

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date of Incident:	July 13, 2018
Time of Incident:	9:36 pm
Location of Incident:	7914 S. Essex Avenue
Date of COPA Notification:	July 13, 2018
Time of COPA Notification:	10:36 pm

On July 13, 2018, at approximately 9:36 pm, Officer Samuel Brienzo and his partner, Officer Ryan Gainer, responded to a vice/disturbance call in the area of 79th Street and Essex Avenue. Officer Brienzo and his partner went to that area, spoke to various civilians in the area and requested they leave the area in response to the complaint. Officer Brienzo observed a vehicle with the engine running parked on the west curb of Essex Avenue and occupied by two males. One of the occupants, [REDACTED], was in the driver’s seat. The second individual, [REDACTED] was seated in the rear passenger-side seat. Officer Brienzo approached the rear passenger side of the vehicle while Officer Gainer approached the driver’s side. After some conversation, Officer Brienzo observed [REDACTED] acting nervous and asked him to exit the vehicle. Mr. [REDACTED] exited the vehicle and fled southbound on Essex Avenue. Officer Brienzo pursued Mr. [REDACTED]. Moments after he started to run, Mr. [REDACTED] removed a handgun from his waistband area and fired multiple times in the direction of Officer Brienzo and Officer Gainer. Officer Brienzo returned fire and took cover behind a tree. Nobody was struck by any of the shots. Mr. [REDACTED] was subsequently located and arrested by assisting units. The firearm Mr. [REDACTED] was carrying was also recovered by assisting units. COPA determined that Officer Brienzo’s use of force by discharging his firearm was justified and within Department policy.

II. INVOLVED PARTIES

Involved Officer #1:	Samuel Brienzo, Star#: 17883, Employee ID#: [REDACTED] Date of Appointment: August 31, 2012, Police Officer, 004 / 195, Date of Birth: [REDACTED], 1986, Male, White
Involved Individual #1:	[REDACTED], Date of Birth: [REDACTED], 1986, Male, Black

III. ALLEGATIONS

Any discharge of an officer’s firearm results in a mandatory notification to COPA. This investigation was initiated pursuant to such notification. Over the course of this full and complete

investigation, COPA did not uncover evidence that would require allegations against Officer Brienzo.

IV. APPLICABLE RULES AND LAWS

General Orders

1. G03-02 - Use of Force (effective 10/16/17 – 2/28/20)
 2. G03-02-01 – Force Options (effective 10/16/17 – 2/28/20)
 3. G03-02-03 - Firearms Discharge Incidents Involving Sworn Members (effective 10/16/17 – 2/28/20)
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Federal Laws

1. United States Constitution, Amendment IV
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State Laws

1. 720 ILCS 5/7-5 (1986) – Peace Officer’s Use of Force in Making Arrest

V. INVESTIGATION¹

a. Interviews

Officer Samuel Brienzo was interviewed² on March 14, 2019, at the COPA offices, and stated the following. On the evening of July 13, 2018, Officer Brienzo worked in the 004th District with his partner, Officer Ryan Gainer. Officer Brienzo wore civilian dress and a body-worn camera. Officer Brienzo carried a Glock Model 17 weapon, fully loaded with a magazine capacity of 17 bullets, plus an additional one in the chamber. He was the passenger in an unmarked Ford Explorer. On the evening of the incident, Officer Brienzo responded to a disturbance call around 79th Street and Essex Avenue. When Officer Brienzo arrived, he exited his vehicle and tried to ascertain the reason for the call.

A vehicle parked on the west side of the street drew Officer Brienzo’s attention. He approached the passenger side of the vehicle. Officer Brienzo initially wanted to speak with the occupants to ascertain whether they saw anything in relation to the call. Officer Brienzo spoke to the rear seat passenger, now known to be [REDACTED]. Officer Gainer approached and spoke with the driver, now known to be [REDACTED]. Officer Brienzo asked general questions about whether [REDACTED] saw anything unusual in the area. Officer Brienzo described [REDACTED] as “a younger black male wearing a do-rag and a reflective vest.”³

[REDACTED] appeared very nervous to Officer Brienzo, which caused Officer Brienzo ask him to get out of the vehicle. Subsequently, Officer Brienzo learned the driver did not have a license and

¹ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

² Attachments 84 (audio) and 87 (transcript).

