



Lori E. Lightfoot
Mayor

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

David O. Brown
Superintendent of Police

July 11, 2022

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

RE: Superintendent's Partial Concurrence and Partial Non-Concurrence with COPA's proposed findings and penalties Complaint Register Number: #2021-0001112
Police Officer Eric Stillman #19277 and Police Officer Corina Gallegos #17521

Dear Chief Administrator,

After a careful review of the recommendation made by the Investigator in this matter the Chicago Police Department (CPD) does not concur with the findings of COPA related to allegation numbers three and five against Police Officer Eric Stillman #19277 ("Stillman" or "Officer Stillman") and does concur with the findings of COPA for allegation six but has an alternate penalty recommendation. CPD does concur with the findings against Police Officer Corina Gallegos #17521 (Gallegos) related to allegation number three, but has an alternate penalty recommendation.

Statement of Facts and Summary of Findings

COPA sustained a variety of allegations against Stillman and Gallegos stemming from an officer involved shooting that occurred on March 29, 2021. Early that morning, at approximately 2:36 a.m., Officers Stillman and Gallegos, while on patrol and in full police uniform, encountered [REDACTED] and [REDACTED] in the alley of 2356 S. Sawyer Ave.

Officers Stillman and Gallegos were responding to a "Shotspotter" alert indicating 8 gunshots in the area of 24th and Sawyer. Upon responding to the area, Stillman and Gallegos, while driving an unmarked Chicago Police Department vehicle, were traveling southbound in the alley when they observed two individuals, now known as [REDACTED] and [REDACTED]. The Officers observed [REDACTED] and [REDACTED] who had been looking in the Officers' direction, turn away from the Officers, move their bodies side by side, and appear to be passing an object. Officer Stillman ordered the two subjects to "show me your hands and don't move." Officer Stillman exited his vehicle and both subjects began fleeing on foot. Officer Stillman was able to detain [REDACTED] and while attempting to perform a quick pat down for weapons [REDACTED] body went stiff and he fell to the ground on his own. Gallegos then took control of [REDACTED] and she began to pat him down and place him in handcuffs. Stillman then turned his attention to [REDACTED] whom Stillman observed running with his right hand to his side. Stillman began to pursue [REDACTED] on foot down the alley. As he was running, Stillman observed [REDACTED] bring his left hand over his right, in what Stillman described as a movement similar to one made when chambering a round in a pistol, making it ready to fire.

Stillman continued to pursue [REDACTED] ordering him to stop two separate times. [REDACTED] slowed down and Stillman ordered [REDACTED] to show his hands two separate times. [REDACTED] stopped running, Stillman began to shift to his left and observed [REDACTED] holding a pistol, in a pistol grip, in his right hand. Stillman then ordered [REDACTED] to drop the gun. [REDACTED] turned toward Stillman with his left hand up and his right hand, with which he'd been holding a pistol in a pistol grip, hidden behind his body. [REDACTED] then brought his right hand out and Stillman fired once, striking [REDACTED] who immediately fell to the ground. Stillman notified OEMC of shots fired, requested an ambulance and immediately began administering first aid to [REDACTED] expired at the scene. The black pistol that [REDACTED] had been holding was discovered, in slide lock, behind the fence where [REDACTED] stopped running 6 feet from the opening in the fence. The black pistol was discovered to be a 9 mm, Ruger semi-automatic. Seven spent shell casings were discovered and recovered at 3232 W. 24th Street. Those shell casings were compared against the recovered Ruger and found to be a match. Moreover, [REDACTED] right hand and the right and left cuffs of the sweatshirt [REDACTED] had been wearing the night of the incident came back positive for gunshot residue.

Notably in its Summary Report of Investigation ("SRI") COPA found that "as Officer Stillman pursued [REDACTED] and closed the distance between himself and [REDACTED] he ordered [REDACTED] to show his hands. During this time, Officer Stillman observed that [REDACTED] whose back was turned toward Officer Stillman, had a dark-colored pistol in his right hand. **Unbeknownst** to Officer Stillman, [REDACTED] then tossed the weapon alongside a wood fence and simultaneously began turning toward Officer Stillman with his hands raised." (SRI at p. 1)(Emphasis added.) COPA admits that the evidence supports that Officer Stillman did not know that [REDACTED] tossed the weapon before he turned towards Stillman. Notwithstanding this important admission, COPA goes on to sustain the allegation that Officer Stillman discharged his firearm at or in the direction of [REDACTED] in violation of General Order 03-02.

COPA made the following determinations on the allegations:

Officer Eric Stillman

It is alleged that on or about March 29, 2021, at approximately 2:36 a.m., at or near 2356 S. Sawyer, Officer Eric Stillman #19277 committed misconduct through the following acts or omissions, by:

1. Detaining and/or seizing [REDACTED] without justification; EXONERATED
2. Detaining and/or seizing [REDACTED] without justification; NOT SUSTAINED
3. Discharging your firearm at or in the direction of [REDACTED] in violation of General Order 03-02; SUSTAINED
4. Used excessive force with respect to [REDACTED] in violation of General Order 03-02; NOT SUSTAINED
5. Acted inconsistently with his training under EBT #18-01, Foot Pursuits Training Bulletin; SUSTAINED
6. Failing to comply with S03-14 by failing to timely activate your body-worn camera; SUSTAINED

At issue in this non-concurrence letter are allegations 3 and 5 and the recommended penalty for allegation 6 which will be discussed further below.

