

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	March 25, 2021
Time of Incident:	5:04 PM
Location of Incident:	2540 W. 46 th Street
Date of COPA Notification:	March 25, 2021
Time of COPA Notification:	5:14 PM

On March 25, 2021, Officer Michael Kocerka, #18275, and Officer Bernard Lee, #15752, responded to a call of a person shot at Home Depot, located at 4555 S. Western Blvd. As the officers were approaching Home Depot, several civilians pointed to the subject, [REDACTED] who was fleeing on foot going west on 46th Street across Western Blvd. Officers Kocerka and Lee followed [REDACTED] in their marked squad car to 2451 W. 46th Street. [REDACTED] fled into the backyard, and the officers stopped their squad vehicle, exited, and pursued [REDACTED] on foot.

[REDACTED] fled into the alley between 46th Street and 46th Place. When the officers entered the backyard at 2451 W. 46th Street, Officer Kocerka entered the alley and observed [REDACTED] walking west. [REDACTED] turned around and shot Officer Kocerka, striking him. Officer Kocerka retreated into the backyard and fell onto the ground. Officer Lee grabbed Officer Kocerka and dragged him to the front of the garage in the same backyard.

[REDACTED] continued to walk west in the alley and entered the backyard of 2540 W. 46th Place. Officers Tobias Houston, #10647, and Adam Tapling, #9489, observed [REDACTED] and attempted to stop him. Officer Houston attempted to enter the backyard of 2540 W. 46th Place, but [REDACTED] shot at Officer Houston, and Officer Houston returned fire. Officers Houston and Tapling, and other assisting officers, repeatedly told [REDACTED] to drop his weapon.

Assisting officers entered the gangway that led to the backyard where [REDACTED] was located. As the officers attempted to enter the backyard, [REDACTED] shot toward the officers. Officer Jack Kwa, #7726, entered an adjacent backyard, located at 2536 W. 46th Place, to get a view of [REDACTED]. Officer Kwa stood on a chair and observed [REDACTED] in the backyard. [REDACTED] shot toward the officers in the alley again, and Officers Houston and Kwa discharged their firearms, striking [REDACTED]. [REDACTED] was placed into custody by officers. [REDACTED] was transported to Stroger Hospital via ambulance, where he was pronounced deceased.

This incident was captured by WGN news station and on Body Worn Camera (BWC). After a review of the available evidence, COPA finds that the use of deadly force by Officers Houston and Kwa were within Department policy.

II. INVOLVED PARTIES

Involved Officer #1:	HOUSTON, Tobias; Star #10647; Employee ID# [REDACTED]; Date of Appointment: March 16, 2018; Chicago Police Officer; Unit of Assignment: 009/189; DOB: [REDACTED], 1991; Male/Black.
Involved Officer #2:	KWA, Jack; Star #7726; Employee ID# [REDACTED]; Date of Appointment: August 16, 2017; Chicago Police Officer; Unit of Assignment: 009; DOB: [REDACTED], 1991; Male/Asian Pacific Islander.
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 2002; Male/Black.

III. ALLEGATIONS

Pursuant to section 2-78-120 of the Municipal Code of Chicago, the Civilian Office of Police Accountability (COPA) has a duty to investigate all incidents in which a Chicago Police Department (CPD or Department) member discharges their firearm and/or when a person dies as a result of police action. During its investigation of this incident, COPA did not find sufficient evidence to support allegations of excessive force related to any officer's firearm discharge. COPA did determine that the following allegations of misconduct should be investigated:

Officer	Allegation	Finding / Recommendation
Officer Tobias Houston	It is alleged that on or about March 25, 2021, at approximately 05:03 p.m., at or near 2540 W. 46 th Place, while on-duty, Officer Tobias Houston, #10647, committed misconduct through the following acts or omissions, by:	
	1. Failing to timely activate your body worn camera in violation of Special Order S03-14 (III)(A).	Sustained
	2. Failing to make, or failing to immediately make, notifications of your firearm discharge in violation of G03-06.	Sustained
Officer Jack Kwa	It is alleged that on or about March 25, 2021, at approximately 05:03 p.m., at or near 2540 W. 46 th Place, while on-duty, Officer Jack Kwa, #7726, committed misconduct through the following acts or omissions, by:	

