

SUMMARY REPORT OF INVESTIGATION

I. EXECUTIVE SUMMARY

Date / Time of Incident:	April 28, 2022, approximately 5:45 am
Location of Incident:	6507 West Imlay Street, Chicago, Illinois
Date / Time of COPA Notification:	April 28, 2022, approximately 6:40 am

While off duty, Police Officer Carlos Rojas observed two individuals who were apparently attempting to steal a catalytic converter from a parked motor vehicle. Officer Rojas called out to the individuals from about eighty-five feet away, but he did not identify himself as a law enforcement officer. One of the individuals responded by firing a gunshot in Officer Rojas’s direction; Officer Rojas was not struck by the gunshot. The individuals then hurriedly entered a vehicle of their own, and Officer Rojas fired three gunshots in rapid succession in the vehicle’s direction. Officer Rojas then notified the Office of Emergency Management and Communications (OEMC) by calling 911, and he then reported the incident, though he did not then disclose that he had fired gunshots. To date, the individuals have not been apprehended, and neither is believed to have been struck by Officer Rojas’s gunshots.

The Civilian Office of Police Accountability (COPA) finds that Officer Rojas committed misconduct by discharging a firearm in violation of Chicago Police Department (CPD) policy, by failing to identify himself as a police officer prior to taking police action, and by failing to immediately notify OEMC that he had discharged a firearm.

II. INVOLVED PARTIES

Involved Officer #1:	Carlos M. Rojas; Star #14347; Employee # [REDACTED]; Date of Appointment: November 22, 1993; Rank: Police Officer; Unit of Assignment: 020/059; Male; Hispanic
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III. ALLEGATIONS

Pursuant to section 2-78-120 of the Municipal Code of Chicago, COPA has a duty to investigate all incidents in which a Chicago Police Department member discharges their firearm. In this case, COPA served the following allegations:

Officer	Allegation	Finding
Officer Carlos M. Rojas	At approximately 5:45 a.m. on April 28, 2022, at or near 6507 West Imlay Street, Chicago, Illinois, Officer Carlos M. Rojas committed misconduct through the following acts and/or omissions:	

1. Officer Rojas failed to identify himself as a police officer prior to taking police action in violation of CPD General Order 03-02-01;	Sustained
2. Officer Rojas discharged a firearm in violation of CPD General Order 03-02; and/or	Sustained
3. Officer Rojas failed to immediately notify the Office of Emergency Management and Communications, in violation of CPD General Order 03-06, that he had discharged a firearm.	Sustained

IV. APPLICABLE RULES AND LAWS

Rules

1. Rule 2, CPD Rules of Conduct (prohibiting action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department)
2. Rule 3, CPD Rules of Conduct (prohibiting any failure to promote the Department's efforts to implement its policy or accomplish its goals)
3. Rule 5, CPD Rules of Conduct (prohibiting the failure to perform any duty)
4. Rule 6, CPD Rules of Conduct (prohibiting the disobedience of a CPD directive)
5. Rule 38, CPD Rules of Conduct (prohibiting the unlawful or unnecessary use or display of a weapon)

General Orders

1. G03-02, De-escalation, Response to Resistance, and Use of Force (effective April 15, 2021 to present)¹
2. G03-02-01, Response to Resistance and Force Options (effective April 15, 2021 to present)²
3. G03-02-03, Firearm Discharge Incidents - Authorized Use and Post-Discharge Administrative Procedures (effective April 15, 2021 to present)³
3. G03-06, Firearm Discharge and Officer-involved Death Incident Response and Investigation (effective April 15, 2021 to present)⁴

¹ Att. 60.

² Att. 61.

³ Att. 69.

⁴ Att. 62.

V. INVESTIGATION

A. Third-Party Video Footage⁵

A video recording from a camera mounted on the exterior of a single-family residence at [REDACTED] depicts a white sedan driving eastbound on W Imlay St. past the camera and stopping in the street.⁶ The recording depicts two individuals exiting the white sedan and removing items from their trunk. The individuals move towards the parking lane on the south side of Imlay St. and out of the camera's view. Seconds later, apparent sawing sounds are audible.⁷ The recording then depicts Officer Rojas walking on a sidewalk eastbound in the direction of the white sedan and the two individuals – see Figure 1 below.⁸



Figure 1: A screenshot from Att. 5, third-party footage at 4:35, showing Officer Rojas walking eastbound towards the white sedan.

⁵ Atts. 4 to 10 and 12. COPA reviewed 352 video recordings made by cameras located near the incident scene at or near the time of the events under review. The recording (Att. 5) summarized here is the only known recording that includes both audio and video directly depicting the events under review. A recording from a different camera at [REDACTED] (Att. 4) depicts the arrival of the white sedan and the arrival of Officer Rojas but does not capture the actions of Officer Rojas or the involved individuals at the time shots were fired.

⁶ Att. 5 at 01:58 to 2:17. (references are to elapsed time, in minutes and seconds, measured from the recording's beginning; the recording is not time-marked).

⁷ Att. 5 at 2:17 to 4:28.

⁸ Att. 5 at 4:28 to 4:38.

