

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	September 21, 2019
Time of Incident:	8:41 A.M./ 3:26 P.M.
Location of Incident:	19█ West 65 th Street Chicago, Illinois/ 6438 South Hoyne Avenue Chicago, Illinois
Date of COPA Notification:	September 21, 2019
Time of COPA Notification:	9:09 A.M.

On September 21, 2019, at approximately 7:00 A.M., members of the Fugitive Apprehension Unit of the Chicago Police Department (the "Department") went to 19█ W. 65th Street to attempt to locate █. Mr. █ had an outstanding burglary warrant and was also identified as the possible suspect in a shooting that took place in downtown Chicago earlier that week. Officers Adam Wazny and Michaela Tuohy arrived at the residence and went to the rear of the apartment building. Other officers observed a man matching Mr. █ description inside one of the ground floor apartments, and they asked him to come outside. Mr. █ came outside and gave a fake name to officers. Officer Wazny, however, recognized Mr. █ and attempted to take him into custody. Mr. █ fled down the westbound stairs and then continued west, and Officer Wazny gave chase. Mr. █ turned and fired several shots at Officer Wazny, and Officer Wazny returned fire. Officer Tuohy, who partially observed the shootout, fired once at Mr. █. Mr. █ escaped through the alley to the west of the apartment building. Officer Wazny was struck in the groin and leg during the shootout and was taken to Christ Hospital. Officers then began to search for Mr. █.

Later that day, at approximately 3:20 P.M., officers tracked Mr. █ to the location of 6440 S. Hoyne Avenue. Officers were speaking with the residents at 64█ S. Hoyne Avenue, who suggested officers check the abandoned building next door at 6440 S. Hoyne Avenue. As officers proceeded to check, Mr. █ fled from the abandoned house. As Mr. █ fled, he ran past Detective ("Det.") Chiocca and pointed his weapon at Det. Chiocca, who then fired once at Mr. █. Mr. █ continued running westbound over the Metra train tracks and into the vehicle lot at 6429 S. Bell Avenue, where he entered the passenger side of a large white truck. At this time, Sergeant (Sgt.) Hamilton, Officer Whiting, and Officer Soto entered the lot, while Lieutenant (Lt.) Lamb and Officer Valeriano were on the southwest corner of the lot, outside the fence. Sgt. Hamilton walked parallel to Mr. █ who then exited the white truck and began walking south and west. Officers announced their office, and Mr. █ turned and fired approximately three times in their direction. Sgt. Hamilton, Lt. Lamb, and Officers Whiting, Soto, and Valeriano returned fire. Mr. █ was shot multiple times and transported to Christ Hospital for medical treatment.

II. INVOLVED PARTIES

Involved Officer #1:	Adam Wazny, Star #11019, Employee # [REDACTED], Date of Appointment: September 29, 2003, Police Officer, Unit 192, DOB: [REDACTED], 1978, male, white
Involved Officer #2:	Michaela Tuohy, Star #9801, Employee # [REDACTED], Date of Appointment: April 28, 2003, Police Officer, Unit 606, DOB: [REDACTED], 1963, female, white
Involved Officer #3:	Michael Chiocca, Star #20867, Employee # [REDACTED], Date of Appointment: May 5, 1997, Det., Unit 620, DOB: [REDACTED], 1968, male, white
Involved Officer #4:	John Hamilton, Star #2329, Employee # [REDACTED], Date of Appointment: March 26, 1990, Sergeant, Unit 189, DOB: [REDACTED], 1967, male, white
Involved Officer #5:	Thomas Lamb Jr., Star #606, Employee # [REDACTED], Date of Appointment: May 22, 1991, Lieutenant, Unit 353, DOB: [REDACTED], 1966, male, white
Involved Officer #6:	George Whiting, Star #14596, Employee # [REDACTED], Date of Appointment: December 14, 2012, Police Officer, Unit 606, DOB: [REDACTED], 1984; male, black
Involved Officer #7:	Fernando Soto, Star #12313, Employee # [REDACTED], Date of Appointment: September 1, 2010, Police Officer, Unit 606, DOB: [REDACTED], 1985, male, white
Involved Officer #8:	Jairo Valeriano, Star #10649, Employee # [REDACTED], Date of Appointment: December 2, 2002, Police Officer, Unit 606, DOB: [REDACTED], 1977, male, Hispanic
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1974, 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 Department member discharges their firearm in a person’s direction or where a person sustains serious bodily injury as a result of police actions. During its investigation of this incident, COPA did not find evidence to support allegations of excessive force related to the involved officers’ firearm

discharges. COPA did determine to serve allegations against Sgt. Hamilton and Officer Soto as follows and makes the following findings:

Officer	Allegation	Finding / Recommendation
Sergeant John Hamilton	1. It is alleged that on or about September 21, 2019, at approximately 3:56 P.M., at or near 6429 South Bell Avenue, Sergeant John Hamilton, Star # 2329, failed to ensure that an item of evidentiary value (PO Soto's rifle) was secured at the scene until recovered by Forensic Services Division personnel, in violation of General Order 03-02-03(V)(B)(6).	Exonerated
Officer Fernando Soto	1. It is alleged that on or about September 21, 2019, at approximately 3:56 P.M., at or near 6429 South Bell Avenue, Police Officer Fernando Soto, Star #12313, failed to ensure that an item of evidentiary value (PO Soto's rifle) was secured at the scene as found until recovered by Forensic Services Division personnel, in violation of General Order 03-02-03(V)(B)(6).	Exonerated

IV. APPLICABLE RULES AND LAWS

General Orders¹

1. General Order 03-02: Use of Force (effective Oct. 16, 2017 to Feb. 28, 2020).
2. General Order 03-02-01: Force Options (effective Oct. 16, 2017 to Feb. 28, 2020).
3. General Order 03-02-03: Firearm Discharge Incidents Involving Sworn Members (effective Oct. 16, 2017 to Feb. 28, 2020).
4. Uniform and Property Directive U04-02-05: Police Carbine Operator Program (Feb. 2, 2015 to Jan. 1, 2021).

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/directives/> (last accessed June 7, 2021).

V. INVESTIGATION²

a. Interviews

On January 9, 2020, **PO Adam Wazny**,³ **Star #11019**, provided a statement to COPA. At the time of this incident, Officer Wazny was detailed to the Fugitive Apprehension Unit. He wore plain clothes, with his police vest and star visible, and his radio affixed to his vest. On September 20, 2019, Officer Wazny learned that his teammate, Officer Stanley Figus, had identified ██████████ as a person of interest on an arrest warrant. Officer Wazny later discovered that Mr. ██████████ was also a person of interest in a shooting that had occurred in downtown Chicago a few days earlier where a woman had been shot.

On September 21, 2019, Officer Wazny reported to work at 6:00 A.M. and met with his teammates in the parking lot of the 7th District police station. The teammates reviewed a photo of Mr. ██████████ as well as physical descriptions including height, weight, and birth date. They then went to 19███ W. 65th Street, the address where Mr. ██████████ was potentially residing. When the team arrived at the address, they set up surveillance at approximately 7:00 A.M. By 8:00 A.M., the teammates had not observed Mr. ██████████ so they decided to enter the building. Officer Wazny and his partner, Officer Michaela Tuohy, went to the back of the apartment while four officers went to the front and a fifth officer stayed behind to monitor the windows.

Officer Wazny said he and Officer Tuohy got to the back of the apartment and observed a woman smoking a cigarette. They showed her the photo of Mr. ██████████ and the woman gestured toward the apartment where the officers believed Mr. ██████████ lived. Officer Wazny then asked the woman to assist other officers with entering the front door of the building. The officers at the front started knocking on the front door and Officers Wazny and Tuohy heard movement inside the apartment around back. Officer Wazny took cover behind a wall on a stairway ascending from the back porch, and Officer Tuohy took cover behind a wall on a stairway descending from the back porch to the rear of the apartment door. They then heard movement in the apartment. As Officer Wazny stepped out from his position of cover, he immediately saw and recognized Mr. ██████████ standing in the doorway of his apartment, wearing all black. Officer Wazny tried to grab Mr. ██████████ but Mr. ██████████ fled down the back staircase into the gangway toward the alley.

Officer Wazny could not recall exactly what happened next but thinks he yelled, “stop.”⁴ As Mr. ██████████ cleared the gangway, he moved his backpack to the front and pulled out a gun. Officer Wazny said he had a clear view of the gun as Mr. ██████████ started firing at him. Officer Wazny returned fire. He reported feeling wetness in his groin area, followed by pain as Mr. ██████████ shattered Officer Wazny’s tibia bone with a bullet. Officer Wazny fell to the ground. Around this time, Mr. ██████████ moved behind the garage in the alley. Officer Wazny attempted

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis. A list of non-material evidence that COPA reviewed in the course of its investigation is attached to this report as Appendix B.

³ Statement of Officer Wazny dated January 9, 2020 (Transcript, Attachment 79; Audio, Attachments 89 and 90). Officer Wazny could not be interviewed until January 2020, due to the injuries he sustained during this incident.

