



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. 1086011

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**Summary:**

This matter involves the July 21, 2017 officer involved shooting in which Officer Victoria Mendoza and Officer David Perez both discharged their firearms but did not strike anyone. Officer Mendoza was shot in the leg and survived her injuries. 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 both Officer Perez's conduct and Officer Mendoza'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 December 5, 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. 1086011. 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. 1086011 under the direction of Senior Director Carl Dobrich.

## 2. Investigative Review

### SYNOPSIS OF INCIDENT

We derived our synopsis of this incident from the investigation IPRA and COPA conducted. We provided an independent review of the investigation and did not conduct further investigation of this incident.

On July 21, 2017, at approximately 1:38 p.m., Chicago Police Department (CPD) 9<sup>th</sup> District Police Officer **Victoria Mendoza**, No. 14334, and Officer **David Perez**, No. 14864, were on duty in a marked CPD patrol vehicle when they responded to a call about a robbery of a T-Mobile store at 4309 S. Ashland Avenue in which a description of the subjects involved was broadcast. Both officers were in uniform and assigned to Beat 934. Officer Perez was driving.

Officer Mendoza and Officer Perez arrived at 43<sup>rd</sup> Street and Ashland and observed subjects fitting the description of the offenders. These subjects, subsequently identified as [REDACTED] and [REDACTED] walked across Ashland Avenue and made eye contact with the officers. Officer Mendoza began to exit the police patrol vehicle and observed [REDACTED] pull out a gun and shoot at her. Two of the shots fired by [REDACTED] struck Officer Mendoza. Officer Mendoza fired two rounds from her service firearm at [REDACTED] and [REDACTED].

Officer Perez radioed that shots were fired at police and then he immediately began chasing [REDACTED] and [REDACTED]. The officers stated that as [REDACTED] and [REDACTED] ran, they pointed guns at Officer Perez but did not shoot. [REDACTED] and [REDACTED] then got into a black Dodge Charger stopped in an alley. As the driver of the Dodge Charger, [REDACTED] drove away, Officer Perez continued to chase the Dodge Charger on foot south on Marshfield Avenue.

Officer Perez observed the Dodge Charger stop near the alley at 43<sup>rd</sup> Street and Marshfield Avenue. [REDACTED] and [REDACTED] exited the vehicle and fired several shots at Officer Perez. Officer Perez was not hit. Officer Perez fired one or two shots from his service firearm at [REDACTED] [REDACTED] was not hit. [REDACTED] drove the Dodge Charger away on Marshfield Avenue. [REDACTED] and [REDACTED] ran west down separate gangways.

Officer Perez chased [REDACTED] into a gangway. [REDACTED] turned and shot at Officer Perez. Officer Perez was not hit. Officer Perez fired two shots from his service firearm at [REDACTED] [REDACTED] was not hit. Officer Perez observed [REDACTED] climb a gate from the gangway into the alley.

Officer Perez observed [REDACTED] running south in the alley and then standing next to the passenger side of a tan van that was not moving. [REDACTED] drove the van north and then began reversing. The van struck [REDACTED] and pinned him against a garage. [REDACTED] crawled under the damaged garage door into the garage. [REDACTED] drove the van past Officer Perez and fired one shot at Officer Perez from the moving van. Officer Perez was not hit. Officer Perez fired one shot from his service firearm toward the moving van driven by [REDACTED] was not hit.

In the alley, a citizen told Officer Perez that [REDACTED] had just carjacked his tan van and that he saw [REDACTED] go into the garage with a gun.

Officer Perez ordered [REDACTED] to come out of the garage. [REDACTED] came out of the garage and other responding officers arrested him. [REDACTED] did not suffer injuries and was neither treated nor hospitalized. Other officers later arrested [REDACTED] and [REDACTED]

None of the shots fired by Officer Mendoza or Officer Perez hit [REDACTED] or [REDACTED]. Officer Perez was not injured. The two rounds that hit Officer Mendoza struck her leg. Officer Mendoza was transported to a hospital and treated for her gunshot injuries.