Officer Rojas stops near a parkway tree, and he calls out towards the individuals words to the effect of “Motherfucker, come on! Come on!”⁹ A gunshot is audible as Officer Rojas takes cover behind the parkway tree.¹⁰ At the moment of the gunshot, a tree branch breaks and falls from a tree located behind Officer Rojas – see Figure 2 below.¹¹ The recording then depicts the individuals hurriedly enter the white sedan.¹²



Figure 2: A screenshot from Att. 5, third-party footage at 4:42, showing the moment when an apparent gunshot is heard.¹³

Approximately six to seven seconds after the first gunshot, the recording depicts Officer Rojas steps out from behind the parkway tree, and then three gunshots are heard in rapid succession.¹⁴ At the moment that the first of those three gunshots is heard, the individuals are completely inside the white sedan while a driver-side door of the white sedan is shown to be ajar.¹⁵

⁹ Att. 5 at 4:39.

¹⁰ Att. 5 at 4:42.

¹¹ Att. 5 at 4:42.

¹² Att. 5 at 4:42 and immediately following.

¹³ That the video depicts a tree branch fall near simultaneously with the sound of the first gunshot satisfies COPA that the video’s audio component is synced with its visual component sufficiently to permit COPA to rely on the temporal concurrence of the two components.

¹⁴ Att. 5 at 4:42 to 4:50.

¹⁵ Att. 5 at 4:48.

At the moment that the second shot is heard, the white sedan's door is closing, and the white sedan is moving in a northeasterly direction, away from Officer Rojas.¹⁶ When the third shot is heard, the white sedan's door is closed and the white sedan is moving away – see Figure 3 below.¹⁷



Figure 3: A screenshot from Att. 5, third-party footage at 4:50, showing the moment when Officer Rojas's third, and last, shot is audible as the white sedan drives away.

The white sedan then proceeds further northeast, away from Officer Rojas, and turns left onto Milwaukee Ave. and out of camera view.¹⁸

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¹⁶ Att. 5 at 4:49.

¹⁷ Att. 5 at 4:49 to 4:50.

¹⁸ Att. 5 at 4:51 to 4:54.

B. Photograph Depicting Officer Rojas

Figure 4: A photograph depicting Officer Rojas, taken by a CPD Evidence Technician on the morning of the incident under review.¹⁹

A CPD Evidence Technician (ET) took photographs, including Figure 4 above, which depicts Officer Rojas as he was clothed at the time of the incident.²⁰

C. CPD Video Footage

On the morning of the events under review, a CPD ET made a video recording which depicts the incident scene from various points of view.²¹ Figure 5 below is a screenshot derived from that video, which shows an east-facing view. The vehicle, a Nissan van, that was the apparent theft target is shown in the background, indicated by an arrow.

¹⁹ Att. 68.

²⁰ Att. 66, pgs. 39 to 40.

²¹ Att. 13.



Figure 5: A screenshot from Att. 13, crime-scene video recording at 1:44, depicting the Nissan van that was the apparent theft target from the west.

Figure 6 below is a screenshot from the CPD crime-scene video recording that shows an opposing, west-facing view. The Nissan van that was the apparent theft target is shown in the center of the image, also indicated by an arrow.



Figure 6: A screenshot from Att. 13, crime-scene video recording at 0:34, depicting the Nissan van that was the apparent theft target from the east.

Figure 7 below is a screenshot derived from the CPD crime-scene video recording that depicts the Mercedes van parked to the east of the Nissan van, the apparent theft target; the Mercedes van's driver-side rear door is shown to bear a perforation caused by a bullet.



Figure 7: A screenshot from Att. 13, crime-scene video recording at 4:37, depicting a Mercedes van with a bullet perforation.