⁴ Statement of Officer Wazny dated January 9, 2020 (Attachment 79), at page 22, line 17.

to call a 10-1⁵ over the radio.⁶ At that time, Mr. ██████ reappeared and began walking toward Officer Wazny, aiming at his head, and firing at him. Officer Wazny again returned fire. Mr. ██████ then ran into the alley and fled the scene. Officer Wazny stated he was not certain but believed there were three volleys of shots between him and Mr. ██████. He only found out later that Officer Tuohy, who was behind Officer Wazny during the shootout, had also fired a shot at Mr. ██████. After Mr. ██████ fled, Officer Wazny applied a tourniquet to his leg and his teammates picked him up and drove him to Christ Hospital. Officer Wazny was shot two to three times and sustained a shattered tibia and a graze wound to his genitals.

On October 16, 2019, **Officer Michaela Tuohy**,⁷ **Star #9801**, provided a statement to COPA. Officer Tuohy was assigned to Fugitive Apprehension at the time of this incident and was in plain clothes but wearing her police vest with her star displayed. On September 20, 2019, one of Officer Tuohy's teammates asked for help in apprehending Mr. ██████ the following morning. She was provided with images of Mr. ██████ prior to the apprehension. On September 21, 2019, the Fugitive Apprehension team met in the parking lot of the 7th District police station and formulated a plan with the main officer assigned to the case, Officer Stanley Figus. Officer Figus briefed the team, developed a plan, and they relocated to the address where they believed Mr. ██████ was residing.

The officers arrived at 19██ W. 65th Street, set up surveillance, and eventually decided to enter the building. Officer Tuohy and her partner, Officer Wazny, went to the rear of the apartment, while four officers went to the front door, with a fifth officer standing watch outside. Officers Tuohy and Wazny observed a woman in the rear of the apartment and presented her with a picture of Mr. ██████. The woman said she recognized Mr. ██████ and pointed to the apartment where Mr. ██████ lived. The woman then went to the front of the building and let the other officers in the front entrance of the building. The officers in the front started knocking on the front door and reported over the radio that they heard a lot of movement in the apartment. Officer Tuohy said the knocking and movement went on for a few minutes. She then looked at the back door to the apartment where they believed Mr. ██████ was residing, and she saw a black male in the window of the door, looking out at her and Officer Wazny. She could not see if the person was Mr. ██████ she just saw the shape of the person. She relayed this information over the radio.⁸ That person, later identified as Mr. ██████ left the window, and approximately a minute later came back and opened the door. At this time, Officer Wazny was positioned closest to the door and took cover behind a wall on a stairway ascending from the back porch, and Officer Tuohy took cover behind a wall on a stairway descending from the back porch. Officer Tuohy called over the radio that the door was opening, and she thought the individual was Mr. ██████

As Mr. ██████ stepped out, Officer Tuohy asked him his name, to which he responded "█████."⁹ Officer Tuohy reported Mr. ██████ was very calm. She knew right away it was Mr. ██████ and communicated over the radio that Mr. ██████ had come out on the porch. At that

⁵ A 10-1 is a radio call of an officer in need of emergency assistance.

⁶ Statement of Officer Wazny dated January 9, 2020 (Attachment 79), at page 25, lines 18-22 and page 31, lines 5-7.

⁷ Statement of Officer Tuohy dated October 16, 2019 (Transcript, Attachment 74; Audio, Attachment 63).

⁸ Officer Tuohy reported the team was using what she referred to as "car to car radio," which allowed them to communicate in a manner similar to walkie talkies, as opposed to over the OEMC zone radio.

⁹ Statement of Officer Tuohy dated October 16, 2019 (Attachment 74), at page 15, line 18.

time, Officer Wazny reached out to apprehend Mr. [REDACTED] and Mr. [REDACTED] fled. Officer Wazny followed Mr. [REDACTED] and Officer Tuohy followed Officer Wazny. Officer Tuohy was unable to see what was happening between Mr. [REDACTED] and Officer Wazny because the gangway was so narrow. She did not see Mr. [REDACTED] or Officer Wazny fire their weapons. Officer Tuohy heard three gunshots, and then four more gunshots, and she proceeded back up the stairway to take cover. As she took cover, she heard a “couple”¹⁰ more gunshots and came back out where she saw her partner on the ground. Officer Wazny told her, “I’m shot.”¹¹

Officer Tuohy said she saw Mr. [REDACTED] near the exit of the alley, approximately 20 feet away from her location. She could not tell if [REDACTED] still had a gun in his hand. She then fired one shot at Mr. [REDACTED] explaining that he had just shot her partner and she was attempting to protect herself and Officer Wazny, as well as the five other officers on scene. Mr. [REDACTED] fled from the alley when Officer Tuohy fired the shot. Officer Tuohy then called over the radio that Officer Wazny was shot, and she searched the yard for Mr. [REDACTED] to no avail. She then went to assist Officer Wazny. By this time, other officers were on scene attempting to get Officer Wazny into a vehicle. Officer Tuohy saw Officer Wazny’s gun “slide-locked”¹² on the ground and put it in the squad car with Officer Wazny as officers prepared to transport him to Christ Hospital.

On October 25, 2019, **Det. Michael Chiocca**,¹³ **Star #20867**, provided a statement to COPA. Det. Chiocca was assigned as a homicide detective on the date of this incident and was wearing a suit and tie with a police vest. Det. Chiocca stated that, prior to this incident, he knew Mr. [REDACTED] was a person of interest in the shooting of a woman that took place downtown earlier that week. He also knew what Mr. [REDACTED] looked like, but he did not know it was Mr. [REDACTED] he was looking for on-scene until he was in the command van reviewing video.¹⁴ Det. Chiocca stated he received a call at approximately 10 A.M., after Mr. [REDACTED] shot Officer Wazny, asking him to report to the 6400 block of S. Damen Avenue to collect digital evidence.

Other detectives informed Det. Chiocca they believed they knew Mr. [REDACTED] location because they had tracked him via doorbell cameras to 64 [REDACTED] S. Hoyne Avenue, and they had not seen Mr. [REDACTED] reemerge from the address. Det. Chiocca stated he then reported to 64 [REDACTED] S. Hoyne Avenue. Det. Timothy O’Brien met Det. Chiocca in front of the house at 64 [REDACTED] S. Hoyne Avenue, where they decided that before calling for backup, they should check the camera footage to determine if it was possible Mr. [REDACTED] had escaped. Det. O’Brien went in a house to watch the live feed as Det. Chiocca walked back and forth in the yard, while on the phone with Det. O’Brien, in an attempt to determine if the camera captured all of Det. Chiocca’s movements or if there was a blind spot. The officers communicated back and forth about the camera position for a brief time and then Det. Chiocca, who was still on the phone and now standing by a U-Haul parked in the alley, heard a noise such as someone saying “uh” or “hey” to get his attention.¹⁵ Det. Chiocca looked up and saw a black male in blue jeans with a handgun in his right hand. Det. Chiocca said

¹⁰ Statement of Officer Tuohy dated October 16, 2019 (Attachment 74), at page 19, line 12.

¹¹ Statement of Officer Tuohy dated October 16, 2019 (Attachment 74), at page 17, line 5.

¹² A slide stop on a semi-automatic handgun, sometimes referred to as a slide lock or slide release, is a function that visually indicates when a handgun has expended all loaded ammunition and facilitates faster reloading by pulling back the slide or depressing the slide lock to advance the first round of a new magazine.

¹³ Statement of Det. Chiocca dated October 25, 2019 (Transcript, Attachment 78; Audio, Attachment 65).

¹⁴ Statement of Det. Chiocca dated October 25, 2019 (Attachment 78), at page 23, line 17.

¹⁵ Statement of Det. Chiocca dated October 25, 2019 (Attachment 78), at page 16, line 20.

it took him a few seconds to realize it was Mr. [REDACTED] because at first, he thought it may have been another officer. However, he quickly realized it was Mr. [REDACTED] because he had been reviewing footage from the downtown shooting all week. Det. Chiocca was facing southbound and Mr. [REDACTED] appeared in his southeast line of vision.

Det. Chiocca said Mr. [REDACTED] walked hunched-over from his left to his right, heading westbound. When Mr. [REDACTED] was approximately 20 feet away, he looked directly at Det. Chiocca. Mr. [REDACTED] then raised his gun from the right side of his body and pointed it in Det. Chiocca's direction as he moved past the detective. Det. Chiocca then drew his firearm with his left hand and fired once. Mr. [REDACTED] spun around, then continued to flee westbound. Det. Chiocca said he fired at Mr. [REDACTED] because he thought Mr. [REDACTED] was going to shoot him, because Mr. [REDACTED] had already shot another officer earlier that morning, and because Mr. [REDACTED] had shot a woman downtown earlier that week. Det. Chiocca raised his weapon and looked down his sights but the "threat [was] gone."¹⁶ He said he briefly chased Mr. [REDACTED] along with other officers, and Mr. [REDACTED] ran into a heavily forested area. Det. Chiocca was concerned that with all the officers and canines on-scene, the evidence of his shooting may not be properly preserved, so he returned to where his shell casing was located. Det. Chiocca then notified Lieutenant Kevin Bruno that he was involved in a shooting.

