



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

INTEGRITY • TRANSPARENCY • INDEPENDENCE • TIMELINESS

**TO:** Kevin Connor  
General Counsel

**FROM:** Andrea Kersten  
Chief of Investigative Operations

**DATE:** July 30, 2020

**RE:** Closure of Log No. 1085331

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**Summary:**

This matter involves the May 24, 2017 non-fatal shooting of [REDACTED] by Officer Ernesto Amparan. IPRA initiated investigation immediately following the shooting. COPA later succeeded IPRA as the investigating agency. IPRA and COPA investigators conducted a full review of available evidence and determined that the shooting was within Department policy and that allegations of misconduct were not appropriate in this case. COPA engaged Hillard Heintze (Subject Matter Expert or SME) to conduct an independent, third-party sufficiency review of COPA's investigation and recommendation. COPA investigators reviewed the SME's report, comments, and conclusion. I concur with the investigators' recommendation that this Log No. be closed and seek your concurrence in its closure. The SME report of findings (Report) and COPA's response are discussed below.

**Subject Matter Expert Review:**

Finding:

The SME conducted a thorough, independent review of IPRA/COPA's investigation and conclusions. Based on the totality of its review as more fully documented in the attached report, the SME concurred with COPA's determination that Officer Amparan's conduct was within Department policy regarding the use of force and that allegations of misconduct would not be appropriate in this matter.

**Additional Insights:**

The SME offered additional comment regarding quality of evidence and other potential avenues of investigative inquiry.

Investigative Leads and Evidence Issues:

COPA staff reviewed the SME's remarks about a note in the file regarding video evidence. COPA is not in possession of any video evidence that captures this officer involved shooting. COPA staff also reviewed the SME's remarks about further pursuing the origin and ownership of the firearm that was recovered in the stolen vehicle. However, COPA investigators determined that as there is no evidence that the recovered firearm was used in the officer involved shooting, such information is immaterial to the scope or outcome of the investigation into whether Officer Amparan's use of deadly force was within policy. The SME also commented on the quality of CPD's crime scene photographs, which COPA notes, but also finds to be immaterial to the resolution of this investigation.

**Conclusion:**

The conclusions of COPA investigators and the SME should be accepted and this investigation closed.

Concur:   
General Counsel

## 1. INTRODUCTION

### Overview of Assignment

On November 25, 2019, the City of Chicago Civilian Office of Police Accountability (COPA) engaged Hillard Heintze to conduct an independent, third-party sufficiency review of the underlying investigation contained within the case filed under Log No. 1085331. Hillard Heintze provides this report summarizing its review of the matter.

### Hillard Heintze Investigators

Investigator [REDACTED] led the review of the matter at the direction of Senior Director, Investigations [REDACTED]

## 2. INVESTIGATIVE REVIEW

### Synopsis of Incident

Hillard Heintze derived its synopsis of the incident from the investigation IPRA and COPA conducted. Hillard Heintze provides its independent review of the investigation conducted by IPRA and COPA – it did not conduct further or independent investigation of the incident.

According to the IPRA and COPA investigation, the evidence provided to, and supported by our review, on May 24, 2017, Chicago Police Department (CPD) 25th District Police Officers Ernesto Amparan, (No. 4614), Mateusz Jasinski, (No. 5007), Jonathan Guzman, (No. 15766), and David Roldan, (No. 15066), were on duty working as tactical officers. The aforementioned officers were in plainclothes and wearing external vest carriers clearly marked with “POLICE” on the back and the CPD badge on the front. Officers Amparan and Jasinski were assigned to Beat 2563E and were driving an unmarked CPD patrol vehicle. Officers Guzman and Roldan were assigned to Beat 2563A and were driving an unmarked CPD patrol vehicle.

25th District Intelligence Officers informed 25th District officers that on May 23, 2017, [REDACTED] stole a black Nissan Murano (Illinois license plate [REDACTED] CPD RD No. [REDACTED]). The Intelligence Officers said [REDACTED] fled from CPD officers on that day. Officer Amparan stated that on the day of the vehicle theft, he witnessed [REDACTED] driving the stolen vehicle, but because of [REDACTED] high rate of speed, he was unable to pursue. Officer Amparan stated that he knew [REDACTED] from prior contacts with him. While Officers Guzman and Roldan were driving in the north alley of Concord Place, west of N. Lamon Avenue, they observed the aforementioned stolen black Nissan Murano. The vehicle was unoccupied and backed into a parking spot on the south side of the alley. The front of the vehicle was facing the alley. Officers Guzman and Roldan informed the rest of their team, including Officers Amparan and Jasinski and left the area to attempt to serve an arrest warrant at another location.

