Brandon Johnson
Mayor

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

Larry Snelling
Superintendent of Police

November 28, 2023

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

RE: Superintendent's Partial Concurrence with COPA's proposed findings and penalties
Complaint Register Number #2020-0001703
Police Officer Reginald Dukes #11176

Dear Chief Administrator,

After careful review of the recommendations made by the Investigator in this matter, the Superintendent concurs with the findings of COPA related to all four (4) allegations against Police Officer Reginald Dukes but does not concur with COPA's disciplinary recommendation of Separation.

STATEMENT OF FACTS AND SUMMARY OF FINDINGS

COPA sustained four (4) allegations against Police Officer Reginald Dukes [Hereinafter Officer Dukes] , a Chicago Police Department (CPD) member, seeking his separation stemming from an on duty use of force incident occurring on May 1, 2020.

It is alleged Officer Dukes violated department policy when he **1)** shot at or in the direction of an unknown subject **2)** discharged his firearm without due regard for his surroundings or the safety of others **3)** improperly used a Department vehicle causing an accident **4)** failed to properly load his Duty Weapon with only one manufacturer and style of prescribed ammunition.

Police Officer Reginald Dukes was working in an undercover capacity, when on May 1, 2020, he heard one of his team members report a call of a person shooting another person in the area of Madison and Pulaski. The reporting Officer noted that the shooting offender entered a white Nissan and fled the scene. The reporting Officer provided the vehicle's path over the radio. Armed with this information, and hearing on the radio that the subject was traveling westbound on Jackson towards Pulaski Road, Officer Dukes drove south on Pulaski. As he approached the intersection of Pulaski Road and Jackson Blvd, Officer Dukes saw a small white car approaching the intersection in the right turn lane. Officer Dukes then turned eastbound on Jackson Boulevard, blocking the white car from moving forward. Officer Dukes then saw the driver of the white car raise the top part of his body and extend his arms into a tactical shooting manner. Believing the subject in the white car was going to shoot him, Dukes discharged his firearm once through his own windshield towards the subject in the white car. Afterwards, the subject in the white car made a U turn striking Dukes car, and made good his escape on the expressway back.[1]

[1] COPA s.r. at pg. 1

Officer Dukes was interviewed by COPA on May 14, 2020. He stated that on the date of the incident, he was assigned to the Narcotics Division working alone full duty in a covert vehicle, a dark grey Chevy Equinox. The rest of his Narcotics team patrolled the nearby area. While conducting surveillance, Officer Dukes heard an Officer on his team report that a male shot a person at Pulaski Road and Madison Street and had entered a white Nissan that was travelling eastbound on Madison Street. Officer Dukes, listening to the Officers on his team report the path of travel, proceeded towards the area, traveling southbound on Pulaski Road. As Officer Dukes approached Jackson BLVD and Pulaski Road, he saw a white Nissan nearing the intersection in the right lane. Officer Dukes clarified in his interview with COPA that he did not know the make and model of the approaching car but could tell that it was a small white car. Based upon its location, Dukes believed it was the offending vehicle, To Wit;

Dukes then made an eastbound turn into westbound traffic to slow the white car down as he believed the white car contained the shooting offender. Dukes stated that as his vehicle approached the front of the subject vehicle, the driver, a black male, started to reverse. When they were bumper to bumper, Dukes noticed that the White Nissan's front windshield was tinted six inches from the top. Dukes stated that he had his pistol in his hand as he was going to exit his vehicle, identify himself as the Police and approach the offending vehicle. The Nissan reversed about one and a half car lengths when Dukes claimed he observed the driver "rise up and come into, like a two-handed tactical shooting position over the front steering wheel." Dukes went on to tell COPA that although he did not see a firearm in the driver's hands, he believed that based upon his training and experience, the driver was going to shoot at him. Dukes discharged his weapon once through his front windshield towards the white sedan. Dukes saw the driver of the white sedan duck down and move his vehicle forward, striking Dukes vehicle, make a U turn and ultimately make good his escape.[2]

Analysis of Officer Duke's Use of Deadly Force under Department Orders

Officer Dukes' use of his firearm to shoot at the unknown male black in the white sedan was the use of deadly force as defined by Department Policy.[3] Department Policy requires that all uses of force must be "1) objectively reasonable, 2) necessary, and 3) proportional in order to ensure the safety of a member or third person, stop an attack, make an arrest, control a subject, or prevent an escape."[4]

The use of deadly force is determined to be objectively reasonable, not by a "precise or mechanical definition," but when multiple factors are considered.[5] The subject must first pose an imminent threat to the officers or others.[6] The threat is imminent when it is objectively reasonable to believe that 1) the subject's actions are immediately likely to cause death or great bodily harm (GBH), 2) the subject has the means or instruments to cause death or GBH, *and* 3) the subject has the opportunity and ability to cause death or GBH.[7]

Department orders also state that when using deadly force officers will "whenever possible" identify themselves as police officers prior to using deadly force.[8]

Objectively Reasonable

In this case, Officer Duke's actions were not objectively reasonable.