On October 11, 2019, **Sgt. John Hamilton**,¹⁷ **Star #2329**, provided a statement to COPA. Sgt. Hamilton was assigned to the Narcotics Division at the time of this incident and was wearing plainclothes, with a collared shirt that displayed a police star and the word "police" written across the back. On September 21, 2019, at approximately 9 A.M., Sgt. Hamilton was notified that an officer had been shot. He responded to 65th Street and Hoyne Avenue, where he began working with a police canine to track Mr. [REDACTED]. The dog tracked Mr. [REDACTED] to 69th Street and Winchester Avenue, but when SWAT¹⁸ searched the area, they did not locate Mr. [REDACTED]. At that point, Sgt. Hamilton returned to 65th Street and Hoyne Avenue to work with a canine from ATF¹⁹ to search for a weapon possibly discarded by Mr. [REDACTED]. Sgt. Hamilton worked with the ATF dog until approximately 3:30 P.M., when he heard a radio call of a vehicle pursuit at approximately 69th Street and Clarendon Avenue. He then heard another radio call at that location of "shots fired. He's running westbound towards the tracks."²⁰ The next transmission reported the address as 64th Street and Hoyne Avenue, and Sgt. Hamilton decided to travel westbound to follow the possible flight path. He arrived at the lot at 64th S. Bell Avenue but did not see any other officers. Sgt. Hamilton pulled into the lot and saw an older black male (now known to be [REDACTED]²¹) who managed the lot. Sgt. Hamilton explained that a man with a gun was running toward the lot. Mr. [REDACTED] reported he was the only person in the lot and promptly left in his car.

Sgt. Hamilton proceeded into the lot and was watching the large limestone wall at the eastern border of the tracks, waiting for Mr. [REDACTED] to appear. A second officer entered the lot behind Sgt. Hamilton. Sgt. Hamilton exited his vehicle and looked for Mr. [REDACTED] on foot,

¹⁶ Statement of Det. Chiocca dated October 25, 2019 (Attachment 78), at page 18, line 11.

¹⁷ Statement of Sgt. Hamilton dated October 11, 2019 (Transcript, Attachment 77; Audio, Attachment 60).

¹⁸ Special Weapons and Tactical Unit.

¹⁹ Alcohol, Tobacco, and Firearms Unit.

²⁰ Statement of Sgt. Hamilton dated October 11, 2019 (Attachment 77), at page 11, lines 19-20.

²¹ Statement of Witness [REDACTED]. [REDACTED] (Audio, Attachment 49).

walking southbound about halfway into the lot. At that point, he observed a white Ford Tahoe with its front passenger side door open. Mr. ██████ exited the Tahoe with a gun in his right hand,²² walked eastbound to the rear of the car, then began running southbound along the limestone wall. Mr. ██████ was wearing black pants and had his T-shirt tied around his head, and Sgt. Hamilton stated he knew it was Mr. ██████ because he matched Mr. ██████ physical description and had a gun in his hand. Sgt. Hamilton called out Mr. ██████ location over the radio, then took cover between the middle row of cars. Sgt. Hamilton ran southbound between the row of cars as he yelled for Mr. ██████ to drop the gun. Mr. ██████ reached the south fence of the lot, then shrugged and began walking westbound along the south fence. Once Mr. ██████ reached the middle row of cars, he saw Sgt. Hamilton and raised the gun from the right side of his body. Mr. ██████ fired at Sgt. Hamilton, who saw the flash and heard a “zing.”²³ Sgt. Hamilton fired three times at Mr. ██████ using a standard two-handed grip, then lost sight of Mr. ██████. Sgt. Hamilton began walking westbound, looking for Mr. ██████ and he saw Mr. ██████ fall to the ground, face-down. Mr. ██████ rolled over and fired one shot at Sgt. Hamilton, who returned fire one time.

Sgt. Hamilton saw Officer Soto and they proceeded toward Mr. ██████. As Sgt. Hamilton approached Mr. ██████ he saw Mr. ██████ weapon on the ground in slide-lock. Sgt. Hamilton put his foot on the gun and instructed Officer Soto to cuff Mr. ██████. Officer Soto cuffed Mr. ██████ and then rolled him onto his side to search him, but Mr. ██████ was spraying blood from his groin. Because Officer Soto’s rifle was obstructing the search, to make the scene safer, Sgt. Hamilton took Officer Soto’s rifle, ejected the magazine, popped the round out of the chamber, and secured the rifle on his back. At that point, Sgt. Hamilton did not know Officer Soto had fired his weapon. Sgt. Hamilton then attempted to apply a tourniquet, but the wound was too high to stop the blood with a tourniquet. Officer Soto stood up and Sgt. Hamilton returned the officer’s rifle to him. By this time, many officers were on the scene and Sgt. Hamilton told one to retrieve the trauma kit from his truck so he could tend to Mr. ██████ wound. The ambulance arrived shortly thereafter.

On October 11, 2019, **Lt. Thomas Lamb Jr.**,²⁴ **Star #606**, provided a statement to COPA. Lt. Lamb was assigned as a commander to the SWAT unit at the time of this incident and was wearing an all green SWAT uniform and vest. At approximately 8:45 A.M. on September 21, 2019, Lt. Lamb responded to 19███ W. 65th Street to search for Mr. ██████. At approximately 2:30 P.M., Lt. Lamb released the SWAT team but stayed in the area for approximately another hour before heading home. He was on his way home, at approximately 62nd Street and Damen Avenue, when he heard a radio call of a foot chase. The radio transmission reported a foot chase of a black male at 64th Street and Hamilton Avenue. Lt. Lamb proceeded to 65th Street and Bell Avenue to possibly intercept the black male. Lt. Lamb exited his vehicle and walked toward the lot at 64███ S. Bell Avenue. Lt. Lamb arrived at the southwest corner of the lot, just outside the fence, and had a southwest view into the lot. There were many other officers on the scene, but Lt. Lamb did not know their names.

²² Statement of Sgt. Hamilton dated October 11, 2019 (Attachment 77), at page 25, line 10.

²³ Statement of Sgt. Hamilton dated October 11, 2019 (Attachment 77), at page 28, line 23.

²⁴ Statement of Lt. Lamb dated October 11, 2019 (Transcript, Attachment 76; Audio, Attachment 61).

Lt. Lamb stated he did not know it at the time, but Mr. ██████ had sequestered himself in a vehicle inside the lot. Lt. Lamb heard yelling to his left, then saw officers at the north end of the lot moving southbound. He moved slightly north to see what the officers were looking at, at which point he observed Mr. ██████ moving towards him, about three to four car lengths away. Lt. Lamb heard officers command Mr. ██████ to stop and drop the gun, but Mr. ██████ fired once. Lt. Lamb then took cover and Mr. ██████ fired at least three more times. At that point, Lt. Lamb fired three or four times at Mr. ██████ and by the fourth shot Mr. ██████ was prone or almost on the ground. Lt. Lamb said he stood in an aggressive stance, used a two-hand grip, and aimed at center mass when he fired at Mr. ██████. Other officers also had guns pointed at Mr. ██████ and gave verbal commands, but Lt. Lamb did not know whether they had also fired at Mr. ██████. Lt. Lamb called “shots fired by the police” over the radio immediately after he fired his weapon.

On October 15, 2019, **Officer George Whiting**,²⁵ **Star #14596**, provided a statement to COPA. Officer Whiting was assigned to Unit 606, Special Investigations Unit, on the date of the incident. On September 21, 2019, Officer Whiting began his shift in the 16th District, where he and his partner received a call about an officer being shot around 9:00 A.M. Sgt. Vance Bonner asked them to report to the scene and set a perimeter near 64███ S. Bell Avenue. The officers knew they were looking for an individual who was a person of interest in the shooting of the woman downtown, and who had also shot an officer that morning. When they arrived at the scene around noon, the officers viewed a photo of Mr. ██████ and met with other officers on-scene to establish the perimeter. They knew Mr. ██████ was hiding in a residence nearby so they began searching for him in different houses.

Around 3:30 P.M., Officer Whiting heard a call over the radio stating, “He’s running westbound from Winchester over the tracks.”²⁶ Officer Whiting and his partner relocated to that location, parked at the entrance to the car lot at 64███ S. Bell Avenue, and exited their vehicle. Officer Whiting heard a commotion, followed by officers yelling for Mr. ██████ to put the gun down. Officer Whiting entered the lot and ran southbound, towards the yelling. At the same time, he observed approximately 6-10 other officers running southbound in the lot. As Officer Whiting continued in the lot, he saw an officer standing in a clear path approximately 15 feet in front of him. Beyond that officer, Officer Whiting observed Mr. ██████ walking southwest through the lot, wearing black pants and a T-shirt wrapped around his head. Mr. ██████ was holding a black object that appeared to be a gun, which Mr. ██████ pointed at the officers north of his location. At that point, Officer Whiting saw a muzzle flash from Mr. ██████ gun, as well as debris from gunshots hitting the ground. When Officer Whiting was approximately 35 to 45 feet away from Mr. ██████ he had a clear shot at Mr. ██████ and fired one time. He did not know if his shot struck Mr. ██████. Officer Whiting then took cover and heard additional gunshots. After he realized Mr. ██████ was on the ground and surrounded by other officers, Officer Whiting helped create a perimeter around Mr. ██████ until the ambulance arrived. Officer Whiting had mixed ammunition in his weapon and received summary punishment from Commander Francis Valadez, Star #484, after the incident.

