

SUMMARY REPORT OF INVESTIGATION

Date/Time/Location of Incident:	December 6, 2017 / 11:22 pm / 9523 S. Calumet Ave., Chicago, IL 60628.
Date/Time of COPA Notification:	December 7, 2017 / 2:10 am.
Involved Member #1:	Officer Brandon Kirby / Star #13335 / Employee ID# [REDACTED] / DOA: April 2, 2012 / Unit: 005 / Male / White.
Involved Member #2:	Officer Michael Fazy / Star # 17775 / Employee ID# [REDACTED] / DOA: November 30, 2012 / Unit: 005 / Male / White.
Involved Individual #1:	[REDACTED] / Male / Black.

I. ALLEGATIONS

Pursuant to section 2-78-120 of the Municipal Code of Chicago, the Civilian Office of Police Accountability (COPA) has a duty to investigate all incidents in which a Chicago Police Department (CPD) member discharges their firearm. During its investigation of this incident, COPA did not find evidence to support allegations directly related to the incident.

II. SUMMARY OF EVIDENCE

On December 6, 2017, at approximately 11:22 pm, CPD Officers Michael Fazy and Brandon Kirby (collectively “the officers”) were on patrol when they observed [REDACTED] and [REDACTED] loitering in the parking lot of a BP gas station.¹ The officers determined they would conduct an investigatory stop on [REDACTED] and [REDACTED] however, when [REDACTED] and [REDACTED] observed the officers, they motioned to each other it was time to leave.²

As the officers approached, Officer Kirby rolled down the passenger window of his vehicle and requested [REDACTED] and [REDACTED] to come to the vehicle.³ [REDACTED] grabbed his waistband and fled southwest on foot.⁴ Initially, the officers pursued [REDACTED] with their vehicle. [REDACTED] fled over a fence and into the parking lot of Walgreens and Officer Kirby exited his vehicle and pursued [REDACTED] on foot.

As Officer Kirby pursued [REDACTED] he observed [REDACTED] running alongside of him. Officer Kirby issued commands for [REDACTED] and [REDACTED] to stop fleeing. [REDACTED] complied and asserted he was not in possession of a weapon, which Officer Kirby confirmed with a

¹ BP was located at 400 E. 95th St., Chicago, IL 60619

² Officer Fazy explained that when the Officers observed [REDACTED] and [REDACTED] loitering in the parking lot it was below zero degrees Fahrenheit, this fact contributed to the decision to stop [REDACTED] and [REDACTED] Att. 26, pg. 10, lns. 9 to 17; Att. 27, pg. 9, lns. 17 to 23.

³ Att. 26, pg. 10, lns. 18 to 21; Att. 27, pg. 10, ln. 1.

⁴ Att. 26, pg. 10, lns. 21 to 24; Att. 27, pg. 10, lns. 2 to 5.

protective pat down.⁵ Officer Kirby then resumed a foot pursuit of [REDACTED] As [REDACTED] fled, Officer Fazy informed Officer Kirby that [REDACTED] fled into the backyards of residences.⁶

Officer Kirby observed, [REDACTED] fleeing southbound through backyards. Officer Kirby paralleled [REDACTED] by running south down the alley.⁷ As [REDACTED] continued to flee south over fences, Officer Kirby stopped to check gangways. As Officer Kirby was checking gangways, Officer Fazy exited the vehicle and was also checking the gangways when he observed [REDACTED] running towards Officer Kirby's location.⁸ Officer Fazy alerted Officer Kirby that [REDACTED] turned and ran in Officer Kirby's direction.⁹ Officer Fazy directed Officer Kirby to where he observed [REDACTED] fleeing. Officer Kirby followed Officer Fazy's directions. As Officer Kirby rounded the corner of a garage, he observed [REDACTED] holding a firearm pointed in the direction of Officer Kirby's head.¹⁰ Officer Kirby dropped to the ground, as he heard a gunshot and observed a muzzle flash from [REDACTED] firearm.¹¹ And Officer Kirby requested via radio for immediate assistance because he had been shot at.¹²

