

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	June 9, 2021/ 12:24 am/ [REDACTED] [REDACTED]
Date/Time of COPA Notification:	June 9, 2021/ 1:40 am
Involved Officer #1:	Oscar Ponce, Star #9208, Employee ID # [REDACTED], Date of Appointment: June 27, 2016, Rank: Police Officer, Unit: 6 th District, DOB: [REDACTED] 1991, Male, White
Involved Officer #2:	Julian Marin, Star #11585, Employee ID # [REDACTED], Date of Appointment: April 17, 2017, Rank: Police Officer, Unit: 6 th District, DOB: [REDACTED], 1993, Male, White
Involved Individual #1:	Unknown
Case Type:	Officer-involved shooting

I. ALLEGATIONS

Pursuant to section 2-78-120 of the Municipal Code of Chicago, the Civilian Office of Police Accountability (COPA) has a duty to investigate all incidents in which a Chicago Police Department (CPD) member discharges their firearm. In connection with that investigation, COPA made the following allegations, findings, and recommendations:

Officer	Allegation	Finding/ Recommendation
Officer Oscar Ponce	<p>It is alleged by COPA, by and through Deputy Chief Matthew Haynam, that on or about June 9, 2021, at approximately 12:29 am, at or near [REDACTED], Officer Oscar Ponce #9208 committed misconduct through the following acts or omissions:</p> <ol style="list-style-type: none"> 1. Discharged his firearm at or in the direction of an unidentified subject without justification, in violation of G03-02. 2. Discharged his firearm without identifying the appropriate target and/or taking precautions to minimize the risk that people other than the target would be struck, in violation of G03-02-03(II)(D)(5). 	<p>Exonerated</p> <p>Exonerated</p>

3. Failed to timely and/or accurately notify OEMC that he discharged his firearm, in violation of G03-06.	Sustained
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II. APPLICABLE RULES AND LAWS

Rules¹

1. Rule 5 – Failure to perform any duty.
2. Rule 6 – Disobedience of an order or directive, whether written or oral.

General Orders²

1. General Order G03-02, De-escalation, Response to Resistance, and Use of Force (effective April 15, 2021– present)
2. General Order G03-02-03, Firearms Discharge Incidents– Authorized Use and Post-Discharge Administrative Procedures (effective April 15, 2021– present)
3. General Order G03-06, Firearm Discharge and Officer-Involved Death Incident Response and Investigation (effective April 15, 2021– present)

III. SUMMARY OF EVIDENCE

On June 9, 2021, at approximately 12:24 am, the residents of [REDACTED] were hosting a party in their garage, in the rear of the residence. There were approximately 10-15 partygoers in attendance, and multiple vehicles blocked the alley near the garage. An unidentified individual (the “subject”) who had recently moved to the neighborhood approached the partygoers and asked them to move the vehicles blocking the alley. The partygoers demanded that the subject ask nicely, and only then would they move the vehicles. In response, the subject brandished a firearm and fired one or two shots into the air. He then left the location.

The firearm discharge triggered a ShotSpotter alert to CPD, and simultaneously a female partygoer called 911. CPD Tactical Officers Oscar Ponce and Julian Marin responded in an unmarked vehicle and approached [REDACTED] from the rear, via the alley. In the meantime, the subject returned to [REDACTED] and began shooting at the partygoers in the garage, injuring [REDACTED] and [REDACTED]. It is unknown if any of the partygoers returned fire. As Officers Ponce and Marin exited their vehicle in the alley, both officers’ BWCs captured the sound of gunshots coming from the area near the garage behind [REDACTED]. Vehicles parked in the alley obstructed the officers’ BWCs from capturing any video of the subject.

¹ Police Board of Chicago, *Rules and Regulations of the Chicago Police Department, Article V. Rules of Conduct* (April 1, 2010) <https://www.chicago.gov/dam/city/depts/cpb/PoliceDiscipline/RulesofConduct.pdf>

² CPD general, special, and uniform 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 <https://directives.chicagopolice.org/> last accessed June 3, 2022).

Officer Ponce issued verbal commands to drop the weapon, but the subject continued firing at the partygoers. Officer Ponce discharged his weapon approximately 15 times towards the alley/garage area behind [REDACTED] where he observed the subject. Officer Ponce then ejected his magazine and reloaded his weapon with a new magazine. The subject continued shooting sporadically.

Once the shooting stopped, both officers proceeded northbound in the alley, towards the garage. The remaining partygoers informed the officers they believed the subject fled to the residence at [REDACTED]. An ambulance responded and transported [REDACTED] and [REDACTED] to the University of Chicago Hospital, where they received treatment for multiple gunshot wounds. A SWAT team arrived at the scene and surrounded the residence at [REDACTED], periodically using a bullhorn to give verbal commands for the subject to surrender. At approximately 7 am, officers executed a search warrant at [REDACTED] and determined the subject was not inside the residence. As of the date of this report, no arrests have been made.

a. Interviews³

On June 22, 2021, **Police Officer Oscar Ponce⁴** provided a statement to COPA. Officer Ponce stated that on June 9, 2021, he was working with his partner, Officer Julian Marin, who was the driver of their unmarked police SUV. They received a call from OEMC that ShotSpotter detected shots fired on the [REDACTED]. As they approached the location, Officer Ponce heard gunshots. The gunfire continued as the officers exited their vehicle in the alley.