The Dodge Charger was located and a handgun was seized from the vehicle. The carjacked van was not located. Two fired cartridge cases fired from Officer Mendoza's service firearm were recovered. Five cartridge cases fired from Officer Perez's service firearm were recovered. Nine fired cartridge cases fired from an unrecovered firearm were recovered.

## **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, including Office of Emergency Management and Communications (OEMC) radio transmissions, red-light camera video footage, business security camera video footage and security camera video from a private residence
- Relevant physical evidence including 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, and Officer Battery Reports.
- Relevant use of force policies in effect as of the date of the incident

## **ANALYSIS**

No allegations of excessive force were brought as a result of the IPRA and COPA investigation we reviewed. Under CPD policy, COPA, of which IPRA was the precursor, is responsible for reviewing 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 Mendoza and Officer Perez complied with applicable law and CPD policy regarding use of force, including deadly force.**

Officer Mendoza stated that she observed [REDACTED] point a firearm at her and shoot, while [REDACTED] accompanied him. Officer Mendoza perceived this action as a threat capable of causing death or serious injury. Two shots fired by [REDACTED] struck Officer Mendoza's leg before Officer Mendoza fired her service firearm. Officer Mendoza stated that she used deadly force in response to this perceived threat by firing her service firearm two times at [REDACTED] and [REDACTED].

Officer Perez stated that near the alley at 43<sup>rd</sup> Street and Marshfield Avenue, he observed [REDACTED] and [REDACTED] point firearms at him and shoot. Officer Perez perceived this action as a threat capable of causing death or serious injury. Officer Perez stated that he used deadly force in response to this perceived threat by firing his service firearm at [REDACTED].

Officer Perez stated that in the gangway, he observed [REDACTED] point a firearm at him and shoot. Officer Perez perceived this action as a threat capable of causing death or serious injury. Officer Perez stated that he used deadly force in response to the perceived threat by firing his service firearm at [REDACTED].

Officer Perez stated that in the alley, he observed [REDACTED] point a firearm at him and shoot from a moving van that he had carjacked. Officer Perez perceived this action as a threat capable of causing death or serious injury. Officer Perez stated that he used deadly force in response to the perceived threat by firing his service firearm at [REDACTED].

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 are statements of fact.

- Officer Mendoza and Officer Perez were on routine patrol in a marked police vehicle while wearing police uniforms.
- Officer Mendoza and Officer Perez responded to an armed robbery and observed subjects matching the description of the suspects, later identified as [REDACTED] and [REDACTED] crossing the street and making eye contact with them.
- Officer Mendoza exited the police patrol vehicle and [REDACTED] pulled out a gun and fired at Officer Mendoza, striking her two times in the leg.
- In response to the perceived threat, Officer Mendoza fired her service firearm twice at [REDACTED] and [REDACTED]. The shots did not hit [REDACTED] or [REDACTED].
- Officer Perez gave chase to [REDACTED] and [REDACTED] who turned and pointed guns at Perez. [REDACTED] and [REDACTED] ran to and entered a Dodge Charger, which [REDACTED] and [REDACTED] drove away. Officer Perez continued to chase the vehicle on foot.
- During the foot pursuit by Officer Perez, near 43<sup>rd</sup> and Marshfield Avenue, [REDACTED] and [REDACTED] exited the Dodge and fired shots at Officer Perez. Officer Perez was not hit.
- In response to the perceived threat, Officer Perez fired his service firearm one or two times at [REDACTED]. [REDACTED] was not hit. [REDACTED] and [REDACTED] fled on foot.
- Officer Perez chased [REDACTED] into a gangway. [REDACTED] turned and fired his gun at Officer Perez. Officer Perez was not hit.

