



April 29, 2022

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 #2019-0000090

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 (Department) in Log # 2019-0000090.¹

As set forth in detail in COPA's Summary Report of Investigation dated December 15, 2021 (SRI), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation of separation of Officer Adolfo Bolanos based on findings that he discharged his weapon at [REDACTED] in violation of Department policy.² COPA also maintains that there is sufficient evidentiary basis to support COPA's recommendation that Officer Guillermo Gama be suspended for thirty days based on COPA's finding that he failed to immediately request appropriate medical care for Mr. [REDACTED].

The Superintendent bears the affirmative burden of proof in overcoming COPA's recommendations. COPA respectfully requests that the Board reject the Superintendent's non-concurrence in this matter for the reasons set forth below.

I. BACKGROUND

A. Relevant Factual Background³

On the night of the incident, Chicago Police Department Officers Guillermo Gama, Jr., and Adolfo Bolanos observed a silver sedan operating without its lights activated. The officers followed the vehicle and then attempted to stop it after the sedan hit a parked car. The silver sedan crashed shortly thereafter.

Following the crash, [REDACTED] Jr. exited the vehicle and, according to Officer Bolanos, Mr. [REDACTED] pointed a gun at Officer Bolanos. In response, Officer Bolanos drew his firearm and fired four shots

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

² The Superintendent concurs with COPA's findings that Officer Bolanos committed misconduct by failing to activate his body-worn camera, failing to notify OEMC of his firearm discharge, and failing to immediately request appropriate medical aid for Mr. [REDACTED]. The Superintendent does not agree that separation is the appropriate penalty for these violations.

³ A more detailed factual summary can be found in the SRI.

at Mr. [REDACTED] Mr. [REDACTED] sustained fatal gunshot wounds, two to his lower back and one to the back of his head.

B. Disputed Findings and Recommendations

As the Superintendent states in the enclosed letter, he does not concur with COPA's finding that Officer Bolanos' use of deadly force was not objectively reasonable. He further disagrees with the recommended penalty of separation for Officer Bolanos as well as the recommended suspension period for Officer Gama.

C. Applicable Department Policy

1. Use of Deadly Force.

Directive G03-02 provided in relevant part that "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. A key factor in determining whether an officer's use of force is reasonable is whether the person poses an immediate threat to that officer's safety. An officer's use of force decisions is "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" without "the benefit of 20/20 hindsight."⁴

Directive G03-02-03 set forth additional requirements for an officer's use of deadly force. Deadly force was only authorized when such force was necessary to, among other things, prevent death or great bodily harm to an officer or another person. Department policy also authorized use of deadly force to prevent escape by use of a deadly weapon when the officer reasonably believes the person has committed a forcible felony.

2. Responsibilities Following a Firearms Discharge.

For any firearm-discharge incident, the discharging member will immediately notify OEMC of the firearm discharge and provide all relevant information and request additional resources.⁵ The discharging member, if physically capable, will also immediately request appropriate medical aid for any injured person and may provide appropriate medical care consistent with their training.⁶ In addition to the discharging member's duties, Department members will perform all necessary actions to address the immediate needs of the scene, including immediately requesting medical attention and providing appropriate medical care consistent with their training.⁷

II. ANALYSIS

A. The Evidence Does Not Support the Superintendent's Arguments that Officer Bolanos' Use of Deadly Force was Objectively Reasonable.

As set forth more fully in the SRI, Officer Bolanos' repeated assertions that Mr. [REDACTED] ran or stumbled from the place he was shot to where he fell are not plausible because Mr. [REDACTED] suffered from a debilitating gunshot wound to the head. The Superintendent disputes this by arguing that it is more likely than not that the bullet that struck Mr. [REDACTED] in the head was either the third or fourth shot from Officer Bolanos. This ignores Officer Bolanos' statement that he fired his shots in quick succession with no pause.⁸ Accordingly, whether the wounds to Mr. [REDACTED] head occurred first or fourth does not refute COPA's finding that Mr. [REDACTED] was not capable of meaningful movement after Officer Bolanos fired his weapon. COPA's finding is

⁴ G03-02 II.D.

⁵ G03-02-03 IV.A.

⁶ G03-02-03 V.B.1.

⁷ G03-02-03V.B.1. The overarching Use of Force policy also requires Department members to immediately request appropriate medical care and provide medical care consistent with their training. G03-02 IV.

⁸ Attachment 157, page 54, lines 14-17 ("The rounds were fairly rapid. I mean, there was no pause between the rounds. So I mean, this happened almost instantly, right after the other."); page 58, lines 16-19 (same).

supported by the statement of Dr. Rishi Chaudhuri, who told COPA that “[f]or an injury to the head like that - - I guess what I can say with certainty is with an injury to the head like that, you could not move in a meaningful way. . . . You may be able to writhe on the ground a little bit, or something like that.”⁹ As the SRI states, Officer Bolanos’ account cannot be credited. The evidence establishes that Mr. ██████ was more likely than not fleeing from Officer Bolanos after having dropped his weapon when Officer Bolanos fired at him.¹⁰

B. The Superintendent’s Arguments Improperly Rely on Hindsight and After the Fact Rationales to Justify Officer Bolanos’ Use of Deadly Force.

