

SUMMARY REPORT OF INVESTIGATION<sup>1</sup>

## I. EXECUTIVE SUMMARY

Date of Incident:	August 29 <sup>th</sup> , 2015
Time of Incident:	1:33 am
Location of Incident:	1910 S. Ashland Avenue
Date of COPA Notification:	August 29 <sup>th</sup> , 2015
Time of COPA Notification:	1:59 am

Two 010<sup>th</sup> District police officers, Officer Monica Reyes, the District Intelligence Officer, and District Commander Francis Valadez, were patrolling known gang hot-spots when they heard multiple gunshots near the intersection of 23<sup>rd</sup> and Wood Street. Commander Valadez stopped his unmarked squad car, at which time he heard gunshots and saw muzzle flashes coming from the passenger side of a beige Chevy Tahoe, facing east on 23<sup>rd</sup> Street, west of Wood Street. It appeared that the Tahoe was shooting at a gold colored Lincoln Navigator.

Commander Valadez and Officer Reyes then observed the Navigator speed away. The Navigator drove east on 23<sup>rd</sup> Street, then south on Wood Street, and finally west on Blue Island Avenue. Commander Valadez and Officer Reyes attempted to follow the Tahoe as it drove north on Wood Street, east on 22<sup>nd</sup> Street, and then north on Ashland Avenue. The Tahoe turned east onto 19<sup>th</sup> Street and crashed into the back of a vehicle parked on the north side of 19<sup>th</sup> Street. The Tahoe continued east on 19<sup>th</sup> Street and turned toward the entrance of the parking lot located on the southwest corner of 19<sup>th</sup> Street and Ashland Avenue.

As the Tahoe approached the parking lot's entrance it struck a vehicle parked on the south side of 19<sup>th</sup> Street, pushing that vehicle onto the curb. The Tahoe stopped momentarily just before the entrance to the parking lot. Commander Valadez stopped his vehicle several feet behind the Tahoe and as the officers began to exit their vehicle, the Tahoe suddenly reversed and struck the officers' vehicle.

Commander Valadez jumped back into his vehicle to avoid being struck by the Tahoe. The Tahoe then drove into the parking lot and stopped near the west fence. The officers, believing that the Tahoe's occupants would exit the vehicle and flee on foot, ran into the lot. The Tahoe turned around and Commander Valadez saw the driver's side window going down. Fearing he was about to be shot at, Commander Valadez discharged his firearm several times at the driver. Officer Reyes, hearing the gunshots and believing they were coming from the Tahoe, discharged her firearm at the Tahoe.

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<sup>1</sup> 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.

The Tahoe went past the officers and exited the parking lot. The Tahoe continued west on 19<sup>th</sup> Street, at a high rate of speed, striking several parked cars, and eventually coming to a stop, after colliding into a vehicle parked at approximately 1647 W. 19<sup>th</sup> Street. Occupants in the Tahoe, except for the driver, exited and ran west on 19<sup>th</sup> Street. The officers followed in their vehicle and eventually caught [REDACTED] just north of 19<sup>th</sup> Street on Paulina Street. Another subject continued west on 19<sup>th</sup> Street and was subsequently apprehended at 1718 W. 19<sup>th</sup> Street. This subject, [REDACTED] sustained a gunshot wound to his left bicep.

The driver of the Tahoe, [REDACTED] was pronounced dead at the location of the Tahoe’s last collision (1647 W. 19<sup>th</sup> Street).

**II. INVOLVED PARTIES**

Involved Officer #1:	Francis Valadez; Star #484; Employee # [REDACTED]; Date of Appointment: 22 December 1988; Rank: Commander; Unit of Assignment: 010; Date of Birth: [REDACTED] 1963; Gender: Male; Race: Hispanic.
Involved Officer #2:	Monica Reyes; Star #19210; Employee # [REDACTED]; Date of Appointment: 25 October 2004; Rank: Police Officer; Unit of Assignment: 010; Date of Birth: [REDACTED] 1979; Gender: Female; Race: Hispanic.
Subject #1:	[REDACTED] Date of Birth: [REDACTED] 1985; Gender: Male; Race: Hispanic.
Subject #2:	[REDACTED] Date of Birth: [REDACTED] 1974; Gender: Male; Race: Hispanic.
Subject #3:	[REDACTED] Date of Birth: [REDACTED] 1995; Gender: Male; Race: Hispanic.
Subject #4:	[REDACTED] Date of Birth: [REDACTED] 1981; Gender: Male; Race: Hispanic.z

**III. ALLEGATIONS**

Any discharge of an officer’s firearm results in a mandatory notification to COPA. This investigation was initiated pursuant to such notification. However, COPA determined evidence did not exist which would require allegations of excessive force against Commander Valdez or Officer Reyes.

Officer	Allegation	Finding
Commander Francis Valadez	1. N/A	Use of deadly force was within CPD policy.
Officer Monica Reyes	1. N/A	Use of deadly force was within CPD policy.

**IV. APPLICABLE RULES AND LAWS**

General Orders

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

State Law

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

Federal Laws

- 1. The Fourth Amendment to the United States Constitution

## V. INVESTIGATION<sup>2</sup>

### a. Interviews

██████████ stated that he and his friend, ██████████ went to Output Bar located at Grand Avenue and Wood Street. They arrived at the bar at approximately 2330 hours. They drank a couple of beers and left between 0100 and 0115 hours to pick up their friends, ██████████ and ██████████ (Mr. ██████████ did not know either of their last names). Mr. ██████████ stated they met the two women at 1800 S. Ashland Avenue and the plan was for all of them to go to Mr. ██████████ house. The two women got into Mr. ██████████ Lincoln Navigator, with Mr. ██████████ sitting in the front passenger seat, ██████████ in the backseat behind Mr. ██████████ and ██████████ sitting in the backseat behind Mr. ██████████

Mr. ██████████ explained that he drove east on 18th Street, then south on Ashland Avenue, and then west on Cermak Road. Mr. ██████████ noticed a beige SUV<sup>4</sup> driving in front of them on Cermak Road. Mr. ██████████ stated that he did not know who owned the beige SUV and did not know any of its occupants. Mr. ██████████ also stated that it was a coincidence that he and the driver of the beige SUV were traveling the same route. Mr. ██████████ stated that he drove behind the SUV as it traveled west on Cermak Road, then south on Wolcott Avenue, and then east on 23rd Street. Mr. ██████████ stated that the beige truck then pulled over and parked on the north side of the street. Mr. ██████████ continued to drive east on 23rd Street, and as he drove past the beige truck, he saw someone from inside the beige truck point a handgun at them through the truck's lowered rear passenger window. Mr. ██████████ immediately heard 8-10 gunshots, adding that the two vehicles were about 4 - 5 feet from each other. After hearing the gunshots, Mr. ██████████ accelerated and turned his vehicle to prevent the shooter from having a clear shot at him. Mr. ██████████ struck a car parked on the south side of 23rd Street and then sped away. Mr. ██████████ drove east on 23rd Street, south on Wood Street, then west on Blue Island Avenue. Mr. ██████████ stated that he believed the beige SUV was chasing them. Mr. ██████████ then drove south on Damen Avenue until he came across a marked Chicago Police SUV. Mr. ██████████ and his friends stopped and reported the incident to the police.

