



September 29, 2022

Mr. Max A. Caproni
Executive Director, Chicago Police Board
30 North LaSalle Street, Suite 1220
Chicago, Illinois 60602

Via Email

RE: Request for Review, Log #2021-0001112

Dear Mr. Caproni,

Pursuant to the Municipal Code of Chicago Section 2-78-130 and Police Board Rules of Procedure Section VI, please consider this letter a Request for Review of a non-concurrence between the Civilian Office of Police Accountability (COPA) and the Superintendent of the Chicago Police Department (Department) in Log # 2021-0001112.¹

As set forth in detail in COPA's Summary Report of Investigation dated April 12, 2022 (SRI), there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation of separation for Officer Eric Stillman based on findings that he discharged his firearm at or in the direction of [REDACTED] in violation of Department policy, acted inconsistently with his training under the Foot Pursuits Training Bulletin, and failed to timely activate his body-worn camera.

The Superintendent bears the affirmative burden of proof in overcoming COPA's recommendations. COPA respectfully requests that the Board reject the Superintendent's non-concurrence in this matter for the reasons set forth below.

I. BACKGROUND

A. Relevant Factual Background²

On March 29, 2021, at approximately 2:36 a.m., Officers Eric Stillman and Corina Gallegos were on routine patrol when they were notified of a ShotSpotter call in the vicinity of 2358 S. Sawyer. The officers responded to the location and observed two individuals, now known to be [REDACTED] (later learned to be 13 years old) and [REDACTED] (later learned to be 21 years old), in the alley between Sawyer and Spaulding. The officers approached [REDACTED] and [REDACTED] in the alley, and upon seeing the officers, [REDACTED] and [REDACTED] ran southbound in the alley. Officers Stillman and Gallegos exited their vehicle and pursued [REDACTED] and [REDACTED] on foot. Officer Gallegos apprehended [REDACTED] who immediately fell to the ground, and Officer Stillman chased [REDACTED]

As Officer Stillman pursued [REDACTED] down the alley. Officer Stillman closed the distance between him and [REDACTED] and stated to [REDACTED] "Stop, stop right fucking now!" [REDACTED] stopped at an opening in a wood fence

¹ As required by the Police Board Rules of Procedure, enclosed are copies of COPA's final summary report, the Department's non-concurrence letter, and the certificate of meeting.

² A more detailed factual summary can be found in the SRI.

near the end of the alley. The video briefly showed [REDACTED] had his back facing Officer Stillman. Officer Stillman shined a light on [REDACTED] and stated, “Hey, show me your fucking hands!” [REDACTED] turned toward Officer Stillman and appeared to put his hands in the air. At this time, Officer Stillman fired one gunshot, and [REDACTED] fell to the ground. Officer Stillman holstered his weapon and rendered aid to [REDACTED] who died on the scene. A black, semi-automatic pistol was later found next to the wood fence, several feet from where [REDACTED] fell.

B. Disputed Findings and Recommendations

As the Superintendent states in the enclosed letter, he does not concur with COPA’s finding that Officer Stillman’s use of deadly force violated Department policy. He further does not concur with COPA’s finding that Officer Stillman violated the Department’s foot pursuit training. Lastly, although the Superintendent agrees with COPA’s sustained findings for allegations pertaining to timely failure to activate BWC, Superintendent disagrees with COPA’s penalty recommendation of separation.³

C. Applicable Department Policy

1. Use of Deadly Force.

Directive G03-02 identifies “the sanctity of human life” as the Department’s “highest priority.”⁴ The Directive further provides that “[t]he 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.”⁵

The use of deadly force is a last resort that is permissible only when necessary to protect against an “imminent threat” to life or to prevent great bodily harm to the member or another person; or to prevent an arrest from being defeated by resistance or escape, where the person poses an “imminent threat” of death or great bodily harm to a sworn member or another person unless arrested without delay.⁶

Department members are required to employ de-escalation techniques to reduce or eliminate the need for force when it is safe and feasible to do so.⁷

2. Foot Pursuits Training Bulletin

The Department’s Foot Pursuit Training Bulletin provides that, “**when making the decision to pursue or to continue to pursue, the safety of the public, Department members and the fleeing person should be the foremost considerations.**”⁸ The Bulletin further provides that officers should not separate from their partner absent exigent circumstances.⁹ The Bulletin defines “separation” as “any situation in which one officer is unable to immediately render aid or otherwise assist the other officer in the apprehension of the subject.”¹⁰

³ The Superintendent appears to have accepted COPA’s lowest recommended penalty for Officer Gallegos’ failure to activate her BWC. Specifically, COPA recommended a penalty range of 5-days to 30-days of suspension and the Superintendent has agreed to the 5-days’ suspension recommendation. *See* Superintendent’s Partial Concurrence and Partial Non-Concurrence with COPA’s proposed findings and penalties, p. 14 (July 11, 2022); *and see* SRI at p. 35.

