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Mayor

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David O. Brown  
Superintendent of Police

September 24, 2021

Andrea Kersten  
Interim Chief Administrator  
Civilian Office of Police Accountability (COPA)  
1615 W. Chicago Ave., 4<sup>th</sup> Floor

Re: Superintendent's Non-Concurrence with COPA's findings  
Log #1086664  
Officer Brian Collins #16773

Dear Interim Chief Administrator Kersten:

Based on a review of the above-referenced complaint register (CR), the Chicago Police Department (CPD) does not concur with the recommended findings and penalty for Officer Brian Collins. In accordance with Municipal Code of Chicago, MCC 2-78-130, the Superintendent provides the following comments when there is a disagreement as to the investigative findings and proposed penalty.

The basis for COPA's sustaining the single allegation and recommending separation is that they found it was not objectively reasonable for Officer Collins to shoot Mr. [REDACTED]. The evidence, however, does not bear out this conclusion and is therefore legally insufficient.

In the Summary Report of Investigation (SRI), COPA summarized the evidence reviewed, including all reports, videos, and statements, and concluded that events unfolded in essentially the manner as related by the accused, Officer Collins, the victim, [REDACTED] and the various witnesses. Video corroborated the various statements, and Officer Collins gave a factual and forthright accounting of what transpired.

The evidence demonstrates that Officer Collins and his partners were responding to the scene of a call of shots fired, both called in to 911 and alerted via ShotSpotter, when they observed Mr. [REDACTED] at or near the scene of the shots fired. They observed Mr. [REDACTED] flee on foot while holding the side of his waistband, indicative of his being armed with a firearm. Mr. Hall was in fact armed with a firearm. Officer Collins pursued Mr. [REDACTED] on foot and shortly found himself in an alley confronted with Mr. Hall running toward him. At that point Officer Collins observed Mr. [REDACTED] to have his hand on the firearm, which Officer Collins could identify by viewing its silver slide. Officer Collins gave Mr. Hall verbal direction to stop and to drop the gun. Mr. [REDACTED] disregarded the verbal commands and continued running, changing direction from northbound toward Officer Collins to a northwesterly direction into a vacant lot. While running in this direction, Mr. [REDACTED] with his hands still at his waistband where Officer Collins observed the firearm, looked in Officer Collins' direction. At this point Officer Collins fired twice, striking Mr. [REDACTED] once in the arm.

The use of force directive in effect at the time of this incident, General Order G03-02, states:

“as set forth by the United States Supreme Court in Graham v. Connor, 490 U.S. 386 (1989), the central inquiry in every use of force is whether the amount of force used by the officer was objectively reasonable in light of the particular circumstances faced by the officer.”

In their SRI, COPA notes that this is the standard and goes on to state that:

“COPA recognizes the inherent risks Department members face when pursuing subjects who are holding firearms and that these circumstances require officers to make split-second decisions—in circumstances that are tense, uncertain, and rapidly evolving.” (COPA Summary Report of Investigation of Log #1086664, pg. 17).

COPA then spells out their rationale for why they believe Officer Collins’ decision to shoot was not objectively reasonable.

COPA first opines that armed subjects sometimes flee with the intention to escape and avoid criminal liability. While this is certainly true, in this instance Officer Collins did not have information to make that conclusion. To the contrary, Officer Collins observed Mr. [REDACTED] to be running with his hand at his waistband where he held a firearm and looking back at Officer Collins. Officer Collins feared that Mr. [REDACTED] was looking back with his hand at his waist in order to aim and shoot at Officer Collins, or as he put it, “acquired him as a target.”

In his statement, Officer Collins noted that while Mr. [REDACTED] may have been attempting to escape, Officer Collins feared what Mr. [REDACTED] might do to effectuate said escape, i.e., shooting Officer Collins. In short, the totality of the circumstances Officer Collins faced, Mr. [REDACTED] movement, hand at waist on the firearm while looking back at Officer Collins, led him to conclude that deadly force was reasonable and necessary.