Mr. ██████████ stated that neither he nor his friends were injured. Mr. ██████████ stated that his vehicle sustained damage from the gunfire, adding that the fired bullets shattered the driver's side window, one of the driver's side rear windows, and struck the doors on the driver's side of his Lincoln Navigator.

██████████ stated that he and his friend, ██████████ left the Output Lounge to meet with their two friends, ██████████ and ██████████. Mr. ██████████ stated that Mr. ██████████ drove them in his Lincoln Navigator to 1800 S. Ashland, where they met up with ██████████ and ██████████. The two women got into the Lincoln Navigator and the plan was for all of them to continue the night at Mr. ██████████ home. Mr. ██████████ drove south on Ashland

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<sup>2</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>3</sup> Attachment 46.

<sup>4</sup> NKA the Tan Chevy Tahoe driven by ██████████

<sup>5</sup> Attachment 50.



Avenue, then west on Cermak Road. Mr. [REDACTED] stated that he saw a tan Chevy Tahoe traveling east on Cermak Avenue, then south on Wolcott Street. Mr. [REDACTED] also drove south on Wolcott Street behind the Chevy Tahoe. Mr. [REDACTED] stated that he recognized the Chevy Tahoe as belonging to member(s) of the Bishops street gang that he and other friends of his encountered three or four days earlier. Mr. [REDACTED] stated that the occupants of that Chevy Tahoe were “gangbanging to, to me on 18<sup>th</sup> Street and Morgan with my other friends.”<sup>6</sup> Mr. [REDACTED] alerted Mr. [REDACTED] by saying, “Hey man, these are the, these are the Bishops, be careful.” Mr. [REDACTED] responded by telling Mr. [REDACTED] “Alright, don’t gang bang.” Mr. [REDACTED] stated that he was a member of the Ambrose street gang. Mr. [REDACTED] added, “We don’t gang bang outta our cars. You know, we don’t have garages so we have to park in front. And you know, assholes come break our windows, set our cars on fire, things like that.”

Mr. [REDACTED] stated that the Chevy Tahoe then travelled east on 23<sup>rd</sup> Street with Mr. [REDACTED] still behind it. Mr. [REDACTED] added that through the Chevy Tahoe’s tinted rear-window, he could see the silhouettes of four individuals. The Chevy Tahoe slowed down as if the driver was looking for a parking spot, then the Chevy Tahoe pulled over and parked on the north side of the street. As Mr. [REDACTED] drove past the Chevy Tahoe, Mr. [REDACTED] saw the rear passenger window of the Chevy Tahoe lower, and a person pointed a gun at Mr. [REDACTED] vehicle. Mr. [REDACTED] ducked down and heard approximately five gunshots. Mr. [REDACTED] stated all the windows on the driver’s side were shattered by the gunfire. Mr. [REDACTED] sped away, striking cars parked on 23<sup>rd</sup> Street. Mr. [REDACTED] then drove south on Wood Street, and west on Blue Island Avenue. Mr. [REDACTED] looked behind them and did not see the Chevy Tahoe. Mr. [REDACTED] stated that they then drove south on Damen Avenue until they saw an officer parked in his vehicle and reported what occurred. Mr. [REDACTED] added that once he exited Mr. [REDACTED] vehicle, he saw bullet holes on the front and back driver’s side doors.

Mr. [REDACTED] was unable to describe the person who shot at them but added that the person had a tattoo on their right forearm. Mr. [REDACTED] stated that neither he nor any of his friends were injured during this incident.

[REDACTED] stated that on the night of this incident, Mr. [REDACTED] and Mr. [REDACTED] picked up her and her friend, [REDACTED] at 1800 S Ashland Avenue. Ms. [REDACTED] was in the front passenger seat of Mr. [REDACTED] Lincoln Navigator. Mr. [REDACTED] was the driver and Mr. [REDACTED] and Ms. [REDACTED] were seated in the backseat. They drove south on Ashland Avenue, then west on Cermak Avenue, and then south on Wolcott Avenue. Ms. [REDACTED] stated that as they traveled south on Wolcott Avenue, she saw a Chevy Tahoe in front of them. Ms. [REDACTED] stated that they traveled behind the Chevy Tahoe south on Wolcott Street, and then east on 23<sup>rd</sup> Street. Ms. [REDACTED] stated that the Chevy Tahoe then pulled over as if to park on the north side of 23<sup>rd</sup> Street. Ms. [REDACTED] stated that as Mr. [REDACTED] drove past the Chevy Tahoe, she saw the rear passenger window of the Chevy Tahoe lower, and she was able to see a male Hispanic subject with a dark beard inside the vehicle. She then saw a flash and heard the gunshots. Ms. [REDACTED] stated that she heard the Lincoln Navigator’s windows shatter, and bullets striking the side of the vehicle. Mr. [REDACTED] turned to the right and struck a car parked on the south side of 23<sup>rd</sup> Street. Mr. [REDACTED] continued to drive east on 23<sup>rd</sup> Street. Mr. [REDACTED] drove south on Wood Street and then west on

<sup>6</sup> Transcript of [REDACTED] P. 9. L. 30.

<sup>7</sup> Attachment 54.

Blue Island Avenue. They then traveled south on Damen Avenue, until they saw a police car at 2900 S. Damen Avenue. They stopped and reported to the officers what occurred.

Ms. [REDACTED] stated that she never saw any of the Chevy Tahoe's occupants with a firearm. Ms. [REDACTED] stated that Mr. [REDACTED] and Mr. [REDACTED] were members of the Ambrose street gang.

[REDACTED] stated that she and her friend, [REDACTED] met [REDACTED] and [REDACTED] at 1800 S. Ashland Avenue. They all got into Mr. [REDACTED] Lincoln Navigator, with Ms. [REDACTED] sitting in the front passenger seat, and Mr. [REDACTED] sitting in the backseat behind Ms. [REDACTED]. Ms. [REDACTED] stated she was seated in the backseat behind the driver, Mr. [REDACTED]. Ms. [REDACTED] added that Mr. [REDACTED] and Mr. [REDACTED] were members of the Ambrose street gang.

Ms. [REDACTED] stated that they were traveling south on Wolcott Avenue behind a Chevy Tahoe, when the Tahoe pulled over. As they drove past the Chevy Tahoe Ms. [REDACTED] observed the Tahoe's rear passenger window lower. She then saw a muzzle flash and heard gunshots coming from the Tahoe. Ms. [REDACTED] immediately ducked down upon hearing the gunshots. Ms. [REDACTED] stated that Mr. [REDACTED] sped away, driving west on Blue Island Avenue and then south on Damen Avenue. They stopped when they saw a marked police vehicle and reported to the officers what occurred. Ms. [REDACTED] added that she did not know the occupants of the Chevy Tahoe.