²⁵ Statement of Officer Whiting dated October 15, 2019 (Transcript, Attachment 73; Audio, Attachment 62).

²⁶ Statement of Officer Whiting dated October 15, 2019 (Attachment 73), at page 13, lines 8-9.

On October 11, 2019, **Officer Fernando Soto**,²⁷ **Star#12313**, provided a statement to COPA. Officer Soto was assigned to Unit 606, Special Investigations Unit, on the date of the incident. On September 21, 2019, PO Soto was at the 22nd District when he received notification of an officer being shot in the 7th District. Officer Soto immediately responded to the scene, where he was provided a photo of Mr. [REDACTED] and assigned to set up a perimeter and search for Mr. [REDACTED]. In the afternoon, Officer Soto heard a man matching Mr. [REDACTED] description was fleeing westbound around 63rd Street and Bell Avenue. Officer Soto responded to that location with his rifle, as he had heard Mr. [REDACTED] was armed and wearing a ballistics vest. He walked southbound on Bell Avenue from 63rd Street, and he observed Sgt. Hamilton entering the car lot at 64th S. Bell Avenue. Officer Soto walked into the lot behind Sgt. Hamilton with his rifle slung over his shoulder, pointing toward the ground.

Officer Soto heard Sgt. Hamilton yell something to the effect of, “Hey, hey, let me see your hands. Police. Stop. Stop right there.”²⁸ Officer Soto was about ten feet west of Sgt. Hamilton, walking parallel to him. Sgt. Hamilton began to run, at which point Officer Soto observed Mr. [REDACTED] in the southeast corner of the lot. Mr. [REDACTED] walked westbound along the back fence of the lot and stared at the officers. At that point, Mr. [REDACTED] began to run, and Officer Soto noticed a firearm in Mr. [REDACTED] hand. Officer Soto also heard Sgt. Hamilton shouting, “He’s got the gun.”²⁹ Officer Soto was approximately twenty-five feet from Mr. [REDACTED] when Mr. [REDACTED] raised his gun and start firing in the officers’ direction. Officer Soto fired four or five rounds as he moved in the same direction as Mr. [REDACTED]. He said his ears were ringing and he could not hear anything after that point. Officer Soto saw Mr. [REDACTED] fall to the ground, and he and Sgt. Hamilton went to secure Mr. [REDACTED]. Officer Soto handed his rifle to Sgt. Hamilton, as the weapon was obstructing him from safely searching and cuffing Mr. [REDACTED]. Sgt. Hamilton cleared the rifle, then returned it to Officer Soto after Mr. [REDACTED] was secured. Officer Soto picked up the cleared round from the ground and put it back in the magazine.

On October 22, 2019, **Officer Jairo Valeriano**,³⁰ **Star #10649**, provided a statement to COPA. Officer Valeriano was assigned to Unit 606, Special Investigations Unit, on the date of the incident. On September 21, 2019, at approximately 8:56 A.M., Officer Valeriano heard an officer had been shot at 64th Street and Damen Avenue. He responded to the shooting location, where he viewed a photo of Mr. [REDACTED] and helped put up crime scene tape. Officer Valeriano also searched for Mr. [REDACTED] and worked with a canine unit, to no avail.

Later in the afternoon, Officer Valeriano heard an individual was running westbound near approximately 64th Street and Western Avenue. When he responded to that location, he observed a SWAT officer looking eastbound, toward the train tracks on the east side of Bell Avenue. Officer Valeriano spoke briefly with the SWAT officer about the possibility that Mr. [REDACTED] might flee across the tracks and into the car lot at 64th Street and Bell Avenue. Officer Valeriano, who was standing outside the southwest corner of the lot, went to grab his rifle. He explained he already

²⁷ Statement of Officer Soto dated October 11, 2019 (Transcript, Attachment 75; Audio, Attachment 57).

²⁸ Statement of Officer Soto dated October 11, 2019 (Attachment 75), at page 16, lines 8-9.

²⁹ Statement of Officer Soto dated October 11, 2019 (Attachment 75), at page 18, line 17.

³⁰ Statement of Office Valeriano dated October 22, 2019 (Transcript, Attachment 72; Audio, Attachment 64).

had his handgun but felt that because Mr. [REDACTED] was wearing a bullet-proof vest and had already shot an officer, his rifle was necessary.³¹

Once Officer Valeriano obtained his rifle, he returned to his position outside the fence and heard officers yelling “police, police.”³² Officer Valeriano observed Mr. [REDACTED] who was wearing black pants and a shirt tied around his head, holding a firearm in his hand. Officer Valeriano yelled for Mr. [REDACTED] to drop the gun, but Mr. [REDACTED] fired two or three rounds in a northbound direction, towards the other officers. Officer Valeriano then fired two or three rounds at Mr. [REDACTED] who was approximately twenty to thirty feet in front of the officer. Mr. [REDACTED] fell to the ground and Officer Valeriano observed two officers approach and cuff Mr. [REDACTED] as Officer Valeriano called for an ambulance. Officer Valeriano later received summary punishment from Commander Valadez for having mixed ammunition.

b. Digital Evidence³³

Security camera footage from 6444 S. Hoyne Avenue³⁴ captures officers moving around the vacant lot in an attempt to locate blind spots in the security footage for approximately twenty minutes. At 03:22:56, the video captures Mr. [REDACTED] fleeing along the fence line. He is slightly hunched over, and the fence line blocks him from the middle of the chest down, so the firearm he was allegedly carrying is not visible. As Mr. [REDACTED] flees past an officer near a U-Haul truck, now known to be Det. Chiocca, Det. Chiocca raises his firearm in his right hand and appears to fire a shot at Mr. [REDACTED]

³¹ Officer Valeriano told COPA that a bulletproof vest can stop a bullet fired from a handgun. Statement of Officer Valeriano dated October 22, 2019 (Attachment 72), at page 16, lines 7-21.

³² Statement of Office Jairo Valeriano dated October 22, 2019 (Attachment 72), at page 17, line 14.

³³ The involved officers were not required to wear body worn cameras and their vehicles were not equipped with in-car cameras due to their special assignments: Fugitive Apprehension, SWAT, and Detective Division. COPA did not serve any body worn camera or in-car camera related allegations for that reason.

³⁴ Video available at Attachment 123. Additionally, COPA’s Digital Forensic Analyst enhanced this video by zooming in, slowing it down, and capturing still images. (Attachment 85).



Figure 1. Screenshot of Mr. [REDACTED] running along the fence line.



Figure 2. Screenshot of Det. Chiocca firing a shot as Mr. [REDACTED] flees past him.

c. Physical Evidence

i. Medical Records

The **Chicago Fire Department Ambulance Report**³⁵ reports Ambulance 49 was dispatched at 3:34:28 P.M. and arrived at 6433 S. Bell Avenue at 3:36:58 P.M.³⁶ EMTs arrived at

³⁵ Att. 100.

³⁶ Multiple ambulances were dispatched but A49 provided service.

the scene to find Mr. ██████ conscious and alert, lying in the parking lot in police custody handcuffed behind the back. Mr. ██████ complained of groin and upper thigh pain after being shot multiple times. EMTs noted gunshot wounds to the groin, upper thigh, and scrotum. Mr. ██████ denied loss of consciousness, chest pain, abdominal pain or tenderness, recent illness, and drug use. EMTs assessed Mr. ██████ vital signs, bandaged his wounds, and initiated advance life support care, but they were unable to apply a tourniquet due to the proximity of the wound to the groin. Mr. ██████ arrived at Christ Hospital via ambulance at 4:01:21 P.M.

Officer Adam Wazny's medical records³⁷ from Christ Hospital indicate the officer sustained a gunshot wound to the left groin and two gunshot wounds to the lower left leg.

██████████ **medical records**³⁸ from Christ Hospital indicate Mr. ██████ sustained multiple gunshot wounds³⁹ to the groin, as well as a right femur fracture.

ii. Forensic Evidence

Evidence technicians ("ETs") recovered the following **ballistics evidence** from the first crime scene, at 19███ W. 65th Street:

- Nine "S&W Win 40" shell casings were recovered from the gangway of 19███ W. 65th Street, along the fence line on the north side of the gangway.⁴⁰ An additional four "S&W Win 40" shell casings were recovered from the yard of 6454 S. Winchester Avenue, one yard to the north and just on the opposite side of the fence from the other .40 caliber shells.⁴¹ Illinois State Police ("ISP") examined these thirteen casings and determined they were fired by Officer Wazny's firearm.⁴²
- One "Win 9mm Luger + P" shell casing was recovered from the cement slab under the porch.⁴³ ISP determined that this casing was fired from Officer Touhy's firearm.⁴⁴

³⁷ Attachment 68.

