



Lori E. Lightfoot
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

David O. Brown
Superintendent of Police

December 21, 2022

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability
1615 West Chicago Avenue, 4th Floor
Chicago, IL 60622

RE: Superintendent's Partial Concurrence with COPA's proposed findings and penalties
Complaint Register Number: #1091909
Detective Jeremy Carter #4007 and Officer Anthony Alvarez #8822

Dear Chief Administrator Kersten:

After a careful review of the recommendation made by COPA in this matter, as detailed below the Chicago Police Department (CPD or Department) concurs with certain findings and recommended penalties but does not concur with others.

Facts

On December 5, 2018 during roll call, Police Officer Jeremy Carter (PO Carter) and Police Officer Anthony Alvarez (PO Alvarez) learned that a white Ford escape and its occupants were wanted for its involvement in an earlier shooting. At 11:24 P.M., Officers Carter and Alvarez were on patrol in a marked squad car when their license plate reader identified a stolen car, a white Ford Escape. The Ford Escape, driven by [REDACTED] ([REDACTED]) drove into the Shell Gas Station at 3944 W. Roosevelt Road, dropped off two female passengers inside the gas station and then parked at one of the gas pumps. Officers Carter and Alvarez called for additional cars to assist them in conducting this high-risk traffic stop. Officers Carter and Alvarez positioned their vehicle behind [REDACTED] while Police Officer Marko Trifunovic (PO Trifunovic) and Police Officer Theresa Depietro (Officer Depietro) parked their squad car next to the front passenger side of [REDACTED] at a forty-five degree angle.¹ Officers Carter, Alvarez, Trifunovic and Depietro exited their vehicles, drew their weapons and ordered [REDACTED] to exit the vehicle. [REDACTED] defied the Officers' verbal commands, revved his engine, threw the Ford Escape in drive and drove the Ford Escape at PO Trifunovic. At this point, several events took place simultaneously. PO Carter, who feared for the life of Officer Trifunovic as well as every other Officer and civilian that potentially could come into the path of [REDACTED] fired his weapon one time striking [REDACTED] in the wrist. PO Carter narrowly avoided being struck by [REDACTED] by jumping out of the way. [REDACTED] then crashed into Officers Trifunovic and Depietro's squad car. The impact and force of the crash was so great that their squad car's bumper was both destroyed and separated from the car.

¹ Additionally assist units also arrived on scene

After the latter string of simultaneous events, [REDACTED] crashed the Ford Escape into a nearby iron fence. Officers successfully took [REDACTED] into custody for his attempt on Officer Trifunovic's life as well as for driving in a stolen vehicle and for his potential involvement in the earlier double shooting.

Superintendent's Penalty Analysis

A. CPD does not concur with COPA's finding that Officer Carter discharged his firearm in violation of General Order G03-02 (Carter Allegation #1).

In the instant case it is paramount to assess the reasonableness of Officer Carter's use of force from the perspective of a reasonable officer on the scene, not with the benefit of 20/20 hindsight and that the reasonableness determination should embody allowance for the fact that officers are 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. See Graham v. Connor, 109 S.Ct 1865, 1872 (1989).

The test of reasonableness regarding a particular use of force requires careful attention to the facts and circumstances of each particular case, including 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. The question is whether the totality of the circumstances justifies a particular use of force. See Tennessee v. Garner 471 U.S. (1985).

The CPD disagrees with the finding against Officer Carter for discharging his firearm at a moving vehicle. The relevant governing General Order in the instant case is *Use of Force* G03-02 which prohibits firing at or into a moving vehicle when the vehicle is the only force used against the officer or another person unless such force is reasonably necessary to prevent death or great bodily harm to a sworn member or to another person. Officer Carter's conduct falls within the latter exception.

