

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	March 12, 2021
Time of Incident:	6:07 a.m.
Location of Incident:	████████████████████
Date of COPA Notification:	March 15, 2021
Time of COPA Notification:	6:50 a.m.

It was reported that on the date of incident, Officer James Murray, #7825, a Field Training Officer (FTO) assigned to the 15th District, was preparing to leave his home for work. He exited the west-side door of his residence to place his uniform shirt and vest in his vehicle. He re-entered his home to grab his coffee and workbag. When Officer Murray exited his house, he heard a noise that resembled a loud muffler. Officer Murray then saw a black Dodge Charger<sup>1</sup> next to his vehicle, facing westbound, with the driver’s side door open and two males inside of his vehicle. Officer Murray stated words to the effect of, “Hey,” at which time the subjects exited his vehicle and entered the black Charger. It was reported Officer Murray saw the driver of the vehicle raise a firearm at him, at which time, in fear of his life, Officer Murray discharged his firearm. As Officer Murray was discharging his weapon, he retreated backwards attempting to create distance and seek cover. The Dodge then drove in Officer Murray’s direction at a high rate of speed, swerving towards him. Officer Murray fired one last round. It was also reported that Officer Murray possibly struck the windshield of the Dodge. The Charger fled and the two males were not apprehended. There was no evidence that anyone was injured.

Any discharge of an officer’s firearm results in a mandatory notification to COPA. This investigation was initiated pursuant to such notification.<sup>2</sup>

**II. INVOLVED PARTIES**

Involved Officer #1:	James Murray, Star #7825, Employee ID # ██████ Date of Appointment: August 25, 2003, Field Training Officer, Unit of Assignment: 015, DOB: ██████ 1968, male, White
Involved Individual #1:	Unknown

<sup>1</sup> In police reports, the vehicle is also described as a Dodge Challenger.  
<sup>2</sup> Municipal Code of Chicago, § 2-78-120 (c)(i) & (d).

### III. ALLEGATIONS

Officer	Allegation	Finding
Officer James Murray	1. It is alleged that on or about March 12, 2021, at 6:07 a.m., at or near [REDACTED] [REDACTED] Officer Murray discharged his firearm at or into a moving vehicle in violation of General Order G03-02 and/or General Order G03-02-03.	Not Sustained
	2. It is alleged that on or about March 12, 2021, at 6:07 a.m., at or near [REDACTED] [REDACTED] Officer Murray failed to fully load his Sig Sauer, P226, semi-automatic pistol, serial number [REDACTED]	Not Sustained

### IV. APPLICABLE RULES AND LAWS

#### Rules<sup>3</sup>

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 a directive, whether written or oral.
4. Rule 10. Inattention to duty.

#### General Orders<sup>4</sup>

1. G03-02: Use of Force (effective February 29, 2020, to April 14, 2021)
2. G03-02-01: Force Options (effective February 29, 2020, to April 14, 2021)
3. G03-02-03: Firearm Discharge Incidents - Authorized Use and Post-Discharge Administrative Procedures (effective February 29, 2020, to April 14, 2021)

#### Uniform and Property Directives

1. U04-02: Department Approved Weapons and Ammunition (effective February 29, 2020, to May 6, 2021)

<sup>3</sup> Chicago Police Board, *Rules and Regulations of the Chicago Police Department, Article V. Rules of Conduct* (April 15, 2015), <https://www.chicago.gov/dam/city/depts/cpb/PoliceDiscipline/RulesofConduct.pdf>.

<sup>4</sup> Department general orders, special orders, uniform and property, and department notices also known as directives, "are official documents establishing, defining, and communicating Department-wide policy, procedures, or programs issued in the name of the Superintendent of Police." Department Directives System, General Order G01-03 II.A.; *see also* Chicago Police Department Directives System, *available at* <http://directives.chicagopolice.org/directives/> (last accessed July 7, 2022).

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**Federal Laws**

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**1. The Fourth Amendment to the United States Constitution**

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**V. INVESTIGATION<sup>5</sup>****a. Interviews**

In a **statement to COPA on March 24, 2021, Officer James Murray, #7825**, assigned as a Field Training Officer (FTO) in the 15th District, stated that on the date of incident he was off-duty, at his home, preparing to leave for work.<sup>6</sup> Officer Murray described that he was wearing his blue police uniform pants, a white t-shirt and a blue coat. According to Officer Murray, he was not wearing any police identifiers as he had placed his uniform shirt and ballistic vest in the rear seat of his Honda CRV, which was parked in front of his residence, facing east. After Officer Murray placed his belongings inside of his vehicle, he re-entered his residence to retrieve his coffee.