**letter purportedly authored by [REDACTED]**, dated 14 January 2017, he stated that he was in a vehicle driven by his best friend, [REDACTED]. Mr. [REDACTED] stated that they were involved in an altercation with another vehicle. After that altercation Commander Valadez and Officer Reyes followed them in an unmarked police vehicle for approximately one mile. Mr. [REDACTED] stated that the police vehicle's lights or sirens were not activated. Mr. [REDACTED] entered a church parking lot, at which time Mr. [REDACTED] heard gunshots. Mr. [REDACTED] stated that Mr. [REDACTED] had been fatally shot. Mr. [REDACTED] stated that Commander Valadez and Officer Reyes had no reason to shoot at them.

**Attempts to gain the cooperation of [REDACTED] and [REDACTED]** in furtherance of this investigation were unsuccessful.

**Canvasses**<sup>12</sup> of the area of incident did not reveal any eye witnesses. During the canvasses, exterior surveillance cameras were observed on the church at 1659 W. 19<sup>th</sup> Street, but [REDACTED] stated that the cameras were inoperable and did not record this incident. During a separate canvas, two potential witnesses ([REDACTED] and [REDACTED]) were identified, but they failed to cooperate with this investigation.

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<sup>8</sup> Attachment 59.

<sup>9</sup> [REDACTED] wrote the letter while incarcerated in Cook County Jail. The letter was delivered via USPS.

<sup>10</sup> Attachment 135.

<sup>11</sup> Attachments 36, 67, 69, 70, 71, 107, 129, 130, 132, 144.

<sup>12</sup> Attachments 34, 37, 39, 41, 66, 72.

In a statement to IPRA on 08 September 2015, 010<sup>th</sup> **District Commander Francis Valadez**<sup>13</sup> stated on the night of this incident he was patrolling gang-spots with the District Intelligence Officer, Officer Monica Reyes. Commander Valadez and Officer Reyes were in plainclothes and driving his unmarked blue Ford Taurus Interceptor. Commander Valadez drove south on Wood Street and stopped for the red light at Blue Island Avenue. At approximately 1:30 am, as they waited for the traffic light to change from red to green, Commander Valadez heard four to five gunshots behind them. Commander Valadez was unable to tell if all of the gunshots came from the same firearm. Commander Valadez immediately shifted into reverse and drove backwards, traveling north on Wood Street. Commander Valadez drove into the intersection of 23<sup>rd</sup> Street and Wood Street and stopped. He looked west and saw two SUV's on 23<sup>rd</sup> Street facing east toward Wood Street; it appeared they collided with each other. Commander Valadez then heard several more gunshots and saw muzzle flashes coming from the passenger side of one of the SUVs, which he later identified as a Chevrolet Tahoe, and realized they were shooting at the occupants in the other SUV, later identified as a Lincoln Navigator. The Lincoln Navigator first drove east on 23<sup>rd</sup> Street, then south on Wood Street, and finally west on Blue Island Avenue. Commander Valadez never saw the Lincoln Navigator again. The Chevrolet Tahoe also drove east on 23<sup>rd</sup> Street but drove around the front of Commander Valadez's vehicle and north on Wood Street. Commander Valadez made a U-turn and pursued the Chevrolet Tahoe. As Commander Valadez drove, Officer Reyes radioed dispatch of the shots fired, a description of the offending vehicle, and direction of flight.

Commander Valadez followed the Chevrolet Tahoe north on Wood Street, east on Cermak Road, and then north on Ashland Avenue, travelling at approximately 50 mph. Commander Valadez stated that he did not activate his vehicle's emergency equipment because he did not want the occupants of the Chevrolet Tahoe to realize he was the police. Commander Valadez explained that he did not want the occupants to recognize them as the police before he could get close enough to the Chevrolet Tahoe to obtain its license plate first, and to hopefully have police units respond in case a pursuit ensued. Commander Valadez observed the Chevrolet Tahoe attempt to turn left (west) onto 19<sup>th</sup> Street from the far right, northbound lane on Ashland Avenue. Commander Valadez stated that the Chevrolet Tahoe took the turn too wide and collided with a vehicle parked on the north side of 19<sup>th</sup> Street. The Chevrolet Tahoe collided with the parked car with enough force to push it into the car parked in front of it, over the curb, and partially onto the sidewalk. The Chevrolet Tahoe continued east on 19<sup>th</sup> Street, striking another vehicle parked on the south side of the street.

Commander Valadez stated that the Chevrolet Tahoe attempted to drive into the parking lot located on the southwest corner of 19<sup>th</sup> Street and Ashland Avenue, but instead struck another vehicle parked next to the entrance to the parking lot. The Chevrolet Tahoe then came to a stop and appeared to stall. Commander Valadez believed it stalled due to the damage it sustained in the collisions. Commander Valadez pulled up and stopped behind the Chevrolet Tahoe. Commander Valadez shifted into park and opened the driver's door, intending to exit. As he got out and stood up, he saw the white reverse indicator lights on the Chevrolet Tahoe illuminate and heard the revving of the Lincoln Navigator's engine. The Chevrolet Tahoe then drove in reverse toward Commander Valadez' vehicle. Commander Valadez jumped back into his vehicle through the opened driver's door to avoid being struck by the Chevrolet Tahoe. Commander Valadez

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<sup>13</sup> Attachment 62.

stated that instead, the Chevrolet Tahoe struck the front quarter-panel and driver's door of his vehicle. After striking Commander Valadez' vehicle, the Chevrolet Tahoe then drove forward and into the parking lot.

Commander Valadez and Officer Reyes exited their vehicle and ran into the parking lot after the Chevrolet Tahoe. Commander Valadez explained that he was familiar with that area and knew that the only way to enter and exit parking lot was the opening on 19<sup>th</sup> Street because the parking lot was enclosed by a chain-linked fence and a metal guardrail. Commander Valadez anticipated that the occupants of the Chevrolet Tahoe would attempt to flee on foot once in the parking lot. Commander Valadez could hear Officer Reyes on her radio communicating with dispatch. Commander Valadez stated that initially the Chevrolet Tahoe stopped in the parking lot, facing the building on the south side of the parking lot. Then the Chevrolet Tahoe began to make a three-point turn. Commander Valadez was facing the driver's side of the Chevrolet Tahoe when it began to turn around. Commander Valadez stated that he saw the closed driver's window being lowered and fearing that he was about to be shot at he drew his firearm from its holster and fired three times at the Chevrolet Tahoe's driver. Commander Valadez stated that the Chevrolet Tahoe continued to drive toward the parking lot's exit. Commander Valadez stopped firing when he no longer had a clear line of sight to the driver, adding that he fired his weapon three times. Commander Valadez also heard Officer Reyes order the Chevrolet Tahoe to stop and heard gunshots from her. Commander Valadez was not certain of Officer Reyes' location when she discharged her firearm.