	1. Failing to make, or failing to immediately make, notifications of your firearm discharge in violation of G03-06.	Sustained
--	---	-----------

IV. APPLICABLE RULES AND LAWS

General Orders¹

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. G03-06: Firearm Discharge and Officer-Involved Death Incident Response and Investigation, effective February 29, 2020, to April 14, 2021.
-

Special Orders

1. Special Order S03-14: Body Worn Cameras, effective April 30, 2018, to present.
-

¹ Department general and special orders, 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; *see also* Chicago Police Department Directives System, available at <http://directives.chicagopolice.org/#directive> (last accessed June 1, 2022).

V. INVESTIGATION²

a. Summary of Incident

This summary utilized information from several different sources: multiple exterior third-party cameras, CPD body-worn cameras, CPD in-car cameras, 911 calls, police reports, civilian interviews, witness officer interviews, and involved/accused officer interviews.

On March 25, 2021, at approximately 4:55 p.m., [REDACTED] was at Home Depot. A Loss Prevention Agent (LPA), [REDACTED] observed [REDACTED] concealing merchandise³ in his jacket. As [REDACTED] exited the store, LPAs approached him. LPA [REDACTED] introduced himself to [REDACTED] and told him he needed to return the merchandise in his jacket. LPA [REDACTED] also told [REDACTED] that he would not call the police and that it was just a matter of him signing a piece of paper so he could leave and return the merchandise. Security Guard [REDACTED] announced that [REDACTED] had a machete in a shoulder holster under his left arm. [REDACTED] attempted to reach for the knife,⁴ but LPA [REDACTED] tried to hold onto [REDACTED] arm to prevent [REDACTED] from grabbing the knife. LPA [REDACTED] told [REDACTED] that they needed to hold the knife so [REDACTED] could sign the paper and be released. [REDACTED] started to struggle with LPAs [REDACTED] and [REDACTED]. LPA [REDACTED] then observed [REDACTED] with a handgun. LPA [REDACTED] yelled that [REDACTED] had a handgun so everyone could disperse. LPA [REDACTED] then fled inside Home Depot and heard a gunshot. The gunshot was [REDACTED] shooting LPA [REDACTED].⁵ [REDACTED] then fled the scene after shooting LPA [REDACTED].⁶ Several people called 911⁷ and reported shots fired at Home Depot.

Officers Kocerka and Lee responded to the shots fired at Home Depot. As the officers approached Home Depot, people pointed toward where [REDACTED] fled.⁸ [REDACTED] fled west on 46th Street and entered the gated property at 2451 W. 46th Street.⁹ Several seconds later, Officers Kocerka and Lee parked their squad car at 2451 W. 46th Street.¹⁰ The officers exited their squad car and pursued [REDACTED] on foot into the backyard of 2451 W. 46th Street. In the backyard, Officer Lee ran to the east of a garage while Officer Kocerka ran to the west of the same garage. Officer Kocerka entered the alley and observed [REDACTED]. Officer Kocerka stated to [REDACTED] “What’s up man?”¹¹ [REDACTED] turned around and shot Officer Kocerka. Officer Kocerka yelled that he was shot and retreated into the backyard. Officer Kocerka fell onto the ground and reported via radio,

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

³ Att. 109 – Electronically Recorded Interview (ERI) of LPA [REDACTED]. LPA [REDACTED] stated that the merchandise was wire.

⁴ Att. 109 – In his ERI, LPA [REDACTED] referred to the machete as a knife.

⁵ Att. 116 - Home Depot Video, timestamped starting at 5:06, showed [REDACTED] in an altercation with the LPAs. At 5:55, [REDACTED] shot LPA [REDACTED].

