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David O. Brown  
Superintendent of Police

March 28, 2022

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

RE: Superintendent's Partial Concurrence and Partial Non-Concurrence with COPA's proposed findings and penalties Complaint Register Number: #2019-0000090  
Police Officer Adolfo Bolanos #16767 and Police Officer Guillermo Gama #17268

Dear Chief Administrator:

After a careful review of the recommendation made by the Investigator in this matter the Chicago Police Department (CPD) does not concur with the finding of COPA related to allegation number one against Police Officer Adolfo Bolanos #16767 (Police Officer Bolanos) and does concur with the findings of COPA for allegations two, three and four but has an alternate penalty recommendation. CPD does concur with the findings against Police Officer Guillermo Gama #17268 (Police Officer Gama) related to allegation number one, but has an alternate penalty recommendation.

## Facts

On February 16, 2019 at 8:31 pm, at 4199 W. 21<sup>st</sup> Place civilian dressed Chicago Police Officers, Police Officer Bolanos and Police Officer Gama were assigned to 1065C a tactical unit driving an unmarked Police SUV. Police Officer Gama and Police Officer Bolanos observed a silver sedan (the Acura) driving without headlights activated. The Acura traveled westbound on 16<sup>th</sup> street and then southbound on Keeler at a high rate of speed. Police Officer Gama attempted to curb the Acura by activating their emergency lights at 18<sup>th</sup> and Keeler. The Acura did not come to a stop but increased their speed traveling at a high rate of speed on a residential street. The Acura struck the passenger side of a vehicle with a driver occupant in the vehicle and then swerved in the middle of the street. The Acura did not stop after the traffic crash and continued to flee southbound at a high rate of speed. The Acura attempted to make a left turn (eastbound turn) onto 21<sup>st</sup> Place when it lost control and crashed into the southeast fence or curb at such a high rate of speed the airbags deployed in the Acura and the front bumper was detached from the rest of the vehicle. There were four individuals in the Acura: the driver [REDACTED] (Mr. [REDACTED]) the front passenger [REDACTED] (Mr. [REDACTED]) rear passenger seat Mariah [REDACTED] (Ms. [REDACTED]) and rear driver seat [REDACTED] Jr. (Mr. [REDACTED]) The rear passengers, Ms. [REDACTED] and Mr. [REDACTED] are in a relationship. Mr. [REDACTED] exited the driver seat and fled southwest from the vehicle on Keeler. The rear passenger Ms. [REDACTED] exited the Acura from the rear passenger door and fled north eastbound on 21<sup>st</sup> Place and hides behind a vehicle parked on the northwest corner of 21<sup>st</sup> Place and

Keeler.<sup>1</sup> Simultaneously, as Police Officer Bolanos observed Ms. [REDACTED] flee the Acura. He exits the unmarked patrol car, provides verbal direction for her to stop and runs a few steps westbound after Ms. [REDACTED]. Mr. [REDACTED] exited the rear passenger door with a firearm in his right hand, he raised and pointed his loaded firearm with a clear extended magazine at Police Officer Bolanos. Police Officer Bolanos unholstered his duty weapon and fired his duty weapon four times. The firearm Mr. [REDACTED] raised and pointed was recovered on the scene near the rear passenger door of the vehicle. Mr. [REDACTED] ran and stumbled to the front of the Acura and turned southbound and collapsed alongside of the Acura next to the curb. Mr. [REDACTED] sustained three gunshot wounds and succumbed to his injuries later that evening. Police Officer Gama exited the driver seat of the patrol vehicle and immediately went to render aid and assist Mr. [REDACTED]. Mr. [REDACTED] the front passenger, remained seated in the vehicle and as he was opening the door he heard gunshots and went on the ground.<sup>2</sup> Police Officer Bolanos took Mr. [REDACTED] into police custody.

## **Superintendent's Non-Concurrence and Penalty Analysis for Officer Bolanos**

### ***Allegation 1***

CPD does not concur with the sustained finding of Police Officer Bolanos (1) It is alleged that on or about February 16, 2019, at approximately 8:31 pm, in the vicinity of 4199 W. 21st Place, Police Officer Bolanos discharged his weapon at [REDACTED] in violation of General Order G03-02.

