



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. 1076797

Summary:

This matter involves the August 20, 2015 non-fatal shooting of “█████” a juvenile, by Officer ██████. ██████ 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 ██████ (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 Officer ██████ 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 GPS evidence and ballistic evidence as additional avenues of investigative inquiry.

Investigative Leads and Evidence Issues:

COPA staff reviewed the SME’s remarks regarding analysis of GPS records for potential identification of additional CPD officers who may have been in the area during the incident. IPRA conducted numerous CPD witness interviews close in time to the occurrence. None of those interviews yielded identification of additional witnesses. There would be little to no investigatory value in seeking additional witnesses nearly five years after the occurrence. COPA staff also reviewed SME remarks regarding a recovered spent bullet ██████. Specifically, SME commented that it didn’t appear to be recovered near where Officer ██████ discharged his weapon. However, ██████ was located in close proximity to ██████ which were Officer ██████ spent shell casings and there is no indication that ██████ or any other officers discharged weapons during this incident. Further, the breakdown of Officer ██████ service weapon indicated he fired three shots. Additional inquiry or analysis of the origin of the spent bullet marked as ██████ will not affect the outcome of the inquiry into whether Officer ██████ use of deadly force was justified.

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 November 25, 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. 1076797**. Under the agreement with COPA, [REDACTED] was tasked with providing a written report summarizing each case reviewed.

[REDACTED] INVESTIGATORS

Investigator [REDACTED] led the review of Case File Log No. 1076797 with support, as needed, from Senior Director [REDACTED].

2. Investigative Review

SYNOPSIS OF INCIDENT

Our synopsis of this incident was based on the investigation conducted by IPRA and COPA and supported by our review of the information provided. We provided an independent review of the investigation and did not conduct further investigation of this incident. The incident involved a juvenile, herein referred to as [REDACTED].”

On August 20, 2015, at approximately 10:25 p.m., Tactical Officers [REDACTED] No [REDACTED]; [REDACTED] No [REDACTED]; and [REDACTED] No [REDACTED] from the Chicago Police Department’s (CPD) [REDACTED] District Tactical Unit were on regular patrol when they responded to a police radio dispatch of a “person with a gun” in the area of 91st street and South Commercial. Officer [REDACTED] Officer [REDACTED] and Officer [REDACTED] were on patrol in an unmarked CPD patrol vehicle. Officer [REDACTED] was driving. Officer [REDACTED] was in the front passenger seat and Officer [REDACTED] was in the backseat on the passenger side. The officers wore civilian clothes, external body armor stating, “POLICE” and a duty belt.

The police radio dispatch stated that a “person with a gun 9100 South Commercial, nine-one-zero-zero Commercial, male black wearing an orange hoodie, riding a bike, armed with a gun, visible, go’n eastbound on 91st street.” The officers left a street stop in the area of 89th Street and Colfax Avenue in response to the dispatch. The officers drove east on 89th Street when they observed two people on bicycles traveling south on Escanaba Avenue from 89th Street. Officer [REDACTED] stated that one of the individuals was traveling at a normal pace and the other was traveling at a fast speed.

Officer [REDACTED] drove alongside the bicycle traveling at the fast speed and from inside his CPD patrol vehicle addressed the rider, who was later identified as [REDACTED] stopped his bicycle and Officer [REDACTED] stopped his CPD patrol vehicle at approximately 90th Street and Escanaba Avenue. Officers [REDACTED] and [REDACTED] were in Officer [REDACTED] CPD patrol vehicle. Officer [REDACTED] asked [REDACTED] what he was doing, and [REDACTED] stated that he was trying to get home quickly. Officer [REDACTED] asked [REDACTED] how old he was, and [REDACTED] answered 15 years old. Officer [REDACTED] observed a bulge in the front-right pocket of [REDACTED] sweatpants. When Officer [REDACTED] asked what it was, [REDACTED] pointed to his front-left pocket and said it was his cell phone. Officer [REDACTED] asked what was in his other pocket. [REDACTED] paused and said, “My wallet.” Officer [REDACTED] stated that the other individual riding a bicycle had stopped riding at approximately the middle of the block. Officer [REDACTED] exited his CPD patrol vehicle to speak with [REDACTED] further.