⁶ Att. #52 – Chicago Fire Department (CFD) Ambulance Report documented that LPA [REDACTED] sustained a through-and-through gunshot wound to the left side of his head.

⁷ Att. 36-45 - OEMC Transmissions. LPA [REDACTED] also called 911 and reported the incident, Att. 39.

⁸ Att. 69 - In-Car Camera (ICC) of Officers Kocerka and LLee’s squad car timestamped at 04:53:39PM.

⁹ Att. 117 & 118 – Surveillance footage from 2451 W. 46th Street. Att. #117 showed [REDACTED] with what appeared to be a gun in his right hand at 00:01. Att. #118 showed [REDACTED] with what appeared to be a handgun in his right hand at 00:03.

¹⁰ Att. 69 - Timestamped at 04:54:21PM. Military time is used on all ICC and BWC.

¹¹ Att. 23 - BWC of Officer Kocerka timestamped at 04:59:22PM.

“Officer shot.”¹² Officer Lee dragged Officer Kocerka from near the alley and rendered aid to him.¹³ [REDACTED] continued walking down the alley and attempted to enter another backyard, but the gate was apparently locked.¹⁴ [REDACTED] continued to walk down the alley. At 05:01:13PM,¹⁵ Officer Houston and Officer Tapling stopped their unmarked squad car in the alley between 46th Street and 46th Place. The officers exited their squad car and approached the backyard of 2540 W. 46th Place.¹⁶

As Officers Houston and Tapling attempted to enter the backyard, [REDACTED] opened fire on the officers.¹⁷ The officers yelled at [REDACTED] to get out of the car.¹⁸ The officers realized [REDACTED] was not in the car. Instead, he was behind a car and ordered him to come out. [REDACTED] exited his vehicle with his hands up. Officer Houston told [REDACTED] to move away and get on the ground. [REDACTED] walked toward the garbage cans that were next to his vehicle in the backyard and laid down on the ground.¹⁹ [REDACTED] positioned himself behind a black SUV²⁰ in the backyard, and the officers continued to yell for [REDACTED] to come out.²¹ Officers Houston and Tapling yelled to [REDACTED] “Let me see your fucking hands.”²² [REDACTED] exited the backyard into the alley.²³ Officers Houston and Tapling, along with assisting officers, continued to tell [REDACTED] to get on the ground.²⁴

At 05:03:38PM,²⁵ Officer David Vargas, #17304, Sergeant Tomas Rosales, #1589,²⁶ and Officer Vicky Apostolou, #19615, entered the east gangway that led to the backyard where

¹² Att. 23 - Timestamped at 04:59:38PM.

¹³ Att. 52 – CFD Ambulance Report documented that Officer Kocerka sustained a through-and-through gunshot to his shoulder.

¹⁴ Att. 124 – Surveillance footage from 2536 W. 46th Place timestamped at 03:30:06PM. Military time was used.

¹⁵ Att. 17 – BWC of Officer Tapling.

¹⁶ Att. 124 – Officers Houston and Tapling were observed running in [REDACTED] direction in the alley timestamped at 15:30:19PM.

¹⁷ Att. 97 – Transcribed statement of Officer Houston. Officer Houston stated he did not know how many times [REDACTED] discharged his handgun. Officer Houston stated he could not recall if he discharged his weapon at this time. Page 22, Lines 3-8.

¹⁸ Att. 91 – Summary of witness [REDACTED] statement. [REDACTED] stated he was in his personal vehicle, a white (Yukon) Denali, when [REDACTED] ran into his backyard with a gun in his hand and stood behind a Honda parked adjacent to his vehicle. The officers’ believed [REDACTED] was [REDACTED] at that time.

¹⁹ Att. 91; Att. 63 – Cellphone Video Footage.

²⁰ Att. 48 – Crime Scene Processing Report documented that a white GMC Yukon, which belonged to [REDACTED] and a black Honda Pilot were parked in the backyard of 2540 W. 46th Place.

