

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	August 31, 2018
Time of Incident:	5:24 P.M.
Location of Incident:	2529 E. 79 <sup>th</sup> Street (Alley)
Date of COPA Notification:	August 31, 2018
Time of COPA Notification:	5:47 P.M.

On August 31, 2018, Officers Jacob Vaci and Daniel Scannell were assigned to an incident car in the 004<sup>th</sup> District. The officers were patrolling in the vicinity of 7600 S. Kingston when they observed a silver sedan, driven by ██████████ (██████████) commit a traffic violation (made a turn without using a turn signal). The officers activated their emergency equipment and conducted a traffic stop in the vicinity of 7621 S. Kingston. Officer Scannell, the driver of the squad car, approached the driver’s side of the vehicle and asked for ██████████ identification. ██████████ did not have any form of identification on his person, at which time Officer Scannell asked for his name, address, and date of birth. Officer Vaci went to the passenger side of the vehicle and spoke to the passenger of the vehicle, ██████████. Officer Scannell received the information, and he and Officer Vaci returned to the squad car to conduct a name check for ██████████.

As Officer Scannell was in the process of conducting the name check, ██████████ exited his vehicle and began running eastbound through a vacant lot at 7621 S. Kingston. Officers Scannell and Vaci began chasing ██████████ on foot through the vacant lot. ██████████ turned southbound in the alley, and the officers continued to pursue ██████████. When ██████████ was about 20 feet away from the officers, he fired a gun once in the officer’s direction and missed. Both officers returned fire, firing approximately 18 rounds in ██████████ direction. ██████████ did not sustain any injuries during the exchange of gunfire. ██████████ continued running westbound through a vacant lot at 7641 S. Kingston, but he gave up when he encountered an 8-foot wrought iron fence. Officers Scannell and Vaci ordered ██████████ to drop his weapon and get on the ground. ██████████ complied with the officer’s orders and was placed in custody.

**II. INVOLVED PARTIES**

Involved Officer #1:	Jacob Vaci; Star #9842; Employee # ██████████; Date of Assignment: June 27, 2016; Police Officer; Unit of Assignment 004 <sup>th</sup> District; DOB: ██████████, 1982; Male; White
Involved Officer #2:	Daniel Scannell; Star #14131; Employee # ██████████; Date of Assignment: December 12, 2016; Police Officer; Unit of

Involved Individual #1:

Assignment: 004<sup>th</sup> District; DOB: ██████████, 1995; Male; White

██████████ DOB: ██████████, 1998; Male; White

### III. ALLEGATIONS

Pursuant to section 2-78-120 of the Municipal Code of Chicago, the Civilian Office of Police Accountability (COPA) has a duty to investigate all incidents in which a Chicago Police Department (CPD or Department) member discharges a firearm. During its investigation of this incident, COPA did not find evidence to support allegations of excessive force related to either of Officer Scannell's and Vaci's firearm discharge.

### IV. APPLICABLE RULES AND LAWS

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General Orders<sup>1</sup>

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1. General Order G03-02: Use of Force (effective October 16, 2017 - February 28, 2020)
2. General Order G03-02-01: Force Options (effective October 16, 2017 – February 28, 2020)

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<sup>1</sup> Department general and special orders, also known as directives, “are official documents establishing, defining, and communicating Department-wide policy, procedures, or programs issued in the name of the Superintendent of Police.” Department Directives System, General Order G01-03; *See also* Chicago Police Department Directives System, available at <http://directives.chicagopolice.org/directives/> (last accessed July 16, 2021).

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

### a. Interviews

COPA interviewed the involved member, **Officer Daniel Scannell**<sup>3</sup>, on November 1, 2018. Officer Scannell stated that on August 31, 2018, he and Officer Vaci were on routine patrol when they observed a vehicle, occupied by █████ fail to use a turn signal. Officers Scannell and Vaci activated their emergency equipment and pulled █████ vehicle to the side of the road. They approached █████ vehicle and Officer Scannell asked for his driver's license. Officer Scannell spoke to █████ through the back driver's side window because the front driver's side window did not roll down. █████ did not have his license or other forms of identification, so he asked for his name and his date of birth. Officer Vaci spoke with the passenger of the vehicle, now known as █████. The Officers returned to the squad car and Officer Scannell began typing █████ last name in the PDT<sup>4</sup> System.

