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David O. Brown
Superintendent of Police

February 1, 2022

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

RE: Complaint Register Number: #2019-0003354
Superintendent's Non-concurrence with certain COPA findings and recommended penalties
Police Officer Noble Williams Star # 7073

Dear Interim Chief Administrator Kersten:

Per the City of Chicago Municipal Code 2-78-130 *Decisions, Recommendations*, this letter sets forth the Chicago Police Department's non-concurrence with sustained findings for the allegations against Off-Duty Police Officer Noble Williams for an off duty event is set out more fully below.

Summary of Facts

On August 21, 2019 at 12:25 P.M., Off-Duty Police Officer Noble Williams (ODPO Williams), was at home in his second-floor apartment at 5137 S. Ingleside, when he heard two thuds indicative of a forcible entry burglary. Upon hearing the strikes, ODPO Williams, first holstered his firearm because of the inherent danger present during a burglary in progress including the possibility of an armed confrontation with the burglary offender. Next, ODPO Williams investigated the source of the noises. ODPO Williams' investigation led him to the building's third floor apartment, where ODPO Williams heard more thudding noises and encountered an open door. ODPO Williams, in an effort to protect his life as well as the lives of the building's residents, entered the apartment to search for burglary offender(s).

Upon entry, ODPO Williams observed [REDACTED] kneeling in front of the flat screen television. ODPO Williams immediately announced his Office and gave [REDACTED] verbal direction by yelling, "Stop, police." [REDACTED] carrying a backpack filled with stolen goods, fled through the third floor apartment's front door. ODPO Williams pursued [REDACTED] and caught up with [REDACTED] just outside the front door where [REDACTED] repeatedly slapped and struck ODPO Williams. [REDACTED] disoriented ODPO Williams and fled yet again. However, [REDACTED] fell down during his attempted flight. [REDACTED] fall left him in a prone position on the second-floor landing. ODPO Williams continued giving verbal direction, called-out for assistance, unholstered his firearm and unsuccessfully attempted to detain [REDACTED] who was still on the ground, by

placing his foot on his right arm. However, ██████ resisted and eventually broke free from his lawful detention and began once again striking ODPO Williams in the chest and body. ODPO Williams' back was at the mouth of the stairs, when ██████ again struck him and forcefully grabbed his left arm. ODPO Williams believed ██████ was going to throw him down the flight of stairs or disarm him. In fear of losing his life or suffering great bodily harm at the hands of ██████ ODPO Williams fired his weapon twice at which ██████ stopped fighting and absconded.

██████ blood droplets were left at the crime scene. Evidence technicians swabbed ██████ blood which was analyzed for DNA. The DNA analysis positively identified ██████ as the burglar and aggravated battery offender. Evidence technician photographs additionally demonstrate that ██████ ransacked the third-floor apartment and destroyed the apartment's front door to make entry. Nearly a year later on October 27, 2020, Fugitive apprehension officers arrested ██████ for the burglary. After his arrest ██████ told the assigned detectives that he suffered a graze wound to his head. ██████ indicated that the graze wound did not require medical attention. ██████ has committed over ten burglaries and is currently incarcerated by the Cook County Sheriffs.

Sustained Allegations and Rule Violations

COPA sustained two allegations against ODPO Williams for the following misconduct. Allegation #1: It is alleged that on August 21, 2019, at approximately 12:32 p.m., at 5137 South Ingleside, ODPO Williams, discharged his firearm at or in the direction of an unknown individual in violation of G03-02. Allegation #2: It is alleged that on August 21, 2019, at approximately 12:32 p.m., at 5137 South Ingleside, ODPO Williams, failed to comply with U04-02 by failing to fully load his firearm with only one manufacturer and style of ammunition.

Analysis

A. COPA's finding against ODPO Williams for discharging his firearm at or in the direction of an unknown individual in violation of G03-02 is not supported by a preponderance of evidence and should be not sustained (allegation 1).

In the instant case, ODPO Williams' use of deadly force is in compliance with Chicago Police Department Policy and Illinois State Law. Likewise COPA's finding against ODPO Williams for discharging his firearm at or in the direction of an unknown individual in violation of G03-02 is exonerated.

It is uncontested that ██████ repeatedly fought with ODPO Williams as well as resisted detention. It is also uncontested that ODPO Williams suffered injuries and that ██████ was burglarizing the 3rd floor apartment.