Officer Murray stated that he served himself coffee in a travel mug and before exiting his residence, he looked at his watch and saw that it was 6:04 a.m. Officer Murray explained that he exited his house through the side door, on the west side of the house, and started to walk through the gangway when he heard a loud noise. Officer Murray believed that maybe it was a garbage truck or a bad muffler. Officer Murray explained that he could not see where the noise was coming from. As he approached a bush at the front of his residence, he saw a shadow but could not decipher if it was a car double parked next to his vehicle. Officer Murray stated that his wife's vehicle, a brown Honda CRV, was parked directly behind his vehicle. Officer Murray looked into the rear window of his vehicle as he walked between the two vehicles and saw two people inside. Officer Murray stated that he yelled "hey,"<sup>7</sup> and the two individuals exited his vehicle. Both individuals then entered through the driver's side of the subject vehicle, a black Dodge sedan that was double parked next to his, facing westbound.<sup>8</sup>

Officer Murray explained that the first male slid over to the passenger seat of the Dodge. The second male got into the driver's seat, placed both hands on the steering wheel, and while looking at him, the male's hands disappeared. The male then displayed a handgun, "holding it with both hands and pointed it directly at me."<sup>9</sup> Officer Murray stated that at that moment, he was standing in front of the Dodge, near the hood, on the driver's side, approximately six feet from the armed male.<sup>10</sup> Officer Murray explained that in fear of getting shot, he immediately drew his pistol

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<sup>5</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>6</sup> Attachments 54, 55.

<sup>7</sup> Statement of Officer Murray. Attachment 54, page 9, line 6.

<sup>8</sup> The investigation revealed that the vehicle was a black Dodge Charger that had been reported stolen. Attachment 31, page 13.

<sup>9</sup> Attachment 54, page 9. Officer Murray described the gun as a black semi-automatic. Attachment 54, page 19.

<sup>10</sup> Attachment 54, page 20. Officer Murray said he saw through the windshield that the gun was pointed at him. Attachment 54, page 20. He said at that point, he was not sure if was pointed through the windshield or out the door and was not sure if the door was open or not. Attachment 54, page 22. The driver may have had the gun "to the left of his body or directly in front of his body." Attachment 54, page 22.

and fired as he retreated backwards in an effort to create distance.<sup>11</sup> Officer Murray stated that he retreated past his neighbor's property to the intersection of ██████ Avenue and ██████ Avenue.<sup>12</sup>

According to Officer Murray, the Dodge still had not moved. It was still running and making the same loud noise. Within seconds, the vehicle then accelerated at a fast rate in the middle of the street passing his wife's vehicle.<sup>13</sup> "[I]t veered right at the curb and came right along the curb...",<sup>14</sup> making him believe it was attempting to run him over.<sup>15</sup> Officer Murray stated that he fired one last round at the driver of the vehicle.<sup>16</sup> The vehicle then veered away from the curb and fled westbound on ██████ Avenue.<sup>17</sup>

After the Dodge fled westbound on ██████ Avenue, past Pulaski Road, Officer Murray dialed 911. His call was initially answered by the Lincolnwood Police Department, but the call was then transferred to OEMC. Officer Murray stated that at this point, several people came out of their houses, including his wife. After he got off the phone with 911, Officer Murray called the 15th District desk. While on the phone with the district, he received a telephone call from OEMC. Officer Murray stated that they asked him for his address and at that point he could hear sirens. According to Officer Murray, two units initially responded to the incident.

Officer Murray stated that on the date of incident, his firearm was fully loaded. Officer Murray explained that he unloads his firearm when arriving home and places it in the safe. Before going to work, Officer Murray then reloads the magazine with 15 rounds, he loads the magazine into the firearm and cycles a round into the chamber. Officer Murray then ejects the magazine, placing one additional round to fully load the firearm with 16 rounds.