As Officer Ponce approached the scene in the alley, he saw the subject firing a weapon into a garage at a victim. Officer Ponce knew the subject was shooting at a person because he saw the victim's legs, and he observed the victim use his feet and legs to push himself into the garage and away from the subject. The subject was standing in a shooting stance, with two hands on his gun. Officer Ponce stated he knew the subject was holding a firearm because he could see the shape of a gun, he heard gunshots, and the subject recoiled with each shot. Officer Ponce described the subject as a Black male wearing a brown hat, white shirt, and dark-colored shorts. Officer Ponce gave verbal commands for the subject to "drop the gun"⁵ in an effort to help the person he thought was being murdered. The subject turned and "squared up,"⁶ facing the officers with his weapon raised in both hands. The subject then dropped his left hand but continued to hold the firearm in his right hand, and he started moving towards the officers. Officer Ponce discharged his own firearm at the subject, firing in defense of himself, his partner, and the civilians in the garage. He did not know if the subject fired at him or his partner. He described the subject as moving quickly from side to side throughout the incident.

At the time, Officer Ponce believed he fired between six and eight times, but he later learned he fired 15 shots. His magazine was fully loaded, and during the shooting, he ejected the magazine after firing at the subject and reloaded another magazine. The capacity of both magazines

³ COPA attempted to contact witness [REDACTED] four times between June 22, 2021 and June 29, 2021. [REDACTED] did not return any calls and or respond to voicemails left by COPA.

⁴ Audio Att. 19, Transcript Att. 23.

⁵ Audio Att. 19, Transcript Att. 23, pg. 14, ln. 10.

⁶ Audio Att. 19, Transcript Att. 23, pg. 15, ln. 5.

was 17. He used his sights and aimed at the subject near the corner of the garage in the alley. There was no one around the subject when Officer Ponce fired at him, and the officer attempted to minimize his own risk by taking cover behind a vehicle. Officer Ponce stated he fired until the subject disappeared into the garage. He said he did not notify OEMC because he thought he heard his partner calling a 10-1,⁷ and he did not want to cut off his communication by going over the radio at the same time.

After the subject ran into the garage, the officers gave chase but were unable to locate him. Responding officers arrived at the scene and created a perimeter while the search was underway. SWAT also responded, but the subject was never located.

On June 22, 2021, **Police Officer Julian Marin**⁸ provided a statement to COPA. Officer Marin reiterated essentially the same information as Officer Ponce provided. He confirmed he also saw the subject firing into the garage and gave commands for the subject to put the gun down. The subject turned and squared up with the officers, and Officer Marin clearly observed a firearm in his hand. Officer Marin only saw the subject for a moment, then heard and saw Officer Ponce fire his weapon. At that point, Officer Marin was standing on the passenger's side of a vehicle parked in the alley, while Officer Ponce was on the driver's side. Officer Marin called out shots fired over the radio but did not recall whether he said the shots were fired by the police. He stated the subject fled through the garage and was never caught.

b. Video Evidence⁹

Officer Ponce's Body Worn Camera (BWC)¹⁰ begins with the officers en route to the scene. At 12:29:22 am, Officer Ponce activates his camera as he exits the squad car; multiple gunshots ring out. Officer Ponce peers around the corner in the alley and yells, "drop the fucking gun,"¹¹ but the gunshots continue. Multiple cars are parked in the alley and obstruct the camera from capturing an image of the subject. Officer Ponce takes cover along the driver's side of a white SUV parked in the alley. He immediately yells "don't fucking move"¹² and fires his weapon approximately 15 times. Officer Marin calls "shots fired, shots fired"¹³ over the radio, and Officer Ponce tactically reloads his weapon, dropping his first magazine in the alley. The video captures the sound of periodic gunshots until 12:29:51 am, at which point a woman repeatedly tells the officers the subject went through the gangway. The officers then begin searching for the subject, to no avail. A person is on the ground in the garage, apparently shot, and Officer Ponce tells Officer Marin to call for medical assistance. As the officers search and wait for assisting officers, Officer Ponce walks past the location where he fired and states, "He pointed a gun over here."¹⁴ He also remarks that "it's the neighbor. White shirt, brown cap. He was killing that dude in the fucking

⁷ A 10-1 is a radio call indicating an officer needs emergency assistance.

⁸ Audio Att. 18, Transcript Att. 22.

⁹ COPA also obtained and reviewed POD footage and the BWC videos of responding officers, but nothing material was captured. The officers' vehicle was not equipped with an in-car camera.

¹⁰ Att. 6.

¹¹ Att. 6 at 2:09.

¹² Att. 6 at 2:15.

¹³ Att. 6 at 2:20.

¹⁴ Att. 6 at 4:05.

garage.”¹⁵ At 12:33:36 am, Officer Ponce announces over the radio there were shots fired by the police.¹⁶

Officer Marin’s BWC¹⁷ captures a slightly different perspective but largely the same footage as Officer Ponce’s BWC. At 12:29:34 am, Officer Marin calls out “10-1 shots fired.”¹⁸ Approximately one minute later, as the officers begin to search for the subject, Officer Marin calls for an ambulance at Officer Ponce’s instruction.