Here, Officer Carter's use of force conformed to department policy because it was objectively reasonable, necessary, and proportional under the totality of the circumstances. [REDACTED] is an assailant whose actions constituted an imminent threat of death or great bodily harm. After all, it is undisputed that [REDACTED] and the Ford Escape (stolen) were wanted for their involvement in an earlier double shooting. Armed with this information Officers Carter, Alvarez, Trifunovic and DiPietro attempted to apprehend [REDACTED] and the Ford Escape. Officers Carter and Alvarez positioned their vehicle behind [REDACTED] while Officer Trifunovic and Officer DiPietro parked their squad car next to the front passenger side of [REDACTED] at a forty-five-degree angle. Officers Carter, Alvarez, Trifunovic and DiPietro exited their vehicles, drew their weapons, and ordered [REDACTED] to exit the vehicle. [REDACTED] defied the Officers' verbal commands, revved his engine, threw the Ford Escape in drive, and drove the Ford Escape at Officer Trifunovic. PO Carter, who feared for the life of Officer Trifunovic as well as every other Officer and civilian that potentially could come into the path of [REDACTED] fired his weapon once, striking [REDACTED] in the wrist. Officer Trifunovic simultaneously jumped out of the way of [REDACTED] Ford Escape, narrowly avoiding being struck by the vehicle. Rather than strike Officer Trifunovic, [REDACTED] struck Officer Trifunovic's and DiPietro's squad with such force that its bumper was both destroyed and dislodged. In Officer Trifunovic's interview with COPA, he told the investigators that [REDACTED] was going to crash into him. In Officer Carter's interview with COPA, he similarly told the investigators that [REDACTED] was going to strike Officer Trifunovic.

Several courts, on very similar facts, have determined that deadly force in response to vehicles driven at officers is reasonable and justified. In *Smith v. Prindable*, Officer Prindable conducted a traffic stop on Smith and Billups. Officer Prindable approached the vehicle with several other officers and a handgun was observed under the driver's seat. Officer Prindable and the other Officers backed away and moved into a formation around the vehicle. Billups accelerated forward striking Prindable. Billups and another Officer fired eleven rounds into the vehicle and struck Smith five times. The Court held that the Officers were justified in using deadly force to stop the vehicle as it accelerated forward towards another officer. See *Smith v. Prindable*, 2015 WL 1866504, 3 (Ill. Dist. Ct. 2015); Also see *Brosseau v. Hagen* 543 U.S. 194 (2004) (Holding that a police officer did not violate clearly established law when she fired at a fleeing vehicle to prevent possible harm to "other officers on foot who she believed were in the immediate area, occupied vehicles in the driver's path, and any other citizens who might be in the area).

In *Plumhoff v. Rickard*, Rickard led police officers on a high-speed car chase that came to a temporary halt when Rickard spun out into a parking lot. Rickard resumed maneuvering his car, and as he continued to use the accelerator even though his bumper was flush against a patrol car, an officer fired three shots into Rickard's car. Rickard managed to drive away, almost hitting an officer in the process. Officers fired 12 more shots as Rickard sped away, striking him and his passenger, both of whom died. The United States Supreme Court held that the Officers' use of deadly force against Rickard was reasonable. See 572 U.S. 765 (2014).

In *Moman v. Valanzuela*², Moman led Officers on high-speed chase that culminated at the Chinatown feeder ramp. State Trooper Muzzillo and several other Officers repeatedly commanded Moman to put his hands up and exit the vehicle. Moman defied their commands, reversed, and then accelerated toward Trooper Muzzillo who got out of the way of Moman and then fired at Moman one time. State Trooper Valanzuela fired an additional three shots at Moman thinking that Moman was going to strike Trooper Muzzillo. The Court held that Moman posed a grave risk to public safety and that State Trooper Muzzillo's and Valanzuela's deadly force against Moman was justifiable to protect others and prevent Moman's escape. See *Moman v. Valenzuela*, 2021 WL 3285948, 8 (N.D. Ill. 2021).

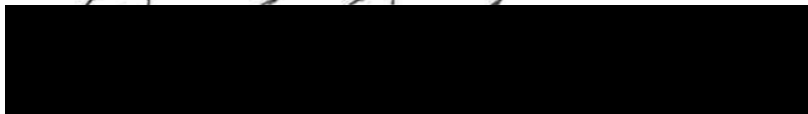
Just as in *Prindable*, *Brosseau*, *Plumhoff* and *Moman*, a court reviewing the present case will determine Officer Carter was justified in using deadly force because [REDACTED] actions: erratically driving and accelerating towards a person; could have resulted in death or great bodily harm to Officer Trifunovic, other on-scene officers, or civilian bystanders. After all, Officer Carter like the Officers in *Prindable*, *Brosseau*, *Plumhoff* and *Moman*, used deadly force after [REDACTED] drove his car at Officer Trifunovic.

B. CPD concurs with COPA's finding that Officer Carter and Officer Alvarez failed to timely activate their body worn cameras (Carter Allegation #2 and Alvarez Allegation #1).

The CPD agrees with COPA's recommendation that Officers Carter and Alvarez be reprimanded for failure to timely activate their body worn cameras.

² In this case the offending vehicle was stolen earlier that day by armed teenager.

CPD looks forward to discussing this matter with you pursuant to MCC-2-78-130(a)(iii).



David O. Brown
Superintendent of Police
Chicago Police Department