During this time, █████ exited his vehicle and began running eastbound through a courtyard. Officers Scannell and Vaci pursued █████ at which time Officer Vaci yelled out, "He has a gun."<sup>5</sup> They continued to run through the courtyard. Officer Scannell ran around a truck that was parked in the courtyard. Once he cleared the truck, █████ pointed his weapon at Officer Scannell, but █████ did not fire the weapon. Officer Scannell did not have his weapon in his hand when he initially exited the squad car to pursue █████ on foot, but he retrieved his weapon when Officer Vaci shouted to him that █████ had a gun. When they entered the alley, Officer Scannell positioned himself on the left side of the alley and Officer Vaci was on the right side of the alley. █████ continued to run and turned toward Officers Scannell and Vaci, with his weapon pointed, and fired his weapon at the Officers. Officers Scannell and Vaci returned fire<sup>6</sup> at █████ who continued to run. █████ ran westbound into an open courtyard, where he was blocked in by a wrought iron fence. Officer Scannell ordered █████ to drop the weapon, which was still in his right hand, and to get on the ground.<sup>7</sup> █████ complied with the commands and Officer Scannell holstered his weapon, put his knee in █████ back and placed him in handcuffs. Officer Vaci recovered the black handgun, and later gave the weapon to Officer Tammy Hernandez. Officers Scannell and Vaci reported the shots fired and the location over the radio. Officers Scannell and Vaci escorted █████ to their vehicle.

None of the officers, Scannell, Vaci, or █████ sustained any injuries during the incident. No one required any medical treatment, but Officer Scannell went to Christ Hospital, each for shortness of breath.

COPA interviewed the involved member, **Officer Jacob Vaci**<sup>8</sup>, on November 1, 2018. Officer Vaci stated that on August 31, 2018, he and Officer Scannell were on routine patrol when

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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> Att. 21, 46

<sup>4</sup> Portable Data Terminal

<sup>5</sup> Att. 46, Page 13, Line 16

<sup>6</sup> Officer Scannell fired his weapon seven times and Officer Vaci fired his weapon 11 times.

<sup>7</sup> Att. 46, Page 14, Line 10

<sup>8</sup> Att. 20, 47

they observed [REDACTED] traveling westbound on 76<sup>th</sup> Street. [REDACTED] turned southbound onto Kingston without using a turn signal. Officers Vaci and Scannell curbed the vehicle in the vicinity of 7625 S. Kingston. They exited their squad car and approached [REDACTED] vehicle. Officer Vaci approached the passenger's side and Officer Scannell approached the driver's side. Officer Vaci spoke to a female passenger, now known as [REDACTED] and Officer Scannell spoke to [REDACTED]. Officer Vaci did not recall the conversation between him and [REDACTED] but he remembered that she did not have her identification. Officer Scannell received [REDACTED] information and they walked back to the squad car.

When they arrived at the squad car, Officer Vaci stood outside the squad car, and Officer Scannell was inside of the squad car using the PDT. During this time, [REDACTED] exited his vehicle and ran eastbound through an open lot. Officers Vaci and Scannell pursued [REDACTED] on foot, through the lot. Officer Vaci said as they pursued [REDACTED] "[REDACTED] right hand was on his right waistband, and his left hand was free running."<sup>9</sup> Officer Vaci indicated that based on his experience as an officer, [REDACTED] was holding a weapon or the gun in his waistband. Officer Vaci yelled to Officer Scannell, "He has a gun. He has a gun. He has a gun."<sup>10</sup> Officer Vaci explained that Officer Scannell was in front of him to the left-hand side and [REDACTED] was in front of him. [REDACTED] turned in the alley, reached back with his right hand and pointed the black gun in Officer Scannell's direction. Officer Vaci indicated that this was the first time he saw [REDACTED] gun. [REDACTED] did not fire the weapon at that time and continued to run southbound through the alley.