²¹ Att. 63 – At 00:26, [REDACTED] was observed holding a handgun.

²² Att. 17 – Timestamped starting at 05:01:40PM. COPA acknowledges that Officer Houston and Officer Tapling used vulgar language throughout the incident. However, due to the nature of the incident and high-level stress, the allegation for the use of vulgar language was not served.

²³ Att. 17 - [REDACTED] exited the backyard at 05:02:29PM.

²⁴ Att. 97 - In a statement with COPA, Officer Houston stated that he discharged his firearm at [REDACTED] when [REDACTED] exited the backyard. However, Officer Tapling’s BWC did not capture anyone discharging a firearm when [REDACTED] exited the yard.

²⁵ Att. #18 - BWC of Officer Rosales; In addition, BWCs from Officers Vargas (Att. 19) and Apostolou (Att. 13) depicted the scene as shown in PO Rosales’ BWC.

²⁶ At the time of the incident, Sergeant Rosales was a Police Officer.

██████████ was located.²⁷ Three gunshots were discharged as the officers walked north in the gangway and attempted to enter the backyard.²⁸ The gunshots were from ██████████ shooting in the officers' direction, and Officer Houston returned fire at ██████████.²⁹ Officers Rosales, Vargas, and Apostolou retreated to the front of the residence. The officers on the scene continued to tell ██████████ to get on the ground. Officer Tapling told officers on the scene that ██████████ had just shot at them and reported via radio that ██████████ was not in custody.³⁰ Officer Tapling also reported that shots were fired at the police and shots returned by the police again. Officers on the scene continued to tell ██████████ to get on the ground and put his hands up.

At 05:04:20PM,³¹ Officer Kwa and Officer Christian Nunez, #5847, entered the backyard of 2536 W. 46th Place, which was east of ██████████ location. Officers on the scene repeatedly told ██████████ that they did not want to shoot him.³² In the backyard of 2536 W. 46th Place, Officer Kwa ran toward the rear of the home and grabbed a folding chair. Three gunshots were discharged as Officer Kwa attempted to stand on the chair.³³ The gunshots were from ██████████ and Officer Houston exchanging gunfire.³⁴ Officer Kwa stood on the chair and looked west over a fence that separated him and ██████████.³⁵ When Officer Kwa looked over the fence, he observed ██████████ with a black semi-automatic handgun in his right hand. According to Officer Kwa, ██████████ was focused on the officers in the alley and did not see him. When ██████████ observed Officer Kwa, he stated, "Oh shit."³⁶ Officer Kwa then fired his firearm three times, striking ██████████.³⁷

Officer Kwa jumped off the chair and yelled that he "got him."³⁸ ██████████ fell to the ground,³⁹ and officers were able to gain access into the backyard and place him in custody. Officer

²⁷ In transcribed statements of the officers with COPA, Officers Rosales (Att. #100 & #101), Vargas (Att. 102), and Apostolou (Att. 103) stated that they entered the backyard. In a statement with COPA (Att. 97), Officer Houston stated that he told Officer Rosales that they needed an officer in the gangway in case ██████████ attempted to run toward 46th Place.

²⁸ Att. 18 - Timestamped at 05:03:51PM.

²⁹ Att. 65 - Video footage from WGN depicted an officer's head shown in the gangway that led to the backyard where ██████████ was located. At 01:03, ██████████ shot toward the gangway. At 01:05, ██████████ appeared to be struck by gunfire apparently from Officer Houston. In his statement to COPA (Att. 97), Officer Houston stated he returned fire. The video did not capture Officer Houston discharging his firearm. Officer Houston's Tactical Response Report (TRR) documented that he discharged his firearm five times during the incident. The TRR did not specify how many volleys Officer Houston discharged his firearm.

³⁰ Att. 17 - Timestamped starting at 05:04:09PM.

³¹ Att. 16 – BWC of PO Nunez.

³² Att. 17 - Timestamped starting at 05:04:49PM.

³³ Att. 16 - Timestamped at 05:05:51PM.