D. Aerial View of the Incident Scene

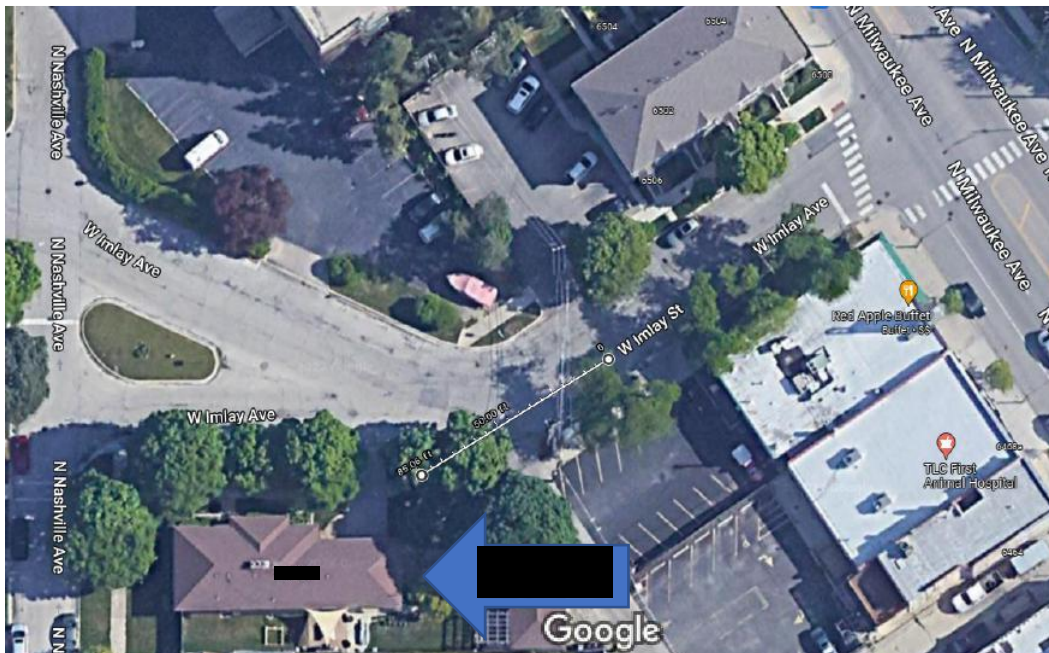


Figure 8: Aerial view of the incident scene, derived from Google Maps, showing a measured distance of approximately eighty-five feet lying between a point approximating Officer Rojas’s firing position and a point approximating the position of the white sedan as it was stopped during the apparent theft attempt.²²

²²Derived from <https://www.google.com/maps/@41.999068,-87.7901226,98m/data=!3m1!1e3> (accessed on August 8, 2022).

E. Physical Evidence

Beginning at about 9:55 am on the incident date, a COPA investigator and CPD detectives observed the collection of physical evidence at the site by CPD evidence technicians.²³ The recovery of a fired cartridge case from within W Imlay St. at a spot approximately 20 to 25 feet to the north of the street's south curb line was observed.²⁴ According to a CPD evidence technician, the case bore the headstamp "40 S&W CBC."²⁵ The recovery of a fired bullet and a bullet fragment from the seatback of the above-described Mercedes van was also observed (see Figure 7, pg. 8).²⁶ The recovery of two fired cartridge cases from the south sidewalk immediately east of the [REDACTED] driveway was then observed, along with the recovery of one fired cartridge case from soil that was immediately adjacent to that sidewalk and to its south.²⁷ According to a CPD evidence technician, each of those three casings bore the headstamp "Winchester 9mm Luger +P."

Beginning at about 11:00 am on the incident date, at CPD's Area Five Headquarters located at 5555 W Grand Ave., COPA investigators and CPD officials observed Officer Rojas present a firearm to a CPD evidence technician for breakdown.²⁸ The firearm was a semi-automatic pistol.²⁹ The evidence technician cleared the firearm, causing it to expel one live round, which the evidence technician placed in an inventory envelope after examining its identifying marks and informing those present that the round bore the headstamp "Winchester 9mm Luger +P."³⁰ The evidence technician then emptied nine live rounds from the firearm's magazine, which he placed in an inventory envelope after examining them and informing those present that each also bore the headstamp "Winchester 9mm Luger +P" and that the magazine had a twelve-round capacity.³¹ The evidence technician also informed those present that the firearm was a Smith & Wesson model M&P 9c having a serial number of [REDACTED]

F. OEMC Recordings and Reports

COPA accessed and reviewed audio recordings of four 911 calls related to the events under review, including an audio recording of a 911 call made by Officer Rojas.³³ OEMC also provided COPA with documentation associated with its receipt of those calls.³⁴ OEMC received the first of those four 911 calls at 5:47:07 am on April 28, 2022.³⁵ In the recording of that first 911 call, the caller informs OEMC that they heard gunshots coming from the area of West Imlay St. and North Milwaukee Ave.³⁶ OEMC then received Officer Rojas's 911 call at approximately 5:47:39 am.³⁷

²³ Att. 3, COPA Preliminary Report; Att. 51, Crime Scene Processing Report.

²⁴ Att. 51, pg. 2.

²⁵ Att. 51, pg. 2.

²⁶ Att. 51, pg. 2.

²⁷ Att. 51, pg. 2.

²⁸ Att. 3; Att. 51, pg. 4.

²⁹ Att. 3; Att. 51, pg. 2.

³⁰ Att. 3; Att. 51, pgs. 2 and 4.

³¹ Att. 3; Att. 51, pgs. 2 and 4.

³² Att. 3; Att. 51, pgs. 2 and 4.

³³ Atts. 14 to 17; Att. 15 is a recording of Officer Rojas's 911 call.

³⁴ Atts. 18 to 25.

³⁵ Att. 22.

³⁶ Att. 14 at 00:11 to 00:28.

³⁷ Att. 19.

In the recording of that call, Officer Rojas identifies himself by name as an off-duty police officer, stating, “Someone just took a shot at me.”³⁸ Officer Rojas also says that a person had been stealing a catalytic converter.³⁹ Officer Rojas then gives his location, stating that he was not hurt and that “three male individuals” who were “masked up” had left the scene in a white Chevy. The dispatcher then asks Officer Rojas if he has “plate information,” and, in response, Officer says that he does not. OEMC received the third 911 call at approximately 5:47:48 am and the fourth 911 call at approximately 5:48:04 am.⁴⁰ In the audio recordings of those calls, both callers say that they heard gunshots in the vicinity of the events under review.⁴¹