As they ran through the alley, Officer Vaci removed his gun from his holster. [REDACTED] was two to three garages ahead of Officer Vaci, during which time, "He looks back in my direction over his right shoulder, and then he looks to his left, and then that's when he takes his weapon, his gun, and fires it at me and my partner."<sup>11</sup> Officer Vaci said [REDACTED] fired his weapon once. Officers Vaci and Scannell then returned fire at [REDACTED]. Officer Vaci learned he fired about eleven times and Officer Scannell fired his weapon about seven to eight times. [REDACTED] continued to run southbound through the alley and turned westbound through another open lot. [REDACTED] was unable to run any further because of a wrought iron fence that surrounded the property. Officers Vaci and Scannell ordered [REDACTED] to drop his weapon. [REDACTED] threw the gun to the ground and then he laid on the ground. Officer Scannell placed [REDACTED] in custody and Officer Vaci recovered [REDACTED] weapon. Officers Vaci and Scannell escorted [REDACTED] to the squad car because crowd began to gather around. Officer Vaci indicated that he kept the gun on his person as they were escorting [REDACTED] to the vehicle. Officer Vaci said that no one sustained any gunshot injuries as a result of the incident. Officer Vaci reported the shots fired over the radio. Officer Vaci related that he was taken to Trinity Hospital for shortness of breath. Officer Vaci said that he gave [REDACTED] weapon to Officer Hernandez before he went to the hospital.

COPA attempted to interview<sup>12</sup> [REDACTED] and [REDACTED] but neither responded to COPA's requests for an interview.

## b. Digital Evidence

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<sup>9</sup> Att. 47, Page 13, Lines 16 -17

<sup>10</sup> Att. 47, Page 13, Line 24 and Page 14, Line 1

<sup>11</sup> Att. 47, Page 14, Lines 23 – 24 and Page 15, Lines 1 - 3

<sup>12</sup> Atts. 32, 33, 34, 35, 41, 42, 43

The **Body-Worn Camera and In-Car Camera of Officers Scannell and Vaci**<sup>13</sup> depicted the officers conducting a traffic stop on a gold-colored Toyota Avalon driven by [REDACTED] Officer Scannell approached the driver's side of the vehicle and spoke with [REDACTED] Officer Vaci approached the passenger's side of the vehicle and spoke with [REDACTED] Officer Scannell asked for [REDACTED] name, date of birth and identification. [REDACTED] provided his name and date of birth, but he did not have his identification. [REDACTED] continued to look in Officer Vaci's direction, as Officer Scannell spoke to him. Officer Vaci asked [REDACTED] for her name, age, and identification. Officer Vaci also asked [REDACTED] had she ever been arrested and if they had anything in the car. [REDACTED] did not have her identification on her person, and she denied being arrested or having anything in the vehicle. When Officers Vaci and Scannell finished speaking with [REDACTED] and [REDACTED] they walked back to the squad car.

When the officers returned to their vehicle, Officer Vaci stated to Officer Scannell, "He's lying."<sup>14</sup> Officer Vaci stated, "There he goes,"<sup>15</sup> and the officers ran in [REDACTED] direction. The video depicted [REDACTED] running through a vacant lot, and Officer Scannell running on the north side of the same vacant lot. Officer Vaci stated, "He's got a gun, he's got a gun."<sup>16</sup> [REDACTED] continued running through the vacant lot and made a right turn in the alley. Officer Vaci called OEMC on his radio and the operator requested additional details of the incident. Officer Scannell also made a right turn in the alley and Officer Vaci followed behind them.

