

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	January 1, 2017
Time of Incident:	2:14 am
Location of Incident:	12504 S. State Street
Date of IPRA Notification:	January 1, 2017
Time of IPRA Notification:	3:13 am

On January 1, 2017, 5th District officers, who were working in a three-vehicle mission team due to the New Year's Eve holiday, heard shots fired when they were in the vicinity of 118th Street and Lafayette Ave. As the officers drove towards the location where the shots were heard, 120th and LaSalle Streets, officers working Beat 562A (Officers Wilmer Hernandez and Joseph Zahradnik) observed a white Hyundai Santa Fe SUV ("the SUV") driving at a high rate of speed and commit a traffic violation. The officers pulled the vehicle over at 120th and State Street. As the officers from Beats 562B (Sergeant John Grib and Officers Gregory Bogyo and James Cooper) and 562D (Officer Thomas Fennell and Alex Raske) exited their vehicles in order to approach the SUV, the driver, now known to be [REDACTED] drove onto the curb on the west side of the street and drove southbound on the sidewalk. The officers followed in their vehicles. At 125th and State Street, the SUV attempted to re-enter traffic and sideswiped a vehicle that was traveling southbound on State Street.²

The SUV subsequently crashed into a vehicle that was parked on the west side of 125th and State Street, causing the vehicle to push several cars in front of it. The SUV then struck Beat 562D's car before ultimately coming to a rest in the middle of the street, facing eastbound. Officer Fennell exited the driver's side of his vehicle and proceeded towards the front driver's side of the SUV. His partner, Officer Raske, exited the passenger side of their vehicle and proceeded towards the passenger side of the SUV. Officer Raske observed Mr. [REDACTED] reach towards the center console. The officers gave Mr. [REDACTED] repeated verbal commands to show his hands, but he refused to comply.

Officer Raske eventually broke the front passenger window with his flashlight and attempted to grab Mr. [REDACTED] hand. Mr. [REDACTED] pulled away and continued to reach for the center console multiple times. In response, Officer Raske fired his weapon at Mr. [REDACTED] Officer Raske then observed Mr. [REDACTED] move towards the center console again and fired another volley

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

² The three occupants of that vehicle have been identified as [REDACTED] and [REDACTED]

of shots.³ Mr. [REDACTED] was struck by the gunfire and was transported to Christ Hospital for treatment.

II. INVOLVED PARTIES

Involved Officer #1:	RASKE, Alex; Star #11186; Employee ID # [REDACTED]; Date of Appointment: July 2, 2012; Chicago Police Officer; Unit of Assignment: 005 District; DOB: [REDACTED], 1987; male; White
Involved Individual #1:	[REDACTED] DOB: [REDACTED], 1973; male; Black

III. ALLEGATIONS

Officer	Allegation	Finding / Recommendation
Officer Alex Raske	1. It is alleged that on or about January 1, 2017, at approximately 2:14 am, in the vicinity of 12510 S. State Street, Officer Alex Raske discharged his firearm at [REDACTED] in violation of General Order 03-02-03 (Deadly Force), in violation of Rule 6.	Sustained / Separation
	2. It is alleged that on or about January 1, 2017, at approximately 2:14 am, in the vicinity of 12510 S. State Street, Officer Alex Raske fired his weapon in the direction of Officer Gregory Bogyo, in violation of Rules 6 and 10.	Sustained / Separation
	3. It is alleged that on or about January 1, 2017, at approximately 2:14 am, in the vicinity of 12510 S. State Street, Officer Alex Raske fired his weapon in the direction of Officer Thomas Fennell, in violation of Rules 6 and 10.	Sustained / Separation

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 6: Disobedience of an order or directive, whether written or oral.

³ Officers Bogyo and Fennell were at the driver’s door attempting to remove Mr. [REDACTED] from the SUV when Officer Raske fired his weapon at Mr. [REDACTED]

2. Rule 10: Inattention to duty.

General Orders

1. General Order 03-02-03: Deadly Force (effective February 10, 2015 – October 15, 2017)

Federal Laws

1. The Fourth Amendment to the United States Constitution

State Laws

1. 720 ILCS 5/7-5 (1986): Justifiable Use of Force, Exoneration

V. INVESTIGATION⁴

a. Interviews⁵

CIVILIAN INTERVIEWS

In a statement to IPRA on January 2, 2017, ██████████ stated that she, ██████████ ██████████ and ██████████ were driving from a friend's house to drop off Ms. ██████████⁶ Mr. ██████████ was driving Ms. ██████████ silver Chevy HHR. Ms. ██████████ was the front passenger, and Ms. ██████████ was seated in the rear. As they passed 125th Street southbound on State Street, a white SUV sideswiped her vehicle on the passenger side.⁷ At that moment, Mr. ██████████ stopped the vehicle.⁸ Ms. ██████████ saw that the SUV was driving half on the street and half on the sidewalk. The white SUV continued to travel southbound, in a somewhat easterly direction, before it crashed into multiple vehicles parked on the west side of the street and finally rested in the middle of the street.

Approximately one to two minutes later, Ms. ██████████ saw a dark-colored unmarked police SUV appear from behind her vehicle. Once the unmarked SUV passed them, it stopped in the middle of the street near the white SUV. About two to three minutes later, other police vehicles started to arrive from both the north and south directions. Ms. ██████████ explained that she was unable to see what was occurring in front of her because there was a Chevy Impala obstructing her

⁴ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁵ COPA made attempts to interview Mr. ██████████ through his attorneys. Mr. ██████████ was not made available due to his pending criminal case (Attachments 58, 129).

⁶ Attachments 40, 43.

⁷ Ms. ██████████ described the white SUV to be traveling at approximately 40-50 miles per hour when it struck her vehicle.

⁸ Ms. ██████████ explained that Mr. ██████████ stopped the vehicle just south of the stop sign, near the second house on the next block.

view. Ms. [REDACTED] was able to see officers moving towards the white SUV with their guns pointed at it. Ms. [REDACTED] stated that, about three minutes later, she heard approximately six gunshots.⁹ Ms. [REDACTED] described the gunfire to occur in rapid succession, coming from southeast of her vehicle.

An ambulance arrived shortly afterwards and wheeled a person, now known to be Mr. [REDACTED] past Ms. [REDACTED] vehicle. She also spoke to several officers regarding her observations and received an accident report from one of the officers.

In a statement to IPRA on January 2, 2017, [REDACTED] stated that he was driving [REDACTED] Chevy HHR southbound on State Street, heading towards 127th Street.¹⁰ Ms. [REDACTED] was seated in the front passenger seat, and [REDACTED] was seated in the rear. Mr. [REDACTED] had just passed the light at 123rd Street when he saw police lights approximately one and a half blocks behind him. Mr. [REDACTED] explained that, as the dark-colored unmarked police SUV got closer, he attempted to move to the right when a white van “flew” past him and sideswiped the vehicle he was driving. Mr. [REDACTED] stated the vehicle “c[a]me out of nowhere”¹¹ before hitting him. The vehicle then crashed into several parked cars and spun around. The police car, whose lights Mr. [REDACTED] initially saw, passed him right after his car was hit. Mr. [REDACTED] then moved to the right at the corner of 124th Street to assess the damage to his vehicle. At that point, several police cars¹² “converged” on the vehicle. Mr. [REDACTED] was unable to see what was happening because he was in “shock” from getting hit and then seeing the vehicle crash into the other vehicles. Mr. [REDACTED] recalled that approximately five or six officers got out of their vehicles with their weapons in their hands. The officers moved towards the white van, which was located approximately a quarter of the way into the 12500 block of South State Street. Approximately one to two minutes later, Mr. [REDACTED] heard approximately five or six gunshots in rapid succession. Mr. [REDACTED] described the gunshots as coming from the area where the officers converged. After the shooting, Mr. [REDACTED] attempted to move his vehicle closer to the area of incident, but then backed up and stopped by the corner. Officers approached his vehicle and asked if his vehicle had been hit. While still on scene, Mr. [REDACTED] Ms. [REDACTED] and Ms. [REDACTED] gave officers a statement regarding what they witnessed. Mr. [REDACTED] stated that approximately five minutes after the shooting, an ambulance arrived. He remained on scene for approximately one and a half to two hours.