The **Office of Emergency Management and Communications (OEMC) 911 Calls**,¹⁹ **Radio Transmissions**,²⁰ and **Event Query Reports**²¹ document the following relevant and material communications: At 12:21 am, [REDACTED] places the first call to 911, reporting that her neighbor asked people to move their cars and then started shooting at them. She describes her neighbor as a black male, wearing a white shirt, glasses, and hat.²² At 12:25 am, the OEMC dispatcher relays this information over the radio. As units arrive in the area, they report the sound of either gunshots or fireworks in the alley.²³ At 12:29:49 am, an officer reports shots fired at the police and the dispatcher calls a 10-1.²⁴ Over the next four minutes, two different units ask the dispatcher if shots were fired by police, and both times the dispatcher responds in the negative.²⁵ At 12:33:43 am, Beat 664D (Officer Ponce) finally clarifies there were shots fired by police.²⁶

c. Physical Evidence

Evidence technicians (“ETs”) recovered the following **ballistics evidence**²⁷ from the alley behind [REDACTED], which the **Illinois State Police (ISP) Laboratory Firearms Report**²⁸ confirmed were fired by Officer Ponce’s weapon:

- Fifteen expended shell casings, headstamped “WIN 9mm Luger +P.”
- One blue steel Glock magazine, 17-round capacity, containing two live rounds.²⁹

ETs recovered the following expended shell casings from the alley behind [REDACTED] and in a garage apron, which ISP confirmed were not fired by Officer Ponce’s weapon, but a second unknown weapon:

¹⁵ Att. 6 at 5:31.

¹⁶ At 12:33:15 am, the dispatcher asks if there were any shots fired by the police or injuries to officers, and someone responds “negative.” However, at 12:33:36 am, Officer Ponce confirms he did discharge his firearm.

¹⁷ Att. 5. The shooting is captured in Part 1 (Att. 5). Part 2 (Att. 7) captures the post-incident scene response.

¹⁸ Att. 5 at 2:08.

¹⁹ Att. 13.

²⁰ Att. 13.

²¹ Atts. 3, 13, 15, and 32.

²² Att. 32, [REDACTED].

²³ Att. 13, Z8 0025-0125.

²⁴ Att. 13, Z8 0025-0125 at 4:45.

²⁵ See Att. 13, Z8 0025-0125.mp3, at 7:09 and 8:18.

²⁶ Att. 13, Z8 0025-0125 at 8:36.

²⁷ Att. 26, Crime Scene Report.

²⁸ Att. 24, ISP Laboratory Report- Firearms/Toolmarks, dated July 12, 2021.

²⁹ This is Officer Ponce’s magazine, which he ejected during the incident to complete a tactical reload of his weapon.

- One expended shell casing, headstamped “Jag 9MM Luger +P.”³⁰
- Seven expended shell casings, headstamped “Underwood 9MM.”
- Three expended shell casings, headstamped “WIN 9mm Luger +P.”

ETs recovered the following expended shell casings from the alley behind [REDACTED], and from the alley, walkway, and interior of the garage at [REDACTED]. ISP confirmed these casings were not fired by Officer Ponce’s weapon, but a third unknown weapon:

- Four expended shell casings headstamped “FNB 5.7 X 28.”

In addition to the expended shell casings, ETs recovered the following fired bullets from the scene: four fired bullets from inside the garage and the alley behind [REDACTED] one fired bullet from the alley at [REDACTED], and one fired bullet from the sidewalk leading to the access door of the garage at [REDACTED]. ISP’s analysis was inconclusive as to which weapon fired each of the recovered bullets. ISP was able to determine that the four fired bullets recovered from [REDACTED] were fired from a different weapon than the other two recovered bullets. Additionally, ISP conclusively determined that the two bullets recovered from the alley at [REDACTED] and the sidewalk at [REDACTED] were not fired from Officer Ponce’s weapon. A fired bullet was also recovered from [REDACTED] at the hospital.³¹

The **Weapons Breakdown**³² was conducted at 9:40 am at Area Central by ETs under the direction of OCIC Commander Winstrom. Officer Ponce’s weapon was a Glock Model 17, 9mm semi-automatic pistol, Serial [REDACTED] with a 17-round capacity magazine. ETs recovered one live round from the chamber and 17 live rounds from the magazine³³ (all Winchester 9mm + P ammunition). COPA personnel did not observe the breakdown of Office Ponce’s weapon.

ShotSpotter³⁴ captured audio from 21 gunshots in the general vicinity of [REDACTED]; however, many of the gunshots were marked as “possible mislocate” due to multiple gunshots occurring at the same time. The first two gunshots were captured on June 9, 2021, at 12:21 am, near [REDACTED]. ShotSpotter detected 19 additional gunshots in the area at 12:29 am.

d. Documentary Evidence

COPA reviewed the **Tactical Response Reports (“TRRs”)**³⁵ of all the involved members and determined their TRRs were consistent with the information reported to COPA.

³⁰ ISP identified this casing as a “Jag 9MM Luger +P;” however, the crime scene processing reports state the casing is a “Jag 9MM Luger.”

³¹ Att. 30 – Inventoried under [REDACTED].

³² Att. 31.

³³ This magazine was inserted after Officer Ponce ejected his first magazine. The first magazine (CSM #16) was recovered in the alley at [REDACTED] (Att. 26). It contained two live rounds and had a total capacity of 17 rounds.

³⁴ Att. 8.

³⁵ Officer Marin Att. 2, Officer Ponce Att. 4.