- Did the subject pose an imminent threat to Officers or others? The white sedan that Officer Dukes approached; he admittedly did not verify was the same as the white Nissan that fired shots at a person

[2] COPA s.r. at pg. 4-6
[3] G03-02-III-C-1-a (effective 16 Oct 2017 and rescinded 28 Feb 2020)
[4] G03-02-III-B
[5] G03-02-III-B-1
[6] G03-02-III-B-1-a
[7] G03-02-III-C-2
[8] G03-02-III-C-5

near Madison and Pulaski. Dukes believed the unknown male black driving the white sedan was possibly armed due to the subject having his hands in a tactical shooting formation.

- There is no evidence to indicate, including Officer Dukes COPA statement that, at the moment Dukes discharged his weapon, the male black driving the white sedan was in possession of a firearm; thus lacking the means, instrument or opportunity to cause death or GBH.

Necessary

Department policy mandates that "the use of deadly force is a last resort only when necessary to protect against an imminent threat to life or prevent GBH to the member or another person" and used only when there is 1) an imminent threat of death or GBH, or 2) an arrest being defeated by resistance or escape, where the person to be arrested poses an imminent threat of death or GBH.[9]

In this case, Officer Dukes did not use deadly force as a last resort. It is undisputed that Dukes positioned his unmarked covert vehicle in such a manner as to interdict with the white sedan; a white sedan to which Dukes failed to verify the make or model before moving himself into an unsafe position, into oncoming traffic. Dukes had several options available to him including using his own squad car as cover and shielding, using time and distance as a tactic, verifying the make and model of the offending vehicle prior to stopping it, calling for assist units before and during the encounter with the white sedan, and or any of the less than lethal force options. There is nothing on the record in evidence to indicate Dukes was attacked by the occupants in the white sedan other that what appeared to be hands in s shooting formation near the steering column; precipitating a last resort scenario.

Proportional

The use of deadly force must be "proportional to the threat, actions, and level of resistance offered by a subject."[10] "This may include using greater force…than that used by the subject."[11] "The more likely the *threat* will result in death or serious physical injury, the greater the level of force that may be necessary to overcome it."[12] "When a subject offers less resistance…the member will decrease the amount of force accordingly."[13] In accordance with the proportional requirement, Department policy restricts deadly force against fleeing persons unless the subject poses an imminent threat of death or GBH.[14]

In this case, Dukes fired at an unknown male Black driving a white sedan based upon a presumption that it possibly was an offending vehicle. While attempting to get away from Dukes, the driver of said white vehicle formed his hands into what Dukes described as a " two hand tactical shooting position" but observed nothing the same size or shape as a handgun in the driver's hands. Without independently verifying that the male black driver had an object in his hands like, similar to or the same as a handgun, the male Black driver did not pose an imminent threat of death or GBH.

Allegations and Findings

Allegation 1: *Officer Dukes discharged his firearm at or in the direction of an unknown subject.*

1. Dukes discharged his weapon in the direction of an unknown subject; that subject not posing an imminent threat of death or GBH.

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[9] G03-02-III-C-3
[10] G03-02-III-B-3
[11] *Id.*
[12] *Id.* (emphasis added)
[13] *Id.*
[14] G03-02-III-C-4

2. It is undisputed that Dukes never observed the unknown subject with a gun or any other weapon.
3. It was not objectively reasonable to believe that the subjects actions were immediately likely to cause death or GBH; Officer Dukes discharged a firearm at an unknown subject who he at no time related had a weapon.
4. Dukes had insufficient information to confirm or deny that the small white car he approached at Jackson and Pulaski was the same as the vehicle involved in the civilian shooting.
5. The evidence indicates that when Dukes approached the white Nissan, it was attempting to flee by reversing and executing a U turn thus having neither opportunity or ability to cause death or GBH to Officer Dukes.
6. Department Policy prohibits using deadly force against a fleeing person unless that person poses an imminent threat. The evidence indicates that the driver of the Nissan was at best an active resister fleeing Dukes and not an assailant.
7. Department policy prohibits firing at or into moving vehicles when the vehicle is the only force used against the sworn member or another person, unless such force is reasonable necessary to prevent death or GBH. As stated above, the facts in this case do not warrant the use of deadly force by Dukes.