³ Attachment 87, page 12, lines 6-7.

he observed [REDACTED] was not wearing a seat belt. After [REDACTED] exited the vehicle, he fled southbound on Essex Avenue. Officer Brienzo pursued him. During the pursuit, Officer Brienzo saw [REDACTED] reach for his waistband. [REDACTED] turned, looked in Officer Brienzo's direction, pulled out a firearm, and fired the gun more than one time at Officer Brienzo, while [REDACTED] ran southbound. Officer Brienzo returned fire thirteen times at [REDACTED]. Officer Brienzo first fired at [REDACTED] from approximately 20 feet. Officer Brienzo continuously moved and fired. Officer Brienzo fired his final shot at [REDACTED] after he moved across the street to take cover behind a tree. Officer Brienzo believed [REDACTED] was armed with a handgun and scanning the area to take another shot at either Officer Brienzo or his partner. Officer Brienzo indicated [REDACTED] posed an immediate threat, even when Officer Brienzo moved across the street and took cover, because [REDACTED] still had the weapon pointed in the direction of Officer Brienzo and his partner prior to Officer Brienzo firing his final shot.

Officer Ryan Gainer was interviewed⁴ on March 14, 2019, at the COPA offices and stated the following. On the evening of the incident, Officer Gainer worked in the 004th District with his partner, Officer Samuel Brienzo. Officer Gainer wore civilian dress and a body-worn camera. On the evening of the incident, Officer Gainer responded to a vice call of gambling. When Officer Gainer arrived at the area of 79th Street and Essex Avenue, he observed a small group of people. He asked the group to leave the area.

Officer Gainer then approached a vehicle with two occupants to speak to them to find out if they saw anything regarding the disturbance call. One individual, [REDACTED] was seated in the driver's seat, while a second occupant, [REDACTED] was in the rear passenger side seat. Officer Gainer approached on the driver's side of the vehicle. Officer Gainer asked [REDACTED] why he was in the area and asked for identification. [REDACTED] could not provide identification. Officer Gainer never spoke to [REDACTED]. Officer Gainer asked [REDACTED] to get out of the vehicle to confirm his identity. Officer Brienzo asked [REDACTED] to get out of the vehicle. When [REDACTED] exited the vehicle, he fled southbound. As he fled, he pulled out a handgun from his waistband and began firing toward Officer Gainer and his partner. Officer Gainer did not fire his weapon because Officer Brienzo was in his line of fire and he did not want to shoot his partner. Officer Brienzo returned fire at the passenger.

COPA submitted a request⁵ on September 19, 2018, to the Public Defender's Office, to interview [REDACTED].⁶ On October 10, 2018, their response stated [REDACTED] would not make any statements.⁷ However, [REDACTED] gave an electronically recorded interview on July 13, 2018, at 11:42 pm, at Area South Detective Division, Room #7 with CPD Detectives Stover and Murphy.⁸ [REDACTED] admitted that he killed a man in Country Club Hills, and he knew he had an active arrest warrant

⁴ Attachments 85 (audio) and 88 (transcript).

⁵ [REDACTED] was charged in the Circuit Court of Cook County, Case No. 18 CR-11186, with multiple counts of attempted murder and aggravated unlawful use of a firearm, for discharging his weapon at Officers Brienzo and Gainer. The Court appointed the Office of the Public Defender to represent him in court. (see Attachment 90). When an individual is represented by counsel relative to a matter under investigation by COPA, COPA procedure requires its investigative staff to communicate with that individual's attorney to arrange and conduct interviews.

⁶ Attachment 28.

⁷ Attachment 29.

⁸ Attachment 47, file name "[REDACTED]_2_JB348742_Axon_Interview_-_Area_02_-_Interview_Room_7_-_MainCam-2".

for murder from the County Club Hills Police Department.⁹ He did not want to go back to prison and wanted the police to kill him, so he shot in the air and did not want to hurt the officer. █████ stated that he has been homeless since attempting to avoid a firearm possession case in DuPage County.¹⁰ According to █████ he conducted a carjacking and an aggravated battery in the state of Indiana and has been involved in multiple car chases in Wisconsin and Illinois. █████ related the police could never catch him until the night of this incident.

On July 13, 2018, █████ identified an Uber vehicle stopped on the street. █████ stated he entered the vehicle and displayed a firearm to the driver. He informed the Uber driver to continue his business until █████ felt like exiting the vehicle. The Uber driver indicated to █████ he was picking up a fair at 79th Street and Essex Avenue. █████ believed the Uber driver was trying to set him up. A police vehicle pulled up on Essex Avenue and informed everyone on the block to leave. They then approached the Uber vehicle.

The officer told █████ he was acting nervous. The officer then asked █████ to exit the vehicle. █████ put his hands on the hood of the car, but then started to run southbound. █████ admitted to turning toward the officer and firing three shots in the air. █████ was wearing a vest and nylon cap. █████ indicated he was hoping the police would kill him when they returned fire, but he did not intend to hurt the police.