The **Detective Case File**³⁶ includes the **Original Case Incident Report**,³⁷ the **Special Weapons and Tactics Team (S.W.A.T.) Supplementary Report**,³⁸ the **Case Supplementary Reports**,³⁹ and the **General Progress Reports**,⁴⁰ among other materials.

The **Case Supplementary Reports**⁴¹ provide a summary of the interviews of Officers Marin and Ponce with IRT detectives following the incident. **Officer Julian Marin**⁴² told detectives that he and Officer Ponce responded to a dispatch of shots fired and drove to the T-alley that connects Kerfoot and Birkhoff Avenues. Officer Marin heard multiple gunshots coming from the Kerfoot alley and placed their unmarked vehicle in park. Officers Marin and Ponce then exited the vehicle. Officer Marin used an SUV that was parked in the alley for cover, positioning himself on the rear passenger's side of the SUV.

Officer Marin observed a person standing on the apron of the garage, shooting into the garage. Officer Marin could see muzzle flashes from the semi-automatic handgun, and he called a 10-1 over the radio. Officer Marin yelled to the subject to drop the gun, and the subject turned and faced Officer Marin with the handgun in his hand. Officer Marin then heard Officer Ponce firing his weapon and saw the subject run into the garage. Officer Marin and Officer Ponce approached the garage and observed a male victim on the ground, bleeding from gunshot wounds. Officer Marin then called for an ambulance.

Officer Oscar Ponce⁴³ provided an account generally consistent with Officer Marin's account. In addition, Officer Ponce told detectives he approached the scene by "'slicing the pie' (a police strategy for identifying threats by looking around corners/obstacles for hostile suspects) and using the brick wall for cover."⁴⁴ Officer Ponce observed the subject standing in a shooting stance near the apron of the garage, holding a handgun with a two-handed grip. The subject was shooting downward at a person on the ground, and that person was "kicking their feet as they were shot."⁴⁵

Officer Ponce yelled for the subject to drop the gun. At that time, the subject turned towards Officer Ponce, squared up in his direction, and advanced a couple of steps toward the officer. Officer Ponce stated he believed the subject with the gun would shoot him or his partner. In response, Officer Ponce fired his weapon at the subject an unknown number of times. Officer Ponce then observed the subject bend at the waist and run towards the garage, out of sight.

³⁶ Att. 35.

³⁷ Att. 35, pgs. 2-7.

³⁸ Att. 35, pgs. 8-10.

³⁹ Att. 35, pgs. 11-53.

⁴⁰ Att. 35, pgs. 80-120.

⁴¹ Att. 35, pgs. 11-53.

⁴² Att. 35, pgs. 50-51.

⁴³ Att. 35, pgs. 51-52.

⁴⁴ Att. 35, pg. 51.

⁴⁵ Att. 35, pg. 51.

