



TO: Kevin Connor
General Counsel

FROM: Andrea Kersten
Chief of Investigative Operations

DATE: July 30, 2020

RE: **Closure of Log No. 1070168**

Summary:

This matter involves the July 5, 2014 fatal shooting of [REDACTED], by Officer Michael Wagner, Officer Armando Garza, Jr., and Officer Francisco Mendoza. IPRA initiated investigation immediately following the shooting. COPA later succeeded IPRA as the investigating agency. IPRA and COPA investigators conducted a full review of available evidence and determined that the shooting was within Department policy and that allegations of misconduct were not appropriate in this case. COPA engaged [REDACTED] (Subject Matter Expert or SME) to conduct an independent, third-party sufficiency review of COPA's investigation and recommendation. COPA investigators reviewed the SME's report, comments, and conclusion. I concur with the investigators' recommendation that this Log No. be closed and seek your concurrence in its closure. The SME report of findings (Report) and COPA's response are discussed below.

Subject Matter Expert Review:

Finding:

The SME conducted a thorough, independent review of IPRA/COPA's investigation and conclusions. Based on the totality of its review as more fully documented in the attached report, the SME concurred with COPA's determination that the conduct of Officer Wagner, Officer Garza, and Officer Mendoza was within Department policy regarding the use of force and that allegations of misconduct would not be appropriate in this matter.

Additional Insights:

The SME offered additional comment regarding GPS evidence and ballistic evidence as additional avenues of investigative inquiry.

Investigative Leads and Evidence Issues:

COPA staff reviewed the SME's remarks regarding the potential eye witness, [REDACTED], a minor. IPRA investigators were unable to make contact with Mario's mother and guardian, [REDACTED], and were therefore unable to interview [REDACTED]. COPA staff also reviewed the SME's remarks regarding the lack of documentation regarding a video camera that was spotted at 8711 S. Morgan. While it is certain that IPRA never obtained any video from that location, there is insufficient documentation as to why such footage was unavailable. COPA has focused significant training efforts surrounding the importance of case note documentation, so that current case files better reflect investigative steps and outcomes.

Conclusion:

The conclusions of COPA investigators and the SME should be accepted and this investigation closed.

Concur: 

General Counsel

1. Introduction

OVERVIEW OF ASSIGNMENT

On December 5, 2019, the City of Chicago Civilian Office of Police Accountability (COPA) engaged [REDACTED] to conduct an independent, third-party sufficiency review of the underlying investigation contained within the case filed under Log No. 1070168. Under the agreement with COPA, [REDACTED] was tasked with providing a written report summarizing each case reviewed.

[REDACTED] INVESTIGATORS

Senior Investigator [REDACTED] led the review of Case File Log No. 1070168 with support, as needed, from Senior Director of Investigations [REDACTED].

2. Investigative Review

SYNOPSIS OF INCIDENT

We derived our synopsis of this incident from the investigation IPRA and COPA conducted. We provided an independent review of the investigation and did not conduct further investigation of this incident.

Chicago Police Department (CPD) Officers Michael Wagner, who was partnered with Officer Ryan Youstra, and Armando Garza Jr., who did not have a partner, were working in uniform on routine patrol in separate marked CPD patrol vehicles in the CPD 6th District. Officer Francisco Mendoza and his partner, Officer Fernando Rodriguez were working on a tactical team on routine patrol while in uniform and in an unmarked CPD vehicle.

All the above-mentioned officers monitored an Office of Emergency Management and Communications (OEMC) notification of shots fired in the vicinity of 86th Street and Morgan Avenue by a man wearing black clothing with red lettering on the front. All the officers proceeded to the area, which is where Officer Mendoza observed [REDACTED], who matched the description provided in the OEMC dispatch, walking southbound on Morgan Street between 86th and 87th Streets. Officer Mendoza and his partner, Rodriguez, exited their CPD patrol vehicle to conduct a field interview. [REDACTED] looked at the officers and began running southbound. The officers followed in pursuit on foot.

