

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	February 28, 2020
Time of Incident:	4:11 pm
Location of Incident:	521 N. State St., Chicago, IL 60654
Date of COPA Notification:	February 28, 2020
Time of COPA Notification:	4:27 pm

On February 28, 2020, at approximately 4:03 pm, Mass Transit Officers Melvina Bogard and Bernard Butler were riding a northbound train on the Chicago Transit Authority's (CTA) Red Line. They observed the subject, now identified as ██████████ cross between train cars, in violation of a CTA ordinance. Officer Butler attempted to make verbal contact with ██████████ but ██████████ ignored him and continued walking through the train car. When the train stopped at the Grand station, Officer Bogard approached ██████████ and instructed him to exit the train. He complied, and both officers followed him off the train. As they stood on the northbound platform, the officers asked ██████████ for his identification so they could issue him a citation. ██████████ reached into his backpack, prompting Officer Butler to grab his right arm. ██████████ immediately attempted to pull away from Officer Butler, and a physical struggle ensued on the edge of the platform, precariously close to the train tracks. Officer Butler then pulled ██████████ away from the tracks and across the platform, where ██████████ continued to struggle to avoid being placed into custody.

██████████ and the two officers continued to struggle on the platform, at which point a civilian eyewitness, ██████████ began video recording the incident on his cellphone. At the same time, Officer Bogard discharged her Taser twice, and Officer Butler took ██████████ to the ground near the bottom of the ascending escalator. Officer Butler then discharged his own Taser three times. ██████████ flailed his hands on the ground and attempted to push off the wall, but he did not strike or kick either officer. Officer Butler wrestled with ██████████ on the ground in an attempt to handcuff him, while Officer Bogard stood over them attempting to assist. Both officers repeatedly ordered ██████████ to stop resisting and give them his hands. ██████████ responded by stating he did not do anything to them and did not want to fight. Several seconds later, Officer Bogard unholstered her OC spray, and Officer Butler yelled to her, "shoot him." Officer Bogard deployed her OC spray in the direction of ██████████ face, which was inches away from Officer Butler's face.

██████████ pushed the officers off him and rose to his feet. Officer Bogard took several steps back away from ██████████ and stated, "I'm going to shoot him." Officer Butler responded by again telling her to "shoot him." Officer Bogard drew her firearm and pointed it in ██████████ direction for approximately eight seconds as Officer Butler stood by. As ██████████ wiped the OC spray from his eyes, he staggered several feet toward Officer Bogard's direction. She discharged her weapon one time, striking ██████████ in the right abdomen. ██████████ lurched backward, then fled up the escalator with both officers in pursuit. As ██████████ neared the top of the escalator, his back was to

the officers, his right hand was carrying his jacket, and his left hand was on the escalator railing. Officer Bogard discharged her weapon a second time, striking ██████ in the left buttocks. He collapsed at the top of the escalator, where the officers took him into custody. ██████ survived his gunshot wounds. At the request of CPD’s Interim Superintendent, the Cook County State’s Attorney’s Office (CCSAO) dismissed all charges against ██████. No weapon was recovered from the scene.

COPA’s investigation determined ██████ was an unarmed active resistor, and he did not pose an imminent threat of death or great bodily harm to Officer Bogard, Officer Butler, or any nearby civilians either time that Officer Bogard discharged her weapon. Additionally, Officer Bogard fired her weapon inside a crowded CTA station, at rush hour, without determining whether her partner or any bystanders were in her line of fire. In fact, the video evidence shows Officer Butler was standing directly behind ██████ in Officer Bogard’s line of fire, at the time she fired the first shot.

In addition to Officer Bogard’s use of deadly force, COPA finds both officers unnecessarily escalated the situation throughout the incident. The officers’ encounter with ██████ began with a simple ordinance violation. Officer Butler improperly initiated physical contact with ██████ by grabbing his arm, which in turn led to ██████ escalation to an active resistor. Officer Butler’s actions were particularly reckless given that both men were standing only inches away from the edge of the platform, and they could have easily fallen onto the tracks. Throughout the rest of the encounter, ██████ level of resistance did not change; the officers’ level of force, however, progressively increased. Officers Bogard and Butler subjected ██████ to five separate Taser discharges, two OC spray deployments, and two firearm discharges. COPA has determined that each officers’ use of force violated applicable Department policies. COPA also concludes that Officer Bogard violated Department policy by failing to cooperate in this administrative investigation.

II. INVOLVED PARTIES

Involved Officer #1:	Bogard, Melvina, Star #3018, Employee # ██████, Date of Appointment: November 16, 2017, Police Officer, Unit 701, DOB: ██████ 1988, Female, Black.
Involved Officer #2:	Butler, Bernard, Star #3036, Employee # ██████, Date of Appointment: November 16, 2017, Police Officer, Unit 701, DOB: ██████ 1989, Male, Black.
Involved Individual #1:	██████████ DOB: ██████ 1986, Male, Hispanic.

III. ALLEGATIONS

Officer	Allegation	Finding/ Recommendation
Officer Melvina Bogard #3018	<p>It is alleged by the Civilian Office of Police Accountability that on or about February 28, 2020, at approximately 4:11 pm, at or near 521 N. State St.:</p> <ol style="list-style-type: none"> 1. Officer Bogard discharged her Taser against ██████ in violation of G03-02-04 and Rules 2, 3, 6, 8, and 9. 2. Officer Bogard deployed her OC Spray against ██████ in violation of G03-02-05 and Rules 2, 3, 6, 8, and 9. 3. Officer Bogard used deadly force by discharging her firearm in the direction of ██████ without justification, in violation of G03-02 and Rules 2, 3, 6, 8, 9, and 38. 4. Officer Bogard used deadly force, without justification, when firing in the direction of ██████ without determining whether Officer Butler or other bystanders would be in the line of fire, in violation of Rules 2, 3, 6, and 10. 5. Officer Bogard failed to use de-escalation techniques, without justification, in violation of Rules 2, 3, and 6. <p>It is further alleged by the Civilian Office of Police Accountability that on or about June 25, 2020, at approximately 10:00 am, at or near 1615 W. Chicago Ave.:</p> <ol style="list-style-type: none"> 6. Officer Bogard failed to cooperate with COPA, in that she refused to answer questions regarding Log #2020-988, in violation of G08-01-02(II)(A)(2) and Rules 2, 3, 6, 7, and 51. 7. Officer Bogard failed to follow Lieutenant Levester Denham's direct order to cooperate with COPA's investigation of Log #2020-988, in that she failed to answer questions with COPA after being ordered to do so, in violation of Rules 2, 3, 6, 7, and 51. 	<p>SUSTAINED/ Separation</p> <p>SUSTAINED/ Separation</p> <p>SUSTAINED/ Separation</p> <p>SUSTAINED/ Separation</p> <p>SUSTAINED/ Separation</p> <p>SUSTAINED/ Separation</p> <p>SUSTAINED/ Separation</p> <p>SUSTAINED/ Separation</p>

<p>Officer Bernard Butler #3036</p>	<p>It is alleged by the Civilian Office of Police Accountability that on or about February 28, 2020, at approximately 4:11 pm, at or near 521 N. State St.:</p>	<p>SUSTAINED/ Separation</p>
	<p>1. Officer Butler stated words to the effect of “shoot him,” while in public and referring to ██████████ without justification, in violation of Rules 2, 3, 6, 8 and 9.</p>	<p>SUSTAINED/ Separation</p>
	<p>2. Officer Butler discharged his Taser against ██████████ in violation of G03-02-04 and Rules 2, 3, 6, 8, and 9.</p>	<p>SUSTAINED/ Separation</p>
	<p>3. Officer Butler used force against ██████████ by grabbing him by the arm, without justification, in violation of Rules 6, 8, and 9.</p>	<p>SUSTAINED/ Separation</p>
	<p>4. Officer Butler used force in a reckless manner against ██████████ by grabbing his arm in close proximity to a CTA train track, in violation of Rules 8, 9 and 10.</p>	<p>SUSTAINED/ Separation</p>
	<p>5. Officer Butler failed to use de-escalation techniques, without justification, in violation of Rules 2, 3, and 6.</p>	

IV. APPLICABLE RULES AND LAWS

Rules

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 7: Insubordination or disrespect toward a supervisory member on or off duty.
5. Rule 8: Prohibits disrespect to or maltreatment of any person, while on or off duty.
6. Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
7. Rule 10: Inattention to duty.
8. Rule 38: Prohibits the unlawful or unnecessary use or display of a weapon.
9. Rule 51B: Failure to cooperate when called to give evidence or statements by any investigative branch or superior officer of the Chicago Police Department or the Police board when the

evidence or statements sought relate specifically, directly and narrowly to the performance of his official duties. If the member properly asserts a constitutional privilege, he will be required to cooperate if advised that by law any evidence or statements given by him cannot be used against him in a subsequent criminal prosecution.

General Orders

1. G03-02: Use of Force (Effective October 16, 2017 - February 28, 2020)
2. G03-02-01: Force Options (Effective October 16, 2017 - February 28, 2020)
3. G03-02-04: Taser Use Incidents (Effective October 16, 2017 - February 28, 2020)
4. G03-02-05: Oleoresin Capsicum (OC) Devices and Other Chemical Agent Use Incidents (Effective October 16, 2017 - February 28, 2020)
5. G08-01-02. II.A.2: Specific Responsibilities Regarding Allegations of Misconduct (Effective May 4, 2018 - present)

V. INVESTIGATION¹

COPA obtained and reviewed the relevant video, audio, medical, and documentary evidence associated with this officer-involved shooting. Additionally, COPA interviewed numerous civilian and officer witnesses, including both accused officers. The following is a summary of the material evidence obtained and analyzed by COPA in this investigation.

a. Digital Evidence²

i. Video Evidence

The **CTA videos from inside the train car**³ begin at 4:03 pm as Officers Bogard and Butler are standing in the crowded train car. Approximately thirty seconds later, the video captures a Hispanic man wearing a backpack and earbuds, now identified as ██████ enter the train car through the connecting doors at the end. When the train stops and passengers begin to exit, ██████ takes out his earbuds and leans in toward Officer Bogard as she appears to engage with him. ██████ responds, then immediately starts walking away from the officers. Officer Bogard turns and follows ██████ through the train car. At 4:04:14 pm, Officer Bogard grabs ██████ backpack, causing him to turn around. While interacting with ██████ PO Bogard repeatedly points and gestures in the direction of the open train doors. Officer Butler, who is still at the other end of the train car, exits the train through the doors nearest to him. Approximately ten seconds later, ██████ and Officer Bogard exit the train through the other set of doors.

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

² The relevant CTA video, third-party video, body worn camera (BWC) video, and OEMC audio are available on COPA's website at <https://www.chicagocopa.org/case/2020-0000988/>.

³ Att. 49. Also available on COPA's website as Third Party 7-13.

The CTA videos from the platform at the Grand Red Line station⁴ shows ██████ and the officers exit the train car. They remain on the platform as the train departs, apparently engaged in conversation. After approximately one minute, ██████ takes off his backpack and turns away from the officers. Officer Butler grabs ██████ right arm, and ██████ immediately begins to pull away. As ██████ attempts to free himself of Officer Butler's grasp, he pulls backward, and his momentum is toward the train tracks behind him. (See Figure 1.) Both men are standing on the blue truncated dome warning strip that runs along the end of the platform, and they appear to be within inches of the edge.