As █████ ran away, he hopped a fence and removed the vest and nylon cap. █████ jumped another fence and lost the gun from his holster. █████ related he was going to shoot himself if he had not dropped the gun. █████ started jumping on garage rooftops and thought the police would shoot him, but they did not. █████ described the gun he used as a black 9mm Luger with an 8-round capacity. █████ related he wanted the police to find the gun, so kids would not get it and get hurt. █████ also related the gun he used in the incident was the same gun he used to commit the murder in Country Club Hills. █████ also indicated he killed someone in Chicago in 2016.

COPA made multiple attempts to locate and contact █████ (“█████”) at his address,¹¹ which includes the issuance of a subpoena.¹² All attempts were met with negative results. However, █████ gave an electronically (video and audio) recorded interview to CPD Det. Sandoval and Assistant State’s Attorney (“ASA”) Susan Jakubiak at Area South Detective Division on July 14, 2018.¹³ █████ is a driver for Uber. On July 13, 2018, just prior to the police involved shooting, █████ drove his vehicle northbound on Essex Avenue. █████ stopped at a stop sign at 82nd Street and Essex Avenue. An individual █████ knew as █████ now known to be █████, waived him down and asked for a ride to the CTA station at 79th Street

⁹ According to records from the Cook County Clerk of the Circuit Court, at the time of this incident, an arrest warrant had been issued for █████ in Case No. 18 MC6-000303 (Sixth Municipal District Courthouse in Markham, IL) for the offense of First Degree Murder in Country Club Hills, IL. That warrant was executed when █████ was arrested for this incident, and that case was superseded by felony indictment 18 CR-10952.

¹⁰ According to a public records search of the DuPage County Clerk of the Circuit Court, at the time of this incident, █████ (Year of Birth: 1986), had a case pending for firearms possession in Villa Park, IL in Case No. 2016 CF-001903. On February 28, 2018, the Court issued a warrant for █████ arrest and ordered his bond forfeited.

¹¹ Attachment 36.

¹² Attachment 44.

¹³ Attachment 91.

and State Street. [REDACTED] offered [REDACTED] five dollars and a bag of weed for the ride. [REDACTED] got into the rear seat of the vehicle.

[REDACTED] has known [REDACTED] for a few months through the sale of loose cigarettes. [REDACTED] drove southbound on Essex Avenue, to 7906-7908 S. Essex Avenue and parked his vehicle in front of the building. [REDACTED] stopped at this location to pick up individuals for a fair. While [REDACTED] parked at the location, [REDACTED] noticed a police vehicle facing westbound on 79th Street. [REDACTED] related to [REDACTED] the police were behind them. [REDACTED] remained parked for approximately two minutes until the officers approached his vehicle.

Two officers questioned both [REDACTED] and [REDACTED]. [REDACTED] was asked whether he drove for Uber, and for his driver's license. [REDACTED] provided the officers with his Uber driver card. [REDACTED] could not find his driver's license during the stop. The taller officer who was on the driver's side of his vehicle subsequently asked [REDACTED] to exit his vehicle. [REDACTED] exited the vehicle. [REDACTED] then observed the shorter officer chasing [REDACTED] southbound. The taller officer then proceeded to run behind the smaller officer and chase [REDACTED]. [REDACTED] then heard gunshots coming from the direction of the officers chasing [REDACTED] and immediately ducked toward the ground and took cover. [REDACTED] did not see anyone fire a gun. Reporting detectives subsequently showed [REDACTED] a photograph of [REDACTED] and [REDACTED] identified [REDACTED] as the individual seated in the backseat of his vehicle. [REDACTED] further related [REDACTED] was the individual who exited his vehicle and ran from police officers.

b. Digital Evidence

Body Worn Camera (BWC) footage from Officer Brienzo's camera¹⁴ depicts Officer Brienzo as a passenger in a police vehicle. Officer Brienzo steps out of the vehicle and shines his flashlight on four individuals gathered near a residence. The individuals then walk away. The officer walks toward 79th Street and then turns to cross Essex Avenue.

Officer Brienzo approaches a red vehicle that appears to be parked on the side of Essex Avenue. Officer Brienzo starts a conversation with the occupants of the vehicle. The vehicle has two occupants, the driver (now known to be [REDACTED]) and a back-seat passenger (now known to be [REDACTED]). After several questions, Officer Brienzo learns that the car is an Uber waiting to pick up another passenger. Officer Brienzo then turns his attention to [REDACTED] and points out that he appears nervous. He asks [REDACTED] if he has a weapon on him, and [REDACTED] states he does not.

Officer Brienzo turns back toward [REDACTED] and asks what liquid is on [REDACTED]'s hand. [REDACTED] tells him it is sweat. Officer Brienzo then asks [REDACTED] what is in his water bottle. [REDACTED] says water is in the bottle, and then hands the bottle to Officer Brienzo to inspect for himself.