According to G03-02-01 Response to Resistance and Force Options

The main issue in use of force is whether the amount of force was objectively reasonable under the circumstances. There is no precise definition for reasonableness. Factors to be considered may include: imminence of the threat, the risk of harm, level of threat or resistance, proximity or access to weapons, whether de-escalation techniques could be employed and the availability of other resources. Members will use only the force that is proportional to the threat. This may include using greater force or a different type of force than used by the person. If it is likely that the threat will result in death or serious injury, the greater the level of force that may be necessary to overcome it. *See p. 2.*

According to G03-02-01 Response to Resistance and Force Options

An active resister is a person who attempts to create distance between himself or herself and the member's reach with the intent to avoid physical control and/or defeat the arrest. Active resistance includes evasive movement of the arm, flailing arms and full flight. Members cannot use deadly force on persons characterized as active resisters *See p. 5.*

An assailant is a person who is using or threatening the use of force against another person or himself/herself which is likely to cause injury. Assailants are further divided into two categories: 1) a person whose actions are aggressively offensive with or without weapons – members cannot use deadly force; and 2) a person whose actions constitute an imminent threat of death or great bodily harm to a department member or to another person – members are authorized to use deadly force. *See p. 6.*

Here, ODPO Williams' use of force was objectively reasonable, necessary and proportional under the totality of the circumstances. ██████████ is undoubtedly an assailant whose actions constituted an imminent threat of great bodily harm. COPA's argument that ██████████ is an active resister fails because ██████████ actions went well beyond attempts to create distance, evasive movements, flailing arms and full flight. ██████████ forcibly entered the 3rd floor apartment by breaking down the door. ██████████ upon being discovered by ODPO Williams, fought him and struck him repeatedly about the face and body causing injury that temporarily incapacitated ODPO Williams so ██████████ could take flight. ODPO Williams recovered from his temporary disorientation and pursued ██████████ who fell on the second floor landing during his attempted flight. ODPO Williams attempted to restrain ██████████ after ██████████ fell, however ██████████ repeatedly struck ODPO Williams, broke free and engaged in a stand-off with ODPO Williams. ODPO Williams had his back to the mouth of the stairs when ██████████ started striking him about the face and body yet again as well as forcefully grabbed his left arm. ODPO Williams believed ██████████ was going to throw him down the stairs, disarm him and possibly kill him, therefore ODPO Williams discharged his firearm. Based on the foregoing, it is clear that ██████████ was an assailant whose actions constituted an imminent threat of great bodily harm. If ODPO Williams didn't take action, ██████████ could have easily threw him down the stairs conceivably killing

him or causing great bodily injury, therefore ODPO Williams was well within the law and policy when he discharged his weapon to avoid the prospect of losing his life or suffering a very serious injury.

ODPO Williams' actions are also permissible under the laws of the state of Illinois. In fact under Illinois law ODPO Williams is afforded more latitude in the actions he took to preserve his life because he was within his private residence. In *People v. Eatman*, Eatman was assaulted within his residence. After being assaulted, Eatman stabbed and killed the assailant. The Illinois Supreme Court held that Eatman's killing of the assailant was within the confines of 720 ILCS 5/2 Use of Force in Defense of Dwelling because the affray took place at Eatman's dwelling, which the law gives him the right to protect, even to the extent of killing. The Court reasoned, the defense of habitation has been the most favored branch of self-defense from the earliest times. Lord Coke, in his Commentaries, says: "A man's house is his castle-for where shall a man be safe if it be not in his house?" (3 Institute, 162); See 91 N.E.2d 387 (Ill. Sup. Ct. 1950); Also see *Cui v. Kubycheck*, 2021 IL App (2d) 200239-U (Ill. App. 2nd Dist. 2021); Also see *People v. Barnes*, 2013 IL App (1st) 120057-U (Ill. App. 1st Dist. 2013) (Affirming that a man's habitation is one place where he may rest secure in the knowledge that he will not be disturbed by persons, coming within, without proper invitation or warrant, and that he may use all of the force apparently necessary to repel any invasion of his home.)