After shooting at Officer Kirby, a still armed [REDACTED] fled towards Officer Fazy.¹³ As [REDACTED] fled, Officer Fazy observed an armed [REDACTED] emerge from behind the garage, point a firearm at, and discharge it towards Officer Fazy. Officer Fazy fell to the ground and discharged his weapon at [REDACTED]¹⁴ Simultaneously, Officer Kirby observed the muzzle flash from [REDACTED] firearm, heard several gunshots, and heard Officer Fazy relaying he had been shot. These observations prompted Officer Kirby to discharge his weapon.¹⁵ Meanwhile, on the ground, Officer Fazy heard additional gunshots and felt the impact of a projectile in his back.¹⁶

Once [REDACTED] fled the immediate area, Officer Kirby located Officer Fazy.¹⁷ Officer Kirby then assisted Officer Fazy to the front yard of the residence to await additional units.

Once Officer Fazy was transported from the scene, the responding units searched the area for [REDACTED] was located in the rear of a residence in the 9500 block of S. Prairie Ave.¹⁸ Responding units, specifically Officers Alexandra Hochhauser and Kathlyn McClain, ordered [REDACTED] to surrender; however, [REDACTED] did not comply and fled on foot.¹⁹ Officers Hochhauser and McClain pursued [REDACTED] who exclaimed word to the effect of "just

⁵ Att. 27, pg. 11, lns. 13 to 24.

⁶ At this point Officer Fazy had not exited the vehicle. Att. 26, pg. 11; lns. 1 to 3; Att. 27, pg. 13, lns. 1 to 4.

⁷ The alley in between S. Calumet Ave and S. Martin Luther King Dr. Att. 27, pg. 13, lns. 6 to 9.

⁸ Officer Fazy ordered [REDACTED] to show his hands; however, [REDACTED] did not heed the order. Att. 22 at 00:45; Att. 26, pg. 11, lns. 4 to 20.

⁹ Att. 22 at 01:00; Att. 26, pg. 11, lns. 18 to 20; Att. 27, pg. 15, lns. 2 to 6.

¹⁰ Att. 27, pg. 15, lns. 11 to 15.

¹¹ Att. 22 at 01:09; Att. 26, pg. 11, lns. 21 to 24; Att. 27, pg. 15, lns. 15 to 17.

¹² Att. 22 from 01:10 to 01:13; Att. 26, pg. 12, lns. 1 to 3; Att. 27, pg. 15, lns. 18 and 19.

¹³ Att. 27, pg. 16, lns. 6 to 8.

¹⁴ [REDACTED] round struck Officer Fazy in the hand. Att. 22 from 01:13 to 01:22; Att. 26, pg. 12, lns. 5 to 10.

¹⁵ Officer Kirby fired his weapon 14 times and stopped once he experienced a stovepipe. Att. 27, pg. 16, lns. 12-13; pg. 17, lns. 13 to pg. 18, ln. 1; lns. 11-15.

¹⁶ Att. 26, pg. 12, lns. 11 to 14.

¹⁷ Att. 27, pg. 19, lns. 10 to 23.

¹⁸ A citizen reported an alarm in her garage, which prompted responding units to the location. Att. 5, pg. 6

¹⁹ Att. 5, pg. 6.

shoot me!”²⁰ Officer John Grubisich used an emergency takedown to capture [REDACTED] [REDACTED] was taken into custody without further incident. A search of the area revealed two firearms.²¹

III. ANALYSIS AND CONCLUSION

a. Applicable Policies

i. G03-02 – Use of Force

CPD members may only use force that is objectively reasonable, necessary and proportional in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject or prevent escape.²² When evaluating use of force, the issue is whether the amount of force used by the officer was objectively reasonable in light of the circumstances faced by the officer on the scene. Factors that are considered when determining reasonableness include but are not limited to: whether the subject is posing an imminent threat to the officer or others; the risk of harm, level of threat or resistance presented by the subject; and the subject’s proximity or access of weapons.²³ The greater the threat and more likely the threat will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it.²⁴

