



**Brandon Johnson**  
Mayor

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

**Fred L. Waller**  
Interim Superintendent of Police

June 30, 2023

Andrea Kersten  
Chief Administrator  
Civilian Office of Police Accountability ("COPA")  
1615 W. Chicago Ave., 4<sup>th</sup> Floor

Re: Complaint Register Number: 2021-0003940  
Interim Superintendent's partial Non-Concurrence with COPA's findings and proposed penalty:  
Police Officer Alberto Covarrubias #18769  
Interim Superintendent's Concurrence with COPA's findings and proposed penalty:  
Sergeant Jeffrey West #1914

Dear Chief Administrator Kersten:

Based on a review of the above-referenced complaint register ("CR"), the Chicago Police Department ("CPD") partially concurs with the recommended findings and penalty for Police Officer ("P.O.") Covarrubias as related to two sustained findings. CPD concurs with the sustained findings and penalty against Sergeant ("Sgt.") West. In accordance with Municipal Code of Chicago, MCC 2-78-130, the Interim Superintendent provides the following comments when there is a disagreement as to the investigative findings and proposed penalty.

### **ALLEGATIONS**

It is alleged by COPA that on or about 04 Oct 2021, at approximately 07:26, at or near [REDACTED], P.O. Covarrubias committed misconduct through the following acts or omissions:

Allegation #1 – Discharging his firearm at or in the direction of [REDACTED] in violation of G03-02.

Allegation #2 – Failing to immediately render medical aid to [REDACTED] in violation of G03-02(V).

It is also alleged by COPA, by and through Deputy Chief Matthew Haynam, that on or about 04 Oct 2021, at approximately 07:26, at or near [REDACTED], Sgt. West committed misconduct through the following acts or omissions:

Allegation #1 – Failing to immediately render medical aid to [REDACTED] in violation of G03-02(V).

## FACTS:

On the morning of 04 Oct 2021, [REDACTED] [REDACTED] and his neighbor, both of [REDACTED], called 911 to report a domestic incident involving an assault with a knife. Mr. [REDACTED] neighbor stated that Mr. [REDACTED] son had knocked on her door and related that his mother had a knife; Mr. [REDACTED] told the 911 call taker that his wife, [REDACTED] had a knife to his throat. P.O. Covarrubias and Sgt. West responded to the residence, where they encountered Mr. [REDACTED] 7-year-old son, [REDACTED] outside the entrance to the building. The boy stated his mother had a knife and his father told him to call 911<sup>1</sup>. The officers entered the building, announced their office, and heard screaming as they ascended the stairway to the second-floor apartment. P.O. Covarrubias initially drew his taser, but then transitioned to his firearm when he observed Mr. [REDACTED] holding a knife above his head and then lowering it to his side while standing next to Ms. [REDACTED]. P.O. Covarrubias next entered the open apartment door, at which point he immediately yelled, "Oh shit, get down! Stop, stop!" Officer Covarrubias fired his weapon once at Mr. [REDACTED] while he was standing and then again while he was lying on the floor on his left side facing Ms. [REDACTED]. There was a brief pause in between shots.

P.O. Covarrubias later told investigators that he observed Mr. [REDACTED] with a knife and believed Mr. [REDACTED] was stabbing Ms. [REDACTED]. Ms. [REDACTED] sustained no injuries during the incident, but an autopsy found that Mr. [REDACTED] had multiple incise wounds to his arms, head, and back from a cutting instrument, as well as a gunshot wound to the abdomen and another to the chest that struck his heart<sup>2</sup>. At no point did P.O. Covarrubias or Sgt. West attempt to perform LEMART or other life saving techniques on Mr. [REDACTED].

## ANALYSIS

### **P.O. Covarrubias**

#### **Allegation #1 – Discharging his firearm at or in the direction of [REDACTED] in violation of G03-02.**

This allegation that P.O. Covarrubias discharged his weapon in violation of G03-02 should not be sustained; however, the Department concurs that P.O. Covarrubias did violate G03-02 in that he failed to use de-escalation techniques. Based on the BWC video provided by COPA and P.O. Covarrubias' statement, one can make a determination that he used deadly force on Mr. [REDACTED] because he reasonably believed that Mr. [REDACTED] was armed with a dangerous weapon that could cause death or great bodily harm to another individual and was an imminent threat to Ms. [REDACTED] life. The issue is reduced to whether or not P.O. Covarrubias' actions were objectively reasonable, necessary, and proportional, given the totality of the circumstances and whether or not P.O. Covarrubias could have used de-escalation techniques to mitigate the situation.