In a statement to IPRA on January 24, 2017, [REDACTED] stated that, on the date of the incident, she was with [REDACTED] and [REDACTED] driving southbound on State Street when they saw police lights behind their vehicle.¹³ Ms. [REDACTED] was seated in the rear passenger seat. Ms. [REDACTED] explained that a white SUV was driving on the sidewalk and sideswiped the passenger side of the vehicle she was in as the SUV attempted to get back into traffic at the intersection. The SUV then hit multiple parked vehicles, eventually pushing a green car into the middle of the street. A police car then hit the SUV. Officers got out of the police car,

⁹ Ms. [REDACTED] was not able to hear if anything was said outside of her vehicle prior to the gunshots, because the radio was turned on. She turned down the volume on the radio in her vehicle right before she heard the gunshots.

¹⁰ Attachments 35, 121.

¹¹ Attachment 121, Page 12, line 15.

¹² Mr. [REDACTED] explained police vehicles arrived from both the north and south directions. Immediately following the crash, Mr. [REDACTED] recalled two other police cars driving right behind the first police vehicle he first saw.

¹³ Attachments 96.

“snatched the door open” and started shooting.¹⁴ Ms. ██████ saw smoke from the shooting and heard approximately six or more consecutive shots. Ms. ██████ stated that the vehicle she was in was approximately 15-20 feet away from where the shooting took place. Several officers and an ambulance arrived on scene after the incident. While still on scene, Ms. ██████ Mr. ██████ and Ms. ██████ spoke to officers about the events they witnessed.

CHICAGO POLICE INTERVIEWS

In a statement to IPRA on January 6, 2017, Chicago Police Officer Wilmer Hernandez, #11216, stated that on the date of incident, he was assigned to Beat 562A with Officer Joseph Zahradnik.¹⁵ Officer Hernandez was dressed in full uniform, driving an unmarked Crown Victoria. Officer Hernandez explained that, due to the holiday, their duties were to make their presence visible by conducting patrol in the area of 115th to 119th from Michigan Avenue to Halsted Street. Officer Hernandez was working with Officers Gregory Bogyo and James Cooper and Sergeant John Grib, who were assigned to Beat 562B and driving an unmarked Ford Interceptor; and with Officers Thomas Fennell and Alex Raske, who were assigned to Beat 562D, driving an unmarked Crown Victoria.

Officer Hernandez heard five gunshots while he was parked in the vicinity of 118th Street and Lafayette Avenue. Officer Hernandez immediately reported the shots over the radio and proceeded to canvass the area near 120th Street and LaSalle Street. As he was turning eastbound on 120th from Wentworth Avenue, Officer Hernandez observed a white vehicle (now known to be the SUV driven by Mr. ██████ driving at a high rate of speed eastbound on 120th Street, ahead of Officer Hernandez’s vehicle. The SUV then rolled past the stop sign at 120th and State Street and made a southbound turn onto State Street, failing to use the turn signal. Officer Hernandez activated his emergency lights in order to curb the vehicle. As the vehicle pulled over at approximately 12020 S. State Street, Officer Hernandez observed Beat 562B pull up behind him and Beat 562D pulled up on the side. Officer Hernandez was attempting to run the SUV’s license plate when the SUV jumped the curb onto the sidewalk on the west side of the street and proceeded to drive southbound. The officers followed, with Beat 562D in the lead and Officer Hernandez approximately one car length behind them. At approximately 125th Street, the SUV attempted to get back into traffic and sideswiped a grey Chrysler PT Cruiser that was attempting to turn westbound onto 125th Street. The SUV then crashed into a parked car on the west side of the street and crashed into Beat 562D.¹⁶

The white SUV came to a rest facing eastbound, and the 562D car rested facing southbound. Officer Hernandez parked his vehicle facing southbound approximately five feet from the SUV’s driver’s side. Once he stopped his vehicle, Officer Hernandez saw the driver of the SUV, now known to be Mr. ██████ open his door. Officer Hernandez exited his own vehicle with his weapon drawn and pointed it at the vehicle. While he was standing near the driver’s side of his vehicle, Officer Hernandez saw Mr. ██████ placing both of his hands near the right side of

¹⁴ Mr. ██████ was not clear what vehicle hit or was hit by Mr. ██████ vehicle. She referred to a “detective” unmarked Chevy and also a marked vehicle.

¹⁵ Attachments 62, 63.

¹⁶ Officer Hernandez estimated that he was at approximately 10 feet from the vehicles (at about the intersection of 125th and State Street) when he observed the collision.

his body. Officer Hernandez saw Officers Fennell and Bogyo approach the SUV while giving Mr. [REDACTED] verbal commands to show his hands. Officer Hernandez also heard Officer Raske giving verbal commands but could only see the top of his head near the passenger side of the SUV. Officer Hernandez subsequently heard four gunshots, which appeared to come from inside of the SUV.¹⁷ Officer Hernandez immediately took cover behind his vehicle. When he got to the rear of his vehicle, he saw Sergeant Grib there as well.

Once the gunfire stopped, Officer Hernandez heard Sergeant Grib use the radio to announce shots fired by the police and request an ambulance. He then saw Officer Bogyo grab Mr. [REDACTED] out of the SUV and place him on the street next to the SUV. Officer Bogyo searched Mr. [REDACTED] and told the other officers that he was not armed. Officer Hernandez then moved his vehicle in order to let the ambulance through.

In a statement to IPRA on January 6, 2017, Chicago Police Officer Joseph Zahradnik, #7965, provided a statement consistent with that of Officer Hernandez, his partner, regarding their assignment and the onset of the incident.¹⁸

Officer Zahradnik added that, once the SUV crashed into other vehicles, Officer Hernandez stopped their vehicle facing south, approximately one car length from Mr. [REDACTED] vehicle. Officer Zahradnik explained that he immediately exited the vehicle with his weapon drawn and was able to see Mr. [REDACTED] sitting in the driver's seat of the SUV. Because Officer Zahradnik was unable to see [REDACTED] hands, he ordered him to show his hands. At that moment, Officer Zahradnik saw Officers Bogyo and Fennell rush towards the driver's side door. Because the officers were in front of him, Officer Zahradnik re-holstered his firearm and moved towards the rear of the SUV to cover the back. Officer Zahradnik saw Officer Raske from the corner of his eye standing on the passenger side of the SUV. He then turned his attention back to Mr. [REDACTED]. At that moment, Officer Zahradnik looked through the rear passenger window¹⁹ and saw Mr. [REDACTED] right arm, from his shoulder to his wrist. Officer Zahradnik could not see Mr. [REDACTED] right hand, but it appeared that he was reaching for something between the driver's seat and the front passenger seat. Officer Zahradnik saw smoke from the airbag deployment and a toolbox that was overturned. After seeing Mr. [REDACTED] reaching for something, almost instantaneously, Officer Zahradnik heard approximately five or six gunshots in continuous succession with no notable breaks. According to Officer Zahradnik, the gunshots sounded as if they were coming from the front passenger side of the SUV.

Once Officer Zahradnik heard the gunshots, he ducked down to get cover. He then drew his weapon because, at that moment, he was not sure who had fired the gunshots. After seeing Officer Raske holding his firearm with both hands and pointing it at the vehicle, Officer Zahradnik realized who had fired the shots. Officer Zahradnik moved to the driver's side of the SUV and saw Mr. [REDACTED] lying on the ground with blood on him and a large pool of blood underneath him. Officer Zahradnik also saw Officers Bogyo and Fennell in the same area. He heard officers on the

¹⁷ Officer Hernandez explained that, for a brief second, he believed he was hit because the gunshots sounded extremely close to him.