At approximately 11:15 a.m., Officers Guzman and Roldan drove through that alley and observed [REDACTED] outside of the parked stolen Nissan Murano. The driver, Officer Roldan, parked the CPD patrol vehicle near the front of the stolen Nissan Murano. Officers Guzman and Roldan exited their vehicle and approached [REDACTED] Officers Roldan and Guzman verbally identified themselves as police officers.

Officer Roldan called out to [REDACTED] [REDACTED] come here.” [REDACTED] and Officer Roldan knew each other from prior contacts. [REDACTED] disregarded Officer Roldan’s commands and entered the driver’s seat of the stolen Nissan Murano. [REDACTED] drove out of the parking spot, turning his vehicle sharply to the left. Officer Roldan attempted to move out of the way of the stolen Nissan Murano to prevent being pinned between

the vehicle and their police patrol vehicle. Despite Officer Roldan's attempt to avoid being struck by the stolen Nissan Murano, [REDACTED] sideswiped Officer Roldan's left leg as he drove the stolen Nissan Murano.

[REDACTED] then continued to drive the stolen Nissan Murano, striking the CPD patrol vehicle and a fixed post near the parking spot. [REDACTED] was then able to drive away, traveling west through the alley. This alley ended at a T-intersection at the east alley of N. LeClaire Avenue. Officers Guzman and Roldan entered their CPD vehicle and pursued [REDACTED]

At the T-intersection of the north alley of Concord Place and the east alley of N. LeClaire, [REDACTED] turned right northbound onto the east alley of N. LeClaire and Officers Guzman and Roldan followed closely in their CPD vehicle. At that intersection, as he turned right, [REDACTED] collided with a white Audi (Illinois license plate [REDACTED]) and a metal fence. Estela Cortez and her six-year-old grandchild were in the Audi.

Officers Guzman and Roldan exited their CPD vehicle, knowing through prior contacts that [REDACTED] was likely to flee on foot. After exiting their CPD vehicle, [REDACTED] reversed direction and struck Officer Guzman and Officer Roldan's CPD patrol vehicle.

Meanwhile, Officers Amparan and Jasinski arrived on the scene. Officers Jasinski and Amparan exited their CPD patrol vehicle and all CPD officers gave loud verbal commands to [REDACTED] identifying themselves as police officers and instructing him to stop.

[REDACTED] then drove his vehicle towards Officer Amparan. Officer Amparan attempted to run out of the way to avoid being struck, but [REDACTED] continued to drive the stolen Nissan Murano in Officer Amparan's direction. [REDACTED] again struck the Audi and pushed it toward Officer Amparan, eventually pinning Officer Amparan between the Audi and Officer Amparan's CPD patrol vehicle. Officer Amparan, now injured and pinned between the Audi and the CPD patrol vehicle, screamed in pain.

[REDACTED] continued to drive the stolen Nissan Murano in the same manner and direction of Officer Amparan, pinning Officer Amparan and preventing him from escaping further injury or even death. At this time, Officer Amparan fired three rounds from his service firearm at [REDACTED] striking [REDACTED] as he sat in the driver's seat of the stolen Nissan Murano. The shots disabled [REDACTED] and the stolen Nissan Murano's engine stopped revving. Other officers then converged on Officer Amparan and [REDACTED]

Officer Roldan called for medical assistance. A Chicago Fire Department (CFD) ambulance transported Officers Roldan and Amparan to Lutheran General Hospital. A CFD ambulance transported [REDACTED] to Mt. Sinai Hospital. Officer Roldan was treated for minor injuries. Officer Amparan was originally thought to have a fractured tibia; however, his final medical report from Lutheran General Hospital showed that he had only bruised his right leg. The investigation indicated that two rounds fired from Officer Amparan's service firearm struck [REDACTED] once in the neck and once in the left bicep. [REDACTED] survived his injuries.