Officer Butler pulls ██████ away from the edge of the platform, and both officers push him toward the area at the bottom of the ascending escalator. The video shows the officers attempting to put ██████ up against the wall opposite the escalator, but he continues to pull away from them. As Officers Butler and Bogard struggle to gain control of ██████ they briefly take him to the floor of the platform. ██████ stands up, and all three veer toward the area at the bottom of the escalator, off camera. The video shows at least ten civilians standing on the northbound platform throughout the struggle.



Figure 1. Screenshot from the CTA video showing ██████ pulling away from Officer Butler near the edge of the platform.⁵

The **third-party cell phone video (the “Twitter video”)**⁶ recorded by witness ██████ begins as Officer Bogard and Butler struggle with ██████ near the bottom of the escalator. The officers and ██████ are standing, while Officer Butler holds onto ██████ arms as

⁴ Atts. 44-45. Also available on COPA's website as Third Party 5 and 6.

⁵ Att. 45 at 20:29 minutes.

⁶ Att. 66. ██████ posted this video to Twitter at 5:36 pm on February 28, 2020. Att. 77, pg. 11, lines 21-24, pg. 51, lines 5-13.

he attempts to pull away. Officer Butler says “Taser,” and the sound of two Taser discharges is audible.⁷ The video then captures ██████ on the ground at the bottom of the escalator, with Officer Butler on top of him, holding ██████ down between his knees. Officer Bogard kneels beside them, and both officers struggle to gain control of ██████ hands. Officer Butler unholsters his Taser and brings it toward ██████ then orders ██████ to “drop the Taser.”⁸ ██████ continues to resist Officer Butler’s commands to give him his hands, at which point Officer Butler discharges his Taser while he is on top of ██████ kicks off the wall and flails his hands on the ground, grabbing hold of one of the officer’s handcuffs. An approaching train arrives at the station and approximately twenty CTA riders walk within feet of the struggle to take the escalator upstairs. Officer Bogard, who is now upright, repeatedly attempts to call for assistance on her and her partner’s radios; no response is audible.

As Officer Butler lays on top of ██████ both officers repeatedly demand that ██████ give them his hands and stop resisting. ██████ continues trying to push away from the officers, telling them, “I didn’t do nothing to you guys. I don’t want to fight.”⁹ Several seconds later, Officer Bogard unholsters her OC spray and Officer Butler yells to her, “shoot him.”¹⁰ ██████ responds, “No, no, no, no...please, please,”¹¹ then raises his hands above his head, as if to protect his face. Officer Bogard appears to deploy her OC spray in the direction of ██████ face, with Officer Butler’s face only inches away. Officer Butler repeatedly yells for ██████ to stop resisting, but ██████ pushes the officer off him and stands up at the bottom of the escalator.

Officer Bogard takes several steps back from ██████ and says, “I’m going to shoot him.”¹² Officer Butler responds, “shoot him,”¹³ and he too begins to move away from ██████ Officer Butler appears to be looking directly at Officer Bogard as she draws her firearm and points it in ██████ direction, using a two-handed grip with both arms extended out from her chest. Officer Bogard repeatedly yells for ██████ to put his hands down, but he bends down and picks up his jacket with his left hand. He puts his right hand over his eyes, apparently attempting to wipe off the OC spray, and staggers several feet toward a railing in Officer Bogard’s direction. She takes two steps back, then discharges her weapon one time in ██████ direction. At the time Officer Bogard fires, Officer Butler is standing almost directly behind ██████ The video shows Officer Bogard pointing her firearm at ██████ for approximately eight seconds prior to discharging her weapon. Throughout this time, Officer Butler is facing ██████ and Officer Bogard, but he appears to be focused on untangling a Taser wire from his handcuffs.

██████ lurches backward, rushes past Officer Butler and flees up the escalator. Both officers follow ██████ onto the escalator, approximately ten steps behind him. As Officer Bogard gets onto the escalator, the video captures her pointing her firearm up the escalator, in ██████

⁷ Att. 66, at 13-16 seconds. At the time of the Taser discharges, Officer Butler’s Taser is still holstered, indicating Officer Bogard discharged her Taser first.

⁸ Att. 66 at 37 seconds. ██████ is partially obscured by Officers Butler and Bogard, and it is unclear whether he makes physical contact with Officer Butler’s Taser. However, throughout the remainder of the struggle, the video shows one of the Tasers on the ground within arm’s length of ██████ He never reaches for it.

⁹ Att. 66 at 2:47 minutes.

¹⁰ Att. 66 at 3:01 minutes.

¹¹ Att. 66 at 3:03 minutes.

¹² Att. 66 at 3:54 minutes.

¹³ Att. 66 at 3:55 minutes.

direction. Although the officers are initially side-by-side on the escalator, Officer Bogard runs a few steps ahead of her partner. As she exits the frame of the video approximately three quarters of the way up the escalator, a second gunshot rings out. Officer Bogard yells, “Get down. Get fucking down,”¹⁴ and the video comes to an end.

The CTA videos from the turnstile level at the Grand Red Line station¹⁵ capture a man wearing a Chicago Bears hat, now tentatively identified as ██████, peer over the top of the escalator. He looks down the escalator for approximately fifteen seconds, then turns and abruptly walks away.¹⁶ Simultaneously, the video captures ██████ fleeing up the escalator. His right hand is holding his jacket and his left hand is on the escalator railing. (See Figure 2.) As ██████ runs, he does not appear to look behind him, turn backwards, or make any motions with his hands. When ██████ is approximately two or three steps from the top of the escalator, he falls forward, landing face down at the top of the escalator.¹⁷ Dozens of civilians run up the stairs from the platform level and rush toward the station’s exits.

Officers Bogard and Butler reach ██████ at the top of the escalator, where Officer Bogard holsters her weapon.¹⁸ As she bends over ██████ and pushes him onto his back, the video shows both Tasers bobbing up the escalator. The officers variously kneel or stand next to ██████ for the next three minutes, until the first responding officers arrive at the scene.



Figure 2. Screenshot from the CTA video showing ██████ fleeing up the escalator at the time of the second gunshot.¹⁹

¹⁴ Att. 66 at 4:17 minutes.

¹⁵ Atts. 46-48.

¹⁶ Att. 46 at 25:10 - 25:25 minutes.

¹⁷ Att. 46 at 25:22 - 25:26 minutes; Att. 47 at 25:26 - 25:29 minutes.

¹⁸ Att. 46 at 25:29 minutes; Att. 47 at 25:34 minutes.

¹⁹ Att. 46 at 25:24 minutes.

COPA obtained and reviewed the **Body Worn Camera (BWC) videos**²⁰ of nineteen responding officers. At 4:13:45 pm, the first responding officer arrives at the scene and approaches the top of the escalator. Officer Butler is on the ground with ██████ holding him in an upright seated position. The responding officer hands her handcuffs to Officer Butler, then repeatedly attempts to radio for EMS. As other units arrive, Officer Bogard walks away from the escalator and is quickly escorted from the scene. Officer Butler remains with ██████ for several minutes, during which time he describes the incident to another officer. He states, “We tried to stop him off the train...He started fighting with us, nonstop. We tased him twice, he didn’t stop.”²¹ Officer Butler then reveals ██████ is shot in the back, and responding officers render medical aid to ██████ until EMS arrives at approximately 4:17:40 pm. Officer Butler’s eyelids appear to be slightly swollen; he does not mention the OC spray or indicate there is anything wrong with his eyesight.

ii. Audio Evidence

The **Office of Emergency Management and Communications (OEMC) Event Queries**²², **Radio Transmissions**²³, and **911 Calls**²⁴ document the following relevant and material communications. At 4:10:50 pm, Officer Butler radios that Beat 7353 has an emergency. Six seconds later, he adds, “7353. Shots fired by police.”²⁵ The following several minutes of radio transmissions contain so much static the dispatcher cannot make out what Officer Butler is saying. At 4:11:30 pm and 4:11:46 pm, two 911 callers report hearing one or two gunshots and seeing people run out of the Grand Red Line station. As the second caller hangs up, he tells the dispatcher he hears the police approaching the area. At 4:13:35 pm, Beat 7391B announces he has arrived at the station, and is about to go underground. The dispatcher requests he report back with additional information, as she cannot hear Officer Butler. Thirty seconds later, Beat 7391B requests EMS, later clarifying the ambulance is for an offender, not an officer.

b. Interviews

i. Police Officers

In **statements to COPA on June 25, 2020 and July 8, 2020, Officer Melvina Bogard** refused to answer any questions regarding the incident. On the advice of counsel, Officer Bogard invoked her 5th Amendment right to remain silent. Lieutenant (Lt.) Levester Denham #275 issued Officer Bogard a direct order to cooperate with COPA’s investigation, but Officer Bogard continued to refuse to answer questions related to the incident.²⁶

In a **statement to COPA on June 23, 2020, Officer Bernard Butler** stated on the date and time of the incident, he was on duty, in uniform, and assigned to Beat 7353. He and his partner,

²⁰ Atts. 50, 104.

²¹ Att. 50, Kenar AXON_Body_2_Video_2020-02-28_1613-2 at 22:14:12.

²² Att. 10.

²³ Atts. 62-63, 80-81.

²⁴ Atts. 60-61.

²⁵ Att. 80 at 23:17 minutes. None of Officer Bogard’s attempts to call for backup during the struggle, as captured on the Twitter video, were transmitted over the air.

²⁶ Officer Bogard’s attorney was present during these statements.

Officer Bogard, worked in the Mass Transit Unit, which does not issue BWCs to its officers. The partners typically arrived at work at 2:00 pm, when a supervisor would assign them to ride a specific L line between two different stops. They were provided a list of different nuisance crimes and ordinance violations to focus on, including smoking or drinking on CTA property, littering, graffiti, crossing between train cars, bike riding, skateboarding, panhandling, etc.

On the date of the incident, a supervisor assigned Officers Butler and Bogard to the Red Line, between the Lake and Belmont stops. The officers boarded a train at Lake and began to ride northbound. Almost immediately, Officer Butler observed the subject, now identified as ██████ open the emergency exit door at the end of the train car and enter the car he and Officer Bogard were riding. Officer Butler told ██████ it was illegal to cross between train cars, but ██████ did not say anything in response. Instead, ██████ put his earbuds back in and continued walking through the car. As the train arrived at the Grand station, Officer Butler saw his partner walk toward ██████ and he assumed she told ██████ to exit the train. Officer Butler stepped off the train, then realized Officer Bogard was having difficulty getting ██████ to exit. To prevent the train from leaving, Officer Butler held one of the train car's doors open until ██████ and Officer Bogard exited. Officer Butler walked toward their location on the platform, and he heard Officer Bogard ask ██████ for identification so she could issue him a citation. ██████ did not comply. Instead, he told Officer Bogard he crossed train cars because a black woman was bothering him in the other car. ██████ was fidgety, his explanation was incoherent, and Officer Butler believed he made up the story in an attempt to talk himself out of the citation.

At that point, Officer Butler intervened in the conversation and reiterated his partner's request for ██████ to produce identification. ██████ turned his back to the officers and reached into his backpack. Officer Butler did not know what ██████ was reaching for, so he grabbed ██████ right arm to ensure he did not pull a weapon out of the backpack. Officer Butler acknowledged he made physical contact with ██████ before he issued any verbal commands for ██████ to show his hands, but he believes he did so after.