¹⁸ Attachments. 71, 72.

¹⁹ Officer Zahradnik stated that the rear passenger window was either rolled down or broken out.

radio reporting the officer-involved shooting and requesting an ambulance. Shortly after that, other officers began to arrive on scene.

In a statement to IPRA on February 2, 2017, Chicago Police Officer Gregory Bogyo, #19101, stated that he worked routine patrol with Officer Cooper and Sergeant Grib as Beat 562B.²⁰ Officer Bogyo was dressed in full uniform, riding in the front passenger seat of an unmarked Ford Explorer. Officer Bogyo explained that they also worked with Officers Fennell and Raske (Beat 562D) and Officers Hernandez and Zahradnik (Beat 562A).

Officer Bogyo and his partners were traveling eastbound near 120th Street when he heard Beat 562A report shots fired over the radio. Beat 562A also reported a white SUV traveling at a high rate of speed going eastbound on 120th Street. Officer Bogyo was traveling a few car lengths behind Beat 562A and could see the SUV. The SUV turned southbound onto State Street. As it did, Beat 562A activated their emergency equipment to curb it. Officer Cooper turned on their emergency equipment and stopped their vehicle behind and to the left of Beat 562A. Officer Bogyo and Sergeant Grib exited their vehicle on the passenger side and started to walk towards the SUV when it drove over the curb and drove southbound on the sidewalk. Officer Bogyo estimated that the SUV was going approximately 45-50 mph at that point. Officer Bogyo and Sergeant Grib returned to their vehicle. At that point, Beat 562D took the lead in following the SUV. Beat 562A was traveling behind Beat 562D and Officer Bogyo's vehicle was in the rear. At about 125th and State Street, the SUV attempted to re-enter traffic, at which point it struck another vehicle that was also traveling southbound on State Street, now known to be Ms. ██████████ HHR. After striking that vehicle, the SUV propelled itself into a car that was parked on the west side of the street. The SUV then spun facing eastbound on State Street and hit Beat 562D. Officer Bogyo described the impact as "very violent."²¹

Officer Cooper stopped their vehicle near the center of the street, and Beat 562A stopped to the east of them, near the intersection. Officer Bogyo exited his vehicle with his weapon drawn and ran to the driver's side of the SUV. According to Officer Bogyo, the driver's door was already opened when he approached. Officer Fennell was standing in the open area between the driver's door and the SUV when Officer Bogyo reached that area. Mr. ██████████ was sitting in the vehicle and was turned towards his right side, reaching for something in the center console or towards the center of the vehicle. Officer Bogyo stood to Officer Fennell's right, next to the pillar that is directly behind the driver's seat. Officer Bogyo re-holstered his firearm because he did not have a clear shot into the vehicle. Officer Bogyo started pulling on Mr. ██████████ in order to get him out of the vehicle while Officer Fennell verbally ordered him to get out of the car. Officer Bogyo could see the left side of Mr. ██████████ body, but his right side was turned towards the center of the vehicle. Officer Bogyo stated that he could feel Mr. ██████████ grabbing for something as the officer was attempting to gain control of him. Officer Bogyo used his left hand to try to grab Mr. ██████████ around the collar area of his shirt, while Mr. ██████████ kept reaching and pulling towards the right. Officer Bogyo tried to give Mr. ██████████ an open hand strike to try to gain compliance but did not make contact. Officer Bogyo then delivered a closed hand strike to Mr. ██████████ face in order to get him out of the vehicle. Officer Bogyo stated that Officer Fennell was assisting him in trying to get Mr. ██████████ out of the vehicle.

²⁰ Attachments 93, 94.

²¹ Attachment 94, page 21, line 27.

At that moment, Officer Bogyo heard four to six shots that appeared to come from inside of the vehicle. Officer Bogyo looked around and no longer saw Officer Fennell, who he assumed took cover. Officer Bogyo continued to pull Mr. ██████ out of the vehicle and onto the ground. At that moment he noticed blood on Mr. ██████ shirt, near his abdomen. Officer Bogyo explained that, as he was taking Mr. ██████ out of the vehicle, his pants were down, and his shirt was raised up, and the officer was able to see his waist. Officer Bogyo did not see a weapon in this area and believed that it may have still been in the vehicle.²² Officer Bogyo recalled Mr. ██████ say something when he was on the ground, but he did not remember what that was. After he heard other officers announce the shooting and call for an ambulance, Officer Bogyo assisted with securing the scene and waited for paramedics to arrive. Officer Bogyo saw Officer Raske come around the SUV from the passenger side and assumed that it was Officer Raske who fired the shots, which Officer Raske later confirmed.

In a statement to IPRA on January 25, 2017, Officer James Cooper, #2834, provided an account consistent with that of Officer Bogyo, his partner, regarding their assignment and the onset of the incident.²³

Officer Cooper explained that, after the SUV crashed into other vehicles, its front end was touching the passenger side of Beat 562D, which was facing south. Beat 562A was also facing south, positioned north of the front end of the SUV on the east side of the street. Officer Cooper stopped his vehicle also facing south, approximately eight feet from Beat 562A. As he did, Sergeant Grib and Officer Bogyo opened their doors to exit. After checking to make sure that the police vehicle was secure, Officer Cooper exited and walked in the direction of the SUV. He saw one occupant, now known to be Mr. ██████. He also saw that the back window was blocked by what he described as a “square shadow.”²⁴ Officer Cooper was able to see Mr. ██████ upper body, from his belly button up. As he approached the vehicle, Officer Cooper saw Officers Fennell and Bogyo at the driver’s side door trying to pull Mr. ██████ out of the vehicle, while Officer Raske was by the passenger side door. Officer Cooper explained that Mr. ██████ pulled himself back to the right, refusing to get out of the car. Officer Cooper stated that he heard officers giving Mr. ██████ verbal commands to show his hands and to exit the vehicle, but Mr. ██████ would not comply. Officer Cooper then heard approximately four to six gunshots that appeared to be coming from his left-hand side, where he last saw Officer Raske standing. Officer Cooper took a half step back, drew his firearm and assessed the situation. He then re-holstered his weapon and subsequently saw Officers Fennell and Bogyo pull Mr. ██████ out of the vehicle. Officer Cooper assisted by moving the seatbelt off Mr. ██████ shoulder so they could get him out of the vehicle. The officers then placed Mr. ██████ on the ground. Mr. ██████ mumbled something at that point, but Officer Cooper was unable to hear what he said. Officer Cooper also observed blood on Mr. ██████ shirt but did not see the actual injuries he sustained.

²² Officer Bogyo recalled seeing tools thrown about the vehicle. He was later told by detectives that a firearm was not found in the vehicle.

²³ Attachments 90, 91.

²⁴ Attachment 91, page 30, lines 25-26. Officer Cooper later saw that the shadow was a large tool box that had tipped over, spilling tools throughout the vehicle.

After the shooting, Officer Cooper heard other officers use their radios to report shots fired by the police and request an ambulance. He then walked around to the passenger side of the vehicle and observed the front passenger window was broken. It was at this moment that Officer Cooper realized Officer Raske fired the gunshots. Officer Cooper also saw that the shadow he had seen earlier was a tool box that spilled tools throughout the vehicle and onto the street. According to Officer Cooper, he was unaware of any weapons being located inside of the vehicle. He stated that the tools thrown about the vehicle were the only objects he saw that could have been used as weapons.