After smelling the water, Officer Brienzo asks [REDACTED] if he has identification. [REDACTED] responds he does not have identification. Officer Brienzo asks if [REDACTED] has on his seatbelt, and [REDACTED] shifts his position to indicate he is not wearing his seat belt. Officer Gainer then informs dispatch that a vehicle is stopped near 79th Street and Essex Avenue. Officer Brienzo asks [REDACTED] his name, and [REDACTED] responds "[REDACTED]". Officer Brienzo then asks [REDACTED] to step out of the

¹⁴ Attachment 48.

vehicle. Officer Brienzo then informs [REDACTED] the law requires him to wear a seatbelt. Officer Brienzo then asks [REDACTED] to step out of the vehicle. Officer Brienzo informs [REDACTED] that he is going to confirm his identity, then let him leave the scene.

[REDACTED] steps out of the vehicle, then runs from the red car in a southbound direction on Essex Avenue.¹⁵ Officer Brienzo pursues [REDACTED] crossing on alley. After several seconds of a foot pursuit, [REDACTED] appears to turn partially back towards Officer Brienzo and the sound of gunshots can be heard on the video.¹⁶ Officer Brienzo turns and runs to his left, across Essex Avenue, and his shadow appears to show him pointing a firearm. Officer Brienzo takes cover behind a tree. Officer Brienzo shouts “shots fired at the police”¹⁷ and provides the location of 79th Street and Essex Avenue. After a brief pause, another gunshot is heard. Officer Brienzo then announces the offender is running southbound on Essex Avenue.

Body Worn Camera (BWC) footage from Officer Gainer’s camera¹⁸ depicts several civilians gathered outside in the area of 79th Street and Essex Avenue. Officer Brienzo is observed standing on the passenger side of a parked red vehicle. Officer Brienzo is wearing light-colored pants, a tee-shirt, and a black police vest. Officer Gainer walks to the driver’s side of an unmarked police vehicle. Officer Gainer then approaches the driver ([REDACTED]) of the red vehicle. [REDACTED] hands Officer Brienzo what appears to be a bottle of water. Officer Gainer learns from [REDACTED] that he operates an Uber and is waiting for a pick-up. [REDACTED] asks if he could get his identification, and Officer Gainer gives him permission. Officer Gainer then announces over the radio he has a stop at 7901 Essex and relays it is part of the vice report from earlier. [REDACTED] tells Officer Gainer he does not have his identification on him. Officer Gainer then asks [REDACTED] to step out of the vehicle and learns his name is [REDACTED].

Soon thereafter, Officer Gainer realizes the back-seat passenger ([REDACTED]) has taken off running with Officer Brienzo in pursuit. Seconds later, what sounds like shots can be heard. Officer Gainer runs across the street shouting “10-1.” Officer Gainer then announces over the radio that the suspect is running westbound from the middle of the block on Essex. Officer Gainer relays a description of [REDACTED] to officers who arrived. Officer Gainer then crosses the street to check on the welfare of Officer Brienzo. After a short time, Officer Gainer walks down the block and indicates where he observed [REDACTED] go west. Officer Gainer walks back towards 79th Street and tells civilians standing at the end of the block to leave. Officer Gainer then reports to other officers that [REDACTED] cut west at 7932 Essex Avenue.

Security Camera Video from 7923 S. Phillips Avenue¹⁹ was obtained by the Chicago Police Department during the investigation. Video footage from Camera 8 shows an alley adjacent to the building (presumably between Phillips and Essex avenues).²⁰ The 18-second video begins with a man wearing a white t-shirt and a reflective yellow vest on top of a garage on the other side of the alley. The man jumps off the garage and runs to the right and out of view. Video footage

¹⁵ Attachment 48, at 4:26.

¹⁶ Attachment 48, at 4:31.

¹⁷ Attachment 48, at 4:36.

¹⁸ Attachment 49.

¹⁹ Attachment 43.

²⁰ *Id.*, video named “ch08_20180713213721.” The timestamp at the start of the video is 9:37:17pm.

from Camera 3 appears to show an alley intersecting a street (presumably Phillips Avenue on the south side of the building) and captures the area during [REDACTED] apprehension and arrest.²¹ An officer climbs onto a garbage can in the alley and jumps over the fence. Immediately after he does so, other officers follow him into the yard. A short time later, officers exit the yard with what appears to be a civilian in custody and walk with him to the left in the video and out of view of the camera.

Body Worn Camera (BWC) footage from Officer Dillan Halley's camera²² depict Officer Halley riding in his squad vehicle to the incident location. He exits the squad vehicle and begins to search for [REDACTED]. At 12:20 into the video, a voice is heard yelling to get your hands up, or words to that effect. Officer Halley runs toward the voice and jumps over a wooden fence. Once the officer jumps the fence a sergeant is seen holding [REDACTED] down on the ground and [REDACTED] is placed into handcuffs and escorted out of the yard area. Officers Gainer and Brienzo are brought to area where [REDACTED] is being held and they both identify [REDACTED] as the person who they had the encounter with.