³⁴ Att. 65 - Timestamped at 3:03. ██████████ discharged his handgun towards the alley where Officer Houston was located. Officer Houston was not in the camera's view. In a statement with COPA (Att. 97), Officer Houston stated he returned fire after ██████████ discharged his handgun in the direction of Officers Rosales, Vargas, and Apostolou. Officer Houston did not know how many times he discharged his firearm at that time.

³⁵ Att. 98 – Transcribed interview of Officer Kwa. In his statement with COPA, Officer Kwa described the fence as a white privacy fence approximately six feet in height.

³⁶ Att. 98 - Page 30, Line 14.

³⁷ Att. 4 - Officer Kwa's TRR documented that he discharged his firearm three times during the incident. Att. 16 – Timestamped at 05:05:59PM; Att. 65 - Timestamped at 3:09; Att. 98 – Page 30, Lines 19-21.

³⁸ Att. 16 - Timestamped at 05:06:04PM; Att. 12 – Officer Kwa's BWC timestamped at 05:06:03PM.

³⁹ Att. 65 - ██████████ appeared to fall onto the ground, timestamped at 3:11.

Apostolou rendered aid to [REDACTED] with the assistance of Officer Rosales. [REDACTED] was transported to Stroger Hospital via ambulance and was pronounced dead.⁴⁰

Officer Kwa admitted that he failed to make notifications regarding the discharge of his firearm. Officer Kwa stated that there was a lot of radio traffic and a tense situation, so he did not go over the radio.⁴¹

Officer Houston stated that when he initially arrived on scene, he believed he hit his BWC to turn it on, but when [REDACTED] went down, he noticed that his BWC was not on. Officer Houston also stated that he failed to immediately make notification for the discharge of his firearm due to the fact it was not safe and feasible to go over the radio. Officer Houston stated that his partner, Officer Tapling, made notifications of shots being fired by the police.⁴²

b. Physical Evidence

Summarization of the review of CPD Inventory Reports, CPD Crime Scene Report, Illinois State Police (ISP) Reports, Office of the Medical Examiner's Report, and Evidence Technician photos⁴³.

A 9mm semi-automatic Ruger Prescott AZ, Serial # [REDACTED], with one Winchester 9mm Luger live cartridge in the chamber, was recovered from [REDACTED] on the scene.⁴⁴ There were two live cartridges in the magazine.⁴⁵ The ballistic examination determined four fired cartridge cases⁴⁶ were discharged from [REDACTED] handgun. Ballistic examination also determined:

- Officer Houston's and Officer Kwa's firearms were examined, tested fired, and found to be in operable condition.⁴⁷
- Officer Houston's weapon was a Glock, model 17, 9mm semi-automatic pistol, Serial # [REDACTED], with a magazine capacity of seventeen (17) plus one (1) in the chamber. One (1) live cartridge was recovered from the chamber, and twelve (12) live cartridges were recovered from the magazine.⁴⁸
- Officer Kwa's weapon was a Glock, model 19, 9mm semi-automatic pistol, Serial # [REDACTED], with a magazine capacity of fifteen (15) plus one (1) in the chamber. One (1) live cartridge was recovered from the chamber, and twelve (12) live cartridges were recovered from the magazine.⁴⁹

⁴⁰ Att. 76 – Office of the Medical Examiner's Report of Postmortem Examination documented that [REDACTED] sustained a gunshot wound to his chest, right thigh, and left thigh. [REDACTED] died of multiple gunshot wounds, and the manner of death was homicide. A toxicology report documented that [REDACTED] tested positive for Delta-9 Carboxy THC and Delta-9 THC. Delta-9 Carboxy THC and Delta-9 THC are both the principal psychoactive ingredient of marijuana/hashish. Delta-9 THC is the active ingredient of marijuana (Att. #72).

⁴¹ Att. 98 – Page 35, Lines 8-21.

⁴² Att. 97 – Page 52, Line -3 through Page 53, Line 18.