In a statement to IPRA on January 6, 2017, Sergeant John Grib, #2437, reported the same account of their assignment and the onset of the incident as Officers Bogyo and Cooper did. Sergeant Grib was the rear passenger in their vehicle.²⁵

After the SUV crashed into the other vehicles and their own vehicle came to a stop near the police vehicle for Beat 562A, Sergeant Grib exited his vehicle. Sergeant Grib heard a lot of screaming²⁶ as he was assessing the scene²⁷ and, very shortly thereafter, heard shots ring out. Sergeant Grib immediately took cover at the rear of the police vehicle for Beat 562A. Sergeant Grib reported hearing approximately five to six gunshots coming from the direction of the white SUV. After the shots stopped, Sergeant Grib walked towards the SUV, asked the officers who shot, and checked to see where the officers were located. One of the officers, possibly Officer Zahradnik, informed him that Officer Raske was the person who fired his weapon. Sergeant Grib also recalled seeing Officers Fennell and Bogyo near the driver's side of the SUV taking Mr. ██████ out of the vehicle. The officers placed Mr. ██████ on the ground, and Sergeant Grib heard someone calling for an ambulance. Sergeant Grib also heard Mr. ██████ say words to the effect of, "You shot me for no reason. I aint got shit;"²⁸ "You motherfuckers shot the shit outta me;"²⁹ and "You shot me for nothing."³⁰ Sergeant Grib recalled seeing blood on Mr. ██████ clothing and a pool of blood near his body.

Sergeant Grib recalled seeing Officer Raske near the driver's side of the white SUV. Officer Raske appeared to be stoic and in shock. Officer Raske confirmed to Sergeant Grib that he fired his weapon and showed him cuts on his hand that he sustained from breaking the passenger window of the SUV. Sergeant Grib reported that Officer Raske informed him that Mr. ██████ kept reaching for something between the seats, and because Officer Fennell was struggling with Mr. ██████ Officer Raske thought he was reaching for a gun. In fear that Mr. ██████ was going to shoot Officer Fennell, Officer Raske fired at him. Sergeant Grib later learned that no firearms were recovered from Mr. ██████ vehicle.

In a statement to IPRA on January 6, 2017, Officer Thomas Fennell, #15220, stated that he was working Beat 562D with Officer Raske, dressed in full uniform.³¹ Officer Fennell was

²⁵ Attachments 68, 69.

²⁶ Sergeant Grib reported hearing "Show me your hands. Show me your hands."

²⁷ Sergeant Grib reported seeing a lot of debris in the street. He also saw a lot of smoke from the deployed airbags of the white SUV.

²⁸ Attachment 69, page 31-32, lines 24, 1.

²⁹ *Id.*, page 33, lines 17-18.

³⁰ *Id.*, page 33, lines 18-19.

³¹ Attachments 65, 66.

the driver of an unmarked Crown Victoria. He provided the same information about the assignment they shared with Beats 562A and 562B and the start of the incident as the other officers did.

Officer Fennell explained that, during the initial attempted traffic stop just south of 120th Street on State Street, he pulled up next to the SUV, which was stopped on the west side of the street. As he was about to exit his vehicle, he heard the vehicle's motor rev. The driver, now known to be Mr. ██████ then made a turn onto the sidewalk and continued southbound on State Street. Officer Fennell followed the SUV in the southbound lane of traffic, maintaining a visual on it as it traveled on the sidewalk. According to Officer Fennell, Officer Raske used the radio to notify OEMC of the incident.

Officer Fennell observed the SUV attempt to veer back into traffic in the vicinity of 125th and State Streets. The SUV struck a vehicle that was parked on the west side of the street, just south of the intersection. Officer Fennell moved into the northbound lanes of traffic. Officer Fennell then saw the SUV appear to go airborne and knew that a collision was imminent between the SUV and his vehicle. Officer Fennell slammed on the brakes and assessed if he could avoid a collision but saw that there were vehicles parked to his left. The SUV subsequently struck their vehicle. Officer Fennell described the position of the vehicles as his vehicle facing southbound in the northbound lanes and the front of the SUV resting at about the rear passenger side door of his vehicle, near the trunk area, facing east.

Officers Fennell and Raske exited their vehicle. Officer Fennell observed Officer Bogyo running towards the driver's side of the SUV. Officer Fennell also proceeded towards the driver's side of the SUV. He saw the driver's door open, at which point he drew his weapon and said, "Police. Show me your hands."³² Officer Fennell explained that as he stood inside the door frame of the driver's side door, he observed a male driver, now known to be Mr. ██████ leaning towards the passenger side of the vehicle. According to Officer Fennell, he could not see the right side of Mr. ██████ body. The engine was still running, the airbags had deployed, and a lot of smoke emanating from the vehicle was starting to fill the area. Both Officer Fennell and Officer Bogyo were inside the door opening giving Mr. ██████ verbal commands. As this was occurring, Officer Fennell heard Officer Raske break the front passenger side window.³³ Officer Fennell heard Officer Raske say, "Police. Let me see your hands."³⁴

Officer Fennell explained that Mr. ██████ continued to disobey their commands and reached further into the passenger side of the vehicle. Officer Fennell observed Officer Bogyo attempt to grab Mr. ██████ hand, but he pulled away from the officer. Officer Fennell holstered his weapon and was attempting to pull Mr. ██████ out of the vehicle when he heard approximately seven to eight gunshots in rapid succession, with a possible pause in between shots. Officer Fennell stated that he immediately took cover because he was unsure what was happening or exactly where the shots were coming from, but he believed they were coming from inside the SUV. Once the gunfire ceased, Officer Bogyo moved back towards the driver's side door and pulled Mr. ██████ out of the vehicle. Officer Fennell observed Mr. ██████ on the ground bleeding. At this

³² Attachment 66, page 25, line 2.

³³ Officer Fennell later learned that Officer Raske broke the window with his flashlight.

³⁴ Attachment 66, page 28, line 16.

point, Officer Fennell called for an ambulance. Officer Raske came around the rear of the SUV from the passenger side of the vehicle and used his radio to announce shots fired by the police. Officer Fennell assumed Officer Raske was the shooter, which Officer Raske later confirmed.

Officer Fennell stated that he sustained multiple injuries from the vehicle collision and was transported by ambulance to the hospital, along with Officer Raske, for medical attention. Upon his release, he returned to the scene to do a walk-through with the street deputy. Officer Fennell later learned that, although a firearm was not found, several tools were recovered from the vehicle.

In a statement to COPA on February 2, 2018, Officer Alex Raske, #11186 stated that he was assigned to Beat 562D, working with Officer Fennell, dressed in full uniform.³⁵ Officer Raske, who was the passenger officer of their vehicle, provided essentially the same account of their assignment and the start of the incident as Officer Fennell did.

In the vicinity of 120th and State Streets, Officer Raske heard approximately five to six gunshots. Beat 562A reported shots fired over the radio. Officer Raske observed a white SUV traveling off of 120th and State Street, traveling at a high rate of speed. Beat 562A followed the SUV and conducted a traffic stop on the vehicle. The vehicle stopped between 120th to 121st Streets on the west side of State Street facing southbound. Officer Fennell positioned their vehicle on the driver's side of the SUV. Officer Raske exited their vehicle and shined his flashlight on the driver's face, now known as Mr. [REDACTED]. Officer Raske was able to see that Mr. [REDACTED] was the sole occupant of the vehicle.

According to Officer Raske, he announced "Chicago Police" to which Mr. [REDACTED] responded by shaking his head no. At that moment, Officer Raske heard the acceleration of the SUV's engine and saw Mr. [REDACTED] drive his vehicle onto the curb and continue driving southbound on the sidewalk. Officer Raske re-entered his vehicle and reported over the radio that the SUV had fled southbound on the sidewalk. Officer Raske stated that he used his vehicle's flood light to obtain an accurate description of the license plate.