Commander Valadez stated that the Chevrolet Tahoe drove out of the parking lot and west on 19<sup>th</sup> Street. As the Chevrolet Tahoe drove, it struck cars parked on both sides of 19<sup>th</sup> Street. Commander Valadez and Officer Reyes got back into their vehicle and drove after the Chevrolet Tahoe, which struck several cars on the south side of 19<sup>th</sup> Street, subsequently coming to a stop after crashing into the parked cars. After the Chevrolet Tahoe came to a stop several of its occupants exited and fled on foot. Commander Valadez continued to drive west on 19<sup>th</sup> Street in pursuit of two male subjects, one wearing a white shirt and one wearing a black shirt. Both subjects then ran north on Paulina Street with Commander Valadez still following them in his car. The male subject in the black shirt then fell to the ground. Commander Valadez stopped his car and was able to place the subject wearing the black shirt in custody. The subject in the white shirt turned around and ran southwest across Paulina Street and out of sight. Numerous additional officers arrived on the scene and the other offenders were subsequently taken into custody. Commander Valadez stated that he never announced his office. (Att. 62)

In a statement to IPRA on 08 September 2015, **Officer Monica Reyes**<sup>14</sup> explained that she is assigned as the District Intelligence Officer. According to Officer Reyes, she gathers information regarding gang-related conflicts, shootings, and homicides throughout the week, and on Fridays she briefs Commander Valadez. They also go to different gang hot-spots, so Commander Valadez can see the area, the people that may be out there, and any gang-related graffiti. Officer Reyes stated that on the date of this incident she was on patrol with Commander Valadez. At approximately 1:30 am they were in Commander Valadez' unmarked Ford Taurus with Commander Valadez driving and Officer Reyes in the front passenger seat.

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<sup>14</sup> Attachment 65.

Officer Reyes stated that they traveled south on Wood Street approaching Blue Island Avenue when she heard gunshots coming from behind them. Officer Reyes turned around and saw two SUVs, with muzzle flashes coming from the passenger side of one of the SUVs, later identified as a Chevrolet Tahoe. Officer Reyes stated that the occupants of the first SUV, later identified as a being Lincoln Navigator, were being fired upon by the other occupants of the Chevrolet Tahoe, adding that she never saw any muzzle flashes from the Lincoln Navigator. Commander Valadez shifted their vehicle into reverse and drove north on Wood Street across 23<sup>rd</sup> Street. Both SUVs drove east on 23<sup>rd</sup> Street. The Lincoln Navigator drove past them, first south on Wood Street and then west on Blue Island Avenue. The Chevrolet Tahoe drove north on Wood Street, east on Cermak Avenue, and then north on Ashland Avenue. According to Officer Reyes, she was unable to see into either SUV to ascertain how many occupants were in either vehicle. Officer Reyes explained that Commander Valadez made a U-turn and pursued the Chevrolet Tahoe because that was where the gunshots came from. Officer Reyes radioed that shots had been fired and gave their location and direction of travel and a description of the offending vehicle.

Officer Reyes stated that the Chevrolet Tahoe turned left (west) on 19<sup>th</sup> Street and rear-ended a parked car on the north side of the street. The Chevrolet Tahoe continued to travel west on 19<sup>th</sup> Street a short distance and attempted to turn left into the parking lot located on the southwest corner of 19<sup>th</sup> Street and Ashland Avenue, but struck a second car parked on the south side of 19<sup>th</sup> Street. The Chevrolet Tahoe stopped, and Officer Reyes believed that it may have been disabled after striking the two parked cars. Commander Valadez and Officer Reyes pulled up behind the Chevrolet Tahoe and began to exit their vehicle when Officer Reyes saw the Chevrolet Tahoe's white reverse lights come on. Officer Reyes heard the revving of the Chevrolet Tahoe's engine as it quickly reversed toward Commander Valadez, who had just begun to exit the driver's side of his vehicle. Officer Reyes said that she and Commander Valadez dove back into their car, and she explained that she re-entered the vehicle with the intention of pulling Commander Valadez into the vehicle. Commander Valadez jumped back into his vehicle and the Chevrolet Tahoe drove in reverse, striking Commander Valadez' vehicle.

Officer Reyes stated that the Chevrolet Tahoe struck their vehicle hard and she looked over at Commander Valadez, fearing he was seriously injured. The Chevrolet Tahoe then drove forward into the parking lot. Commander Valadez and Officer Reyes exited their vehicle again and ran into the parking lot after the Chevrolet Tahoe. Officer Reyes stated that the Chevrolet Tahoe began making a three-point turn and assumed that the Chevrolet Tahoe's driver must have realized there was no other way out of the parking lot and intended to exit the way they entered. Officer Reyes also explained that Commander Valadez was on the driver's side of the Chevrolet Tahoe as it made the three-point turn, during which the driver's window also began to lower. Officer Reyes stated that Commander Valadez was positioned in the middle of the parking lot and unable to gain cover. Officer Reyes said that as the Chevrolet Tahoe continued to maneuver towards them, she heard the Chevrolet Tahoe's engine revving again and believed that Commander Valadez would be unable to get out of the way. Officer Reyes then heard several gunshots but could not tell where they were coming from. Officer Reyes added that she believed the occupants of the Chevrolet Tahoe were shooting at her and Commander Valadez. Officer Reyes stated that, fearing for her safety and the safety of Commander Valadez, she discharged her firearm several times at the driver of the Chevrolet Tahoe through the driver's side window. The Chevrolet Tahoe drove past Officer Reyes, who stopped firing once she no longer had a line of sight to the driver.

The Chevrolet Tahoe then drove out of the parking lot and west on 19<sup>th</sup> Street and Officer Reyes utilized her radio to notify dispatch of the shots fired by police. Commander Valadez then ran up to her and told her to get into his vehicle. They got into Commander Valadez' vehicle and drove west on 19<sup>th</sup> Street. Officer Reyes attempted to obtain the Chevrolet Tahoe's license plate number but due to its speed and movement was unable to. Officer Reyes stated that the Chevrolet Tahoe struck several parked cars on the south side of 19<sup>th</sup> Street, subsequently crashing and being unable to go further. After the Chevrolet Tahoe stopped Officer Reyes saw three Hispanic male subjects exit and run west on 19<sup>th</sup> Street. Officer Reyes radioed a description of the three Hispanic male subjects and their direction of flight. The three Hispanic male subjects ran northwest to the intersection of 1900 S. Paulina, and when Commander Valadez' turned to go north on Paulina Street his vehicle stopped suddenly. Officer Reyes believed that Commander Valadez' vehicle stopped because of the damage it sustained when the Chevrolet Tahoe collided with it. Officer Reyes exited the vehicle and chased one of the Hispanic male subjects<sup>15</sup>. After a brief foot chase and verbal commands to stop, the male Hispanic she was chasing stopped and went to the ground. Officer Reyes was able to place him into custody. Officer Reyes stated that the subject repeatedly said, "I'm sorry, I'm sorry, I'm sorry." Additional officers began to arrive to assist. Officer Reyes radioed a description of the other two Hispanic male subjects and the direction they ran. Officer Reyes stated that she remained with the subject in custody, while Commander Valadez and the other officers searched for the remaining two offenders.

Officer Reyes stated that she never saw any of the Chevrolet Tahoe's occupants toss any firearm(s) from the vehicle at any time during the incident. Officer Reyes added that she never searched the Chevrolet Tahoe or recovered any firearm(s) or evidence from the Chevrolet Tahoe.

