



Brandon Johnson
Mayor

Department of Police · City of Chicago
3510 S. Michigan Avenue · Chicago, Illinois 60653

Fred L. Waller
Interim Superintendent of Police

May 26, 2023

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

RE: Partial Non-concurrence
Complaint Register (CR) Number: #2020-0000672
Request for additional investigation for:
Police Officer Eliot Tupayachi #18875
Police Officer Ashton McLean-Hall #7370

Dear Chief Administrator:

The Chicago Police Department (CPD) has reviewed the above referenced investigation and concurs in part and non-concurs in part with COPA's findings and recommendations. Specifically, the Department concurs with the recommended findings against Officer Eliot Tupayachi ("Tupayachi") and Officer Ashton McLean-Hall ("McLean-Hall"). The Department does not concur with the penalty and instead believes that a 20 day suspension for Officer Tupayachi and a 10 day suspension for Officer McLean-Hall is more appropriate.

Factual Summary

COPA sustained a variety of allegations against Officers Tupayachi and McLean-Hall stemming from an incident on 09 Feb 2020 that began as a disturbance in front of Tai's Til 4 Bar, turned into shots fired at and by the police, and ended with the offender, [REDACTED] killing himself with a self-inflicted gunshot to the head.

The sustained allegations against Tupayachi and McLean-Hall were found to violate the following rule:

Rule 6 – Disobedience of an order or directive, whether written or oral.

On 09 Feb 2020 at approximately 0515 hours, Officers Tupayachi and McLean-Hall responded to a call responded to a call of a battery in progress at Tai's Til 4 Bar located at 3611 N. Ashland Avenue. Officer McLean-Hall arrived on scene first, and spoke [REDACTED] who related a male inside the bar, now known as [REDACTED] threatened to kill him. Next, McLean-Hall spoke to Blake Itagaki, who identified himself as the owner of the bar. As McLean-Hall was speaking to Itagaki, Officer Tupayachi arrived on scene. Itagaki related that he heard [REDACTED] say "he had a gun and was going to kill this guy ([REDACTED] when he comes outside". Itagaki further explained this is why he called the police. Itagaki added that [REDACTED] was still inside the bar as Itagaki didn't want [REDACTED] to leave and get shot. [REDACTED] eventually exited the bar, approached [REDACTED]

and they had a verbal altercation that turned into minor shoving. All this took place in the presence of McLean-Hall and Tupayachi. During the altercation, ██████ can be heard, on McLean-Hall's body-worn camera, threatening ██████ stating "...you dead." ██████ eventually walked away and crossed Ashland Ave. in a northwesterly direction. ██████ headed north on the east side of Ashland, eventually heading towards ██████ ██████ then fired several shots at ██████ and struck him six times. McLean-Hall and Tupayachi entered their vehicles and responded to the shooting. After the shooting, ██████ fled on foot westbound on Waveland and then northbound on Marshfield Ave. ██████ then fired his handgun several times at Officer Tupayachi, with Tupayachi returning fire twice. ██████ fired a final shot, later determined to be a fatal self-inflicted gunshot wound the left side of his head. A black semi-automatic pistol was recovered from underneath ██████ body. ██████ sustained several gunshot wounds and was transported to and treated at Illinois Masonic Hospital.

Allegations

Officer Eliot Tupayachi It is alleged that on or about February 9, 2020, at approximately 5:15 a.m., at or near 3611 N. Ashland Avenue, Officer Tupayachi:

1. Failed to comply with S03-14 by failing to timely activate his body worn camera in violation of Rule 6. SUSTAINED
2. Failed to comply with U04-02 by failing to fully upload his firearm in violation of Rule 6. SUSTAINED
3. Failed to comply with G04-01 by failing to conduct a thorough and accurate preliminary investigation in violation of Rule 6. SUSTAINED

Officer Ashton McLean-Hall

It is alleged that on or about February 9, 2020, at approximately 5:15 a.m., at or near 3611 N. Ashland Avenue, Officer McLean-Hall:

1. Failed to comply with G04-01 by failing to conduct a thorough and accurate preliminary investigation in violation of Rule 6. SUSTAINED

Analysis

Allegations against Officer Eliot Tupayachi

Failure to timely activate body-worn camera

COPA's investigation has shown by a preponderance of the evidence that Officer Tupayachi failed to activate his body-worn camera in a timely manner. In his statement to COPA, Tupayachi acknowledged that a body-worn camera is to be activated "when you get the call before you have any interaction with the--anybody." Tupayachi further acknowledged that he didn't turn on his body-worn camera until he was in the alley, which was several minutes after he arrived on scene.

Failure to fully load firearm

COPA's investigation has shown by a preponderance of the evidence that Officer Tupayachi failed to fully load his firearm. The Crime Scene Processing Report for this incident shows that Officer Tupayachi's firearm was recovered with 1 live round in the chamber of the firearm, and 12 live rounds in the firearm's magazine for a total of 13 live rounds. In his statement, Tupayachi acknowledged he returned fire at [REDACTED] two or three times. Two expended shell casings recovered on scene (Inv. # 14656277) were determined to have been shot from Tupayachi's gun. All told, Tupayachi's gun which holds 16 live rounds when fully loaded, was determined to be loaded only with 15 live rounds, leaving the gun one live round from being fully loaded.