As they were traveling southbound on State Street, Officer Raske saw Mr. [REDACTED] attempt to open the door multiple times, leading Officer Raske to believe that he is going to attempt to exit the SUV and flee on foot. Officer Raske stated that there was a civilian vehicle also traveling southbound in his lane of traffic. At approximately 124th or 125th and State Street, Mr. [REDACTED] attempted to re-enter traffic, struck the civilian vehicle, then struck a vehicle that was parked on the west side of the street. Officer Fennell attempted to avoid a collision by moving into the northbound lanes. Mr. [REDACTED] SUV subsequently went airborne and then struck the front passenger side of Officer Raske's vehicle. Mr. [REDACTED] SUV came to a stop facing eastbound.

Officer Raske and Officer Fennell exited their vehicle. Officer Raske approached Mr. [REDACTED] passenger side door. Officer Raske drew his weapon when he exited his vehicle. According to Officer Raske, he heard other officers shouting, "Chicago Police. Chicago Police."³⁶ Officer Raske observed the inside of Mr. [REDACTED] vehicle to be smoky from the airbag deployment but he was able to see Mr. [REDACTED] moving around. Officer Raske could see Mr.

³⁵ Attachments 108, 109.

³⁶ Attachment 109, page 33, lines 19-20.

█████ flailing his arms and fighting³⁷ with Officers Fennell and Bogyo at the driver's side door, refusing to comply with the officers' commands. Officer Raske then broke the front passenger window with his flashlight, which was attached to his firearm, and ordered Mr. █████ to put his hands up and show his hands.

Once the window was broken, Officer Raske was able to see more clearly inside of the vehicle as the smoke began to clear out. According to Officer Raske, he was then able to see Mr. █████ full body and saw Officers Fennell and Bogyo trying to extract Mr. █████ out of the vehicle.³⁸ Mr. █████ hands were initially on his left side, close to Officers Fennell and Bogyo. Mr. █████ then pushed away from those officers and immediately started to dig in the center console and underneath the passenger seat with his right hand. Officer Raske grabbed Mr. █████ right hand, but Mr. █████ immediately pulled his hand towards his body. According to Officer Raske, Mr. █████ again pushed Officers Fennell and Bogyo away from him and moved towards the passenger seat/center console area. Officer Raske reached for Mr. █████ hand again, and again Mr. █████ pulled away from him. Officer Raske stated that after the third time this happened, Mr. █████ gave him a look that Officer Raske described as "a look of distain [sic] hatred and most intense look I've ever had someone give me my entire life."³⁹ Mr. █████ then started to reach for the center console for the third time.

Officer Raske stated that he thought, "Man, this guy's gonna kill me."⁴⁰ He thought that Mr. █████ was going to grab a gun and either kill him or Officer Fennell. Officer Raske repeatedly told Mr. █████ to show his hands. Officer Raske explained that he could not grab Mr. █████ hand anymore because Mr. █████ was "digging too deep."⁴¹ At that moment, Officer Raske discharged his firearm four to five times. Given that Officers Bogyo and Fennell were still at the driver's side door, Officer Raske explained that he angled the barrel down towards the driver's seat, towards Mr. █████ hip area. Officer Raske only had a "glimpse" of Officer Fennell for a "mere second" standing in the open driver's side doorway before he fired his weapon.⁴² He knew Officer Bogyo was in the same area but only saw his face. When asked, Officer Raske said that he did not see the other officers the entire time he fired this first volley of shots because he was not focused on them. Once Mr. █████ stopped reaching, Officer Raske stopped firing. Shortly after, Mr. █████ reached back towards the center console, under the passenger seat, and started digging in the same area. Officer Raske told Mr. █████ to stop, which he did not do. Officer Raske re-engaged and fired another four to five rounds. Officer Raske did not know where Officers Fennell and Bogyo were at this point. Mr. █████ stopped reaching and moved his arm to his body. Officers Fennell and Bogyo immediately extracted Mr. █████ from the vehicle.

Officer Raske walked around the vehicle to make sure his partners were okay. After confirming to Sergeant Grib that he fired his weapon, Officer Raske used his radio to call for an

³⁷ Officer Raske was repeatedly asked what Mr. █████ was doing to fight with the officers. The only description he could provide was that Mr. █████ was "flailing his arms." (Attachment 109, page 36, line 19)

³⁸ When asked by COPA if Mr. █████ was wearing his seatbelt, Officer Raske stated that he was not concentrated on that, but assumed that he was wearing a seatbelt.

³⁹ Attachment 109, page 46, lines 14-15.

⁴⁰ *Id.*, page 46, line 19.

⁴¹ *Id.*, page 47, line 2.

⁴² *Id.*, page 55, line 8.

ambulance and report shots fired by the police. When asked if he ever saw any weapons prior to discharging his firearm, Officer Raske stated that he did not see anything inside of the vehicle other than tools thrown about the vehicle. When asked if the OC spray and baton he carried during this incident were options to use against Mr. ██████ Officer Raske said that they were not because Mr. ██████ was “fast and intense.”⁴³ In explaining why he discharged his weapon at Mr. ██████ Officer Raske said he believed Mr. ██████ was reaching for a weapon “based off totality of the circumstances.”⁴⁴ He further described Mr. ██████ refusal to stop reaching and to show his hands, which led Officer Raske to fear receiving “immediate battering [*sic*] or death.”⁴⁵

b. Digital Evidence⁴⁶

The Office of Emergency Management and Communication (OEMC) Event Queries⁴⁷ and police radio transmissions⁴⁸ document Beat 562A reported hearing shots fired in the area of 120th and LaSalle Streets at approximately 2:09 am. Approximately four minutes later, Beat 562D reported over the radio that a white vehicle fleeing southbound at 120th Place and State Street, driving on the sidewalk at a high rate of speed. The officer provided a plate number of ██████. Approximately one minute later, officers announced shots fired by the police at 12502 S. State Street and requested an ambulance for Mr. ██████ They also reported that Mr. ██████ had crashed into another vehicle.

Video footage⁴⁹ from Jessie Owens Community Academy depicts a white SUV traveling southbound on the sidewalk, apparently at a high rate of speed. Three dark-colored unmarked CPD vehicles with their emergency lights activated are observed traveling in the southbound lane of traffic behind the SUV. The video shows the SUV possibly attempting to drive back into the lanes of traffic before leaving the frame.

Evidence Technician (ET) photographs⁵⁰ depict photographs of Officers Raske, Bogyo, and Fennell. Photographs of the scene were taken, which depict the remnants of a vehicle crash. Several vehicles are depicted with damage from the crash. Included is a white SUV with front-end damage and a blue unmarked police vehicle with damage on the passenger side and front bumper. There was a large toolbox in the trunk and rear seat of the SUV with various tools strewn about the interior of the SUV and on the pavement outside of it.

In-car camera video footage from Beat 555⁵¹ depicts the vehicle responding to the scene, traveling southbound. The unit arrives on scene as shots fired by the police is being announced over the radio. Upon arrival, a dark-colored Chevy Impala is observed facing westbound, a dark-

⁴³ *Id.*, page 72, line 3.

⁴⁴ *Id.*, page 81, lines 3-4.

⁴⁵ *Id.*, page 85, lines 15-19. Officer Raske also stated that he had exhausted his options but did not explain what else he had done beyond giving verbal commands and trying to grab Mr. ██████ hand.

⁴⁶ The involved officers did not have body-worn cameras assigned to them at the time of the incident.

⁴⁷ Attachments 29-31.

⁴⁸ Attachments 27, 28.

⁴⁹ Attachment 49. The incident is captured on camera 4 at approximately 2:14 a.m.

⁵⁰ Attachment 76.