Officer Corina Gallegos

It is alleged that on or about March 29, 2021, at approximately 2:36 a.m., at or near 2356 S. Sawyer, Officer Corina Gallegos #17521 committed misconduct through the following acts or omissions, by:

1. Detaining and/or seizing [REDACTED] without justification; EXONERATED
2. Detaining and/or seizing [REDACTED] without justification; NOT SUSTAINED
3. Failing to comply with S03-14 by failing to timely activate your body-worn camera; SUSTAINED

The Department concurs with the sustained finding for allegation 3 but does not concur with the recommended penalty

ANALYSIS

I. Allegations against Officer Stillman

- a. The Preponderance Of The Evidence Does Not Support COPA's Finding That Officer Stillman Discharged His Firearm At Or In The Direction Of [REDACTED] In Violation Of G03-02

Based on a review of all of the evidence presented to COPA, it is clear that COPA cannot meet its required standard of proof, preponderance, to sustain Allegation 3 against Officer Stillman; that he discharged his firearm at or in the direction of [REDACTED] in violation of G03-02. In its Summary Report of Investigation (SRI), COPA summarized the evidence reviewed, including all reports, videos, and statements, and concluded that events unfolded in essentially the manner as related by Officer Stillman and Officer Gallegos. In fact, COPA found Stillman and Gallegos "credible during their statements" and "does not dispute the truthfulness or reliability of each officer's account." (SRI, p. 24-25). Allegation 3 should be "not sustained".

- i. *COPA's legal analysis is flawed as they apply the incorrect legal standard*

As a preliminary matter, before a discussion of the facts begins, it is important to point out that COPA incorrectly cites to a legal standard and relies on that standard for its findings. This reliance is incorrect and leads to a faulty finding. Starting on p. 17 of the SRI COPA sets forth the applicable 4th Amendment Standard for seizures through deadly use of force. COPA initially points out correctly:

A police officer's use of force to effect an arrest is a seizure within the meaning of the Fourth Amendment." It therefore must be reasonable. Under the Fourth Amendment, officers may be justified in using deadly force when they reasonably believe a person poses an imminent threat of serious physical harm to themselves or others. An officer may use deadly force even on a fleeing person if that officer reasonably believes the person poses such a threat.

In evaluating an officer's use of deadly force, courts provide that the fact finder must understand that officers often face situations that are "tense, uncertain, and rapidly evolving" and that they are required to "make split second judgments" about how much force to apply. "Whether use of deadly force constitutes a constitutionally reasonable seizure is an objective inquiry and must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight."¹

COPA, on p. 18 of the SRI, then makes the legally incorrect statement, "[i]mportantly 'an officer does not possess unfettered authority to shoot a member of the public simply because that person is carrying a weapon. Instead deadly force may only be used by a police officer when, based on a reasonable assessment, the officer or another person is threatened with the weapon.'" (SRI, at p. 18). To support this statement, COPA cites *Cooper v. Sheehan*, 735 F.3d 153 (4th Cir. 2013). Through hopefully nothing more than a mere oversight, COPA fails to address the footnote that comes at the end of the cited language in *Cooper*. The footnote states "To be clear, an armed suspect need not engage in some specific action---such as pointing, aiming, or firing his weapon---to pose a threat. Pursuant to *Tennessee v. Garner* and its progeny, there are many circumstances under which a police officer could reasonably feel threatened." *Cooper v. Sheehan*, 735 F.3d 153, 159 n.9 (4th Circuit 2013).

It is well settled that deadly force may not be used unless "the officer has probable cause to believe that the armed suspect . . . 'poses a threat of serious physical harm, either to the officer or to others,' or . . . 'committed a crime involving the infliction or threatened infliction of serious physical harm' and is about to escape." *Muhammed v. City of Chi.*, 316 F.3d 680, 683 (7th Cir. 2002) (quoting *Garner*, 471 U.S. at 11–12). "[W]hen 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." *Muhammed*, 316 F.3d at 683 (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (en banc) (emphasis omitted)). In *Conley-Eaglebear v. Miller*, for example, the court affirmed the entry of summary judgment for an officer on an excessive force claim where the officer shot a fleeing suspect in the back after observing him draw a gun from his waistband and look back over his shoulder toward the officer; the officer "did not need to wait for [the suspect] to face him or point the gun directly at him before acting to protect himself and the community." No. 16-3065, 2017 WL 7116973, at *2 (7th Cir. Sept. 26, 2017) (citing *Helman v. Duhaime*, 742 F.3d 760, 763 (7th Cir. 2014) (objectively reasonable for officer to shoot suspect who was reaching for firearm); *Henning v. O'Leary*, 477 F.3d 492, 496 (7th Cir. 2007) ("officers cannot be expected to wait until a resisting arrestee has a firm grip on a deadly weapon and completely freed himself from officers trying to subdue him before taking action to ensure their safety"); *Ellis v. Wynalda*, 999 F.2d 243, 247 (7th Cir. 1993) (noting officer would be justified to shoot suspect when he was about to throw a bag at him, up until the moment officer observed that the bag was lightweight, caused no injury, and was no immediate threat); see also *Horton*, 883 F.3d at 952 (reasonable officer would know that "suspect could have turned and produced a gun in a flash given all the facts and circumstances"); accord *White v. City of Topeka*, 489 F. Supp. 3d 1209, 1240 (D. Kan. 2020) (identifying cases where use of deadly force by officer who believed suspect had a gun and suspect was resisting or fleeing law enforcement, even if the suspect never threatened officer, was objectively reasonable) (citing *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010); *Henning*, 477 F.3d at 496; *Anderson v. Russell*, 247 F.3d 125, 130–31 (4th Cir. 2001); *Thompson v. Hubbard*, 257 F.3d 896, 898–99 (8th Cir. 2001); *Slattery v. Rizzo*, 939 F.2d 213, 215–17 (4th Cir. 1991); *George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013)).