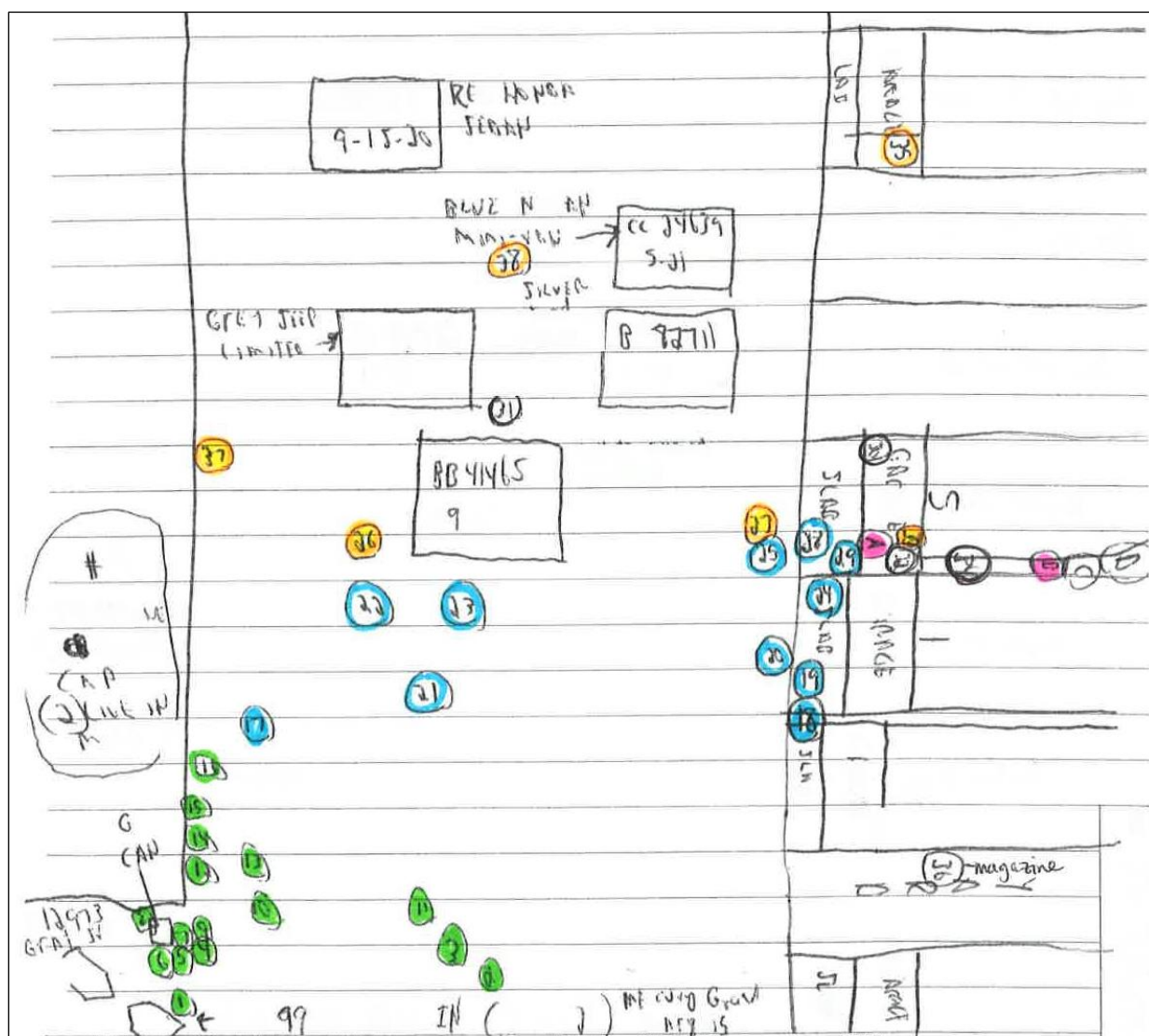


Figure 1. Detective's diagram of the approximate location of evidence recovered on scene, depicting suspect bloodstains (pink), Officer Ponce's casings (green), fired bullets (orange), and casings from a second weapon (blue).⁴⁶

The **Detective Supplementary Report**⁴⁷ summarizes interviews with eyewitnesses on scene. The witnesses provided consistent accounts of the subject first asking the group to move their cars, then discharging one or two shots. The subject came back a few minutes later and began shooting at the partygoers in the garage.⁴⁸ [REDACTED] stated that he observed the subject shooting from the alley into the garage, then engage in a "shoot out with the police."⁴⁹

⁴⁶ Att. 35, pgs. 80 – 82. COPA added the colors to this diagram to distinguish between the different types of evidence.

⁴⁷ Att. 35, pgs. 40 – 53.

⁴⁸ Att. 35, pgs. 46 – 47.

⁴⁹ Att. 35, pg. 46.

The investigating detectives also conducted interviews with the two gunshot victims, [REDACTED] and [REDACTED].⁵⁰ Detectives interviewed [REDACTED] at the hospital approximately one week after the shooting.⁵¹ [REDACTED] stated he was celebrating his cousin's birthday when the subject arrived and started shooting at the partygoers in the garage. [REDACTED] turned to run but he was shot in the leg and fell inside the garage.

Detectives also interviewed [REDACTED] at his home after he was released from the hospital.⁵² [REDACTED] related he was in the basement of [REDACTED] watching television while his niece was having a birthday party in the garage. Shortly after midnight, he heard gunshots and ran to the back door. There, he saw a child on the patio and ran to grab the child amidst the gunfire. He then felt pain in his groin, realized he had been shot, and moved towards the garage to get help. In the garage, he observed that [REDACTED] had also been shot.

The **Case Report**⁵³ reiterates the details outlined in the officer interviews. The **Case Supplementary Report: Progress-Line Up**⁵⁴ indicates that detectives showed a photo line-up to witness [REDACTED] on June 9, 2021. [REDACTED] tentatively identified [REDACTED] as the individual who "walked up and talked with my sister, then left in the alley and about 4-5 minutes later he came back and started shooting at everyone including the police."⁵⁵

IV. LEGAL STANDARD

a. Use of Deadly Force⁵⁶

CPD's stated highest priority is the sanctity of human life. In all aspects of their conduct, the CPD expects that its members act with the foremost regard for the preservation of human life and the safety of all persons involved.⁵⁷ CPD members are only authorized to use force that is objectively reasonable, necessary, and proportional, under the totality of the circumstances, to ensure the safety of a member or a third person, stop an attack, make an arrest, control a subject, or prevent escape.⁵⁸ This means CPD members may use only the amount of force necessary to serve a lawful purpose. The amount and type of force used must be proportional to the threat, actions, and level of resistance a person offers.⁵⁹

The primary concern in assessing the use of force is whether the amount of force the officer used was objectively reasonable in light of the totality of the circumstances faced by the officer.⁶⁰

⁵⁰ Att. 35, pg. 52.

⁵¹ Att. 35, pg. 52.

⁵² Att. 35, pg. 52.

⁵³ Att. 10.

⁵⁴ Att. 29.

⁵⁵ Att. 29, pg. 5. Per IRT Detective Iser, the suspected shooter was [REDACTED], not [REDACTED]. See CMS Notes. The report indicates that [REDACTED] mugshot was included in the photo line-up, but [REDACTED] did not identify him.

⁵⁶ On October 16, 2017, CPD materially modified its Use of Force policy. CPD's current Use of Force Policy prohibits the use of deadly force under circumstances that would be permissible under the Fourth Amendment to the United States Constitution and Illinois state law. COPA's analysis focuses solely on whether Officer Ponce complied with General Order 03-02. COPA cites case law solely for guidance on how to interpret common concepts or terms.

⁵⁷ General Order G03-02.II.A, De-Escalation, Response to Resistance, and Use of Force (effective April 15, 2021, to present).

