



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

INTEGRITY • TRANSPARENCY • INDEPENDENCE • TIMELINESS

TO: Kevin Connor
General Counsel

FROM: Andrea Kersten
Chief of Investigative Operations

DATE: July 30, 2020

RE: Closure of Log No. 1076081

Summary:

This matter involves the July 10, 2015 fatal shooting of [REDACTED] by a Chicago Police Detective. 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 Detective's conduct 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 certain evidence and Department policies.

Investigative Leads and Policy Issues:

COPA staff reviewed the SME's remarks about seeking additional interviews regarding a text message and the further testing of a previously tested DNA sample. The SME also suggested the possibility of obtaining private video footage of the event. COPA investigators determined that additional interviews regarding the text were not material to the investigation and that no such additional video material exists. They also determined the results of prior testing of DNA material sufficient for purposes of the investigation. COPA investigators took note of and concur with the SME's observations regarding potential clarifications or revisions of Department policies.

Conclusion:

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

Concur: [REDACTED]

General Counsel

1. INTRODUCTION

Overview of Assignment

On December 10, 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. 1076081. [REDACTED] provides this report summarizing its review of the matter.

Investigators

Senior Investigator [REDACTED] led the review of the matter at the direction of Senior Director, Investigations [REDACTED] and Director [REDACTED].

2. INVESTIGATIVE REVIEW

Synopsis of Incident

[REDACTED] derived its synopsis of the incident from the investigation IPRA and COPA conducted. [REDACTED] provides its independent review of the investigation conducted by IPRA and COPA – it did not conduct further or independent investigation of the incident.

According to the IPRA and COPA investigation, the evidence provided to and supported by our review, on July 10, 2015, officers from the Chicago Police Department (CPD) Gang Intelligence Division worked with a Cooperating Individual¹ (CI) to take into custody [REDACTED], who was wanted on an active burglary warrant issued out of Lake County, Indiana.² During the operation, the CI told CPD Officer [REDACTED] who was partnered with Officer [REDACTED] that [REDACTED] possessed a firearm. Officer [REDACTED] gathered a team of officers near 111th Street across from the CPD [REDACTED] District building for a briefing. The officers returned to their vehicles and positioned themselves in anticipation of a traffic stop of the CI's four-door pickup truck.³

¹ For the purposes of confidentiality, the CI's name is not disclosed in this report, although the identity is disclosed within the case file. The CI made a statement to CPD [REDACTED] Detectives that he was registered with CPD through Officer [REDACTED]. These documents are not contained within the case file.

² It was later determined that [REDACTED] had a second active warrant, [REDACTED], for failure to appear issued on June 19, 2014. The notifying agency was the Hammond, Indiana, Police Department.

³ The COPA Summary Report states that a "thirteen-member team" was involved in the incident (see footnote #15). The case file identifies 14 team members: Sergeant [REDACTED] Detective [REDACTED] and Officers [REDACTED] [REDACTED] Detective [REDACTED] interviewed these 14 team members. It appears that COPA interviewed nine of the 14 team members: Sergeant [REDACTED] Detective [REDACTED] and Officers [REDACTED] and [REDACTED]. The remaining officers – [REDACTED] and [REDACTED] – did not witness the shooting and therefore may not have had relevant information to add. However, Officer [REDACTED] may have observed the text message from the CI to Officer [REDACTED] (see footnote #5).

The involved officers were Sergeant [REDACTED] Detective [REDACTED] and Officers [REDACTED] [REDACTED] and [REDACTED] Officers [REDACTED] and [REDACTED] were working in unmarked police vehicles in plainclothes and were assigned as the two enforcement vehicles. The other officers were in covert vehicles in plainclothes to assist as surveillance officers.

The IPRA and COPA investigation revealed that at approximately 4 p.m., the CI and [REDACTED] traveled on Cottage Grove Avenue toward 107th Street in the CI's pickup truck. The CI drove and [REDACTED] was in the passenger seat. Two unmarked CPD vehicles were assigned to conduct a traffic stop on the CI's vehicle. CPD Officers [REDACTED] and [REDACTED] were in the first vehicle and Officers [REDACTED] and [REDACTED] were in the second vehicle.

