



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

INTEGRITY • TRANSPARENCY • INDEPENDENCE • TIMELINESS

TO: Kevin Connor
General Counsel

FROM: Andrea Kersten
Chief of Investigative Operations

DATE: November 6, 2020

RE: Closure of Log No. 1080615

Summary:

This matter involves the May 21, 2016 of an officer involved shooting without hits of Officer Shawn Bryant. Officer Bryant and Officer Shalaine Enahora were working in plainclothes when they responded to a call about two black men wearing black clothing armed with guns in the area of 1724 E. 71st Street. Officer Bryant exited his vehicle, which he was driving, and began a foot chase of [REDACTED]. Officer Bryant observed [REDACTED] raise his arm while holding a gun and fire at Officer Bryant. Officer Bryant discharged his service weapon five times at [REDACTED] believing [REDACTED] would fire at him again. Neither Officer Bryant nor [REDACTED] were struck. 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 Hillard Heintze (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 Bryant 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:

[REDACTED]

General Counsel

1. Introduction

OVERVIEW OF ASSIGNMENT

On November 25, 2019, the City of Chicago Civilian Office of Police Accountability (COPA) engaged Hillard Heintze to conduct an independent, third-party sufficiency review of the underlying investigation contained within the case filed under **Log No. 1080615**. Under the agreement with COPA, Hillard Heintze was tasked with providing a written report summarizing each case reviewed.

HILLARD HEINTZE INVESTIGATORS

Director Mark Giuffre led the review of Case File Log No. 1080615 under the direction of Senior Director Carl Dobrich.

2. Investigative Review

SYNOPSIS OF INCIDENT

Our synopsis of this incident was derived from the information provided by COPA. We provided an independent review of the investigation and did not conduct further investigation of this incident.

According to the investigation IPRA and COPA conducted, and supported by our review of the evidence provided, on May 21, 2016 at approximately 10:11 a.m., Chicago Police Department (CPD) 3rd District Police Officers **Shawn Bryant** (No. 4142) and **Shalaine Enahora** (No. 17704) were on duty in a CPD unmarked patrol vehicle. Both officers were working in plainclothes and assigned to Beat 306D. Officer Bryant was driving.

According to the IPRA and COPA investigation and the evidence provided to us, Officers Bryant and Enahora responded to a call about two black men wearing black clothing armed with guns near 1724 E. 71st Street. Officer Bryant stopped the patrol vehicle near 71st Street and East End Avenue. Two marked patrol vehicles had also arrived on the scene. Officer Bryant observed two men matching the description given on the southeast corner. As other officers exited their patrol vehicles to approach the subjects, Officer Bryant observed the two men, subsequently identified as [REDACTED] and [REDACTED] run away.

The IPRA and COPA investigation revealed that [REDACTED] ran through the parking lot of Big Salem Mart at 1724 E. 71st Street. Officer Bryant exited his patrol vehicle and chased [REDACTED]. Officer Enahora got into the driver's seat of the patrol vehicle to chase [REDACTED]. Officer Bryant observed that [REDACTED] jumped over a fence and as [REDACTED] was running, he held his right side. Before going over the fence in pursuit, Officer Bryant observed [REDACTED] running in the yard north of the fence. [REDACTED] then turned, raised his arm and fired a gun once at Officer Bryant. Officer Bryant was not hit.

According to the IPRA and COPA investigation and the evidence provided to us, Officer Bryant saw that the gun was still in [REDACTED] hand and thought that [REDACTED] was going to fire at him again. Officer Bryant fired five rounds from his service firearm at [REDACTED]. [REDACTED] was not struck by the shots fired, but he fell to the ground. Officer Bryant went over the fence and took [REDACTED] into custody. Officer Bryant searched [REDACTED] and did not find the firearm. Officer Bryant asked [REDACTED] where the gun was, and [REDACTED] indicated where it was on the ground approximately three feet away. Officer Bryant retrieved the gun. [REDACTED] told Officer Bryant and Officer Enahora, who had arrived to assist, that he did not shoot at Officer Bryant, but that the gun went off when he hopped over the fence.

The IPRA and COPA investigation determined that a shell casing recovered from the scene was analyzed and found to have been fired from the firearm seized near [REDACTED]. Five shell casings recovered from the scene were analyzed and found to be fired from Officer Bryant's service firearm.

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 Central detectives, IPRA and/or COPA investigators
- Officer interviews done by CPD Area Central detectives and later by COPA investigators
- Relevant digital evidence collected that included Office of Emergency Management and Communications (OEMC) radio transmissions, and business security camera video
- Relevant physical evidence including CPD Crime Scene processing reports, and Illinois State Police laboratory reports
- Relevant documentary evidence that included CPD Detective Division Supplementary Reports and General Progress Reports, CPD Arrest Reports for [REDACTED] and [REDACTED] CPD Major Incident Notification Report, and Tactical Response Reports
- 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, has responsibility to review all officer involved shooting incidents. This was the predicate for the IPRA review.

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

Officer Bryant stated that he observed an individual point his firearm at the officer and fire one time. Officer Bryant perceived this action as a threat capable of causing death or serious injury.

Officer Bryant stated he used deadly force in response to this perceived threat by firing his firearm five times at the subject. Our determination is also based upon 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:

- Officer Bryant and Officer Enahora were on routine patrol in plainclothes in an unmarked police patrol vehicle.
- Officer Bryant and Officer Enahora responded to a call about two black men armed with guns near 1724 E. 71st Street.
- As Officers Bryant and Enahora arrived at the location, two marked police patrol vehicles had arrived and officers in uniform were exiting their vehicles to approach two men matching the

descriptions given. The two men ran. One of the men, [REDACTED] ran through the lot of Big Salem Mart at 1724 E. 71st Street.

- Officer Bryant exited his vehicle and chased [REDACTED] Officer Enahora pursued the other subject, [REDACTED]
- [REDACTED] hopped over a fence at the rear of the lot and ran in the yard north of the fence. As [REDACTED] ran, he held his right side. [REDACTED] turned and raised his arm and fired his gun once at Officer Bryant. Officer Bryant was not hit.
- In response to this perceived threat, Officer Bryant fired five rounds at [REDACTED] from Bryant's service firearm. None of the rounds hit [REDACTED]
- [REDACTED] fell to the ground after Officer Bryant fired and was apprehended by Bryant.
- When asked by Officer Bryant where his firearm was, [REDACTED] responded to Bryant and Officer Enahora, who was now present, that [REDACTED] had tossed the gun and indicated where it was located on the ground nearby.
- A firearm was recovered near [REDACTED] where he indicated it might be found. One shell casing was also recovered nearby. Analysis of the shell casing determined that it was fired from the firearm recovered near [REDACTED]
- [REDACTED] told Officer Bryant that he did not fire at Officer Bryant, but that the firearm went off when he hopped the fence.

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 Bryant 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 had just been the victim of attempted murder and aggravated assault to a peace officer by [REDACTED] who pointed and fired 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;

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

- 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.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 perspective of "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

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

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 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. 1080615 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/COPA investigation. No allegations of excessive force were served.

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.