



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. 1076815

Summary:

This matter involves the August 21, 2015 non-fatal shooting of “[REDACTED]” a juvenile, by Officer [REDACTED]. [REDACTED] 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 Officer Salvador’s conduct was within Department policy regarding the use of force and that allegations of misconduct would not be appropriate in this matter.

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. 1076815**. 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. 1076815 under the direction of Senior Director [REDACTED].

2. Investigative Review

SYNOPSIS OF INCIDENT

We derived our synopsis of this incident from the investigation IPRA and COPA conducted. We independently reviewed this information and did not further investigate the incident. The incident involved a juvenile, herein referred to as [REDACTED].”

On August 21, 2015 at approximately 7:28 p.m., Chicago Police Department (CPD) [REDACTED] District tactical officers were assigned to directed patrol in the area near 71st Street and Paulina Avenue. The directed patrol was in response to recent gang shootings in the area that bordered two gang territories.

Seven officers were assigned to a directed patrol and were patrolling in three CPD patrol vehicles.

- The lead CPD patrol vehicle was an unmarked Ford Explorer displaying municipal license plates. Officer [REDACTED] No. [REDACTED], was driving the lead CPD patrol vehicle with Officer [REDACTED] No. [REDACTED], in the passenger seat.
- The second CPD patrol vehicle was an unmarked Ford Explorer displaying municipal license plates. Officer [REDACTED] No. [REDACTED], was driving the second CPD patrol vehicle with Sergeant [REDACTED] No. [REDACTED], in the passenger seat and Officer [REDACTED] No. [REDACTED], in the rear seat.
- The third CPD patrol vehicle was an unmarked Ford Crown Victoria displaying municipal license plates. Officer [REDACTED] No. [REDACTED], was driving the third CPD patrol vehicle with Officer [REDACTED] No. [REDACTED], in the passenger seat.
- Lieutenant [REDACTED] Beat [REDACTED], came on scene in an unmarked CPD police vehicle.

The officers wore civilian clothes, external body armor displaying “POLICE” and their duty belt. The three vehicles patrolled the area, driving in tandem.

The officers were traveling westbound on 71st Street, west of Ashland Avenue (1600 W). As they passed Paulina Avenue (1700 W), they observed a group of approximately 10 to 20 people standing in the street and on the east sidewalk south of 71st Street. The group was approximately mid-block.

The CPD officers radioed to each other that they were going to approach the group. The officers drove past the 71st Street and Paulina Avenue intersection and around the block. They then approached the group while driving northbound on Paulina Avenue from 72nd Street.

As the CPD officers drove north on Paulina Avenue approaching the crowd, Officer [REDACTED] Officer [REDACTED] Officer [REDACTED] Sergeant [REDACTED] Officer [REDACTED] and Officer [REDACTED] observed [REDACTED] look in their direction. [REDACTED] was holding his waistband in front of him with both hands and walked away to distance himself from the crowd. The closer the CPD officers approached the crowd, the faster [REDACTED] walked away.

Officer [REDACTED] exited his CPD patrol vehicle shouting, "Police! Stop!" [REDACTED] looked back at the CPD officers again and fled running northbound on Paulina Avenue, continuing to hold his waistband. Officer [REDACTED] pursued [REDACTED] on foot. Officer [REDACTED] exited his CPD patrol vehicle and pursued [REDACTED] on foot. Officer [REDACTED] Officer [REDACTED] Sergeant [REDACTED] and Officer [REDACTED] followed the foot pursuit in their respective CPD patrol vehicles. [REDACTED] ran north on Paulina Avenue and turned eastbound toward Ashland Avenue into the south alley of 71st Street. Officer [REDACTED] exited his CPD patrol vehicle and ran eastbound through the rear yards of residences on the 1600 block of West 71st Street. Officer [REDACTED] continued his foot pursuit eastbound and into the south alley of 71st Street.

