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David O. Brown
Superintendent of Police

January 11, 2023

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

RE: Complaint Register Number: #2021-1496
Superintendent's Non-Concurrence with COPA's proposed findings for
Lieutenant Michael Keeney #427

Dear Chief Administrator:

After a careful review of the above-referenced Log including all attachments, the Chicago Police Department (CPD) does not concur with COPA's conclusion that Lieutenant Keeney violated Department orders when he shot at [REDACTED] an offender actively engaged in a thirty minute violent crime spree. The Department also does not concur with COPA's conclusion that Lieutenant Keeney failed to promptly and accurately notify OEMC that he discharged his weapon. Based on the reasons stated below, the Department believes that these two Allegations are *Unfounded*.

I. Summary of the facts

The facts detailed in COPA's investigation are not in dispute. There is substantial video of this incident, the most significant being the shooting officer's BWC, but there is also CPD POD footage and video of the shooting from a WGN news helicopter.¹ COPA also "did not find any material discrepancy between [Lieutenant Keeney's] statement and the available evidence" and "[did] not dispute the truthfulness or reliability of [Lieutenant Keeney's] account."²

On 22 April 2021, Chicago Police Lieutenant Michael Keeney (then Sergeant Keeney) was working as a 25th District Field Supervisor, Beat 2510, in uniform driving a marked SUV. Lt. Keeney was beginning his 0600 hour shift and was in his squad car in the 25th District parking lot preparing his supervisor log.³ Lt. Keeney heard multiple calls for service dispatched by OEMC over the police radio along with a ShotSpotter Alert, indicating that shots had been fired in the area. Lt. Keeney stated he heard separate calls reporting a carjacking, an attempted carjacking, and an armed robbery all in the same area and all with the same offender description, a Hispanic male with face tattoos, wearing a blue hat, blue or black hoody, and blue jeans.⁴ During

¹ Attachment 45 (Lt. Keeney BWC); Attachments 35-40 (CPD PODs); Attachment 65 (WGN helicopter video)

² COPA SR pg 17

³ Attachment 42 at 14:00

⁴ Attachment 42 at 12:10 and 13:10.

his interview with COPA, Lt. Keeney stated he could not remember all of the calls, but COPA's investigation includes recordings of the all of the jobs dispatched in the order they were dispatched.⁵ The time from the first dispatch at approximately 7:18 am to the nineteenth dispatch in the list below was thirty-two (32) minutes.⁶

1. ShotSpotter indicated two rounds were fired at 3702 W Division.⁷
2. Caller reported a person with a gun at Division and Grand. The offender, a male Hispanic wearing a brown jacket just shot at the caller's vehicle. Beat 2531 was dispatched.⁸
3. ShotSpotter indicated one round was fired at 3721 W Hirsch. Beat 2531 was dispatched and the dispatcher requested other units. Beat 2593 was dispatched but was coming from a distance.⁹
4. Caller reported shots fired at Hamlin and Hirsch. The offender, a male Hispanic with a dark complexion, fired one shot and stole a white Grand Cherokee, fleeing eastbound. The vehicle rolled over in a crash and the offender was attempting to get out of the vehicle. The SDSC verified that a POD showed a vehicle rolled over in the middle of the street. The dispatcher stated the fire department would not respond until police secured the scene.¹⁰
5. Caller reported his vehicle was hit by a bullet at 3719 W Hirsch. Beat 2582F responded.
6. SDSC reported PODs showed the offender possibly ran northbound through an alley between Hamlin and Avers. The offender was wearing a jacket with a hood.¹¹
7. Caller reported an attempt carjacking of a tan 2005 Jeep Grand Cherokee at North and Hamlin. The offender fired a shot through the window of the caller's vehicle and the caller was bleeding.¹²
8. Beat 2531 reported the offender, a male Hispanic, was wearing a grey jacket, black pants, had face tattoos, and fled northbound through the west alley of Hamlin. Beat 2582F reported the victim of the attempt carjacking was located and was bleeding from the side of her eye.¹³
9. Caller reported a person with a gun at North and Pulaski who attempted to steal a vehicle at gunpoint. Beat 2593 responded. Additional information reported the offender was a male Hispanic holding a black gun, who approached the victim who was sleeping in his vehicle and tried to break the window before running toward North and Avers.¹⁴
10. Caller reported a person with a gun at 1538 N. Avers. Caller described a male Hispanic with a black gun, which was additional information for a prior dispatch.¹⁵