Security Camera Video from 7922 S. Essex Avenue²³ was obtained during the pendency of this investigation. Video "001.avi" depicts an individual (possibly [REDACTED]) running past a front gate located at 7922 S. Essex Avenue at approximately 05:45 on video. The individual appears to run past the gate or front opening of 7922 S. Essex Avenue, then turn around briefly northbound for several feet, before again turning southbound and continuing to run south on Essex Avenue.

Police Observation Device (POD) Camera Video from 7900 S. Essex Avenue²⁴ was also obtained during the pendency of this investigation. The POD video depicts multiple individuals standing on the 7900 South block of Essex Avenue. At 00:17, Officer Brienzo and [REDACTED] come into frame near what appears to be a corner. At 00:22, Officer Gainer runs in front of a white SUV and then continues to run around the vehicle before leaving the camera's view. Shortly afterwards other officers arrived on scene.

c. Physical Evidence²⁵

Illinois State Police Lab Report for Firearms for RD #JB348742²⁶ documents Officer Brienzo's weapon²⁷ was received operable and test fired. Nine Winchester 9 mm Luger +P cartridge cases that were recovered were determined to have been fired from Officer Brienzo's

²¹ *Id.*, video named "ch03_20180713214908" beginning at 5:01. The timestamp at this point of the video is 9:54:09pm.

²² Attachment 97.

²³ Attachment 42. There is not a date or time stamp embedded on the video. However, the police report regarding the recovery of this video (Att. 26), described obtaining video from "900-940." Since this incident occurred at 9:36pm and the video depicts a scene at night, COPA presumes that the time listed in the report was a mistake and meant to be 2100-2140. Any offset of the time of the security DVR could not be determined.

²⁴ Attachment 41.

²⁵ The Illinois State Police, Division of Forensic Services also produced laboratory reports for the testing of cannabis that was recovered from [REDACTED] (Attachment 96) and comparing firearm evidence recovered in this case to other, unrelated investigations (Attachment 94). Those tests and reports are not material to this investigation.

²⁶ Attachment 24.

²⁷ Attachment 18, p. 3.

weapon. Five unfired bullets, Winchester 9 mm Luger +P, from Officer Brienzo's weapon, were examined for caliber and type. Six additional fired cartridge cases (three Hornady cartridge cases and three CCI 9 cartridge cases)²⁸ were tested, and none were fired from Officer Brienzo's weapon. However, all six were fired from the same weapon.²⁹ There was also one fired bullet fragment that could not be identified or eliminated from being fired from Officers Brienzo's weapon.

Illinois State Police Lab Report for Latent Fingerprints for RD #JB348742³⁰ documents a black Hi-Point handgun and magazine were tested for prints but did not reveal latent impressions suitable for comparison.

Illinois State Police Lab Report for Firearms for RD #JB348742³¹ documents a Hi-Point, Model C9, 9 mm Luger caliber semiautomatic pistol and magazine were tested. The weapon was received inoperable and rendered operable and test fired. The fired cartridge cases recovered from the sidewalk and parkway in front of 7918 and 7922 S. Essex³² were fired from the Hi-Point handgun.

Illinois State Police Lab Report for DNA for RD #JB348742³³ documents swabs were taken from the weapon inventoried under #14216677³⁴ and a buccal standard was taken from [REDACTED]. ISP determined that there were at least 3 contributors to the DNA on the weapon and [REDACTED] cannot be excluded as one of those contributors.

Illinois State Police Lab Report for Microscopy Trace for RD #JB348742³⁵ documents that an Illinois State Police SEM/GSR³⁶ evidence collection kit was administered to Randle [REDACTED]. Samples were taken from [REDACTED] right and left back hands. The results indicated that [REDACTED] may not have discharged a firearm with either hand and if he did discharge a firearm, the particles were not deposited, were removed by activity or were not detected by the procedure.

d. Documentary Evidence

A TRR completed by Officer Brienzo³⁷ documents [REDACTED] fled, was an imminent threat of battery, and used force likely to cause death or great bodily harm. The document indicates [REDACTED] was armed with a semi-auto pistol and discharged his firearm at the officer. The TRR further documents Officer Brienzo responded in defense of self and a Department member and returned fire from his firearm with thirteen shots.

²⁸ Attachment 18, p. 11 (Inventory No. 14216762).

²⁹ These bullets were later determined to be fired from the Hi-Point weapon believed to be in the possession and control of [REDACTED]. See attachment 83.

³⁰ Attachment 80.

³¹ Attachment 83.

³² Attachment 18, p. 11 (Inventory No. 14216762). These fired cartridge cases were also referenced in the lab report dated August 17, 2018, as Exhibits 17 – 20 (Attachment 24).