¹ Footnote citations omitted but can be found on p. 17-18 of SRI.

Courts also have concluded that a suspect disobeying commands to stop or drop a weapon is a factor that reasonably supports an officer's belief that the suspect presents an imminent threat. *E.g.*, *Smith v. Finkley*, 10 F.4th 725, 739 (7th Cir. 2021) (noting person suspected of a crime involving firearm, whom officers reasonably believed was armed, displayed "active resistance" when he fled and hid, and when found failed to obey numerous commands from different officers); *Betton v. Belue*, 942 F.3d 184, 193 (4th Cir. 2019) (had suspect "disobeyed a command given by the officers, such as to drop his weapon or to 'come out' with his hands raised, [officer] reasonably may have feared for his safety upon observing [suspect] holding a gun at his side").

Finally as the Court in *Bell v. Irwin*, 321 F.3d 637, 640 (7th Cir. 2003) held, "It is easy in retrospect to say that officers should have waited, or should have used some other maneuver...but...the fourth amendment does not require second-guessing if a reasonable officer making decisions under uncertainty and the press of time would have perceived a need to act." This is important considering the circumstances of this incident and the evidence presented to and considered by COPA.

ii. The evidence presented in this case does not support COPA's finding that Stillman improperly discharged his weapon.

COPA begins its analysis of Stillman's actions by finding that Officer Stillman had probable cause to seize ██████ stating, "COPA finds that by the time Officer Stillman shot ██████ he had probable cause to believe that ██████ had committed a crime, namely, the unlawful possession of a weapon." (SRI at p. 28). COPA goes on to acknowledge that "██████ can be seen holding the firearm in his hand prior to Officer Stillman seizing him in Officer Stillman's BWC video." (SRI at p. 28) This finding also references Stillman's commands to ██████ which changed from "stop right fucking now" to "show me your hands" to "drop it" within a matter of 2 seconds as corroboration that Stillman saw the firearm. (SRI at p. 28, fn 138 citing Att. 23 at 2:00-2:05). Stillman then fires his weapon after yelling "drop it". What COPA refuses to acknowledge is that these same facts support a finding that ██████ posed an imminent threat of serious physical harm to Officer Stillman, Officer Gallegos and even ██████ thus justifying the use of force under settled Fourth Amendment precedent.

The evidence demonstrates that Officer Stillman and Officer Gallegos responded to a Shot Spotter call in the area of 2358 S. Sawyer Ave at approximately 2:36 a.m. In responding to the area, Stillman and Gallegos observed two individuals, ██████ and ██████ in the alley between Sawyer and Spaulding. As Stillman and Gallegos continued driving in the alley, they observed ██████ and ██████ facing away from them and standing shoulder to shoulder. ██████ and ██████ appeared to be passing an unknown object. ██████ and ██████ began to flee down the alley on foot, with Stillman and Gallegos exiting their vehicle and pursuing on foot. Officer Stillman grabbed ██████ and performed a quick pat down, as ██████ then threw himself to the ground. Officer Gallegos remained with ██████ as Stillman pursued ██████ further down the alley they were in. Stillman observed ██████ holding his waistband as he fled, and then observed ██████ running with right arm bent at the elbow and his left hand coming across his body to cover his right hand. Stillman described what he saw as they type of movement that is made to chamber a round in a semi-automatic pistol, making it ready to fire. (Att. 68, p. 60) Officer Stillman ordered ██████ to stop two times, ordered ██████ to show his hands two times, and upon seeing ██████ armed with a pistol in his right hand, to drop the gun. (Att. 68, p. 61). Stillman said in his statement to COPA:

He doesn't drop it, he doesn't drop it. I see he still has it in his hands, he doesn't drop it. He starts to turn. I can see he still has the gun in his hand. His arms slightly – it looks like he is turning around. I know that he's going to go ahead and if he turns at me he's going to shoot me. I know he's going to kill me. I just know it. He starts to turn, I end up shooting. I shoot one time.