[REDACTED] crossed 87th Street, entered the south alley of 87th Street and ran eastbound in the alley. Officer Mendoza maintained his pursuit, but lost sight of [REDACTED] when [REDACTED] entered a backyard. Officer Mendoza then ran eastbound to Sangamon Avenue, where he observed [REDACTED] attempting to hide in front of the residence at 8718 S. Sangamon Avenue. Officer Mendoza observed that [REDACTED] was now holding a handgun with two hands and pointing it at Officer Mendoza. Officer Mendoza identified himself to [REDACTED] as a police officer and he notified the OEMC that [REDACTED] had a handgun. [REDACTED] did not drop the handgun and ran westbound through a gangway to the backyard of the residence, where Officer Mendoza lost sight of him. As Officer Mendoza searched for [REDACTED] in the backyard of 8718 S. Sangamon Avenue, Officers Wagner and Garza entered the adjacent yard to search for [REDACTED]. Officer Garza then observed [REDACTED] hiding under an SUV

parked in the backyard of 8718 S. Sangamon Avenue and Officer Garza alerted his colleagues via radio.

██████████ began to exit from underneath the passenger side of the vehicle so that he was partially under it when he pointed his handgun at Officers Wagner and Garza with his right hand and his finger on the trigger. Officers Wagner and Garza ordered ██████████ several times to drop his firearm, but he did not comply.¹ Officers Wagner and Garza then discharged their service firearms multiple times at ██████████

Officer Mendoza was on the driver's side of the vehicle, saw ██████████ under the car and heard Officer Garza yell that ██████████ still had the weapon. Officer Mendoza heard several shots fired and saw Officer Garza fire several shots at ██████████ Officer Mendoza fired two shots at ██████████ Officer Wagner fired several shots and then stopped firing to give ██████████ an opportunity to drop his handgun.

██████████ did not drop the handgun after several more verbal commands to do so. Officer Wagner re-engaged and fired several more shots at ██████████ Officer Mendoza then moved out of his crossfire position to the front of the vehicle and while doing so, he continued hearing shots fired. Officer Wagner stopped firing at this point because Officer Mendoza was in his line of fire.

Officer Mendoza saw that ██████████ continued to point his handgun in the direction of Officers Wagner, Garza and Mendoza. Officer Mendoza observed that Officer Wagner's service firearm was in "slide lock" and that ██████████ continued to point his handgun at the officers. Officer Mendoza discharged his service firearm multiple times at ██████████ Officer Mendoza then believed that he had an opportunity to disarm ██████████ Officer Mendoza ran toward ██████████ and kicked the handgun out of his hand. Officer Wagner handcuffed ██████████ with the assistance of Officers Rodriguez and Youstra. Officer Garza informed OEMC that shots had been fired by CPD officers and he requested an ambulance. Subsequently, The Cook County Medical Examiner pronounced ██████████ dead at the scene as a result of his gunshot wounds.

METHODOLOGY – MATERIALS REVIEWED

As noted above, we did not conduct an independent investigation of this case. Our review was based on the following materials provided by COPA.

- Civilian interviews conducted by the CPD Area South detectives, IPRA and/or COPA investigators
- Officer interviews done by CPD Area South detectives and later by COPA investigators

¹ Officers Wagner and Garza did not verbally identify themselves as police officers prior to discharging their firearms.

- Relevant digital evidence collected that included Office of Emergency Management and Communications (OEMC) radio transmissions²
- Relevant collected physical evidence including Chicago Fire Department ambulance reports, medical examiners reports, CPD Crime Scene processing reports and Illinois State Police laboratory reports.
- Relevant documentary evidence including CPD Detective Division Supplementary Reports and General Progress Reports, CPD Major Incident Notification Report.
- Relevant use of force policies in effect as of the date of the incident

ANALYSIS

No allegations of misconduct were brought forward by the IPRA and COPA investigation we reviewed. Under CPD policy, COPA, of which IPRA was the precursor, is responsible for reviewing all officer-involved shooting incidents. This was the predicate for the IPRA review.

Based upon the provided investigation, information and evidence reviewed by [REDACTED], using the standard of the preponderance of the evidence that applies in an administrative investigation, the use of force by Officers Wagner, Mendoza and Garza complies with CPD policies regarding use of force, including deadly force.