⁴³ Atts. 48, 76, 105, 119, 120, 121, & 122.

⁴⁴ Att. 48 – Inventory # [REDACTED].

⁴⁵ Att. 105 – Illinois State Police (ISP) Laboratory Report.

⁴⁶ Att. 122 – ISP Report; All fired cartridge cases were Winchester 9 mm Luger fired cartridge cases.

⁴⁷ Att. 122 – ISP Report.

⁴⁸ Att. 48 - Inventory # [REDACTED].

⁴⁹ Att. 48 - Inventory # [REDACTED].

- Four (4) fired cartridge cases were examined⁵⁰ and determined that they were discharged from [REDACTED] handgun.⁵¹
- Six (6) fired cartridge cases were examined⁵² and determined to be discharged from Officer Houston's firearm.⁵³
- Two (2) fired cartridge cases were examined⁵⁴ and determined that they were discharged from Officer Kwa's firearm.⁵⁵
- A "Survivor" stainless steel knife, with a twelve-inch blade and black handle, was recovered from the concrete patio in the backyard of 2540 W. 46th Place where [REDACTED] was standing.⁵⁶
- A black "Reyleo" backpack containing clear packages of "Cerrowire" was recovered from the concrete patio in the backyard of 2540 W. 46th Place where [REDACTED] was standing.⁵⁷
- Two metal projectiles and one metal fragment were extracted from [REDACTED] at the Medical Examiner's Office.⁵⁸

VI. LEGAL STANDARD

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** that a proposition is proved.⁵⁹ 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. This standard also applies in determining whether an officer's firearm discharge complies with Department policy when no allegation of misconduct has been made.

⁵⁰ Winchester 9mm Luger. Att. 48 & 122.

⁵¹ Att. 122.

⁵² Winchester 9mm Luger + P fired cartridge cases. Att. 48 & 122.

⁵³ Att. 122.

⁵⁴ Winchester 9mm Luger + P fired cartridge cases. Att. 48 & 122.

⁵⁵ Att. 122

⁵⁶ Att. 48; Inventory # [REDACTED].

⁵⁷ This was the backpack [REDACTED] had on his back, Att. 48; Inventory # [REDACTED].

⁵⁸ Att. 119 – Crime Scene Processing Report, Inventory # [REDACTED].

⁵⁹ 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.").

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.⁶⁰ 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."⁶¹

VII. ANALYSIS

A. Applicable Department Policies

a) G03-02: Use of Force⁶²

The Department states that its highest priority is the sanctity of human life. In all aspects of their conduct, Department members are expected to act with the utmost regard for the preservation of human life and the safety of all persons involved. Department members may only use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent escape.

The main issue in evaluating every use of force is whether the amount of force used by the member was objectively reasonable in light of the totality of the circumstances faced by the member on scene. Factors to be considered include but are not limited to: whether the subject is posing an imminent threat to the member or others; the risk of harm, level of threat or resistance presented by the subject; and the subject's proximity to weapons.

Department members are to only use the amount of force necessary to serve a lawful purpose. The force must be proportional to the threat, actions, and level of resistance offered by a subject, which may include using greater force or a different type of force than that used by the subject. The greater the threat and 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, as members are to use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so based on the totality of the circumstances.

Deadly force is force by any means that is likely to cause death or great bodily harm, including the firing of a firearm in the direction of the person to be arrested. 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 to the member or another person, or to prevent an arrest from being defeated by resistance or escape, where the person poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay.

A threat is imminent when it is objectively reasonable to believe that the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action

⁶⁰ See e.g., *People v. Coan*, 2016 IL App (2d) 151036 (2016).

⁶¹ *Id.* at ¶ 28.