⁵ Attachment 42 at 15:15

⁶ Attachment 49 Z012 0650-800. The recordings begin at 0651 hours on 22 April 2021. Attachment 49 includes multiple files of 911 call recordings, Office of Emergency Communications (OEMC) dispatches to the Chicago Fire Department (CFD), and OEMC dispatches to and radio calls between Chicago Police Department (CPD) units. The information provided here is from the communication between OEMC dispatchers and CPD field units via the police radio (file Z012). OEMC call takers speak with callers, which is included in separate files in Attachment 49 and not detailed in this list of nineteen (19) dispatches. OEMC dispatchers receive information about calls for service and dispatch field units to respond via the police radio. CPD units identify themselves by a "Beat number" when communicating on the radio. Beat 2501S is the 25th District Strategic Decision and Support Center (SDSC) room. Beat 2510 is Lt. Keeney.

⁷ *Id.* at 19:00. ShotSpotter is a wide-area acoustic gunshot detection, alert, and analysis tool (S03-02-01 and 02). The 25th District SDSC (Beat 2501S) receives ShotSpotter alerts and notifies OEMC dispatchers on the radio. The OEMC dispatcher then assigns field units (Beats). The SDSC (Beat 2501S) can view Chicago Police Observation Devices (PODs) in real-time and can also rewind video. The SDSC informs OEMC and other field units of relevant observations via the radio.

⁸ *Id.* (Dispatched at 0718 hours under Event in Attachment #19)

⁹ *Id.* at 23:00-25:00

¹⁰ *Id.* at 27:00

¹¹ *Id.* at 29:00

¹² *Id.* at 31:00

¹³ *Id.* at 32:00

¹⁴ *Id.* at 33:00-35:00

¹⁵ *Id.* at 35:00

11. Beat 2523 observed the offender running northbound in the alley at North and Hamlin. The dispatcher requested additional units.
12. Beat 2593 located a victim at 1506 N. Avers (later clarified to be at 1414 N. Avers). The victim stated a male Hispanic pointed a .38cal handgun at the victim in an attempt to steal his pickup truck.¹⁶
13. Dispatchers asked for units to assist Beat 2523. Beat 2510, Sgt. Keeney, reported that he was on Hamlin.¹⁷
14. Caller reported an armed robbery at a store at 3839 W. North Avenue. Caller stated a Latino male offender stole two cases of beer at gunpoint and fled eastbound on Avers.¹⁸
15. SDSC reported receiving information over the phone that the offender was a male Hispanic with a mustache and tattoos over both eyes, possibly names.¹⁹
16. Lt. Keeney reported a tow truck driver saw the offender run up the Metra railroad tracks at Wabansia and Hamlin.²⁰ SDSC reported video showed the offender went from the Metra tracks to the 606 Trail near Lawndale and Bloomingdale and was wearing a black hoody, Adidas baseball cap, blue shirt, and blue jeans. SDSC was tracking the offender on video walking eastbound toward the start of the 606 Trail.²¹
17. SDSC directed police toward workers who were waving at the responding officers.²²
18. Lt. Keeney reported he observed the offender run back toward Springfield. SDSC reported the offender was running westbound and appeared to be trying to get on the tracks.²³
19. Lt. Keeney (Beat 2510) reported "Shots fired squad, shots fired squad".²⁴ The dispatcher asked if these were shots fired by the offender or shots fired by the police.²⁵ Lt. Keeney responded, "2510 shots fired, offender is on the ground, I need people to come up the side tracks to get him in custody, weapon is here as well."²⁶

Lt. Keeney stated he monitored the jobs on the radio and began his involvement when an officer reported via the radio that a witness saw the offender running at Hamlin and North Avenue.²⁷ Lt. Keeney drove to that location, met with Officer Rodriguez (Beat 2523), and reported to OEMC that a tow truck driver saw the offender run across Wabansia onto the Metra railroad tracks.²⁸ Lt. Keeney drove up the access way to the railroad tracks and was not able to find the subject.²⁹ Lt. Keeney was in the area with Officer Rodriguez who was also working 10-99 (single officer unit) in a separate squad car.³⁰ Lt. Keeney relocated to Lawndale Ave and the 606 Trail when the SDSC reported the offender was headed in that direction.³¹