Allegations against Officer Eliot Tupayachi and Officer Ashton McLean-Hall

Failure to conduct a thorough investigation

COPA'S investigation has shown by a preponderance of the evidence that Tupayachi and McLean-Hall failed to conduct a thorough preliminary investigation. During his statement to COPA, Tupayachi explained that upon arriving at Tai's TII 4, he was informed by [REDACTED] that he had threatened to kill [REDACTED] and that [REDACTED] has threatened to kill [REDACTED]. Additionally, Tupayachi related that he was informed by the bar's owner, Blake Itagaki that [REDACTED] threatened to kill [REDACTED] and that [REDACTED] further stated he had a gun. Tupayachi related that Itagaki kept [REDACTED] inside the bar as he didn't want there to be a shooting in front of his bar. Clearly, Tupayachi was aware of both individuals threatening to kill one another, as well as one of the individuals claiming to be armed with a gun. Even after being made aware of all this, Tupayachi never performed any protective pat-downs nor did he note or ask for any of the involved parties names and contact information. This is borne out in his statement as well as on McLean-Hall's body-worn camera.

Officer McLean-Hall's body worn camera captures his response to this incident. On the video, [REDACTED] can be seen holding his right hand inside his jacket pocket for a significant amount of time. At no time, does McLean-Hall ask [REDACTED] to remove his hand. It is during this interaction, that [REDACTED] admits he threatened to kill [REDACTED]. Moreover, Itagaki informs McLean-Hall that [REDACTED] said he had a gun and threatened to kill [REDACTED]. It is clear that Itagaki is referring to [REDACTED] as he relates this information. McLean-Hall never patted down [REDACTED] never spoke to [REDACTED] nor did he document anything from the incident, other than what is captured on body-worn camera.

It is clear from the officers' statements and body-worn camera that Tupayachi and McLean-Hall failed to perform an adequate investigation.

Precedent / Alternate Penalty

The recommended penalty of 180 days up to and including separation for Officers Tupayachi and McLean-Hall is excessive. A suspension of 180 days, or 6 months would cost these officers 50% of their salary, about \$45,000 each, as well as their insurance benefits. This penalty recommendation is best described as punitive and does nothing to ensure that this does not happen again. According to the consent decree, discipline is to be consistently applied. "COPA and CPD will ensure that the recommended level of discipline for findings is consistently applied in a fair, thorough, and timely fashion, based on the nature of the misconduct. COPA and CPD will also ensure that mitigating and aggravating factors are identified, consistently applied, and

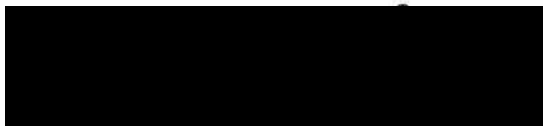
documented” (Paragraph 513, Consent Decree, State of Illinois v. City of Chicago, (No. 17-cv-6260, N.D. Illinois, January 1, 2019). The Consent Decree further requires the Department to “use best efforts to ensure that the level of discipline recommended for sustained findings is applied consistently across CPD districts...” (Id. at Paragraph #514). COPA has failed to take into consideration that each of these officers have no prior discipline in the almost 24 years of service for Tupayachi and seven years of service for McLean-Hall. A more appropriate penalty should include a period of suspension as well as training for each of these officers so they understand their actions and what they could do better in the future. This combined approach is better formulated to hold officers accountable while working to correct their actions and make them better officers.

Further, a 180 day suspension is far too egregious given the circumstances. COPA has proposed a lesser penalty in a far more significant rule infraction. In Log #1086285, COPA made the following finding: “the evidence demonstrates that an officer with similar training and experience as Sergeant Muhammad would not have reasonably believed that Hayes posed an immediate threat of death or serious bodily harm and/or that the use of deadly force was otherwise justified” (COPA Summary Report of Investigation of Log #1086285, pg. 27). COPA recommended a penalty of 90 days, CPD disagreed and increased the penalty to 180 days. (In the Matter of Charges Filed against Sergeant Khalil Muhammad, No. 19 PB 2956).

The incident underlying Log #108625 involved Sgt. Muhammad, off-duty and in a personal vehicle, shooting an unarmed, mentally-handicapped teenager. The teen had committed no crime and Muhammad fired because he observed the teen with a dark object in his hand, which Muhammad stated he believed may be a firearm.

The use of force in the present incident was found to be justified. When determining the level of discipline to be imposed, the sustained allegations should be viewed in a vacuum. As such, a penalty of less than 180 days is warranted. The Department proposes a 20 day suspension for Tupayaki and a 10 day suspension for McLean-Hall. Additionally, as stated above the Department will ensure that these officers receive training directly related to these sustain violations.

Sincerely,

A large black rectangular redaction box covering the signature of Fred L. Waller.

Fred L. Waller
Interim Superintendent of Police
Chicago Police Department