



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. 1085496

Summary:

This matter involves the June 6, 2017 non-fatal shooting of [REDACTED] by Officer Gregory Stranski. 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 Officer Stranski'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: [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. 1085496**. Under the agreement with COPA, Hillard Heintze was tasked with providing a written report summarizing each case reviewed.

HILLARD HEINTZE INVESTIGATORS

Senior Director Carl Dobrich led the review of Case File Log No. 1085496 with support, as needed, from Director Mark Giuffre.

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 this information and did not conduct further investigation of the incident.

According to the investigation IPRA and COPA conducted and supported by our review of the information provided, on June 6, 2017, at approximately 11:54 p.m., Chicago Police Department (CPD) 24th District Police Officers Artur Tomkow, No. 18747, and **Gregory Stranski**, No. 7907, were on duty as tactical officers in a dark grey Ford Explorer, which was a CPD unmarked patrol vehicle. Both officers were working in plainclothes and assigned to Beat 2461E. Officer Tomkow was driving.

According to the IPRA and COPA investigation and the evidence provided to us, Officers Tomkow and Stranski were stopped at a red light on northbound Central Avenue at Diversey Avenue behind a Toyota Camry.¹ Michael Martinez was driving the Toyota and Ashley Diaz was a passenger. While waiting for the light to turn green, the officers observed a dark colored Infiniti pass them in the right lane and stop next to the Toyota. [REDACTED] was the driver of the Infiniti. [REDACTED] occupied the passenger seat of the Infiniti.² As the light turned green, the Infiniti passed the Toyota on the right and proceeded directly in front of the Toyota. The police patrol vehicle followed directly behind the Toyota.

The IPRA and COPA investigation revealed that just north of the intersection of Central and Diversey Avenues, [REDACTED] stood up in the Infiniti and appeared partially outside the sunroof and pointed a handgun at the Toyota. Subsequently, the officers observed [REDACTED] fire the handgun in the direction of the Toyota and their police patrol vehicle between three and 10 times. Officers Tomkow and Stranski took cover inside their police patrol vehicle.

¹ The officers did not know the identity of the driver or the passenger of the Camry until after the incident occurred.

² The officers did not know the identity of the driver or the passenger of the Infiniti until after the incident occurred.

According to the IPRA and COPA information, the officers observed the driver of the Toyota veer away from the line of gunfire and the driver of the Infiniti sped away from the shooting scene. Officers Tomkow and Stranski pursued the vehicle in which the shooter was riding. The officers stated that the driver of the Infiniti zigzagged through neighborhood streets. The driver of the Infiniti abruptly braked in the alley between Newland Street and New England Street, causing the police patrol vehicle driven by Officer Tomkow to strike the rear of the Infiniti. After the collision, the driver of the Infiniti sped away and while doing so, again braked suddenly in an alley near George Street.

The IPRA and COPA investigation revealed that in the alley, [REDACTED] positioned his body outside the Infiniti's passenger window and pointed the same handgun at the police patrol vehicle. According to Officer Stranski, in response to the threat, he drew his firearm and discharged it 14 times through the police patrol vehicle's front windshield at [REDACTED]. Officer Stranski's gunfire struck [REDACTED] multiple times.

The IPRA and COPA determined the driver of the Infiniti continued onto George Street from the alley where the vehicle lost power and was driven into a green Mitsubishi that was parked on the street at 6925 W. George Street. As the Infiniti came to a stop, [REDACTED] fled the vehicle on foot and Officer Tomkow apprehended [REDACTED] with the assistance of Officer Stranski. [REDACTED] presented with an injury to the back of his head, which required medical attention. According to the investigation, the source of [REDACTED] injury was undetermined. However, the investigation reflects that [REDACTED] injury may have been caused by broken glass discharged into his vehicle from Officer Stranski's gunshots.

According to the IPRA and COPA investigation, Officer Stranski located [REDACTED] in the front passenger seat of the Infiniti and observed that he was unresponsive and with gunshot wounds to his head. [REDACTED] was taken to Loyola University Hospital for medical attention. A search of the Infiniti revealed two firearms in the immediate area of where [REDACTED] was seated.