#### **b. Digital Evidence**

**Office of Emergency Management and Communications (OEMC) 911 audio recordings** include numerous telephone calls made by Officer Murray and his wife reporting the

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<sup>11</sup> He used his right hand to draw and fire his weapon while holding his coffee mug with his left hand. Attachment 54, pages 10 & 35. Officer Murray believed he fired between six and eight shots. Attachment 54, page 23.

<sup>12</sup> Attachment 54, pages 10 & 24. He said he was standing in the street at the southeast corner of ██████ and ██████

<sup>13</sup> Attachment 54, pages 10 & 25.

<sup>14</sup> Attachment 54, pages 10 & 27. The vehicle "veered into the parking lane near the curb where I was standing."

<sup>15</sup> Officer Murray said he "didn't know if they were going to pull up to me and shoot at me or they were trying, just trying to run me over." Attachment 54, page 10. He was "in fear that the vehicle would either strike me, run me over, or I didn't know if the occupants of the vehicle would shoot me." Page 27.

<sup>16</sup> Attachment 54, pages 10 & 27. Officer Murray stated that he dropped his coffee mug just before discharging the final round. Attachment 54, page 35.

<sup>17</sup> Attachment 54, pages 10-11 & 30. Officer Murray said he stopped firing after the last shot because "the vehicle passed me. The vehicle changed direction and continued westward but come off the curb, passed me." Attachment 54, page 30.

officer involved shooting incident.<sup>18</sup> Other callers also reported hearing shots fired in the area.<sup>19</sup> Radio transmissions document the dispatch of officers to the area of incident.<sup>20</sup>

**Evidence Technician (ET)** photographs depict the area of incident, Officer Murray's vehicle, what appear to be fingerprints on the exterior of Officer Murray's vehicle, the interior rear of the vehicle and Officer Murray's police uniform.<sup>21</sup> Also photographed are several other vehicles, a green tumbler, and several fired cartridge cases. Fired cartridge cases are located within a few feet of the curb from behind Officer Murray's vehicle towards the corner of the intersection; they are in the street and in the neighbor's yard. ETs also photographed Officer Murray.



Several video recordings, to include **Police Observation Devices (PODs), in-car cameras, body worn cameras (BWC), and third-party recordings** were collected and reviewed.<sup>22</sup> The recordings do not show the officer involved shooting event. Various BWC videos depict Officer Murray describing the events to the officers who first arrive after the shooting. Officer Murray described the driver as “kind of in, kind of out” of the Dodge when he produced a handgun.<sup>23</sup> Officer Murray said he fired multiple times into the windshield and was backing up as he did it;<sup>24</sup> then they came at him with the car, and he fired again. He pointed across the intersection indicating where he was standing when he fired his last shot and then pointed to the road right in

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<sup>18</sup> Officer Murray told OEMC that he did not know if they shot at him. He said as he approached the vehicle, the driver produced a handgun, and he fired multiple rounds into the windshield. They tried to run him over. Attachment 41, EV#2107102712. Officer Murray's wife said someone pointed a gun at her husband and he shot at the car. Attachment 41, EV#2107102745.

<sup>19</sup> Attachment 41.

<sup>20</sup> Attachment 41, Z1\_0607-0730.mp3.

<sup>21</sup> Attachments 34, 35.

<sup>22</sup> Attachments 3-17, 21-23, 38, 45, 46, 48, 49, 50.

<sup>23</sup> Attachment 21 Lugo BWC at 06:12:40 & attachment 22 Vasquez BWC at 6:12:38. He tells Sergeant Malcynski that the driver “as he gets in, produces a handgun.” Attachment 23 Malcynski BWC at 6:14:18.

<sup>24</sup> Attachment 23 Malcynski BWC at 6:14:26.

front of him describing where the vehicle was when he fired his last shot.<sup>25</sup> Various recordings capture the black Dodge’s path of travel including driving down ██████ Avenue.<sup>26</sup>



<sup>25</sup> Attachment 21, Lugo BWC at 06:12:53 & attachment 22, Vasquez BWC at 6:12:51. “They veered towards me and that’s when I fired again.” Attachment 23, Malcynski BWC at 6:14:35.

<sup>26</sup> Attachment 46 & attachment 6, 4024 W ██████ PODs at 6:05 a.m.