Officer [REDACTED] drove past his partner, Officer [REDACTED] who continued to pursue on foot, eastbound in the alley and caught up to [REDACTED] continued running and was positioned along the driver's side front-quarter panel of Officer [REDACTED] CPD patrol vehicle. Both were traveling eastbound in the alley.

According to Officer [REDACTED] at this point, he had a view of [REDACTED] backside. Officer [REDACTED] yelled at [REDACTED] to stop. Officer [REDACTED] observed that [REDACTED] hands were in front of him at about waist height. Officer [REDACTED] observed [REDACTED] shirt, arms and elbows rise as if to remove an object from his front waistband. Still traveling east, [REDACTED] turned to his left and Officer [REDACTED] observed a handgun in [REDACTED] right hand.

[REDACTED] continued to turn to his left and pointed the handgun at Officer [REDACTED] Officer [REDACTED] fearing for his safety and the safety of others, drew his service firearm as he was driving the vehicle and discharged it at [REDACTED] three times through the vehicle's open window. Three separate Shot Spotter data recordings indicate that three rounds were fired in rapid succession. Officer [REDACTED] gunfire struck [REDACTED] three times. Officer [REDACTED] observed [REDACTED] throw the handgun into the air, run about 15 feet and then fall to the ground east of a wooden fence. The other CPD officers eventually caught up to Officer [REDACTED] and [REDACTED]

Officer [REDACTED] stopped and exited his CPD patrol vehicle. Lieutenant [REDACTED] arrived and assisted Officer [REDACTED] with handcuffing [REDACTED] Officer [REDACTED] ran up to them. Officer [REDACTED] pointed toward the wooden fence and told Officer [REDACTED] that [REDACTED] threw a handgun in that direction. As the rest of the CPD officers arrived, Sergeant [REDACTED] transmitted over his police radio that shots were fired by the police and requested an ambulance.

Officer [REDACTED] looked over the wooden fence and observed a handgun lying on the ground. Officer [REDACTED] entered the yard to secure the weapon. Chicago Fire Department (CFD) paramedics transported [REDACTED] to [REDACTED] Hospital.

None of the CPD officers knew the identity of [REDACTED] until after the incident.

METHODOLOGY – MATERIALS REVIEWED

As noted above, ██████████ 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 ██████████ detectives, IPRA and/or COPA investigators
- Officer interviews conducted by CPD ██████████ detectives and later with COPA investigators
- Depositions of civilians, officers and expert witnesses
- Relevant digital evidence collected including Office of Emergency Management and Communications (OEMC) radio transmissions, Shot Spotter audio recordings, and cell phone camera video footage, CPD Crime Scene video, and CDP Crime Scene photos
- Relevant collected evidence including CFD ambulance reports, medical records from ██████████ Hospital, CPD Crime Scene processing reports and Illinois State Police (ISP) laboratory 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 and Shot Spotter reports
- Relevant CPD use of force policies
- Cook County State’s attorney response to IPRA
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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 alleged 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. Officer ██████████ perceived this action as reasonable apprehension of receiving a battery likely to cause death or great bodily harm.

Officer ██████████ stated that he used deadly force in response to this perceived threat by discharging his service firearm three times at ██████████. Our determination is also based on the preponderance of the evidence standard 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 directed patrol in CPD unmarked police vehicles while wearing plainclothes and external body armor displaying “POLICE.”
- The directed patrol was in response to recent gang-related shootings in an area that borders two gang territories.