⁴ G03-02.II.A (Eff. Feb. 29, 2020).

⁵ G03-02.III.B.1.

⁶ G03-02(III)(C).

⁷ G03-02(III)(B)(4); G03-02-01(II)(B).

⁸ *See* ETB#18-1, p. 3.

⁹ *See* ETB#18-1, p. 1.

¹⁰ *See* ETB#18-1, p. 1.

Before a pursuit begins, “officers should try to use assistance from other units and other tactics to their advantage. If officers have reason to believe that a subject may present a flight risk, there may be ways to mitigate the circumstances. Be aware of signs that the subject may be about to flee, such as their body language and movements.”¹¹ If officers believe a subject presents a flight risk, “the officers should consider waiting for backup before [...] approaching a subject who is on foot.”¹² “Using sound tactics might prevent or discourage a subject from fleeing.”¹³ The Bulletin also provides that in cases where a subject is armed, containment, not apprehension, may be the best course of action.¹⁴

The Bulletin further provides that **officers will discontinue the foot pursuit if they determine that the risk to themselves, the subject, or the public outweighs the need to apprehend the subject.**¹⁵ Moreover, the Bulletin strongly discourages “running with a firearm in hand,” noting that it “is to be avoided.”¹⁶ The Bulletin also requires officers to activate their BWCs at the beginning of the incident and to record throughout the entire incident.¹⁷

II. ARGUMENT

As an initial matter, COPA stands by its investigation, findings, and recommendations. It is evident from the Superintendent’s letter that the Department has abandoned any pretext that it will require its officers to meaningfully employ de-escalation techniques to reduce the need for use of deadly force. The Superintendent spends pages attempting to pick apart COPA’s caselaw citations, ignoring that COPA reached its findings by applying the terms authorizing a Department member’s use of deadly force as set forth in the Department’s own policy.

The Department substantially revised its use of force policy in 2017 to emphasize the sanctity of life, de-escalation, and accountability.¹⁸ Of particular note, the duty to use force mitigation techniques became an affirmative requirement. But reform happens in the streets and not on paper. Through his letter, the Superintendent has signaled that a member’s duty to de-escalate exists only on paper.

Furthermore, as noted in the SRI, the Department’s current Use of Force Policy prohibits the use of deadly force under circumstances that would be permissible under the Fourth Amendment to the United States Constitution and Illinois state law. The Superintendent’s focus on COPA’s citations¹⁹ is a diversion.

The ultimate question addressed by COPA in its analysis was whether Officer Stillman violated General Order 03-02 or the Foot Pursuit Training Bulletin. Following a thorough investigation, COPA concluded by a preponderance of the evidence that he violated both provisions. The Superintendent’s steadfast defense of Officer Stillman’s actions ignores the Department’s policies aimed at preventing or reducing the need for force²⁰ and disregards the Consent Decree’s identification of de-escalation as one of the Department’s core principles and one of the primary techniques used to improve the odds of safe outcomes.²¹

¹¹ See ETB#18-1, p. 3.

¹² See ETB#18-1, p. 3.

¹³ See ETB#18-1, p. 3.

¹⁴ See ETB#18-1, p. 5.

¹⁵ See ETB#18-1, p. 3.

¹⁶ See ETB#18-1, p. 4.

¹⁷ See ETB#18-1, p. 4.

¹⁸ See *CPD Announces Use of Force Training Underway: New policy based on public and officer feedback goes into effect into the fall*, July 5, 2017, available at https://www.chicago.gov/content/dam/city/depts/mayor/Press%20Room/Press%20Releases/2017/July/070517_UseofForce.pdf

¹⁹ As noted in the SRI, COPA cites to caselaw to aid in interpretation of common terms or concepts.