G. Body-worn Camera (BWC) Recordings

COPA accessed and viewed BWC video recordings made by CPD officers who responded to the incident scene.⁴² One of those recordings, made by Officer Agata M. Ciach, shows that she was the first CPD officer to arrive at the incident scene in response to OEMC’s dispatch.⁴³ That recording depicts a conversation between Officer Ciach and Officer Rojas immediately upon Officer Ciach’s arrival at the scene.⁴⁴ In it, Officer Rojas tells Officer Ciach, among other things, that he had observed individuals attempting to steal a catalytic converter, that he yelled at the individuals, that he “opened up” his jacket to show them a CPD star embroidered onto his shirt, that one of the individuals then took a shot at him, that he returned fire, and that he was unsure if his shots struck any of the individuals.⁴⁵ The recording also depicts a second conversation between Officer Ciach and Officer Rojas.⁴⁶ Officer Rojas essentially repeats the above information, but adds, “One of them ... takes one shot at me. They go to jump in their car. I see the window open. ... One of them turned around to take a shot at me again, and I shot back. I returned fire.”⁴⁷ In response to Officer Ciach’s inquiries about the individuals’ vehicle, Officer Rojas answers that the vehicle was white, but he could not make out the license plate because he could not approach closely enough. Officer Rojas then shows Officer Ciach where he was positioned when he discharged his firearm and the fired cartridge cases on the ground.⁴⁸

H. CPD Records

A CPD Original Case Incident Report (OCIR) identifies Officer Rojas’s firearm as a 9mm Smith & Wesson model M&P semi-automatic pistol having serial number [REDACTED]. CPD documentation also shows that Officer Rojas completed an annual prescribed weapon qualification with that firearm on March 11, 2022.⁵⁰ CPD records also document that on the incident date Officer Rojas provided a urine sample to the CPD Bureau of Internal Affairs and submitted to an alcohol

³⁸ Att. 15 at 00:13 to 00:19.

³⁹ Att. 15 at 00:20 and following.

⁴⁰ Atts. 24 and 25.

⁴¹ Atts. 20 and 24; Atts. 21 and 25; Atts. 16 and 17.

⁴² Atts. 28 to 32.

⁴³ Att. 29 at 2:30.

⁴⁴ Att. 29 at 2:30 and immediately following.

⁴⁵ Att. 29 at 2:30 am and immediately following.

⁴⁶ Att. 29 at 2:30 am and immediately following.

⁴⁷ Att. 29 at 11:00 to 11:20.

⁴⁸ Att. 29 at 12:15 and immediately following.

⁴⁹ Att. 33, pg. 4.

⁵⁰ Att. 34, pg. 3.

/ breath test. Both tests proved to be negative for the presence of alcohol and prohibited controlled substances.⁵¹

A case supplementary report completed by CPD detectives documents the detectives' interview of Officer Rojas on the afternoon of April 28, 2022.⁵² Officer Rojas provided the following account to detectives: Officer Rojas arrived at his residence at [REDACTED] after working an overnight shift for the CPD Marine Unit. Officer Rojas observed a white sedan driving eastbound on Imlay St. across Nashville Ave. The white sedan stopped on Imlay St. near a parked Nissan van. Officer Rojas saw three men exit the white sedan, and the men raised the Nissan van using a jack and one of them crawled underneath the Nissan van with a saw. Officer Rojas walked from his residence eastbound on Imlay St. in the direction of the men, and he opened his jacket to expose an embroidered star on his shirt. As he walked near the driveway of a residence at [REDACTED], Officer Rojas called out to the men to get their attention and to display the embroidered star on his shirt. One of the men produced a handgun and fired one shot at Officer Rojas, who then took cover behind a tree. Officer Rojas saw the armed man walk around the open front door of the white sedan, heading towards Officer Rojas's position. Officer Rojas, in fear for his life, fired his weapon three times at the armed man. The armed man entered the front driver-side door of the white sedan and one of the other men entered the front passenger-side door, and the white sedan fled eastbound on Imlay St. towards Milwaukee Ave. Officer Rojas then called 911 to report the incident.

The CPD case supplementary report also documents an interview of a witness, [REDACTED] who resided at [REDACTED]⁵³ [REDACTED] told detectives that she was in her residence when she heard gunshots. She then looked outside and saw a man wearing all black clothing with a mask covering his face walking towards a white sedan and enter the front passenger-side door. The white sedan then drove eastbound on Imlay St. towards Milwaukee Ave. [REDACTED] also saw a man she knows as [REDACTED] standing on the sidewalk.

I. Interview of Officer Carlos M. Rojas

COPA interviewed Officer Rojas on June 1, 2022.⁵⁴ Prior to commencing that interview, COPA permitted Officer Rojas, his attorney, and his union representative to privately review the above-described BWC video recording which depicts Officer Rojas's at-scene conversations with Officer Ciach.⁵⁵ Officer Rojas indicated that he had previously viewed the video recorded by the doorbell camera located at [REDACTED].⁵⁶ COPA also permitted Officer Rojas, his attorney, and his union representative to listen to a recording of Officer Rojas's above-described 911 call.⁵⁷

⁵¹ Atts. 36 and 37.

⁵² Att. 58, pgs. 15 to 16.

⁵³ Att. 58, pgs. 13 to 14. Another CPD case supplementary report documents a canvass conducted by CPD detectives on April 28, 2022; several witnesses reported hearing gunshots, but none saw the interaction between Officer Rojas and the men in the white sedan. Att. 57.

⁵⁴ Att. 48 is an audio recording of that interview; Att. 49 is a transcription of that audio recording.

⁵⁵ Att. 49, pg. 6, ln. 20, through p. 7, ln. 13; p. 9, lns. 13 to 24.