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 North detectives, IPRA and/or COPA investigators
- Officer interviews conducted by CPD Area North detectives and later by COPA investigators
- Relevant digital evidence collected including Office of Emergency Management and Communications (OEMC) radio transmissions, red-light camera video footage, business security camera video footage and security camera video footage from a private residence
- Relevant collected physical evidence including Chicago Fire Department ambulance reports, medical records from Loyola University Medical Center, medical records from Schwab Rehabilitation Hospital, medical records from John H. Stroger, Jr. 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, CPD Arrest Reports for [REDACTED] and [REDACTED] CPD Major Incident Notification Report, Tactical Response Reports, Officer Battery Reports, OEMC Global Positioning Reports and Pursuit Package Reports
- Relevant use of force policies in effect as of the date of the incident

ANALYSIS

Under applicable law, 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 Hillard Heintze, using the standard of the preponderance of the evidence that applies in an administrative investigation, **the use of force by Officer Stranski complies with applicable law and CPD policy** regarding use of force, including deadly force.

Officer Stranski stated that he observed an individual point his firearm at the officer and his partner. Officer Stranski perceived this action as a threat capable of causing death or serious injury. This threat is also supported by Officer Stranski's earlier observation of an aggravated assault involving these subjects wherein [REDACTED] fired his weapon at other individuals and in the direction of the officers.

Officer Stranski stated that he used deadly force in response to this perceived threat by firing his firearm 14 times at [REDACTED] who was inside a vehicle. Our 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 facts informed our conclusion.

- Officer Tomkow and Officer Stranski were on routine patrol in an unmarked police vehicle while wearing plainclothes.
- Officer Tomkow and Officer Stranski observed [REDACTED] emerge from the sunroof of a vehicle driven by [REDACTED] and discharge a firearm in the direction of a vehicle driven by Martinez and occupied by Diaz, and in the direction of the police vehicle.
- Officer Stranski observed that [REDACTED] committed the felony offenses of attempted murder (four counts), aggravated assault with a firearm (two counts) and aggravated assault to a peace officer (two counts).
- Officers Tomkow and Stranski immediately pursued the vehicle driven by [REDACTED] and occupied by [REDACTED]
- During the pursuit, Officer Stranski stated that he gave verbal commands from his police patrol vehicle passenger window for the driver of the vehicle to stop.
- During the pursuit, [REDACTED] appeared outside the vehicle's passenger window and pointed his firearm at the direction of Officers Tomkow and Stranski.
- In response to this perceived threat, Officer Stranski fired 14 rounds at [REDACTED] through the police patrol vehicle's front windshield.
- Following this action, the vehicle occupied by [REDACTED] came to rest after striking a parked vehicle.
- Officer Tomkow apprehended the driver, [REDACTED] after a short foot chase with the assistance of Officer Stranski.
- Officer Stranski located [REDACTED] inside the vehicle unresponsive with gunshot wounds to his head.
- The officers called for medical assistance.
- [REDACTED] was taken to Loyola University Hospital for medical attention.

- A search of the vehicle containing the [REDACTED] revealed two firearms in the immediate area of passenger area where [REDACTED] was seated.
- [REDACTED] survived his injuries.

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 Stranski 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 and his partner, Officer Tomkow, had just been the victims of attempted murder and aggravated assault with a weapon to a peace officer by the subject, who was pointing a firearm in their direction.

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

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).

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 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

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

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)

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 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 an officer-involved shooting under Log No. 1085496 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 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.

The officer-involved shooting incident was preceded by a pursuit. The Traffic Safety Review Board determined that the pursuit was compliant with the policies of the CPD, therefore, this matter has been resolved given the administrative jurisdiction of the CPD.

However, Officer Stranski fired from inside his police patrol vehicle and through the windshield. This action is concerning for officer safety and the safety of members of the public. Although Officer Stranski was able to see the subject, the decision to shoot from inside the police vehicle identifies training issues for the CPD, particularly regarding tactical decisions on use of force during pursuits.

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).

¹³ 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.