²⁰ G03-02.III.C

²¹ Illinois Attorney General, Chicago Police Consent Decree, para. 161

<http://chicagopoliceconsentdecree.org/resources/> (last accessed August 24, 2022)

A. The Preponderance of the Evidence Shows that Officer Stillman Disregarded the Foot Pursuits Training Bulletin.

COPA maintains that Officer Stillman acted inconsistently with the Foot Pursuits Training Bulletin. Specifically, the evidence shows that Officer Stillman's actions on the night of the incident combined a panoply of unsound tactics in contravention of the Bulletin's guidelines. Officer Stillman engaged in a "reckless foot pursuit" by first conducting a "jump out" from an unmarked squad car, then splitting from his partner and chasing and cornering [REDACTED] in an alley without leaving himself viable alternatives to deadly force.²² It was a combination of these unsound tactics and failure to de-escalate that led to Officer Stillman's use of deadly force. Officer Stillman's actions show that he failed to consider the risks prior to initiating a foot pursuit;²³ and, once he initiated the foot pursuit, failed to use sound tactics²⁴ and to follow the requirements as set forth in the Bulletin.²⁵

Prior to initiating the foot pursuit, Officer Stillman did not consider the risks to himself, to his partner, to the two males, or to the public.²⁶ Despite anticipating that the two males might flee, Officer Stillman did not call for or wait for back-up, as the Bulletin recommended.²⁷ The Bulletin explicitly provided that "[h]aving your partner to assist in the possible arrest of a subject is greatly preferred for officer safety."²⁸ Officer Stillman also suspected that the males could be armed due to the ShotSpotter notification. Nevertheless, and without considering the possible danger of an ambush,²⁹ Officer Stillman separated from Officer Gallegos and ran headlong down the alley. In addition, although radio communication was available to him, he failed to use it to obtain the help of assist units that were nearby. Instead, Officer Stillman actively disregarded all sound tactical training and pursued [REDACTED] alone in direct contravention of the Bulletin.

During the pursuit, Officer Stillman confirmed his suspicion that [REDACTED] had a firearm. Despite this realization, Officer Stillman did not stop the pursuit. The Bulletin specifically provided that officers *will discontinue* the foot pursuit *if* they determine that *the risk to themselves, the subject, or the public outweighs the need to apprehend the subject*.³⁰ Here, the risk of Officer Stillman pursuing an armed person alone increased the danger of an armed confrontation.

²² The DOJ report identified "reckless foot pursuits" conducted in a "tactically unsound, often reckless manner, some of which culminated in an officer-involved shooting." For instance, the report highlighted "partner-splitting" and "jump outs" as contributing to the reason for many foot pursuits ending in unnecessary use of force. The Report noted as follows:

The practice involves groups of officers, frequently in plain clothes and riding in unmarked vehicles driving rapidly toward a street corner or group of individuals and then jumping out and rapidly advancing, often with guns drawn. These actions often cause one or more members of the targeted group to walk away briskly or run from the scene. The officers then zero-in on the fleeing person, often with one officer tasked with chasing him on foot. Some of the most problematic shootings occurred when that sole officer closed in on the subject, thus greatly increasing the risk of a serious or deadly force incident.

United States Department of Justice Civil Rights Division and United States Attorney's Office, Northern District of Illinois, Investigation of the Chicago Police Department, Executive Summary, pp. 5, 30-31 (January 13, 2017), <https://www.justice.gov/opa/file/925846/download> (last accessed August 24, 2022) (emphasis added)

²³ See ETB#18-1, p. 1.

²⁴ See ETB#18-1, p. 2.

²⁵ See ETB#18-1, p. 4.

²⁶ See ETB#18-1, p. 1; It is evident that the Foot Pursuits Bulletin adopted the DOJ's recommendation that any foot pursuit policy implemented should "*balance* the objective of apprehending the suspect with the risk of potential injury to the officer, the public, and the suspect." United States Department of Justice Civil Rights Division and United States Attorney's Office, Northern District of Illinois, Investigation of the Chicago Police Department, Section VI.A.1.c, p. 151 (January 13, 2017), <https://www.justice.gov/opa/file/925846/download> (last accessed August 24, 2022) (emphasis added)

²⁷ See ETB#18-1, p. 3.

²⁸ See ETB#18-1, p. 1.

²⁹ See ETB#18-1, p. 1. The Bulletin warned that separation from a partner could mean walking into an ambush, increasing safety concerns for everyone.

³⁰ See ETB#18-1, p. 3.