#### **b. Digital Evidence<sup>16</sup>**

**The Dominican Friars Order of Preachers Province Center<sup>17</sup>**, at 1910 S. Ashland Avenue, had an exterior camera facing their parking lot on the north side of the building. The camera is on the north side of the building with a view of the parking lot to the north. The recording showed the Chevy Tahoe, driven by Mr. [REDACTED] travel west on 19<sup>th</sup> Street from Ashland Avenue. The Chevy Tahoe crashed into vehicles parked on the north side of 19<sup>th</sup> Street. The Chevy Tahoe continued west to the parking lot entrance, followed by the vehicle driven by Commander Valadez. The entrance is located on the south side of 19<sup>th</sup> Street. The Chevy Tahoe stopped near the entrance, then traveled in reverse, and struck Commander Valadez' vehicle. After striking Commander Valadez' vehicle, the Chevy Tahoe moves forward into the parking lot and traveled toward the southeast corner of the enclosed chain-link fence parking lot. Commander Valadez and Officer Reyes run from their vehicle into the parking lot. The Chevy Tahoe then makes a 3-point turn, during which, the rear driver's side door opened and closed. Also, as the vehicle turned around the driver's side window appeared to lower. Commander Valadez, who was standing several feet from the driver's side of the Chevy Tahoe, appeared to discharge his firearm at the Chevy Tahoe. The Chevy Tahoe then left the parking lot through the same entrance and traveled

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<sup>15</sup> [REDACTED]

<sup>16</sup> Neither Commander Valadez nor Officer Reyes were equipped with body-worn cameras on the night of this incident.

<sup>17</sup> Attachment 143.

west on 19<sup>th</sup> Street out of the camera's view. Commander Valadez and Officer Reyes ran back to their vehicle and drove west on 19<sup>th</sup> Street after the Chevy Tahoe.

There were no **PODs**<sup>18</sup> in the vicinity of 1900 S. Ashland Avenue.

### c. Physical Evidence

The **Chicago Fire Department's Ambulance Report**<sup>19</sup> stated that on 29 August 2015, at 0154 hours, Ambulance 33 was dispatched to [REDACTED] [REDACTED] regarding a gunshot victim. Ambulance 33 arrived at the scene at 0201 hours and found Mr. [REDACTED] with a gunshot wound to his left bicep. It was noted that Mr. [REDACTED] smelled of alcohol and he was slow to respond to questions. Mr. [REDACTED] stated that he was just sitting and got shot. Mr. [REDACTED] refused to provide any further information about the events leading up to his gunshot wound. Mr. [REDACTED] did not have any other signs of trauma. At 0217 hours Mr. [REDACTED] was transported from the scene to [REDACTED]

[REDACTED] **Medical Records**<sup>20</sup> regarding Mr. [REDACTED] stated that on 29 August 2017, at 0238 hours, Mr. [REDACTED] arrived in the hospital's Emergency Room via ambulance. It was reported to hospital personnel that Mr. [REDACTED] was shot on the street and ran into a residential property to escape. Police were notified and found him in that building. Mr. [REDACTED] was examined and found to be intoxicated with a single gunshot wound to his left bicep with the fired bullet lodged in the soft tissue near his left elbow. Mr. [REDACTED] did not have significant blood loss. X-rays indicated that Mr. [REDACTED] did not sustain any fractured or broken bones. Mr. [REDACTED] was discharged at 0523 hours.

The **Cook County Medical Examiner's Postmortem Report**<sup>21</sup> of [REDACTED] which was conducted on August 30, 2015 by Dr. [REDACTED], stated that after examination, it was determined that Mr. [REDACTED] sustained a distant-range gunshot wound, with the entrance wound being the upper left side of his back, near his left armpit. The fired bullet traveled upward, forward, and rightward, through both lungs, his aorta, and esophagus. The fired bullet was recovered from his right shoulder. The Toxicology Report stated that Mr. [REDACTED] tested positive for alcohol.<sup>22</sup>

### A. Video Evidence

The **Illinois State Police (ISP) Report**<sup>23</sup>, dated 09 September 2015, stated that examination of the firearm, a revolver<sup>24</sup> recovered from between the driver's seat and center console of the Chevy Tahoe did not reveal any latent impressions suitable for comparison. The seven discharged cartridges from the cylinder of the revolver were analyzed and did not reveal any latent impressions suitable for comparison.

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<sup>18</sup> Attachment 31.

<sup>19</sup> Attachment 35.

<sup>20</sup> Attachment 133.

<sup>21</sup> Attachment 127.

<sup>22</sup> Sample Types: Vitreous Humor (208mg/dL) and Peripheral Blood (174 mg/dL).

<sup>23</sup> Attachment 137.

<sup>24</sup> Taurus .357 Magnum Revolver with a chrome finish.

The **Illinois State Police (ISP) Report**<sup>25</sup>, dated 23 September 2015, stated that the seven fired cartridge cases in the cylinder of the revolver were examined and found to be in firing condition. Two fired bullets and six metal fragments were recovered from the Navigator's driver's side door, a rear seat, and a speaker. Examination determined that one fired bullet and two fired bullet/bullet fragments, recovered from inside the driver's door and interior of Mr. [REDACTED] Lincoln Navigator, were fired from the aforementioned revolver.

The report stated examination of three fired cartridge casings recovered from the parking lot at 1901 S. Ashland Avenue were fired from Commander Valadez' firearm, and five of the fired cartridge casings recovered from the same parking lot were fired from Officer Reyes' firearm. Furthermore, examination of the fired bullet recovered from Mr. [REDACTED] body by the Medical Examiner was determined to have been fired from Officer Reyes' firearm. The firearms belonging to Commander Valadez and Officer Reyes were also examined and found to be in firing condition.

An **Illinois State Police (ISP) Report**<sup>26</sup>, dated 29 October 2015, revealed that a mixture of at least two human DNA profiles was identified on the revolver recovered from the Chevy Tahoe. The samples obtained were unsuitable for comparison to known standards and is not suitable for entry into the DNA Index.

The **Illinois State Police (ISP) Report**<sup>27</sup>, dated 06 November 2015, stated that examination of the front right chest area of [REDACTED] t-shirt indicated that it may have been in the environment of a discharged firearm, may have contacted a PGSR<sup>28</sup> related item, or may have received the PGSR particles from an environmental source.

The report further stated that examination of the samples taken from the rear passenger side door panel of the Chevy Tahoe indicated that it was in the environment of a discharged firearm or had contact with a PGSR related item.

#### d. Documentary Evidence

The **General Offense Case Report (RD# [REDACTED])**<sup>29</sup> stated that while officers were on routine patrol in the vicinity of 1803 W. 23<sup>rd</sup> Street, they observed a tan Chevy Tahoe firing at the victims in a Lincoln Navigator. The vehicle fled the scene and its occupants were later apprehended.

Commander Valadez' **Tactical Response Report (TRR) and Officer's Battery Report (OBR)**<sup>30</sup> classified [REDACTED] as an assailant whose actions were likely to cause death or great bodily harm. OCIC McNaughton's narrative stated that Commander Valadez and Officer Reyes were on patrol in the area of 23<sup>rd</sup> and Wood when they observed the occupants of the offenders' vehicle fire into a vehicle occupied by four subjects. Commander Valadez gave chase to the

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<sup>25</sup> Attachment 139.

