailed account to the police, some of the eyewitness’ testimony was independently verified by the police prior to the defendant’s arrest, and the defendant ran upon seeing the officers); *see Illinois v. Wardlow*, 528 U.S. 119, 125 (2000) (holding that “unprovoked flight” in a high crime area justified an investigatory stop); *but see People v. Horton*, 2017 IL App (1st) 142019, ¶¶69-79 (finding that the defendant’s flight did not justify the *Terry* stop and noting “it is not difficult to imagine why a young black man having a conversation with friends in a front yard would quickly move inside when seeing a police car back up” in light of the “reality of law enforcement in today’s racially charged environment.”), *vacated on other grounds*, 2017 Ill. LEXIS 1094. At most, Involved Civilian 1’s flight in conjunction with the other facts and circumstances known to Sergeant A justified a brief *Terry* stop.

See Florida v. Royer, 460 U.S. 491, 497-98 (1983) (noting that individuals approached by police in a consensual encounter do not need to answer police questions and may go about their business). Moreover, as explained in detail above, Sergeant A was not readily identifiable as a police officer making Involved Civilian 1's flight far less suspicious.

Third, Sergeant A's general knowledge that another officer "in the area" had a weapon and possibly a wallet stolen for her personal vehicle parked near her house certainly did not establish probable cause to arrest Involved Civilian 1. Sergeant A did not provide COPA investigators any specifics about the alleged incident, such as the alleged date and time the incident occurred, any description of the suspect, or any other information that would reasonably connect the incident to Involved Civilian 1.¹¹⁸

Fourth, although leaving a vehicle with its hazard lights¹¹⁹ on may violate the Chicago Municipal Code—§ 9-40-090—Sergeant A did not have sufficient information to adequately connect the white Nissan to Involved Civilian 1. Moreover, even assuming *arguendo* that Sergeant A could reasonably connect the vehicle to Involved Civilian 1, this observation should have only decreased his suspicion that Involved Civilian 1 was attempting to break into his neighbor's vehicle, as leaving a vehicle with its lights on is likely to attract significant attention to an in-progress crime.

Finally, Sergeant A's failure to call 911 or otherwise contact law enforcement is circumstantial evidence that he did not subjectively believe he had probable cause to arrest Involved Civilian 1 especially when Sergeant A did not even possess any handcuffs.

General Order 03-02-03, Illinois law, and the Fourth Amendment recognize that the severity of the crime at issue is an extremely important consideration in the use of force analysis. *See Graham*, 490 U.S. at 396. General Order 03-02-03, Illinois law, and Fourth Amendment reflect that officers have greater justification in using deadly force against individuals they reasonably believe are violent criminals. The evidence demonstrates that the facts and circumstances known to Sergeant A were insufficient to establish probable cause to believe Involved Civilian 1 had committed *any* crime, let alone a violent crime.¹²⁰ This fact weighs heavily against the reasonableness of Sergeant A's decision to shoot Involved Civilian 1 simply in response to Involved Civilian 1 reaching for his back pocket and grabbing an unknown dark object.

4. Sergeant A did not have any reasonable basis to suspect that Involved Civilian 1 was armed and dangerous.

¹¹⁸ The officer identified by Sergeant A as having her wallet stolen also lived approximately .8 miles away from the location where Sergeant A first encountered Involved Civilian 1. Att. 159.

¹¹⁹ Sergeant A did not specify which lights were left on (e.g. the hazard lights, the dome light or the headlights). However, the evidence obtained during this investigation demonstrates by a preponderance of the evidence that Involved Civilian 3's brother who was staying at her residence located at XXXXX S. Hermosa left a white Nissan with its hazard lights on near the residence on the night of the incident.

¹²⁰ While COPA addressed each fact and circumstance known to Sergeant A separately above for readability purposes, COPA viewed all the facts and circumstances in their totality in reaching its conclusion that Sergeant A did not have probable cause to believe Involved Civilian 1 had committed any crime. At most, the totality of the facts and circumstances known to Sergeant A were sufficient to establish reasonable suspicion to justify a limited investigatory *Terry* stop. However, it would be entirely inappropriate for an off-duty officer to attempt a *Terry* stop. The appropriate step would have been to contact on-duty CPD officers.

The evidence demonstrates that Sergeant A had no reasonable basis to believe that Involved Civilian 1 was armed or dangerous. Sergeant A did not articulate any basis to believe that Involved Civilian 1 was armed with a firearm or any other weapon prior to Involved Civilian 1 pulling out the dark object out of his back pocket.¹²¹ For example, Sergeant A did not observe any bulges on or near Involved Civilian 1's waistband. Indeed, Sergeant A never even asserted to COPA investigators that he subjectively believed Involved Civilian 1 was armed prior to Involved Civilian 1 pulling the dark object out of his back pocket or waistband area, and it is undisputed that Involved Civilian 1 was unarmed on the night of the incident.¹²² Again, Sergeant A was required to evaluate Involved Civilian 1's action of reaching for his back pocket and pulling a dark object, in light of the totality of the circumstances confronting him. The fact that Sergeant A had no reasonable basis to believe that Involved Civilian 1 was armed and dangerous weighs heavily against the objective reasonableness of his decision to shoot Involved Civilian 1.