To reduce or avoid the need for use of force, CPD policy directs members to use de-escalation techniques when safe and feasible to do so under the circumstances. These techniques include but are not limited to exercising persuasion and advice and providing a warning prior to the use of force; determining whether the member may be able to stabilize the situation through the use of time, distance, or positioning to isolate and contain a subject; and requesting additional personnel to respond or make use of specialized units or equipment including crisis-intervention-team trained officers.²⁵

In addition to the requirements above, the use of deadly force, including the firing of a firearm in the direction of a person subject to arrest, is permitted as a last resort when necessary to protect against an imminent threat of great bodily harm or death to a member or another. A threat is defined as “imminent” when it is objectively reasonable to believe that: the subject’s actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; the subject has the means or instruments to cause death or great bodily harm; and the subject has the opportunity and ability to cause death or great bodily harm.²⁶

²⁰ Att. 5, pg. 6.

²¹ Att. 5, pg. 6; Att. 17, pgs. 3 and 4.

²² G03-02 (III)(B), Use of Force, effective October 16, 2017, to February 29, 2020.

²³ G03-02 (III)(B)(1).

²⁴ G03-02 (III)(B)(3).

²⁵ G03-02 (III)(B)(4).

²⁶ G03-02 (III)(C)(2).

ii. G03-02-01 – Force Options

When it is safe and feasible to do so, CPD members are to use de-escalation techniques known as “Principles of Force Mitigation” to reduce or avoid the need for use of force. These techniques include: “Continual Communication,” which means using verbal control techniques to avoid or minimize confrontations before resorting to physical force such as using persuasion, advice, instruction, and warning prior to any use of force; “Tactical Positioning,” which involves use of positioning, distance, and cover to contain a subject and create a zone of safety for officers and the public; and using “Time as a Tactic” to, among other things, permit the de-escalation of a subject’s emotions and provide time for the subject to comply with police orders, provide time for continued communication, and allow for the arrival of additional members or special units and equipment.²⁷

b. The Officers’ use of deadly force was within CPD Policy

i. Objectively Reasonable to Perceive ██████████ Actions as a Deadly Threat

COPA finds that it was objectively reasonable for the Officers to believe that ██████████ actions were likely to cause death or serious injury. Near the garage, Officer Kirby saw ██████████ raised a firearm level to Officer Kirby’s head, thereby, presenting an imminent deadly threat directly towards Officer Kirby’s life. Additionally, Officer Fazy’s BWC footage depicted the sound of multiple forearm discharges shortly before Officer Fazy fell to the ground and exclaim that he was shot. And Officer Fazy relayed that he heard Officer Kirby report being shot only after he heard ██████████ initial discharge(s). Considering these facts, COPA finds it was objectively reasonable for both officers to believed ██████████ possessed a firearm, and that ██████████ used his firearm as an imminent deadly threat against the officers.

ii. Deadly force was used as a last resort

Officer Kirby discharged his firearm only after having a firearm pointed towards his head. Officer Fazy discharged his firearm in response to sustaining gunshots. Neither officer discharged their firearm until after ██████████ discharged his. Due to the proximity and deployment of ██████████ deadly threat and already sustaining gunshots (Officer Fazy), it was not objectively reasonable for either officer to retreat, deescalate, wait for the assistance of fellow officers, or employ a lesser means of force. Therefore, COPA finds that the officers use of deadly force in this instance was an act last resort.

For the reasons discussed above, COPA finds that Officers Kirby and Fazy’s use of deadly force was **within** CPD policy.

²⁷ G03-02-01 (III), Force Options, effective October 16, 2017, to February 29, 2020.

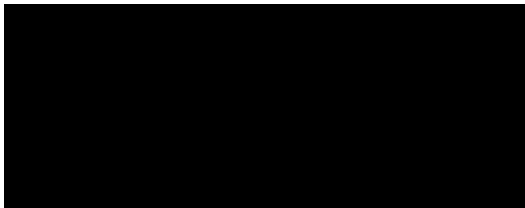
Approved:



10/31/2022

Matthew Haynam
Deputy Chief Administrator – Chief Investigator

Date



10/31/2022

Andrea Kersten
Chief Administrator

Date