### c. Physical Evidence

The **Crime Scene Processing Report** documents the photographs and inventory of several evidentiary items located on scene.<sup>27</sup> These items included a green insulated beverage holder (CSM #1), eight fired cartridge cases, head-stamped Win 9mm Luger (CSM #s 2, 3, 4, 5, 6, 7, 8, 9), parts of a broken flashlight (CSM #10), an Illinois State license plate # [REDACTED] (CSM #11), trace evidence collection tape of glass standard recovered from the roof & windshield of Officer Murray's vehicle (CSM #12). In addition, swabs for suspect biological material were recovered from parts of a broken flashlight and swabs of suspect biological material were recovered from inside of Officer Murray's driver's door and steering wheel. A fingerprint lift was also recovered from the outside of the driver's side of the B-pillar.

A **Supplementary Crime Scene Processing Report** documented that ET Julian Valenzuela, #16817, was assigned to recover a projectile at [REDACTED].<sup>28</sup> ET Valenzuela met with Detective Tedeschi, #20243, and civilian [REDACTED] who stated that while changing her tire, damaged from the shooting incident, she noticed a rattling noise come from the tire. [REDACTED] believed that a fired bullet was in between the tire and hub. ET Valenzuela took the tire to Area 3 Detective Division garage, located at 2452 W. Belmont Avenue, where a bullet was recovered from inside the tire. The fired bullet was subsequently inventoried.

An additional **Supplementary Crime Scene Processing Report** and the **COPA Preliminary Report** document the recovery and processing of Officer Murray's firearm at Area 5 Detective Division.<sup>29</sup> A blue steel, Sig Sauer, P226, 9mm firearm was recovered and inventoried. Additional items recovered and inventoried were a Blue Steel, 15 round 9mm Sig Sauer magazine and 5 live rounds, headstamped WIN 9mm Luger +P, recovered from the magazine, along with one live round with the same headstamp recovered from the firearm's chamber. ET Consentino reported that the magazine capacity was listed as 15 cartridges.

**Illinois State Police (ISP) Laboratory Reports**<sup>30</sup> for Laboratory Case #DFS21-009290 document that the Illinois State Police test fired the Sig Sauer, model P226 firearm belonging to Officer Murray. The firearm was determined to be operable. Seven (7) of the eight (8) fired

<sup>27</sup> Attachment 58.

<sup>28</sup> Attachment 27.

<sup>29</sup> Attachments 47, 57.

<sup>30</sup> Attachments 60-63.

cartridge cases were determined to be fired by Officer Murray's firearm. The fired cartridge casing, lab item/designator #4 (Inventory #14870735-11266351) was determined to be inconclusive. Samples from material recovered from parts of a broken flashlight (CSM #10) and swabs of suspect biological matter recovered from the inside of Officer Murray's driver's side door and steering wheel were submitted and tested. It was determined that three (3) contributors to the materials swabbed. No further details were explained relating to this matter. Additionally, one (1) latent print lift was submitted. After obtaining a palmprint from Officer Murray, it was determined that the lift was identified as that of Officer Murray.

A **Bureau of Internal Affairs Synoptic Report**<sup>31</sup> documents that Officer Murray submitted to post-incident drug and alcohol testing on March 12, 2021. The test results were negative for alcohol and for all specified controlled substances.

#### d. Documentary Evidence

Officer Murray's **Tactical Response Report (TRR)** documents that on March 12, 2021, at 6:07 a.m., while at [REDACTED] Avenue, Officer Murray discharged his firearm ten times in self-defense to overcome resistance and aggression from an armed subject.<sup>32</sup> The report documents that the subject presented an imminent threat of battery with a firearm and physical attack with a semi-automatic pistol. Officer Murray reported that he used movement to avoid attack.

The **COPA Preliminary Report**, the **CPD Major Incident Notification Report (MIN)**, the **Original Case Incident Report**, and the **Detective Supplementary Reports** contain information identified and obtained in the preliminary stages of the investigation, which is consistent with information gathered throughout the investigation.<sup>33</sup> The notes reflect Officer Murray described the driver as being a Black male with dark clothing but could not describe the other male.<sup>34</sup> One note reflects Officer Murray described the driver's gun as a black or blue steel semi-automatic pistol.<sup>35</sup> The weapon was displayed through the driver's door frame and windshield.<sup>36</sup>

The **Detective Supplementary Reports** also document the canvassing efforts by the detectives in search of witnesses and video footage. There were no witnesses with direct knowledge of the incident and third-party video did not capture the police involved incident. The supplementary report further documents that the Area Five Crime Pattern Analysis Team compiled a pattern for the crime of theft of catalytic converters involving a black Dodge Challenger or

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<sup>31</sup> Attachment 24.