¹⁶ *Id.* at 37:00

¹⁷ *Id.* at 37:40

¹⁸ *Id.* at 38:00

¹⁹ *Id.* at 38:40

²⁰ *Id.* at 40:30

²¹ *Id.* 41:00 to 43:00

²² *Id.* 43:00

²³ *Id.* 43:42

²⁴ *Id.* 43:50

²⁵ *Id.* 43:58

²⁶ *Id.* 44:07-44:14

²⁷ Attachment 42 at 15:50 (See Dispatch Item #8)

²⁸ *Id.* at 16:30 (See Dispatch Item #16)

²⁹ *Id.* at 16:50

³⁰ *Id.* at 17:30

³¹ *Id.* at 18:30 (See Dispatch Item #16)

Lt. Keeney saw Officer Feliciano (Beat 2513) exit his squad car and walk up the embankment onto the 606 Trail.³² At that moment, Officer Feliciano was the only officer Lt. Keeney saw.³³ Lt. Keeney went on foot by himself onto the 606 Trail from the Lawndale entrance and ran westbound on the trail to help contain the offender.³⁴ Lt. Keeney saw the offender (now known to be [REDACTED] running westbound.³⁵ [REDACTED] was wearing a blue hat, blue hoody, and blue jeans.³⁶ At that moment, Lt. Keeney did not see [REDACTED] holding a gun.³⁷ Lt. Keeney began running as fast as “his 48 year legs” could go.³⁸ Lt. Keeney saw landscapers on the elevated landscaping on the trail and then heard the dispatcher say that [REDACTED] was coming back eastbound.³⁹ Lt. Keeney estimated he lost sight of [REDACTED] for about ten seconds.⁴⁰ Lt. Keeney then saw [REDACTED] emerge from the turnaround coming back east directly toward him. Lt. Keeney stated [REDACTED] was about twenty feet away from him holding a black revolver in his right hand.⁴¹ Lt. Keeney said he told [REDACTED] twice to “get on the fucking ground.”⁴² [REDACTED] did not comply and continued closing the distance toward Lt. Keeney. As [REDACTED] approached, [REDACTED] gun was pointed at Lt. Keeney. When [REDACTED] was approximately ten feet from Lt. Keeney, [REDACTED] veered from Lt. Keeney’s right to his left holding the gun at his right hip.⁴³ Lt. Keeney fired one shot at [REDACTED].⁴⁴

Lt. Keeney stated [REDACTED] continued running to his left (southbound) toward a fence separating the 606 Trail.⁴⁵ Lt. Keeney stated there was no place for him (Lt. Keeney) to take cover and he (Lt. Keeney) fired two more times at [REDACTED].⁴⁶ Lt. Keeney stated that he fired two additional times because he still saw [REDACTED] “as a threat to himself [Lt. Keeney], his colleagues, and the community at large.”⁴⁷ Lt. Keeney stopped shooting after [REDACTED] went over the fence and Lt. Keeney could see [REDACTED] no longer had the gun.⁴⁸ Lt. Keeney described that the fence was a “double fence” at the bottom of a drop off area next to the 606 Trail.⁴⁹ Officer Feliciano approached from Lt. Keeney’s left and both of them were on the same side of the fence with [REDACTED] now on the other side of the fence.⁵⁰ Officer Feliciano gave [REDACTED] verbal commands to stay on the ground, while Officer Jose Rodriguez (on the opposite side of the fence) placed [REDACTED] into handcuffs. No one was struck by the three rounds Lt. Keeney fired at [REDACTED].⁵¹ Lt. Keeney notified the dispatcher there were shots fired.⁵²

³² *Id.* at 19:15

³³ *Id.* at 19:50

³⁴ *Id.* at 20:30

³⁵ *Id.* at 21:00

³⁶ *Id.* at 22:45

³⁷ *Id.* at 26:50

³⁸ *Id.* at 23:40 – 24:30

³⁹ *Id.* at 24:40

⁴⁰ *Id.* at 25:30

⁴¹ *Id.* at 26:40

⁴² *Id.* at 27:30 (Lt. Keeney’s BWC showed he actually told [REDACTED] to “get on the ground” four times)

⁴³ Attachment 43 at 3:00-5:00

⁴⁴ Attachment 43 at 3:00

⁴⁵ *Id.* at 8:00

⁴⁶ *Id.* at 9:20

⁴⁷ *Id.* at 34:00

⁴⁸ *Id.* at 9:30

⁴⁹ *Id.* at 31:30

⁵⁰ *Id.* at 32:00

⁵¹ *Id.* at 11:00

⁵² *Id.* at 12:15 (Lt. Keeney stated he did not remember if he told the dispatcher that he fired. The OEMC record showed that Lt. Keeney reported that shots were fired and the offender was down.)