⁵⁶ Att. 49, pg. 10, ln. 9, through pg. 15, ln. 3.

⁵⁷ Att. 49, pg. 8, lns. 4 to 15.

COPA inquired about Officer Rojas's attempts, if any, to identify himself as a police officer to the individuals at the scene prior to taking law enforcement action.⁵⁸ Officer Rojas explained that he opened his jacket to display a two-to-three inch star that was embroidered on his shirt.⁵⁹ Officer Rojas also explained that he had said the word "police" while standing on the west side of North Nashville Avenue when he first observed the individuals, before crossing North Nashville Avenue and walking eastbound on West Imlay Street, but he allowed that he did not believe that the individuals heard him.⁶⁰

Officer Rojas said that he saw three individuals involved in the apparent theft attempt,⁶¹ and the two individuals who did not fire at him were in the white sedan at the time that he fired.⁶² However, Officer Rojas also said that he could not see into that vehicle because its back window was dark, and, because of that, he could not see exactly where those individuals were positioned in the white sedan.⁶³ Officer Rojas also said that he thought the individuals involved in the apparent theft attempt were masked because he couldn't make out their facial features, though he allowed that distance may have played a part in his inability to discern their facial features.⁶⁴ Officer Rojas likewise partly attributed to distance and tint his inability to make out the white sedan's license plate characters.⁶⁵

With respect to his decision to fire gunshots, Officer Rojas said that he saw the person who had fired a gunshot in his direction outside of his sedan, looking at Officer Rojas as if he was acquiring a target.⁶⁶ Officer Rojas further said that he thought that the person was going to take a second shot at him.⁶⁷ Officer Rojas also said that he shot in quick succession as the person was entering his sedan to "eliminate the threat . . . thinking that he's going to shoot at me again."⁶⁸ COPA then asked Officer Rojas to identify what the person was doing at the moment that Officer Rojas pulled the trigger the first time.⁶⁹ Officer Rojas responded by saying, "He was – he was – his body – body was out and facing – facing in my direction, and from viewing the videos, believed that obviously he was trying to enter the car. But he was still – still was – his body was still facing my direction."⁷⁰ COPA then asked Officer Rojas whether he could see if the target of his first shot had a gun in his hand or hands at the moment that Officer Rojas made the decision to fire that first shot.⁷¹ In response, Officer Rojas said that he "perceived" that the person still had possession of a

⁵⁸ Att. 49, pg. 38, ln. 22, through pg. 44, ln. 17.

⁵⁹ Att. 49, pg. 25, lns. 4 to 12; pg. 40, lns. 1 to 2; pg. 74, lns. 6 to 24.

⁶⁰ Att. 49, pg. 41, ln. 14 through pg. 42, ln. 8.

⁶¹ Att. 49, pg. 35, lns. 2 to 7.

⁶² Att. 49, pg. 57, ln. 21, through pg. 58, ln. 4.

⁶³ Att. 49, pg. 58, lns. 5 to 10.

⁶⁴ Att. 49, pg. 35, ln. 10, through pg. 36, ln. 3; pg. 36, lns. 20 to 23.

⁶⁵ Att. 49, pg. 36, lns. 8 to 19.

⁶⁶ Att. 49, pg. 26, ln. 13, through pg. 27, ln. 14.

⁶⁷ Att. 49, pg. 27, lns. 14 to 15.

⁶⁸ Att. 49, pg. 28, lines 5 to 6.

⁶⁹ Att. 49, pg. 50, ln. 24, through pg. 51, ln. 1.

⁷⁰ Att. 49, pg. 51, lns. 2 to 6.

⁷¹ Att. 49, pg. 54, ln. 23, through pg. 55, ln. 1.

weapon because he did not see the person toss or put his weapon away.⁷² In response to further questions from COPA, Officer Rojas said that he fired all three of his shots at the same person.⁷³

COPA inquired about Officer Rojas's apparent failure to disclose, during his 911 call, that he had fired shots at the scene. Officer Rojas responded by acknowledging that he did not make such a disclosure, and he attributed this failure to stress.⁷⁴

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 a proposition is proved.⁷⁵ For example, if the evidence gathered in an investigation establishes that it is more likely that the conduct complied with CPD policy than that it did not, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the “beyond-a-reasonable doubt” standard required to convict a person of a criminal offense. Clear and convincing can be defined as a “degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true.”⁷⁶

VII. ANALYSIS

a. Credibility Assessment of Officer Rojas

COPA finds Officer Rojas generally credible, although portions of his account of the incident are undermined by the available evidence. COPA finds that any discrepancies between

⁷² Att. 49, pg. 55, ln. 2, through pg. 57, ln. 11.

⁷³ Att. 49, pg. 56, ln. 2, through pg. 59, ln. 1.

⁷⁴ Att. 49, pg. 44, ln. 18, through pg. 48, ln. 3.

⁷⁵ See *Avery v. State Farm Mut. Auto. Ins. Co.*, 216 Ill. 2d 100, 191 (2005) (“A proposition proved by a preponderance of the evidence is one that has been found to be more probably true than not true.”).

⁷⁶ *People v. Coan*, 2016 IL App (2d) 151036, ¶ 28 (quoting Illinois Pattern Jury Instructions, Criminal, No. 4.19 (4th ed. 2000)).

