



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 #2021-0003940

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 (CPD) in Log # 2021-0003940.¹

As set forth in detail in COPA's Final Summary Report (FSR) dated April 30, 2023, there is a compelling legal and evidentiary basis to support COPA's disciplinary recommendation that Police Officer Alberto Covarrubias be separated from CPD based on findings that he (1) improperly used deadly force on [REDACTED] and (2) failed to render medical aid after shooting him.

I. BACKGROUND

A. Relevant Factual Background²

Officer Covarrubias and Sergeant West responded to a 911 call of a woman, [REDACTED] threatening her husband, Mr. [REDACTED] with a knife on the morning of October 4, 2021.³ Officer Covarrubias and Sergeant West arrived and spoke with Ms. [REDACTED] and Mr. [REDACTED] seven-year-old son, who told them Ms. [REDACTED] had a knife, and that his father had told him to call police.⁴

Officer Covarrubias and Sergeant West entered the apartment common area, where they heard yelling, and walked up the stairs towards Mr. [REDACTED] apartment.⁵ Mr. [REDACTED] yelled words to the effect of "she's got a butcher knife on my neck", and Ms. [REDACTED] and Mr. [REDACTED] both screamed.⁶ Officer Covarrubias transitioned his taser to his left hand, drew his firearm with his right hand, and entered the apartment door.⁷ As Officer Covarrubias entered the apartment, Mr. [REDACTED] and Ms. [REDACTED] appeared to be struggling with each other.⁸ Officer Covarrubias yelled "oh shit, get down", and shot Mr. [REDACTED] once within seconds of entering the doorway.⁹ Officer Covarrubias inadvertently discharged his taser, as [REDACTED] and [REDACTED] fell to the ground.¹⁰

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

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

³ Att. 14, OEMC Report.

⁴ Att. 1 (Officer Covarrubias BWC) at 2:12-22.

⁵ Officer Covarrubias BWC at 2:35-55.

⁶ Officer Covarrubias BWC at 2:57-3:01.

⁷ Officer Covarrubias BWC at 3:01-03.

⁸ Officer Covarrubias BWC at 3:03-04.

⁹ Officer Covarrubias BWC at 3:03-04.

¹⁰ Officer Covarrubias BWC at 3:04.

Officer Covarrubias repeatedly yelled “stop”, and shot Mr. █████—who had fallen on the ground—again, approximately three seconds after the first shot.¹¹ Following the shooting, Officer Covarrubias provided no medical attention to Mr. █████ but attempted to provide it to Ms. █████ who had no injuries.

B. Disputed Findings and Recommendations

The Superintendent disputes COPA’s sustained allegation #1 against Officer Covarrubias for discharging his firearm at or in the direction of Mr. █████ in violation of CPD policy.¹² Notably, the Superintendent concurs that Officer Covarrubias failed to use de-escalation techniques, as required by CPD policy.

C. Applicable CPD Policy

CPD policy requires members “to use de-escalation techniques to prevent or reduce the need force, unless doing so would place a person or a CPD member in immediate risk of harm, or de-escalation techniques would be clearly ineffective under the circumstances”.¹³

CPD members are only permitted to use force when it is (1) objectively reasonable, (2) necessary, and (3) proportional.¹⁴ CPD members are required to only use force that is “objectively reasonable in light of the totality of the circumstances”.¹⁵ CPD members must “*continually assess the necessity* of the use of force and whether alternatives may be employed”.¹⁶

CPD members may only use deadly force—including firearms—as “a last resort”, when necessary to prevent death or great bodily harm from an imminent threat.¹⁷ A threat is imminent when “it is objectively reasonable to believe” (1) a subject’s “actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken;” (2) the subject “has the means or instruments to cause death or great bodily harm;” and (3) the subject “has the opportunity or ability to cause death or great bodily harm.”¹⁸

II. ARGUMENT

A. Allegation #1 is properly sustained based on Officer Covarrubias’s failure to de-escalate in violation of General Order G03-02.

The Superintendent acknowledges that Officer Covarrubias failed to use de-escalation techniques;¹⁹ despite this fact, he maintains Allegation #1 should be not sustained. An officer’s duty to de-escalate is fundamental to CPD’s use of force policy. De-escalation techniques are designed to slow down an incident to give an officer more time, distance, and space to assess and resolve a situation. De-escalation also goes to the heart of the Consent Decree, which identifies de-escalation as a “core principle.”²⁰ The Department of Justice

¹¹ Officer Covarrubias BWC at 3:05-07.

¹² The Superintendent concurs with COPA’s sustained Allegation #1 against Sergeant West, and Allegation #2 against Officer, for failure to render medical aid to Mr. █████ The Superintendent concurs with COPA’s 60-day suspension recommendation against Sergeant West, but disputes COPA’s separation recommendation against Officer Covarrubias and recommends a 90-day suspension.

¹³ G03-02 III.C; G03-02-01 II.B.

¹⁴ G03-02 III.B.

¹⁵ G03-02 III.B.1.

¹⁶ G03-02 III.B.2 (emphasis added).

¹⁷ G03-02 IV.C.

¹⁸ G03-02 IV.B.

¹⁹ Non-Concurrence at p. 2 (“the Department concurs that P.O. Covarrubias did violate G03-02 in that he failed to use de-escalation techniques.”); at p. 4 (“The Department concurs that P.O. Covarrubias could have used de-escalation techniques upon entry to the apartment and while it was a very short period of time officers are trained to use these techniques.”).