Officers in each vehicle activated the emergency equipment in their unmarked CPD patrol vehicles, stopped the pickup truck and instructed the two occupants – the CI and [REDACTED] – to put their hands in the air. As the officers approached the pickup truck, the CI and [REDACTED] complied and raised their hands. Officers [REDACTED] and [REDACTED] approached on the driver's side of the CI's vehicle behind Officer [REDACTED]. Officers [REDACTED] and [REDACTED] approached the passenger's side of the CI's vehicle. Officer [REDACTED] attempted to open the driver's side door, but it was locked. The CI opened the driver's door and the CI and [REDACTED] began to fight over the gearshift on the steering wheel column.

As the vehicle's tires spun, Officer [REDACTED] heard [REDACTED] tell the CI to "just drive." Officer [REDACTED] pressed the unlock button on the driver's door and unlocked the vehicle doors. The officers continued to yell verbal commands, identifying themselves as police officers and telling the CI and [REDACTED] not to move and to put their hands up. The CI and [REDACTED] remained seated in the vehicle at this time.

Detective [REDACTED] arrived at the scene and approached the CI's vehicle on the passenger's side and positioned himself in between Officers [REDACTED] and [REDACTED] near the passenger door. Sergeant [REDACTED] and Officer [REDACTED] arrived and approached the passenger's side of the vehicle. Sergeant [REDACTED] was positioned behind Detective [REDACTED] and Officer [REDACTED] maintained a position at the passenger rear of the vehicle. Detective [REDACTED] yelled verbal commands along with several other officers for the CI and [REDACTED] to put their hands up. Officer [REDACTED] repeatedly pulled on the passenger door handle to open it and it eventually opened.

The CI and [REDACTED] complied with the commands to put their hands up, but then [REDACTED] leaned forward, hunched his shoulders and extended his left arm toward Officer [REDACTED]. Officer [REDACTED] used his left hand to grab control of [REDACTED] left forearm. As Officer [REDACTED] was doing so, [REDACTED] raised his right arm from his leg area with a handgun in his right hand. [REDACTED] moved his right hand containing the handgun up.

Officer [REDACTED] immediately yelled, "Gun." Officer [REDACTED] let go of [REDACTED] left arm and moved back and to the right to gain cover. Officers [REDACTED] [REDACTED] [REDACTED] and Detective [REDACTED] observed [REDACTED] raise his right hand up from the floor area and they saw that he held a handgun. The CI reported that he observed [REDACTED] reach down between his legs where the handgun was located and went to grab the handgun and then the handgun "moved forward." Detective [REDACTED] reported

⁴ Since the date of this matter, Detective [REDACTED] was promoted to Sergeant (No. [REDACTED]) in Unit [REDACTED]. For this report, [REDACTED] refers to him as "Detective [REDACTED]" which was his title at the time of this matter.

that when [REDACTED] right hand came up from the floor area with the handgun, [REDACTED] pointed the handgun toward the driver's door area of the CI's vehicle where officers were present.

Detective [REDACTED] was in plainclothes with no CPD insignia displayed and his bulletproof vest underneath his t-shirt. He was standing at the pickup truck's front passenger door. Detective [REDACTED] discharged his service firearm once, striking [REDACTED] in the back of his head. [REDACTED] hunched over and became unresponsive; blood dripped from the back of his head.⁵ The other officers on the scene reported that they did not fire at [REDACTED] because they were not in a position to see [REDACTED] right hand with the handgun, were trying to get in a better tactical position or were concerned about the safety of possible crossfire.

Officer [REDACTED] escorted the CI out of the vehicle and laid the CI on the street in a prone position. Officers [REDACTED] and [REDACTED] handcuffed the CI. Officer [REDACTED] called in on his CPD radio that shots had been fired by police and he requested emergency medical services. A Chicago Fire Department (CFD) ambulance took [REDACTED] to the hospital, where he was pronounced dead at 6:38 a.m. on July 11, 2015. CPD Evidence Technician [REDACTED] recovered a blue steel, Colt 45 semi-automatic handgun from the front passenger seat floor of the CI's vehicle.

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 [REDACTED] detectives, IPRA and/or COPA investigators.
- Officer interviews conducted by CPD [REDACTED] detectives and later with COPA investigators.
- Relevant digital evidence collected including the CPD Police Observation Device (POD) video, Office of Emergency Management and Communications (OEMC) radio transmissions and Apple iPhone Extraction Report. None of the involved officers nor the CPD vehicles present had body-worn cameras (BWCs) or in-car camera video equipment.
- Relevant collected physical evidence including CFD ambulance reports, medical records from [REDACTED] Hospital, CPD Crime Scene processing reports and Illinois State Police laboratory reports.
- Relevant documentary evidence including CPD Detective Division Supplementary Reports and General Progress Reports, Hammond, Indiana, Police Reports for [REDACTED] Lake County, Indiana, Warrant Reports for [REDACTED] and the CPD Major Incident Notification Report.
- Relevant Use of Force, Operational Planning and Use of CI policies.