When Officer Butler grabbed ██████ arm, both men were only inches from the edge of the platform. ██████ immediately tried to pull away from the officer and lunged toward the tracks. Officer Butler grabbed ██████ arm more tightly, recognizing that if he let go, ██████ momentum would carry him off the platform and onto the tracks. Officer Butler believed the physical contact he made with ██████ was necessary to keep him off the tracks, and to move him to a safer location. Officer Butler guided ██████ to a wall on the other side of the platform, where he attempted to deescalate the situation by isolating and containing ██████ away from the civilians who were waiting for the train.²⁷ Officer Butler put ██████ up against the wall, and both officers gave ██████ verbal commands to give them his hands. Instead, ██████ turned around and faced the officers, and started to fight them. ██████ kicked and threw elbows at them, and he pushed Officer Butler's head and neck area. At that point, Officer Butler stated ██████ went from being

²⁷ Officer Butler told COPA he used de-escalation techniques throughout the incident, including verbal direction, isolating and containing ██████ in one area, and continuing to tell ██████ to stop resisting and to show his hands. However, when a COPA investigator asked if the officers made any attempts to talk ██████ down, beyond just yelling verbal commands at him, Officer Butler replied, "Yes, I think we told him to 'stop resisting.'" Transcribed statement of Officer Butler, pg. 106, line 14.

an active resistor to an assailant because he “used physical force against us in an effort to not allow us to gain physical control or defeat the arrest.”²⁸

As the struggle continued, the officers and █████ veered toward the area near the bottom of the escalator, where Officer Bogard discharged her Taser. Officer Butler could not recall if she gave any verbal warnings prior to discharging her Taser, and he did not know if any of the probes made contact with █████ had no verbal or physical reaction to the Taser, and he remained standing. At that point, Officer Butler reengaged physical contact with █████ and he performed a takedown in the area near the bottom of the escalator. █████ ended up on his back or his side, with Officer Butler on top of him. █████ continued to throw elbows and push, grab, and squeeze Butler’s head and neck area, ignoring Officer Butler’s commands to show his hands and stop resisting. Officer Butler stated he tried to stay as close as possible to █████ so █████ could not throw a forceful punch. He perceived █████ actions to be aggressive, and not merely flailing on the ground.

As the men struggled on the ground, Officer Butler unholstered his Taser. █████ immediately grabbed the Taser and attempted to take it away from Officer Butler, but the officer did not let it go. Officer Butler eventually regained full control of the Taser and discharged both cartridges while he was partially on top of █████. Officer Butler reassessed the situation after discharging the first cartridge, but he observed no change in █████ behavior. He then discharged the second cartridge. Officer Butler did not know if any of the probes made contact with █████ as █████ had no reaction to either Taser discharge.

Officer Butler continued attempting to handcuff █████ but █████ grabbed the officer’s handcuffs and tried to take them from him.²⁹ Officer Butler also noticed █████ repeatedly reaching for his jacket, which was on the ground nearby, causing Officer Butler to fear that █████ was trying to retrieve something (i.e., a weapon) from inside the jacket. Officer Butler continued to give █████ verbal commands, but he did not recall hearing █████ say anything in response. While the two men struggled on the ground, Officer Bogard repeatedly attempted to call for backup. Officer Butler heard her make at least three or four attempts using both officers’ radios, but no one responded.

Eventually, Officer Butler observed Officer Bogard holding her OC spray in her hand. He told her to “shoot him,”³⁰ meaning she should deploy her OC spray at █████. At the time, Officer Bogard’s firearm was not in her hands, and Officer Butler believed the meaning of his words was clear from the context of the situation.³¹ Officer Bogard hesitated, then deployed her OC spray in the direction of █████ face. Officer Butler did not recall Officer Bogard giving any warning prior to spraying █████ and he did not know if there were any civilians on the platform. When Officer Bogard deployed her spray, Officer Butler was still on top of █████ and his face was

²⁸ Transcribed statement of Officer Butler, pg. 51, lines 20-24.

²⁹ Officer Butler used the term “disarm” while discussing █████ attempts to take his handcuffs and Taser. When COPA investigators inquired if █████ ever touched his firearm, Officer Butler responded that he did not remember █████ ever making any motions toward his firearm or holster. Transcribed statement of Officer Butler, pg. 62, line 12 - pg. 63, line 21.

³⁰ Transcribed statement of Officer Butler, pg. 58, lines 5-12.

³¹ Transcribed statement of Officer Butler, pg. 59, lines 5-13.

only centimeters from ██████ face. The OC spray struck the left side of Officer Butler' face, causing a burning sensation in his eyes, nostrils, and mouth. He struggled to breathe, and the vision in his left eye was blurry, diminishing his ability to see in front of him.

██████ on the other hand, had no apparent reaction to the spray, and he rose to his feet. Officer Butler again told Officer Bogard to "shoot him,"³² meaning that she should deploy her OC spray a second time. Due to the effects of the spray, Officer Butler could not see what was in Officer Bogard's hands, but he knew the last time he saw her she was holding the OC spray. He told COPA his vision was so impaired he did not see Officer Bogard draw her firearm or point it at ██████. However, in his peripheral vision, Officer Butler observed ██████ walking toward the area where he believed Officer Bogard was standing. He could not see Officer Bogard's exact location on the platform, or how far ██████ was from her. As ██████ moved in her direction, Officer Butler heard a gunshot. He did not see who fired the shot and did not know if anyone was struck.

At that point, Officer Butler classified ██████ as an assailant; ██████ had just fought with Officer Butler and was now approaching Officer Bogard, potentially with the intention of disarming her or pushing her onto the tracks. From Officer Butler's perspective, ██████ posed an imminent threat of death or great bodily harm to Officer Bogard, in that he was "going towards her where her back's to the tracks, the train tracks, and still not—resisting, not surrendering, still able to physically fight with her as he did with me for six or seven minutes."³³ Officer Butler did not draw his firearm or make any motions to stop ██████ because he was physically exhausted and suffering the effects of the OC spray. He feared if he intervened, ██████ would be able to disarm him and use his firearm against him or his partner.

After the gunshot, ██████ lunged back at Officer Butler, who used his elbow to push ██████ up against the escalator wall. ██████ then turned and fled up the escalator with his jacket in his hand. Both officers followed ██████ onto the escalator, but Officer Butler could not recall if his partner was in front of or behind him. His gaze was fixed on ██████ and the jacket in ██████ hand. When ██████ was near the top of the escalator, approximately seven to ten steps above him, Officer Butler heard a second gunshot. He did not hear Officer Bogard say anything just before the shot, did not know she was about to discharge her weapon, and did not see her fire. Officer Butler stated he had a clear view of the top of the escalator and did not see anyone other than ██████. Despite that, he assumed there were civilians on the turnstile level, and he believed it was possible ██████ posed an imminent threat of death or great bodily harm to them. Officer Butler described the imminent threat as "that if there was any civilians up there, that ██████ would possibly engage with them, some form or fashion, possibly hurt, harm them, rob them, take whatever they need—they had that he needed to make his getaway."³⁴ However, Officer Butler

³² Transcribed statement of Officer Butler, pg. 68, lines 2-4. Although Officer Butler meant Officer Bogard should shoot ██████ with the OC spray, he claimed ██████ posed an imminent threat to his or Officer Bogard's lives both times he told her to "shoot him." The first time, the imminent threat was to Officer Butler's life, created by the physical fight ██████ engaged in with the officer. The second time, ██████ posed an imminent threat to Officer Bogard's life when he walked towards her on the platform. Transcribed statement of Officer Butler, p. 77, lines 3-11, pg. 102, line 22- pg. 103, line 20.

³³ Transcribed statement of Officer Butler, pg. 77, lines 7-11.

³⁴ Transcribed statement of Officer Butler, pg. 87, lines 7-11.

acknowledged ██████ did not pose an imminent threat to him or Officer Bogard at the time he heard the second gunshot.³⁵

After the second shot, ██████ tripped and fell at the top of the escalator. Officer Butler attempted to handcuff him but realized his handcuffs had been broken in the struggle. He immediately radioed for assistance, but it took about a minute for him to make radio contact. After responding officers arrived, Officer Butler exited the station and got into an ambulance with Officer Bogard and a sergeant, now identified as Sergeant Robyn Richardson. Paramedics transported both officers to Rush University Medical Center, where doctors treated Officer Butler for a swollen knee, severe lower back pain, cuts and scrapes on his hands, and the effects of the OC spray.³⁶

In a **statement to COPA on May 27, 2020, Sergeant (Sgt.) Robyn Richardson**³⁷ stated on the date and time of the incident, she was Officer Bogard and Officer Butler's direct supervisor in the Mass Transit Unit. Sgt. Richardson was on the Dan Ryan Expressway, near 55th St., when she heard a radio call of shots fired. She immediately turned around and responded to the scene, but heavy traffic delayed her arrival by 20-25 minutes. When Sgt. Richardson arrived at State and Grand, she learned Officers Bogard and Butler were the officers involved in the shots fired incident. Sgt. Richardson located Officers Bogard and Butler in the back of the same ambulance, along with a paramedic.³⁸ Sgt. Richardson got into the ambulance and accompanied the officers to Rush University Medical Center. Both officers appeared to be in shock, and they did not discuss the incident.

At the hospital, medical personnel separated the officers, and Sgt. Richardson stayed with Officer Bogard. Officer Bogard was anxious and nervous, but Sgt. Richardson could not recall if she had any physical injuries. When Sgt. Richardson conducted the Public Safety Interview³⁹, Officer Bogard provided yes/no answers and did not volunteer any additional information about the incident. Sgt. Richardson remained at the hospital until medical staff released both officers; she then relocated to Area Central, where she completed Officer Bogard's Tactical Response Report (TRR) with the assistance of Chief James O'Donnell, Deputy Chief Jose Tirado, Commander (Cmdr.) Matthew Cline, and Sgt. Geno Rouse, among others.

³⁵ Transcribed statement of Officer Butler, pg. 86, lines 4-13

³⁶ Officer Butler later stated he did not receive a saline flush or related treatment for his eyes, and he could not remember if he told any medical or EMS personnel about the OC spray. He knew that if he told them, they would make him take out his contact lenses, and he did not want to lose his vision completely. Officer Butler's impaired vision lasted until he got home and changed out of his contact lenses.

³⁷ Atts. 101-103, 105.

³⁸ This appears to be a violation of Department policy, which requires responding supervisors to ensure that involved officers "remain separate from each other and do not communicate with each other or other witnesses regarding the incident." Att. 89, G03-02-03(V)(D)(5)(a). Sgt. Richardson stated when she arrived at the scene, Mass Transit Commander Cindy Sam told her Officers Bogard and Butler were in the same ambulance, and she should accompany them to the hospital. Sgt. Richardson followed Cmdr. Sam's instructions, while also ensuring the officers did not discuss the incident. As a result, COPA did not serve a failure to separate allegation against Sgt. Richardson. Cmdr. Sam retired from the Department shortly after the incident.

³⁹ Att. 102. After every Officer Involved Shooting, a supervisor asks the involved member a standard list of questions, which are related to public safety, the preservation of evidence, and the securing of the incident scene.