⁵¹ Attachment 87. COPA also obtained video footage from Beat 533H (Att. 86). The video captures the vehicle driving and arriving on scene. No substantive information is captured on the video.

colored Crown Victoria is facing southbound in the northbound lane of traffic, and a white SUV is parked in front of the Crown Victoria, facing east. A second dark-colored Crown Victoria is parked in the northbound lane, facing south, near the white SUV. Several officers are depicted on scene, either taking cover or moving towards the SUV. Smoke appears to be emanating from the SUV. An officer appears to pull Mr. ██████ out of the vehicle and place him on the ground.

c. Physical Evidence

The **Chicago Fire Department's (CFD) Ambulance Report**⁵² documents that on January 1, 2017, at 2:20 a.m., Ambulance 5 arrived at 12502 S. State Street. The patient, now known to be Mr. ██████ (listed as "John Doe"), was lying on the ground with multiple gunshot wounds to the right side of his abdomen, chest, and shoulder. It was noted that Mr. ██████ was involved in a motor vehicle accident with the police. Mr. ██████ complained of abdominal pain. The paramedics controlled his bleeding, applied a collar, and put him on a back board. Mr. ██████ would not answer any questions regarding the motor vehicle accident or the gunshot wounds. Mr. ██████ was very hostile to the crew. He yelled at the crew but refused to provide any information. Mr. ██████ was transported to Christ Hospital.

Medical Records from **Advocate Christ Medical Center**⁵³ document that Mr. ██████ was admitted on January 1, 2017 after suffering injuries from a motor vehicle accident and subsequently receiving multiple gunshot wounds after a possible police chase. Mr. ██████ presented with a blood alcohol level of 94 mg/dL and multiple gunshot wounds to the thigh, right chest, right flank, groin, back, right arm, and right elbow. CT scans revealed injuries to the lumbar spine.⁵⁴ On January 28, 2017, Mr. ██████ was transferred to Stroger Hospital for rehabilitation treatment.⁵⁵

The **Crime Scene Processing Report**⁵⁶ documents that ETs were assigned to process the scene of this incident, which consisted of taking photographs and video⁵⁷ of the scene, taking photographs of the evidence that was identified, and taking photographs of Officers Raske, Bogyo, and Fennell. The ETs recovered a total of nine expended cartridge cases: one from the pavement next to the SUV, one from the driver's side front seat, one from the driver's side front floor by the pedal, two from the driver's side floor under the floor mat, one from the front middle console cup holder, two from the driver's side front console near the gear shifter, and one from the area between the passenger side and console. Field measurements were taken, photographs of Mr. ██████ were taken at the hospital, and ETs recovered and inventoried the evidence under RD #JA-100125. The ETs also created a drawing (plat) of the scene.⁵⁸

Officer Raske's **firearm was recovered and processed by CPD Evidence Technician Paul Presnell** in the presence of IPRA personnel.⁵⁹ During the processing of his weapon, it was

⁵² Attachment 81.

⁵³ Attachments 117-119.

⁵⁴ Attachment 118, page 211.

⁵⁵ *Id.*, page 384.

⁵⁶ Attachment 120.

⁵⁷ Attachment 75.

⁵⁸ Attachment 110.

⁵⁹ Attachment 24.

determined that Officer Raske's Glock, model 17, 9mm semiautomatic pistol contained one live round in the chamber and eight live rounds in the magazine. Officer Raske's firearm had a capacity of 17 live rounds plus one in the chamber.

The **Illinois State Police (ISP) Laboratory Report**⁶⁰ documents the examination of Officer Raske's firearm. Officer Raske's firearm was test fired and determined to be operable. The firearm has rifling characteristics of six polygonal lands and grooves with a right-hand twist. The nine cartridge cases recovered on scene were determined to have been fired from Officer Raske's Glock, model 17 Gen 4, Luger caliber, semi-automatic pistol.

d. Documentary Evidence

The **IPRA Preliminary Report**,⁶¹ the **CPD's Major Incident Notification (MIN) Report**,⁶² and the **Original Case Incident Report**⁶³ contain information identified and obtained in the preliminary stages of the investigation. The reports contain information consistent with information gathered throughout the investigation.

According to the **CPD Arrest Report**,⁶⁴ Mr. ██████ was observed driving eastbound, failing to use his turn signal when turning and failing to stop at a stop sign at the intersection of 120th and State Streets. Officers activated their emergency lights and attempted to curb Mr. ██████ vehicle. Mr. ██████ pulled the vehicle to the side of the road and then drove the vehicle onto the west sidewalk of State Street and proceeded to drive south on the sidewalk at a high rate of speed. At the intersection of 125th and State Streets, Mr. ██████ attempted to re-enter traffic, striking a vehicle in traffic. Mr. ██████ lost control and struck a parked vehicle before crashing. Mr. ██████ refused to comply with Officer Fennell's orders to exit the vehicle and instead stiffened his body while reaching towards his right side, thereby placing the officers in fear of a battery. Mr. ██████ was taken into custody and transported to Christ Hospital by CFD ambulance 5 for injuries he sustained from the incident. He was charged with DUI,⁶⁵ three counts of Aggravated Assault to Peace Officer, Issuance of a Warrant, Aggravated Fleeing, and traffic violations.⁶⁶

The **Tactical Response Report (TRR)**⁶⁷ completed by **Officer Raske** documents that Mr. ██████ did not follow verbal direction, pulled away, was an imminent threat of battery, and appeared to be reaching for a firearm. According to his TRR, Officer Raske responded by using member presence, verbal commands, and firing his semiautomatic pistol nine times at Mr. ██████

⁶⁰ Attachment 126.

⁶¹ Attachment 4.

⁶² Attachment 55.

⁶³ Attachments 6, 7.

⁶⁴ Attachment 5.

⁶⁵ A full DUI kit had been conducted at Christ Hospital.

⁶⁶ There is no reference to the shooting in this report. As of the date of this report, the charges of Aggravated Fleeing and Eluding are still pending against Mr. ██████

⁶⁷ Attachment 9. Officer Raske made some minor corrections to his TRR during his statement. None of the errors were substantive.

The **Officer Battery Report (OBR)**⁶⁸ completed by **Officer Raske** documents that during a traffic stop/pursuit, Officer Raske perceived Mr. ██████ to reach for a firearm. Officer Raske sustained a non-fatal, minor injury from the incident.

The **Tactical Response Report (TRR)**⁶⁹ completed by **Officer Fennell** documents that Mr. ██████ did not follow verbal direction, pulled away, was an imminent threat of battery, and appeared to be reaching for a firearm. According to his TRR, Officer Fennell responded with member presence and verbal commands.

The **Officer Battery Report (OBR)**⁷⁰ completed by **Officer Fennell** documents that during a traffic stop/pursuit, Officer Fennell perceived Mr. ██████ to reach for a firearm. Officer Fennell sustained a non-fatal, minor injury from the incident.

The **Tactical Response Report (TRR)**⁷¹ completed by **Officer Bogyo** documents that Mr. ██████ did not follow verbal direction, stiffened, pulled away, and was an imminent threat of battery and appeared to be reaching for a firearm. Officer Bogyo responded with member presence, verbal commands, and open and closed hand strikes.

The **Officer Battery Report (OBR)**⁷² completed by **Officer Bogyo** documents that during a traffic stop/pursuit, Officer Bogyo perceived Mr. ██████ to reach for a firearm. Officer Bogyo sustained a non-fatal, minor injury from the incident.

The information documented in the **Detective Supplementary Reports**⁷³ and **General Progress Reports**⁷⁴ is consistent with the evidence gathered throughout COPA's investigation.

VI. LEGAL STANDARD

a. Use of Deadly Force

The applicable Chicago Police Department General Order is General Order 03-02-03, II, A,⁷⁵ which states:

A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or:
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:

⁶⁸ Attachment 10.

⁶⁹ Attachment 11.

⁷⁰ Attachment 12.

⁷¹ Attachment 13.

⁷² Attachment 14.