Just as in *Eatman*, a court reviewing the present case will determine ODPO Williams was justified in using deadly force because [REDACTED] actions meet the 3-prong test laid out in 720 ILCS 5/2: 1) [REDACTED] forcibly, violently and tumultuously entered ODPO Williams' residence; 2) ODPO Williams believed the force was necessary to prevent an assault upon him in the dwelling; and 3) ODPO Williams believed the force was necessary to prevent the commission of burglary within the dwelling. Prong 1 is substantiated by the evidence technician photograph that depicts the demolished 3rd floor apartment entry door. Prong 2 is substantiated by that fact that [REDACTED] repeatedly struck ODPO Williams about the face and body as well as by the fact that ODPO Williams believed [REDACTED] at one point, was going to throw him down a flight of stairs and/or disarm him. Prong 3 of the statutory test is met because [REDACTED] was within ODPO's residence to commit the forcible felony of burglary.

Even though department policy and Illinois state law exonerate ODPO Williams' use of force, COPA determined that ODPO Williams' use of force was unreasonable because: 1) ODPO Williams' discharge was not a "last resort;" and 2) [REDACTED] was not an imminent threat. See COPA's Summary Report of Investigation p. 11. COPA supports its finding that ODPO Williams' firearm discharge was not a last resort by pointing out that ODPO Williams did not say that [REDACTED] either tried to disarm him or push him down the stairs. *Id.* However the latter is not borne out by the evidence and therefore does not support COPA's claim that ODPO Williams' use of force was not a last resort. In COPA's Summary Report of Investigation, COPA admitted that ODPO Williams said: 1) his back was toward the steps and that [REDACTED] could have easily pushed him down the stairs; and 2) he could've dropped his weapon. COPA additionally acknowledged that ODPO Williams said that Nocentilli was going to evade arrest even if that meant killing ODPO Williams. *Id.* p. 4.

COPA further argued that ODPO Williams' actions weren't a last resort because ODPO Williams' struggle with [REDACTED] couldn't have been that bad because ODPO Williams' injuries were minor. This argument fails. First COPA does not support its statements with the opinion of a medical professional. Additionally, correlating ODPO Williams' injuries to the struggle is too far of a leap in logic - severity of one does not guarantee the severity of the other. What's more is, per the law and the general and special orders, ODPO Williams does not have to endure great bodily harm before force may be used, the threat of great bodily harm is enough to support the use of deadly force against an assailant. According to G03-02 De-escalation, Response to Resistance and Use of Force, members are not required to refrain from taking action that unreasonably endangers themselves. See G03-02, p. 1.

COPA also falsely determined that [REDACTED] actions didn't rise to the level of an imminent threat because ODPO Williams "felt" his life was in danger. This argument fails because "how the officer felt at the time," is one of the benchmarks in a legal use of force analysis. COPA further argued that even if ODPO Williams fell down the stairs it is unlikely that he would've suffered injuries. Again, this argument fails because COPA is not a medical professional and COPA has no business using pure conjecture to support its arguments. COPA lastly argues that ODPO Williams could have mitigated the situation if he used de-escalation techniques or a lesser force option such as a takedown. This argument fails because COPA acknowledged the fact that ODPO Williams used de-escalation techniques in its Summary Report of Investigation at the top of p. 13. Finally, COPA's argument that ODPO Williams should have employed a take-down rather than deadly force also fails because at one point ODPO Williams was in fact restraining [REDACTED] when [REDACTED] was prone on the ground and [REDACTED] broke free. See COPA's Summary Report of Investigation p. 12.

B. COPA's finding against ODPO Williams for failure to load his firearm with one type of ammunition should be sustained (allegation 2).

Evidence at the scene along with ODPO Williams' statement to COPA substantiate allegation 2 and CPD concurs with the report and recommendation on this allegation.

C. Penalty and Conclusion

CPD finds that ODPO Williams should be exonerated for the firearm discharge. Below please find precedential disciplinary recommendations for sustained officer-involved discharges on similar facts:

1. Sergeant John Poulos #814, Log Number 1064607 - was cleared of wrong doing by the Independent Police Review for Authority for fatally shooting a man that was trying to break into a building from a second-floor back porch on August 31, 2013.
2. Police Officer Peter Kelly #13712 (Retired) Log Number 1070600 - was cleared of wrong doing by the Independent Police Review Authority for fatally shooting a man trying to break into a property being built adjacent to where he lives on July 28, 2014.

To conclude, CPD disagrees with the sustained finding that ODPO Williams discharged his firearm at an unknown individual in violation of G03-02, but concurs with the sustained finding that ODPO Williams had two types of ammunition in his firearm. The appropriate penalty for the sustained finding is a reprimand.

The Department 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