(Att. 68, p. 61:17-24, 62:2). This description of events recounted by Stillman is supported by the BWC video of the incident. (Att. 23 at 2:00-2:05).²

COPA has been afforded the benefit of time in considering Stillman's actions; however, COPA fails to consider how quickly these events unfolded in real time. "It is easy in retrospect to say that officers should have waited, or should have used some other maneuver...but...the fourth amendment does not require second-guessing if a reasonable officer making decisions under uncertainty and the press of time would have perceived a need to act." *Bell v. Irwin*, 321 F.3d 637, 640 (7th Cir. 2003). The analysis put together by the Detectives assigned to the Incident Response Team charged with the criminal investigation of this case demonstrates exactly how fast these events unfolded. (Att. 25). Stillman's BWC shows that [REDACTED] has a gun in his hand at 2:03:343, and Stillman fires at 2:04:182. (Att. 25 at 1:55-156 and Att. 23 at 2:03-2:05). This means there was a total of 838 milliseconds between the gun showing in [REDACTED] hand and the single shot. (Att. 25 at 2:03)



² In her review of this case State's Attorney Kim Foxx stated that the "video footage played in real time corroborate Officer Stillman's version of events and demonstrates how quickly these actions took place."
[https://www.cookcountystatesattorney.org/sites/default/files/files/documents/\[REDACTED\]memo.pdf](https://www.cookcountystatesattorney.org/sites/default/files/files/documents/[REDACTED]memo.pdf)

The gun that [REDACTED] had been holding in his right hand was discovered in slide-lock, on the ground near [REDACTED] on the Farragut High School side of the fence. The fact that it was in slide-lock further supports Officer Stillman's account that [REDACTED] was manipulating the weapon to prepare to use it. The gun was found to be a 9 mm semi-automatic Ruger. Seven spent shell casings were recovered at 3232 W. 24th Street. Testing concluded that the spent shell casings matched the recovered gun. [REDACTED] right hand as well as the right and left cuffs of the sweatshirt [REDACTED] had been wearing the night of the incident came back positive for gunshot residue.

The use of force directive in effect at the time of this incident, General Order G03-02, states:

The main issue in evaluating every use of force is whether the amount of force used by the member was objectively reasonable in light of the totality of the circumstances faced by the member on the scene. Reasonableness is not capable of precise definition or mechanical application. Factors to be considered by the member include but are not limited to:

- a. Whether the subject is posing an imminent threat to the member or others.
- b. The risk of harm, level of threat or resistance presented by the subject.
- c. The subject's proximity or access to weapons."

According to General Order 03-02, "a threat is imminent when it is objectively reasonable to believe that the subject's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; and the subject has the means or instruments to cause death or great bodily harm; and the subject has the opportunity or ability to cause death or great bodily harm." Based on the evidence presented, all three factors were present and it was objectively reasonable for Officer Stillman to use deadly force. First, [REDACTED] possessed a firearm and refused to show his hands or drop the weapon when he was commanded to do so. Second, not only did [REDACTED] continue to run from Officer Stillman, he continued to conceal his hands until finally Stillman was able to see that he had a weapon. Finally, [REDACTED] held a gun in his right hand. (Att. 23, 2:00-2:05)

COPA's analysis makes much of the fact that [REDACTED] tossed the gun at the last minute and was allegedly in the act of complying with Stillman's orders for [REDACTED] to drop the weapon and show his hands at the time he was shot. This analysis is best described as Monday morning quarterbacking and does not take into consideration the mindset of Officer Stillman at the time he used force, which is the primary analysis that matters when considering uses of force. COPA had the benefit of viewing the video from Farragut High School which shows [REDACTED] drop the weapon on the side of the fence facing the school. Officer Stillman did not have the benefit of that angle as he was moving diagonally away from the fence and away from [REDACTED] as [REDACTED] turned towards him with his left hand raised. Officer Stillman could not see his right hand as [REDACTED] turned. As is demonstrated by the still shot of BWC from the night of the incident, [REDACTED] gun landed inside the Farragut High School fence, the opposite side from where Officer Stillman was standing.



(Att. 25 at 1:50).

Two other factors here that support the reasonableness of deadly force are that Stillman gave several warnings to drop the gun before firing, *see Garner*, 471 U.S. at 11–12, and he did not keep firing his weapon once the threat ██████ posed was over. Notably, Officer Stillman fired a single round in this exchange. *see Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014) (“officers need not stop shooting until the threat has ended”).

iii. COPA’s finding that Stillman failed to use de-escalation techniques before using deadly force is contrary to the evidence presented.

COPA concludes that Stillman violated Department policy by failing to use de-escalation techniques before using deadly force. General Order 03-02 states “members will use de-escalation techniques to prevent or reduce the need for force when it is safe and feasible to do so based on the totality of circumstances”. The order cites “providing a warning and exercising persuasion and advice prior to using force” as an example of a de-escalation technique. It should be pointed out, because COPA failed to, that Stillman gave no less than 6 orders to ██████ all of which were ignored. (Att. 23 at 1:58-2:06). Due to the fact that this interaction was evolving so rapidly, there was no time to employ other techniques listed as examples in the General Order.