<sup>32</sup> Attachment 64.

<sup>33</sup> Attachments 29-33, 40, 43, 44, 47, 59.

<sup>34</sup> Attachment 59, pages 27 & 88.

<sup>35</sup> Attachment 59, page 53. Also noted as dark colored semi-automatic handgun. Attachment 59, page 89.

<sup>36</sup> Attachment 59, page 89. Another note indicates the driver's door was still open when the driver points the weapon out from the open door but also notes the weapon was pointed through the windshield or open door. Attachment 59, page 100.



Charger as the offending vehicle.<sup>37</sup> None of the suspects described, stopped, or arrested that related to a Dodge vehicle and theft of catalytic converters had a firearm.<sup>38</sup>

COPA personnel conducted a canvass of the area with negative results for additional video or witnesses.<sup>39</sup>

## VI. 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** can be described as evidence indicating that it is **more likely than not** a proposition is proved.<sup>40</sup> For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with Department policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

**Clear and convincing evidence** is a higher standard than a preponderance of the evidence but lower than the “beyond-a-reasonable doubt” standard required to convict a person of a criminal offense.<sup>41</sup> Clear and Convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.”<sup>42</sup>

## VII. LEGAL STANDARD

### A. *Use of Force*

The main criteria in evaluating police use of force is whether the amount of force the officer used was (1) objectively reasonable, (2) necessary, and (3) proportional under the totality of the

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<sup>37</sup> Attachment 59, page 28. Officer Murray had later explained that his catalytic converter had been partially cut off and he had to get it repaired.

<sup>38</sup> Attachment 59, pages 119-134 & 152 & 154-57 & 161.

<sup>39</sup> Attachments 67, 65.

<sup>40</sup> See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005) (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not).

<sup>41</sup> See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

<sup>42</sup> *Id.* at ¶ 28.

circumstances faced by the officer.<sup>43</sup> “Objectively reasonable” force is based on the “totality of the circumstances faced by the officers on the scene.”<sup>44</sup> Factors to consider include but are not limited to (a) “whether the subject is posing an imminent threat” (b) “the risk of harm, level of threat, or resistance presented by the subject” and (c) “the subject’s proximity or access to weapons.”<sup>45</sup> “Necessary” force is “only the amount of force required under the circumstances to serve a lawful purpose.”<sup>46</sup> “Proportional” force is proportional to the “threat, actions, and level of resistance offered by a subject.”<sup>47</sup>

The “foremost regard” in police-public encounters is “the preservation of human life and the safety of all persons....”<sup>48</sup> Consistent with this priority, officers must “use de-escalation techniques to prevent or reduce the need for force....”<sup>49</sup> De-escalation techniques, or principles of force mitigation, include (a) continual communication (b) tactical positioning and (c) time as a tactic.<sup>50</sup> The Department expects members to resolve confrontations without resorting to force.<sup>51</sup>

While recognizing officers 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” use of force is assessed “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.”<sup>52</sup>

### **B. Use of Deadly Force**

The Department’s “highest priority is the sanctity of human life.” Consistent with this priority, the “use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat to life or to prevent great bodily harm....”<sup>53</sup>

Assessing if there is an imminent threat is an objectively reasonable standard, not the subjective belief of an officer.<sup>54</sup> A threat is imminent when: (a) the person’s actions are “immediately likely to cause death or great bodily harm” to another unless action is taken and the

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<sup>43</sup> See Use of Force General Order G03-02 III.B. (effective February 29, 2020) & Force Options General Order G03-02-01 II.C. (effective February 29, 2020)

<sup>44</sup> Use of Force order III.B.1.

<sup>45</sup> Use of Force order III.B.1.(a)-(c)

<sup>46</sup> Use of Force order III.B.2.

<sup>47</sup> Use of Force order III.B.3. “This may include using greater force or a different type of force than that used by the subject. The greater the threat and the more likely that the threat will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it. When or if the subject offers less resistance, however, the member will decrease the amount or type of force accordingly.”

<sup>48</sup> See Force Options order G03-02-01 II.D.