- In response to this perceived threat, Officer Perez fired two rounds from his service firearm at [REDACTED] was not hit.
- [REDACTED] fled into the alley. [REDACTED] drove a carjacked van past Officer Perez and fired at Perez from the moving van. Officer Perez was not hit.
- In response to this perceived threat, Officer Perez fired one round from his service firearm at [REDACTED] who was driving the van. [REDACTED] was not hit.
- Responding officers arrested [REDACTED] in a garage in the alley. Other officers later arrested [REDACTED] and [REDACTED]. A firearm was recovered from the Dodge.

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 Mendoza complied with CPD policy regarding the use of deadly force.** Based on the preponderance of the evidence, it was reasonable for Officer Mendoza to believe she was in imminent danger of death or great bodily harm given that [REDACTED] fired at her and that she eventually realized she had been struck twice in the leg and was suffering from life-threatening injuries. Officer Mendoza was a victim of attempted murder and aggravated assault to a peace officer by [REDACTED] who shot and hit her two times.

**Based on the totality of circumstances, we concur with the determination of the previous investigation that Officer Perez complied with CPD policy regarding the use of deadly force.** Based on the preponderance of the evidence, it was reasonable for Officer Perez to believe he was in imminent danger of death or great bodily harm near the alley at 43<sup>rd</sup> Street and Marshfield Avenue, given that [REDACTED] and [REDACTED] fired at him. Based on the preponderance of the evidence, it was reasonable for Officer Perez to believe he was in imminent danger of death or great bodily harm in the gangway, given that [REDACTED] fired at him. Based on the preponderance of the evidence, it was reasonable for Officer Perez to believe he was in imminent danger of death or great bodily harm in the alley, given that [REDACTED] fired at him from a moving carjacked van. Officer Perez had just been a victim of attempted murder and aggravated assault to a peace officer by [REDACTED] and [REDACTED] who pointed and fired firearms in his direction.

COPA served allegations against Officers Mendoza and Perez for failing to activate their body-worn cameras during this incident, in violation of CPD Special Order S03-14, Body Worn Cameras. In their statements to COPA, both officers admitted their failure to do so.

## APPLICABLE RULES AND LAW

### Chicago Police Department General Order

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

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:

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

- 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.<sup>2</sup>

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.<sup>3</sup>

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.<sup>4</sup>

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

### **Illinois Statute**

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<sup>2</sup> *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7<sup>th</sup> Cir. 2003).

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

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

<sup>5</sup> *Muhammed v. City of Chicago*, 316 F.3d 380, 383 (7<sup>th</sup> Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7<sup>th</sup> Cir. 1988) (en banc) (omitting emphasis)

<sup>6</sup> *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 (7<sup>th</sup> Cir. 2003).

CPD officers are bound by Illinois law regarding the use of deadly force as codified in the Illinois Compiled Statutes.<sup>7</sup> 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...<sup>8</sup>

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.<sup>9</sup>

### **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.<sup>10</sup> 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.<sup>11</sup>

### **CONCLUSION**

Our administrative review of the officer-involved shooting under Log No. 1086011 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 proffered.

The allegation that the officers failed to activate their body-worn cameras is **Sustained** against both officers.

Officer Mendoza has been a member of the Chicago Police Department since February 2, 2015. In that time, she has received 9 Honorable Mentions and 1 Complimentary Letter. In the last seven years, she

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<sup>7</sup> 720 ILCS 5

<sup>8</sup> 720 ILCS 5/7-5(a)

<sup>9</sup> 720 ILCS 5/7-1(a)

<sup>10</sup> 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).

<sup>11</sup> 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.

received no discipline. Given the high-stress nature of this incident in which Officer Mendoza was shot in the leg, COPA recommends Violation Noted for this allegation.

Officer Perez has been a member of the Chicago Police Department since April 1, 2013. In that time, he has received 34 Honorable Mentions and 1 Department Commendation. In the last seven years, he received no discipline. Given the high-stress nature of this incident in which Officer Perez's partner was shot, COPA recommends Violation Noted for this allegation.