<sup>26</sup> Attachment 140.

<sup>27</sup> Attachment 138.

<sup>28</sup> Primer Gunshot Residue.

<sup>29</sup> Attachment 5.

<sup>30</sup> Attachments 6-7.



offender's vehicle, which crashed into several parked cars on the 1600 block of west 19<sup>th</sup> Street. The offender continued his effort to make good his escape and refused to all verbal commands to stop his vehicle, and purposely struck the vehicle occupied by Commander Valadez and Officer Reyes, with Commander Valadez suffering an injury to his left shoulder. Commander Valadez and Officer Reyes exited their vehicle and ordered the occupants to exit the vehicle. The armed offenders disregarded verbal commands and put the vehicle into drive and continued their efforts to escape. The driver of the vehicle then started to open his driver's side, deep -tinted window, at which time commander Valadez fired three rounds at him. Officer Reyes fired five rounds at the offender. The offender suffered a fatal gunshot wound and his vehicle crashed on the 1600 block of west 19<sup>th</sup> Street. The report stated that Commander Valadez discharged his firearm three times.

Officer Reyes' **Tactical Response Report (TRR) and Officer's Battery Report (OBR)**<sup>31</sup> classified [REDACTED] as an assailant whose actions were likely to cause death or great bodily harm. OCIC McNaughton's narrative stated that Commander Valadez and Officer Reyes were on patrol in the area of 23<sup>rd</sup> and Wood when they observed the occupants of the offenders' vehicle fire into a vehicle occupied by four subjects. Commander Valadez gave chase to the offender's vehicle, which crashed into several parked cars on the 1600 block of west 19<sup>th</sup> Street. The offender continued his effort to make good his escape and refused to all verbal commands to stop his vehicle, and purposely struck the vehicle occupied by Commander Valadez and Officer Reyes, with Commander Valadez suffering an injury to his left shoulder. Commander Valadez and Officer Reyes exited their vehicle and ordered the occupants to exit the vehicle. The armed offenders disregarded verbal commands and put the vehicle into drive and continued their efforts to escape. The driver of the vehicle then started to open his driver's side, deep -tinted window, at which time commander Valadez fired three rounds at him. Officer Reyes fired five rounds at the offender. The offender suffered a fatal gunshot wound and his vehicle crashed on the 1600 block of west 19<sup>th</sup> Street. The report stated that Officer Reyes discharged her firearm five times.

[REDACTED] **Arrest Report**<sup>32</sup> stated that he was placed under arrest after his actions caused the death of [REDACTED] and that he was involved in the attempted murder of two on-duty Chicago police officers and four civilian victims. The Receiving Screening Record indicated that Mr. [REDACTED] did not have obvious pain or injury, and that he was received in lock-up without incident. Mr. [REDACTED] was arrested and initially charged with six counts of Attempt First Degree Murder, and one count of First-Degree Murder, but was subsequently released due to the 48-hour requirement to charge. A search of Cook County Court Records appears to show that Mr. [REDACTED] was never charged in connection with this incident.

Mr. [REDACTED] **Central Booking Photographs**<sup>33</sup> do not depict him to have obvious injury.

Commander Valadez' **Tactical Response Report (TRR) and Officer's Battery Report (OBR)**<sup>34</sup> classified Mr. [REDACTED] as an assailant, adding that Mr. [REDACTED] was a passenger in a vehicle that was involved in a shooting incident where the driver threatened deadly force toward Commander Valadez. OCIC McNaughton's narrative stated that Commander Valadez and Officer

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<sup>31</sup> Attachments 8-9.

<sup>32</sup> Attachment 10.

<sup>33</sup> Attachment 11.

<sup>34</sup> Attachments 12-13.

Reyes were on patrol in the area of 23<sup>rd</sup> and Wood when they observed the occupants of the offenders' vehicle fire into a vehicle occupied by four subjects. Commander Valadez gave chase to the offender's vehicle, which crashed into several parked cars on the 1600 block of west 19<sup>th</sup> Street. The offender continued his effort to make good his escape and refused to all verbal commands to stop his vehicle, and purposely struck the vehicle occupied by Commander Valadez and Officer Reyes, with Commander Valadez suffering an injury to his left shoulder. Commander Valadez and Officer Reyes exited their vehicle and ordered the occupants to exit the vehicle. The armed offenders disregarded verbal commands and put the vehicle into drive and continued their efforts to escape. The driver of the vehicle then started to open his driver's side, deep -tinted window, at which time commander Valadez fired three rounds at him. Officer Reyes fired five rounds at the offender. The offender suffered a fatal gunshot wound and his vehicle crashed on the 1600 block of west 19<sup>th</sup> Street. The report stated that Commander Valadez discharged his firearm three times.

In Officer Reyes' **Tactical Response Report (TRR) and Officer's Battery Report (OBR)**<sup>35</sup>, OCIC McNaughton's narrative stated that Commander Valadez and Officer Reyes were on patrol in the area of 23<sup>rd</sup> and Wood when they observed the occupants of the offenders' vehicle fire into a vehicle occupied by four subjects. Commander Valadez gave chase to the offender's vehicle, which crashed into several parked cars on the 1600 block of west 19<sup>th</sup> Street. The offender continued his effort to make good his escape and refused to all verbal commands to stop his vehicle, and purposely struck the vehicle occupied by Commander Valadez and Officer Reyes, with Commander Valadez suffering an injury to his left shoulder. Commander Valadez and Officer Reyes exited their vehicle and ordered the occupants to exit the vehicle. The armed offenders disregarded verbal commands and put the vehicle into drive and continued their efforts to escape. The driver of the vehicle then started to open his driver's side, deep -tinted window, at which time commander Valadez fired three rounds at him. Officer Reyes fired five rounds at the offender. The offender suffered a fatal gunshot wound and his vehicle crashed on the 1600 block of west 19<sup>th</sup> Street. The report stated that Officer Reyes discharged her firearm five times.

██████████ **Arrest Report**<sup>36</sup> stated that he was placed under arrest at 1800 S. Paulina after he was positively identified as being involved in the death of ██████████ the attempted murder of two on-duty Chicago Police Officers, and four civilians. The Receiving Screening Record indicated that Mr. ██████████ did not have obvious pain or injury. Mr. ██████████ was arrested and initially charged with six counts of Attempted First Degree Murder, and one count of First-Degree Murder, but was subsequently released due to the 48-hour requirement to charge. A search of Cook County Court Records appears to show that Mr. ██████████ was never charged in connection with this incident.

Mr. ██████████ **Central Booking Photographs**<sup>37</sup> do not depict him to have obvious injury. ██████████ **Arrest Report**<sup>38</sup> stated that he was placed under arrest after his actions caused the death of ██████████ and that he was involved in the attempted murder of two on-duty Chicago Police Officers and the four civilian victims. The Receiving Screening Record indicated

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<sup>35</sup> Attachments 14-15.

<sup>36</sup> Attachment 16.

<sup>37</sup> Attachment 17.