³³ Attachment 92.

³⁴ The weapon inventoried under 14216677 was the Hi-Point, model C9, 9mm Luger that was believed to be possessed by [REDACTED]

³⁵ Attachment 93.

³⁶ SEM is scanning electron microscopy; GSR is gunshot residue.

³⁷ Attachment 82.

A TRR completed by Officer Gainer³⁸ documents █████ fled, was an imminent threat of battery with a weapon, and used force likely to cause death or great bodily harm. The TRR further documents █████ discharged his firearm at the officer.

An Arrest Report for █████³⁹ documents █████ was arrested on July 13, 2018 at 9:57 p.m. at the location of 7943 S. Phillips Ave. █████ was identified by officers as the person who fired a handgun in their direction, knowing them to be officers acting in their official capacity.

Officer Brienzo's breath alcohol concentration (BAC) was .000 when he submitted to a breathalyzer test on July 14, 2018, at 1:27 a.m.⁴⁰ On July 14, 2018, at 1:05 a.m., Officer Brienzo was also given a drug test and he tested negative for the drugs tested.⁴¹

A Detective Case Supplementary Report for RD #JB348742⁴² documents that the incident occurred at 7914 S. Essex Avenue on July 13, 2018 at 9:36 p.m. The offender is identified as █████, and his gun is listed as a Hi-Point, Model C9, 9mm semi-auto blue steel handgun. The weapon was found in slide lock⁴³ in between the two fences behind 7932 and 7936 S. Essex Avenue.

On July 14, 2018, Evidence Technician Leflore recovered Officer Brienzo's service weapon at Area South Detective Division. ET Leflore recovered a Glock 17, Gen-4, serial #TKF916, 9mm, semi-auto. There was one Winchester 9mm Luger round in the chamber. The weapon had a 17-shot capacity magazine, which was loaded with 4 live Winchester 9mm Luger rounds.

This report further summarized interviews conducted shortly after the incident by Detectives Lorenzo Sandoval #20027 and Brian Cunningham #21419 in the course of the criminal investigation against █████ by the Department. The summaries of the interviews that are material to this investigation are as follows.⁴⁴

Officer Brienzo was interviewed by Detectives Sandoval and Cunningham shortly after the incident. Officer Brienzo's interview was materially consistent with his COPA interview. Officer Brienzo added that he noticed █████ acting nervous and, in a manner, consistent with █████ trying to conceal an object. According to Officer Brienzo, █████ was fidgeting in his seat and sitting in a manner with his legs over the seat belt. Officer Brienzo requested █████ to exit the vehicle.

³⁸ Attachment 11.

³⁹ Attachment 6.

⁴⁰ Attachment 16.

⁴¹ Attachment 17.

⁴² Attachment 79.

⁴³ Slide lock is a function on a semi-automatic handgun that visually indicates when a handgun has expended all loaded ammunition.

⁴⁴ The interviews by detectives included those of █████ and █████. Both of those were video and audio recorded and obtained by COPA. Those statements have been summarized in the interview section (Section V(a) above).

As [REDACTED] exited the vehicle, he made a motion to put his hands on the vehicle. [REDACTED] then ran southbound toward the west sidewalk of Essex Avenue. Officer Brienzo immediately pursued [REDACTED]. [REDACTED] ran across the south alley of 79th Street at approximately 7914 S. Essex Avenue. Officer Brienzo observed [REDACTED] reach his right hand toward his waistband area. [REDACTED] subsequently produced a handgun and fired the handgun multiple times in the direction of Officer Brienzo. Officer Brienzo also observed muzzle flash emitting from the handgun. Officer Brienzo, fearing for the safety of himself and his partner, returned fire in the direction of [REDACTED]. Officer Brienzo subsequently took cover behind a tree on the east side of Essex Avenue.

Officer Gainer was interviewed by Detectives Sandoval and Cunningham shortly after the incident. Officer Gainer's interview was materially consistent with his COPA statement. He added that he also observed muzzle flash from the firearm discharged by [REDACTED].

Sergeant Terrence Patcher #2063 was interviewed by Detectives Sandoval and Cunningham shortly after the incident. He was working Beat 4470 when he responded to a police radio broadcast of a "10-1(police officer in need of assistance)"⁴⁵ in the 004th District. Sgt. Pratscher had information the offender fled toward the area of 78th / 79th and Phillips Avenue. Sgt. Pratscher responded to the area, and during the search for the wanted individual, he observed a construction vest and a black "doo-rag" on the pavement at 7925 S. Phillips Avenue. Sgt. Pratscher subsequently searched the rear yard at 7943 S. Phillips Avenue, where he discovered a black male wearing no shirt hiding behind an air conditioning unit. Sgt. Pratscher detained the individual, now known to be [REDACTED]. Sgt. Pratscher asked [REDACTED] where he discarded the handgun. [REDACTED] pointed out where he jumped along the garage roofs and pointed to the rear yard where he approximated the handgun would be located. A show-up was conducted and both Officers Brienzo and Gainer identified [REDACTED] as the individual who discharged his weapon at them.