Police Officer Bolanos' decision to discharge his firearm was objectively reasonable based in light of the totality of the circumstances consistent with the Department Directive entitled Use of Force, General Order G03-02 (Effective Oct. 16, 2017-Feb.28, 2020).<sup>3</sup> Department policy recognizes that "Department members are often forced to make split-second decisions - in circumstances that are tense, uncertain, and rapidly evolving - about the amount of force that is necessary in a particular situation. These decisions must therefore be judged based on the totality of the circumstances known by the member at the time and from the perspective of a reasonable Department member on the scene, in the same or similar circumstances, and not with the benefit of 20/20 hindsight. Nothing in this policy requires member to take actions, or fail to take actions, that unreasonably endanger themselves or others." <sup>4</sup>

According to the Chicago Police Department Policy, the main issue in evaluation of every use of force is whether the amount of force that is objectively reasonable in light of the totality of the circumstances faced by the officer on the scene.<sup>5</sup> The General Order has additional policies that apply to the use of deadly force. In that, the use of deadly force must be against an imminent threat and as a last resort.<sup>6</sup>

In *Graham v. Connor*, 490 S.Ct. 386 (1989), the Supreme Court of the United States held that the determination of the reasonableness of an officer's decision to use force must be made from the perspective of an officer on the scene. The Court noted that "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

<sup>1</sup> Officer Bolanos believed that Ms. [REDACTED] exited from the front passenger door but it was determined she exited the rear passenger door.

<sup>2</sup> It is not clearly established if Mr. [REDACTED] exits the front passenger seat or the rear passenger seat. Mr. [REDACTED] states he went out the front passenger seat and Officer Bolanos believed he exited the rear passenger seat.

<sup>3</sup> General Order G03-02 (effective 16 October 2017) is attached to this letter as exhibit 1 in that it was not included in the COPA file.

<sup>4</sup> G03-02 (Effective Oct. 16, 2017 – Feb. 28, 2020)(II)( D).

<sup>5</sup> *Id* at (III)( B)(1).

<sup>6</sup> *Id* at (III)( C)(2)(3)



particular situation.” Furthermore, the Court concluded, the issue must be viewed “from the perspective of a reasonable officer at the scene, rather than with the 20/20 vision of hindsight...” In the case at hand COPA focused their analysis without taking into account the CPD members perspective at the scene and their decision to use force based on the totality of the circumstances as required in an analysis of deadly force.

In the case of *Ybarra v. City of Chicago* 946 F.3d 975, the court of appeals determined that Chicago Police Department Commander Valdez and Officer Monica Reyes could have reasonably believed, based on the plaintiff’s involvement in a drive-by shooting and extreme reckless driving, that the plaintiff posed an imminent threat to others if allowed to escape from the parking lot where they shot him. The court determined that the plaintiff posed an immediate threat to others in the vicinity and it was not unreasonable for the officers to prevent Cruz’s (the Plaintiff) escape by using deadly force even ninety seconds after the original observation of the shots fired. *Id.* at 979. In *Ybarra*, the court describes the circumstances as tense, uncertain and rapidly evolving. *Id.* At 982. In *Ybarra*, the officers did not observe Cruz (the Plaintiff) to be in possession of a firearm, but were justified in using deadly force based on the evolving circumstances of the case. *Id.*

Similarly, in the case at hand analyzing the totality of the circumstances from the perspective of a reasonable officer on the scene indicates that Mr. [REDACTED] was a public safety risk. Police Officer Bolanos had the following information when he approached the Acura, the Acura was fleeing and eluding a traffic stop conducted by Police Officers, the Acura was traveling at a high rate of speed, the Acura crashed into a parked occupied vehicle, the Acura swerved and appeared to lose control, the Acura attempted to make a hard left turn onto 21<sup>st</sup> Place and crash into the curb or fence with such force the airbags deployed and the front bumper was detached from the vehicle. Police Officer Bolanos observed two individuals flee from the Acura. A reasonable officer with this information would know this was an extremely high risk traffic stop. The Acura was not fleeing for merely not having their headlights activated. In the instant case Officer Bolanos observed Mr. [REDACTED] with a firearm raise and point a loaded firearm with an extended magazine in his direction coupled with the aforementioned facts justify the use of deadly force. In their use of force analysis, COPA did not consider the totality of the circumstances and instead focused their analysis on limited aspects of the shooting incident.