Officer Rojas's account and the available evidence were likely the result of his compromised ability to accurately perceive the events due to the stressful nature of the incident.⁷⁷

b. Allegation #1, that Officer Rojas failed to identify himself as a police officer prior to taking police action, is Sustained.

COPA finds by a preponderance of the evidence that Officer Rojas failed to identify himself as a police officer prior to taking police action. CPD policy provides that “[s]worn members will, whenever possible, identify themselves as police officers prior to taking any police action, unless identification would jeopardize the safety of the member or others.”⁷⁸ Here, COPA finds that Officer Rojas was taking police action during the incident, that he failed to identify himself as a police officer to the unknown individuals attempting to steal the catalytic converter, and that identification would not have jeopardized his safety or the safety of others.

First, COPA finds that Officer Rojas was taking police action during the incident. Officer Rojas admitted that he intended to arrest the individuals attempting to steal the catalytic converter.⁷⁹ Second, although Officer Rojas indicated that he attempted to identify himself as a police officer, he admitted that his attempts were likely unsuccessful. Specifically, Officer Rojas claimed that he stated “police” when he was near his residence and first observed the unknown individuals. However, he admitted that the individuals likely did not hear him because of how far away he was from them.⁸⁰ In fact, the third-party video did not appear to pick up any statements from Officer Rojas prior to him appearing in the video frame, making it somewhat unlikely that the unknown individuals, who were farther away from Officer Rojas than the third-party camera, had heard him.⁸¹

COPA further finds that Officer Rojas's action in briefly exposing his police star in the direction of the unknown individuals did not comply with CPD policy.⁸² According to Officer Rojas, his star was about 2 inches tall and 3 inches wide.⁸³ Officer Rojas admitted that he was too far away to see the unknown individuals' identifying features,⁸⁴ the make, model, or color of the weapon used by the unknown individual, or the license plate of the white sedan. Given Officer Rojas's distance from the unknown individuals, COPA finds by a preponderance of the evidence that the brief exposure of his police star in the direction of the unknown individuals did not suffice to identify Officer Rojas as a police officer.

⁷⁷ The credibility of an individual relies primarily on two factors: 1) the individual's truthfulness; and 2) the reliability of the individual's account. The first factor addresses the honesty of the individual making the statement, while the second factor speaks to the individual's ability to accurately perceive the event at the time of the incident and then accurately recall the event from memory.

⁷⁸ Att. 61, G03-02-01(II)(D).

⁷⁹ Att. 49, pg. 80, lns. 18 to 24; pg. 81, lns. 1 to 16.

⁸⁰ Att. 49, pg. 41, lns. 19 to 24; pg. 42, lns. 13 to 24; pg. 43, lns. 1 to 2.

⁸¹ Att. 5.

⁸² Att. 49, pg. 40, lns. 1 to 13.

⁸³ Att. 49, pg. 74, lns. 18 to 22.

⁸⁴ Officer Rojas stated that he believed that the unknown individuals were masked because he could not recognize their identifying features or their race, not because he saw them wearing masks. Att. 49, pg. 35, lns. 10 to 24; pg. 36, lns. 1 to 3.

Third, the evidence shows that had Officer Rojas identified himself as a police officer, his identification would not have jeopardized his safety or the safety of others. Specifically, Officer Rojas's stated goal was to stop the individuals from stealing the catalytic converter and to arrest them. To convey to the individuals that he had the authority to arrest them, he would have needed to inform them of his identity as a police officer. COPA finds by a preponderance of the evidence that had Officer Rojas identified himself as a police officer, his safety likely would not have been jeopardized any more than the approach he had taken during the incident, which led to one of the unknown individuals firing a gun in his direction.

Based on a totality of the circumstances in this case, COPA finds by a preponderance of the evidence that **Allegation #1 is Sustained** as a violation of Rules 2, 3, 5, and 6.

c. Allegation #2, that Officer Rojas discharged his firearm in violation of G03-02, is Sustained.

COPA finds by a preponderance of the evidence that Officer Rojas's use of deadly force violated CPD policy. CPD's stated highest priority is the sanctity of human life. In all aspects of their conduct, CPD expects that its members act with the foremost regard for the preservation of human life and the safety of all persons involved.⁸⁵ The use of deadly force is permitted only as a "last resort" when "necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person."⁸⁶ A CPD member may use deadly force in only two situations: (1) to prevent "death or great bodily harm from an imminent threat posed to the sworn member or to another person"; (2) to prevent "an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay."⁸⁷

A threat is considered imminent "when it is objectively reasonable to believe that: (a) the person's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; *and* (b) the person has the means or instruments to cause death or great bodily harm; *and* (c) the person has the opportunity and ability to cause death or great bodily harm."⁸⁸ Officers are expected to modify the use of force as circumstances change and in ways that are consistent with officer safety, including stopping the use of force when it is no longer necessary.⁸⁹

COPA recognizes that Officer Rojas's use of deadly force occurred after the unknown person fired at him. COPA notes, however, that Officer Rojas not only initiated but also escalated the encounter by stating words to the effect of "Motherfucker! Come on! Come on!" in the direction of the unknown individuals as he approached them. In addition, Officer Rojas waited approximately 6 to 7 seconds after being fired at to fire his first round. Officer Rojas thus had enough time to assess the situation and understand that the circumstances had changed, the threat had substantially diminished, and that the unknown individuals were in the process of fleeing.