COPA makes the claim that Stillman failed to use tactical positioning, such as plastic garbage cans in the alley, for cover. Putting aside the fact that “tactical positioning” is not listed as a de-escalation technique in the General Order in effect at the time, it is important to point out that a plastic garbage can will provide concealment, but never cover. Cover is a term of art used by police which means something that will slow,

deflect or stop bullets. Examples include, large trees, fire hydrants, dirt or rock, an engine block etc.³ In order to offer that protection from enemy fire the object from which the officer is seeking to use as cover must be something that can protect him from gunfire such as a wall or engine block of a car. If Stillman were trying to hide, then utilizing a garbage can would be ideal. A plastic city garbage can offers zero protection from gunfire. A bullet could pierce the plastic garbage can and strike Officer Stillman in an instant. Sitting behind a garbage can when facing an armed subject does nothing more than make someone a stationary target. Shifting to the left, as Stillman explained he did, is much more tactical than curling up behind a plastic garbage can. The benefit of hindsight allows for COPA to proclaim that Stillman should have used de-escalation techniques. As set forth above, Officer Stillman did use de-escalation techniques. However, even if he had not, the General Order in effect at the time stated, those techniques are to be utilized only if safe and feasible. This situation was neither. Stillman would have been reasonable to not use de-escalation techniques given the circumstances. Notwithstanding the danger to himself, his partner and Mr. [REDACTED] Officer Stillman relied on his training and used the de-escalation techniques available to him which COPA ignores in its analysis.

iv. *COPA Incorrectly Found That [REDACTED] Did Not Present An Imminent Threat To Officer Stillman.*

Next, COPA concludes that [REDACTED] did not present an imminent threat. COPA points out that a reasonable Officer with police training would recognize that many subjects flee with firearms with the intention to discard the weapon. Remarkably COPA fails to cite to any case law in support of this position, or consider how dangerous this approach is to public safety. While this may be factually correct in some circumstances, it flies in the face of established Fourth Amendment law and it has no place in the analysis of this incident. COPA could not offer support for this finding because it is expressly contrary to established Fourth Amendment law.

It is well settled that deadly force may not be used unless “the officer has probable cause to believe that the armed suspect . . . ‘poses a threat of serious physical harm, either to the officer or to others,’ or . . . ‘committed a crime involving the infliction or threatened infliction of serious physical harm’ and is about to escape.” *Muhammed v. City of Chi.*, 316 F.3d 680, 683 (7th Cir. 2002) (quoting *Garner*, 471 U.S. at 11–12). “[W]hen 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.” *Muhammed*, 316 F.3d at 683 (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (en banc) (emphasis omitted)). In *Conley-Eaglebear v. Miller*, for example, the court affirmed the entry of summary judgment for an officer on an excessive force claim where the officer shot a fleeing suspect in the back after observing him draw a gun from his waistband and look back over his shoulder toward the officer; the officer “did not need to wait for [the suspect] to face him or point the gun directly at him before acting to protect himself and the community.” No. 16-3065, 2017 WL 7116973, at *2 (7th Cir. Sept. 26, 2017) (citing *Helman v. Duhaime*, 742 F.3d 760, 763 (7th Cir. 2014) (objectively reasonable for officer to shoot suspect who was reaching for firearm); *Henning v. O’Leary*, 477 F.3d 492, 496 (7th Cir. 2007) (“officers cannot be expected to wait until a resisting arrestee has a firm grip on a deadly weapon and completely freed himself from officers trying to subdue him before taking action to ensure their safety”); *Ellis v. Wynalda*, 999 F.2d 243, 247 (7th Cir. 1993) (noting officer would be justified to shoot suspect when he was about to throw a bag at him, up until the moment officer observed that the bag was lightweight, caused no injury, and was no immediate threat); *see also Horton*, 883 F.3d at 952 (reasonable officer would know that “suspect could have turned and produced a gun in a flash given all the facts and circumstances”); *accord White v. City of Topeka*, 489 F. Supp. 3d 1209, 1240 (D. Kan. 2020) (identifying cases where use of deadly force by officer who believed suspect had a gun and suspect was resisting or fleeing law enforcement, even if the suspect never threatened officer, was objectively reasonable) (citing *Jean-Baptiste v. Gutierrez*, 627 F.3d 816, 821 (11th Cir. 2010); *Henning*, 477 F.3d at 496; *Anderson v. Russell*, 247

³ Taken from Tactical Safety & Awareness Recruit Training (CPD – September 2019)

F.3d 125, 130–31 (4th Cir. 2001); *Thompson v. Hubbard*, 257 F.3d 896, 898–99 (8th Cir. 2001); *Slattery v. Rizzo*, 939 F.2d 213, 215–17 (4th Cir. 1991); *George v. Morris*, 736 F.3d 829, 838 (9th Cir. 2013)).

In this case there were no facts or circumstances present for Officer Stillman to reach the conclusion that ██████ did not pose a threat or intended to drop the weapon. The act of fleeing was one factor of many that Stillman considered during the encounter. ██████ ignored 6 orders from Stillman. (Att. 23 at 1:58-2:06). A reasonable Officer's alert level would be heightened by an armed offender's refusal to comply with 6 separate orders.