### **Constitutional Precedent - Police Deadly Force**

In *Graham v. Connor*, the hallmark United States Supreme Court Fourth Amendment case on police use of force, the Court held that claims of use of force by government officials are properly analyzed under the Fourth Amendment's "objective reasonableness" standard. Furthermore, the "objective reasonableness" of a use of force should be judged by the perspective of an officer on the scene, and should take into account factors

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<sup>1</sup> Att. 65, pg. 1.

<sup>2</sup> Att. 65, pg. 1.

such as the severity of the crime, the threat posed by the suspect, and any attempts by the suspect to resist or evade arrest<sup>3</sup>.

### **Illinois State Law - Deadly Force**

According to 720 ILCS 5/7-5, a peace officer is justified in using force likely to cause death or great bodily harm only when he reasonably believes, based on the totality of the circumstances, that such force is necessary to prevent death or great bodily harm to himself or another person. A peace officer is not justified in using force likely to cause death or great bodily harm when there is no longer an imminent threat of great bodily harm to the officer or another<sup>4</sup>.

Where feasible, a peace officer shall, prior to the use of force, make reasonable efforts to identify himself or herself as a peace officer and to warn that deadly force may be used. This authority shall be exercised judiciously and with respect for human rights and dignity and for the sanctity of every human life. Police officers shall use deadly force only when reasonably necessary in defense of human life. In determining whether deadly force is reasonably necessary, officers shall evaluate each situation in light of the totality of circumstances of each case, including, but not limited to, the proximity in time of the use of force to the commission of a forcible felony, and the reasonable feasibility of safely apprehending a subject at a later time, and shall use other available resources and techniques, if reasonably safe and feasible to a reasonable officer<sup>5</sup>.

The decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time of the decision, rather with the benefit of hindsight, and the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force<sup>6</sup>.

### **CPD Policy - Deadly Force**

CPD's general order on De-escalation, Response to Resistance, and Use of Force (G03-02) states that the Department's highest priority is the sanctity of human life and its members should seek to gain voluntary compliance of persons when consistent with personal safety. Furthermore, Department members involved in a use of force incident will make an independent assessment and decision to use force based on the totality of the circumstances and whether such force is objectively reasonable, necessary, and proportional; however, nothing in this policy requires members to take actions, or fail to take actions, that unreasonably endanger themselves or others<sup>7</sup>.

Department members are required to use de-escalation techniques to prevent or reduce the need for force, unless doing so would place a person or a Department member in immediate risk of harm, or de-escalation techniques would be clearly ineffective under the circumstances at the time<sup>8</sup>.

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<sup>3</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>4</sup> 720 ILCS 5/7-5. <https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=072000050K7-5>. Jan 25, 2021.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> Chicago Police Department Directive, *De-Escalation, Response to Resistance, and Use of Force*. General Order G03-02. Pg. 1.

<sup>8</sup> *Id.* at 2.

The use of deadly force is a last resort that is permissible only when necessary to protect against an imminent threat of life or to prevent great bodily harm to the member or another person. Additionally, the Department defines an imminent threat as when it is objectively reasonable to believe that the person's actions are immediately likely to cause death or great bodily harm to the member or others unless action is taken; the person has the means or instruments to cause death or great bodily harm; and the person has the opportunity and ability to cause death or great bodily harm<sup>9</sup>.

### **Analysis of Use of Force**

In light of the totality of the circumstances faced by P.O. Covarrubias during this incident, the force he used against Mr. ██████ was objectively reasonable, necessary, and proportional in order to protect Ms. ██████ from death or great bodily harm. COPA did not assess the reasonableness of P.O. Covarrubias' use of force based on the totality of the circumstances related to the incident.

COPA argues that P.O. Covarrubias' use of deadly force was not objectively reasonable, necessary, and proportional because he received multiple OEMC radio calls describing Ms. ██████ as the aggressor, and Mr. ██████ did not pose a risk of death or great bodily harm to Ms. ██████. COPA also claims that Mr. ██████ was not the aggressor because he had multiple injuries and Ms. ██████ had none. Furthermore, COPA claims that P.O. Covarrubias failed to use de-escalation techniques to mitigate the situation. Factors of objective reasonableness to be considered in determining if P.O. Covarrubias' use of deadly force was objectively reasonable and consistent with G03-02 include, but are not limited to whether the person is posing an imminent threat to the member or others; the risk of harm, level of threat, or resistance presented by the person; the person's proximity or access to weapons; whether de-escalation techniques can be employed or would be effective; and the availability of other resources<sup>10</sup>.

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.

The amount of time P.O. Covarrubias had to evaluate and consider the circumstances must be taken into account to put oneself in his position at the instance he decided to use deadly force. The total length of time that passed between P.O. Covarrubias observing Mr. ██████ with a knife and the first of two shots was approximately 2 seconds. This is the essence of a situation where a police officer was forced to make a split second decision in a circumstance that was tense, uncertain, and rapidly evolving. The reasonableness of a particular use of force incident must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of retrospection<sup>11</sup>. Furthermore, nothing in the Department's use of force policy requires members to take actions, or fail to take actions, that unreasonably endanger themselves or others<sup>12</sup>.