³⁸ Attachment 69.

³⁹ Due to overlapping entry wounds, the number of gunshot wounds was indeterminable. No bullets were recovered at the hospital.

⁴⁰ ET Plat (JC442368) (Attachment 95), Crime Scene Markers ("CSMs") 1 – 9. Officer Wazny's weapon was a Glock 23, .40 caliber semi-automatic pistol. ETs recovered the weapon from the passenger seat of the unmarked squad car that was used to transport Officer Wazny to the hospital. The weapon was slide-locked and contained no live rounds. Officer Wazny told COPA that his magazine capacity was thirteen rounds, plus one in the chamber, for a total capacity of fourteen rounds. ETs recovered thirteen .40 caliber spent casings from the scene, and ISP later confirmed the thirteen casings were fired from Officer Wazny's weapon; however, ISP could not trace four additional spent casings recovered from the scene to any weapon. Therefore, COPA did not have evidence to confirm or deny Officer Wazny's statement that his weapon was fully loaded with fourteen live rounds prior to the incident.

⁴¹ ET Plat (JC442368) (Attachment 95), CSMs 21-24.

⁴² ISP Laboratory Report dated November 26, 2019 (Attachment 96). The Department's Crime Scene Processing Report for RD# JC443015 included preliminary ballistics findings consistent with ISP's findings in this case. See Crime Scene Processing Report, JC443015 (Attachment 33).

⁴³ ET Plat (JC442368) (Attachment 95), CSM 25.

⁴⁴ ISP Laboratory Report dated November 26, 2019 (Attachment 96). Officer Tuohy's weapon was a Glock 17, 9mm semi-automatic pistol. ETs cleared one live round from the chamber and sixteen rounds from the magazine, which had a seventeen-round capacity.

- Three “Win 9mm Luger” and four “Jag 9mm Luger” shell casings were located in the yard at 19█ W. 65th Street.⁴⁵ The seven casings were recovered from the courtyard area between the garage and the apartment building. ISP examined these shell casings and found a high confidence correlation between the 9mm casings recovered from the two scenes in this incident and the casings recovered from the scene of the September 18, 2019 shooting at 207 N. Milwaukee Avenue, in which Mr. █ was a person of interest.⁴⁶
- Three fired bullets were recovered from the gangway at 19█ W. 65th Street, and two fired bullets were recovered from the garage and the vehicle parked inside the garage at 64█ S. Damen Ave., across the alley from 19█ W. 65th Street.⁴⁷ ISP determined Mr. █ weapon fired one of the bullets recovered from the gangway; however, it could not determine which weapon(s) fired the other bullets.⁴⁸

ETs recovered the following ballistics evidence from **64█ S. Hamilton Avenue:**

- One “Win 9mm Luger” shell casing was recovered from the alley behind 64█ S. Hamilton.⁴⁹ ISP determined this casing was fired by Det. Chiocca’s firearm.⁵⁰

ETs recovered the following ballistics evidence from the lot at **64█ S. Bell Avenue:**

- One “9mm P Win 18” shell casing was recovered from the northwest corner of the parking lot.⁵¹ ISP determined this casing was fired by Officer Whiting’s weapon.⁵²
- One “Win 45 Auto” shell casing was recovered from the walkway between the rows of cars on the northwest side of the lot, and three “Win 45 Auto” shell casings were recovered from the walkway between the middle row of cars in the center of the lot.⁵³ ISP determined these casings were fired by Sgt. Hamilton’s weapon.⁵⁴

⁴⁵ ET Plat (JC442368) (Attachment 95), CSMs 11-17.

⁴⁶ There was also a high degree of confidence linking the casings to a July 2019 case in Minneapolis.

⁴⁷ ET Plat (JC442368) (Attachment 95), CSMs 10, 18, 20, 27, and 28.

⁴⁸ ISP Laboratory Reports dated November 26, 2019 (Attachments 96, 98).

⁴⁹ Crime Scene Worksheet, JC#443015 (Attachment 110), CSM 1.

⁵⁰ ISP Laboratory Report dated November 26, 2019 (Attachment 98). Det. Chiocca’s weapon was a Sig Sauer Model P226, 9mm semi-automatic pistol. ETs cleared one live round from the chamber and fourteen rounds from the magazine, which had a total capacity of fifteen rounds. All ammunition was marked Winchester 9mm Luger.

⁵¹ Crime Scene Worksheet, JC#443015 (Attachment 110), CSM 6.

⁵² ISP Laboratory Report dated November 26, 2019 (Attachment 98). Officer Whiting’s weapon was a Glock 19, Gen 4, 9mm semi-automatic pistol. ETs cleared one live round from the chamber and fourteen live rounds from the magazine, which had a total capacity of fifteen rounds. The ammunition was marked Win 9mm Luger (one round from the chamber) and Win 9mm Luger + P (all of the rounds in the magazine).

⁵³ Crime Scene Worksheet, JC#443015 (Attachment 110), CSMs 7, 8, 9, and 10.

⁵⁴ ISP Laboratory Report dated November 26, 2019 (Attachment 98). Sgt. Hamilton’s weapon was a Glock 21, .45 caliber semi-automatic pistol. ETs cleared one live round from the chamber and eight live rounds from the magazine, which had a total capacity of thirteen rounds. All the ammunition was marked “Win .45 Auto.”

- One “RP 223 REM,” one “Winchester 223 REM,” and three “PMC 223 REM” shell casings were recovered from the walkway between the rows of cars on the northwest side of the lot.⁵⁵ ISP determined all five casings were fired by Officer Soto’s weapon.⁵⁶
- Three “Win 9mm Luger” shell casings were located along the southwest fence line of the lot.⁵⁷ ISP determined these three casings were fired by Lt. Lamb’s weapon.⁵⁸
- Three “Win 9mm Luger” shell casings were recovered from the south end of the lot, including one casing that was located in the same area where Mr. ██████ fell after the shooting.⁵⁹ ISP determined these casings were fired by Mr. ██████ weapon.⁶⁰
- ETs recovered Mr. ██████ SCCY Industries, Model CPX-2, 9mm semi-automatic pistol from the southwest corner of the lot.⁶¹ There was no round in the chamber and the ten-round capacity magazine was empty. ISP tested the firearm and determined it was operable as received.⁶²

COPA reviewed the **Tactical Response Reports (“TRRs”)**⁶³ of all the involved members and determined their TRRs were consistent with the information reported to COPA.

VI. LEGAL STANDARD

a. Use of Force

Department policy states that the “Department’s highest priority is the sanctity of life.”⁶⁴ Department members are expected to act with the utmost regard for preserving human life and must comply with Department use of force orders.⁶⁵ The Department’s policy in place on the date

⁵⁵ Crime Scene Worksheet, JC#443015 (Attachment 110), CSMs 11, 12, 13, 14, and 15.

⁵⁶ ISP Laboratory Report dated November 26, 2019 (Attachment 98). Officer Soto’s weapon was a Smith & Wesson, M&P rifle. There were no live rounds in the chamber. ETs cleared twenty three live rounds from the magazine, which had a total capacity of thirty rounds. The ammunition was marked R-P223 REM (seven rounds), PMC223 REM (eleven rounds), and Winchester 223 REM (five rounds).

⁵⁷ Crime Scene Worksheet, JC#443015 (Attachment 110), CSMs 21, 22, and 23.

⁵⁸ ISP Laboratory Report dated November 26, 2019 (Attachment 98). Lt. Lamb’s weapon was a Glock 17, 9mm semi-automatic pistol. ETs cleared one live round from the chamber and thirteen live rounds from the magazine, which had a total capacity of seventeen rounds. All the ammunition was marked Win 9mm Luger.

⁵⁹ Crime Scene Worksheet, JC#443015 (Attachment 110), CSMs 17, 18, and 19.

⁶⁰ ISP Laboratory Report dated November 26, 2019 (Attachment 98).

⁶¹ Crime Scene Worksheet, JC#443015 (Attachment 110), CSM 20.

⁶² ISP also compared latent fingerprint lifts from the firearm to Mr. ██████ prints, but the fingerprint lifts were either not suitable for comparison or no identification was made.

⁶³ Atts. 1, 4, 8, 20, 22, 23, 24, 66.

⁶⁴ General Order G03-02 (effective October 16, 2017 to February 28, 2020) (hereinafter the “Use of Force Order”).