COPA somehow reaches the unsupported conclusion that ██████ was "in the act of complying with both orders at the moment that Officer Stillman discharged his weapon", and that Stillman "took issue with the way ██████ complied with his orders". (SRI at p. 30). Again COPA does not complete its analysis as that of a reasonable officer under the same set of circumstances as required by the Fourth Amendment case law, but rather engages in results based analysis that because Toldeo dropped the gun "unbeknownst to Officer Stillman" (SRI at p. 1) he must have been complying. Stillman did not know ██████ dropped the gun. COPA admits that the evidence shows that Stillman did not know that ██████ dropped the gun (SRI at p. 1) but still goes on to reach the absurd finding that ██████ was complying. There is no factual basis for this irresponsible conclusion, especially considering that ██████ had not yet complied with a single order.

COPA furthers this irresponsible finding by asserting that Stillman never ordered ██████ not to turn around, the double negative aside, as if such an order would have made a difference⁴. Stillman very clearly ordered ██████ to stop, twice; he did not, Stillman very clearly ordered ██████ to show him his hands, twice; he did not, Stillman very clearly ordered ██████ to drop the gun, he did not. It's disingenuous for COPA to then blame Stillman for not issuing a clear order for ██████ to "not turn around". The person responsible for ██████ actions is ██████. There is nothing on the video to support the conclusion that ██████ was complying. Rather it demonstrates that ██████ ran from Officer Stillman, with a gun, while disobeying command after command. Again, a reasonable officer facing what Stillman was facing would conclude that ██████ based on the totality of his actions that ██████ was posing a threat: not complying with orders, appearing to make his firearm ready to fire, holding a pistol in his right hand with a pistol grip, and raising his left arm up and turning towards Stillman with a pistol in his right hand with his right arm cocked and concealed was posing an imminent threat.

In his statement Stillman spelled out exactly why ██████ was an imminent threat. Stillman knew ██████ had a gun, he knew the gun was in ██████ right hand, ██████ hadn't listened to any verbal commands, ██████ appeared to ready his gun, was turning towards Stillman and was acquiring a target. While ██████ was running, ██████ made a motion that Stillman recognized as being similar to one that makes a firearm ready to fire. "I know he's looking at me in order to go ahead and shoot the gun at me and kill me." (Att. 68, p. 61-62).

COPA goes on to state it should have been clear to Stillman that ██████ by "looking back after stopping at the fence, coupled with his acts of raising his left hand and discreetly moving his right hand with the firearm, were consistent with him surrendering and hiding his firearm." COPA then cites to a case to support their

⁴ COPA acknowledges that Stillman's BWC shows Officer Stillman did order ██████ to "stop" as he was turning but goes on the state "it is not clear that the order was intended to stop ██████ from turning in the officer's direction." (SRI at 31, fn 149; Att. 23 at 2:04). Inexplicably COPA never asked Stillman what he meant when he said "stop". This is an important point because COPA is the investigatory agency and the entity allowed to interview Officer Stillman. COPA had the opportunity to ask Stillman about this and what he meant by "stop" but chose not to. Instead COPA used its lack of questioning on this issue to draw a conclusion which supports COPA's finding rather than even give Stillman the benefit of the doubt.

unreasonable proposition. The case cited *Wealot v. Brooks*, is distinguishable for many reasons, the least of which is the Defendants in that case acknowledged that when Waylon (plaintiff's deceased son) turned toward the officers he "was unarmed and surrendering with his hands bent up at his sides." *Wealot v. Brooks*, 865 F.3d 1119, 1127 (2017). In the case at hand, and as stated by COPA, [REDACTED] was "discreetly moving his right hand with the firearm." (SRI at p. 31). That is a far cry from turning with both hands in the air and bent at the elbows. Stillman stated several times during his statement to COPA that he saw [REDACTED] holding a pistol in his right hand. Why COPA cites to this case as if it is in any way analogous is a mystery.

On Stillman's body-worn camera, which is the closest representation of what Stillman actually saw, you cannot see [REDACTED] toss the pistol. Even after watching a slowed down version of the video, that act is still not seen. The only video that captures [REDACTED] tossing the pistol, comes from a video, mounted on the exterior of Farragut High School, which captures the reverse angle of the encounter from the opposite side of the fence. The fence blocked Officer Stillman's view. Once again, this can only be seen when viewing the slowed down version of the Farragut High School video. (Att. 25; Att. 38).