⁵⁸ G03-02.III.B.

⁵⁹ G03-02.III.B.

⁶⁰ G03-02.III.B.1.

Factors to be considered by the officer may include, but are not limited to: (1) whether the person is posing an imminent threat to the officer or others; (2) the risk of harm, level of threat or resistance presented by the person; (3) the person's proximity to or access to weapons; (4) whether de-escalation techniques can be employed or would be effective; and (5) the availability of other resources.⁶¹

The discharge of a firearm in the direction of a person constitutes the use of deadly force under CPD policy.⁶² The use of deadly force is permitted only 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."⁶³ A CPD member may use deadly force in only two situations: (1) to prevent "death or great bodily harm from an imminent threat posed to the sworn member or to another person"; or (2) to prevent "an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay."⁶⁴

A threat is considered imminent "when it is objectively reasonable to believe that: (a) the person's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; **and** (b) the person has the means or instruments to cause death or great bodily harm; **and** (c) the person has the opportunity and ability to cause death or great bodily harm."⁶⁵

During all use of force incidents, CPD members are required to use de-escalation techniques to prevent or reduce the need for force, unless doing so would place a person or a CPD member in immediate risk of harm, or de-escalation techniques would be clearly ineffective under the totality of the circumstances.⁶⁶ The use of de-escalation techniques will include continually assessing the situation and the need to use force,⁶⁷ considering individualized factors such as:

- a) The subject's age, disability, or physical condition (e.g., known, suspected or perceived behavioral or mental health conditions; intellectual, developmental, psychiatric, or physical disability; vision, hearing, or neurological impairment).
- b) The risk posed by the subject.
- c) If the subject is restrained, injured, or in crisis.⁶⁸

Officers are expected to modify the use of force as circumstances change and in ways that are consistent with officer safety, including stopping the use of force when it is no longer necessary.⁶⁹ These concepts of force mitigation include but are not limited to: providing a warning and exercising persuasion and advice prior to the use of force; determining whether the member may be able to stabilize the situation through the use of time, distance, or positioning to isolate and contain a subject (e.g., establishing a zone of safety); requesting additional personnel to respond

⁶¹ G03-02.III.B.1.

⁶² G03-02.IV.A.1.

⁶³ G03-02.IV.C.

⁶⁴ G03-02.IV.C; 720 ILCS 5/7-5.

⁶⁵ G03-02.III.C.2 (emphasis added).

⁶⁶ G03-02.III.C.

⁶⁷ G03-02.III.B.2.

⁶⁸ G03-02.III.C.1.

⁶⁹ G03-02.III.C.2.

or make use of specialized units or equipment, including crisis-intervention-team trained officers, as necessary and appropriate.⁷⁰

CPD has placed several prohibitions on its officers' use of firearms. Most pertinent to the instant case is a prohibition against firing a weapon when the person lawfully fired at is not clearly visible.⁷¹ An officer is prohibited from using deadly force in such circumstances unless the officer's discharge is "directed at a specific location and such force is necessary, based on the specific circumstances confronting the sworn member, to prevent death or great bodily harm to the sworn member or to another person."⁷² In such circumstances, "the use of deadly force is permissible only if the member has identified the appropriate target prior to discharging the firearm and has taken precautions to minimize the risk that people other than the target will be struck."⁷³

CPD policy recognizes that its members must make "split-second decision" in circumstances that are "tense, uncertain, and rapidly evolving" about the use of force required in a particular situation.⁷⁴ As such, their decisions must be "judged based on the totality of the circumstances known by the member at the time and from the perspective of a reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight."⁷⁵

CPD policy further provides that officers involved in a firearm discharge incident "will immediately notify the Office of Emergency Management and Communications (OEMC) providing all relevant information and requesting additional resources."⁷⁶

b. Standard of Proof

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

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegation 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.

⁷⁰ G03-02.III.C.2.

⁷¹ G03-02-03.II.D.5, Firearms Discharge Incidents– Authorized Use and Post-Discharge Administrative Procedures (effective April 15, 2021, to present).

⁷² G03-02-03.II.D.5.

⁷³ G03-02-03.II.D.5.

⁷⁴ G03-02.II.D.

⁷⁵ G03.02.II.D.1.

⁷⁶ G03-06.IV.A, Firearm Discharge and Officer-Involved Death Incident Response and Investigation (effective April 15, 2021, to present).

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that a proposition is proved.⁷⁷ For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with CPD 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. Clear and convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.”⁷⁸

V. ANALYSIS AND CONCLUSION

a. Allegation #1: Discharge of a firearm at or in the direction of the subject without justification – EXONERATED.

COPA finds there is clear and convincing evidence that Officer Ponce’s use of deadly force was objectively reasonable, necessary, and proportional to the imminent threat posed by the subject. COPA also finds that Officer Ponce’s use of force was an act of last resort.