⁷³ Attachments 8, 99, 100, 101, 102, 124, 125.

⁷⁴ Attachment 116.

⁷⁵ This report references the version of General Order 03-02-03 II in effect on the date of the incident. The Department subsequently amended its use of force directives.

- a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
- b. is attempting to escape by use of a deadly weapon or;
- c. otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) "whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). The analysis of the reasonableness of an officer's actions must be grounded in the perspective of "a reasonable officer on the scene, rather than with the 20/20 vision of hindsight" and "allow for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014) (internal quotations and citation omitted). The analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020; see also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003).

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

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that 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 been 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.

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. *See e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). 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." *Id.* at ¶ 28.

VII. ANALYSIS⁷⁶

a. Material Factual Findings

COPA makes the following material findings of fact.

1. Officer Raske Heard Gunfire While in the Vicinity of 120th Street and State Street but Did Not Have Any Other Information About the Source of the Gunfire

Officer Raske asserted that he heard approximately five to six gunshots while in the vicinity of 120th Street and State Street. Officer Raske's assertion was corroborated by numerous other officers and a contemporaneous report over the radio by Beat 562A (Officers Wilmer Hernandez and Joseph Zahradnik) hearing shots fired in the area of 120th and LaSalle Streets at approximately 2:09 am.

However, the evidence demonstrates Officer Raske did not have any information about the source of the gunfire. Officer Raske did not observe the source of the gunshots and received no other information about the source of the gunshots (e.g. a description of a person or the vehicle).

2. Officer Raske Observed Mr. ██████ Flee a Traffic Stop and Drive in an Erratic Manner

Officer Raske asserted that, shortly after hearing gunshots, he observed a white SUV in the vicinity of 120th Street and State Street traveling at a high rate of speed. Officer Raske stated that Beat 562A conducted a traffic stop on the white SUV and that he approached the vehicle and observed a man, now known to be Mr. ██████ in the driver's seat. Officer Raske asserted Mr. ██████ subsequently fled the traffic stop while driving in an erratic fashion, including driving at a high rate of speed and driving on the sidewalk. Finally, Officer Raske stated he observed Mr. ██████ vehicle strike multiple vehicles, including his own, before coming to a complete stop.

⁷⁶ COPA's administrative analysis substantially differs from a criminal law analysis. In criminal cases, the standard of proof is beyond a reasonable doubt, which is a significantly higher evidentiary standard than the preponderance of the evidence standard that applies to COPA's sustained administrative findings. Furthermore, COPA may rely on the compelled statement of Officer Raske of in its analysis, which would be inadmissible in a criminal case. *See Garrity v. New Jersey*, 385 U.S. 493 (1967). Finally, COPA's analysis focuses solely on whether Officer Raske complied with Department policy.

Officer Raske's account was materially corroborated by numerous other officers' accounts, contemporaneous reports over the radio, video footage from Jessie Owens Community Academy, and photographs taken after the incident.

3. Officer Raske Possessed OC Spray

Officer Raske admitted that, in addition to his firearm, he possessed OC spray on the date of the incident.

4. Mr. ██████ Did Not Comply with Commands, Resisted Officers Raske, Bogyo, and Fennell, and Reached Toward the Center Console/Under the Passenger's Side Seat

Officers Raske, Bogyo, and Fennell all stated that Mr. ██████ refused to comply with their orders to exit his vehicle after crashing it. Officers Bogyo and Fennell both asserted that they attempted to grab Mr. ██████ and that he resisted and reached toward the passenger side of the vehicle. Officer Raske stated that he observed Mr. ██████ reaching inside the center console of the car and under the front passenger's seat and that Mr. ██████ repeatedly resisted when Officer Raske tried to grab his arm.

Mr. ██████ did not provide a statement to IPRA/COPA investigators, and no independent evidence exists to confirm or dispel the officers' account about ██████ refusal to comply and efforts to reach elsewhere in the car. However, other portions of the officers' accounts have been materially corroborated by independent evidence.⁷⁷ Therefore, COPA finds Officers Raske's, Bogyo's, and Fennell's accounts to be generally credible and finds that Mr. ██████ resisted Officers Raske, Bogyo, and Fennell and reached toward the center console and under the passenger side seat in a manner materially consistent with their accounts.⁷⁸

5. Officer Raske Did Not Observe Mr. ██████ with a Firearm or Any Other Weapon

Officer Raske admitted that he did not observe Mr. ██████ with a firearm or any other weapon. Furthermore, no other responding officer observed Mr. ██████ with a firearm or any other weapon.

6. Officers Bogyo and Fennell Were in Close Vicinity to Mr. ██████ Attempting to Pull Him Out of the Vehicle When Officer Raske Initially Discharged His Firearm

⁷⁷ Officer Raske asserted that ██████ efforts to reach elsewhere in the vehicle occurred three times prior to him discharging his first round of shots and another time in between his first round of shots and second round of shots.

⁷⁸ Parts of Officer Raske's account are at least somewhat inconsistent with Officer Bogyo's and Fennell's accounts. Specifically, Officer Raske asserted that he attempted to grab Mr. ██████ again after initially discharging his firearm, but Officer Fennell stated that there was only a *brief* pause between the first round of shots and second round of shots and Officer Bogyo reported hearing one round of four-to-six shots. However, these discrepancies are ultimately not material to COPA's findings.

Officers Bogyo and Fennell both stated they were inside the front driver's side door attempting to pull Mr. ██████ out of the vehicle when Officer Raske initially discharged his firearm. Officer Fennell stated that, in response, he immediately took cover because he was unsure what was happening or exactly where the shots were coming from, but he believed they were coming from inside the SUV. Officer Bogyo stated he continued to try to pull Mr. ██████ out of the vehicle. Officer Raske admitted that he knew that both Officer Bogyo and Officer Fennell had hands on Mr. ██████ when he initially discharged his firearm.⁷⁹

7. Officer Raske Discharged his Firearm Nine Times

Officer Raske stated he discharged his firearm at Mr. ██████ nine times, in two separate volleys, from his position by the broken front passenger's seat window. A total of nine expended cartridge cases were located at the scene, and all nine cases were determined by the Illinois State Police to have been fired by Officer Raske.

b. Legal Analysis

Officer Raske asserted that he discharged his firearm at Mr. ██████ based on the totality of the circumstances confronting him. Officer Raske stated that he believed Mr. ██████ was reaching for a firearm and posed an imminent risk of death or great bodily harm to Officers Bogyo and Fennell and that it was necessary for him to discharge his firearm at Mr. ██████ to eliminate the threat. Officer Raske stated that no reasonable alternative to discharging his firearm existed.⁸⁰ Officer Raske further claimed that he accounted for the safety of his fellow officers by angling the barrel down towards the driver's seat towards Mr. ██████ hip area. Officer Raske stated that, in response to the threat posed by Mr. ██████ he discharged his firearm nine times, in two separate volleys, at Mr. ██████ from his position by the broken⁸¹ front passenger's seat window.

To comply with Department policy, the evidence must demonstrate an officer with similar training and experience as Officer Raske would have reasonably believed that Mr. ██████ posed an immediate threat of death or serious bodily harm and/or that the use of deadly force was otherwise justified. In other words, Officer Raske's decision to discharge his firearm must have been objectively reasonable based on the totality of the circumstances confronting him.⁸²

As outlined above, the evidence demonstrates the following: (1) Officer Raske heard gunfire in the vicinity of 120th Street and State Street, but did not know the source of the gunfire; (2) Officer Raske observed Mr. ██████ flee a traffic stop and drive an erratic fashion; (3) Officer Raske possessed OC spray and a baton; (4) Mr. ██████ did not comply with commands, resisted Officers Raske, Bogyo, and Fennell, and reached toward the center console/under the passenger's

⁷⁹ Officer Raske asserted that he did not know where Officers Fennell and Bogyo were at the time he discharged his second round of shots.