In a **statement to COPA on June 22, 2020, Sgt. Geno Rouse⁴⁰** stated on the date and time of the incident, he was the district station supervisor for the Mass Transit Unit. At approximately 4:10 pm, Sgt. Rouse was conducting roll call when he heard radio transmissions indicating there was a 10-1⁴¹ at Grand and Lake. Several minutes later, Sgt. Rouse received a phone call from Officer Butler, who stated his partner discharged her weapon while they were struggling with a subject. The phone call was brief, lasting approximately 45 seconds, and Sgt. Rouse did not speak to Officer Bogard. Sgt. Rouse responded to the scene, but Officers Bogard and Butler were gone by the time he arrived. At approximately 10:00 pm, Sgt. Rouse relocated to the hospital, where he checked on both officers. Officer Butler showed Sgt. Rouse the swelling to his right leg and hands, and he also complained of back pain. Officer Bogard was upset and crying. Neither officer provided Sgt. Rouse with a more detailed account of the incident. Sgt. Rouse then relocated to Area Central, where he completed Officer Butler's TRR. Chief O'Donnell and Cmdr. Cline subsequently reviewed the TRR to ensure the correct boxes were checked.

ii. Civilian Witnesses

On March 5, 2020, investigators from the Cook County State's Attorney's Office (CCSAO) took the **statement of ██████████⁴¹** at Northwestern Memorial Hospital as a part of their ongoing criminal investigation into this use of deadly force. CCSAO permitted a COPA investigator to be present and observe the interview. In our presence, ██████████ provided additional context and detail relating to this incident. However, he did not relate any information that materially changed the facts as known or require additional questioning from COPA. The CCSAO did not record the statement, asked that COPA not document the specific content of ██████████ statement, and CCSAO has not provided COPA a copy of their summary of the interview.

In a **statement to COPA and CCSAO on February 29, 2020, ██████████** stated on the date and time of the incident, he was on his way home after seeing a movie at the AMC River East theater. ██████████ entered the Grand Red Line station and descended the stairs to the northbound platform, where he intended to catch the next train. As soon as ██████████ stepped onto the platform, he observed two uniformed officers engaged in a scuffle with a man a few yards down the platform. ██████████ immediately began recording the incident on his cell phone, as is his habit anytime he observes police activity.

The two officers, now identified as Officers Bogard and Butler, grappled with the man, now identified as ██████████ from a standing position on the platform. The officers held onto ██████████ by his jacket, pulling the jacket over ██████████ head as he struggled to get away. ██████████ heard general struggling sounds, followed by the popping sound of a Taser. He did not see which officer

⁴⁰ Atts. 106-107, 115.

⁴¹ A 10-1 is a radio call indicating an officer needs emergency assistance.

⁴¹ Investigator's Case Log, Note No. CO-0043284. CCSAO declined to make its written summary of ██████████ interview available to COPA.

⁴² Atts. 15-19, 76-77. Investigators from COPA and CCSAO conducted the questioning of ██████████ while additional representatives from COPA, CCSAO, and the FBI observed a live-stream of the video from a separate room at COPA. At the conclusion of the interview, an examiner from the FBI's Regional Computer Forensics Laboratory (RCFL) forensically extracted two videos of the incident (including the "Twitter video") from ██████████ cell phone, with his consent. Att. 76.

discharged the Taser. At that point, the officers wrestled ██████ to the ground near the bottom of the ascending escalator. Officer Butler got on top of ██████ holding him down, while Officer Bogard stood behind them and attempted to provide assistance from above. ██████ was squirming underneath Officer Butler, continuously resisting the officers' efforts to place him in custody. Both officers were yelling verbal commands, and ██████ was saying things like, "Please let me go. I didn't do anything to you. I didn't do anything."⁴³ Officer Bogard repeatedly attempted to radio for backup, with no response.

Throughout the struggle, ██████ noticed ██████ was holding onto one of Officer Butler's handcuffs, trying to prevent the officer from handcuffing him. Officer Butler held the other end of the handcuffs, and the two men were "doing a sort of tug-of-war with it."⁴⁴ ██████ continued to disregard Officer Butler's commands to let go of his cuffs and give him his hands. As Officer Butler wrestled with ██████ on the ground, he told Officer Bogard to shoot ██████. She pulled out her OC spray, and Officer Butler told her to "mace him."⁴⁵ Officer Bogard reached down and squirted ██████ in the face with the OC spray. ██████ did not observe any of the OC spray get on Officer Butler.

As the officers continued to wrestle with ██████ he struggled to his feet at the bottom of the escalator. Officer Bogard warned, "I'm going to shoot him," then drew her firearm. Officer Butler responded, "shoot him."⁴⁶ Officer Bogard ordered ██████ to give Officer Butler his hands, but ██████ reached down with one hand and picked his jacket up off the floor. He brought his other hand to his eyes, as if he were trying to wipe away the OC spray. ██████ staggered forward, toward Officer Bogard. ██████ stated ██████ movement did not appear to be threatening, and it was unclear if ██████ could even see (due to the OC spray). When ██████ was a couple of feet from Officer Bogard, ██████ heard a single gunshot and saw ██████ lurch backward.⁴⁷ At the time of the gunshot, Officer Butler was standing directly behind ██████ less than a foot from him. ██████ and two or three other civilians were also standing on the platform watching the incident.⁴⁸

After the gunshot, ██████ turned and staggered a few steps up the escalator. Both officers followed, but ██████ was out of their reach. ██████ lost sight of them as they went up the escalator and passed under the overhang. Almost immediately thereafter, he heard a second gunshot. ██████ did not see who fired the shot, nor could he see if there were other people at the top of the escalator at the time of the shot. He heard someone scream and Officer Butler radio for assistance. ██████ stayed on the platform for several minutes, then took the stairs up to the turnstile level and observed the arrival of responding units. Later that evening, ██████ posted the cell phone video he recorded to Twitter, under his Twitter handle ██████.

Throughout the incident, ██████ stated he never saw ██████ strike or kick either officer, touch either officer's Taser or firearm, or brandish a weapon of his own. From

⁴³ Att. 77, pg. 17, lines 1-3.

⁴⁴ Att. 77, pg. 33, line 12.

⁴⁵ Att. 77, pg. 18, line 5.

⁴⁶ Att. 77, pg. 18, lines 17-18; see also pg. 43, lines 9-13.

⁴⁷ Officer Bogard's back was facing ██████ so he did not see her fire her weapon.

⁴⁸ COPA was unable to identify these civilians.

██████████ perspective, ██████████ actions were “not violent”⁴⁹ and did not pose a threat to the officers. ██████████ impression was that ██████████ was scared throughout the entire encounter, and was trying to get away from the officers, who in his opinion, were frustrated and increasingly angry they could not get him under control.⁵⁰

In a **statement to COPA on February 28, 2020**, ██████████ stated he works as a customer service assistant for the CTA. On the date and time of the incident, he was inside the kiosk on the turnstile level of the Grand Red Line station. ██████████ heard one gunshot and saw a stampede of people running out of the station. Approximately five seconds later, he heard a second gunshot. He did not see who fired either shot.

In a **statement to COPA on February 28, 2020**, ██████████ stated she works as a janitor for the CTA. On the date and time of the incident, she was inside the janitor’s closet on the turnstile level of the Grand Red Line station. She heard two gunshots in rapid succession, followed by people screaming. A few minutes later ██████████ exited the closet to see what was happening, and she observed a man, now identified as ██████████ lying on the ground. Two white male officers in uniform were standing next to ██████████ and ██████████ heard them tell ██████████ they were going to get him help. Responding officers arrived at the scene approximately five minutes later.

COPA investigators made multiple **attempts to interview** ██████████, whom Chicago Police detectives tentatively identified as the man wearing the Bears hat who watched part of the struggle from the top of the escalator. COPA investigators attempted to reach ██████████ by phone and certified mail, but he did not respond. Ultimately, a COPA investigator contacted ██████████ wife, ██████████ who related that her husband “did not really see anything.”⁵⁴ She promised to relay COPA’s message to ██████████ but he never responded.

c. Physical Evidence

i. Forensic Evidence

The Crime Scene Processing Reports⁵⁵, Evidence Plat⁵⁶, Inventory Sheets⁵⁷ and Evidence Technician’s (ET) Photographs⁵⁸ document the recovery of evidence from the crime scene. On the platform level, ETs recovered one fired cartridge case, a pair of handcuffs, various Taser wires and Taser cartridge blast doors, and a Coleman backpack. When the ETs searched the backpack, they recovered a digital scale and a substantial amount of suspect cannabis (packaged in 23 plastic baggies). On the turnstile level, ETs recovered one fired cartridge case from the top

⁴⁹ Att. 77, pg. 15, line 22 – pg. 16, line 1.

⁵⁰ Att 77, pg. 26.

⁵¹ Atts. 13, 83.

⁵² Atts. 12, 84.

⁵³ Atts. 100, 111; Investigator’s Case Log.

⁵⁴ Investigator’s Case Log, Note No. CO-0051875.

⁵⁵ Atts. 71, 94-97.

⁵⁶ Att. 78.

⁵⁷ Att. 53.

⁵⁸ Att. 82.

step of the escalator, as well as two Tasers, various Taser wires and darts, and [REDACTED] jacket, jeans, and shoes. They also recovered three clear knotted plastic baggies containing suspect cocaine from inside [REDACTED] jacket pocket.

After ETs marked and photographed the evidence, they relocated to Rush University Medical Center, where they photographed the injuries to Officers Bogard and Butler. The photos show bruising to Officer Butler's right knee, an abrasion to Officer Bogard's bottom lip, and minor scattered abrasions to both officers' hands. At Northwestern Memorial Hospital, an ET fingerprinted and photographed [REDACTED] and recovered his remaining clothing.

At Chicago Police Department (CPD) Detective Area 1, ETs processed the officers' weapons and equipment.⁵⁹ Officer Bogard's Glock pistol⁶⁰, which had a fifteen-round capacity magazine, was found to have thirteen live rounds of ammunition in the magazine and one live round in the chamber (all Win 9mm Luger +P). Officer Butler's Glock pistol⁶¹ was fully loaded, with fifteen live rounds in the magazine and one live round in the chamber (all Win 9mm Luger +P). An ET swabbed Officer Bogard's firearm and duty belt, Officer Butler's firearm, duty belt, holster, and handcuffs, and both officers' Tasers for the presence of DNA.

The **Illinois State Police (ISP) Laboratory Report—Firearms/Toolmarks**⁶² documents the examination and testing of Officer Bogard's Glock Model 19 pistol. The pistol was operable as received, and it was test fired using the magazine submitted with the weapon. An ISP forensic scientist determined the two Winchester 9mm Luger +P fired cartridge cases recovered from the scene were fired by Officer Bogard's weapon.

The **ISP Laboratory Report—Drug Chemistry**⁶³ documents the testing of the narcotics evidence recovered from [REDACTED] backpack and jacket. An ISP forensic scientist analyzed 90.7 grams of plant material from fourteen plastic bags and determined it was Cannabis.⁶⁴ The scientist also concluded that 4.3 grams of powder from three plastic bags was Cocaine.

The **ISP Evidence Submission Form**⁶⁵ documents the results of the major case review meeting held at ISP on March 6, 2020. At that meeting, representatives from CPD, CCSAO, COPA, and ISP agreed that, in addition to the firearms and drug chemistry tests listed above, ISP would conduct DNA testing on the swabs collected from Officer Butler's firearm, holster, and duty belt, and Officer Bogard's firearm. As of the date of this report, the results of the DNA testing remain outstanding.⁶⁶

⁵⁹ See Att. 52.

⁶⁰ Model 19 Gen 5, 9X19 semi-automatic pistol (Serial #BGGC874).

⁶¹ Model 19 Gen 5, 9X19 semi-automatic pistol (Serial #BHDC902).

⁶² Att. 118.

⁶³ Att. 119.

⁶⁴ An estimated 28.0 grams of plant material from nine plastic bags was not tested.

⁶⁵ Att. 72.