When discussing with COPA his decision to use deadly force, Lt. Keeney stated he continually assessed the situation as it was occurring and he fired because he had no other option and was afraid that [REDACTED] was going to use his gun to shoot him.⁵³ Lt. Keeney stated that he fired at [REDACTED] to defend himself and also because of the danger [REDACTED] posed to other people based on the crimes [REDACTED] had already committed.⁵⁴ Lt. Keeney stated he was aware that [REDACTED] had already used the weapon against other people in the community.⁵⁵

Lt. Keeney's BWC video showed the incident in its entirety from Lt. Keeney's perspective.⁵⁶ Lt. Keeney activated his BWC while driving to the area. Lt. Keeney's conversation with Officer Rodriguez was captured.⁵⁷ Lt. Keeney reported on the radio that [REDACTED] ran up to the Metra tracks at Wabansia and Hamlin.⁵⁸ Lt. Keeney continued driving while the SDSC reported [REDACTED] movements onto the 606 Trail. Lt. Keeney exited his vehicle and ran onto the 606 Trail. Lt. Keeney unholstered his weapon and reported on the radio [REDACTED] direction back toward Springfield Ave.⁵⁹ Lt. Keeney continued running on the trail, listening to the SDSC reports of [REDACTED] movements, and observed [REDACTED] coming around an embankment in the middle of the trail directly toward Lt. Keeney.⁶⁰ [REDACTED] was holding a gun in his right hand. Lt. Keeney yelled four times to [REDACTED] to "get on the ground." [REDACTED] continued to run at Lt. Keeney while Lt. Keeney ran backwards. [REDACTED] closed the distance on Lt. Keeney and veered to Lt. Keeney's left holding the gun in his right hand showing his left profile to Lt. Keeney.⁶¹ [REDACTED] yelled something. Lt. Keeney fired one time.⁶² [REDACTED] ran behind a large tree as Lt. Keeney continued moving backward and emerged on the other side of the tree.⁶³ Lt. Keeney fired two more times as [REDACTED] was running away to a fence, going over the fence at the same time as the third shot.⁶⁴ There was a short bush between Lt. Keeney and [REDACTED]. As Lt. Keeney turned to get around the bush, Officer Feliciano ran [REDACTED].⁶⁵ Officer Feliciano reached the fence and pointed his gun at [REDACTED] telling him to get down.⁶⁶ [REDACTED] put both hands up and he was not holding a weapon. [REDACTED] then immediately fell onto his back with his hands up. A unit reported on the radio, "shots fired" and the dispatcher asked if the shots were fired by the offender or the police.⁶⁷ Lt. Keeney walked to Officer Feliciano and told him, "The gun's there. The gun's there."⁶⁸ Lt. Keeney reported on the radio, "Hey 2510, shots fired. The offender's on the ground. I need people to come up the side tracks to get him into custody. The gun's here as well."⁶⁹ Lt. Keeney told officers the weapon was here. An officer yelled, "I got it." Other officers gave a slowdown. Lt. Keeney then ran down the entrance ramp to get around the fence to get into the alley where the offender was in custody.⁷⁰ As Lt. Keeney reached [REDACTED] an officer on the scene reported on the radio that [REDACTED] fired shots. Lt. Keeney told the officer, "Don't report bad info." Lt. Keeney immediately reported on the radio, "2510 correction. That was not

⁵³ Attachment 43 at 14:00-16:00

⁵⁴ *Id.* at 16:00 to 16:30

⁵⁵ *Id.* at 16:00

⁵⁶ Attachment 45 (Keeney BWC)

⁵⁷ *Id.* at 7:25

⁵⁸ *Id.* at 8:30-9:30

⁵⁹ *Id.* at 11:40

⁶⁰ *Id.* at 11:59

⁶¹ *Id.* at 12:02

⁶² *Id.* at 12:03

⁶³ *Id.* at 12:04

⁶⁴ *Id.* at 12:05

⁶⁵ *Id.* at 12:08

⁶⁶ Attachment 46 at 2:20 (Feliciano BWC)

⁶⁷ Attachment 45 at 12:12 (Keeney BWC)