- The officers were investigating a large group gathering in the area of their directed patrol.
- The officers entered an area in which they were legally allowed and observed a person, now known to be ■■■ exhibit behavior that indicated possible criminal activity.
 - As officers approached the group, ■■■ noticed their presence and immediately attempted to distance himself from the crowd.
 - ■■■ grabbed hold of his waistband as he attempted to distance himself from the crowd and away from officers.
 - The closer the officers approached the crowd, the faster ■■■ walked away still holding his waistband.
 - When Officer ■■■ exited his CPD patrol vehicle and announced himself as police, ■■■ looked in his direction and ran away.
 - ■■■ attempted to elude officers by running down an alley while still holding his waistband.
 - While running, ■■■ ignored Officer ■■■ verbal commands to stop as Officer ■■■ pursued him down the alley in the CPD patrol vehicle.
- As ■■■ continued to run from officers.
- ■■■ continued running and when he turned, he presented a handgun and pointed it at Officer ■■■
- In response to the perceived threat of death or great bodily harm, Officer ■■■ drew his service firearm and discharged it three times at ■■■ Three separate Shot Spotter data recordings indicate that three rounds were fired in rapid succession.
- ■■■ threw the handgun as he attempted to continue running but fell to the ground.
- Officer ■■■ informed Officer ■■■ of the general direction that ■■■ threw the handgun.
- Officer ■■■ located a handgun in the vicinity of where Officer ■■■ told him that ■■■ threw the handgun.
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The Department's policy regarding the use of force, as well as Illinois and federal law, govern 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 threatened by ■■■ 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

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 him, without regard to his 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

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

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.

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 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, 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 potential 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 the officer-involved shooting under Log No. 1076815 determined that the use of force in the case was consistent with CPD use of force policies and that the IPRA

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

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 applying to administrative findings.

investigation and determination were supported by a preponderance of the evidence. This determination is consistent with IPRA's investigation. No allegations of excessive force were proffered by IPRA.

ADDITIONAL INSIGHT

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.

Directed Patrols

Flooding an area of known criminal activity with law enforcement officers is a common technique to increase public safety. These deployments should be initiated based on articulatable criminal activity information so that officers focus on known indicators that criminal activity may be occurring, rather than indiscriminately targeting people who frequent that area.

Such operations can generate legitimate criticism of policing tactics if the information behind the mission is weak or erroneous. In this matter, a directed patrol was deployed to the area of 71st Street and Paulina Avenue. Our review did not locate any operational plan for that deployment of officers that explained its mission, goals or objectives.

Video Evidence

According to the IPRA investigation, neither the CPD officers nor their vehicles had cameras. The file contained a brief cell phone video that starts after [REDACTED] was apprehended and handcuffed. It does not show the shooting incident. The file contained a CPD evidence technician video of the scene after the incident. No video evidence exists to confirm or dispute the facts as presented.

Deposition Testimony

During [REDACTED] deposition, he alleged that his hands were raised when he turned towards Officer [REDACTED]. [REDACTED] stated, "They were like this."¹² The deposition indicated that [REDACTED] demonstrated the positions of his hands. [REDACTED] further stated, "My hands in the air."¹³ [REDACTED] was not provided video.

[REDACTED] indicated that one of the bullets grazed his arm. [REDACTED] medical records indicate the locations on his body where he suffered from gunshot wounds.¹⁴ The medical record diagram of [REDACTED] gunshot wounds show six wounds, five of which the medical personnel marked as gunshot wounds. Medical personnel did not mark the sixth wound as a gunshot wound. The medical records do not reflect any of the wounds as entry or exit wounds.

[REDACTED] upper left arm had one wound with two more across his upper body nearly in line with the one on his upper arm. The medical records identified two more gunshot wounds, one to the left side of his abdomen and the other to his right thigh area. Another wound is diagramed on [REDACTED] backside, just

¹² "Att134DepositionSubject [REDACTED]...", pg. 88, line one.

¹³ Ibid., pg. 88, line 17.

¹⁴ "Att106MedRex [REDACTED]...", pg. 667.

above his left buttock cheek, but this is not identified as a gunshot wound. Officer [REDACTED] stated that he shot [REDACTED] three times.

Officer [REDACTED] service firearm was missing three rounds after other personnel found it. The IPRA interviews revealed that the no other officers fired their service firearms.

We believe the medical records that depict a diagram of gunshot wounds to [REDACTED] body are insufficient to impact our conclusions.