⁶² General Order G03-02, effective February 29, 2020

is taken; and the subject has the means or instruments to cause death or great bodily harm; and the opportunity and ability to cause death or great bodily harm.

b) G03-02-01: Force Options⁶³

To reduce or avoid the need for the use of force, Department policy instructs members to use de-escalation techniques known as “Principles of Force Mitigation” when it is safe and feasible under the circumstances. These techniques include:

1. “Continual Communication,” which means using verbal control techniques to avoid or minimize confrontations before resorting to physical force. This includes using persuasion, advice, instruction, and warning prior to any use of force;
2. “Tactical Positioning,” which involves use of positioning, distance, and cover to contain a subject and create a zone of safety for officers and the public; and
3. Using “Time as a Tactic” to, among other things, permit the de-escalation of a subject’s emotions and provide time for the subject to comply with police orders, provide time for continued communication, and allow for the arrival of additional members or special units and equipment.

Additionally, Department policy outlines the various force options available to department members and the circumstances in which their use is authorized.⁶⁴ The force options authorized are categorized based on the amount of and type of resistance by an individual. The use of deadly force is only authorized when dealing with an assailant⁶⁵ whose actions constitute an imminent threat of death or great bodily harm to the department member or another person.

c) G03-06: Firearm Discharge and Officer-Involved Death Incident Response and Investigation

For every firearm discharge incident, the involved member is required to immediately notify the Office of Emergency Management and Communications (OEMC) to provide all relevant information and request additional resources.⁶⁶

d) S03-14: Body Worn Cameras⁶⁷

To increase transparency and improve the quality and reliability of investigations, Department policy requires law-enforcement-related encounters to be electronically recorded. Law-enforcement encounters include but are not limited to arrests, use of force incidents, calls for service, searches, foot and vehicle pursuits, and high-risk situations.

⁶³ General Order G03-02-01, effective February 29, 2020

⁶⁴ General Order G03-02-01.

⁶⁵ Pursuant to Department policy, an assailant is defined as a subject who is using or threatening the use of force against another person or himself/herself, which is likely to cause physical injury. Assailants are further subdivided into two categories: (1) a subject whose actions are aggressively offensive with or without weapons and (2) a subject whose actions constitute an imminent threat of death or great bodily harm to a Department member. G03-02-01(IV)(C).

⁶⁶ General Order G03-06 (V)(A), effective February 29, 2020.

⁶⁷ Special Order S03-14, effective April 30, 2018.

The decision to record is mandatory, not discretionary. The system is to be activated at the beginning of an incident and record the entire incident. If there are circumstances preventing the activation of the Body Worn Camera at the beginning of the incident, it shall be activated as soon as practical. However, sworn members are not to unreasonably endanger themselves or another person to conform with this policy.

At the beginning of duty, Department members are to securely attach the body worn camera to the front of his or her person.⁶⁸

II. LEGAL ANALYSIS

A. The use of deadly force by Officers Houston and Kwa was authorized by Department policy.

A preponderance of the evidence establishes that the force used was within Department policy. COPA has completed its investigation and determined that the preponderance of the evidence supports that the force used complied with Department policy. In coming to that conclusion, COPA weighed the credibility and reliability of all available statements and evidence discussed above.

a) The force used was objectively reasonable and necessary to protect against an imminent threat to life.

It was objectively reasonable to believe that Mr. [REDACTED] actions were likely to cause death. Mr. [REDACTED] possessed a firearm and used it to shoot Officer Kocerka, causing injury. Mr. [REDACTED] also shot at Officer Houston. It was apparent that Mr. [REDACTED] had the means, opportunity, and ability to cause death and/or great bodily harm. The force used by Officers Houston and Kwa was necessary to prevent further injury to anyone else. Additionally, Department policy authorizes the use of deadly force to prevent an escape of an individual who poses an imminent threat of death or great bodily harm unless arrested without delay. Once the threat was eliminated, the officers ceased the use of deadly force and began placing Mr. [REDACTED] into custody.

b) The force used was proportionate to the force used by Mr. [REDACTED]

In the instant matter, Mr. [REDACTED] was in possession of a firearm that he was actively using to shoot. The officers used the same force in response to the force used by Mr. [REDACTED]

c) The officers were confronted with an assailant whose actions constituted an imminent threat of death or great bodily harm.