<sup>38</sup> Attachment 18.

that Mr. ██████ did not have obvious pain or injury, and that he was received in Lock-up without incident. Mr. ██████ was arrested and initially charged with several counts of First-Degree murder, attempted first degree murder, aggravated discharge of a firearm, unlawful possession of a weapon by a felon, aggravated unlawful use of a weapon, and other assorted weapons charges. On 6 April 2018, Mr. ██████ pled guilty to one count of aggravated discharge of a firearm and was sentenced to 8 years in prison.

Mr. ██████ Central Booking Photographs<sup>39</sup> do not depict obvious injury.

#### e. Additional Evidence

**Civil Suit No. ██████**<sup>40</sup> was filed on August 10, 2016, against the City of Chicago and members of the CPD in the United States District Court for the Northern District of Illinois, Eastern Division, by ██████ on behalf of herself as special administrator of the Estate of ██████<sup>41</sup>. On February 8, 2019, the civil case was dismissed after Summary Judgment was granted to Commander Valadez and Officer Reyes.

**Civil Suit ██████**<sup>42</sup> was filed on August 12, 2016, against the City of Chicago, Commander Valadez and Officer Reyes by ██████. On September 12, 2018, Mr. ██████ voluntarily dismissed the case, with leave to re-file. On September 11, 2019, refiled his suit (██████). As of November 18, 2019, Mr. ██████ civil suit was continued.

## VI. LEGAL STANDARD

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 found to be more probably true than not). If the evidence gathered in an investigation

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<sup>39</sup> Attachment 19.

<sup>40</sup> Attachment 134.

<sup>41</sup> Attachments 144 & 145.

<sup>42</sup> Attachments 146 & 147.

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. ANALYSIS

### A. Applicable Rules and Law

This investigation found that Commander Valadez and Officer Reyes' use of deadly force was in compliance with Chicago Police Department policy and Illinois State statutes. Consistent with Illinois state law as codified at 720 ILCS 5/7-5, Chicago Police Department's General Order G03-02-03, Section II<sup>43</sup> states:

- A. "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:
    - 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 or she will endanger human life or inflict great bodily harm unless arrested without delay."

General Order G03-02-03, Section III:

"Use of firearms in the following ways is prohibited:

- A. Firing into crowds.
- B. Firing warning shots.

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<sup>43</sup> This General Order was later rescinded and replaced in October 2017, but this is the Order that was in effect at the time of this incident.

- C. Firing into buildings or through doors, windows, or other openings when the person lawfully fired at is not clearly visible.
- D. Firing at a subject whose action is only a threat to the subject himself (e.g., attempted suicide).
- E. Firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person.”

General Order G03-02-03, Section IV, “Affirmation of Protection of Life Policy”

“Sworn members will not unreasonably endanger themselves or another person to conform to the restrictions of this directive.”

An officer’s use of deadly force is a seizure within the meaning of the Fourth Amendment. When applying the Constitutional standard to a Fourth Amendment analysis, the question is whether the officer’s actions are objectively reasonable in light of the facts and circumstances confronting them. 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). Consequently, “when an officer believes that a suspect’s actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force.” *Muhammed v. City of Chicago*, 316 F.3d 380, 383 (7th Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (*en banc*) (omitting emphasis)). Finally, 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. Analysis of the Use of Deadly Force**

COPA finds that the actions of Commander Valadez and Officer Reyes were objectively reasonable in light of the facts and scenario confronting them. Based on the totality of the circumstances, Commander Valadez and Officer Reyes were justified in using deadly force because it was reasonable for them to believe they were in imminent danger.

1. General Order 03-02-03

CPD General Order 03-02-03 must be interpreted sequentially and as a whole. Section I sets forth the purpose of the directive. Section II lays out specific circumstances when the use of deadly force is justified. Section III then expressly prohibits CPD officers from using firearms in specific situations. However, Section IV then states that officers shall not unreasonably endanger themselves or others in order to comply with the prohibitions contained in Section III. In other words, CPD officers need not comply with General Order 03-02-03's prohibitions when the failure to use their firearm would unreasonably endanger the officer or another person.

a. Section II

In this case, the circumstances fit both prongs of Section II of the General Order. Regarding the first prong, Commander Valadez and Officer Reyes reasonably believed that deadly force was necessary to prevent death or great bodily harm to themselves, or to any other people that may have been in the area, including but not limited to the occupants of the SUV that had just been shot at, if they were still in the area or happened to come back to the scene. While it is notable that the subject did not actually fire a weapon at the officers, this does not affect the analysis. Courts, in this jurisdiction and across the country, have repeatedly and broadly accepted the notion that officers are not required to wait to act until an armed person actually uses deadly force against the officer. *Montoute v. Carr*, 114 F.3d 181, 185 (11th Cir. 1997) (“ . . . an officer is not required to wait until an armed and dangerous felon has drawn a bead on the officer or others before using deadly force”); see also *Leong v. City of Detroit*, 151 F.supp.2d 858 (E.D.Mich. 2001), holding that regardless of whether the suspect actually pointed his gun at the officers, or instead remained with his back turned, he was quite capable of leveling the weapon at an officer or a bystander and inflicting severe injury or death in an instant, and therefore the use of deadly force was permitted; see also *Anderson v. Russell*, 247 F.3d 125 (4th Cir. 2001), holding that an officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action; see also *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007), (“Even if we accept that the threat posed by Long to Deputy Slaton was not immediate in that the cruiser was not moving toward Slaton when shots were fired, the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.”)

Officer Reyes, in her interview, stated that she wasn't sure where the gunshots were coming from, but she believed that they were coming from the vehicle; she also thought that Commander Valadez wouldn't be able to get out of the path of the vehicle in time to avoid being hit. Regarding the gunshots that Officer Reyes mistakenly attributed to the vehicle, although Officer Reyes was wrong about the source of the shots, she was not unreasonable in believing that they came from the subjects in the vehicle. As the

court noted in *Sherrod*, knowledge of the facts and circumstances that are gained after the fact have no place in the later analysis of the reasonableness of the officer's judgment; in other words, evaluations may not be made using the benefit of hindsight. *Sherrod*, *supra* at 805; see also *Graham*, *supra* at 396-397.

Furthermore, the analysis is not limited to whether the officer utilizing deadly force is the one in imminent danger: when an officer reasonably believes an assailant's actions "place him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force." *Horton v. Pobjecky*, 883 F.3d 941, 949, 2018 U.S. App. LEXIS 4885, \*14, 2018 WL 1061677, quoting *Sherrod*, *supra* at 805 (internal marks omitted). In this case, while Officer Rey was not in the path of the vehicle, Commander Valadez was.