⁶⁵ Questions as to the propriety of a police officer’s use of force, including excessive or deadly force, are also typically evaluated under state law as well as the 4th Amendments to the United States Constitution and Illinois state Constitution. However, Department policy in place at the time of the incident in this case prohibited the use of deadly force under circumstances that may have been permissible under state law and 4th amendment law, meaning that Department policy may be *more* restrictive than state law and federal 4th amendment law. COPA cites to judicial decisions in its analysis solely as an aide to interpretation of common concepts or terms (such as the meaning of “objectively reasonable”).

of the incident provides that a Department member's use of force must be evaluated based on the totality of the circumstances known by the member at the time of the incident, from the perspective of a reasonable Department member in the same or similar circumstances, and without the benefit of 20/20 hindsight.⁶⁶ Department policy recognizes that Department members must "make split-second decisions – in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation."⁶⁷

Department General Order entitled "Use of Force" provides that a member's use of force must be "objectively reasonable, necessary, and proportional."⁶⁸ Each of these elements is further explained in Department policy, as follows:

- Objectively Reasonable: In evaluating use of force, Department policy provides that the key issue is whether the Department member's use of force was objectively reasonable under the totality of the circumstances at the time force is used. Although "reasonableness" cannot be precisely defined, Department policy states the following non-exclusive list of factors can be considered:
 - "whether the subject is posing an imminent threat;
 - the risk of harm, level of threat, or resistance presented by the subject; and
 - the subject's proximity or access to weapons."⁶⁹
- Necessary. Department members are limited to using "only the amount of force required under the circumstances to serve a lawful purpose."⁷⁰
- Proportional. A Department member's use of force must be proportional to the "threat, actions, and level of resistance offered by a subject."⁷¹

To reduce or avoid the need for use of force, Department policy directs members to use de-escalation techniques known as "Principles of Force Mitigation" when it is safe and feasible under the circumstances.⁷² These techniques include:

- "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;
- "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
- 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.⁷³

⁶⁶ Use of Force Order, section II.D.

⁶⁷ Use of Force Order, section II.D.

⁶⁸ Use of Force Order, section III.B.

⁶⁹ Use of Force Order, section III.B.1(a)-(c).

⁷⁰ Use of Force Order, section III.B.2.

⁷¹ Use of Force Order, section III.B.3.

⁷² Use of Force Order, section III.B.4; *see also* G03-02-01(III) (the "Force Options Order").

⁷³ Force Options Order, section III.

While attempting to de-escalate an encounter, Department members are required to continually assess the situation and modify their use of force in ways that ensure officer safety as circumstances develop.⁷⁴

b. Use of Deadly Force.

A Department member's use of deadly force, which includes the discharge of a weapon at or in the direction of a person subject to arrest, is controlled by Department policy restrictions in addition to those described above. In particular, Department members may only use deadly force as a "last resort" when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person.⁷⁵ A threat is defined as "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 is taken;
- the subject has the means or instruments to cause death or great bodily harm; and
- the subject has the opportunity and ability to cause death or great bodily harm."

The Department's definition of "last resort" re-enforces the principle that a Department member may only use deadly force when presented with an "imminent threat."⁷⁶ The Force Options Order outlines the force options available to Department members when met with resistance or threats.⁷⁷ The Force Options Order authorizes the use of deadly force in situations involving an "assailant," which is defined as a subject whose actions constitute an imminent threat of death or great bodily harm to a Department member or another person.⁷⁸

c. Preservation of Evidence and Carbine Policy

Department policy provides that, unless there are overriding public or officer-safety concerns, no Department members other than Forensic Services Division personnel will handle, inspect, unload, or otherwise tamper with the firearm of an officer involved in a firearm discharge incident.⁷⁹ Furthermore, in situations where a Department member has discharged a firearm, that member, if physically capable, must "ensure that any weapons . . . are secured at the scene as found until recovered by Forensics Services Division personnel, unless public safety requires immediate recovery."⁸⁰

d. Standard of Proof

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

⁷⁴ Use of Force Order, section III.B.4.

⁷⁵ Use of Force Order, section III.C.3.

⁷⁶ *Id.*

⁷⁷ Use of Force Order, section III.C.

⁷⁸ Force Options Order, section IV.C.2.

⁷⁹ General Order G03-02-03 (VII)(A).

⁸⁰ General Order G03-02-02(V)(B)(6).

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

A **preponderance of evidence** is evidence indicating that it is **more likely than not** that the conduct reviewed complied with Department policy.⁸¹ 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.⁸² Clear and convincing evidence 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.”⁸³

VII. LEGAL ANALYSIS

a. COPA finds that Officer Wazny’s Use of Deadly Force was permissible under Department Policy.

The evidence demonstrates that Officer Wazny’s use of deadly force was objectively reasonable in light of the totality of the circumstances he faced in this incident. His use of deadly force was a last resort and was necessary to prevent the imminent threat of death or great bodily harm presented by Mr. ██████████ to Officers Wazny and Tuohy as well as other officers.

1. COPA finds that Mr. ██████████ posed an imminent threat of death or great bodily harm.

First, it was objectively reasonable for Officer Wazny to believe that Mr. ██████████ actions were immediately likely to cause death or great bodily harm to PO Wazny and his fellow officers. PO Wazny stated he shot only after Mr. ██████████ first fired upon him, and COPA finds his statement to be credible. The physical evidence corroborates this statement as ISP determined that seven shell casings recovered from the scene were highly correlated to the firearm later

⁸¹ 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).

⁸² e

⁸³ *Id.* at ¶ 28.

recovered from Mr. [REDACTED]. Moreover, Officer Tuohy described hearing an exchange of gunfire consistent with Officer Wazny's description of the incident.⁸⁴

Second, it was objectively reasonable for Officer Wazny to believe that Mr. [REDACTED] had the means or instruments to cause death or great bodily harm. Officer Wazny personally observed Mr. [REDACTED] firing his weapon numerous times in the direction of himself and Officer Tuohy.

Third, it was objectively reasonable for Officer Wazny to believe that Mr. [REDACTED] had the opportunity and ability to cause death or great bodily harm. Officer Wazny was in a narrow gangway, and he was aware that Officer Tuohy was behind him. Mr. [REDACTED] was at the mouth of that gangway, blocking any avenue of escape, and raising the risk to the two officers. It was further reasonable for Officer Wazny to believe Mr. [REDACTED] had the opportunity and ability to shoot at the officers because he did in fact do so, just before Officer Wazny fired his own weapon. Additionally, the last volley that Officer Wazny fired was after he had already been shot in the leg, fracturing his femur.

2. COPA finds Officer Wazny reasonably believed that deadly force was necessary and proportional as a last resort.

COPA finds that under the totality of the circumstances faced by Officer Wazny, it was reasonable for him to believe that deadly force was a necessary last resort. At the time he used deadly force, not only did Mr. [REDACTED] pose an imminent threat of death or great bodily harm, but he was in front of Officer Wazny, blocking any path to the larger courtyard. Thus, Officer Wazny was essentially trapped in the narrow gangway behind 19 [REDACTED] W. 65th Street with no opportunity to seek cover or retreat.⁸⁵ Additionally, Officer Wazny fired only after Mr. [REDACTED] used deadly force on Officer Wazny, thus Officer Wazny's use of force was proportional to the threat posed by Mr. [REDACTED] actions.

Additionally, it was objectively reasonable for Officer Wazny to believe that further de-escalation would not have been safe and feasible under the totality of the circumstances. He gave verbal commands, which Mr. [REDACTED] ignored. Due to the narrow gangway, there was no opportunity for him to reposition himself safely. He also attempted to call for backup, despite already being shot, but was unsuccessful.

Considering the totality of the circumstances, COPA finds a preponderance of the evidence establishes that Officer Wazny reasonably believed the use of deadly force was a necessary last resort to prevent the imminent threat of death or great bodily harm to himself and others. Therefore, he was permitted to use deadly force under the Use of Force Order, General Order 03-02.

b. COPA finds that Officer Tuohy's use of deadly force was within policy.

⁸⁴ The officers were also attempting to apprehend Mr. [REDACTED] in part based on the belief that he had shot a woman in downtown Chicago earlier in the week. This made it more reasonable for Officer Wazny to believe that Mr. [REDACTED] was dangerous and may engage in further violence to avoid capture.

⁸⁵ ET photos show that the gangway was narrow and provided no areas to seek cover. Based on the location of Officer Wazny's casings, he was at the farthest east portion of the gangway and would have had no opportunity to retreat to the porch area where Officer Tuohy had sought cover.

A preponderance of the evidence demonstrates that Officer Tuohy's use of deadly force was objectively reasonable in light of the totality of the circumstances she faced in this incident. Her use of deadly force was a last resort and was necessary to prevent the imminent threat of death or great bodily harm presented by Mr. ██████████ to herself, Officer Wazny, and other officers.

1. COPA finds that Mr. ██████████ posed an imminent threat of death or great bodily harm.

Officer Tuohy stated she fired her weapon only after Mr. ██████████ and Officer Wazny had exchanged fire, and Officer Wazny was injured. Because of this, and due to the fact that Mr. ██████████ was walking towards the alley where he could put the other five officers at risk, Officer Tuohy fired one shot. COPA finds this statement to be credible. Officer Tuohy did not exaggerate the threat Mr. ██████████ posed; instead she admitted she did not see Mr. ██████████ with the gun before she discharged her weapon. Additionally, as with Officer Wazny's shooting, the physical evidence corroborates Officer Tuohy's account. COPA finds Officer Tuohy reasonably perceived Mr. ██████████ to be an imminent threat for the following reasons.