⁶⁸ *Id.* at 12:18

⁶⁹ *Id.* at 12:25

⁷⁰ *Id.* at 13:14 to 14:15

correct. I'm the one who fired.”⁷¹

██████████ was charged with multiple counts including attempted murder of the woman he shot during a vehicle hijacking and attempted murder of a man in a vehicle ██████ shot at.⁷² ██████ was also charged with armed robbery, aggravated vehicular hijacking, and aggravated assault on a police officer. One of ██████ victims, ██████ (Dispatch #9), later told police that while he was sleeping in his vehicle, ██████ banged on his driver's side window with a snub nosed revolver and told him, “Open the door or I'm gonna shoot. I need to get away from the police.”⁷³

Chicago Police Detectives located witnesses, including two landscapers and two joggers on the 606 Trail.⁷⁴ All four witnesses stated that moments before Lieutenant Keeney fired shots, ██████ attempted to steal the landscapers' truck, but was unable to get the vehicle to move. All four witnesses saw ██████ exit the truck with a black revolver in his hand. One of the joggers, ██████ told detectives he approached ██████ while ██████ was in the truck. When ██████ exited with the revolver in his right hand, ██████ “decided to run away because he feared being shot.”⁷⁵

The criminal charges against ██████ remain pending.

II. Lieutenant Keeney's use of deadly force was objectively reasonable, necessary, and proportional to the imminent threat presented by ██████

Lieutenant Keeney's use of his firearm to shoot at ██████ was the use of deadly force as defined by Department Orders.⁷⁶ The Department requires that all uses of force are “1) objectively reasonable, 2) necessary, and 3) proportional in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent an escape.”⁷⁷ An officer's use of force is assessed “*under the totality of 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.”⁷⁸

The use of deadly force has additional restrictions. The person must pose an imminent threat of death or great bodily harm (GBH) to the officers or others.⁷⁹ Officers are prohibited from firing at a fleeing person unless that person poses an imminent threat of death or GBH.⁸⁰ And, the use of deadly force must be a necessary last resort to prevent death or GBH, *or* to prevent an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or GBH to the officer or another person.⁸¹

⁷¹ *Id.* at 14:34

⁷² Attachment 2

⁷³ Attachment 10

⁷⁴ Attachment 73

⁷⁵ Attachment 73 pg 18

⁷⁶ G03-02-IV-A-1 (effective 15 April 2021)

⁷⁷ G03-02-III-B

⁷⁸ G03-02-II-D-1 (emphasis added)

⁷⁹ G03-02-IV-B

⁸⁰ G-03-02-IV-D-1-a

⁸¹ G03-02-IV-C

Illinois Law defines imminent threat:

“A threat of death of serious bodily injury is ‘imminent’ when, based on the totality of circumstances, a reasonable officer in the same situation would believe that *a person has the present ability, opportunity, and apparent intent to immediately cause death or great bodily harm* to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.”⁸²

A. Lt. Keeney’s use of deadly force was objectively reasonable *under the totality of circumstances*.

All three shots Lt. Keeney fired were each objectively reasonable because █████ presented an imminent threat of death or GBH during the entire encounter. The use of deadly force is objectively reasonable when *under the totality of circumstances*: 1) the subject’s actions are immediately likely to cause death or GBH, 2) the subject has the instruments to cause death or GBH, and 3) the subject has the opportunity and ability to cause death or GBH.⁸³

During the incident leading up to the first shot, █████ was running at Lt. Keeney with a firearm in his right hand, ultimately pointing that gun at Lt. Keeney before turning to Lt. Keeney’s left. █████ disregarded Lt. Keeney’s multiple commands to get down and instead kept his firearm in his right hand and continued to run at Lt. Keeney. Lt. Keeney was aware that █████ had committed other violent crimes, including shooting at people. Lt. Keeney was aware █████ knew police officers were chasing him and that █████ had already used his firearm to try to escape. █████’s decision to veer into the embankment did not reduce the danger █████ posed to Lt. Keeney. █████ presented overwhelming evidence that his refusal to drop the gun was a threat to Lt. Keeney and █████ was both willing and capable of shooting Lt. Keeney.

During Lt. Keeney’s second and third shot, █████ was moving to the side of Lt. Keeney through high plants on the embankment away from Lt. Keeney toward a fence, while still holding the gun in his right hand. █████’s movements did not eliminate the immediate threat █████ posed to Lt. Keeney. The circumstances presented to Lt. Keeney were clear. █████ was not going to drop the gun and was going to use the gun to prevent his capture. Even after the first shot, █████ refused to drop his weapon and surrender.