⁶⁶ Based on particular facts of this incident, available video evidence, and witness accounts, the results of the DNA testing are not necessary for inclusion in the analysis, i.e., the presence of [REDACTED] DNA on the items tested would not have altered COPA's conclusions. COPA's concluded investigations can always be re-opened for inclusion of additional evidence, if warranted.

ii. Medical Evidence

The **Chicago Fire Department (CFD) Ambulance Report for [REDACTED]** states paramedics from Ambulance 43 arrived at the scene at 4:18:46 pm. They found [REDACTED] lying on his back near the turnstiles, his hands cuffed in front of his body. Crew from Engine 98 were already on-scene rendering medical treatment. [REDACTED] presented with gunshot wounds to the right lower chest and left upper buttocks. He was alert but confused, uncooperative, and repeatedly admitted to cocaine use. Paramedics moved [REDACTED] into the ambulance and transported him to Northwestern Memorial Hospital, where he was transferred into the care of trauma staff at 4:34:24 pm.

According to [REDACTED] **medical records**⁶⁸, he arrived at Northwestern Memorial Hospital via ambulance at 4:33 pm on February 28, 2020. [REDACTED] presented with a gunshot wound to the right upper quadrant, a gunshot wound to the left buttocks, and an abrasion to the left knee. He underwent multiple surgeries to repair damage to his small bowel, and doctors removed a bullet fragment from his central pelvis. While hospitalized, [REDACTED] tested positive for cocaine.⁶⁹

The **CFD Ambulance Reports for Officer Bogard⁷⁰ and Officer Butler⁷¹** indicate paramedics from Ambulance 42 arrived at the scene at 4:30 pm, where they found Officer Bogard sitting in the back of a squad car. She complained of lacerations to her hands and bottom lip, as well as emotional stress. At 4:38 pm, Officer Butler approached the paramedics and reported similar complaints. There is no indication Officer Butler complained of the effects of OC spray, and the report notes his pupils were equal and reactive to light. Ambulance 42 transported both officers to Rush University Medical Center, where paramedics transferred them into the care of a nurse at 4:55 pm.

Officer Butler's medical records⁷² reveal he was admitted to Rush University Medical Center at 5:06 pm on February 28, 2020. Officer Butler told doctors he was hit in the nose and fell onto his right knee during an altercation with a suspect. He complained of scattered abrasions on his hands, lower back pain, right knee pain, and mild nose pain. Doctors noted no swelling to the nasal bridge, and X-rays of the lumbar spine, right knee, and hands revealed negative results.

Officer Butler's medical records contain no references to OC spray or any related complaints. He specifically denied experiencing double vision, blurry vision, or shortness of breath. Additionally, a physical examination of Officer Butler revealed his vision was intact, his gaze was aligned appropriately, and his pupils were equal, round, and reactive to light. Doctors prescribed Officer Butler pain medications and anti-inflammatories, provided him an Ace wrap for his right knee, and discharged him from the hospital at 12:04 am on February 29, 2020.

⁶⁷ Att. 68.

⁶⁸ Att. 67.

⁶⁹ Att. 67, pg. 349.

⁷⁰ Att. 69.

⁷¹ Att. 70.

⁷² Att. 85.

Officer Bogard's medical records⁷³ reveal she arrived at Rush University Medical Center at 4:58 pm on February 28, 2020. Officer Bogard complained of anxiety, right knee pain, and superficial abrasions to the lower lip and both hands. X-rays of her hands revealed negative results, and a psychiatric consultation determined Officer Bogard's anxiety and sadness reflected a normal response to a traumatic incident. Doctors prescribed Officer Bogard medications for anxiety and muscle spasms, referred her for outpatient counseling, and discharged her from the hospital at 1:29 am on February 29, 2020.

CPD's Bureau of Internal Affairs (BIA) administered a **breathalyzer test**⁷⁴ to Officer Bogard at 10:01 pm on February 28, 2020, revealing her breath alcohol concentration (B.A.C.) was .000. Officer Bogard also submitted to a urine drug test on the same date, which produced negative results.

d. Documentary Evidence⁷⁵

Arrest Report⁷⁶ and **Criminal Court Records**⁷⁷ reveal Officers Bogard and Butler placed ██████ in custody at 4:11 pm on February 28, 2020. According to the narrative in the Arrest Report, ██████ refused to comply with the officers' verbal directions after they observed him crossing between train cars in violation of a CTA ordinance. ██████ then engaged in a physical altercation with Officers Bogard and Butler, causing bodily injury to both officers. Although the narrative notes ██████ also sustained injuries during the altercation, it does not reference Officer Bogard's firearm discharge, or the fact that ██████ sustained gunshot wounds. Following the incident, ██████ was charged with resisting or obstructing a peace officer, possession of a controlled substance, possession of cannabis (30-100 grams), manufacturing or delivering cannabis (30-500 grams), and CTA-unsafe conduct/crossing between cars. On March 1, 2020, at ██████ bond court hearing, the CCSAO dismissed all charges against ██████ Nolle Prosequi.

The **Taser Download Reports**⁷⁸ indicate [Officer Bogard]⁷⁹ discharged one cartridge from Taser No. 50NH at 4:07:11 pm, and a second cartridge two seconds later. [Officer Butler] discharged two cartridges from Taser No. 50NF approximately one minute later, at 4:08:11 pm and 4:08:12 pm. The reports indicate [Officer Butler] pulled the trigger on his Taser a third time

⁷³ Att. 122.

⁷⁴ Att. 79.

⁷⁵ COPA requested a copy of the detectives' file for this case, including the detectives' supplementary reports and general progress reports. The Department denied the request on the grounds that its investigation is "open and ongoing and the requested information is not available." Att. 121.

⁷⁶ Att. 6.

⁷⁷ Att. 112.

⁷⁸ Atts. 36-37.

⁷⁹ The Department's records regarding which officer possessed which Taser appear to be inaccurate. According to the Personal Equipment Log for Unit 701, on the date of the incident Officer Joanna Mietka #6157 issued Taser No. 50NF to Officer Bogard and Taser No. 50NH to Officer Butler. Att. 113. However, when ETs recovered Officer Bogard's duty belt, it contained the holster for Taser No. 50NH. Similarly, Officer Butler's duty belt contained the holster for Taser No. 50NF. Att. 53, pages 55, 57. This suggests the Taser numbers on the assignment logs are transposed, and the officers each possessed the Taser assigned to their partner. This is consistent with Officer Butler's assertion that the wrong Taser Download Report was attributed to him, as he discharged his Taser *after* Officer Bogard. Indeed, the Twitter video shows Officer Butler's Taser was still holstered at the time Officer Bogard discharged her Taser. As a result, COPA finds that Officer Butler possessed Taser No. 50NF and Officer Bogard possessed Taser No. 50NH at the time of the incident. COPA's summary of the Taser Download Reports reflects the accurate information.

at 4:08:17 pm, reenergizing his second cartridge for another five-second energy cycle. The officers exposed ██████ to five, five-second energy cycles, for a cumulative 22 seconds.

Sgt. Richardson and Sgt. Rouse completed the **Tactical Response Reports (TRRs) for Officers Bogard⁸⁰ and Butler⁸¹**, respectively. Both sergeants told COPA the information contained in the TRRs came from their review of the Twitter video and the CTA videos, not the first-hand accounts of Officers Bogard and Butler.⁸² However, it is notable that upon review of the videos, both sergeants concluded that ██████ was not armed with a weapon, did not attempt to obtain the member's weapon, and did not use force likely to cause death or great bodily harm. The TRR Sgt. Rouse completed further indicates that ██████ did not commit an assault or battery against Officer Butler.⁸³ The Force Review Board determined that prior to resuming full duties, Officers Bogard and Butler must complete an eight hour hands-on control tactics course, an eight hour hands-on Taser refresher training, and an eight hour firearms refresher training.

On March 3, 2020, COPA sent a **Relief of Powers Request⁸⁴** to Interim Superintendent Charles Beck, which requested that the Department relieve Officers Bogard and Butler of their police powers pending the outcome of COPA's investigation. The Department concurred, and, the following day, both officers were relieved of their police authority and served with duty restrictions. They also surrendered their CPD Police Officer Stars, Shields, and Identification Cards.

On March 11, 2020, ██████ filed a **civil lawsuit⁸⁵** against the City of Chicago, Officer Bogard, and Officer Butler. The case is currently pending in the United States District Court for the Northern District of Illinois.

VI. LEGAL STANDARD

a. Use of Force⁸⁶

The main issue in evaluating every use of force is whether the amount of force the officer used was objectively reasonable, necessary, and proportional in light of the totality of the circumstances faced by the officer.⁸⁷ Factors to be considered in assessing the reasonableness of force include, but are not limited to, (1) whether the subject was posing an imminent threat to the officer or others; (2) the risk of harm, level of threat or resistance presented by the subject; (3) the

⁸⁰ Att. 2.

⁸¹ Att. 3.

⁸² See Att. 115, pg. 36, lines 7-21; Att. 105, pg. 26, lines 1-14, pg. 40, lines 16-21. Sgt. Richardson also stated Chief O'Donnell, Dep. Chief Tirado, and Cmdr. Cline provided some of the information included in Officer Bogard's TRR. Att. 105, pg. 31, lines 10-19.

⁸³ Sgt. Richardson initially indicated the same on Officer Bogard's TRR, but during her COPA statement she maintained that answer was an error, and she should have checked the box specifying that ██████ committed an assault or battery against Officer Bogard. Att. 105, pg. 41, lines 1-17.

⁸⁴ Att. 40. See also Atts. 41, 79.

⁸⁵ Att. 74, Case No. 20-CV-01717, ██████ v. *City of Chicago*.

⁸⁶ The Department's Use of Force Policy at the time of the incident prohibits the use of deadly force under circumstances that would be permissible under the Fourth Amendment to the United States Constitution and Illinois state law. COPA's analysis focuses solely on whether Officer Bogard complied with General Orders.

⁸⁷ General Order G03-02(III)(B)(1)(effective Oct. 16, 2017 to Feb. 28, 2020).

subject's proximity or access to weapons; (4) the severity of the crime at issue; and (5) whether the subject is actively resisting arrest or attempting to evade arrest by flight.⁸⁸

The Force Options directive divides subjects into categories based upon the amount of force the subject is using and provides for what types of force members are permitted to use against those subjects. These categories are (1) cooperative subjects who are compliant without the need for force; (2) passive resisters who fail to comply, via non-movement, with verbal or other direction; (3) active resisters who attempt to create distance between themselves and members' reach with the intent to avoid physical control and/or defeat arrest; and (4) assailants who use or threaten the use of force which is likely to cause physical injury.⁸⁹

Department policy recognizes that Department members must "make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation. These decisions must therefore be judged based on the totality of the circumstances known by the member at the time and from the perspective of a reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight."⁹⁰

b. Use of Deadly Force

The Department's "highest priority is the sanctity of human life."⁹¹ Discharging a firearm is deadly force under Department policy.⁹² Department policy dictates that "[t]he use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person."⁹³ Thus, a Department member may use deadly force in only two situations. First, deadly force may be used to prevent death or great bodily harm from an imminent threat posed to the sworn member or another person. Second, deadly force may be used to prevent an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay.⁹⁴ "A threat is imminent when it is objectively reasonable to believe that:

- a. the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; and
- b. the subject has the means or instruments to cause death or great bodily harm; and
- c. the subject has the opportunity and ability to cause death or great bodily harm."⁹⁵

c. Taser Use

⁸⁸ Id.

⁸⁹ G03-02-01 (IV).