²⁰ *Illinois v. City of Chicago*, CONSENT DECREE, ¶¶ 42, 48, 85, 88, 94, 96, 126, 153, 156, 157, 161, 243-244, 246, 248, 266, 272, 317, 334, 352, 375, 413, 574, 791, 17CV06260 (N.D. Ill., Sep. 13, 2018) (Para. 161 provides that “CPD

found that CPD members engaged in a pattern or practice of unreasonable deadly force. It found that officers used reckless tactics, limiting their options to the use of deadly force.²¹

Here, Officer Covarrubias' reckless tactics resulted in the loss of innocent life. Instead of using de-escalation techniques—as required under CPD policy—Officer Covarrubias immediately used deadly force, which violated G03-02 and G03-02-01. The Superintendent does not explain why Allegation 1 should not be sustained on that basis.²²

B. The preponderance of the evidence shows that Officer Covarrubias's further violated CPD policy when he repeatedly shot Mr. █████ within seconds of entering the apartment.

The evidence shows that Officer Covarrubias immediately shot Mr. █████ despite having several pieces of information indicating that Mr. █████ was in danger.²³ Dispatch and the couples' seven-year-old son informed Officer Covarrubias that a woman had threatened a man with a knife. This information was confirmed when, after Officer Covarrubias announced himself, Mr. █████ yelled that Ms. █████ was holding a knife to his neck. Mr. █████ also had defensive knife wounds, while Ms. █████ had none. Taken together, the totality of the circumstances indicated to Officer Covarrubias that Mr. █████ was the person at risk in this incident and did not pose an imminent threat.

COPA maintains that Officer Covarrubias's first shot was not objectively reasonable, and that Officer Covarrubias compounded his error by shooting Mr. █████ again as he lay injured on the floor. After the first shot, Officer Covarrubias waited approximately three seconds before shooting █████ again. By this point, Mr. █████ and Ms. █████ had fallen to the floor. Mr. █████ was not moving towards Ms. █████. The totality of these facts again showed that Mr. █████ was not an imminent threat the second time Officer Covarrubias shot him. At this point, CPD policy required Officer Covarrubias to assess the situation and de-escalate his force.

This case is similar to the case of former CPD member Robert Rialmo that the Board considered in 2019.²⁴ In that case, the Board found Rialmo guilty of violating CPD's use of force orders when he shot and killed an innocent bystander, █████ █████. The Board voted unanimously to discharge Rialmo from CPD based on his failure to take reasonable precautions to prevent █████ death. In reaching that conclusion, the Board wrote:

While the Board understands that Officer Rialmo found himself in a difficult situation, police officers must take all reasonable precautions available to them in order to avoid the loss of innocent life. The Department and the residents of Chicago rightfully demand that police officers protect those around them—including requiring an officer to consider the

officers must use de-escalation techniques to prevent or reduce the need for force whenever safe and feasible" by, among other things, slowing down the pace of an incident, tactical positioning, communication, requesting assistance, using less lethal force, and using trauma-informed communication techniques.).

²¹ See generally *Investigation of the Chicago Police Department*, United States Department of Justice and United States's Attorney's Office Northern District of Illinois (Jan. 13, 2017).

²² Officer Covarrubias's failure to de-escalate alone calls for discipline far greater than the 90-days the Superintendent suggests. COPA also believes that Officer Covarrubias's failure to render aid to Mr. █████ was so egregious as to warrant a suspension greater than 90 days. Furthermore, COPA notes that the Police Board previously considered separation charges against Officer Covarrubias in 2019. See *In the matter of charges filed against Police Officer Alberto Covarrubias, Star No. 18769, Department of Police, City of Chicago*, No. 18 PB 2947 (CR 1079817).

²³ The Superintendent argues that Mr. █████ "had the option to drop the knife and retreat as P.O. Covarrubias announced, 'Chicago Police' and gave directions to stop." (Non-Concurrence. at p. 5) This argument ignores the extremely short amount of time that Officer Covarrubias gave to Mr. █████ to comply. Moreover, the Superintendent discounts the complex nature of the domestic incident. Officer Covarrubias had information that Ms. █████ was the aggressor and had attacked Mr. █████ with a knife. It is unreasonable to believe that dropping the knife was a realistic option for Mr. █████.

²⁴ *In the matter of charges filed against Police Officer Robert Rialmo, Star No. 15588, Department of Police, City of Chicago*, No. 18 PB 2950 (CR 1078616).

presence of an innocent bystander when deciding to use deadly force if an officer knows or reasonably should know that an innocent bystander is in his line of fire.²⁵

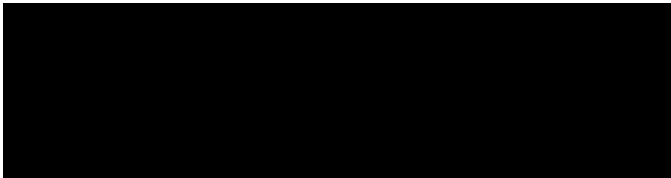
The Board found that Rialmo had the opportunity to prevent the loss of innocent life but failed to alter his tactics.

Similarly, COPA found that Officer Covarrubias had the opportunity and obligation to alter his tactics to prevent the loss of innocent life. Officer Covarrubias had every indication that Mr. [REDACTED] was at risk in this incident. Instead of taking steps to protect him, Officer Covarrubias shot him without taking the time to consider all the circumstances.

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 findings and recommendations.²⁶

Respectfully,



Andrea Kersten
Chief Administrator
Civilian Office of Police Accountability

²⁵ *Id.* at p. 24.

²⁶ At the very least, COPA believes resolution of this disagreement would benefit from a full hearing before the full board for expert testimony on the use of deadly force and the duty to de-escalate.