First, it was objectively reasonable for Officer Tuohy to believe that Mr. ██████████ actions were immediately likely to cause death or great bodily harm to herself, Officer Wazny, and her fellow officers. Mr. ██████████ had just shot Officer Wazny, which was evident to Officer Tuohy, who had a view of her injured partner. Additionally, Officer Tuohy observed Mr. ██████████ walking towards the alley, where she believed he might encounter other officers. Officer Tuohy had just announced on the radio that Mr. ██████████ had exited the back door. That, coupled with the gunfire, made it reasonable for Officer Tuohy to believe officers might be responding to the alley. Mr. ██████████ had already demonstrated his willingness to use deadly force to avoid arrest, and she reasonably believed that he still posed an immediate threat.

Second, it was objectively reasonable for Officer Tuohy to believe that Mr. ██████████ had the means or instruments to cause death or great bodily harm. While Officer Tuohy admitted she did not see a gun in Mr. ██████████ hand, she was aware Mr. ██████████ likely shot Officer Tuohy, and it was reasonable for her to believe Mr. ██████████ still possessed a gun.

Third, it was objectively reasonable for Officer Tuohy to believe that Mr. ██████████ had the opportunity and ability to cause death or great bodily harm. Officer Tuohy, as well as Officer Wazny, were in a narrow gangway with little opportunity to take cover, and Officer Wazny was on the ground injured. Mr. ██████████ was also approaching the alley where other officers could be coming to assist.

2. COPA finds Officer Tuohy reasonably believed that deadly force was necessary and proportional as a last resort.

Moreover, COPA finds that under the totality of the circumstances faced by Officer Tuohy, it was reasonable for her to believe that deadly force was a necessary last resort. At the time she used deadly force, not only did Mr. ██████████ pose an imminent threat of death or great bodily harm, but the two officers were essentially trapped in the narrow gangway behind 19███ W. 65th

Street with no opportunity to seek cover or retreat. Officer Tuohy also reasonably believed that the remaining officers were coming to assist, and they might be unaware they were putting themselves in danger. Additionally, Officer Tuohy fired only after Mr. ██████ fired upon Officer Wazny, and there was still a substantial risk that Mr. ██████ would continue to use deadly force against the officers. Therefore, Officer Tuohy's use of force was proportional to the threat posed by Mr. ██████ actions.

Additionally, it was objectively reasonable for Officer Tuohy to believe that further de-escalation would not have been safe and feasible under the totality of the circumstances. Mr. ██████ shot at Officer Wazny before Officer Tuohy had any opportunity to give verbal commands. Due to the narrow gangway, there was no opportunity for her to reposition herself safely, and Officer Wazny appeared unable to move. As a result, it was reasonable for the officers to believe that using time as a tactic would not be feasible.

Considering the totality of the circumstances, COPA finds by a preponderance of the evidence that Officer Tuohy reasonably believed the use of deadly force was a necessary last resort to prevent the imminent threat of death or great bodily harm to herself and others. Therefore, she was permitted to use deadly force under the Use of Force Order, General Order 03-02.

c. COPA finds that Det. Chiocca's use of deadly force was within policy.

A preponderance of the evidence demonstrates that Det. Chiocca's use of deadly force was objectively reasonable in light of the totality of the circumstances he faced in this incident. His use of deadly force was a last resort and was necessary to prevent the imminent threat of death or great bodily harm presented by Mr. ██████

1. COPA finds that Mr. ██████ posed an imminent threat of death or great bodily harm.

Det. Chiocca stated he fired his weapon because Mr. ██████ was running through the yard of 64███ S. Hoyne Avenue and had begun raising his firearm in Det. Chiocca's direction. Moreover, Det. Chiocca immediately recognized Mr. ██████ to be the suspect from the shooting downtown.⁸⁶ That, coupled with the fact that Mr. ██████ had just shot an officer, led Det. Chiocca to reasonably conclude Mr. ██████ would shoot him as well. COPA finds Det. Chiocca's explanation to be credible, as it is uncontradicted and consistent with the video evidence. Therefore, COPA finds Det. Chiocca reasonably perceived Mr. ██████ to be an imminent threat for the following reasons.

First, it was objectively reasonable for Det. Chiocca to believe that Mr. ██████ actions were immediately likely to cause death or great bodily harm to himself. Det. Chiocca fired his weapon only after Mr. ██████ began raising his firearm in the detective's direction. Additionally, Det. Chiocca was aware that Mr. ██████ had just shot an officer and was the

⁸⁶ COPA finds this explanation to be credible. Det. Chiocca explained he was in charge of reviewing digital evidence, and prior to the OIS he had repeatedly watched video of the downtown shooting. After Officer Wazny was shot, Det. Chiocca spent the day in the police command van, using doorbell camera videos to track Mr. ██████ path of flight to 64███ S. Hoyne Avenue. Thus, Det. Chiocca had ample time to become familiar with Mr. ██████ appearance.

suspect in an earlier murder. Mr. ██████ had already demonstrated his willingness to use deadly force to avoid arrest, and Det. Chiocca reasonably believed that he still posed an immediate threat.

Second, it was objectively reasonable for Det. Chiocca to believe that Mr. ██████ had the means or instruments to cause death or great bodily harm. He observed Mr. ██████ holding a firearm and had been informed that Mr. ██████ recently shot an officer.

Third, it was objectively reasonable for Det. Chiocca to believe that Mr. ██████ had the opportunity and ability to cause death or great bodily harm. At the time Mr. ██████ raised his gun in Det. Chiocca's direction, Mr. ██████ had a clear shot at Det. Chiocca, who did not have any cover. Det. Chiocca was also aware that Mr. ██████ had already shot a woman downtown and an officer.

2. COPA finds Det. Chiocca reasonably believed that deadly force was necessary and proportional as a last resort.

Moreover, COPA finds that under the totality of the circumstances faced by Det. Chiocca, it was reasonable for him to believe that deadly force was a necessary last resort. At the time he used deadly force, not only did Mr. ██████ pose an imminent threat of death or great bodily harm, but Det. Chiocca had no place to reasonably seek cover. Additionally, Det. Chiocca had connected Mr. ██████ to two prior shootings, including one on a police officer, and he reasonably believed Mr. ██████ would again use deadly force. Therefore, Det. Chiocca's use of force was proportional to the threat posed by Mr. ██████ actions.

Additionally, it was objectively reasonable for Det. Chiocca to believe that further de-escalation would not have been safe and feasible under the totality of the circumstances. Mr. ██████ had already demonstrated he was unwilling to acquiesce to police, and giving additional commands would have been futile, even if Det. Chiocca had time to do so. Since Mr. ██████ was raising his firearm, it was reasonable to believe that Det. Chiocca could not have used time as a tactic.

Considering the totality of the circumstances, COPA finds the preponderance of the evidence establishes that Det. Chiocca reasonably believed that the use of deadly force was a necessary last resort to prevent the imminent threat of death or great bodily harm to himself and others. Therefore, he was permitted to use deadly force under the Use of Force Order, General Order 03-02.

d. COPA finds that the Use of Deadly Force by Sgt. Hamilton, Lt. Lamb, and Officers Whiting, Soto, and Valeriano was within policy.

A preponderance of the evidence demonstrates the use of deadly force by Sgt. Hamilton, Lt. Lamb, Officer Whiting, Officer Soto, and Officer Valeriano was objectively reasonable in light of the totality of the circumstances they faced in this incident.⁸⁷ The members' use of deadly force

⁸⁷ COPA analyzed the use of deadly force by each officer individually. However, there are material similarities in their justifications for their use of force, as well as the threat posed by Mr. ██████ at the moment each officer used such

was a last resort and was necessary to prevent the imminent threat of death or great bodily harm presented by Mr. ██████ to themselves and their fellow officers.

1. COPA finds Mr. ██████ posed an imminent threat of death or great bodily harm.

Sgt. Hamilton, Lt. Lamb, Officer Whiting, Officer Soto, and Officer Valeriano told COPA they discharged their weapons for the following reasons:

- Sgt. Hamilton saw Mr. ██████ get out of a parked vehicle holding a handgun. Sgt. Hamilton knew it was Mr. ██████ because he matched the description and was carrying a gun. Mr. ██████ fired first at Sgt. Hamilton⁸⁸, who returned fire with three shots.
- Lt. Lamb saw Mr. ██████ fire once, then three more times. Lt. Lamb fired three shots in response to Mr. ██████ second volley and stopped firing when he saw Mr. ██████ fall to a prone position on the ground.
- Officer Whiting saw Mr. ██████ fire one time towards the officers north of his location. In response, Officer Whiting fired one shot from a distance of approximately 35-45 feet.
- Officer Soto saw Mr. ██████ fire multiple shots in his direction and returned fire.
- Officer Valeriano positioned himself outside of the fence. He saw Mr. ██████ fire two to three rounds northbound,⁸⁹ in the direction of other officers. In response, Officer Valeriano fired two or three rounds at Mr. ██████ then stopped firing when Mr. ██████ fell to the ground.
- After Mr. ██████ fell to the ground, he fired one final shot⁹⁰ at Sgt. Hamilton, who returned fire one time.