Officer Joseph Carroll #11252 was interviewed by Detectives Sandoval and Cunningham shortly after the incident. Officer Carroll was present when Officer Jeremy Snyder #6881 and his canine located [REDACTED] gun between the two fences at 7932 S. Essex Avenue and 7936 S. Essex.⁴⁶

VI. LEGAL STANDARD

A. Use of Force

CPD policy states that the "Department's highest priority is the sanctity of life."⁴⁷ Department members are expected to act with the utmost regard for preserving human life and must comply with CPD use of force directives. CPD's policy in place on the date 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.⁴⁸ A Department member's use of force must be "objectively reasonable,

⁴⁵ Attachment 79, p. 16.

⁴⁶ Officer Snyder also documented the discovery of the gun in a supplemental report (Attachment 81, p. 72).

⁴⁷ G03-02(II)(A) (hereinafter the "Use of Force Order"); *see also* G03-02-01(II)(A).

⁴⁸ G03-02(II)(D).

necessary, and proportional”⁴⁹ Factors to be considered in assessing the reasonableness of force include, but are not limited to, (1) whether the subject was posing an imminent threat to the officer or others; (2) the risk of harm, level of threat or resistance presented by the subject; (3) the subject’s proximity or access to weapons; (4) the severity of the crime at issue; and (5) whether the subject is actively resisting arrest or attempting to evade arrest by flight.⁵⁰ CPD policy and COPA recognize 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.”⁵¹

The Force Options directive divides subjects into categories based upon the amount of force the subject is using and provides for what types of force officers are permitted to use against those subjects. These categories are (1) cooperative subjects who are compliant without the need for force; (2) passive resistors who fail to comply, via non-movement, with verbal or other direction; (3) active resistors who attempt to create distance between themselves and an officers’ reach with the intent to avoid physical control and/or defeat arrest; and (4) assailants who use or threaten the use of force which is likely to cause physical injury.⁵²

To reduce or avoid the need for use of force, CPD policy directs members to use de-escalation techniques and “Principles of Force Mitigation” when safe and feasible under the circumstances.⁵³ These concepts include techniques such as:

- “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.⁵⁴

When employing these techniques, CPD members are required to continually assess the situation and modify their use of force in ways that ensure officer safety as circumstances develop.⁵⁵

⁴⁹ G03-02(III)(B); *see also* G03-02-01(II)(C).

⁵⁰ G03-02(III)(B)(1) and *Graham v. Connor*, 490 U.S. 386, 396 (1989).

⁵¹ G03-02(II)(D); *see also* G03-02-01(II)(D).

⁵² G03-02-01(IV).

⁵³ G03-02(III)(B)(4); *see also* G03-02-01(III).

⁵⁴ G03-02-01(III).

⁵⁵ G03-02(III)(B)(4); *see also* G03-02-01(II)(B) and (F).

B. Use of Deadly Force

The Department's "highest priority is the sanctity of human life."⁵⁶ Discharging a firearm is deadly force under Department policy.⁵⁷ Department policy dictates that "[t]he use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person."⁵⁸ Thus, a Department member may use deadly force in only two situations. First, deadly force may be used to prevent death or great bodily harm from an imminent threat posed to the sworn member or another person. Second, deadly force may be used 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.⁵⁹

A threat is imminent when it is objectively reasonable to believe that:

- a. the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; and
- b. 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; and
- c. the subject has the opportunity and ability to cause death or great bodily harm.⁶⁰

C. Standard of Proof

The applicable standard of proof is a preponderance of the evidence. A preponderance of evidence can be described as evidence indicating that it is more likely than not that the conduct occurred and violated Department policy. *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). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

VII. LEGAL ANALYSIS

Accordingly, the relevant question is whether a reasonable officer in Officer Brienzo's position would have believed the use of deadly force was necessary to prevent death or great bodily harm. COPA makes its factual and legal determinations using a preponderance of the evidence standard.

██████ presented an imminent risk of death or great bodily harm to Officer Brienzo when he pointed his firearm and fired at or in the direction of Officer Brienzo. Under the General Order 03-02, a Department member may use deadly force only when such force is necessary to prevent death or great bodily harm from an imminent threat posed to the sworn member or to another person. In the present case, Officer Brienzo responded to a vice/disturbance

⁵⁶ G03-02(II)(A); *see also* G03-02-01(II)(A).

⁵⁷ G03-02(III)(C)(1).