In their individual interviews, Officers Wagner, Mendoza and Garza stated that they observed [REDACTED] point a handgun at them. Each officer perceived this action as a threat capable of causing death or serious injury. Officers Wagner, Mendoza and Garza stated that they used deadly force in response to the perceived threat presented by [REDACTED] by firing their service firearms at [REDACTED] who was partially underneath an SUV and pointing a handgun at them.

Based on the available information, evidence and the submitted investigation, the following are statements of fact.

- Officers Mendoza, Wagner and Garza were working in police uniform on routine patrol.
- Officer Mendoza was in an unmarked CPD patrol vehicle. Wagner and Garza were working together in a marked vehicle. Both vehicles were in the CPD 6th District when they received an OEMC notification of shots fired in the vicinity of 86th Street and Morgan Street by a man wearing a black clothing with red lettering on the front.
- Officer Mendoza observed [REDACTED] who matched the description provided in the dispatch, walking southbound on Morgan Street between 86th and 87th Streets.

² COPA's Summary Report of Investigation noted that IPRA obtained an in-car camera recording from vehicle #8405, which was assigned to Officers Wagner and Youstra in Beat 621. The recording did not capture the officer-involved shooting. IPRA did not request other in-car camera recordings. It is not clear whether the other vehicles had working cameras at the time. COPA notes that this incident occurred in the backyard of a residence and that no CPD vehicles would have had a view of the incident. No other videos of this incident exist.

- Officer Mendoza and his partner, Officer Rodriguez, exited their CPD patrol vehicle to conduct a field interview of [REDACTED] [REDACTED] looked at the officers and began running southbound. The officers followed in pursuit on foot.
- Officer Mendoza observed [REDACTED] attempting to hide in the front of the residence at 8718 S. Sangamon Avenue while holding a handgun with two hands and pointing it toward Officer Mendoza. Officer Mendoza verbally identified himself as a police officer and [REDACTED] then ran westbound through a gangway to the backyard of the residence. Officer Mendoza lost sight of [REDACTED]
- As Officer Mendoza searched for [REDACTED] in the backyard of 8718 S. Sangamon Avenue, Officers Wagner and Garza entered the adjacent yard where Officer Garza noticed [REDACTED] hiding under an SUV parked in the backyard and he alerted his colleagues via radio.
- [REDACTED] began to exit from underneath the SUV while pointing a handgun at Officers Wagner and Garza. Officers Wagner and Garza gave [REDACTED] verbal commands to drop the handgun, but [REDACTED] did not comply.
- Officers Wagner and Garza perceived this action as a threat capable of causing death or serious bodily injury and they discharged their service firearms multiple times at [REDACTED] [REDACTED] continued to point his handgun in the direction of Officers Wagner, Garza and Mendoza. Officers Wagner and Mendoza then discharged their service firearms multiple times at [REDACTED]
- When [REDACTED] no longer appeared to be a threat to the officers, Officer Mendoza approached him, kicked the handgun out of his hand and secured it.
- Officer Wagner handcuffed [REDACTED] with the assistance of Officers Rodriguez and Youstra.
- The officers called for medical assistance and requested an ambulance. [REDACTED] was not transported to a hospital. The Cook County Medical Examiner pronounced [REDACTED] dead at the scene.

The Department's policy regarding the use of force, as well as Illinois and federal law, governs CPD officers' use of deadly force.

Based on the totality of circumstances, we concur with the determination of the previous investigation that Officers Wagner, Mendoza and Garza complied with CPD policy regarding the use of deadly force.

Based on the preponderance of the evidence, given that [REDACTED] was wanted in connection with a possible shooting, had fled from Officer Mendoza, had pointed a handgun at officers and refused the requests by the officers to drop his handgun when encountered, it was reasonable for the officers to believe they were in imminent danger of death or great bodily harm.

APPLICABLE RULES AND LAW

Chicago Police Department General Order

CPD General Order 03-02-03, Section II (A) states that:³

- 1 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:
- 2 to prevent death or great bodily harm to the sworn member or to another person, or:
- 3 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.