While in the alley, [REDACTED] ran on the right side of the alley and Officer Scannell was positioned on the left side of the alley. Officer Vaci positioned himself on the right side of the alley, at which time one gunshot was heard. Officer Vaci yelled out, "Shots fired,"<sup>17</sup> and Officers Scannell and Vaci then fired their weapons several times at [REDACTED] turned right through a vacant lot, and Officers Scannell and Vaci followed him. When [REDACTED] got in the lot, he stopped running due to a seven to eight-foot wrought iron fence. Officer Scannell yelled out for [REDACTED] to drop the gun and get to the gun. Officer Scannell immediately handcuffed him. Officer Vaci recovered a black handgun that was a few feet away from [REDACTED]

The **evidence technician photographs**<sup>18</sup> did not depict any visible injuries to Officers Vaci and Scannell or the subject, [REDACTED] The photographs also depict several pictures of the scene, including bullet damage to garages and garbage cans in the area. The photos also show bullet holes and damage to homes in the area, including a bullet hole over a kitchen sink in one home.<sup>19</sup> The photographs further showed the shell casings in the alley of 2529 E. 79<sup>th</sup> Street. The evidence technician photographs depicted a photograph of [REDACTED] weapon, which was in an evidence box.

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<sup>13</sup> Att. 24, 52 (ICC Beat 406b)

<sup>14</sup> Att. 24 BWC of P.O. Vaci, at the 1:41 Mark

<sup>15</sup> Att. 52 ICC at the 2:35 Mark, depicts [REDACTED] open the driver's side door and flee on foot. Att. 24 BWC of P.O. Vaci, at the 1:52 Mark.

<sup>16</sup> Att. 24 BWC of P.O. Vaci at the 1:53 Mark

<sup>17</sup> Att. 24 BWC of P.O. Vaci at the 2:05 Mark

<sup>18</sup> Att. 22

<sup>19</sup> Those bullets apparently came from the officers' weapons. COPA has no evidence to suggest that Officers Scannell and Vaci intended to shoot into a building. COPA is also not aware of any reports of any injuries related to the bullet damage.

### c. Physical Evidence

The **Illinois State Police Forensic Report**<sup>20</sup> indicated that the gunshot residue test revealed that █████ either discharged a firearm, contacted an item with gunshot residue, or had his left hand in the environment of a discharged weapon. █████ weapon was tested for DNA, but the swabs from █████ weapon were deemed inconclusive. Fingerprints were taken from █████ weapon, but there were no suitable latent prints. Officers Scannell and Vaci's weapons were examined, test fired, and deemed operable.

The **Crime Scene Processing Report**<sup>21</sup> indicated that an evidence technician recovered the weapon officers found at the scene, a Walther, PPQ, Semi-Auto, Black, with a ten-round capacity magazine.<sup>22</sup> One expended shell casing was recovered from the chamber of █████ weapon. The evidence technician also recovered eighteen fired cartridge cases (Win 9mm Luger +P) and one fired bullet from the scene.

### d. Documentary Evidence

The **arrest of █████** indicated that he was arrested for two counts of Attempted Murder and failing to use a turn signal. The reports related that on August 31, 2018, at approximately 5:20 P.M., Officers Vaci and Scannell observed █████ fail to utilize his turn signal while in the vicinity of 76<sup>th</sup> and Kingston. The officers curbed █████ in the vicinity of 7621 S. Kingston. During the traffic stop, █████ failed to produce his identification. █████ then fled eastbound through a vacant lot and southbound through an alley. █████ retrieved a weapon from his waistband, pointed it in the officers' direction and fired one round. █████ then ran through a vacant lot in the vicinity of 7641 S. Kingston, where he was subsequently placed in custody. The officers immediately recovered █████ weapon, a Walter Arms PPQ serial # █████ with a loaded magazine. Officers Vaci and Scannell also recovered what officers suspected to be cannabis from █████ left front pant pocket.

The **Case Supplementary Report**<sup>24</sup> indicated that detectives conducted canvasses in the vicinity of 7600 S. Colfax and Kingston. The residents the detectives spoke with did not witness the shooting, but they heard several gunshots in the surrounding area.