COPA finds that each of the explanations provided by involved members are credible. All gave statements that are consistent with one another, including their descriptions of Mr. ██████ firing one shot, followed by a burst of two to three more shots. The involved members also consistently described Mr. ██████ as facing northbound when he fired at officers. Moreover, the physical evidence corroborates the officers' accounts, as ISP determined that three of the casings found in the lot were fired by Mr. ██████ weapon. Based on this information, COPA finds that Sgt. Hamilton, Lt. Lamb, and Officers Whiting, Soto, and Valeriano reasonably believed Mr. ██████ posed an imminent threat.

First, it was objectively reasonable for the officers to believe that Mr. ██████ actions were immediately likely to cause death or great bodily harm. The officers only fired at Mr. ██████ after he fired his own weapon, with an initial shot at Sgt. Hamilton, then two to three more shots at the remaining officers.

force. In addition, each officer fired their weapon within a short time frame and in relatively the same location. For these reasons, COPA's analysis evaluates the officers' use of deadly force together.

⁸⁸ Lt. Lamb corroborated that Mr. ██████ initially fired one shot.

⁸⁹ Officer Soto and Sgt. Hamilton indicated they were north of Mr. ██████ when he fired at them, and Lt. Lamb observed additional officers to Mr. ██████ north who were also in Mr. ██████ line of fire.

⁹⁰ One of Mr. ██████ shell casings was recovered from the location where he fell to the ground.

Second, it was objectively reasonable for the officers to believe that Mr. ██████ had the means or instruments to cause death or great bodily harm. Each officer indicated that they not only saw the firearm, but saw Mr. ██████ shoot his firearm before they discharged their own weapons.

2. COPA finds that Sgt. Hamilton, Lt. Lamb, and Officers Whiting, Soto, and Valeriano each reasonably believed that deadly force was necessary and proportional as a last resort.

Moreover, COPA finds that under the totality of the circumstances faced by Sgt. Hamilton, Lt. Lamb, and Officers Whiting, Soto, and Valeriano, it was reasonable for them to believe that deadly force was a necessary last resort. At the time they used deadly force, Mr. ██████ was actively shooting at officers, and it was not clear that seeking cover was feasible. Additionally, their use of deadly force was proportional to the threat posed by Mr. ██████ actions given Mr. ██████ own use of deadly force.

Additionally, COPA finds that it was objectively reasonable for the officers to believe that further de-escalation would not have been safe and feasible under the totality of the circumstances. Multiple officers gave commands which Mr. ██████ ignored, and Mr. ██████ had already demonstrated he was unwilling to acquiesce to police. Moreover, due to the rapidly unfolding situation, with Mr. ██████ running while actively shooting, it was not feasible for all the officers to use tactical positioning to avoid being shot.

Considering the totality of the circumstances, COPA finds by a preponderance of the evidence that Sgt. Hamilton, Lt. Lamb, Officer Whiting, Officer Soto, and Officer Valeriano reasonably believed the use of deadly force was a necessary last resort to prevent the imminent threat of death or great bodily harm to themselves and others. Therefore, they were permitted to use deadly force under the Use of Force Order, General Order 03-02.

e. COPA finds it was reasonable under the circumstances for Sgt. Hamilton to clear Officer Soto's rifle and for Officer Soto to put the cleared round back into his weapon.

COPA finds that Sgt. Hamilton did not unreasonably fail to ensure that an item of evidentiary value (Officer Soto's rifle) was secured at the scene until recovered by Forensic Services Division personnel. In his statement to COPA, Sgt. Hamilton explained that after the shooting in the parking lot, he instructed Officer Soto to handcuff Mr. ██████. Officer Soto cuffed Mr. ██████ then rolled him onto his side to search him while Mr. ██████ was spraying blood from his groin. Officer Soto's rifle was slung over his shoulder, and the weapon was dangling in front of Officer Soto as he attempted to search Mr. ██████. To make the scene safer, Sgt. Hamilton took Officer Soto's rifle, ejected the magazine, cleared a round from the chamber, and secured the rifle on his back. At the time, Sgt. Hamilton did not know Officer Soto had fired his weapon. COPA finds this explanation to be credible, as it aligns with the other evidence, Officer Soto's statement, and because Sgt. Hamilton was otherwise credible throughout his interview.

COPA finds that Sgt. Hamilton acted reasonably under the circumstances. Although he failed to preserve the evidence at the time, Sgt. Hamilton's primary concern was safety. Moreover, he did not know Officer Soto had fired, thus did not know that his rifle needed to be preserved. Given the totality of the circumstances, the high-stress nature of this situation, and the legitimate safety concerns, COPA finds that **Allegation 1 against Sgt. John Hamilton**, that he failed to ensure that an item of evidentiary value (Officer Soto's rifle) was secured at the scene until recovered by Forensic Services Division personnel, in violation of General Order 03-02-03(V)(B)(6), is **Exonerated**.

Moreover, COPA finds that Officer Soto did not unreasonably fail to ensure that an item of evidentiary value (his rifle) was secured at the scene until recovered by Forensic Services Division personnel. In his statement to COPA, Officer Soto explained his rifle was obstructing his ability to safely search and cuff Mr. [REDACTED] so he handed it to Sgt. Hamilton. Sgt. Hamilton cleared the rifle, then returned it to Officer Soto after Mr. Blackman was secured. Officer Soto picked the cleared round up off the ground and put it back in the magazine because he believed that to be the most secure place for it.

Given the totality of the circumstances, the high-stress nature of this situation, and the direct order to hand over his weapon to a superior officer, COPA finds that **Allegation 1 against Police Officer Fernando Soto**, that he failed to ensure that an item of evidentiary value (PO Soto's rifle) was secured at the scene until recovered by Forensic Services Division personnel, in violation of General Order 03-02-03(V)(B)(6), is **Exonerated**.

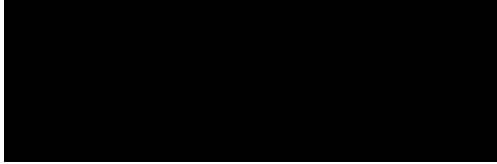
VIII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Sergeant John Hamilton	1. It is alleged that on or about September 21, 2019, at approximately 3:56 P.M., at or near 64 [REDACTED] South Bell Avenue, Sergeant John Hamilton, Star # 2329, failed to ensure that an item of evidentiary value (PO Soto's rifle) was secured at the scene until recovered by Forensic Services Division personnel, in violation of General Order 03-02-03(V)(B)(6).	Exonerated
Officer Fernando Soto	1. It is alleged that on or about September 21, 2019, at approximately 3:56 P.M., at or near 64 [REDACTED] South Bell Avenue, Police Officer Fernando Soto, Star #12313, failed to ensure that an item of evidentiary value (PO Soto's rifle) was secured at the scene as found until recovered by Forensic Services Division	Exonerated

	personnel, in violation of General Order 03-02-03(V)(B)(6).	
--	---	--

Approved:



7/12/2021

Andrea Kersten
Interim Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad#:	6
Major Case Specialist:	Emily Pierce
Supervising Investigator:	Steffany Hreno
Deputy Chief Administrator:	Matthew Haynam

Appendix B**DIGITAL EVIDENCE**

- Evidence Technician photos (RD #JC442368 and RD #JC443015) (Attachments 70 and 71)
- Video footage from security camera at 64█ S. Bell Avenue (Attachment 100)
- Office of Emergency Management and Communication Event Queries (Attachment 87)
- Audio of Department radio transmissions (Attachments 84 and 86)
- ShotSpotter audio (Attachment 88)

PHYSICAL EVIDENCE

- Drug and Alcohol Tests for involved officers other than Officer Wazny (Attachment 30)
- Crime Scene Processing Reports (Attachments 3, 6, 31- 33, 128-131)
- Evidence Technician Photographs (JC443105) (Attachment 70)
- Evidence Technician Photographs (JC442368) (Attachment 71)
- Plat (JC443015) (Attachment 110)

DOCUMENTARY EVIDENCE

- COPA Preliminary Report (Attachment 53)
- Original Case Incident Report (JC442368) (Attachments 5 and 7)
- Original Case Incident Report (JC443015) (Attachments 12 and 108)
- Case Supplemental Reports (Attachments 101-106)
- Mr. █ Arrest Report (Attachment 10 and 109)
- Tactical Response Reports from Officers Tuohy and Wazny (Attachments 4 and 8)
- Tactical Response Report of Det. Chiocca (Attachment 20)
- Tactical Response Reports from PO's Whiting, Valeriano, and Soto, as well as Sgt. Hamilton and Lt. Lamb (Attachments 21, 22, 23, 24, and 66)
- Detective File (JC442368), including Detective's Supplementary Reports (Attachment 113)
- Officer Training and Weapons Qualification for all involved Officers (Attachment 67)
- Cook County Criminal Court Docket for case # 19CR14489012
- Dockets for Northern District of Illinois and Cook County Circuit court, reviewed on May 21, 2021. As of that date, no lawsuits related to this case had been filed.