



June 2, 2023

Mr. Max A. Caproni
Executive Director, Chicago Police Board
30 North LaSalle Street, Suite 1220
Chicago, Illinois 60602

Via Email

RE: Request for Review, Log #1091909: Officer Jeremy Carter #4007

Dear Mr. Caproni,

Pursuant to the Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedure Section VI, please consider this letter a Request for Review of a non-concurrence between the Civilian Office of Police Accountability (COPA) and the Superintendent of the Chicago Police Department (CPD) in Log No. 1091909.¹

As set forth in detail in COPA's Final Summary Report dated September 28, 2022 (FSR), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendations against Officer Jeremy Carter.

I. BACKGROUND

A. Relevant Factual Background²

On December 5, 2018, Officers Jeremy Carter ("Officer Carter") and Anthony Alvarez ("Officer Alvarez") while on patrol, observed a stolen car, a white Ford Escape. The Ford Escape, now known to be driven by ██████████ (██████████) drove into a Shell Gas Station and parked at one of the gas pumps. Officers Carter and Alvarez called for additional units to assist. When the additional officers arrived on the scene, the officers converged on the stolen vehicle. ██████████ was in the driver's seat. Officers Carter and Alvarez, along with the additional units on the scene, surrounded the vehicle and ordered ██████████ out of the vehicle.

Officer Carter positioned himself on the driver's side of the Ford Escape, while Officer Alvarez, Trifunovic, and Depietro were on the passenger's side. Officer Carter and the other officers had their weapons drawn and pointed in ██████████ direction. The officers gave verbal commands for ██████████ to exit the vehicle, but he refused to comply. ██████████ revved the engine as if he was going to drive away. Directly in front of the Ford Escape was a marked CPD SUV, and to its left was a gas pump. *See* Figures 1 and 2. ██████████ moved

¹ As required by the Police Board Rules of Procedure, enclosed are copies of COPA's FSR, CPD's non-concurrence letter, and the certificate of meeting.

² A more detailed factual summary can be found in the FSR.

the Ford Escape forward and to the left, towards the gap between the CPD SUV and the gas pump. During this maneuver, [REDACTED] struck the front end of the unoccupied marked CPD SUV, and Officer Carter fired his weapon once at [REDACTED] believing that [REDACTED] was about to hit Officer Trifunovic or Officer Depietro.



Figure 1. Screenshot from Officer Carter's BWC after exiting his squad car, depicting the location of the Ford Escape indicated by a red arrow, with the pump indicated by a yellow arrow, and the marked CPD SUV indicated by a green arrow.



Figure 2. Evidence Technician photograph depicting the CPD SUV indicated by a green arrow and the Ford Escape indicated by a red arrow after it hit the front of the CPD SUV and the wrought iron fence.³

BWC evidence shows that at the time [REDACTED] moved the Ford Escape, Officer Trifunovic, Officer Depietro, and Officer Alvarez were all located on the passenger side of the Ford Escape. None of the officers were in front of the Ford Escape. During his COPA interview, Officer Carter admitted that, at the time he fired his weapon, he did not realize that Officers Trifunovic and Depietro had moved out of the way of the Ford Escape.

Officer Carter's shot struck [REDACTED] on the left wrist. [REDACTED] then lost control of the car, collided with a wrought iron fence surrounding the Shell Gas Station, and was placed in custody. After the incident, Officer

³ Att. 29.



Carter learned that the Ford Escape had been involved in a double shooting earlier in the day. Officer Carter admitted that he was not aware of that shooting when the license plate reader identified the vehicle.⁴

No other officers fired their weapons during the incident. Officer Alvarez, who was on the passenger side of the Ford Escape during the incident, stated that he did not fire his weapon because [REDACTED] was not a threat, and it was not safe to fire a gun at that time. Officer Trifunovic stated that he did not fire at [REDACTED] because he had moved out of the way of the Ford Escape and he did not believe that [REDACTED] posed a threat.

B. Disputed Findings and Recommendations

The Superintendent disagrees with the Sustained finding against Officer Carter for violation of the CPD's use of force policies, concurs with the Sustained finding against Officer Carter for his failure to timely activate his body-worn camera, but argues that a Reprimand is the appropriate penalty.⁵

C. Applicable CPD Policy

1. Use of Deadly Force.

CPD policy dictates that “[t]he use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat to life or to prevent great bodily harm to the member or another person.”⁶ Thus, a CPD member may use deadly force in only two situations. First, deadly force may be used to prevent death or great bodily harm from an imminent threat posed to the sworn member or another person. Second, deadly force may be used to prevent an arrest from being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or great bodily harm to a sworn member or another person unless arrested without delay.⁷ CPD policy places prohibitions on the use of deadly force in certain situations. In pertinent part, *CPD policy prohibits firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person, unless such force is reasonably necessary to prevent death or great bodily harm to the sworn member or to another person.*⁸

II. ARGUMENT

A. The Superintendent ignores CPD policy prohibiting the use of deadly force at a moving vehicle absent reasonable need to prevent death or great bodily harm.

The Superintendent argues that Officer Carter's use of deadly force was appropriate under the circumstances because the use of such force was necessary to prevent [REDACTED] from driving the Ford Escape at Officers Trifunovic and Depietro.⁹ This argument lacks merit for several reasons.

⁴ The Superintendent's argument that Officer Carter knew about the vehicle's earlier involvement in a shooting is incorrect and not based on the evidence. *See* Superintendent's Partial Concurrence with COPA's proposed findings and penalties, pp. 1-2 (Dec. 21, 2022).

⁵ The Superintendent concurs with the Sustained finding and penalty recommendation for Allegation #1 against Officer Alvarez. *See* Superintendent's Partial Concurrence at p. 3.

⁶ G03-02(III)(C)(3) (eff. Oct. 16, 2017).