The **Case Supplementary Report**<sup>25</sup> indicated that detectives interviewed a witness, █████ said he was standing near a gate by his home, 7615 S. Kingston, and observed a marked squad car pull a vehicle over. The officers approached the vehicle on each side. The officers returned to their vehicle. The male/black driver, now known as █████ of the curbed vehicle ran from his vehicle into a vacant lot (█████), at which time the officers pursued █████ observed █████ holding his waistband as he fled through the lot. █████

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<sup>20</sup> Att. 19, 45

<sup>21</sup> Att. 26. The detectives also canvassed the 7600 block of Colfax. None of the residents that the detectives spoke to witness the shooting incident.

<sup>22</sup> Officer Hernandez took possession of the weapon prior to Officer Vaci going to the hospital. The exchange of the weapon was captured on Officers Vaci's and Hernandez' BWC.

<sup>23</sup> Att. 6

<sup>24</sup> Att. 29

<sup>25</sup> Atts. 30, 51

stated he followed the path of the officers and he observed them turn southbound in the alley. ██████ reported that he heard several gunshots.

The detectives interviewed Officers Scannell and Vaci, who provided essentially the same information that was stated to COPA during their interviews. The detectives also interviewed ██████ and ██████. Neither ██████ nor ██████ witnessed the incident.

The **Tactical Response Report (TRR)**<sup>27</sup> completed by Officer Scannell indicated that ██████ did not follow verbal direction, fled, posed an imminent threat of battery with weapon and used force likely to cause death or great bodily harm. Officer Scannell responded with member presence, verbal direction/control techniques, emergency handcuffing, and lethal force with a semi-automatic weapon. Officer Scannell discharged his weapon seven times.

The **Tactical Response Report (TRR)**<sup>28</sup> completed by Officer Vaci indicated that ██████ did not follow verbal direction, fled, posed an imminent threat of battery with a weapon and used force likely to cause death or great bodily harm. Officer Vaci responded with member presence, verbal direction/control techniques, emergency handcuffing, and lethal force with a semi-automatic weapon. Officer Vaci discharged his weapon eleven times.

The **OEMC Event Queries and Audio Transmissions**<sup>29</sup> reported that during a traffic stop, shots were fired at and by the police. The report noted that the offender was in custody and a weapon was recovered.

#### e. Additional Evidence

COPA conducted a **canvass**<sup>30</sup> in the vicinity of 7625 S. Kingston, which did not reveal any additional witnesses.

## VI. LEGAL STANDARD

### a. Standard of Review

COPA applies a preponderance of the evidence standard to determine whether allegations of excessive force are justified or well-founded.<sup>31</sup> A **preponderance of evidence** is evidence indicating that it is more likely than not that the alleged conduct occurred.<sup>32</sup> If the evidence COPA

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<sup>26</sup> ██████ is ██████ girlfriend and ██████ sister.

<sup>27</sup> Att. 8

<sup>28</sup> Att. 9

<sup>29</sup> Att. 12, 36 -39

<sup>30</sup> Att. 13

<sup>31</sup> See Municipal Code of Chicago, Ch. 2-78-110

<sup>32</sup> *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.”).

gathers in an investigation establishes that it is more likely than not that misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

**b. Use of Force.**

CPD Policy states that the “Department’s highest priority is the sanctity of life.”<sup>33</sup> CPD members are expected to act with the utmost regard for preserving human life and must comply with CPD use of force orders.<sup>34</sup> CPD’s policy in place on the date of the incident provides that a CPD member’s use of force must be evaluated based on the totality of the circumstances known by the member at the time of the incident, from the perspective of a reasonable Department member in the same or similar circumstances, and without the benefit of 20/20 hindsight.<sup>35</sup> CPD policy recognizes that Department members must “make split-second decisions – in circumstances that are tense, uncertain, and rapidly evolving-about the amount of force that is necessary in a particular situation.”<sup>36</sup>

CPD General Order entitled “Use of Force” provides that a member’s use of force must be “objectively reasonable, necessary, and proportional.”<sup>37</sup> Each of these elements is further explained in CPD policy, as follows:

- Objectively Reasonable: In evaluating use of force, CPD policy provides that the key issue is whether the Department member’s use of force was objectively reasonable under the totality of the circumstances at the time force is used.