Regarding the second prong, commonly referred to as the "fleeing felon" rule, the inquiry is whether a reasonable officer under the same circumstances would have believed deadly force was necessary to prevent the subjects from defeating the arrest by resistance or escape.<sup>44</sup> The officers' accounts are consistent in the circumstances, which satisfy multiple aspects of the policy: (a) the occupants of the SUV had just committed a forcible felony in that they had shot at the other SUV, which falls into the category of physical force likely to cause death or great bodily harm; (b) the occupants were attempting to escape by using a deadly weapon, because the vehicle itself was being utilized as a deadly weapon; and (c) the occupants had indicated that they were willing to endanger others unless arrested, in that they were willing to hit Commander Valadez, and in fact had already hit the squad car, with their vehicle in order to make good their escape. The Seventh Circuit has broadly stated that an officer "does not violate the Fourth Amendment by firing at a suspect when the officer reasonably believes that the suspect had committed a felony involving the threat of deadly force, was armed with a deadly weapon, and was likely to pose a danger of serious harm to others if not immediately apprehended." *Horton*, *supra* at 949, quoting *Ford v. Childers*, 855 F.2d 1271, 1275 (7th Cir. 1988) (internal quotations omitted).

Although all cases are extremely fact specific, courts have found the use of deadly force to prevent escape justifiable in somewhat similar cases. See, e.g., *Klein*, *supra*, (finding that the officers were justified in using deadly force when a suspect they reasonably believed committed a burglary was fleeing in a vehicle).

#### b. Section III

Section III of the General Order would appear to prohibit firing into the SUV, however, Subsection E states "...when the vehicle is the only force used against the sworn member or another person." In this case, the officers were aware that at least one occupant of the SUV had a firearm, and the officers reasonably believed that the subjects were preparing to shoot at them. While possession of a firearm alone does not

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<sup>44</sup> *Klein v. Ryan*, 847 F.2d 368, 372 (7th Cir. 1988)

justify the use of deadly force<sup>45</sup>, this is not the case here, as the officers had just seen someone in that vehicle shooting at another vehicle. While the officers did not see the subject brandishing or pointing the firearm just before they discharged their weapons, they did see the driver's window start to lower, just after the SUV had apparently attempted to run over Commander Valadez. It was reasonable for the officers to believe that the subject was preparing to shoot at them. If, as [REDACTED] states in his letter, the occupants did not know that Commander Valadez and Officer Reyes were police officers and were just trying to flee the area because they were afraid, the driver would have had no reason to roll down his window. Courts have held that officers are not "required to wait until he sets eyes upon [a] weapon before employing deadly force to protect himself against a fleeing suspect who turns and moves as though to draw a gun." *Thompson v. Hubbard*, 257 F.3d 869, 899 (8<sup>th</sup> Cir. 2001). In this case, the fleeing suspect isn't on foot, but Commander Valadez interpreted the subject's actions in the same way as he would a subject turning and motioning as if to draw a weapon, as the action of rolling down the window in the act of fleeing, given that the officers knew there was at least one firearm in the vehicle, could be seen as equivalent to that act. Essentially, given the totality of the circumstances, the act of rolling down the window could be interpreted as preparing to fire a weapon in the same way that turning and making a certain motion could be interpreted as preparing to fire a weapon. Thus, the officers reasonably believed that the vehicle was not the only force being used or about to be used against the officers, and so Subsection E does not apply.

c. Section IV

As noted above in Section 1 of this report, the General Order must be interpreted as a whole. Section IV of the General Order states that officers "...will not unreasonably endanger themselves or another person to conform to the restrictions of this directive." As discussed immediately preceding this paragraph, the officers had just witnessed the occupants of the vehicle shooting at another SUV; the vehicle was driving straight towards Commander Valadez; it had already hit the CPD vehicle; and the driver's side window appeared to roll down. Under the totality of the circumstances, it reasonably appeared to the officers that if they did not use deadly force in an attempt to stop the vehicle right then, it would endanger their lives as well as the lives of any people the occupants happened to encounter imminently. Therefore, the officers felt that it would be unreasonable to conform to the restrictions put forth in the Order.

2. Additional Case Law

While it is regrettable that Commander Valadez and Officer Reyes did not announce their office or warn the subjects in the SUV before firing, we must note that this is not required when not practical. An officer is required to "warn when feasible, but that does not require an officer to warn under all circumstances." *Horton, supra* at 949, quoting

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<sup>45</sup> *Curnow v. Ridgecrest*, 952 F.2d 321, 325 (9<sup>th</sup> Cir. 1991)



*Garner, supra*, at 11-12 (internal quotations omitted) (finding no requirement to warn or identify when officer had limited time and was using deadly force to defend himself and others during an armed robbery). In this case, given that the vehicle was reversing toward the officer, he was not required to stop to identify his office or warn the assailants.

**VIII. CONCLUSION**

Commander Valadez and Officer Reyes witnessed one of the occupants in Mr. [REDACTED] vehicle shoot at the occupants in Mr. [REDACTED] vehicle. Their account is corroborated by Mr. [REDACTED] and his friends, [REDACTED] and [REDACTED]. The physical evidence also supports that one of the occupants in Mr. [REDACTED] vehicle discharged a firearm at Mr. [REDACTED] and his friends. The fired bullets and fragments that were recovered from Mr. [REDACTED] Lincoln Navigator that were suitable for examination were found to have been fired from the same revolver recovered from Mr. [REDACTED] vehicle. Also, examination of Mr. [REDACTED] shirt and the rear passenger side door panel of the Chevy Tahoe indicated that it was in the environment of a discharged firearm or had contact with a PGSR related item. In sum, Mr. [REDACTED] and the other occupants of his vehicle committed a violent forcible felony, when they discharged a firearm multiple times at Mr. [REDACTED] and his friends.

In addition, Mr. [REDACTED] nearly struck Commander Valadez, and did strike his vehicle, when Mr. [REDACTED] attempted to escape the parking lot at Ashland. This was evidenced by the footage from the exterior cameras of the building, which showed that Mr. [REDACTED] intentionally driving in reverse, nearly striking Commander Valadez and in fact hitting Commander Valadez’s vehicle. The recording showed that as Mr. [REDACTED] Chevy Tahoe turned around, simultaneous with an apparent attempt to drive out of the parking lot, the driver’s side window lowered. It was reasonable at that moment for Commander Valadez and Officer Reyes to believe they were in danger of death or great bodily harm because they knew that at least one person in the Chevy Tahoe was armed with a firearm and had already witnessed at least one of the occupants of the Chevy Tahoe shoot at Mr. [REDACTED] and his friends. Therefore, this investigation has determined that Commander Valadez’ and Officer Reyes’ use of deadly force was in compliance with Chicago Police Department policy and Illinois State statutes.

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

COPA has determined by a preponderance of the evidence that Officer Reyes and Commander Valadez’s use of deadly force was objectively reasonable as outlined under state and federal law and the Chicago Police Department’s General Orders.

<b>Officer</b>	<b>Allegation</b>	<b>Finding</b>
Commander Francis Valadez	1. Not Applicable	Not Applicable
Officer Monica Reyes	1. Not Applicable	Not Applicable

Approved:

[Redacted Signature]

\_\_\_\_\_  
Angela Hearts-Glass  
*Deputy Chief Administrator – Chief Investigator*

\_\_\_\_\_  
Date

[Redacted Signature]

\_\_\_\_\_  
Sydney Roberts  
Chief Administrator

\_\_\_\_\_  
Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	8
<b>Major Case Specialist:</b>	Brian Killen
<b>Supervising Investigator:</b>	Robert Coleman
<b>Deputy Chief Administrator:</b>	Angela Hearts-Glass