Through his letter, the Superintendent attempts to insert after the fact rationales for Officer Bolanos’ use of force. The Superintendent’s first attempt is by citing *Ybarra v. City of Chicago*.¹¹ The Superintendent equates the facts in this case to those in *Ybarra*. But the *Ybarra* court concluded that the officers’ use of deadly force in that case was objectively reasonable to prevent the escape of individuals the officers knew to have participated in a shooting of car occupants moments before.¹² The Superintendent therefore seems to be suggesting that Officer Bolanos’ use of force was justified under Department policy authorizing use of deadly force to prevent escape where the officer reasonably believes a person has committed a forcible felony. Officer Bolanos made no statements suggesting he fired at Mr. ██████ to prevent his escape or that he believed Mr. ██████ had committed a forcible felony. Rather, he told COPA that he fired at Mr. ██████ because he feared Mr. ██████ would fire at him.¹³

Second, the Superintendent points to a Facebook post showing a photo of Mr. ██████ holding a weapon resembling the weapon involved on the date of the incident. The Superintendent, without further argument or support, suggests the photo demonstrates Mr. ██████ “propensity for violence.” The Superintendent also argues that it was more likely than not that he was armed with the weapon on the date of the incident, which COPA has not disputed. According to the Superintendent, these factors serve to demonstrate that Mr. ██████ presented an imminent threat to Officer Bolanos. However, nothing in the record suggests Officer Bolanos had seen or was otherwise aware of the photo when he used deadly force. As noted by the Seventh Circuit, “[k]nowledge of facts and circumstances gained after the fact . . . has no place in the trial court’s or jury’s proper post-hoc analysis of the reasonableness of the actor’s judgment.”¹⁴ Accordingly, the photo should not be considered in determining whether Mr. ██████ posed an imminent threat at the moment Officer Bolanos used deadly force.

C. The Officers’ Failure to Immediately Request Medical Aid is a Serious Oversight Warranting More Serious Penalties than the Superintendent Recommends.

The Superintendent attempts to minimize the seriousness of each officer’s failure to immediately request medical aid for Mr. ██████ by arguing that the officers were simply mistaken due to the circumstances and that the scene was not secure. First, COPA respectfully disagrees that the evidence shows that Officer Gama was merely mistaken. Rather, the evidence shows that Officer Gama exhibited a concerning disregard for Mr. ██████ well-being in the moments after he was shot. Officer Gama was the first to reach Mr. ██████ after he fell. Rather than immediately requesting or providing aid, Officer Gama notified OEMC that officers were okay and then proceeded to search Mr. ██████ pockets and clothing. Despite clear evidence that Mr.

⁹ Attachment 157, page 14, lines 11-17. The Superintendent also suggests that the fact that Officer Bolanos was side-stepping as he fired would alter the analysis. First, this ignores Officer’s Bolanos’ statement that he remained in essentially the same location while he fired. *See* Attachment 165, page 56, lines 9-11. Second, the Superintendent does not explain how that side-stepping would alter the analysis given the rapid succession of shots in this case.

¹⁰ Similarly, the facts show that it is more likely than not that Officer Bolanos was aware that Mr. ██████ had dropped his weapon. Given his own stated proximity to Mr. ██████ when he fired and lack of obstructions, Officer Bolanos’ assertions he did not notice the gun drop are not plausible. *See* Attachment 157, page 3, lines 22-24; page 15, lines 19-22; *see also* SRI at pages 27-28.

¹¹ 946 F.3d 975 (7th Cir. 2020).

¹² *Id.* at 978.

¹³ Attachment 157, page 47, lines 5-9.

¹⁴ *Sherrod v. Berry*, 856 F.2d 802, 804 (7th Cir. 1988).

██████ had sustained grievous wounds, several minutes passed before OEMC realized the need for an ambulance.¹⁵ Officer Gama's inattention to his duty to Mr. ██████ warrants a more significant suspension than 10 days.

With respect to Officer Bolanos, the Superintendent further argues that Officer Bolanos needed medical attention after the incident. But the evidence does not show that Officer Bolanos was physically incapable of requesting medical aid or making other required notifications in the moments after the shooting. Rather, Officer Bolanos eventually asked about the status of an ambulance, suggesting he was physically capable of requesting aid earlier but had failed to do so. COPA appreciates that officer involved shootings are traumatic experiences. However, the duty to immediately request aid and make other notifications are important responsibilities meant to preserve the life and safety of involved civilians and other officers.

III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet his affirmative burden of showing COPA's recommendations in this case are unreasonable. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent's non-concurrence in this matter and accept COPA's recommendation to separate Officer Bolanos and to suspend Officer Gama for thirty days.

Respectfully,

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Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability

¹⁵ Backup officers appear to have arrived approximately a minute after Officer Gama reached Mr. ██████