5. Under the totality of the circumstances, Involved Civilian 1 did not reasonably pose an immediate threat of death or great bodily harm to Sergeant A, and Sergeant A's use of deadly force was not reasonably necessary to prevent death or great bodily harm.

Sergeant A told COPA investigators that he discharged his firearm after Involved Civilian 1 pulled a dark object from his waistband area during their encounter in front of XXXXX S. Hermosa Avenue.¹²³ Sergeant A's observation that Involved Civilian 1 pulled a dark object from his waistband area was generally corroborated by the surveillance footage and other evidence.

The surveillance footage at XXXXX S. Hermosa Avenue depicts Involved Civilian 1 running south in the street on Hermosa Avenue.¹²⁴ Immediately in front of XXXXX S. Hermosa Avenue, Involved Civilian 1 runs from the street to the sidewalk, stops, and faces north.¹²⁵ Sergeant A's vehicle stops in front of XXXXX S. Hermosa Avenue.¹²⁶ Sergeant A speaks to Involved Civilian 1.¹²⁷ Involved Civilian 1 makes a grunting noise, and Sergeant A speaks to Involved Civilian 1 again.¹²⁸ Involved Civilian 1 then moves his hand towards the back pocket of his shorts and takes several steps towards the SUV.¹²⁹

Numerous witnesses stated that, after Involved Civilian 1 was detained near School, he repeatedly discussed the fact that he had just pulled a cell phone from his pocket. The surveillance footage at XXXXX S. Hermosa Avenue depicts a man, now known to be Involved Civilian 2, pick up an item from the ground close to the area where Involved Civilian 1 was standing when Sergeant

¹²¹ The evidence demonstrates that Involved Civilian 1 was in fact unarmed on the night of the incident.

¹²² Sergeant A also did not observe Involved Civilian 1 with any burglary tools which could potentially be used as weapon.

¹²³ Att. 145 at 28.

¹²⁴ Atts. 140-141.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.* As explained above, there is insufficient evidence to determine exactly what was said.

¹²⁸ *Id.* Sergeant A did not assert that Involved Civilian 1 made any type of threat to him.

¹²⁹ *Id.*

A shot him.¹³⁰ Involved Civilian 2 told IPRA investigators that the item he picked up was a cell phone. That cell phone was later identified as belonging to Involved Civilian 1.¹³¹ Neither Sergeant A nor any other individual located a firearm on Involved Civilian 1 or in the area after the incident. For this reason, the evidence demonstrates that Involved Civilian 1 did, in fact, pull a dark object from his back pocket, but that the dark object was his cell phone.

At the time Sergeant A discharged his firearm, he did not know whether the object Involved Civilian 1 pulled from his waistband area was a firearm, a cell phone, or any other dark object. Sergeant A asserted to COPA investigators that he believed Involved Civilian 1 was pulling out a firearm and that Involved Civilian 1's actions put him in fear of his life.¹³²

The pertinent inquiry is whether, under the totality of the circumstances, it was reasonable for Sergeant A to infer that Involved Civilian 1 was threatening him by pulling out a firearm, and that deadly force was necessary to prevent his own death or serious injury. It is axiomatic that an individual reaching for his or her back pocket and pulling out a dark object cannot always justify the use of deadly force. To find otherwise, would permit police officers to use deadly force on *any person* who reaches for their back pocket and pulls out an object, which would inevitably result in the death or grave injury of many unarmed individuals.¹³³ Many people, particularly men, carry their cell phones and wallets in their back pockets and may reach for these items during a police encounter or an encounter with a stranger. In the instant case, it was not reasonable for Sergeant A to assume Involved Civilian 1 was pulling out a firearm and assume that deadly force was necessary to prevent his own death or serious injury.

Sergeant A did not have enough information to justify the preemptive use of deadly force. Sergeant A's observations must be reviewed under the totality of the circumstances that confronted him which includes that: (1) Sergeant A was off-duty, driving a civilian vehicle with Indiana license plates, and not otherwise readily visibly identifiable as a law enforcement official; (2) Sergeant A did not have probable cause to believe that Involved Civilian 1 had committed any crime, let alone a violent crime; and (3) Sergeant A did not have an adequate basis to believe that Involved Civilian 1 was armed and dangerous; and (4) Involved Civilian 1 approached Sergeant A's vehicle only after Sergeant A attempted to engage Involved Civilian 1 in conversation (i.e. made a verbal inquiry).¹³⁴ A reasonable officer would have taken these facts and circumstances

¹³⁰ *Id.*

¹³¹ Att. 127 at 5, 12. Involved Civilian 1 identified the cell phone as belonging to him, and it is undisputed that a dark object was dropped by Involved Civilian 1 during the shooting the incident.

¹³² Att. 145 at 28-29.