Next, COPA inexplicably finds that because Stillman never claimed [REDACTED] pointed his weapon at him [REDACTED] was not a threat. This is legally incorrect and defies common sense. As stated above numerous courts have found that an offender need not point a gun at an officer to be a threat, merely possessing the gun is threat enough. *Conley-Eaglebear v. Miller*, for example, entered summary judgment for an officer on an excessive force claim where the officer shot a fleeing suspect in the back after observing him draw a gun from his waistband and look back over his shoulder toward the officer; the officer "did not need to wait for [the suspect] to face him or point the gun directly at him before acting to protect himself and the community." No. 16-3065, 2017 WL 7116973, at *2 (7th Cir. Sept. 26, 2017) (citing *Helman v. Duhaime*, 742 F.3d 760, 763 (7th Cir. 2014) (objectively reasonable for officer to shoot suspect who was reaching for firearm); *Henning v. O'Leary*, 477 F.3d 492, 496 (7th Cir. 2007) ("officers cannot be expected to wait until a resisting arrestee has a firm grip on a deadly weapon and completely freed himself from officers trying to subdue him before taking action to ensure their safety"; COPA graciously acknowledges that some courts have stated that an officer need not wait for a gun to be pointed at them to defend themselves. COPA then states that "other courts have recognized that officers may not shoot someone merely because they possess a firearm, unless that person, through actions or work, threatens the officer with that firearm." COPA cites *Weinmann v. McClone*, 787 F.3d 444, 450 (7th Cir. 2015), as supporting that proposition. *Weinmann* deals with an officer responding to a call of a suicidal man, armed with a shotgun; clearly a much different set of facts than the case at bar. A review of *Weinmann*, revealed no such language on the page cited, nor did a review of the opinion reveal any language to support COPA's proposition. It did however yield the following, "officers may not use deadly force against a suicidal person unless they threaten harm to others, including the officers." 787 F.3d 444, 450 (7th Cir. 2015). Stillman was not responding to a call of a man threatening to harm himself. What's more, Stillman did not shoot [REDACTED] merely because he possessed a firearm, but because of the totality of the circumstances he faced on the scene, Stillman reasonably believed [REDACTED] was going to shoot him. Again Stillman spelled this out during his statement to COPA:

He hasn't listened to any verbal commands. I know he's got the gun. I know it's in his right hand. He's turning towards me as he's looked at me. He's looking in my direction. I know that he's – in my mind, I know that he's acquiring the target. I know that he's looking at me in order to go ahead and shoot the gun at me and kill me.

(Att. 68, p. 61-62)

COPA contends that Stillman's use of a strobe flashlight made it impossible for [REDACTED] to turn around and acquire Stillman as a target. COPA also takes issue with the fact that Stillman offered no explanation as to how [REDACTED] could have done so, though COPA never actually asked Officer Stillman for an explanation. COPA states that [REDACTED] looking back is equally consistent with someone looking back to see if he was being pursued. This statement, in a vacuum, is true. However, this was only one of several factors that Stillman considered. The act of looking back, coupled with the fact that [REDACTED] was armed, and had made a motion with his hands that he was readying his pistol to fire cannot be overlooked.

COPA'S offered rationale for finding Stillman's actions to be an unreasonable use of force, namely that [REDACTED] was fleeing with the intention of discarding the firearm, that [REDACTED] was in the process of complying but "Stillman took issue with the way [REDACTED] complied", the act of looking back was likely only to check that he was being pursued are at best attenuated and speculative at best and only reached using a results based analysis. They do not add up to a preponderance of the evidence that Stillman's use of force was not objectively reasonable. Based on this evidence COPA cannot meet its burden of proof by a preponderance.

- b. COPA Cannot Demonstrate By A Preponderance Of Evidence That Stillman Acted Inconsistent With His Training On Foot Pursuits, Rather The Evidence Supports That Stillman Followed The Guidance Provided In The Training Bulletin.

Allegation 5 against Officer Stillman, that he acted inconsistently with his training under Education Training Bulletin 18-01, Foot Pursuits Training Bulletin, cannot be supported by a preponderance of the evidence given the facts and circumstances presented to COPA. As such, Allegation 5 should not be sustained.

First, it should be noted that the Training Bulletin relied on by COPA includes terms such as "risks to be considered" as well as "factors to be considered" when engaging in foot pursuits. It is not the bright line rule and COPA considers it. It is a training bulletin to give guidance to officers as they face a variety of circumstances. Notwithstanding COPA's misinterpretation of the document itself, on its face Officer Stillman did comply with the Training Bulletin.

In their SRI, COPA intimates that Stillman's pursuit of [REDACTED] created a situation that put members of the public in danger. COPA does not state how allowing an armed 13 year old to remain on the street is safer for the public than a Chicago Police Officer attempting to arrest and recover the illegal firearm [REDACTED] was in possession of and had likely fired.

COPA next criticizes Stillman for separating from his partner. This "separation" is misunderstood and overstated. In her statement, Officer Gallegos related that Officer Stillman was only half a block away from her when he encountered [REDACTED] in fact she stated she could see him running southbound in the alley. (Att. 53, at p. 13). The alley was well lit and the only people present in the alley were Officer Stillman, Officer Gallegos, [REDACTED] and [REDACTED] (Att. 53, at p. 29). Gallegos had already detained [REDACTED] who was found to be unarmed. [REDACTED] did not lead Stillman away from the alley, around a corner or through a yard. Though they were physically not right next to each other, they were not separated to such a point they would be unable to assist one another. Stillman was half a block away in a lit alley. COPA does not indicate that there was any curve to this alley. It was a straight shot. Gallegos, in her statement to COPA, related that she could hear Stillman's voice and observed a flash and heard a pop.