[REDACTED] stated to CPD Area North Detective Division Detective Valkner, (No. 20111), that a police officer shot him because [REDACTED] tried to hit that police officer with a car.

## Methodology – Materials Reviewed

As noted above, we did not conduct an independent investigation of this case. Our review was based on the following materials provided by COPA.

- Civilian interviews conducted by the CPD detectives, IPRA and/or COPA investigators.
- Officer interviews conducted by CPD detectives and later with COPA investigators.
- Relevant digital evidence collected including Office of Emergency Management and Communications (OEMC) radio transmissions and body camera video footage. Attempts to secure exterior video surveillance footage from surrounding properties were not successful. One report discusses video footage of this incident, however, we did not receive this video footage in the documents submitted to Hillard Heintze.
- Relevant collected physical evidence including CFD ambulance reports, medical records from Lutheran General Hospital and Mt. Sinai Hospital, CPD Crime Scene processing reports, CPD crime scene digital photographs and Illinois State Police (ISP) laboratory reports.
- Relevant documentary evidence including CPD Detective Division Supplementary Reports, General Progress Reports, Tactical Response Reports, Officer Battery Reports, CPD Crime Scene Reports.

## Analysis

By Ordinance, COPA, which upon its September 2017 inauguration assumed responsibility for pending IPRA investigations, is mandated to review all CPD officer-involved shooting (OIS) incidents. This was the predicate for the IPRA case initiation. No allegations of misconduct regarding the incident described herein have been served by IPRA or COPA.

Based on the provided investigation, information and evidence reviewed by Hillard Heintze, using the standard of the preponderance of the evidence that applies in an administrative investigation, **the use of force by Officer Amparan complied with CPD policies regarding use of force, including deadly force.**

Officer Amparan stated that [REDACTED] drove the stolen Nissan Murano toward him, striking the Audi Cortez and her minor grandchild occupied. [REDACTED] driving pinned Officer Amparan between Officer Amparan's CPD patrol vehicle and the Audi. Officer Amparan, now injured and pinned between the Audi and his patrol vehicle and screaming in pain, saw [REDACTED] continue to drive the stolen Nissan Murano toward him in the same manner and direction, thus preventing him from escaping further injury or even death.

Officer Amparan stated that he fired three rounds from his service firearm at [REDACTED] who was inside the Nissan Murano. Officer Amparan stated that he could see [REDACTED] inside of the vehicle. According to Officer Amparan, once he fired the third round, he heard the engine stop revving and he then holstered his firearm.

Based on the available information, evidence and the submitted investigation, the following facts informed our conclusion.

- Officers Amparan, Jasinski, Guzman and Roldan were on routine patrol in unmarked CPD patrol vehicles while wearing plainclothes.
- Sometime between 9:30 a.m. and 11:15 a.m., Officers Guzman and Roldan first observed the Nissan Murano, which they knew to be stolen. At that time, they observed that the Nissan Murano,

which was parked in an alley was unoccupied. They subsequently notified other officers of the location of the stolen vehicle, Officers Amparan and Jasinski among them.

- Around 11:15 a.m., Officers Guzman and Roldan again drove down the alley toward the stolen Nissan Murano and noticed [REDACTED] was standing outside of the stolen vehicle. Roldan knew [REDACTED] from previous encounters and knew [REDACTED] was the suspect named in the theft of the vehicle.
- Officers Guzman and Roldan stopped their CPD patrol vehicle in front of the stolen Nissan Murano, exited their vehicle and approached [REDACTED]. Both officers were in plainclothes, wearing external vest carriers that were clearly marked with the word “POLICE” and the CPD badge.

Officer Roldan ordered [REDACTED] to come to him. Instead of complying, [REDACTED] entered the stolen Nissan Murano and began to drive away, sideswiping Officer Roldan’s left leg, despite Roldan moving out of the way to avoid being struck. After striking Officer Roldan’s left leg, [REDACTED] struck Officer Guzman and Officer Roldan’s CPD patrol vehicle and a fixed post that was next to the area where the stolen Nissan Murano had been parked.