The court in *Cooper v. Sheehan* held that an officer does not possess the unfettered authority to shoot a member of the public simply because the person is carrying a weapon. 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

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<sup>9</sup> *Id.* at 4.

<sup>10</sup> *Id.* at 2.

<sup>11</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

<sup>12</sup> Chicago Police Department Directive, *De-Escalation, Response to Resistance, and Use of Force*. General Order G03-02. Pg. 1.

weapon<sup>13</sup>. In determining whether the threat Mr. █████ posed to Ms. █████ may be considered imminent, three factors must be taken into account. First, it must be objectively reasonable for P.O. Covarrubias to believe that Mr. █████ actions were immediately likely to cause death or great bodily harm to Ms. █████ unless an action was taken. Second, it must be considered whether it was objectively reasonable for P.O. Covarrubias to believe that Mr. █████ had the means or instruments to cause death or great bodily harm to Ms. █████ Finally, it must be considered whether it was objectively reasonable for P.O. Covarrubias to believe that Mr. █████ had the opportunity and ability to cause death or great bodily harm.

In the instant case, P.O. Covarrubias was forced to make a split second decision to use deadly force against Mr. █████ Department members are trained to expect any type of variable when responding to a call for service, and it is not unfeasible for a victim to transition to an assailant / offender. P.O. Covarrubias announced his office in a louder than conversational tone within close proximity to the apartment door, which was open. Therefore, a reasonable officer on scene could believe that he was heard by Mr. █████ Furthermore, COPA acknowledged that P.O. Covarrubias communicated by directing Mr. █████ to stop and get down prior to discharging his firearm. Although limited, these actions can be considered de-escalation techniques based on the totality of the circumstances. Mr. █████ had the option to drop the knife and retreat as P.O. Covarrubias announced "Chicago Police" and gave directions to stop.

It should also be noted that P.O. Covarrubias initially drew a less than lethal instrument in his taser first. He drew his firearm and fired a round at Mr. █████ only when he realized that Mr. █████ was an imminent deadly threat to Ms. █████ by holding a knife over her head and on the side within an arm's length distance while moving towards her. Additionally, P.O. Covarrubias heard a female voice who sounded like she was in distress as he was ascending the staircase to the apartment. A reasonable officer on scene could believe that Mr. █████ had the means and opportunity to kill Ms. █████ Additionally, one could assess that Mr. █████ was bigger and presumably stronger than Ms. █████ which makes him more dangerous.

It is worth noting that COPA failed to secure the interviews of Ms. █████ and █████ key eyewitnesses to the events that unfolded that morning. Without their statements, COPA is unable to substantiate its assertion that P.O. Covarrubias' use of force was unreasonable.

Any purported inconsistency between P.O. Covarrubias' COPA statement and the BWC video can be reconciled. Furthermore, he paused briefly in between shots and stated that Mr. █████ was still standing before he fired the 2nd shot; however, the BWC depicts Mr. █████ laying on the ground on his left side while facing Ms. █████ who was also on the ground. Mr. █████ right hand is unarmed, but his left hand and the knife are out of view and within reach of Ms. █████ A reasonable officer on scene could believe that Mr. █████ still had the means and opportunity to attack Ms. █████ even though he was on the ground.

Although tragic and unfortunate, the use of deadly force against Mr. █████ was permissible to protect against an imminent threat to life or to prevent bodily harm to Ms. █████ As previously stated, the reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the benefit of 20/20 hindsight<sup>14</sup>. Based on the totality of the circumstances, P.O. Covarrubias' use of de-escalation techniques, no matter how limited, was objectively reasonable. It would have been neither safe nor feasible for him to take any further de-escalation actions.

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<sup>13</sup> *Cooper v. Sheehan*, 735 F.3d 153, 159 (4th Cir. 2013).

<sup>14</sup> *Graham v. Connor*, 490 U.S. 386 (1989).

There is a preponderance of the evidence demonstrating P.O. Covarrubias' use of force was objectively reasonable based on the totality of the circumstances. Furthermore, his actions were in line with CPD policy, and the facts presented by COPA are legally insufficient to sustain this allegation.

**Allegation #2 – Failing to immediately render medical aid to ██████████ in violation of G03-02(V).**

Based upon the preponderance of the evidence, P.O. Covarrubias violated general order G03-02(V) by failing his duty to render aid to Mr. ██████████. This allegation should be sustained.