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<sup>33</sup> General Order G03-02 (effective October 16, 2017 to February 28, 2020) (hereinafter the “Use of Force Order”).

<sup>34</sup> Questions as to the propriety of a police officer’s use of force, including excessive or deadly force, are also typically evaluated under state law as well as the 4<sup>th</sup> Amendments to the United States Constitution and Illinois state Constitution. However, CPD policy in place at the time of the incident in this case prohibited the use of deadly force under circumstances that may have been permissible under state law and 4<sup>th</sup> amendment law, meaning that CPD policy is *more* restrictive than state law and federal 4<sup>th</sup> amendment law. COPA’s analysis therefore focuses solely on whether the officers use of deadly force complied with Department policy in place at the time of the incident. COPA cites to caselaw to aid in interpretation of common concepts (such as the meaning of “objectively reasonable”).

<sup>35</sup> Use of Force Order, section II.D.

<sup>36</sup> Use of Force Order, section II.D.

<sup>37</sup> Use of Force Order, section III.B.

Although “reasonableness” cannot be precisely defined, CPD policy states the following non-exclusive list of factors can be considered:

- “whether the subject is posing an imminent threat;
- the risk of harm, level of threat, or resistance presented by the subject; and
- the subject’s proximity or access to weapons.”<sup>38</sup>
- Necessary. Department members are limited to using “only the amount of force required under the circumstances to serve a lawful purpose.”<sup>39</sup>
- Proportional. A Department member’s use of force must be proportional to the “threat, actions, and level of resistance offered by a subject.”<sup>40</sup>

To reduce or avoid the need for use of force, CPD policy directs members to use de-escalation techniques known as “Principles of Force Mitigation” when it is safe and feasible under the circumstances.<sup>41</sup> These techniques include:

- “Continual Communication,” which means using verbal control techniques to avoid or minimize confrontations before resorting to physical force. This includes using persuasion, advice, instruction, and warning prior to any use of force;
- “Tactical Positioning,” which involves use of positioning, distance, and cover to contain a subject and create a zone of safety for officers and the public; and
- Using “Time as a Tactic” to, among other things, permit the de-escalation of a subject’s emotions and provide time for the subject to comply with police orders, provide time for continued communication, and allow for the arrival of additional members or special units and equipment.<sup>42</sup>

While attempting to de-escalate an encounter, CPD members are required to continually assess the situation and modify their use of force in ways that ensure officer safety as circumstances develop.<sup>43</sup>

### **c. Use of Deadly Force.**

A Department member’s use of deadly force, which includes the discharge of a weapon at or in the direction of a person subject to arrest, is controlled by CPD policy restrictions in addition to those described above. In particular, Department members may only use deadly force as a “last resort” when necessary to protect against an imminent threat to life or to prevent great bodily harm

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<sup>38</sup> Use of Force Order, section III.B.1(a)-(c).

<sup>39</sup> Use of Force Order, section III.B.2.

<sup>40</sup> Use of Force Order, section III.B.3.

<sup>41</sup> Use of Force Order, section III.B.4; *see also* G03-02-01(III) (the “Force Options Order”).

<sup>42</sup> Force Options Order, section III.

<sup>43</sup> Use of Force Order, section III.B.4.

to the member or another person.<sup>44</sup> A threat is defined as “imminent” when it is objectively reasonable to believe that:

- the subject’s actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken;
- the subject has the means or instruments to cause death or great bodily harm; and
- the subject has the opportunity and ability to cause death or great bodily harm.”