⁹⁰ G03-02(II)(D).

⁹¹ Id. at (II)(A).

⁹² Id. at (III)(C)(1).

⁹³ Id. at (III)(C)(3).

⁹⁴ Id.

⁹⁵ Id. at (III)(C)(2).

General Order G03-02-04 outlines the Department's policy governing the deployment of Taser devices. A member's use of a Taser must be objectively reasonable, necessary under the circumstances, and proportional to the threat, actions, and level of resistance offered by a subject.⁹⁶ Members may use a Taser only against a subject who is an assailant or an active resistor.⁹⁷ Due to the fact that Tasers "can cause serious injury or death," policy places a number of prohibitions on the use of Tasers, including (1) using multiple Tasers against the same subject unless the probes in the already attempted Taser use did not make contact with the subject; and (2) using "drive stuns"⁹⁸ unless the subject is an assailant, and other force options are not readily available.⁹⁹

Moreover, the policy provides requirements for the Authorized Manner of Use, including: (1) giving verbal commands and warnings prior, during, and after deployment; (2) aiming for the back, whenever possible; (3) discharging probes at an ideal distance of 7-15 feet; (4) using only one five-second cycle then reassessing the situation before any additional cycles are given or cartridges are discharged; and (5) if the subject has been exposed to three, five-second energy cycles, or a cumulative 15 total seconds of energy, switch to other force options unless the member can reasonably justify the continued Taser use.¹⁰⁰

d. OC Spray

General Order G03-02-05 outlines the Department's policy governing the deployment of OC spray and other chemical agents. A members' use of OC spray must be objectively reasonable, necessary under the circumstances, and proportional to the threat, actions, and level of resistance offered by a subject.¹⁰¹ Members may use OC spray only against a subject who is an assailant or an active resistor.¹⁰² However, if an active resistor is part of a group or crowd, a member is authorized to use OC spray only after obtaining approval from the Superintendent or his designee. Additionally, the General Order prohibits the use of OC spray in two specific situations: (1) against a subject in an enclosed area; and (2) against a subject who is at greater risk of serious injury from the OC spray (i.e., children, pregnant women, the elderly). These prohibitions do not apply where the subject is an assailant and other force options are not readily available or would be ineffective.¹⁰³

The General Order also sets forth procedural requirements for members who discharge their OC spray. A discharging member will, when possible, give verbal commands and warnings prior to, during, and after the discharge, including informing other Department members at the scene.¹⁰⁴ After the discharge, the member will take steps to assist in mitigating the effects of the OC spray, including relocating the subject to an area with uncontaminated air, providing the

⁹⁶ General Order G03-02-04(II)(C).

⁹⁷ Id.

⁹⁸ The TASER manual describes a "drive stun" as using the TASER more as a traditional stun gun by firmly pressing the TASER against the body of the subject. *See*, Taser X2 CEW User Manual, AXON (March 2020) pp. 40-41.

⁹⁹ G03-02-04(II)(D).

¹⁰⁰ G03-02-04 (III)(B).

¹⁰¹ General Order G03-02-05(II)(C).

¹⁰² Id. at (II)(C)(1)-(2). The policy also allows a member to use OC spray against passive resistors in two specific circumstances, neither of which is applicable here.

¹⁰³ Id. at (II)(D).

¹⁰⁴ Id. at (III)(A).

subject an opportunity to flush the affected areas with cool water, and advising the subject not to rub the affected areas.¹⁰⁵ The discharging member will also request that a supervisor respond to the scene, notify OEMC, and call for EMS if the subject appears to be in physical distress.

e. De-Escalation Principles

When using any force, Department members will use de-escalation techniques to prevent or reduce the need for force, when it is safe and feasible under the totality of the circumstances.¹⁰⁶ This includes continually assessing the situation and modifying the use of force as circumstances change and in ways that are consistent with officer safety.¹⁰⁷ The requirement to continually assess the situation means they must determine (1) if any use of force is necessary; (2) the authorized force option based on the totality of the circumstances; (3) if the seriousness of the situation requires an immediate response or whether the member can deploy other force options or the Force Mitigation Principles; and (4) if the level of force employed should be modified.¹⁰⁸

The policy provides the following Force Mitigation Principles:

Continual Communication: Members are required to attempt to use verbal control techniques to avoid or minimize confrontations prior to, during, and after the use of physical force, when feasible and safe, including persuasion, advice, instruction, and warning prior to the use of physical force. Members should establish and maintaining verbal communication and continually evaluate the effectiveness of that communication including maintain one-on-one communication. Members should also adjust verbal communication and allow a different member to initiate verbal commands (but refrain from giving simultaneous directions).¹⁰⁹

Tactical Positioning: When it is safe and reasonable to do so, members should make advantageous use of positioning, distance, and cover by isolating and containing a subject and continuously evaluating the member's positioning, the subject's actions, and available force options. This including creating a "zone of safety" to continually monitor the subject and the scene, contain the subject, and ensure the subject does not pose a continuing threat to Department members or the public.¹¹⁰

Time as a Tactic: When it is safe and reasonable to do so, officers should use time as a tactic by establishing a zone of safety for security of responding members and the public. This may (1) permit the de-escalation of the subject's emotions and allow the subject an opportunity to comply; (2) allow for continued communication and adjustment of verbal control techniques; and (3) allow for the arrival of additional members.¹¹¹

f. Duty to Cooperate With COPA

¹⁰⁵ Id. at (IV)(A).

¹⁰⁶ Id. at (II)(B).

¹⁰⁷ Id.

¹⁰⁸ Id. at (II)(F).

¹⁰⁹ G03-02-01(III)(A).

¹¹⁰ G03-02-01(III)(B).

¹¹¹ G03-02-01(III)(C).

Department policy requires all members to cooperate with personnel from COPA, BIA, or any other lawful investigatory entity who are conducting an investigation into a member's misconduct.¹¹² Members who refuse to answer questions relating to their official actions or obligations will be disciplined up to and including separation from the Department.¹¹³

g. Standard of Proof

For each allegation COPA must make one of the following findings:

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

A **preponderance of evidence** is evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *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 been 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, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and convincing is defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

VII. LEGAL ANALYSIS

At the outset, COPA notes that Officer Bogard refused to provide a statement to COPA, did not complete her own TRR, and has reportedly never discussed the incident with her partner or immediate supervisors. As a result, COPA does not know Officer Bogard's account of the incident, including her explanation for using deadly force against ██████████. Officer Bogard's refusal to cooperate has rendered COPA unable to assess the credibility of her account, or the validity of any defense she might offer. Therefore, COPA's analysis of Officer Bogard's actions is based entirely on the evidence that is available, including the CTA and Twitter videos, the eyewitness accounts of ██████████ and Officer Butler, and the physical, medical, and documentary evidence.

¹¹² General Order G08-01-02(II)(A)(2).

¹¹³ General Order G08-01(II)(C).

a. Initial Stop**i. The officers were justified in stopping and detaining ██████**

The officers were initially justified in stopping ██████ for crossing between train cars, which is prohibited by CTA rules.¹¹⁴ Such a violation subjected him to a fine and removal from CTA property.¹¹⁵ CTA video from inside the train clearly shows that ██████ passed from one car to the next, which the officers also observed, prompting them to stop him and remove him from the train to issue a citation.

ii. Officer Butler was not justified in grabbing ██████ by the arm.

COPA finds that, at the time Officer Butler grabbed ██████ by the arm, ██████ was a cooperative subject. CTA video shows the officers and ██████ speaking calmly for about a minute before Officer Butler grabbed his arm. According to Officer Butler, he grabbed ██████ arm after ██████ had been asked to produce identification and commenced to reach into his backpack. By all accounts, ██████ was not resisting and was attempting to get his ID out of his backpack at the officers' request.

Officer Butler stated he grabbed ██████ because ██████ turned his back to the officers and reached inside his backpack. However, Officer Butler conceded neither he nor Officer Bogard issued any verbal instruction for ██████ to turn around or show his hands. Under Department policy, ██████ would have had to be categorized as a resistor to justify the arm hold technique Officer Butler used. The facts as presented are inconsistent with that of a resistor, ██████ was compliant with verbal direction from the officers. In fact, the directive explicitly states that "police presence alone is the only force option authorized for use with subjects who are fully cooperative."¹¹⁶

A preponderance of the evidence demonstrates that ██████ was cooperative and did not disregard verbal direction. Therefore, Officer Butler was not justified in grabbing his arm and doing so violated G03-02's prohibitions against using force against a cooperative subject as well as Rule 9's prohibition against unjustified physical altercations. Allegation 3 against Officer Butler is **Sustained**.

iii. It was not objectively reasonable for Officer Bogard to grab ██████ by the arm in close proximity to the train track.

Not only was Officer Butler unjustified in grabbing ██████ by the arm, Officer Butler did so in a reckless manner. CTA video clearly shows the officers and ██████ standing near the edge of the platform when Officer Butler grabbed ██████ arm. Indeed, at one point during the struggle, both of ██████ feet were inside the blue safety area along the edge of the platform.¹¹⁷ Had ██████ taken a step just one foot further back, or had Officer Butler lost grip of his arm, then one or both of them would likely have fallen onto the tracks.

¹¹⁴ Chicago Transit Board Ordinance 016-110-4(13), available at <https://www.transitchicago.com/assets/1/28/016-110.pdf>

¹¹⁵ *Id.* at Sections 2 & 3.

¹¹⁶ G03-02-01 (IV)(A)(1)(b).

¹¹⁷ See Figure 1.

Officers are required to use tactical positioning in a manner which ensures they can maintain the safety of the scene.¹¹⁸ Video evidence and Officer Butler's statement make clear that he failed to conduct the initial stop in a safe manner and failed to exercise sound tactical positioning as required by Department policy placing both he and ██████ at risk of harm.

A preponderance of the evidence demonstrates that Officer Butler's conduct was both careless and dangerous. Therefore, COPA finds that Allegation 4 against Officer Butler is **Sustained**.

b. Taser Usage

i. Officer Bogard's Taser Use Violated Department Policy

At the time Officer Bogard discharged her Taser, ██████ was disregarding verbal commands, pulling away from the officers, and attempting to thwart their attempts to place him in custody. Under these circumstances, ██████ was an active resistor, and it appears Officer Bogard discharged her Taser to gain control of him. Thus, Department policy authorized her to use her Taser against ██████¹¹⁹

However, in discharging her Taser, Officer Bogard failed to follow several rules and procedural requirements set forth in Department policy. For example, there is no evidence Officer Bogard gave any verbal commands or warnings indicating she was going to use her Taser, a violation of policy.¹²⁰ Additionally, Officer Bogard discharged both of her Taser cartridges only two seconds apart, meaning the five-second energy cycle from the first cartridge was still being applied when she discharged the second cartridge. Department policy required Officer Bogard to use only one Taser cartridge at a time and reassess the situation before discharging an additional cartridge.¹²¹

Finally, COPA finds that Officer Bogard violated Department policy by failing to appropriately balance the risks and benefits of her Taser deployment.¹²² At the time Officer Bogard discharged her Taser, ██████ and the officers were standing on the concrete CTA platform, and ██████ was pulling the officers in the direction of the train tracks. Officer Bogard's Taser use created a substantial risk of injury to ██████ the officers, as well as the dozens of CTA riders standing on the platform nearby. Additionally, Officer Bogard should have recognized that discharging her Taser was unlikely to be successful. ██████ was wearing a large coat, which made it less likely the Taser barbs would be effective. Moreover, Officer Bogard discharged her Taser from only a foot away, seemingly towards the front of ██████ body, whereas Department policy dictates that officers discharge from seven to fifteen feet away at a subject's back, in order to have

¹¹⁸ G03-02-01 (III)(B).