Analysis

By Ordinance, COPA, which upon its September 2017 inauguration assumed responsibility for pending IPRA investigations, is mandated to review all CPD officer-involved shooting (OIS) incidents. This was the predicate for the IPRA case initiation. No allegations of misconduct regarding the incident described herein have been served by IPRA or COPA.

⁵ Detective [REDACTED] reported that “everybody” on the scene was yelling, “Police, let me see your hands.” Detective [REDACTED] yelled a verbal command for the vehicle occupants to show their hands, but he could not recall whether he verbally identified himself as the police.

Based upon the provided investigation, information and evidence reviewed by ██████████ using the standard of the preponderance of the evidence that applies in an administrative investigation, **the use of force by Detective ██████████ complied with applicable law and CPD policy regarding use of force, including deadly force.**

Officers reported that after the CI's pickup truck was stopped, the pickup truck's tires spun, "jerking" the pickup truck (see Officer ██████████ transcript p. 15). The officers stated the pickup truck was "lurching forward and backwards," was "moving" (see Officer ██████████ transcript p. 14 and 15) and was "accelerating, but not moving" (see Officer ██████████ transcript p. 25). Regardless of whether the pickup truck was moving, Detective ██████████ reasonably believed that deadly force was necessary to prevent death or great bodily harm to another officer or another person due to the fact that ██████████ was armed with a handgun and pointing it in the direction of the CI and other officers.

Detective ██████████ stated that he observed ██████████ point a handgun in the direction of the CI and other CPD officers who were on the driver's side of the CI's vehicle, including Officer ██████████. Detective ██████████ perceived this action as a threat capable of causing death or serious injury to the CI and the officers. Other officers on the scene and the CI supported this threat in their statements.

Detective ██████████ stated that he used deadly force in response to this perceived threat by firing his service firearm one time at ██████████ who was inside the CI's pickup truck. ██████████ determination is also based on the preponderance of the evidence standard and based on the totality of the circumstances.

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

- Officers from the CPD Gang Intelligence Division worked with a CI to take into custody ██████████ who was wanted on an active burglary warrant from Lake County, Indiana.
- During the briefing Officer ██████████ held in a parking lot near 111th and Corliss Avenues, officers were informed that the CI reported that ██████████ carried a gun. The officers were shown a photo of ██████████
- The method of arrest was to be a pre-planned traffic stop conducted on the CI while accompanied by ██████████ when officers observed the CI's pickup truck.
- During the operation, the CI texted Officer ██████████ that ██████████ placed a gun on the front passenger floor of the CI's pickup truck. Officer ██████████ told officers involved in the operation of this information via the AT&T push-to-talk feature on his phone.
- Two unmarked CPD vehicles containing five plainclothes officers, using emergency equipment, stopped the CI's pickup truck and instructed the two occupants (the CI and ██████████) to put their hands in the air. As officers approached the CI's pickup truck, ██████████ displayed a handgun and pointed it in the direction of the CI and officers on the driver's side of the pickup truck.
- In response to this perceived threat, Detective ██████████ who was on the passenger side of the CI's pickup truck, fired one round from his service firearm at ██████████ who was still seated in the passenger seat of the CI's pickup truck.
- ██████████ slumped forward inside the CI's pickup truck and was unresponsive with a gunshot wound to his head.
- Officer ██████████ called for medical assistance.

- A search of the CI's pickup truck revealed a handgun on the floor of the passenger area where [REDACTED] was seated.
- [REDACTED] was taken to [REDACTED] Hospital where he was pronounced dead.

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 Detective [REDACTED] complied with CPD policy regarding the use of deadly force. Based on the preponderance of the evidence, it was reasonable for him to believe that officers and the CI were in imminent danger of death or great bodily harm.

Applicable Rules and Law

Chicago Police Department General Orders:

CPD General Order 03-02-03, Section II (A) states that:⁶

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

1. to prevent death or great bodily harm to the sworn member or to another person, or;
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
 - b. is attempting to escape by use of a deadly weapon or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

CPD General Order 03-02-03, Section III (E). (Department Prohibitions for the Use of Deadly Force), provides the following prohibition for use of deadly force:

Firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person.