⁶⁸ *Id.* at (V)(A)(3).

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. Assailants are divided into two categories: (1) a subject whose actions are aggressively offensive with or without weapons and (2) a subject whose actions constitute an imminent threat of death or great bodily harm to a Department member or another person. Mr. [REDACTED] actions of discharging his firearm at and in the direction of the officers created an imminent threat of death and/or great bodily harm to the Department members involved in this case. When dealing with an assailant whose actions constitute an imminent threat of death or bodily harm, Department policy authorizes the use of firearms and other deadly force responses.⁶⁹

- B. Officer Houston failed to timely activate his body worn camera in violation of Special Order S03-14 (III)(A).

Officer Houston's body worn camera was not activated at the beginning of the encounter as mandated by Department policy. Instead, Officer Houston's body worn camera footage begins while the incident is ongoing. The footage starts as Officer Houston is taking cover near garbage cans in the opening that leads to the alley near 2540 W. 46th Place. Officer Houston can be seen activating his body worn camera after the shooting of Mr. [REDACTED]. During his interview with COPA, Officer Houston stated that when he initially arrived on scene, he believed he hit his BWC to turn it on, but when [REDACTED] went down he noticed that his BWC was not on. Thus, **Allegation #1** against Officer Houston is **SUSTAINED**.

- C. Officers Houston and Kwa failed to immediately make notifications of their firearm discharges in violation of G03-06.

Department policy requires that members immediately notify OEMC of the discharge of their firearms and the relevant information pertaining to the discharge. Officer Kwa admitted that he failed to make notifications regarding the discharge of his firearm. Officer Kwa stated that there was a lot of radio traffic and a tense situation, so he did not go over the radio. Officer Houston also admitted to failing to make immediate notification, stating that he failed to immediately make notification for the discharge of his firearm due to the fact that it was not safe and feasible to go over the radio. Officer Houston also stated that his partner, Officer Tapling, made notifications of shots being fired by the police. Thus, **Allegation #1 against Officer Kwa and Allegation #2** against Officer Houston are **SUSTAINED**.

⁶⁹ General Order G03-02-01(IV)(C)(2), effective February 29, 2020.

VIII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Tobias Houston

i. Complimentary and Disciplinary History

Officer Houston has received 45 various awards and three spars within two years, which included a reprimand in 2021 for non-compliance with motor vehicle pursuit requirements, one-day off in 2021 for a preventable accident, and two days off in 2022 for compliance with motor vehicle pursuit requirements.

ii. Recommended Penalty

COPA found that Officer Houston violated Rule 6 when he failed to timely activate his BWC and immediately make notifications of his firearm discharge. For these reasons, combined with the officer's complimentary and disciplinary history, COPA recommends a **3–5-day(s) suspension**.

b. Officer Jack Kwa

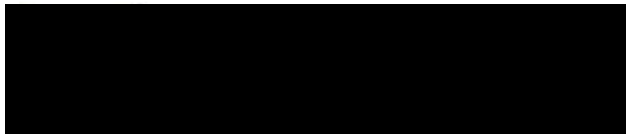
i. Complimentary and Disciplinary History

Officer Kwa has received 12 various awards.

ii. Recommended Penalty

COPA found that Officer Kwa violated Rule 6 when he failed to immediately make notifications of his firearm discharge. For these reasons, combined with the officer's complimentary history and no disciplinary history, COPA recommends a **1–3-day(s) suspension**.

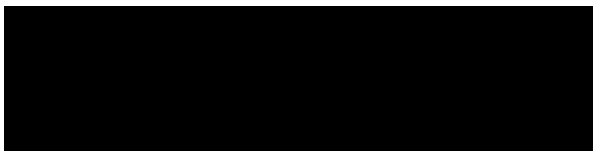
Approved:



Angela Hearts-Glass
Deputy Chief Investigator

3-28-2023

Date



Andrea Kersten
Chief Administrator

3-28-2023

Date