Specifically, COPA finds there is clear and convincing evidence that Officer Ponce used deadly force in response to an imminent risk of death or great bodily harm to himself, his partner, and nearby civilians. First, Officer Ponce reasonably believed the subject’s conduct was immediately likely to cause death or great bodily harm to himself and others unless action was taken. Specifically, Officer Ponce reported that he observed the subject discharging a firearm at a victim inside the garage. Officer Ponce saw the victim’s legs, and he observed the victim use his feet and legs to push himself into the garage and away from the subject. Second, Officer Ponce reasonably believed the subject had the means or instruments to cause death or great bodily harm. Officer Ponce observed the subject holding a firearm, confirming his belief that the subject had proximity to and access to weapons. Officer Ponce further reported that he saw the subject standing in a shooting stance with two hands on his gun, heard gunshots, and observed the subject’s firearm recoil with each shot. Third, it was objectively reasonable for Officer Ponce to believe the subject had the opportunity and the ability to cause death or great bodily harm, as he saw the subject using his firearm to repeatedly shoot at civilians inside the garage. Officer Ponce’s belief that the subject posed an imminent threat was objectively reasonable.

COPA further finds there is clear and convincing evidence that it was objectively reasonable for Officer Ponce to believe the subject posed a high risk of harm, level of threat, and resistance. Officers Ponce and Marin both reported that the subject ignored their commands to drop the gun, and he instead turned towards the officers while still holding the firearm. Officer Ponce reasonably believed the subject was dangerous, having observed him repeatedly shoot at civilians in the garage and ignore the officers’ orders.

⁷⁷ 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.”).

⁷⁸ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28.

In addition, COPA finds that Officer Ponce used deadly force only as a “last resort”⁷⁹ to prevent great bodily harm to himself and others. Officer Ponce reported that he only discharged his firearm after the subject ignored his orders to drop the gun and turned towards him and Officer Marin with the weapon in hand.⁸⁰ Officer Ponce’s account is corroborated by Officer Marin’s account, and COPA finds both officers credible. Although no video footage exists depicting the subject shooting at the civilians in the garage or turning towards the officers, there is available evidence that supports officers’ accounts. Civilian witnesses on scene reported the subject was shooting at them, called 911 to report the attack, and two gunshot victims were later taken to the hospital. In addition, the officers’ BWC videos and ShotSpotter captured several gunshots when the officers arrived on scene. Based on the officers’ interviews, the available BWC footage, and the eyewitness accounts detailing the shooting, it is reasonable to believe that an officer with similar experience and training would have used deadly force to stop the threat.

COPA further finds that it was not feasible to de-escalate the situation under the circumstances faced by Officers Ponce and Marin. The evidence does show the officers attempted to de-escalate the encounter by using verbal commands. The subject, however, ignored the officers’ commands to drop the gun and instead turned towards them. This indicates that further attempts to de-escalate would likely not have been effective and would have placed the officers and nearby civilians at immediate risk of harm. Moreover, it appears that the officers modified their use of force as circumstances evolved. Such modifications were apparent in the officers’ cautious approach to the scene, including seeking cover behind a building and vehicles, employing verbal commands prior to using deadly force, and using deadly force only while the threat was present. Overall, the evidence shows that Officer Ponce’s use of deadly force was, under the totality of the circumstances, the minimum amount of force necessary to provide for the safety of the officers and civilians. Based on the available evidence, COPA finds that the amount and type of force used by Officer Ponce was proportional to the threat, actions, and level of resistance offered by the subject.

For all these reasons, COPA finds there is clear and convincing evidence that Officer Ponce’s use of deadly force was objectively reasonable in light of the totality of the circumstances. Therefore, Allegation #1 against Officer Ponce is **exonerated**.

b. Allegation #2: Discharge of a firearm without identifying the appropriate target and/or taking precautions to minimize the risk that people other than the target would be struck – EXONERATED.

COPA finds there is clear and convincing evidence that Officer Ponce’s firearm discharge did not violate CPD policy. Specifically, the evidence shows that Officer Ponce identified the appropriate target and took precautions to minimize the risk that people other than the target would be struck. Consequently, Officer Ponce’s firearm discharge did not violate the prohibition against firing a weapon when the person lawfully fired at was not clearly visible.⁸¹

Officer Ponce reported that he identified the appropriate target prior to firing his weapon. He was able to identify the subject’s physical characteristics, including his race, approximate

⁷⁹ G03-02.IV.C.

⁸⁰ Audio Att. 19, Transcript Att. 23, pg. 14, line 10.

⁸¹ G03-02-03.II.D.5.

height, and clothing description. Officer Ponce also stated that he ensured there was no one near the subject when he discharged his weapon. He related that, prior to firing his weapon, he saw an injured person on the ground in the garage being shot by the subject. Officer Ponce was able to provide details regarding the victim's movements as the victim retreated deeper into the garage, away from the subject. In addition, Officer Ponce did not observe any other civilians in the garage or alley when he discharged his weapon. The information provided by Officer Ponce shows he was aware of the location of the civilians near the subject, and he took precautions to minimize the risk to them.

However, various vehicles obstructed the view from Officer Ponce's BWC during the incident, and the BWC video does not show the exact location of the subject or the civilians at the time Officer Ponce fired. Despite this, the available evidence supports Officer Ponce's claim that he took precautions to minimize the risk that people other than the subject would be struck. Officer Ponce fired in a southeast direction, towards the subject who was standing in the alley. The civilian witnesses, on the other hand, told detectives they were either in the garage or had fled to the rear yard by the time Officer Ponce fired.