In addition to not terminating the pursuit, Officer Stillman also did not contact OEMC or request back-up once he saw [REDACTED] with the gun. The Superintendent contends that Officer Gallegos' notification to OEMC sufficed. And this likely would have been true had the partners remained together. Here, however, the partners separated. Officer Stillman's decision to separate from his partner rendered Officer Gallegos unable to immediately assist in [REDACTED] apprehension or render aid once [REDACTED] was shot because she was actively detaining [REDACTED]. She also could not accurately report to OEMC what Officer Stillman was observing during the pursuit, because she was too far away. She admitted that all she could see and hear was a muzzle "flash and a pop."³¹ Officer Stillman's decision to pursue [REDACTED] without back-up, without a plan, and without any attempts to consider the safety of all involved violated the Foot Pursuits Training Bulletin and warrants dismissal.

B. Officers can and should be held accountable for failing to comply with their training.

The Superintendent states COPA is off the mark for seeking to hold officers accountable for failures in the performance of their duties, and in particular for failing to follow their training. COPA does not believe it unreasonable to expect that Department members comply with their training. Anything else risks placing all officers at risk in highly dangerous circumstances. In addition, Department members carry with them the responsibility at all times to protect the community. Permitting officers to avoid responsibility for their training risks not only public safety but the community's trust that officers will adhere to best practices. Officers receive training to ensure that they enter the world with the knowledge and skills necessary to effectively perform their duties as police officers. COPA does not believe it unfair or unimaginable that an officer be expected to properly perform their duties.

C. The Preponderance of the Evidence Shows that Officer Stillman Violated Department's Use of Deadly Force Policy by Discharging his Weapon at or in the Direction of [REDACTED] while [REDACTED] Posed No Imminent Threat.

For the reasons set forth in its SRI, COPA maintains that [REDACTED] did not pose an imminent threat to Officer Stillman when Officer Stillman shot and killed him. The Superintendent disputes this by arguing that the shooting was justified because [REDACTED] had a gun and was running away from Officer Stillman.³² This argument blatantly contradicts Department policy, which prohibits shooting at a fleeing individual. The evidence shows that [REDACTED] was in the process of complying with Officer Stillman's orders to drop the gun and raise his hands at the time Officer Stillman fired his weapon. The Superintendent nevertheless claims that the threat was imminent,³³ apparently disregarding the applicable Department policy which requires an analysis of the totality of the circumstances facing the officer.

Specifically, the Superintendent has laser-focused on the milliseconds leading up to Officer Stillman's use of deadly force against [REDACTED] to show that Officer Stillman's conduct was justified. By focusing on milliseconds, the Superintendent has failed to consider the totality of the circumstances leading up to Officer Stillman's firearm discharge. First, even when focusing on milliseconds, as is the Superintendent's preference, [REDACTED] did not pose an imminent threat. The preponderance of the evidence shows that [REDACTED] was complying with Officer Stillman's orders at the time he was shot. Had Officer Stillman given [REDACTED] a chance to comply with his orders, he would have seen that [REDACTED] no longer had the gun in his right hand. Second when evaluated in light of the totality of the circumstances, the evidence shows that not only did Officer Stillman fail to use de-escalation techniques, but he escalated the incident.

³¹ Summary Report of Investigation at p. 4.

³² Superintendent's Partial Concurrence and Partial Non-Concurrence with COPA's proposed findings and penalties, p. 7 (July 11, 2022).

³³ Superintendent's Partial Concurrence and Partial Non-Concurrence with COPA's proposed findings and penalties, pp. 9-12 (July 11, 2022).

³⁴ Superintendent's Partial Concurrence and Partial Non-Concurrence with COPA's proposed findings and penalties, p. 6 (July 11, 2022).

In addition, the Superintendent's suggestion that Officer Stillman's use of de-escalation techniques was sufficient effectively renders that duty meaningless. Officer Stillman placed himself in a position that limited his ability to use other force options. He did so by engaging in a tactically unsound foot pursuit and by failing to consider other available options to avoid the need for use of force. Officer Stillman's actions placed everyone on scene in danger, violated Department policy, and warrants dismissal.³⁵

D. Officer Stillman's Failure to Timely Activate his Body-Worn Camera Warrants a Higher Penalty than that Suggested by the Superintendent.

The Superintendent contends that Officer Stillman should only receive a 5-day suspension for his failure to timely activate his body-worn camera (BWC). The Superintendent argues that "[s]ignificant weight" should be accorded to the fact that Officer Stillman eventually activated his camera.³⁶ The Superintendent, however, fails to consider that Officer Stillman's untimely BWC activation resulted in crucial information lost. His failure to timely activate the BWC resulted in a loss of evidence including whether the officers announced their presence when they exited their car, whether any words were exchanged with [REDACTED] and [REDACTED] and what verbal commands, if any, the officers gave to [REDACTED] and [REDACTED] prior to Officer Stillman engaging in and during the foot pursuit.