Lt. Keeney was also aware additional police officers were closing in to stop █████ who now posed a danger to all of them as he was in high ground over the alley, partially concealed by plants and trees. Lt. Keeney stated, and his belief was objectively reasonable, that █████ presented an immediate threat of death or GBH to him, other officers, and anyone else on the 606 Trail or in the alley.

During all three shots fired by Lt. Keeney, █████’s actions were immediately likely to cause death; █████ had the instrument needed to cause death; and, █████ had the *ability, opportunity, and apparent intent* to cause death. Therefore, Lt. Keeney’s actions were objectively reasonable.

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

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

⁸³ G03-02-IV-B

escape:

“Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the affliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”⁸⁴

Lt. Keeney’s response to [REDACTED] actions is the situation the Court described. Lt. Keeney had probable cause to believe that [REDACTED] had shot people and, therefore, posed a threat of serious physical harm to Lt. Keeney and others. [REDACTED] armed with a firearm, ran toward Lt. Keeney as Lt. Keeney backed away, giving multiple warnings to stop and get down. Instead of getting down, [REDACTED] pointed his gun at Lt. Keeney. Like the situation the Court described in *Garner*, Lt. Keeney’s use of deadly force was **not** constitutionally unreasonable when he fired at [REDACTED] under these circumstances to protect himself and prevent [REDACTED] escape.

COPA concluded in order for [REDACTED] to present an imminent threat he must not just point, but must *aim* his firearm at Lt. Keeney; and, in the split-second moments [REDACTED] did not do so, he was not a threat.⁸⁵ Under the law and Department Orders, an imminent threat is analyzed, not in split-second moments, but under the totality of circumstances. The Illinois Supreme Court defines the “totality of circumstances” as looking at “the whole picture,” including the events leading up to and during the encounter, and not “a single, isolated event.”⁸⁶ Under the totality of circumstances, Lt. Keeney knew that [REDACTED] was intent on using his gun to escape; had shot and shot at people to escape; ran at Lt. Keeney while Lt. Keeney backed away; pointed his gun at Lt. Keeney when ordered to surrender; then moved to an area where he could better shoot Lt. Keeney, other officers, or other people. This whole picture would let a reasonable police officer know that [REDACTED] had the ability, opportunity, and the apparent intent to shoot. Lt. Keeney was not addressing the future harm [REDACTED] might pose, he was instantly confronting the imminent threat of harm [REDACTED] posed as [REDACTED] stood ten to twenty feet in front of him.

COPA’s analysis ignored the significant danger [REDACTED] posed looking at the whole picture and instead, evaluated Lt. Keeney’s use of force using photographs of the split-second position of [REDACTED] and his firearm at the exact moment Lt. Keeney fired.⁸⁷ This type of analysis would leave officers in Lt. Keeney’s position with two options. Wait until [REDACTED] took aim or let [REDACTED] escape. The U.S. Supreme Court, Illinois Law, and Department Orders allow officers to use objectively reasonable force proportional to the threat as a necessary last resort to prevent those outcomes.

⁸⁴ *Tennessee v. Garner*, 471 US 1, 11-12 (1985)

⁸⁵ COPA SR pg 17, “At the time Sgt. Keeney fired three shots from his firearm, [REDACTED] actions were not immediately likely to cause death”; Keeney does not “fire his weapon *at the moment* he identifies [REDACTED] pointing the revolver at him.”; “[REDACTED] was not *aiming* or pointing his weapon at Sgt. Keeney when Sgt. Keeney discharged his rounds”; “There is no evidence that [REDACTED] was imminently likely to cause death or GBH to other individuals when Sgt. Keeney discharged his weapon.”

⁸⁶ *People v. Timmsen*, 2016 IL 118181 ¶14 and ¶16 (The Court disagreed with defendant’s assertion that simply making a U turn was insufficient to produce reasonable suspicion to justify a traffic stop. The Court ruled that reasonable suspicion had to be evaluated under the totality of circumstances and all of the relevant events, including the roadblock in front of defendant, had to be considered. The Court found defendant’s argument “view[ed] the U turn as a single, isolated event” and “defendant’s contention misses the point of the...analysis, which considers the totality of circumstances.”)