- Officers Guzman and Roldan entered their CPD patrol vehicle and pursued [REDACTED] in the stolen Nissan Murano down the alley.
- [REDACTED] drove a short distance until he collided with an Audi driven by Cortez and occupied by her minor grandchild.
- Officers Amparan and Jasinski then arrived on scene. Officers Amparan, Jasinski, Roldan and Guzman, all wearing clearly visible police identification markings, exited their vehicles and all gave clear and repeated commands for [REDACTED] to stop.
- [REDACTED] then drove the stolen Nissan Murano toward Officer Amparan. Officer Amparan attempted to avoid the stolen Nissan Murano by running out of the way. However, [REDACTED] again drove the stolen vehicle into the Audi Cortez and her minor grandchild occupied and pinned Officer Amparan’s leg between the Audi and his CPD patrol vehicle.
- [REDACTED] continued to drive the stolen vehicle in the same manner injuring Officer Amparan’s leg and preventing Officer Amparan from escaping further injury or even death.
- Officer Amparan fired three rounds from his service firearm at [REDACTED] who was still in the driver’s seat of the stolen Nissan Murano and in control of the vehicle. According to Officer Amparan’s statement, after he fired the third round, the stolen Nissan Murano’s engine revving stopped, and he ceased firing and holstered his firearm.
- CFD ambulances transported Officers Amparan and Roldan to Lutheran General Hospital and [REDACTED] to Mt. Sinai Hospital.
- Two of Officer Amparan’s service firearm rounds struck [REDACTED] once in the neck and once in the left bicep.
- CPD Crime Scene personnel processed the scene.<sup>1</sup>
- [REDACTED] admitted to CPD Area North detectives at Mt. Sinai Hospital that he tried to strike Officer Amparan with the stolen Nissan Murano.
- [REDACTED] Officer Amparan and Officer Roldan survived their injuries.

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<sup>1</sup> While CPD Crime Scene personnel processed the scene, they recovered a Smith & Wesson M&P .40 caliber semiautomatic handgun in the driver’s area of the stolen Nissan Murano

## **Applicable Law and Policy**

### **Chicago Police Department General Orders:**

CPD General Order 03-02-03, Section II (A) states that:<sup>2</sup>

A sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or;
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
  - b. is attempting to escape by use of a deadly weapon or;
  - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.

CPD General Order 03-02-03, Section III (E) states that:

Use of firearms in the following ways is prohibited:

\* \* \*

- E. Firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person.

### **Illinois and United States Precedent:**

A law enforcement officer's use of deadly force is a seizure within the meaning of the Fourth Amendment. Determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. Our review was intended to determine whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.<sup>3</sup>

The following factors are instructive when making the determination of whether an officer's use of force is reasonable.

- 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.<sup>4</sup>

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<sup>2</sup> This was the Use of Force policy in effect at the time of this incident. It has since been rescinded and replaced.

<sup>3</sup> *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7<sup>th</sup> Cir. 2003).

<sup>4</sup> *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)).

The analysis of the reasonableness of an officer's actions must be grounded in the following perspective.

[A] reasonable officer on the scene, rather than with the 20/20 vision of hindsight” and “allow for the fact that police 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 particular situation.<sup>5</sup>

Consequently, “when an officer believes that a suspect's actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force.”<sup>6</sup> Finally, the analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors.<sup>7</sup>

### **Illinois Statute**

CPD officers are bound by Illinois law regarding the use of deadly force as codified in the Illinois Compiled Statutes.<sup>8</sup> The pertinent Code provision states:

[A] peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person....<sup>9</sup>

Additionally, Illinois Statute addresses the use of self-defense by all individuals by stating:

A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.<sup>10</sup>

### **Standard of Proof**

The standard of proof applicable in administrative investigations such as this is a preponderance of the evidence. A preponderance of evidence can be described as evidence that makes it more likely than not that the alleged misconduct took place.<sup>11</sup> If the evidence gathered in an investigation establishes

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<sup>5</sup> *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014). Internal quotations and citation were omitted.

<sup>6</sup> *Muhammed v. City of Chicago*, 316 F.3d 380, 383 (7th Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (en banc) (omitting emphasis)

<sup>7</sup> *Plumhoff v. Rickard*, 572 U.S. 765, (2014) 134 S. Ct. 134 S. Ct. 2012, 2020 (2014); see also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003).