¹³³ COPA fully recognizes the legitimate safety interests of law enforcement officers and that reasonable errors of perception or other reasonable mistakes are justifiable under the Fourth Amendment and Department policy. Sergeant A's mistake in this case was not reasonable.

¹³⁴ Sergeant A did not assert that he subjectively found Involved Civilian 1 stepping towards his vehicle threatening and never referenced Involved Civilian 1 stepping towards his vehicle in his initial statement. In fact, Sergeant A simply described Involved Civilian 1 as turning towards him in his first statement. Regardless, a reasonable officer would not have found it threatening that Involved Civilian 1 stepped towards the vehicle because this occurred only after Sergeant A verbally engaged him. In fact, a reasonable officer would have expected Involved Civilian 1 to act in this manner especially when Sergeant A does not even allege that he ordered Involved Civilian 1 to "stop" or said, "don't move."

into account when evaluating the danger Involved Civilian 1 posed when he reached for his back pocket and pulled out a dark object.¹³⁵

Indeed, although Sergeant A stated that he believed Involved Civilian 1 was pulling a firearm, Sergeant A never even asserted that he was able to identify the dark object as a firearm. This is not surprising because Involved Civilian 1 was in fact holding a cell phone, and the cell phone in no way resembled a firearm.¹³⁶ For example, Involved Civilian 1's cell phone does not have a handle or a barrel.¹³⁷ Indeed, it appears that, at least immediately after shooting Involved Civilian 1, Sergeant A himself did not believe the dark object was a firearm because Sergeant A did not secure the dark object despite admitting that he saw Involved Civilian 1 drop the dark object to the ground.¹³⁸ Finally, deadly force was not reasonably necessary because Sergeant A could have simply driven away from the potential threat. This would have created time and distance for Sergeant A to reassess the situation and to determine whether Involved Civilian 1 was in fact an actual threat.

In its totality, the evidence demonstrates that an officer with similar training and experience as Sergeant A would not have reasonably believed that Involved Civilian 1 posed an immediate threat of death or serious bodily harm and/or that the use of deadly force was otherwise justified. Accordingly, Sergeant A's use of deadly force was objectively unreasonable and did not comply with Chicago Police Department's General Order 03-02-03. For these reasons, COPA recommends a finding of **Sustained** for Allegation #1 against Sergeant A.¹³⁹

VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Sergeant A, #XXX

1. Complimentary and Disciplinary History

COPA received and reviewed Sergeant A's complimentary and disciplinary history.

2. Recommended Penalty, by Allegation

¹³⁵ Nonetheless, a preponderance of the evidence demonstrates that Sergeant A *subjectively* believed that Involved Civilian 1 posed an immediate risk of death or great bodily to himself and did not act with malice. However, the relevant standard is objective reasonableness. Sergeant A's subjective belief was objectively unreasonable and therefore Sergeant A's decision to discharge his firearm at Involved Civilian 1 violated CPD policy.

¹³⁶ See Section V(a) above for a picture of the cell phone.

¹³⁷ To the extent that the lighting conditions prevented Sergeant A from having a clear view of the dark object, Sergeant A certainly could not have reasonably identified the object as a firearm.

¹³⁸ Att. 145 at 32. An officer is clearly required to secure weapons for public safety reasons. While surveillance footage from XXXXX S. Hermosa Avenue does show Sergeant A searching the area, it does not reflect that he secured the dark object, and Sergeant A stated that he did not attempt to retrieve it despite repeated questioning on the subject. Att. 145 at 45-46; Att. 150 at 34-38. However, COPA recognizes that Sergeant A's belief immediately after the shooting does not necessarily prove what he perceived immediately prior to the shooting.

¹³⁹ COPA also evaluated Sergeant A's use of deadly force under General Order 03-02-03(II)(A)(2) and determined that is not applicable to these facts.

Having taken that into consideration Sergeant A's complimentary and disciplinary history and in accordance with the applicable collective bargaining agreement, COPA recommends a suspension of **ninety (90)** days.

VIII. CONCLUSION

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

Officer	Allegation	Finding/Recommendation
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<p>Sergeant A</p>	<ol style="list-style-type: none"> 1. It is alleged that on August 13, 2017, at approximately 5:06 a.m., at or near XXXXX S. Hermosa Avenue, Sergeant A used unjustified deadly force by shooting Involved Civilian 1, in violation of General Order 03-02-02 and Rules 2, 3, 6, and 38. 2. It is alleged that on August 13, 2017, at approximately 5:06 a.m., at or near XXXXX S. Hermosa Avenue, Sergeant A failed to identify himself as a police officer, in violation of Rules 2 and 3. 	<p>Sustained</p> <p>Not Sustained</p>
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Approved:

 COPA Chief Administrator
Chief Administrator

 Date

Appendix A

Assigned Investigative Staff

Squad#:	X
Major Case Specialist:	COPA Major Case Specialist
Acting Supervising Investigator:	COPA Acting Supervising Investigator
Deputy Chief Administrator:	COPA Deputy Chief Administrator