COPA concluded that Police Officer Bolanos was not objectively reasonable in discharging his firearm in that Mr. [REDACTED] was not armed and fleeing at the time Police Officer Bolanos discharged his weapon. COPA concluded that Mr. [REDACTED] was not an imminent threat and Officer Bolanos did not use deadly force as a last resort. First, COPA stated that it was not medically possible for Mr. [REDACTED] to run to the front of the car turn left and move past the front of the car until he collapsed after Mr. [REDACTED] sustained a gunshot wound to the head. COPA concluded that Mr. [REDACTED] would not have been capable of meaningful movement after the gunshot wound to the head, but excluded a critical statement made by a medical professional. Dr. [REDACTED] stated typically he has no experience with mobility related to injuries and the only thing he does not know is the order in which Mr. [REDACTED] was shot.<sup>7</sup> The order of injuries is incredibly important in this case. According to the statements by Dr. [REDACTED] and Dr. [REDACTED] there is significantly less likelihood that Mr. [REDACTED] was capable of meaningful movement after he was struck with a bullet in the head, but there is no evidence what order Mr. [REDACTED] sustained his injuries. The fact that Police Officer Bolanos had to unholster his firearm prior to firing coupled with firearms training Police Officer Bolanos received in the Academy, the gun would have been moving and firing in an upward direction. It is more likely than not that the bullet that struck Mr. [REDACTED] in the head was either shot number three or shot number four fired by Police Officer Bolanos. According to both medical professional statements there was a much higher likelihood that Mr. [REDACTED] was capable of meaningful movement after he was struck in the pelvis and in the upper hip bone than when he was struck in the head.

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<sup>7</sup> Attachment 140, page 13 lines 6-13.

Additionally, Police Officer Bolanos stated that he was sidestepping as he was firing and Mr. [REDACTED] was moving forward. These movements are not accounted for in COPA's use of force analysis. Second, COPA concluded that if Mr. [REDACTED] was armed with a firearm he discarded the firearm immediately after he exited the Acura and Police Officer Bolanos should have seen the firearm being discarded. Mr. [REDACTED] was pictured in a Facebook photo with the firearm that was recovered near the rear passenger door an hour prior to the shooting incident wearing the same clothing as when he sustained three gunshot wounds and succumbed to those injuries. This photo shows Mr. [REDACTED] had a propensity for violence and that it was more likely than not he was armed with the same firearm when he pointed and raised it in the direction of Officer Bolanos putting him in fear of death. The above factors determine that Mr. [REDACTED] was an imminent threat and Police Officer Bolanos used deadly force as a last resort.

The COPA investigative summary report cites an eighth circuit case *Wealot v. Brooks* 865 F.3d 1125 which can be easily distinguished from the case at hand. In *Wealot*, the court determined there were genuine issues of material fact 1) whether the officers saw Waylen (the plaintiff) throw his gun and therefore knew he was unarmed and 2) whether Waylen (the plaintiff) was turning around to the officer with his hands raised to surrender. In *Wealot* there were two eyewitness who had seen the weapon thrown prior to this shooting. *Id.* At 1126. In this case, there were no witnesses who testified that they saw or heard the weapon being tossed or thrown. Furthermore, the *Wealot* case depicts evidence that Waylan (the plaintiff) was turning around to surrender. In *Wealot* there was a lengthy foot chase and the suspect was clearly fleeing from the scene. *Id.* at 1123. In this case there was no foot chase the shooting occurred mere seconds after Police Officer Bolanos exited his patrol vehicle. The case is out of circuit, easily distinguishable and merely remanded based of two issues or material fact. Police Officer Bolanos stated that he did not hear or see the firearm that was raised and pointed at him being tossed or thrown. Police Officer Bolanos use of deadly force was necessary to protect against imminent threat to life or to prevent great bodily harm to himself and others on the scene when Mr. [REDACTED] was armed with a firearm raised and pointed the gun in his direction. Additionally, no witnesses saw or heard the firearm being tossed or thrown.<sup>8</sup>

An analysis of the totality of the circumstances and the perspective of a reasonable officer on the scene conclude that the use of deadly force is justified. For the above reasons the allegation is not sustained.

#### ***Allegations 2, 3, and 4***

CPD concurs with the sustained finding that Officer Bolanos: (2) failed to activate his body-worn camera, in violation of Special Order S03-14, but disagrees with the penalty of separation. CPD concurs with the sustained finding that Officer Bolanos: (3) failed to immediately notify OEMC of the firearms discharge and/or provide all relevant information, in violation of General Order G03-02-03 (effective 16 October 2017), but disagrees with the penalty of separation.<sup>9</sup> CPD concurs with Officer Bolanos: (4) failed to immediately notify OEMC of the firearms discharge and/or provide all relevant information, in violation of General Order G03-02-03 (effective 16 October 2017), but disagrees with the penalty of separation. While it is true Officer Bolanos failed to activate his BWC, failed to immediately notify OEMC after he discharged his firearm and failed to immediately request appropriate medical aid for Mr. [REDACTED] they were mistakes due to the totality of the circumstances. In the recent decision 21 PB 2986, *In the matter of charges filed against Police Officer Luigi Sarli*, The Board concluded, "that mistakes were just that mistakes. There is no evidence that the Respondent lied or

<sup>8</sup> COPA was unable to obtain an interview with Mr. [REDACTED] who remained in the Acura at the time of the shooting incident.