Illinois and United States Precedent

A law enforcement officer's use of deadly force is a seizure within the meaning of the Fourth Amendment. 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. Our review was intended to determine 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.⁴

The following factors are instructive when making the determination of whether an officer's use of force is reasonable.

- The severity of the crime at issue;
- Whether the suspect poses an immediate threat to the safety of the officers or others; and,
- Whether he is actively resisting arrest or attempting to evade arrest by flight.⁵

The analysis of the reasonableness of an officer's actions must be grounded in the following perspective.

[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

³ This was the Use of Force policy in effect at the time of this incident. It has since been rescinded and replaced.

⁴ *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).

⁵ *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)).

are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation.⁶

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.”⁷ Finally, the analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors.⁸

Illinois Statute

CPD officers are bound by Illinois law regarding the use of deadly force as codified in the Illinois Compiled Statutes.⁹ The pertinent Code provision states:

[A] peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person...¹⁰

Additionally, Illinois Statute addresses the use of self-defense by all individuals by stating:

A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.¹¹

Standard of Proof

The standard of proof applicable in administrative investigations such as this is a preponderance of the evidence. A preponderance of evidence can be described as evidence that makes it more likely than not that the alleged misconduct took place.¹² If the evidence gathered in an investigation establishes

⁶ *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014). Internal quotations and citation were omitted.

⁷ *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)

⁸ *Plumhoff v. Rickard*, 572 U.S. 765, (2014) 134 S. Ct. 134 S. Ct. 2012, 2020 (2014); see also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003).

⁹ 720 ILCS 5

¹⁰ 720 ILCS 5/7-5(a)

¹¹ 720 ILCS 5/7-1(a)

¹² 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).

that it is more likely that the misconduct occurred than that it did not occur, even if by a narrow margin, the standard of proof has been met.¹³

CONCLUSION

Our administrative review of the officer-involved shooting under Log No. 1070168 determined that the use of force in the case was consistent with CPD's use of force policies and that the COPA investigation and determination were supported by a preponderance of the evidence. This determination is consistent with the IPRA and COPA investigations. No allegations of excessive force were raised in these investigations.

ADDITIONAL INSIGHTS

We identified noteworthy issues that were not within the scope of our review. We provide this information for transparency, further discussion within COPA, as needed, and the practices, policies and future planning for COPA and the CPD.

Possible Eyewitness to the Shooting

IPRA completed a neighborhood canvas in the area of the shooting and did not locate any witnesses to the shooting. Handwritten notes on an IPRA report state that [REDACTED] of 8742 S. Sangamon Avenue informed investigators that his sister, [REDACTED], has a 13-year-old son named [REDACTED] who was reportedly an eyewitness to the shooting. [REDACTED] would not provide the investigator with [REDACTED] contact information. [REDACTED] attempted to call [REDACTED] while the investigator was in the area, but he was unable to reach her. [REDACTED] informed the investigator that he would provide [REDACTED] with the investigator's business card.¹⁴ No other documentation in the case file indicates that IPRA investigators interviewed [REDACTED] or [REDACTED] or made further attempts to contact them.

Case File Documentation

ATT 17 IPRA Preliminary Report states, "A camera was observed at the rear of 8711 S. Morgan. It is unknown at this time if the camera was functioning or if it captured any portion of the incident." No further documentation exists in the case file other than FN 19 in the COPA Summary Report of Investigation, which states that "there were no other videos of this incident."

During our review, we noted that the number of shots fired at [REDACTED] by CPD officers totaled 30. Officer Garza fired four rounds, Officer Mendoza fired nine rounds and Officer Wagner fired 17 rounds. This may be concerning given that [REDACTED] did not fire any shots at the CPD officers. However, CPD officers are trained to fire their service firearms until a threat has been eliminated. The

¹³ 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).

¹⁴ See Att. #33 and 34.

officers reportedly fired at [REDACTED] and then reassessed his threat to them, which remained as [REDACTED] continued to point his handgun at the officers. The officers then fired again. It is unlikely in this type of situation, each officer realized how many other officers also fired their service firearms and how many times.