¹¹⁹ General Order G03-02-04(II)(C) (authorizes Department members to use a Taser against an active resistor or assailant, but only for the purpose of gaining control of and restraining the subject).

¹²⁰ See id. at (III)(B)(1) ("A member who is discharging a Taser device will, when possible: 1. give verbal commands and warnings prior to, during, and after deployment of the Taser, including informing other Department members on the scene of the deployment of the Taser.")

¹²¹ See id. at (III)(B)(4).

¹²² See id. at (II)(E).

the greatest chance of success. Therefore, the heightened risk, balanced against lack of achieving a successful outcome, suggests Officer Bogard should not have discharged her Taser, based on the totality of the circumstances.¹²³

For these reasons, while COPA finds it appropriate to characterize ██████ as an active resister, Officer Bogard failed to comply with the associated procedural safeguards to ensure Taser deployment could be effectively and safely carried out. For these reasons, COPA finds by the preponderance of the evidence that Officer Bogard discharged her Taser in violation of G03-02-05, and Rules 2, 3, 6, 8, and 9. Therefore, Allegation 1 against Officer Bogard is **Sustained**.

ii. Officer Butler's Taser Use Violated Department Policy

At the time Officer Butler discharged his Taser, ██████ was an active resistor. He was wrestling with the officers in a continued attempt to avoid being taken into custody. As discussed above, Department policy authorizes Taser use against active resisters. In this situation, however, the policy prohibited Officer Butler from using his Taser, because Officer Bogard had already used her Taser against ██████¹²⁴ Officer Butler stated he did not know if Officer Bogard's Taser made contact with ██████ and the video evidence is inconclusive. While it may have been reasonable for Officer Bogard to assume from ██████ continued aggression that Officer Bogard's taser deployment had not made contact with ██████ Officer Butler's deployment was still in violation of Department policy.¹²⁵

As noted above, Department policy requires the officer to provide advanced warning prior to each deployment of a Taser. While the record reflects that Officer Butler said something akin to "I'm going to tase him too," seemingly meant for Officer Bogard, prior to his first deployment, he said nothing prior to discharging his second cartridge or before giving the Taser the additional third charge.

Additionally, Officer Butler's second discharge, and subsequent additional charge, came after ██████ had already been exposed to three five-second energy cycles (two from Officer Bogard and one from himself).¹²⁶ Officer Butler's statement is void of any justification that said the repeated use of his Taser was reasonably necessary to ensure the safety of himself or others, as required by Department policy.

¹²³ See id. at (II)(E)(1), (2), (6) (providing a list of situations in which members should avoid the use of Tasers, including on subjects who are: elevated above the ground or in an unstable position; could fall and suffer an impact injury to the head; or are running, or otherwise in motion.)

¹²⁴ G03-02-04 (II)(D)(3) states members "will not use multiple Tasers against the same subject, unless a member already attempted to use a Taser against the subject but the probes did not make contact with the subject."

¹²⁵ G03-02-04 (III)(B)(1) requires members to "give verbal commands and warnings prior to, during, and after deployment of the Taser."

¹²⁶ G03-02-04 (III)(B)(6) requires that "if the subject has been exposed to three, five-second energy cycles (or has been exposed to a cumulative 15 total seconds of energy) and the member has not gained control of the subject, switch to other force options unless the member can reasonably justify that continued Taser use was necessary to ensure the safety of the member or another person."

Finally, Officer Butler discharged his Taser in a manner that was unlikely to be effective.¹²⁷ He did so at close range and to the front of ██████ body, which are methods less likely to be effective. ██████ had already been subjected to multiple Taser discharges, and the increased risk of serious injury outweighed any minimal benefit.

For the foregoing reasons, the preponderance of the evidence establishes that Officer Butler's deployment of the taser was in violation of G03-02-04 and Rules 2, 3, 6, 8, and 9. COPA finds that Allegation 2 against Officer Butler is **Sustained**.

c. OC Spray

i. Officer Bogard's Use of OC Spray Violated Department Policy

██████ was an active resistor at the time Officer Bogard discharged her OC Spray. While Department policy permits the use of OC spray against active resisters, it imposes several limitations, including the prohibition of OC spray against active resisters in enclosed areas.¹²⁸ Officer Bogard deployed her OC spray against ██████ in the area near the base of the ascending escalator. This is a small corner of the CTA platform, enclosed on three sides by two walls and the escalator. The fourth side is only partially open to the platform, as it contains a half-wall that restricts the flow of CTA riders accessing the escalator. COPA finds this is an enclosed space, and Officer Bogard's use of OC spray in this area violated the General Order.

The consequences of Officer Bogard's deployment of her OC spray in this area could have been significant to both her and Officer Butler. At the moment of deployment, Officer Butler, was on top of ██████ which could have compromised his ability to gain control of ██████ assist her or himself. Officer Butler stated the effects of the OC spray, coupled with his physical exhaustion, took him "out of the fight."¹²⁹ Officer Bogard's use of OC spray at that time failed to take adequate consideration to the impact it would have on her partner.

Additionally, the Twitter video does not capture Officer Bogard warn ██████ her partner, or nearby civilians that she is about to use her OC Spray. This is consistent with Officer Butler's statement that he did not recall hearing his partner provide any warnings prior to using her OC Spray. This is also a violation of Department policy, which requires officers to provide warnings and commands prior to, during, and after the discharge of OC spray.¹³⁰

The preponderance of the evidence establishes that the manner in which officer Bogard discharged her OC spray violated G03-02-05 and Rules 2, 3, 6, 8, and 9. Therefore, Allegation 2 against Officer Bogard is **Sustained**.

¹²⁷ G03-02-04 (II)(E) states that "Department members will balance the risks and benefits of a Taser deployment based on several factors, including, but not limited to: threat to the officer, threat to the subject and the public as well as the availability of other force options, and the likely outcome of their use."

¹²⁸ General Order G03-02-05(II)(D)(2).

¹²⁹ Transcript of Officer Butler's statement, pg. 26, lines 21-22. As discussed below, the evidence indicates Officer Butler's vision was not as severely impaired as he claimed. However, there is no question Officer Bogard deployed her spray in Officer Butler's general direction, and he was impacted to some extent.

¹³⁰ General Order G03-02-05(III)(A).

d. Deadly Force**i. Officer Bogard Used Deadly Force in Violation of Department Policy.**

COPA finds the preponderance of the evidence demonstrates that Officer Bogard's use of deadly force violated Department policy. Specifically, COPA finds Officer Bogard's use of deadly force was not objectively reasonable in light of the circumstances presented because ██████ posed no imminent threat of death or great body harm and that said use placed others in danger.

1. It was not Objectively Reasonable for Officer Bogard to Believe ██████ Posed an Imminent Threat of Death or Great Bodily Harm.

COPA finds at the time Officer Bogard fired both shots, ██████ was, at most, an active resistor.¹³¹ First, at the time Officer Bogard discharged her first shot, ██████ actions were not likely to cause death or great bodily harm. The preponderance of the evidence demonstrates that prior to discharging her firearm ██████ was slowly walking towards the platform, while wiping his eyes with one hand and holding his coat with the other. Officer Butler stated ██████ was approaching Officer Bogard, possibly with the intent of disarming her or pushing her onto the tracks. However, none of the other evidence supports Officer Butler's statement. ██████ was walking at an angle, not towards Officer Bogard.

Second, ██████ did not have the means or instruments to cause death or great bodily harm nor was there a basis for Officer Bogard to reasonably believe he did. No weapon was recovered from ██████ person or belongings, nor did either officer or any civilian witness claim to see a weapon. Additionally, the video evidence does not demonstrate that ██████ ever took any physical action consistent with brandishing a weapon. He also did not possess the means to harm Officer Bogard by pushing her onto the track, as they were still far from the edge of the platform.

Third, for the above reasons, ██████ did not have the opportunity or ability to cause death or great bodily harm. ██████ was unarmed and did not take any action likely to cause death or great bodily harm. The video evidence strongly suggests that ██████ was unsteady in his balance and was attempting to wipe the burning chemicals from his eyes. The physical effects of the officers' attempts to place ██████ in custody were evident, and they greatly diminished his ability to present any category of threat.

At the time Officer Bogard discharged her second shot, the above analysis is still applicable and incorporated in assessing each of the three requisite factors in determining whether ██████ was an imminent threat of death or great bodily harm. However, there are two additional factors to analyze after the first shot was fired. Those factors are that ██████ was now suffering from a gunshot wound to the abdomen, and ██████ was fleeing in the opposite direction from the officers.

¹³¹ An "active resistor" is defined as "a person who attempts to create distance between himself ... and the member's reach with the intent to avoid physical control and/or defeat the arrest." G03-02-01(IV)(B)(2). Officer Butler claimed he believed ██████ was an assailant, defined as "a subject who is using or threatening the use of force against another person or himself which is likely to cause physical injury." G03-02-01(IV)(C).

Both of these factors strengthen the conclusion that an objectively reasonable officer faced with the same circumstances would not reasonably believe ██████ posed a threat of death or great bodily harm. The fact that ██████ was fleeing the officers is the most significant additional factor in the assessment of Officer Bogard's second firearm discharge, because deadly force may not be used on a fleeing person unless the subject poses an imminent threat.^{132, 133} It is uncontroverted that ██████ was unarmed and fleeing as he ascended the escalator.

The preponderance of the evidence establishes that it was not objectively reasonable for Officer Bogard to believe that ██████ posed an imminent threat of death or great bodily harm, and her use of deadly force violated G03-02 and Rules 2, 3, 6, 8, 9 and 38. Therefore, COPA finds that Allegation 3 against Officer Bogard is **Sustained**.

2. Officer Bogard Used Deadly Force Without Determining Whether Officer Butler or Other Bystanders Would Be in The Line of Fire

Officer Bogard discharged her weapon inside a downtown CTA station during rush hour on a Friday afternoon. The Twitter and CTA videos capture dozens of CTA riders on both the turnstile and platform levels throughout the incident. In fact, less than a minute before Officer Bogard discharged her firearm, approximately twenty CTA riders walked within feet of the struggle and took the escalator upstairs. In such a situation, Department policy required Officer Bogard to identify her target prior to discharging her weapon, and to take reasonable precautions to ensure no one else would be struck.¹³⁴ The preponderance of the evidence demonstrates Officer Bogard did not do this before she discharged her weapon.

When Officer Bogard fired the first shot, the Twitter video reveals Officer Butler was standing directly behind ██████ in the line of fire. ██████ who recorded the Twitter video, estimated Officer Butler was less than a foot away from ██████ at the time Officer Bogard discharged her firearm. ██████ also noted several bystanders were standing on the platform nearby. This video and testimonial evidence demonstrates Officer Bogard did not take reasonable precautions to ensure she did not strike anyone but her target since her partner was in her direct line of fire.

Additionally, there is no evidence Officer Bogard took reasonable precautions when she fired the second shot. Officer Bogard discharged her weapon as she ascended the escalator, firing at ██████ in an upwards direction. Moreover, Officer Bogard fired on a moving escalator at a target who was also moving on the escalator. Not only was the escalator itself moving, but so were both officers and ██████ as each party was proceeding up the moving steps. Thus, Officer Bogard's ability to aim and the position of her target were changing rapidly.

¹³² See General Order G03-02(III)(C)(4).