<sup>9</sup> General Order G03-02-03 (effective 16 October 2017) is attached to this letter as exhibit 2 in that it was not included in the COPA file.



attempted to cover up his misconduct..." Similar to the case at hand, these violations should be treated as mistakes there is no evidence Police Officer Bolanos lied or attempted to cover up misconduct, he was securing an additional passenger and was suffering from symptoms of post traumatic distress.

CPD has identified several factors in mitigation of the sustained findings above that were utilized in a penalty analysis. Officer Bolanos has no disciplinary history and has 103 awards for exemplary service to the City of Chicago. In *Fox v. Civil Serv. Comm'n* the Illinois Appellate Court held that employment history has a bearing on discipline. 383 N.E.2d 1201, 1208 (Ill. App. 3<sup>rd</sup> Dist. 1978); *see also, Kreiser v. Police Board* 352 N.E.2d 389 (Ill. App. 1<sup>st</sup> Dist. 1976).

Additional factors in mitigation include immediately after the shooting incident, the scene was not safe and secure. The scene was not safe for the following reasons, there were two individuals at large who fled the Acura after it had crashed. There was one individual still in the Acura. Police Officer Bolanos had to conduct an extremely high risk traffic stop with this additional occupant, Mr. [REDACTED]. There was a second firearm recovered in the vehicle. There was a search perimeter set up to complete a systematic search for the two suspects who were still at large. Lastly, Police Officer Bolanos experienced post-traumatic stress and received medical treatment for his symptoms. Police Officer Bolanos was experiencing chest pains and shortness of breath nausea, headache and anxiety. In consideration of the factors in mitigation, CPD recommends an alternate penalty of a 10-day employment suspension.

#### **Superintendent's Penalty Analysis Officer Gama**

##### ***Allegation 1***

CPD concurs with the sustained finding that Officer Gama: (1) failed to immediately request appropriate medical aid for [REDACTED] in violation of General Order G03-02 (effective 16 October 2017), but disagrees with the penalty of a 30-day employment suspension. While it is true Officer Gama failed to request appropriate medical aid for Mr. [REDACTED] it was a mistake due to the totality of the circumstances. In the recent decision 21 PB 2986, *In the matter of charges filed against Police Officer Luigi Sarli*, The Board concluded, "that mistakes were just that mistakes. There is no evidence that the Respondent lied or attempted to cover up his misconduct..." Similar to the case at hand, these violations should be treated as mistakes there is no evidence Police Officer Gama lied or attempted to cover up misconduct, he genuinely thought he called for an ambulance and only realized he had not when he listened to audio evidence.


CPD has identified several factors in mitigation of the sustained findings above that were utilized in a penalty analysis. Officer Bolanos has one spar in his disciplinary history and has 78 awards for exemplary service to the City of Chicago. In *Fox v. Civil Serv. Comm'n* the Illinois Appellate Court held that employment history has a bearing on discipline. 383 N.E.2d 1201, 1208 (Ill. App. 3<sup>rd</sup> Dist. 1978); *see also, Kreiser v. Police Board* 352 N.E.2d 389 (Ill. App. 1<sup>st</sup> Dist. 1976).

Additional factors in mitigation include, the scene was still unsafe immediately after Mr. [REDACTED] sustained injuries gunshot wounds. The scene was not safe for the following reasons, there were two individuals at large who fled the vehicle after it had crashed. There was one individual still in the Acura. During the time the scene was not safe and secure, Police Officer Gama rendered first aid according to his LEMART training and military training. Police Officer Gama stayed with Mr. [REDACTED] rendering aid according to his training until the Chicago Fire Department Ambulance arrived. In consideration of the factors in mitigation, CPD recommends an alternate penalty of a 10-day employment suspension.

## **Conclusion**

For the foregoing reasons, CPD does not concur with the finding of COPA related to allegation number one against Police Officer Bolanos and does concur with the findings of COPA for allegations two, three and four but has an alternate penalty recommendation. CPD does concur with the findings against Police Officer Gama related to allegation number one, but has an alternate penalty recommendation. CPD recommends a penalty for Police Officer Bolanos of a 10-day employment suspension and a penalty for Police Officer Gama of a 10-day employment suspension. CPD looks forward to discussing this matter with you pursuant to MCC-2-78-130(a)(iii).

Sincerely,



David O. Brown  
Superintendent of Police  
Chicago Police Department