COPA next finds Stillman was inconsistent with his training by not notifying OEMC of the foot pursuit. Stillman did notify OEMC that an individual was running, and that the individual was holding his side. What

COPA does not mention is that his partner notified OEMC of [REDACTED] fleeing, his direction of travel, and the fact he was holding his side. This is important because the Training Bulletin relied upon by COPA states, “When two officers are engaged in a foot pursuit, one should take the role of the ‘primary’ or ‘lead officer, who should direct the foot pursuit and focus on any observed threats, the actions of the subject, and the subject’s location. The ‘secondary’ or ‘support’ officer should be responsible for radio communications, including updating the direction of travel, and requesting assist unit.” (See attached Ex. A). This is precisely what happened here. Officer Stillman was the primary officer and Officer Gallegos, the secondary officer, made the radio communications. COPA’s conclusion is directly contrary to the evidence presented and should not stand. Additionally, the pursuit was very short, and rather than notify OEMC of the foot pursuit, as his partner had already done, Stillman was giving lawful orders to [REDACTED] in an attempt to de-escalate the situation. From Stillman’s body-worn camera, Stillman can be heard giving constant lawful orders to [REDACTED] From mark 1:59 to mark 2:05 on the video, Stillman gives 6 separate orders to [REDACTED] (Att. 23, 1:59-2:05)

In an attempt to support their finding that Stillman acted inconsistently with his training under Education Training Bulletin 18-01, Foot Pursuit Training Bulletin, COPA, in a footnote, inexplicably cites to *Cf. Gafney v City of Chicago*, 302 Ill App. 3d. 41 (1998). In that case the Chief of Chicago Police Department’s Organized Crime Division testified that the Department disciplined officers for the way they handled their guns while at home, while off duty, under a Department rule prohibiting “inattention to duty.” *Cf. Gafney* at 44. COPA is trying to intimate that the case decrees that Officers can be disciplined for “inattention to duty” for almost anything it wants. This is an extremely exaggerated extrapolation for which COPA’s position is completely off the mark.

It appears that COPA sustains this allegation simply because the outcome of the interaction was bad. This kind of outcome based discipline leads to inconsistent and unfair application of discipline. Inconsistent and unfair discipline was recently highlighted as an issue with COPA by the City’s Office of the Inspector General.⁵

Based on the above, the finding that Stillman acted inconsistently with his training under Education Training Bulletin 18-01, Foot Pursuit Training Bulletin is not supported by a preponderance of evidence.

- c. COPA correctly found that Officer Stillman failed to timely activate his BWC and he should be suspended for 5 days as a penalty.

Allegation 6 against Officer Stillman, failure to comply with S03-14 by failing to timely activate his body worn camera is supported by a preponderance of the evidence. Significant weight should be given to the fact that Stillman did eventually activate his camera, and by doing so captured critical points of the encounter. There is nothing to suggest Stillman’s failure to comply was intentional or ill-willed. The discipline imposed for this sustained allegation should be no more than a 5 day suspension.

- d. Even Assuming That Allegation 3 And 5 Should Be Sustained, Which Based On The Evidence They Should Not Be, The Recommended Penalty Of Separation Is An Overreach.

The recommended penalty of separation for Officer Stillman’s use of force – were the allegation to be sustained, which it should not - is excessive and inconsistent with previous administered penalties for excessive force. According to the consent decree, discipline is to be consistently applied. “COPA and CPD will ensure

⁵ See, <https://igchicago.org/wp-content/uploads/2022/06/Fairness-and-Consistency-in-the-Disciplinary-Process-for-Chicago-Police-Department-Members-Copy.pdf>

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).

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 #1086285 involved Sgt. Muhammad, off-duty and in a personal vehicle, shooting an unarmed and 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.

In the present case, Officer Stillman was on-duty and attempting to apprehend a clearly armed individual. Stillman fired at [REDACTED] under the reasonable belief that [REDACTED] was preparing to shoot him. Officer Stillman was truthful in responding to investigators questions, and described in great detail a tense, rapidly evolving situation. Should the allegation be sustained, which for the reasons listed above, the evidence is not sufficient to do so, a penalty less than separation and more in line with the penalty imposed upon Sgt. Muhammad would be appropriate.

II. Allegations against Officer Gallegos

Allegation 3 against Officer Gallegos, failure to comply with S03-14 by failing to timely activate her body worn camera is supported by a preponderance of the evidence. Significant weight should be given to the fact that Gallegos did eventually activate her camera, and by doing so captured important footage of the incident. There is nothing to suggest Gallegos’ failure to comply was intentional or ill-willed. The discipline imposed for this sustained allegation should be 5 days rather than the 30 day penalty recommended by COPA.

Conclusion

For the foregoing reasons, CPD does not concur with the finding of COPA related to allegation number three and five against Officer Stillman and does concur with the finding for Allegation 6 but offers an alternative recommended penalty for Allegation six. CPD does concur with the finding against Officer Gallegos but recommends a suspension of 5 days as opposed to the 30 days recommended by COPA. CPD looks forward to discussing this matter with you pursuant to MCC-2-78-130(a)(iii).

Sincerely,

[REDACTED]

David O. Brown
Superintendent of Police