<sup>8</sup> 720 ILCS 5

<sup>9</sup> 720 ILCS 5/7-5(a)

<sup>10</sup> 720 ILCS 5/7-1(a)

<sup>11</sup> See *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005) (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not).



that it is more likely that the misconduct occurred than that it did not occur, even if by a narrow margin, the standard of proof has been met.<sup>12</sup>

### 3. CONCLUSION

Based on the totality of circumstances, we concur with the determination of the previous investigation that Officer Amparan complied with CPD policy regarding the use of deadly force.

In this specific circumstance, CPD General Order 03-02-03 Section II and Section III (E) are contradictory. Based on the preponderance of the evidence, it was reasonable for Officer Amparan to believe he was in imminent danger of death or great bodily harm, and in fact, was in the process of being injured by █████ as █████ used the stolen Nissan Murano to pin Officer Amparan between an Audi driven by Cortez and Officer Amparan's CPD patrol vehicle. █████ did not desist from his actions toward Officer Amparan until Officer Amparan fired his service firearm at █████ three times to prevent further injury or even death to Officer Amparan.

Our administrative review of an officer-involved shooting under Log No. 1085331 determined that **the use of force in the case was consistent with CPD's use of force policies and that the COPA investigation and determination were supported by a preponderance of the evidence.** This determination is consistent with the IPRA/COPA investigation. No allegations of excessive force were alleged.

As stated previously in this report, CPD General Order G03-02-03 Section III (E) states that, "Firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person" is prohibited.

A literal, obdurate reading of this policy would interpret Officer Amparan's firing into the moving stolen Nissan Murano driven by █████ as a policy violation. However, as shown in this report, Officer Amparan made a genuine attempt to avoid being struck by the stolen Nissan Murano █████ was operating and did not immediately fire his service firearm when he was struck and pinned between two vehicles. Numerous officers that were present at that moment gave █████ repeated lawful orders to cease injuring Officer Amparan, but doing the opposite, █████ revved the engine of the stolen Nissan Murano after pinning Amparan, leaving Amparan no reasonable choice but to use deadly force by shooting █████ in the driver's seat of the stolen Nissan Murano. █████ later told CPD Area North detectives that he was shot because he tried to hit Officer Amparan with a vehicle, showing █████ intentional use of deadly force toward Officer Amparan.

This entire policy is predicated on protection of life. In this instance, Officer Amparan had no option other than to shoot █████ the driver of the stolen Nissan Murano that had him pinned between two vehicles. Our interpretation of the policy is that Section II identifies the overall predicate for the use of force. Section III (E) is fact-specific to a moving vehicle. The vehicle in question, a stolen Nissan Murano, while operable, was being used to further cause injury to Officer Amparan. In this matter, the officer has necessary justification in using force to prevent great bodily harm.

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<sup>12</sup> In criminal cases, the standard of proof is beyond a reasonable doubt, which is a significantly higher evidentiary standard than the preponderance of the evidence standard that applies to administrative findings.

#### 4. ADDITIONAL INSIGHTS

Hillard Heintze identified additional issues that are beyond the scope of the immediate review but are noteworthy for their impact on the predicate to the incident. This information is provided for transparency and further discussion within COPA, as needed, to determine appropriate practices, policies, and future incident response strategies for COPA and the CPD.

1. As indicated in the report, Hillard Heintze learned that a search of the stolen vehicle [REDACTED] operated resulted in the recovery of a Smith & Wesson M&P .40 caliber semiautomatic handgun. The ISP laboratory report showed the handgun was test fired and operable and the firearm and projectile were entered into the IBIS database; however, there was no identification as to ownership.
2. Further investigation by Hillard Heintze revealed this handgun had what appeared to be the words “DETROIT PD” engraved on the slide. We checked open-source databases and learned that this engraving can be ordered directly through the manufacturer and other lawful sources.
3. The crime scene photographs of the M&P .40 caliber handgun were poor quality and unusable. The crime scene photographs of [REDACTED] identification and blood smears in the back of a marked CPD patrol vehicle were also of very poor quality. Considering the seriousness of this incident, better crime scene photographs should have been taken.