Allegation 2: *Officer Dukes discharged his firearm without due regard for his surroundings or the safety of others.*

1. POD video footage shows other cars and pedestrians during the shooting. Dukes testified at COPA that he did not see any other cars around when he discharged his weapon at the white sedan.
2. Dukes admitted in statements to CPD that he used a civilian car to effectuate a traffic stop on the white sedan; specifically using that civilian car to block the white sedan and also maneuvering his car to force another car to go into a different direction of travel to facilitate his stop of the white Nissan.
3. Dukes failed to identify a female passenger that was captured on video entering the white Nissan.
4. Dukes decision to block the white Nissan's path with his covert vehicle without first identifying himself and then discharging his weapon was at best tactically unsound, at worst, dangerous and potentially deadly.
5. To all concerned parties, Officer Dukes appeared to be civilian, advancing on the white Nissan for unknown reasons.

Allegation 3: *Officer Dukes improperly used a Department vehicle, causing an accident*

1. By his own testimony and video evidence, Dukes improperly used a covert Department vehicle lacking lights, sirens, or any other necessary equipment to operate as an emergency vehicle.
2. By his own testimony and video evidence, Officer Dukes drove said car described above into an opposite lane of traffic causing an accident

Allegation 4: *Officer Dukes failed to properly load his duty weapon with only one manufacturer and style of prescribed ammunition.*

By his own testimony and evidence, Dukes firearm contain mixed ammunition due to him carrying multiple firearms and ammunition in his backpack. Dukes Magazine was loaded with only one authorized round; the round DUKES discharged during this incident was not that round. It too was unauthorized.

CONCLUSION

Based upon the preponderance of the evidence, Police Officer Reginald Dukes violated Department Policy and Orders when he discharged his weapon on May 1, 2020 at an unknown subject. The Physical evidence as well as the Officers own testimony support the 4 (four) sustained findings as mentioned above.

However; COPA'S recommendation of Separation in this matter does not comport with recent Police Board decisions. Analogous to the instant case, the recent finding in Police Board case 21PB2986, *Charges Filed against Police Officer Luigi Sarli Star. No. 14398* is more in line with the expectation of Discipline here in Dukes.[15] In Sarli, the Respondent Officer fired four times (hitting no one) from his CPD vehicle into a moving vehicle being driven by the unarmed offender, based upon Sarli's subjective belief that his leg was being crushed and possibly severed. The Board opined that Sarli's subjective belief did not make his actions objectively reasonable. Moreover, the Board stated that Sarli's actions were not necessary to prevent death or great bodily harm; stating particularly, "*In short, Respondent's actions were based upon a series of mistakes and reactions disproportionate to the situation.*" [16]His Firing his gun at the moving Jeep was clearly unreasonable and unnecessary; the Board finding Respondent Officer Sarli guilty as charged.

The Board concluded in Sarli that the Officers mistakes were just that: Mistakes. There was no evidence that Respondent Officer Sarli lied or attempted to cover up his misconduct, and Respondent Sarli forthrightly acknowledged his many factual errors. The Board stated for the record that although Respondent Sarli made the wrong decision to fire his weapon, five seconds should not end his career. Based upon the facts in Sarli, the Board found that Separation was not the right penalty but that suspension without pay for two years including receiving full re-training on the use of deadly force with scenario based elements and interactive exercises was a justified penalty. [17]

The facts in Dukes are similar to Sarli. Dukes fired at a subject once, not striking him, based upon his subjective belief that the subject driving the white sedan was the same who had just previously shot someone and was still armed. Dukes also testifies that the subject in the white sedan put his two hands into a tactical shooting position. Dukes mistaken belief was at the moment he discharged his weapon. On the record and with his interview with COPA, he did not independently verify that the subject driver was armed at the moment he discharged his duty weapon. Similar to Sarli, Officer Dukes recount's the facts of the incident openly during the investigation phase and there is no evidence to suggest an attempt to cover up his actions.

Similar to the decision in Sarli, mere seconds of a mistaken subjective belief by Dukes should not end his career. A one hundred eighty **(180)** day suspension with re-training for Dukes is the appropriate penalty in this case.

Sincerely,

[redacted]

Larry Snelling
Superintendent of Police

[15] (In The Matter of Charges Filed Against PO Luigi Sarli No.14398 CPD City of Chicago, 2022)
[16] *Id.* at pg. 5
[17] *Id.* at pg.6-7