<sup>49</sup> See Force Options order G03-02-01 II.B. & Use of Force order III.B.4 De-escalation techniques include: a. providing a warning and exercising persuasion and advice b. stabilizing the situation through the use of time, distance, or positioning c. requesting additional units or specialized units or equipment.

<sup>50</sup> See Force Options order G03-02-01 II.A.

<sup>51</sup> See Force Options order G03-02-01 II.A.

<sup>52</sup> Use of Force order III.

<sup>53</sup> Use of Force General Order G03-02 III.C.3. (October 17, 2017). Deadly force is not permitted against a person who is only a threat to himself. Use of Force order III.C.4.

<sup>54</sup> See Use of Force order G03-02 III.C.2.

person has (b) the “means or instruments” and (c) the “opportunity and ability” to cause death or great bodily harm.<sup>55</sup>

Officers must identify themselves as police officers prior to using deadly force where feasible.<sup>56</sup>

While Department policy clearly requires an imminent threat to use deadly force, it highlights that even if a person is fleeing and may evade arrest, an imminent threat is required before using deadly force.<sup>57</sup> An officer must determine the person is an “assailant” whose actions constitute an imminent threat before using deadly force.<sup>58</sup>

### ***C. Firearm loading***

Department policy requires that a member’s firearm be “fully loaded with only one manufacturer and style of prescribed ammunition (same bullet type and grain weight).”<sup>59</sup>

## **VIII. LEGAL ANALYSIS**

### ***A. The evidence does not show that Officer Murray violated policy when using deadly force.***

#### ***i. It is more likely than not that Officer Murray faced an imminent threat.***

The preponderance of the evidence is sufficient that an objectively reasonable officer on the scene would agree Officer Murray was facing an imminent threat each time he used deadly force. Upon approaching his vehicle to drive to work, a stranger who had just been inside Officer Murray’s vehicle displayed a gun pointing at Officer Murray.<sup>60</sup> This is an action “immediately likely to cause death or great bodily harm” unless action is taken. It appeared the male had the means to cause death or great bodily harm since he was holding what appeared to be a firearm in a pointing manner consistent with firing at someone. Since Officer Murray was about six feet away standing in front of the Dodge with no barriers between the male and himself, except perhaps a

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<sup>55</sup> Use of Force General Order G03-02 III.C.2.

<sup>56</sup> See Use of Force order G03-02 III.C.5. Unless it is not safe and feasible to do so or would jeopardize the safety of others.

<sup>57</sup> See Use of Force order G03-02 III.C.4.a.

<sup>58</sup> Use of deadly force is only authorized on an “assailant” whose “actions constitute an imminent threat of death or great bodily harm to a person.” Force Options General Order G03-02-01 IV.C.2 & Force Options order G03-02-01 IV.C. (An “assailant” is “a subject who is using or threatening the use of force against another person or himself/herself which is likely to cause physical injury.”).

<sup>59</sup> Department Approved Weapons and Ammunition Uniform and Property U04-02.II.H (effective February 29, 2020)

<sup>60</sup> Officer Murray described the male as pointing the firearm while seated in the driver’s seat after dropping his hands from the wheel, but also described him as being kind of in but kind of out of the vehicle when he pointed. He was not sure if the door was open or if the pointing was from behind the windshield or out the door. Officer Murray told OEMC he didn’t know if the driver shot at him. Seven (7) of the eight (8) fired cartridge cases were confirmed to be fired by Officer Murray’s firearm.

windshield, the male had the opportunity and ability to cause death or great bodily harm.<sup>61</sup> While there is no other footage or witnesses to this first volley of shots, Officer Murray presumably immediately told his wife that the male pointed a gun at him, since she relayed this information to OEMC. Additionally, the location of the casings suggests Officer Murray fired in the vicinity of his vehicle. Video footage shows a black Dodge driving rapidly on his street. Therefore, under the totality of the circumstances when Officer Murray first fired his weapon at the male, it was objectively reasonable to believe he was facing an imminent threat.