The duty to activate the BWC is mandatory.³⁷ Here, Officer Stillman should have activated his BWC as soon as he responded to the ShotSpotter alert. There did not appear to be any circumstances preventing Officer Stillman from activating his BWC at the beginning of the incident. This was not an on-view incident that caught the officers by surprise. His failure to timely activate his BWC appears to be the result of his inattention to duty. Officer Stillman's inattention to duty is especially concerning given his status as the shooting officer and the sole officer engaging in the foot pursuit of [REDACTED]. Officer Stillman was the only one able to capture the entire incident's audio. His failure to timely activate his BWC is illustrative of his disregard for Department policy and training and warrants his dismissal.

E. Questions of Fact or Law Should be Decided after a Full Hearing of the Police Board.

COPA disagrees with many of the Superintendent's arguments regarding the application of law and policy to the facts of this case.³⁸ Given the nature and extent of those disagreements, COPA respectfully submits

³⁵ In his supplemental submission, the Superintendent attaches an opinion of a single member of the Police Board. Respectfully, COPA disagrees with that opinion and disputes that this is the precedent the Police Board should follow. The opinion cited is that of a single member of the Police Board based on a limited review of the entire evidentiary file and decided without an opportunity for argument. In COPA's view, the opinion did not adequately consider the heightened requirements for use of deadly force as outlined in Department policy. COPA encourages the Police Board to evaluate the facts of this case during a full hearing and to apply Department policy following that hearing. COPA is confident that the Police Board will conduct such an independent analysis following a thorough hearing to reach the outcome that is just based on the facts of this case. Then, only if the Board comes to the same conclusion as the single member, should it apply the same or similar discipline. Reliance on the opinion of the single member would do a disservice to all involved absent a full hearing. *See Superintendent's Partial Concurrence and Partial Non-Concurrence with COPA's proposed findings and penalties*, p. 1 (July 22, 2022) (citing *In the Matter of Recommendations for Discipline of Police Officer Evan Solano, No. 22RR07 and Police Officer Sammy Encarnacion, No. 22RR08* (July 20, 2022)).

³⁶ Superintendent's Partial Concurrence and Partial Non-Concurrence with COPA's proposed findings and penalties, p. 13 (July 11, 2022).

³⁷ S03-14.III.A.2 (The policy requires officers to activate their camera at the beginning of an incident and to record the entire incident for all "law enforcement related activities," including, but not limited to calls for service, arrests, use of force incidents, high risk situations, foot and motor vehicle pursuits, and statements made by individuals during the course of an investigation.)

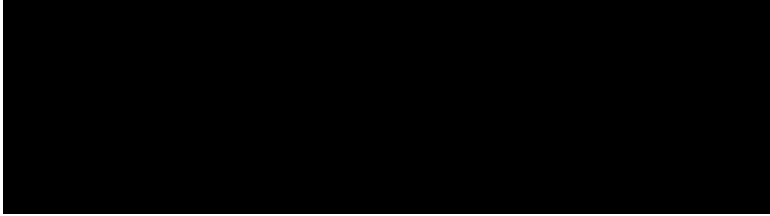
³⁸ Many of the cases the Superintendent relies on are distinguishable, have minimal precedential value and do not support his argument for a broader interpretation of the use of deadly force. *See e.g. Superintendent's Partial Concurrence and Partial Non-Concurrence with COPA's proposed findings and penalties*, pp. 4-5, 9-10 (July 11, 2022)

that the many issues raised would be more appropriately addressed through a full hearing of the Police Board. COPA also welcomes an opportunity to present additional argument upon request of the single member of the Police Board.

III. CONCLUSION

For these reasons, COPA maintains that the Superintendent has failed to meet his affirmative burden of showing COPA's recommendations in this case are unreasonable. Accordingly, COPA respectfully requests that the Chicago Police Board reject the Superintendent's non-concurrence in this matter and accept COPA's recommendation to separate Officer Stillman.

Respectfully,



Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability

(citing 4th, 8th, 9th, 11th Circuit cases and an opinion from a District Court in Kansas). The Superintendent's reliance on *White v. City of Topeka*, 489 F. Supp. 3d 1209 (D. Kan. 2020) (holding that an officer can shoot a fleeing suspect even if the suspect never threatened the officer with a weapon.) is misguided. The case is not precedential, and its holding is contrary to Department Policy.