When Officer [REDACTED] exited his CPD patrol vehicle, [REDACTED] dropped his bicycle and fled, running north on foot. Officer [REDACTED] pursued [REDACTED] on foot. Officer [REDACTED] and Officer [REDACTED] exited the CPD patrol

vehicle and gave chase on foot as well. Officer [REDACTED] observed that [REDACTED] was holding his right side. As officers ran past the other person who had been riding a bicycle, Officer [REDACTED] and Officer [REDACTED] heard him yell, "Don't shoot my brother."

While [REDACTED] was running in the area of 89th Street, Officer [REDACTED] observed him remove a handgun from the front-right pocket of his sweatpants. [REDACTED] turned westbound on 89th Street, running on the north side of the street on the easement. Officer [REDACTED] pursued [REDACTED] on the north easement. Officer [REDACTED] observed [REDACTED] run west on 89th Street, out of his view. Officer [REDACTED] stopped before turning the corner from northbound Escanaba Avenue to westbound 89th Street and drew his service firearm. Officer [REDACTED] turned the corner to west 89th Street on the south side of 89th Street and ran approximately 10 to 15 steps when he observed [REDACTED] on the sidewalk on the north side of the street with something in his hand. Officer [REDACTED] observed [REDACTED] turn around and run east on the sidewalk and observed Officer [REDACTED] on the north sidewalk, near the corner, to the east of [REDACTED]. Officer [REDACTED] yelled to Officer [REDACTED] that [REDACTED] was doubling back. Officer [REDACTED] stated that [REDACTED] and Officer [REDACTED] were facing each other. While running into the area, Officer [REDACTED] observed Officer [REDACTED] on 89th Street with his service firearm drawn. Officer [REDACTED] drew her service firearm.

Officer [REDACTED] observed [REDACTED] running at him with a handgun in his right hand. Officer [REDACTED] stated that he yelled, "Drop the gun, drop the gun." Officer [REDACTED] stated that he heard Officer [REDACTED] yelling, "Drop the gun, let me see your hands." Officer [REDACTED] recalled hearing Officer [REDACTED] yelling, "Drop the gun, drop the gun." According to Officer [REDACTED] pointed the handgun at him. Officer [REDACTED] then discharged his service firearm twice at [REDACTED]. Officer [REDACTED] and Officer [REDACTED] observed Officer [REDACTED] discharge his service firearm twice. Officer [REDACTED] observed [REDACTED] conceal himself behind a tree. Officer [REDACTED] recalled that he lost sight of [REDACTED].

Officer [REDACTED] stated that [REDACTED] emerged from behind the tree with the handgun in his hand while running on an angle toward the street when [REDACTED] pointed the handgun at Officer [REDACTED] again. Officer [REDACTED] yelled for [REDACTED] to drop the gun and discharged his service firearm at [REDACTED] a third time. Officer [REDACTED] and Officer [REDACTED] observed Officer [REDACTED] discharge his service firearm the third time. Officer [REDACTED] heard [REDACTED] yell in pain and watched him fall to the ground in the street, throwing the handgun as he fell in the direction of Officer [REDACTED]. Officer [REDACTED] observed [REDACTED] run into the street toward him with a handgun in his hand. Officer [REDACTED] raised his firearm toward [REDACTED] as [REDACTED] fell to the ground, throwing his handgun toward Officer [REDACTED]. Officer [REDACTED] did not fire his service firearm. Officer [REDACTED] observed [REDACTED] fall in the street and throw an object. Officer [REDACTED] stated that he recovered the handgun after stepping on it with his foot as it slid on the ground.

Officer [REDACTED] approached and [REDACTED]. The officers observed that [REDACTED] was bleeding from his leg. The officers called for an ambulance. Officer [REDACTED] asked [REDACTED] why he did not drop the gun. [REDACTED] told Officer [REDACTED] that he did not know why and that he was scared. [REDACTED] was transported to [REDACTED] Hospital by Chicago Fire Department ambulance for treatment. None of the officers knew [REDACTED] identity until after the incident.