⁸⁵ Att. 60, G03-02 (II)(A).

⁸⁶ Att. 60, G03-02(IV)(C).

⁸⁷ Att. 60, G03-02(IV)(C).

⁸⁸ Att. 60, G03-02(IV)(B) (emphasis added).

⁸⁹ Att. 60, G03-02(III)(C)(2).

Under these circumstances, the use of deadly force Officer Rojas's use of deadly force at or in the direction of fleeing persons who no longer posed an imminent threat was objectively unreasonable, unnecessary, and disproportionate, and violated CPD policy.⁹⁰

i. Officer Rojas's first shot violated CPD policy where the unknown individual who had earlier fired at him no longer posed an imminent threat.

First, COPA finds by a preponderance of the evidence that at the time Officer Rojas used deadly force, the unknown person did not pose an imminent threat, and Officer Rojas's belief to the contrary was objectively unreasonable. Specifically, at the time Officer Rojas fired the first shot, all unknown individuals were inside of the white sedan while the driver's side door remained open. Officer Rojas admitted that he only perceived the driver to be holding a gun but could not see the driver holding a firearm.⁹¹ Based on this evidence, Officer Rojas's belief that the unknown individual posed an imminent threat was objectively unreasonable. In addition, the evidence suggests that the unknown individual was attempting to flee the scene. Immediately prior to Officer Rojas's first shot, the unknown individual had entered the white sedan, started closing the driver's side door, and appeared to have activated the brake lights.⁹² At this point, the level of threat presented by the unknown individual was so diminished that the use of deadly force was not objectively reasonable. Nevertheless, Officer Rojas fired his weapon.

Further supporting the conclusion that the unknown individual did not pose a threat of imminent harm when Officer Rojas discharged his weapon are Officer Rojas's own actions. After the unknown individual fired at Officer Rojas and began entering the white sedan, Officer Rojas left cover and completely exposed his body in order to fire at the unknown individual in the white sedan.⁹³ Altogether, Officer Rojas waited approximately 6 to 7 seconds after being fired at to fire his first round. Officer Rojas explained that he fired at the white sedan partially out of fear that the unknown individual would place the sedan's gear in reverse and shoot at him again. However, there is no evidence that the unknown individual undertook any of these actions or continued to threaten Officer Rojas once he entered the white sedan. Officer Rojas cannot rely on the fact that the driver earlier fired one shot in his direction to justify his later use of deadly force under different circumstances. Based on the totality of the circumstances present here, COPA finds by a preponderance of the evidence that Officer Rojas's belief that the unknown individual posed an imminent threat was objectively unreasonable.

⁹⁰ On October 16, 2017, the CPD materially modified its Use of Force policy. The CPD's current Use of Force Policy prohibits the use of deadly force under circumstances that would be permissible under the Fourth Amendment to the United States Constitution and Illinois state law. COPA's analysis focuses solely on whether Officer Rojas' use of deadly force complied with CPD Policy.

⁹¹ Att. 49, pg. 27, lns.10-24, pg. 28, lns. 1 to 6.

⁹² Att. 5 at 4:48.

⁹³ Att. 5 at 4:48.

ii. Officer Rojas's second and third shots were prohibited by CPD policy.

Officer Rojas then discharged two more shots at or in the direction of the unknown individuals. When he fired the additional shots, the unknown individuals were inside of the white sedan, the door of the sedan was closing, and the sedan was moving away from Officer Rojas. At this point, Officer Rojas's use of deadly force was prohibited by CPD policy.

First, Officer Rojas used deadly force on the unknown individuals although the circumstances indicated that they were in the process of fleeing. CPD policy prohibits firing at "a fleeing person, unless the person poses an imminent threat."⁹⁴ Here, the evidence shows that when Officer Rojas fired his second and third shots, all unknown individuals were completely inside the white sedan, the driver's door was closing, and the sedan was moving away from Officer Rojas. Officer Rojas's use of deadly force under these circumstances was prohibited.

Second, Officer Rojas fired at the white sedan despite not being able to see how many individuals were inside the white sedan, where they were seated, or whether he was endangering anyone other than the unknown individual whom he was attempting to target. CPD policy prohibits firing at a person who is not clearly visible.⁹⁵ An officer is prohibited from using deadly force in such circumstances unless the officer's discharge is "directed at a specific location and such force is necessary, based on the specific circumstances confronting the sworn member, to prevent death or great bodily harm to the sworn member or to another person."⁹⁶ Here, Officer Rojas admitted that although he was targeting the driver of the white sedan, he did not know how many persons were in the vehicle,⁹⁷ or where they were sitting, because the back windshield of the white sedan was tinted.⁹⁸ His use of deadly force under these circumstances was prohibited by CPD policy.

Third, CPD policy prohibits firing at a person who is near or among other people, unless certain precautions are taken.⁹⁹ In such circumstances, "the discharge of a firearm is permissible only if the member has identified the appropriate target prior to discharging the firearm and has taken precautions to minimize the risk that people other than the target will be struck."¹⁰⁰ Here, COPA finds by a preponderance of the evidence that the tinted back windshield combined with the distance of the white sedan and its movement away from Officer Rojas rendered Officer Rojas unable to take precautions to minimize risk to the other occupant(s) of the white sedan.¹⁰¹ Officer Rojas's use of deadly force under these circumstances was prohibited.