**Illinois State Law - Duty to Render Aid**

According to 720 ILCS 5/7-15, it is the policy of the State of Illinois that all law enforcement officers must, as soon as reasonably practical, determine if a person is injured, whether as a result of a use of force or otherwise, and render medical aid and assistance consistent with training and request emergency medical assistance if necessary. "Render medical aid and assistance" includes, but is not limited to, (i) performing emergency life-saving procedures such as cardiopulmonary resuscitation or the administration of an automated external defibrillator; and (ii) the making of arrangements for the carrying of such person to a physician, surgeon, or hospital for medical or surgical treatment if it is apparent that treatment is necessary, or if such carrying is requested by the injured person<sup>15</sup>.

**CPD Policy - Medical Attention**

According to G03-02-V-B, for use of force incidents involving Department members, as soon as it is safe and feasible to do so, members will provide lifesaving aid consistent with their Department training, including LEMART training to injured persons until medical professionals arrive on scene. Furthermore, members will treat injured persons, whether another officer, a member of the public, or a person, with dignity and respect<sup>16</sup>.

**Analysis of Failure to Render Aid**

The evidence is clear and convincing that P.O. Covarrubias failed to render aid to Mr. ██████████. For approximately 9 minutes from the time he shot Mr. ██████████ to the moment the paramedics arrived on scene, P.O. Covarrubias failed to perform any life saving techniques, in accordance with the LEMART training he received on 23 Jan 2020 and the CPR training he received as a recruit at the CPD training academy. The fact that he did not have his Department issued first aid kit on his person is irrelevant. P.O. Covarrubias could have performed CPR on Mr. ██████████ until the paramedics arrived or ran out to his car to retrieve his first aid kit. Checking for a pulse alone is not satisfactory. Furthermore, Department members are not trained to pronounce a time of death by taking a pulse. Mr. ██████████ was still in need of medical attention and did not receive it. It is true that Sgt. West called for EMS; however, P.O. Covarrubias' duty to render aid did not stop at that moment.

<sup>15</sup> 720 ILCS 5/7-15. <https://www.ilga.gov/legislation/ilcs/fulltext.asp?DocName=072000050K7-15#:~:text=It%20is%20the%20policy%20of.emergency%20medical%20assistance%20if%20necessary>. Jan 25, 2021.

<sup>16</sup> Chicago Police Department Directive, *De-Escalation, Response to Resistance, and Use of Force*. General Order G03-02. Pg. 5.

## **Sgt. West**

**Allegation #1 – Failing to immediately render medical aid to ██████████ ██████████ in violation of G03-02(V).**

### **Illinois State Law - Duty to Render Aid**

Please refer to the law cited on the previous page.

### **CPD Policy - Medical Attention**

Please refer to the general order cited on the previous page.

### **Analysis of Failure to Render Aid**

It is beyond a preponderance of the evidence that Sgt. West failed to render aid to Mr. ██████████ however, it is unclear if Sgt. West had received LEMART or CPR training prior to the incident, based upon his COPA statement and the lack of evidence provided by COPA. For approximately 9 minutes from the time P.O. Covarrubias shot Mr. ██████████ to the moment the paramedics arrived on scene, Sgt. West failed to perform or delegate the action of life saving techniques on Mr. ██████████ Mr. ██████████ was still in need of medical attention, and he did not receive it. It is undisputed that Sgt. West called for EMS and checked on the little boy outside; however, his duty to perform or delegate the action of rendering aid did not stop at that moment. A Department member who observes a violation of G03-02 will, except in extraordinary circumstances, act to intervene on the person's behalf<sup>17</sup>. Such action may include, but is not limited to, verbally or physically intervening to try to stop the violation. If the member is a supervisor, he or she will issue a direct order to stop the violation<sup>18</sup>. Sgt. West should not have presumed that P.O. Covarrubias was rendering aid, he should have ensured that it happened.

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<sup>17</sup> *Id* at 5.

<sup>18</sup> *Id*.

**CONCLUSION**

CPD concurs with COPA's sustained findings that P.O. Covarrubias and Sgt. West failed to immediately render medical aid to [REDACTED] in violation of G03-02(V), but disagrees with the penalty recommendation for P.O. Covarrubias. Additionally, the Department believes that P.O. Covarrubias failed to use de-escalation techniques. The Department concurs that Sgt. West should be given a 60-day suspension for this violation. The Department believes that P.O. Covarrubias should be given a 90-day suspension for failure to render aid and failure to use de-escalation techniques.

CPD does not concur with the allegation that P.O. Covarrubias discharged his firearm at or in the direction of [REDACTED] in violation of G03-02. The evidence in this matter does not meet the preponderance of the evidence standard, and this allegation should not be sustained.

CPD looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii).

[REDACTED]  
Sincerely,  
[REDACTED]

Fred L. Waller  
Interim Superintendent of Police  
Chicago Police Department