CPD’s definition of “last resort” re-enforces the principle that a Department member may only use deadly force when presented with an “imminent threat.”<sup>45</sup>

The Force Options Order outlines the force options available to Department members when met with resistance or threats.<sup>46</sup> The Force Options Order authorizes the use of deadly force in situations involving an “assailant,” which is defined as a subject whose actions constitute an imminent threat of death or great bodily harm to a Department member or another person.<sup>47</sup>

## VII. LEGAL ANALYSIS

COPA finds that a preponderance of the evidence demonstrates that each of Officers Scannell’s and Vaci’s use of deadly force was objectively reasonable under the totality of the circumstances. Their use of deadly force was a last resort and was necessary to prevent the imminent threat of death or great bodily harm presented by ██████

In making the determinations discussed herein, COPA evaluated all available statements and evidence discussed above. As part of this review, COPA found the officers to be credible. The statements from both officers are materially consistent with each other, and are supported by video, firearm, and physical evidence. Additionally, as neither ██████ nor ██████ agreed to an interview with COPA, COPA has no evidence to contradict the officers’ account of the incident.

### **a. Officer Scannell’s and Officer Vaci’s use of force was authorized under Department policy.<sup>48</sup>**

#### **1. Officer Scannell’s and Officer Vaci’s use of force was objectively reasonable under the circumstances.**

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<sup>44</sup> Use of Force Order, section III.C.3.

<sup>45</sup> *Id.*

<sup>46</sup> Use of Force Order, section III.C.

<sup>47</sup> Force Options Order, section IV.C.2.

<sup>48</sup> COPA evaluated each officer’s use of force separately. Given that their firearm discharges were contemporaneous and, as demonstrated by available evidence, based on essentially the same facts, COPA has consolidated the use of force analysis to address both officers conduct in one place.

COPA finds that the preponderance of the evidence established that each of Officer Scannell's and Officer Vaci's use of force was objectively reasonable under the totality of the circumstances for the following reasons.

First, it was reasonable for Officer Scannell to believe ██████ posed an imminent threat. Shortly after ██████ ran from the car, Officer Scannell heard his partner yell out that ██████ had a gun. Moments later ██████ pointed that weapon at Officer Scannell. Officer Scannell did not fire at that moment but continued to chase ██████ then pointed his firearm at Officer Scannell again and fired.

Second, by pointing and then firing his weapon at officers, ██████ presented a high level of threat and resistance to Officers Scannell and Vaci. ██████ was appropriately considered an "assailant" under the Department's use of force model based on those actions.<sup>49</sup>

Third, the evidence demonstrates that ██████ possessed his weapon until just before officers apprehended him. BWC footage shows ██████ drop the weapon moments before officers approach him near the iron fence. Gunshot residue was found on ██████ hand, although gunshot residue testing could not conclusively determine that ██████ fired the weapon. Further, evidence technicians recovered a shell casing fired from the gun that ██████ discarded before his arrest. The existence of gunshot residue on ██████ hand, together with the BWC footage leads to the conclusion that ██████ had on him, and fired, a weapon when officers discharged their weapons.

**2. COPA cannot conclusively determine that Officer Scannell's and Officer Vaci's use of force violated Department policy regarding necessity and proportionality.**

As discussed above, Department policy requires that each use of force be "necessary"-meaning that officers will use only the amount of force required to serve a lawful purpose.<sup>50</sup> Similarly, Department policy provides that officers will use only the force that is proportional to the threat and resistance offered by a person.<sup>51</sup> Courts have stated that "[f]orce . . . becomes increasingly severe the more often it is used; striking a resisting suspect once is the same thing as striking him ten times."<sup>52</sup> COPA questioned whether Officer Vaci's firearm discharge in this instance went beyond what was "necessary" or "proportional." Officer Vaci fired his weapon eleven times in response to ██████ single shot. Similarly, Officer Scannell fired his weapon seven to eight times. As noted above, it appears some of the bullets from those shots landed in nearby homes, risking the safety of innocent residents.