⁷ *Id.*

⁸ G03-02(III)(D)(6) (emphasis added).

⁹ *See* Superintendent's Partial Concurrence at p. 2.



First, CPD policy explicitly prohibits Officer Carter’s use of deadly force under these circumstances. Here, the evidence shows that deadly force was not reasonably necessary to prevent death or great bodily harm to the sworn member or to another person. Officer Carter’s belief to the contrary was objectively unreasonable. Specifically, at the time he discharged his weapon, neither Officer Trifunovic, Alvarez, nor Depietro, were in the path of the Ford Escape. Officer Carter, despite lacking awareness of the whereabouts of his partners, nevertheless fired at ██████████. Under these circumstances, Officer Carter could not have been shooting to protect his partners’ lives. Rather, completely unaware of his surroundings and his partners’ location, he could have accidentally shot them. His use of deadly force under these circumstances was prohibited.

Moreover, the evidence shows that Officer Carter’s use of deadly force was not warranted where ██████████ was attempting to flee, did not drive the Ford Escape at an officer or a civilian, and was not armed. Specifically, the evidence shows that ██████████ attempted to flee by driving the Ford Escape through the gap between the unoccupied squad car and the pole next to the pump when Officer Carter opened fire. *See* Figures 1 and 2. No officers were in the path of the Ford Escape. In addition, contrary to the Superintendent’s claim, Officer Carter did not know that the Ford Escape had been used in an earlier double shooting, and, even if he had, there is no evidence that ██████████ was armed during this incident and/or had participated in the earlier shooting. The totality of the circumstances thus indicates that use of deadly force was objectively unreasonable.

The Superintendent correctly points out that Officer Carter’s use of deadly force should be assessed from the perspective of a reasonable officer on the scene.¹⁰ Here, such an assessment further supports the conclusion that Officer Carter’s decision to use deadly force under these circumstances was objectively unreasonable. In fact, no other officers on scene, including Officers Trifunovic, Alvarez, or Depietro, fired their weapons. Officer Trifunovic and Officer Alvarez both explained that they did not fire their weapons because they did not believe ██████████ posed a threat. Officer Alvarez added that he did not believe it was safe to fire his weapon at ██████████ under the circumstances.

In further support of his argument that Officer Carter’s use of deadly force was justified, the Superintendent cites federal qualified immunity case law.¹¹ The case law is inapposite. The Department’s Use of Force policy prohibits the use of deadly force under circumstances that would be permissible under the Fourth Amendment to the United States Constitution and Illinois state law.¹² Thus, reliance on case law that does

¹⁰ *See* Superintendent’s Partial Concurrence at p. 2.

¹¹ *See* Superintendent’s Partial Concurrence at p. 3 (citing *Brosseau v. Haugen*, 543 U.S. 194 (2004)).

¹² *See* Sharon R. Fairley, *The Police Encounter with a Fleeing Motorist: Dilemma or Debacle?* 52 U.C. DAVIS LAW REVIEW ONLINE 155, 168 (Nov. 2018), <https://lawreview.law.ucdavis.edu/online/vol52/52-online-Fairley.pdf>.

(Noting that “[b]ecause the legal framework created by statutory and common law leaves the critical concepts governing the use of force relatively undefined, there is no single, universal set of rules that governs when officers should use force and how much. Each law enforcement agency promulgates its own policies and procedures related to the use of force, often restricting officer conduct more than the constitutional standard.”)



not comport with the CPD's Use of Deadly Force policy is misguided.¹³ The remaining case law relied upon by the Superintendent is factually distinguishable.¹⁴ Specifically, the cited cases involve incidents where officers discharged their weapons when the involved individuals drove their vehicles at them or their partners.¹⁵ Video footage shows that ██████ did not drive the Ford Escape at any of the officers. Rather, objective evidence shows that the officers were all out of the Ford Escape's path when Officer Carter fired his weapon. Under these circumstances, Officer Carter's use of deadly force at a fleeing vehicle violated CPD policy.

For all these reasons, Officer Carter's decision to discharge his weapon at the moving Ford Escape was objectively unreasonable, unnecessary, and disproportionate. COPA's sustained finding on Allegation #1 against Officer Carter should stand along with the recommended penalty of separation for Allegations #1 and #2.

III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet the affirmative burden of overcoming COPA's recommendation. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent's non-concurrence in this matter and accept COPA's recommended penalty of separation for Officer Carter.

Respectfully,

A handwritten signature in blue ink, appearing to read 'Andrea Kersten', is written over a light blue circular stamp.

Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability

¹³ In *Brosseau*, an officer fired at a driver who had just begun to flee a traffic stop and had not yet driven in a dangerous manner. The use of deadly force under the circumstances in *Brosseau* would have been prohibited by CPD policy since the fleeing vehicle was not used as a weapon and deadly force was not reasonably necessary to prevent death or great bodily harm.

¹⁴ See Superintendent's Partial Concurrence at p. 3 (citing *Plumhoff v. Rickard*, 572 U.S. 765 (2014), *Moman v. Valenzuela*, 2021 U.S. Dist. LEXIS 143880 (N.D. Ill.), and *Smith v. Prindable*, 2015 WL 1866504 (S.D.Ill 2015)).

¹⁵ In *Plumhoff*, the Supreme Court found that the Fourth Amendment did not prohibit officers from using deadly force to terminate a dangerous high-speed car chase during which the driver almost hit an officer. In *Moman*, the Court found the use of deadly force objectively reasonable where the fleeing driver drove at an officer following a high-speed chase. In *Prindable*, the Court found that officer's use of deadly force in response to a fleeing driver who struck the officer's partner did not violate the Fourth Amendment. Unlike in *Plumhoff* and *Moman*, no high-speed chase occurred here.