⁵⁸ G03-02(III)(C)(3).

⁵⁹ *Id.*

⁶⁰ G03-02(III)(C)(2).

call at 79th Street and Essex Avenue. While in the area he noticed a parked car with two occupants inside. Officer Brienzo and his partner approached the vehicle in order to ask the occupants if they had any information in relation to the disturbance call. When Officer Brienzo spoke with the back-seat passenger, ██████ he appeared nervous. Officer Brienzo asked him to exit the vehicle, because he was not wearing a seat belt.

When ██████ exited the vehicle, he fled southbound on Essex Avenue. Officer Brienzo pursued ██████. As Officer Brienzo pursued ██████, ██████ pulled a firearm from his waistband area, turned around, and fired the weapon at least six times in the direction of Officer Brienzo. After being fired upon, Officer Brienzo returned fire. Officer Brienzo fired his weapon thirteen times towards ██████ in rapid succession. One final discharge from Officer Brienzo came just seconds later, after he crossed Essex Avenue and began to take cover behind a tree. Nonetheless, both body-worn camera video and the statement of Officer Brienzo establish that ██████ turned around in the direction of Officer Brienzo and fired the firearm. ██████ himself corroborated this sequence in his statement to the detectives, albeit stating that he discharged his firearm into the air. Believing ██████ may again fire the weapon at the officers, while Officer Gainer was also in the line of ██████ fire, Officer Brienzo fired a final time towards the direction of ██████ before ██████ was able to temporarily escape. ██████ continued to flee and was apprehended a short time later by assisting units after he discarded some of his clothing and his firearm. Much of the incident was recorded on Officer Brienzo's body-worn camera, and other recovered video.

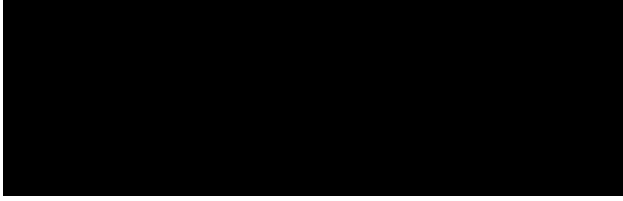
Based on the officers' interviews, the video evidence and ██████'s own statements of possessing a firearm, turning towards Officer Brienzo and firing a firearm, it is reasonable to believe an officer with similar experience and training would have used deadly force to stop the threat. Both Officers Brienzo and Gainer gave creditable statements to COPA regarding the incident. Both officers account of events are corroborated by body-worn camera footage and ██████. ██████ also admitted to detectives that he had a firearm on the date of the incident and that he fired that firearm. While ██████ stated that he fired the weapon in the air, he can be seen turning around toward the direction of Officer Brienzo as he fired the firearm. The use of deadly force may be reasonable even if ██████ had not fired first.⁶¹ COPA finds all shots fired by Officer Brienzo were objectively reasonable. ██████ posed an imminent risk of death or great bodily harm when he pointed and fired a gun in the officers' direction.

VIII. CONCLUSION

Based on the analysis set forth above, the evidence is clear that Officer Brienzo's belief that ██████ presented an imminent threat was objectively reasonable, which permitted the officer to use deadly force against ██████. Moreover, COPA finds an officer with similar training and experience as Officer Brienzo would reasonably believe ██████ posed an immediate threat of death or serious bodily harm, when he pointed a gun and fired it at the officers. Considering the totality of the circumstances confronting Officer Brienzo, COPA finds the use of deadly force objectively reasonable and consistent with Chicago Police Department's policies, Illinois law, and United States Constitution. Accordingly, COPA finds that Officer Brienzo's actions were objectively reasonable and **Within Department Policy**.

⁶¹ See: *Lozano v. City of Austin*, 2010 U.S. Dist. LEXIS 78611, finding that the Fourth Amendment does not require police officers to wait for armed suspects to fire the first shot before using deadly force.

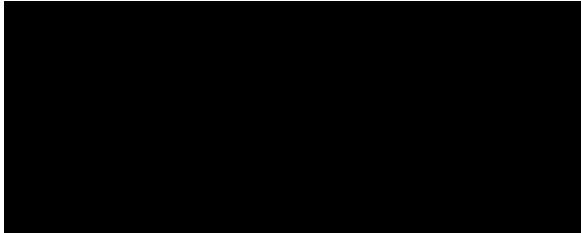
Approved:



6-2-2021

Angela Hearts-Glass
Deputy Chief Investigator

Date



6-2-2021

Andrea Kersten
Interim Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad#:	5
Investigator:	Chenese Brown
Supervising Investigator:	Anthony Becknek / Erica Sangster / Loren Seidner
Deputy Chief Administrator:	Angela Hearts-Glass
Attorney	Christopher Reed