Despite these concerns, COPA cannot conclude that each officer's use of deadly force was objectively unreasonable. Each officer's fire was in very quick succession without any breaks. Each stopped firing once ██████ fled and did not later resume their fire. Although the officers may have fired more bullets than ██████ each stopped when the threat diminished.

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<sup>49</sup> Force Options Order, section IV.C.2,

<sup>50</sup> Use of Force Order, section III.B.2.

<sup>51</sup> Use of Force Order, section III.B.3.

<sup>52</sup> *Cyrus v. Town of Mukwonago*, 624 F.3d 856, 863 (7th Cir. 2010).

**3. Officer Scannell's and Officer Vaci's de-escalation techniques were adequate under Department policy.**

Officer Scannell and Officer Vaci each attempted to use verbal control techniques with █████ prior to their firearm discharge. Each continually yelled commands for █████ to stop and Officer Scannell ordered █████ to drop his weapon. The alley █████ ran through appeared to offer limited to no options for the officers to seek cover.

Department members must decrease the force used when the resistance they face is lessened.<sup>53</sup> Officer Scannell and Officer Vaci each complied with this policy by stopping their gunfire after █████ fled from their fire. When █████ then climbed a fence, Officer Scannell yelled for █████ to drop his gun. Although █████ apparently still had the gun on him, Officer Scannell and Officer Vaci refrained from using deadly force for the remainder of the encounter.

**b. Officer Scannell's and Officer Vaci's use of deadly force was permissible under Department policy.**

Officer Scannell's and Officer Vaci's actions demonstrate that each officer used deadly force as a last resort based on a reasonable belief that █████ posed an imminent threat of death or great bodily harm.

As discussed above, COPA finds that █████ actions created an imminent threat because (1) his firearm discharge in the officer direction was likely to cause death or great bodily harm unless officers took action; (2) █████ had the means to cause death or great bodily harm through possession of a firearm; and (3) █████ had the opportunity and ability to cause death or great bodily harm as demonstrated by his firearm discharge at officers. Again, █████ actions put him into the category of an "assailant" under Department policy. Officers Vaci and Scannell were authorized to use deadly force as a result.

Further, COPA finds that both officers used deadly force as a last resort. Neither officer used deadly force when █████ initially pointed a gun. Officer Scannell and Officer Vaci only resorted to deadly force after █████ fired a gun in their direction.

## **VII. CONCLUSION**

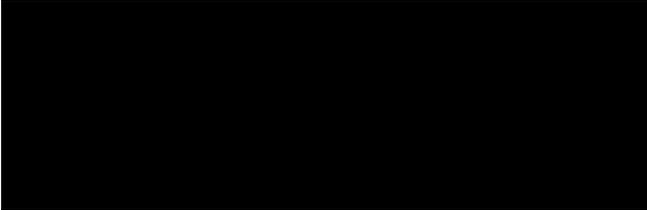
Based on the analysis set forth above, COPA makes the following findings:

COPA finds that a preponderance of the evidence that the use of deadly force by Officers Scannell and Vaci was and authorized under Department policy

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<sup>53</sup> Use of Force Order, section III.B.4.

Approved:



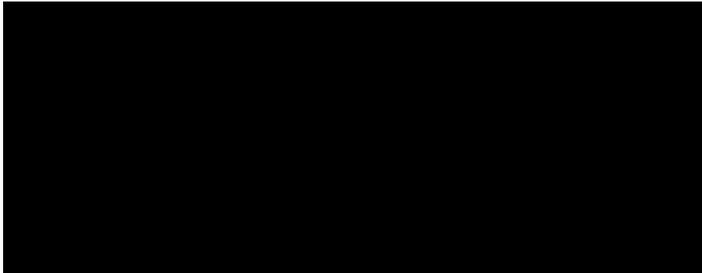
1-31-2022

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Angela Hearts-Glass  
Deputy Chief Investigator

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Date



1-31-2022

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Andrea Kersten  
Interim Chief Administrator

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Date