Additionally, when the vehicle with the two males appeared to veer towards Officer Murray near the curb after he fired upon the driver, it was objectively reasonable to believe he was facing another imminent threat. The armed driver was taking what appeared to be an action immediately likely to cause death or great bodily harm when he drove towards Officer Murray after being fired upon.<sup>62</sup> The male had the means to cause great bodily harm and the opportunity as he drove a vehicle towards Officer Murray without any barriers between them. Additionally, the male who was still armed was positioning himself closer to Officer Murray where he still had the means and opportunity to shoot him. The location of the casings appears to corroborate that Officer Murray backed away to the corner of the intersection and that he dropped his coffee tumbler before firing the last shot.

In both instances, Officer Murray said he fired his weapon when facing an imminent threat and articulated he stopped firing when he was no longer threatened. At first, he faced being shot by an armed person who had just been caught inside Officer Murray's vehicle. Second, he faced being struck by a vehicle being driven by the person that Officer Murray had just fired upon. Officer Murray said he did not fire after the male was no longer pointing the gun at him and after the vehicle stopped veering towards him. Therefore, each time Officer Murray was using only the amount of force necessary to protect himself from the imminent threats. Additionally, since he was facing a deadly threat from the gun or vehicle when he used deadly force, his use of force was proportional force to the risk of harm he faced.

**ii. It is more likely than not that Officer Murray discharged his firearm as a last resort.**

The preponderance of the evidence is sufficient that an objectively reasonable officer on the scene would agree Officer Murray used deadly force as a last resort. When the driver appeared to point a firearm at Officer Murray from a distance the length of the hood of the Dodge or six feet away, Officer Murray used one hand to draw and fire his weapon. Quickly using only one hand supports that this was a last resort situation.

When Officer Murray again discharged his firearm after dropping his coffee tumbler when the Dodge veered towards him,<sup>63</sup> the evidence is sufficient that this was objectively a last resort.

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<sup>61</sup> Here the subject was acting as an assailant by using force against another person likely to cause physical injury when he pointed a firearm at Officer Murray. Further, as discussed, this assailant's actions constituted an imminent threat allowing the use of deadly force.

<sup>62</sup> Here the evidence suggests the male was acting as an assailant by using force against another person likely to cause physical injury when he veered the Dodge towards Officer Murray.

<sup>63</sup> While Officer Murray said he fired upon the vehicle when it veered towards him, he pointed out a location in the middle of the intersection when telling responding officers where the vehicle was when he last fired.

There is not sufficient evidence indicating that any communication or positioning could have diminished or prevented the threat of the vehicle veering at him. Additionally, there is not sufficient evidence Officer Murray had time to reach cover to escape the vehicle's path as it drove rapidly towards him. Likewise, there is no indication he likely would have reached an object that could shield him from the driver firing at him after he drove closer to Officer Murray. Photos of this area corroborate that the southeast corner of this intersection was several yards away from any potential cover such as a tree, house, or parked vehicles.

COPA recognizes that officers are expected to resolve confrontations without resorting to force and to use de-escalation techniques. Due to the nature of this surprise confrontation as Officer Murray was going to work that immediately turned into an imminent threat, COPA does not have sufficient evidence to show that Officer Murray acted unreasonably. Additionally, Officer Murray agreed he did not announce he was the police before firing his weapon.<sup>64</sup> The evidence is sufficient it was reasonable to believe it would not have been safe or feasible to do so under the circumstances.

COPA finds no evidence that contradicts Officer Murray's description of the events supporting he faced an imminent threat in both instances but notes there is not a witness or video footage to the shooting nor corroboration that the driver had a gun since he fled. Additionally, due to different descriptions Officer Murray uses when describing the positioning of the driver when he pointed the firearm and the location of the vehicle when he fired his last shot, there is not clear and convincing evidence such that COPA can exonerate Officer Murray. For these reasons, COPA finds **Allegation #1 against Officer Murray is Not Sustained.**

***B. There is insufficient evidence to show that Officer Murray loaded his firearm contrary to policy.***

Officer Murray stated that on the date of incident, his firearm was fully loaded. He explained his habit of making his firearm safe at home after every shift and checking it before every shift. When evidence technicians inventoried his firearm, a 9 mm Blue Steel Sig Sauer, the 15 round magazine had 5 live rounds. Eight cartridge cases were found; seven of the cartridge cases were confirmed to be fired by Officer Murray's firearm. It is possible that not every expelled cartridge case was located by ETs. For these reasons, COPA finds **Allegation #2 against Officer Murray is Not Sustained.**

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<sup>64</sup> Attachment 34, page 24.