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

- Relevant digital evidence collected that included Office of Emergency Management and Communications (OEMC) radio transmissions and CPD Crime Scene photos
- Relevant collected physical evidence including Chicago Fire Department ambulance reports, medical records from The University of Chicago Medicine, CPD Crime Scene processing reports
- Relevant documentary evidence including CPD Detective Division Supplementary Reports and General Progress Reports, CPD Case Reports, CPD Arrest Reports for █████ CPD Major Incident Notification Report, OEMC Global Positioning Reports, Officer Battery Reports, and Tactical Response Reports
- Relevant use of force policies

ANALYSIS

Under CPD policy, COPA, of which IPRA was the precursor, has responsibility to review all officer-involved shooting incidents. This was the predicate for the IPRA case initiation, and no misconduct was asserted by IPRA or COPA within the investigation we reviewed.

Based on 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 Officer █████ complies with CPD policies** regarding use of force, including deadly force.

Officer █████ stated that he observed █████ point a handgun at him twice. Each time, Officer █████ perceived █████ actions as a reasonable apprehension of receiving a battery likely to cause death or great bodily harm.

Officer █████ stated that he used deadly force in response to these threats by discharging his service firearm twice at █████ during the first threat, then once at █████ during the second threat. **Our determination is based on the preponderance of the evidence and the totality of the circumstances.**

Based on the available information, evidence and the submitted investigation, the following facts informed our conclusion.

- CPD █████ District tactical officers were on regular patrol in an unmarked CPD patrol vehicle while wearing plainclothes and external body armor stating, "POLICE."
- The officers responded to the call of a man with a gun.
- The officers were in an area where they had the legal right to be.
- The officers located █████ as he matched the description of the man with the gun.
- The officers observed a bulge in █████ pants.
- While being interviewed by officers, █████ fled from the officers on foot.
- █████ was holding his waist as he ran from officers.
- Officer █████ observed █████ remove a handgun from his pocket.
- █████ ignored Officer █████ verbal commands to drop the gun.
- █████ remained armed with a handgun.
- █████ pointed the handgun at Officer █████

- In response to the perceived threat of death or great bodily harm, Officer █████ drew his service firearm and discharged it twice at █████
- █████ concealed himself behind a tree while still armed.
- █████ emerged from behind the tree and ran with the handgun in his hand while attempting to escape.
- █████ again ignored Officer █████ orders to drop the gun.
- █████ pointed his handgun at Officer █████ for a second time.
- In response to the perceived threat of death or great bodily harm Officer █████ discharged his service firearm at █████ a third time.
- █████ ran toward Officer █████ with the handgun still in his hand while attempting to escape.
- Officer █████ pointed his service firearm at █████ as █████ fell to the ground and threw the handgun in the direction of Officer █████ Officer █████ stopped the handgun with his foot as it slid on the street.
- Officer █████ recovered the handgun.

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 Officer █████ complied with CPD policy regarding the use of deadly force. Based on the preponderance of the evidence, it was reasonable for him to believe he was in imminent danger of death or great bodily harm, given that he was being assaulted by a subject who was pointing a firearm in his direction.

APPLICABLE RULES AND LAW

Chicago Police Department General Order

CPD General Order 03-02-03, Section II (A) states that:¹

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

¹ This was the Use of Force policy in effect at the time of this incident. It has since been rescinded and replaced.

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.²

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.³

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.⁴

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."⁵ Finally, the analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors.⁶

Illinois Statute

CPD officers are bound by Illinois law regarding the use of deadly force as codified in the Illinois Compiled Statutes.⁷ 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

² *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).

³ *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)).

⁴ *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014). Internal quotations and citation were omitted.

⁵ *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)

⁶ *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).

⁷ 720 ILCS 5

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...⁸

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.⁹

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.¹⁰ 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.¹¹

CONCLUSION

Our administrative review of an officer-involved shooting under Log No. 1076797 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 alleged.

ADDITIONAL INSIGHTS – TRAINING OPPORTUNITY

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

Review of GPS Data

COPA may choose to consider additional investigation or analysis of the GPS data to determine if any other CPD units and, therefore, witnesses, were on the scene during the officer-involved shooting.

Review of Evidence

⁸ 720 ILCS 5/7-5(a)

⁹ 720 ILCS 5/7-1(a)

¹⁰ 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).

¹¹ 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.

COPA may choose to consider additional investigation or analysis related to the bullet located in the street pavement as identified by evidence marker number three. The location of the bullet does not appear to be consistent with the firearm discharges made by Officer [REDACTED]