⁸⁰ Officer Raske asserted that neither his baton nor his OC spray would have been effective in eliminating the threat and that he could no longer grab Mr. ██████ hand because it was deep inside the center console.

⁸¹ Officer Raske stated he broke the front passenger's side window with the flashlight attached to his firearm prior to discharging his firearm.

⁸² The relevant standard is objective reasonableness. Objectively reasonable mistakes do not violate Department policy. However, Officer Raske's actual subjective intentions and beliefs are not controlling and cannot justify an objectively unreasonable use of deadly force.

side seat; (5) Officer Raske did not observe Mr. [REDACTED] with a firearm or any other weapon; (6) Officers Bogyo and Fennell were in close vicinity to Mr. [REDACTED] when Officer Raske initially discharged his firearm.; and (7) Officer Raske discharged his firearm nine times.

COPA finds that the totality of the circumstances confronting Officer Raske did not justify his use of deadly force.

First, Officers Bogyo and Officer Fennell were in Officer Raske's line of fire when he discharged his firearm. Officers Bogyo and Fennell were both hands-on with Mr. [REDACTED] at the moment Officer Raske initially discharged his firearm. Officer Raske admitted that he knew that Officers Bogyo and Fennell were in Mr. [REDACTED] immediate vicinity attempting to pull Mr. [REDACTED] out of the vehicle when he initially discharged his firearm. As expressly noted by the Chicago Police Board, Department policy requires officers to consider the presence of innocent bystanders when deciding whether to use deadly force.⁸³ While Officer Raske asserted he accounted for the safety of his fellow officers by angling the barrel down towards the driver's seat towards Mr. [REDACTED] hip area, COPA finds Officer Raske's belief that his firearm discharge at Mr. [REDACTED] did not pose a serious risk of death or great bodily harm to Officers Bogyo and Fennell to be unreasonable. Officers Bogyo and Fennell were both hands-on with Mr. [REDACTED] in a fluid interaction that inevitably involved both the officers and Mr. [REDACTED] continuously moving during the struggle in a confined area. Additionally, Officer Raske did not communicate with Officers Bogyo or Fennell to warn them that he was about to discharge his weapon. Therefore, Officers Bogyo and Fennell could not possibly have influenced their movements or positioning to protect themselves. Furthermore, Officer Raske admitted to losing sight of Officers Bogyo and Fennell prior to firing his second volley of shots. While Officers Bogyo and Fennell were not struck, Officer Raske could have accidentally struck Officers Bogyo and/or Officer Fennell by either a bullet directly striking them while they were hands-on with Mr. [REDACTED] or a bullet traveling through Mr. [REDACTED] and then striking Officers Bogyo and/or Fennell.

Second, Officer Raske had a reasonable alternative weapon available to attempt to eliminate any threat posed by Mr. [REDACTED]. Specifically, Officer Raske possessed OC spray.⁸⁴ A reasonable officer with police training would have discharged his OC spray at Mr. [REDACTED] face to stop him from reaching towards the center console and under the passenger's seat. The OC spray would have posed little to no risk to Officers Bogyo and Fennell⁸⁵ while still stopping Mr. [REDACTED] from reaching for the center console/under the passenger's seat.

Third, Officer Raske did not have an adequate basis to infer that Mr. [REDACTED] was reaching for a firearm and / or posed an *imminent* threat of death or great bodily harm or to himself or others. Officer Raske did not observe Mr. [REDACTED] with a firearm or any weapon during the encounter.⁸⁶ While Officer Raske certainly had adequate basis to believe that Mr. [REDACTED] was likely reaching

⁸³ *In the Matter of Charges Filed Against Police Officer Robert Rialmo*, No. 18 PB 2950 available at <https://www.chicago.gov/content/dam/city/depts/cpb/PoliceDiscipline/18PB2947Order.pdf>.

⁸⁴ Officer Raske also had a baton but there is insufficient evidence to demonstrate that he could have effectively used the baton within the confined space of the vehicle.

⁸⁵ Department members are trained on how to handle the ancillary effects of OC spray. While it is entirely possible that Officers Bogyo or Fennell may have suffered some irritating effects from the OC spray usage, these effects would not have been life-threatening or life-altering when compared with being struck by a bullet.

⁸⁶ The Department did not locate a firearm on Mr. [REDACTED] person or in his vehicle after the incident.

for some type of weapon to use against the officers due to his continued resistance to the officers’ attempts to apprehend him, Officer Raske had no information to connect Mr. [REDACTED] or Mr. [REDACTED] vehicle to the gunfire he heard except for Mr. [REDACTED] presence in the general area and erratic driving. It is entirely possible that Mr. [REDACTED] erratic driving was due to attempting to leave the source of the gunfire for his own protection.

In its totality, a preponderance of the evidence⁸⁷ demonstrates that an officer with similar training and experience as Officer Raske would not have discharged his or her firearm at Mr. [REDACTED] under the circumstances confronting Officer Raske. A reasonable officer would not have believed that Mr. [REDACTED] posed an immediate threat of death or serious bodily harm and/or that the use of deadly force was otherwise justified.⁸⁸ In fact, Officers Bogyo and Fennell were confronted with the same circumstances as Officer Raske and did not use deadly force to confront Mr. [REDACTED]. Accordingly, Officer Raske’s use of deadly force was objectively unreasonable and did not comply with Chicago Police Department’s General Order 03-02-03. Furthermore, Officer Raske violated Department policy by firing in the direction of Officers Bogyo and Fennell. For these reasons, COPA **Sustains** allegations #1-3 against Officer Raske.

VIII. CONCLUSION

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

Officer	Allegation	Finding / Recommendation
Officer Alex Raske	1. It is alleged that on or about January 1, 2017, at approximately 2:14 am, in the vicinity of 12510 S. State Street, Officer Alex Raske discharged his firearm at [REDACTED] in violation of General Order 03-02-03 (Deadly Force), in violation of Rule 6.	Sustained / Separation
	2. It is alleged that on or about January 1, 2017, at approximately 2:14 am, in the vicinity of 12510 S. State Street, Officer Alex Raske fired his weapon in the direction of Officer Gregory Bogyo, in violation of Rules 6 and 10.	Sustained / Separation
	3. It is alleged that on or about January 1, 2017, at approximately 2:14 am, in the vicinity of 12510 S. State Street, Officer Alex Raske fired his weapon in the	Sustained / Separation

⁸⁷ The preponderance of the evidence requires only that it is more likely than not that the proposition is true.

⁸⁸ COPA also evaluated Officer Raske’s use of deadly force under General Order 03-02-03(II)(A)(2) and determined that is not applicable to these facts.

	direction of Officer Thomas Fennell, in violation of Rules 6 and 10.	
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IX. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Alex Raske

i. Complimentary and Disciplinary History

Officer Raske has been a member of the Chicago Police Department since July 2, 2012. In that time, he has received 62 Honorable Mentions, 4 Department Commendations, 1 Superintendent’s Honorable Mention, and 1 Complimentary Letter. In the last seven years, he has not received any discipline.

ii. Recommended Penalty

COPA has determined Officer Raske’s use of deadly force against [REDACTED] on January 1, 2017, to be without justification and in violation of General Order 03-02-03. The improper use of deadly force against a citizen is an egregious act requiring severe consequences. Accordingly, COPA recommends separation from the Department.

[REDACTED]

September 28, 2020

Andrea Kersten
Chief of Investigative Operations

Date

[REDACTED]

September 28, 2020

Sydney Roberts
Chief Administrator

Date

Appendix A

Assigned Investigative Staff

Squad#:	One
Major Case Specialist:	██████████
Supervising Investigator:	██████████
Deputy Chief Administrator:	Andrea Kersten