⁸⁷ COPA SR Figures 1-6

II-B. Lt. Keeney's use of deadly force was necessary and used as a last resort.

Department members are instructed to use the minimum amount of force to effect an arrest and must continually assess the situation to determine if other alternatives are available.⁸⁸ Lt. Keeney provided ample de-escalation and opportunity for [REDACTED] to comply and surrender. Lt. Keeney ran backwards to increase distance between himself and [REDACTED] closed that distance. Lt. Keeney pointed his firearm at [REDACTED] and yelled multiple times at [REDACTED] to get on the ground. [REDACTED] held on to his firearm and refused to get down. Lt. Keeney had nothing near him to give him protection from [REDACTED] threat to shoot. Lt. Keeney, therefore, fired only as a necessary last resort to prevent [REDACTED] from shooting him or someone else *and also* to stop [REDACTED] from using his firearm to escape arrest.

II-C. Lt. Keeney's use of deadly force was proportional to [REDACTED] threat to shoot to escape arrest.

The use of deadly force must be "proportional to the threat, actions, and level of resistance offered by a subject."⁸⁹ "This may include using greater force...than that used by the person."⁹⁰ "The more likely the *threat* will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it."⁹¹

An officer's use of force is proportional even when an officer uses greater force than that used by the suspect to overcome the *threat* posed by the suspect.⁹² Under an objective standard from the perspective of a reasonable officer in the same situation as Lt. Keeney, [REDACTED] was *threatening* the deadly use of force when he pointed his gun at Lt. Keeney, refused to surrender, and kept his gun in his hand while moving to an area where he would be better positioned to shoot Lt. Keeney.

COPA concluded there was "*no* evidence [REDACTED] was imminently likely to cause death...when Sgt. Keeney discharged his weapon."⁹³ This conclusion goes against the evidence in this case. [REDACTED] actions presented an *imminent threat*. Under federal law, state law, and Department orders, Lt. Keeney did not need to wait for [REDACTED] to take a deadly *action*, but could stop [REDACTED] with deadly force once [REDACTED] presented an *imminent threat* that he had the ability, opportunity, and apparent intent to immediately cause death or great bodily harm to escape arrest.

III. Lieutenant Keeney followed Department Orders and immediately notified OEMC that he fired shots at [REDACTED]

Department orders state that for all firearm discharge incidents the involved member(s) will immediately notify OEMC, providing all relevant information and requesting additional resources.⁹⁴ COPA concluded because at least one officer and the OEMC dispatcher were not aware that shots were fired by the police for a period of time, Lt. Keeney violated this order.⁹⁵ Lt. Keeney did not.

⁸⁸ G03-02-III-B-2

⁸⁹ G03-02-III-B-3

⁹⁰ *Id.*

⁹¹ *Id.* (emphasis added)

⁹² "[The use of force] may include using greater force or a different type of force than that used by the subject. The greater the threat and the more likely the threat will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it." G03-02-III-B-3 (emphasis added)

⁹³ COPA SR pg 17 (emphasis added)

⁹⁴ G03-06-V-A

⁹⁵ COPA SR pg 19

Lt. Keeney's three shots were fired in two seconds. Twenty-six seconds after shooting, Lt. Keeney announced to the dispatcher who he was, that shots were fired, the offender was down, and his weapon recovered. Lt. Keeney then took one minute and thirty seconds to run down the 606 Trail entrance to get around the fence and down to the area where [REDACTED] was taken into custody. Ten seconds after getting to [REDACTED] Lt. Keeney learned an officer incorrectly told the dispatcher that [REDACTED] fired the shots. Lt. Keeney immediately cleared up the confusion and identified that he fired the shots. Lt. Keeney was in compliance with the Department's policy.

IV. Conclusion

The Department does not concur with COPA's conclusion to sustain Allegation #1 that Lieutenant Keeney violated Department Orders when he discharged his weapon at [REDACTED]. The Department believes the evidence obtained in COPA's investigation has shown that Allegation #1 is *Unfounded*.

The Department also does not concur with COPA's conclusion to sustain Allegation #2 that Lieutenant Keeney failed to timely and/or accurately notify OEMC that he discharged his firearm. The Department believes the evidence shows that Allegation #2 has been *Unfounded*.

The Department looks forward to discussing this matter with you pursuant to MCC 2-178-130(a)(iii).

Sincerely,

[REDACTED]
David O. Brown
Superintendent of Police
Chicago Police Department