⁹⁴ Att. 60, G03-02(IV)(D).

⁹⁵ Att. #, G03-02-03(II)(D)(5).

⁹⁶ Att. #, G03-02-03(II)(D)(5).

⁹⁷ Officer Rojas believed that there were three individuals involved, but evidence suggests there were two. See generally Att. 5.

⁹⁸ Att. 49, pg. 58, lns. 3 to 10.

⁹⁹ Att. #, G03-02-03(II)(D)(4).

¹⁰⁰ Att. #, G03-02-03(II)(D)(4).

¹⁰¹ Att. 49, pg. 58, lns. 3 to 10.

iii. Officer Rojas’s use of deadly force was not necessary, proportional, or an option of last resort.

COPA further finds that Officer Rojas failed to assess the necessity for the use of deadly force when he fired his weapon and failed to proportionally decrease the amount and type of force when the unknown persons began fleeing. CPD members are required to continually evaluate the need and amount of force needed as a situation develops to ensure that the force options employed are proportional to and necessary under the circumstances. The totality of the circumstances shows that the unknown persons had entered the white sedan and were in the process of driving away when Officer Rojas fired at them. Officer Rojas was required to determine the need for deadly force under those circumstances. Officer Rojas could not rely on the fact that one of the unknown individuals previously fired in his direction to justify his later use of deadly force under different circumstances.

COPA also finds that Officer Rojas’s use of deadly force was not an option of last resort to protect against an imminent threat to life or to prevent great bodily harm. Once the unknown individuals entered the white sedan, Officer Rojas could have monitored their movements while continuing to take cover and could have called 911 to request additional units to respond to the area. The unknown individuals were not coming towards him or threatening him or anyone else in any manner when he fired his weapon three times at their fleeing white sedan. Altogether, COPA finds that Officer Rojas’s use of deadly force violated CPD policy. **Allegation #2 is Sustained** as a violation of Rules 2, 3, 6, and 38.

d. Allegation #3, that Officer Rojas failed to immediately notify OEMC that he had discharged a firearm, is Sustained.

COPA finds by a preponderance of the evidence that Officer Rojas violated the CPD policy requirement to “immediately” notify OEMC of his firearm discharge.¹⁰² Officer Rojas admitted that he failed to immediately notify OEMC that he had discharged his firearm. Officer Rojas explained that his failure was due to the stressful nature of the incident. Officer Rojas, however, was able to immediately call 911 and report that someone had shot at him. At that time, he ought to have notified OEMC that he had also fired his own weapon. His failure to do so violated CPD policy. COPA finds **Allegation #3 Sustained** as a violation of Rules 2, 3, 5, and 6.

VIII. FINDINGS

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

Officer	Allegation	Finding
Officer Carlos M. Rojas	At approximately 5:45 a.m. on April 28, 2022, at or near 6507 West Imlay Street, Chicago, Illinois, Officer Carlos M. Rojas committed misconduct through the following acts and/or omissions:	

¹⁰² Att. 62, G03-06(V)(A).

1. Officer Rojas failed to identify himself as a police officer prior to taking police action in violation of CPD General Order 03-02-01;	Sustained
2. Officer Rojas discharged a firearm in violation of CPD General Order 03-02; and/or	Sustained
3. Officer Rojas failed to immediately notify the Office of Emergency Management and Communications, in violation of CPD General Order 03-06, that he had discharged a firearm.	Sustained

IX. DISCIPLINARY AND REMEDIAL RECOMMENDATIONS

a. Officer Carlos M. Rojas

i. Complimentary and Disciplinary History¹⁰³

Officer Rojas has received the Life Saving Award, a Special Commendation, five Department Commendations, the Police Officer of the Month Award, two Problem Solving Awards, the Traffic Stop of the Month Award, two Complimentary Letters, 271 Honorable Mentions, and 23 other awards and commendations.

ii. Recommended Penalty

COPA has found that Officer Rojas violated Rules 2, 3, 5, 6, and 38 by discharging his firearm without justification, failing to identify himself as a police officer prior to taking police action, and failing to immediately notify OEMC that he had discharged a firearm. Officer Rojas discharged his firearm multiple times in the direction of fleeing individuals who posed no imminent threat to his safety. Officer Rojas’s use of force was not permissible under CPD policies. In mitigation, COPA has considered Officer Rojas’s lack of disciplinary history, his extensive complimentary history, his 29 years of service to the City, and the fact that no one was injured during this incident. Accordingly, COPA recommends that Officer Rojas be separated from the CPD.

¹⁰³ Att. 70.

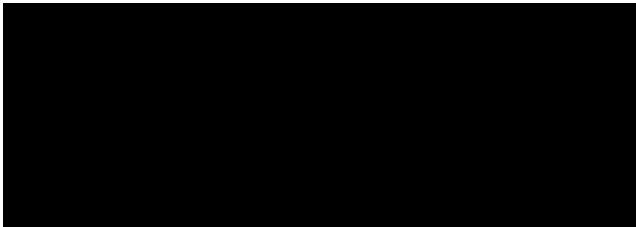
Approved:



5/30/2023

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date



5/30/2023

Andrea Kersten
Chief Administrator

Date