Specifically, one of the civilians shot by the subject – [REDACTED] – was already injured and laying on the ground in the garage when Officer Ponce first saw him. Officer Ponce reported he could only see [REDACTED] legs and feet.⁸² Police reports indicate that [REDACTED] sustained two gunshot wounds to the upper right arm, three gunshot wounds to the right thigh, one gunshot wound to the left buttocks, one gunshot wound to the right buttocks, and one gunshot wound to the left finger.⁸³ He did not suffer any injuries to his legs or feet, making it less likely that Officer Ponce's weapon inflicted these gunshot wounds. In addition, [REDACTED] reported the subject shot at him and others celebrating his cousin's birthday, and he did not implicate Officer Ponce at all in his statement.

Similarly, although COPA is unable to establish the precise location of the second civilian – [REDACTED] – when he was shot, the available evidence suggests that Officer Ponce did not cause his injuries. Based on [REDACTED] statement to detectives, it appears he was located between the garage and the house at [REDACTED]. Further corroborating this conclusion are the ET photographs⁸⁴ and Detective GPRs,⁸⁵ which depict two separate suspect bloodstains. The first suspect bloodstain is located inside the garage where [REDACTED] fell after he was shot, and where he remained until he was removed by paramedics.⁸⁶ The second bloodstain is located on the sidewalk/stairs between the garage and the house at [REDACTED].⁸⁷ Therefore, because [REDACTED] remained inside the garage after he was shot, the second bloodstain likely belonged to [REDACTED].⁸⁸ In fact, [REDACTED] told detectives he exited the rear door of [REDACTED] and was shot soon thereafter, somewhere in the back yard.⁸⁹ Based on Officer Ponce's BWC video,⁹⁰ which shows his approximate location while he was firing his weapon, it is unlikely that

⁸² Audio Att. 19, Transcript Att. 23

⁸³ Att. 35, pg. 46

⁸⁴ Att. 36.

⁸⁵ Att. 35, pg. 82.

⁸⁶ Att. 35, pgs. 52, 82.

⁸⁷ Att. 35, pg. 82; Att. 93.

⁸⁸ There is no evidence in the record to suggest that the unidentified person was shot or injured during the incident.

⁸⁹ Att. 35, pg. 52.

⁹⁰ Att. 6 at 2:15.

he could have shot someone standing near the back door of the garage or in the rear yard of [REDACTED] which is located behind the garage.

For all these reasons, COPA finds that Officer Ponce used deadly force only after he identified the appropriate target and took precautions to minimize the risk that people other than the target would be struck. Therefore, Allegation #2 against Officer Ponce is **exonerated**.

c. Allegation #3: Failure to timely and/or accurately notify OEMC that he discharged his firearm – SUSTAINED.

CPD policy provides that officers involved in firearm discharge incidents “will immediately notify the Office of Emergency Management and Communications (OEMC) providing all relevant information and requesting additional resources.”⁹¹ COPA finds that Officer Ponce violated this policy by failing to immediately notify OEMC of his firearm discharge and by failing to provide all relevant information to OEMC.

Specifically, Officer Ponce waited nearly four minutes⁹² after his firearm discharge to notify OEMC that shots were fired by the police. Although Officer Marin almost immediately radioed, “shots fired”⁹³ and “shooting at the police,”⁹⁴ neither officer announced that shots were fired by the police. As a result, dispatch reported only that shots were fired *at* the police.⁹⁵ Officer Marin then requested an ambulance and dispatch inquired whether an officer was injured.⁹⁶ Officer Marin responded that the person injured was not an officer. When another unit asked if any officers fired shots, dispatch responded, “Not that I’m aware of. Negative.”⁹⁷ More than a minute later, Officer Ponce finally went over the air to clarify that he had discharged his firearm.⁹⁸

For these reasons, COPA finds by a preponderance of the evidence that Officer Ponce’s notification to OEMC was deficient and violated CPD policy. Therefore, Allegation #3 against Officer Ponce is **sustained** as a violation of Rules 5, 6, and 10.

VI. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Oscar Ponce

COPA has found that Officer Ponce violated Rules 5, 6, and 10 by failing to timely notify OEMC of his firearm discharge. In mitigation, COPA has considered Officer Ponce’s complimentary history, minimal disciplinary history,⁹⁹ and the rapidly evolving and high-stress nature of the incident. In aggravation, COPA notes that Officer Ponce’s delayed notification

⁹¹ G03-06.V.A

⁹² See Att. 13, Z8 0025-0125.mp3 at 4:45 to 8:38.

⁹³ Att. 13, Z8 0025-0125.mp3 at 4:45.

⁹⁴ Att. 13, Z8 0025-0125.mp3 at 4:48.

⁹⁵ Att. 13, Z8 0025-0125.mp3 at 4:51.

⁹⁶ Att. 13, Z8 0025-0125.mp3 at 5:30.

⁹⁷ Att. 13, Z8 0025-0125.mp3 at 7:08 to 7:13.

⁹⁸ Att. 13, Z8 0025-0125.mp3 at 8:36.

⁹⁹ Att. 39. Officer Ponce received a reprimand following a preventable traffic accident in July 2020. He has received 97 awards, including five CPD commendations, one problem solving award, one annual bureau award of recognition, and 86 honorable mentions.

caused dispatch to report inaccurate and confusing information over the radio. Accordingly, COPA recommends that Officer Ponce receive a **reprimand**.

Approved:



Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date: 4/28/2023



Andrea Kersten
Chief Administrator

Date: 4/28/2023