COPA then states “Officer Collins conceded that once Mr. [REDACTED] was no longer a threat when he turned from running towards the officer and headed west across the alley.” (SRI at pg. 18). This is incorrect. Officer Collins is clear in his statement that when Mr. [REDACTED] changes direction, the threat-level he perceived diminished, however, upon Mr. [REDACTED] turning to look at Officer Collins, Officer Collins believes that Mr. [REDACTED] is going to shoot. It is at this time, after Mr. [REDACTED] changes direction but maintains his hand at his waist and turns his gaze back at Officer Collins that the accused determines that Mr. [REDACTED] actions constitute a threat of the imminent use of deadly force against him and he shoots at Mr. [REDACTED]

Again, the totality of the circumstances – Mr. [REDACTED] movement, hand at waistband and looking back at Officer Collins – taken as a whole determined Officer Collins’ response. When asked in his deposition (attachment 126) if, hypothetically, he would’ve shot had Mr. [REDACTED] not looked back but merely fled, Officer Collins responded that he would not. But faced with the circumstances present here, Officer Collins reasonably believed he was faced with a threat of death or great bodily harm.

The final rationale put forth by COPA for determining that Officer Collins’ use of force was unreasonable is that “Officer Collin [sic] did not indicate that Mr. [REDACTED] made any movements to draw or point the firearm.” (SRI at pg. 18). Again, this is an incorrect representation of what Officer Collins stated.

While it is true that Officer Collins did not indicate that Mr. █████ drew or pointed his firearm, it is not accurate to say that he made no such movements. In fact, Officer Collins stated that he saw Mr. █████ holding the gun against his body and that he was not sure if he was pulling it out or putting it away. He further stated that it looked an unnatural means of carrying a gun, unlike it being tucked to the side or rear to merely carry it. In his statement, Officer Collins further elaborated that the gun appeared long, that he could see a good deal of the slide, but he did not know if what he saw was the entirety of the weapon. He reiterated that Mr. █████ could've either been removing or replacing the weapon and that he wasn't certain.

In either event, Officer Collins observed movement that he reasonably believed could have been Mr. █████ drawing his weapon. And again, this movement coupled with Mr. █████ looking at Officer Collins in what Officer Collins believed to be acquiring him as a target led to Officer Collins' belief that the use of deadly force was reasonable and necessary.

The Police Board, in a substantially similar case, determined that the officer's use of force was reasonable and found that the Superintendent did not meet his burden of proof in seeking separation. (In the Matter of Charges Filed against Police Officer Brandon Ternand, No. 17 PB 2940). In that case, Officer Ternand pursued a teenager who he had observed with a gun in his waistband. At a certain point in the foot pursuit, the teen turned and reached for his side, and Officer Ternand, fearing the teen was reaching for the gun officers had previously seen in his possession, fired, striking the teen in the back of the head, killing him. It was later discovered that the gun was no longer in the teen's possession

While acknowledging that the incident was a terrible tragedy, the Board found that under the totality of the circumstances Officer Ternand's belief that the teen was armed and moving toward the gun in his waistband with intention to shoot him was reasonable, and Officer Ternand's use of deadly force was justified:

"The Board found the testimony of Respondent to be credible and persuasive that before he shot Mr. █████ he observed Mr. █████ turn around, look at him, and reach for his left side, which gave rise to Respondent's reasonable fear for his safety and life in that he believed that Mr. █████ was reaching for the gun of which the officers had previously seen him in possession and was going to shoot him." (Id. at pg. 4)

COPA's proffered rationale for finding Officer Collins' actions to be an unreasonable use of force – Mr. █████ might've just been trying to escape, Mr. █████ might've just been putting his gun away, Mr. █████ might just have been looking back at Officer Collins with his hand on the gun in his waistband for wholly innocent reasons – are all too speculative and attenuated to add up to a preponderance of evidence that Officer Collins' belief that deadly force was necessary was not objectively reasonable. The evidence is legally insufficient to sustain COPA's allegation and as such CPD believes the allegation should be not sustained.

Sincerely,

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David O. Brown  
Superintendent of Police  
Chicago Police Department