¹³³ COPA finds that, independent of its conclusions and findings regarding Officer Bogard's initial firearm discharge, the second shot was in violation of Department policy for the above-stated reasons. An objectively reasonable officer, with similar training and experience and facing these circumstances, would not reasonably believe that ██████ presented an imminent threat of death or great bodily harm as the unarmed ██████ fled up the escalator.

¹³⁴ See General Order G03-02(III)(D)(4).

For these reasons, COPA finds by a preponderance of the evidence that Officer Bogard did not take reasonable precautions to ensure her partner or other civilians would not be struck by gunfire during either of her firearm discharges, thereby violating Rules 2, 3, 6, and 10. Therefore, COPA finds that Allegation 4 against Officer Bogard is **Sustained**.

e. The Officers Failed To Use De-Escalation Techniques

First, ██████ did not increase his level of force or resistance throughout the incident; he merely struggled to avoid arrest. The officers, however, continually increased their levels of force. This began with Officer Butler *initiating* force, prior to ██████ using any force or ignoring any commands. In fact, ██████ was attempting to be compliant with the officers' request for his ID by retrieving it from his backpack. From that moment, ██████ continually tried to pull away, but the officers increased their force in ways which were both unreasonable and unlikely to be effective. In so doing, the officers failed in their obligation to constantly assess the amount of force being used and to modify their use of force accordingly.

Second, the officers did not use communication to mitigate the need to use force. Officer Butler initiated force instead of communicating to ██████ that he needed to face the officers when reaching into his bag. Then, throughout the encounter, the officers continued to yell commands, often competing with one another.¹³⁵ Their repeated commands, volume, and tone of voice escalated the encounter. Effective use of communication as a de-escalation technique would have allowed for a resolution other than the use of force, and, if force was still deemed necessary, permitted for a use of force much more proportionate to the surrounding circumstances.

The officers also failed to listen to ██████ communications. The Twitter video captures ██████ repeatedly saying things like "I don't want to fight" and "I didn't do nothing to you guys," but neither officer responds to him. Officer Butler told COPA he did not recall hearing ██████ make these statements. After the first time Officer Butler said "shoot him," ██████ responded, "No, no, no, no...please, please." He then raised both hands above his head, as if to protect his face. Officer Bogard's only response to ██████ pleas was deployment of her OC spray in the direction of his face.

Third, the officers failed to use tactical positioning that would mitigate the need for force. The officers chose to begin the encounter alongside the train tracks. Thus, Officer Butler had to focus on preventing ██████ from falling onto the tracks, which led to them careening across the platform and into the wall. At that point, the officers and ██████ wrestled at the base of the escalator, where it was less conducive to merely waiting until ██████ stopped resisting.

Fourth, the officers did not use time as a tactic to avoid force. As discussed, their failure to create a zone of safety exacerbated the incident. Additionally, the officers did not allow ██████ time to react and comply. To the contrary, they increased the level and frequency of repeated uses of force, often nearly concurrently, as with their Taser uses. Finally, while the officers never did get ██████ into handcuffs, they essentially had him in their control throughout the encounter.

¹³⁵ When a COPA investigator asked Officer Butler if either officer made any attempts to communicate with ██████ beyond just yelling verbal commands at him, Officer Butler replied, "Yes, I think we told him to 'stop resisting.'"

The preponderance of the evidence shows that Officer Bogard and Officer Butler both failed to use de-escalation techniques as required by G03-02, thereby violating Rule 6. Moreover, their failure to do so prevented the Department from achieving or promoting the policy goals articulated in G03-02, a violation of Rules 2 and 3. Therefore, Allegation 5 against Officer Bogard and Allegation 5 against Officer Butler are **Sustained**.

f. Officer Butler was not justified in publicly stating “shoot him” in reference to [REDACTED]

Officer Butler claimed that both times he said, “shoot him,” he meant for Officer Bogard to discharge her OC Spray, not her firearm. However, common usage of that phrase would make it likely to be interpreted as being said in reference to the discharge of Officer Bogard’s firearm, not her OC Spray. However, Officer Butler’s intent is largely irrelevant, as neither the discharge of OC Spray or a firearm were justified during this interaction. Therefore, it was objectively unreasonable for Officer Butler to encourage Officer Bogard to use her OC Spray or deadly force on [REDACTED] in violation of policy.¹³⁶ Furthermore, to have an officer publicly shouting at his partner to “shoot” an unarmed civilian during a police encounter brought significant discredit to the Department. Accordingly, Allegation 1 against Officer Butler is **Sustained**.

g. Officer Bogard Refused To Cooperate With COPA’s Investigation

The sixth and seventh allegations against Officer Bogard arise from her refusal to cooperate with COPA’s investigation into this incident. During Officer Bogard’s COPA statements, she invoked her Fifth Amendment right to remain silent and refused to answer any questions regarding February 28, 2020. Officer Bogard persisted in her refusal to answer questions even after Lt. Denham issued her a direct order to cooperate.

Department policy on this issue is clear: members **must** answer questions relating to their official actions or obligations or face disciplinary action up to and including separation. Prior to Officer Bogard’s COPA statements, she reviewed and signed her administrative proceeding rights.¹³⁷ That document expressly states she has no right to remain silent, as by law any admission or statement she makes cannot be used against her in a subsequent criminal proceeding. A COPA investigator advised Officer Bogard of the potential consequences of her refusal to cooperate, but she continued to refuse to answer questions. Officer Bogard’s refusal to cooperate violated Rules 2, 3, 6, 7, and 51. Accordingly, COPA finds Allegations 6 and 7 are **Sustained**.

¹³⁶ Department members are required to ensure compliance by other members with policy and to intervene when they observe excessive uses of force. G03-02 (V)(A & B).

¹³⁷ CPD-44.105, Administrative Proceeding Rights.

VIII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings by the preponderance of the evidence:

Officer	Allegation	Finding/ Recommendation
Officer Melvina Bogard #3018	<p>It is alleged by the Civilian Office of Police Accountability that on or about February 28, 2020, at approximately 4:11 pm, at or near 521 N. State St.:</p> <ol style="list-style-type: none"> 1. Officer Bogard discharged her Taser against ██████ in violation of G03-02-04 and Rules 2, 3, 6, 8, and 9. 2. Officer Bogard deployed her OC Spray against ██████ in violation of G03-02-05 and Rules 2, 3, 6, 8, and 9. 3. Officer Bogard used deadly force by discharging her firearm in the direction of ██████ without justification, in violation of G03-02 and Rules 2, 3, 6, 8, 9, and 38. 4. Officer Bogard used deadly force, without justification, when firing in the direction of ██████ without determining whether Officer Butler or other bystanders would be in the line of fire, in violation of Rules 2, 3, 6, and 10. 5. Officer Bogard failed to use de-escalation techniques, without justification, in violation of Rules 2, 3, and 6. <p>It is further alleged by the Civilian Office of Police Accountability that on or about June 25, 2020, at approximately 10:00 am, at or near 1615 W. Chicago Ave.:</p> <ol style="list-style-type: none"> 6. Officer Bogard failed to cooperate with COPA, in that she refused to answer questions regarding Log #2020-988, in violation of G08-01-02(II)(A)(2) and Rules 2, 3, 6, 7, and 51. 7. Officer Bogard failed to follow Lt. Levester Denham's direct order to cooperate with COPA's investigation of Log #2020-988, in that she failed to answer questions with COPA after being ordered to do so, in violation of Rules 2, 3, 6, 7, and 51. 	<p>SUSTAINED/ SUSTAINED/ SUSTAINED/ SUSTAINED/ SUSTAINED/ SUSTAINED/ SUSTAINED/ SUSTAINED/ SUSTAINED/</p> <p>Separation Separation Separation Separation Separation Separation Separation Separation</p>

<p>Officer Bernard Butler #3036</p>	<p>It is alleged by the Civilian Office of Police Accountability that on or about February 28, 2020, at approximately 4:11 pm, at or near 521 N. State St.:</p> <ol style="list-style-type: none"> 1. Officer Butler stated words to the effect of “shoot him,” while in public and referring to ██████████ without justification, in violation of Rules 2 and 3. 2. Officer Butler discharged his Taser against ██████████ in violation of G03-02-04 and Rules 2, 3, 6, 8, and 9. 3. Officer Butler used force against ██████████ by grabbing him by the arm, without justification, in violation of Rules 6, 8 and 9. 4. Officer Butler used force in a reckless manner against ██████████ by grabbing his arm in close proximity to a CTA train track, in violation of Rules 8, 9, and 10. 5. Officer Butler failed to use de-escalation techniques, without justification, in violation of Rules 2, 3, and 6. 	<p>SUSTAINED/ Separation</p> <p>SUSTAINED/ Separation</p> <p>SUSTAINED/ Separation</p> <p>SUSTAINED/ Separation</p> <p>SUSTAINED/ Separation</p>
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IX. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Melvina Bogard #3018

i. Complimentary and Disciplinary History

Officer Bogard has received one 2019 Crime Recognition Award, one Emblem of Recognition for Physical Fitness, and one Honorable Mention. She has no prior disciplinary history.

ii. Recommended Penalty

COPA has determined Officer Bogard’s use of deadly force against ██████████ on February 28, 2020, to be without justification and in violation of General Order 03-02. The improper use of deadly force against a citizen is an egregious act requiring severe consequences. Additionally, Officer Bogard has other sustained allegations for use of force as well as her failure to cooperate in the investigation. Accordingly, COPA recommends separation from the Department.

b. Officer Bernard Butler #3036**i. Complimentary and Disciplinary History**

Officer Butler has received one 2019 Crime Recognition Award, one Emblem of Recognition for Physical Fitness, three Honorable Mentions, and one Life Saving Award. He has no sustained CR numbers and one SPAR, which he received on March 27, 2019 for a preventable accident. Officer Butler received a written reprimand as a result of that incident.

ii. Recommended Penalty

While Officer Butler did not himself use deadly force against [REDACTED] he failed to deescalate the situation, he improperly used force against [REDACTED] and his words “shoot him” which he shouted twice during this incident were egregious and the ability to influence Officer Bogard’s decision making under the circumstances. Furthermore, the video of this incident, which clearly depicts Officer Butler shouting “shoot him” in regard to an unarmed person, was widely circulated and brought significant discredit to the Department. Accordingly, COPA recommends separation from the Department.

X. RECOMMENDATIONS FOR DEPARTMENT

In the aftermath of an officer-involved shooting, Department supervisors play a critical role in maintaining the integrity of the scene and the subsequent investigation. Specifically, supervisors are responsible for ensuring that involved officers “remain separate from each other and do not communicate with each other or other witnesses regarding the incident.” *See* G03-02-03(V)(D)(5)(a). In the instant case, as well as other recent officer-involved shootings, COPA notes that involved officers have been transported from the scene in the same ambulance. While this may not constitute a *per se* violation of the policy, at a minimum it creates the appearance of impropriety and it creates the opportunity for the officers to communicate, which undermines the principles of objectivity and transparency set forth in the directives. COPA recommends additional Departmental training for the responding supervisory personnel for officer-involved shooting protocols. COPA also recommends the Department assess whether similar training should be required of all of its supervisory personnel.

Approved:



Andrea Kersten
Chief of Investigative Operations

September 30, 2020

Date



Sydney Roberts
Chief Administrator

September 30, 2020

Date

Appendix A

Assigned Investigative Staff

Squad#:	8
Major Case Specialist:	██████████
Supervising Investigator:	██████████
Deputy Chief Administrator:	Andrea Kersten