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

⁶ This was the Use of Force policy in effect at the time of this incident. It has since been rescinded and replaced.

objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.⁷

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.⁸

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 are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation."⁹

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."¹⁰ Finally, the analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors.¹¹

Illinois Statute

CPD officers are bound by Illinois law regarding the use of deadly force as codified in the Illinois Compiled Statutes.¹² 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 .

...¹³

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

⁷ *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).

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

⁹ *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014). Internal quotations and citation were omitted.

¹⁰ *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)

¹¹ *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).

¹² 720 ILCS 5

¹³ 720 ILCS 5/7-5(a)

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.¹⁴

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.¹⁵ If the evidence gathered in an investigation establishes 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.¹⁶

3. CONCLUSION

Our administrative review of the officer-involved shooting under Log No. 1076081 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 investigation. No allegations of excessive force were brought.

4. ADDITIONAL INSIGHTS – TRAINING OPPORTUNITY

██████████ identified additional issues that are beyond the scope of the immediate review but are noteworthy for their impact on the predicate to the incident. This information is provided for transparency and further discussion within COPA, as needed, to determine appropriate practices, policies, and future incident response strategies for COPA and the CPD.

Investigative Leads

1. **Gear Shift DNA:** As officers approached the pickup truck, the CI reported that ██████████ reached for the gear shift and put the pickup truck in “drive” while stepping on the gas pedal. The CI applied the brake, preventing the pickup truck from moving. The gear shift was tested for DNA. An Illinois State Police Laboratory Report dated January 5, 2018 indicated that it identified a mixture of at least three human DNA profiles. The mixture was not suitable for comparisons or entry in the DNA database. Limited amounts of extracted DNA remain from this exhibit for additional testing although nothing in the case file indicates additional testing was performed.
2. **Privately Owned Video Footage:** The case file does not contain any reports indicating that the investigators inquired about any fixed personally owned or private video camera footage during the neighborhood canvas. Investigators inquired during officer interviews if any officer was aware

¹⁴ 720 ILCS 5/7-1(a)

¹⁵ 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).

¹⁶ In criminal cases, the standard of proof is beyond a reasonable doubt, which is a significantly higher evidentiary standard than the preponderance of the evidence standard that applies to administrative findings.

of any private still or video recording of the incident, but the questioned officers stated they were not aware of any non-CPD owned photos or video footage.

3. **Interview of Officer [REDACTED]** The case file contains Detective [REDACTED] interview of Officer [REDACTED] partner, Officer [REDACTED]. The report of the interview indicates that the CI texted Officer [REDACTED] cellphone with the message, "Gun on floor." It is unknown if Officer [REDACTED] viewed the text message Officer [REDACTED] reportedly received from the CI. It does not appear from the case file that COPA interviewed Officer [REDACTED].
4. **Interview of Detective Chiocca:** Detective [REDACTED] stated that Detective [REDACTED] completed the extraction of Officer [REDACTED] cellphone at the Regional Computer Forensics Laboratory (RCFL) kiosk and downloaded that information. The Apple iPhone Extraction Report corroborates that a text message occurred between the CI and Officer [REDACTED] at the reported time, although the report does not contain the text message's content. It does not appear that Detective [REDACTED] was interviewed based on the case file.

Policy Issues

5. **Operational Plans:** [REDACTED] requested CPD policies in place at the time of the incident governing operational plans but did not receive them. Its investigation could not verify if Officer [REDACTED] was required to or disseminated a written operations plan to the officers participating, which is a best practice.
6. **CI Policy:** Due to the sensitive nature of CPD's use of CIs, [REDACTED] could not confirm whether Officer [REDACTED] complied with CPD's Bureau of Organized Crime Special Order 14-01. CPD Bureau of Organized Crime Special Order 14-01 (Registered Cooperating Individual (C.I.)) Files. Section IV. "Procedures" outlines the Registration and Reporting Requirements regarding use of a CI. Section IV.D. specifically outlines the Bureau of Patrol Gun Teams Procedures - Issue and Effective Date February 10, 2015. This was the policy in effect at the time of this incident. Officer [REDACTED] stated in his interview with Detective [REDACTED] that he "signed up" the CI. IPRA Investigators did not address this issue with Officer [REDACTED] during their interview. [REDACTED] requested the CI file from COPA but did not receive it.