



Brandon Johnson
Mayor

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

Larry Snelling
Superintendent of Police

March 28, 2024

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

Re: Complaint Register Number: 2021-0004795
Superintendent's Non-Concurrence with COPA's findings and proposed penalties:
Police Officer Nicholas Schillaci #10879
Police Officer Julius Givens #18583

Dear Chief Administrator Kersten:

COPA sustained three allegations from a total of four made against Chicago Police Department ("CPD") Police Officer ("P.O.") Julius Givens. The allegations relate to an on-duty officer involved shooting incident referenced under JE462975¹. Allegations two through four are not legally sufficient. The Department concurs with COPA's finding of not sustained for allegation one.

COPA sustained three allegations from a total of three made against P.O. Nicholas Schillaci. The allegations relate to the aforementioned incident. The allegations are not legally sufficient.

In accordance with Municipal Code of Chicago, MCC 2-78-130, the Superintendent provides the following comments when there is a disagreement as to the investigative findings and proposed penalties.

ALLEGATIONS

It is alleged by COPA that on or about 01 Dec 2021, at approximately 20:30, at or near 9200 S. Stony Island Avenue, P.O. Givens committed misconduct through the following acts or omissions:

Allegation #1 – Discharged his firearm at or in the direction of unknown vehicle occupants, in violation of General Order G03-02. Not sustained.

Allegation #2 – Discharged his firearm at or in the direction of unknown vehicle occupants without considering the safety of uninvolved members of the public before discharging his firearm or minimizing the risk to uninvolved members of the public, in violation of General Order G03-02-03.III. Sustained, Violation of Rules 2, 3, 6, and 9.

¹ Civilian Office of Police Accountability ("COPA"), *Summary Report of Investigation CR# 2021-0004795*.

Allegation #3 – Failed to use de-escalation techniques to prevent or reduce the need for force, in violation of General Order G03-02. Sustained, Violation of Rules 2, 3, 6, and 9.

Allegation #4 – Failed to notify the Office of Emergency Management and Communications (OEMC) that he discharged his weapon, in violation of General Order G03-06.V. Sustained, Violation of Rules 2, 3, 5, and 6.

It is also alleged by COPA that on or about 01 Dec 2021, at approximately 20:30, at or near 9200 S. Stony Island Avenue, P.O. Schillaci committed misconduct through the following acts or omissions:

Allegation #1 – Discharged his firearm at or in the direction of unknown vehicle occupants, in violation of General Order G03-02. Sustained, Violation of Rules 2, 3, 6, and 9.

Allegation #2 – Discharged his firearm at or in the direction of unknown vehicle occupants without considering the safety of uninvolved members of the public before discharging his firearm or minimizing the risk to uninvolved members of the public, in violation of General Order G03-02-03.III. Sustained, Violation of Rules 2, 3, 6, and 9.

Allegation #3 – Failed to notify the Office of Emergency Management and Communications (OEMC) that he discharged his weapon, in violation of General Order G03-06.V. Sustained, Violation of Rules 2, 3, 5, and 6.

FACTS:

This case review is to be read in conjunction with all other reports generated under the COPA investigation for CR #2021-0004795. This case review is a summarization of all reported information. All statements are also in summary format and are not to be considered verbatim. On 1 Dec 2021, at approximately 20:30 hrs, P.O.s Givens and Schillaci, while on patrol, observed a black Jeep, which the officers confirmed had been reported stolen. The officers described the vehicle over the radio as a “black SRT” with tinted windows and informed the dispatcher that they attempted to stop the vehicle at a gas station at 83rd Street and Stony Island Avenue, but the Jeep sped away southbound on Stony Island Avenue. The Office of Emergency Management and Communication (“OEMC”) dispatcher provided the license plate as “██████████” and the officers added that the Jeep appeared to be turning on 87th Street. A concerned citizen, who had previously provided information to P.O. Givens, called the officer and told him that the Jeep was pulling into the gas station at 92nd Street and Stony Island Avenue. The officers had multiple encounters with the Jeep since 29 Nov 2021. Furthermore, the vehicle was known to evade contact with the officers.

The Jeep arrived at the Citgo gas station and stopped outside the service station. ██████████ (██████████) exited the front passenger side of the Jeep and entered the service station. The officers parked their unmarked police vehicle on 92nd Street along the traffic median on Stony Island Avenue and ran toward the gas station in order to conduct an investigatory stop. P.O. Schillaci then requested more police vehicles over the radio. ██████████ exited the service station and entered the Jeep. P.O. Givens ran to the driver’s side of the Jeep with his firearm in his right hand as the vehicle slowly accelerated forward. Due to the Jeep having black tinted windows, P.O. Givens opened the rear driver’s side door of the Jeep to gain visibility of the inside of it. ██████████ then pointed a firearm with a drum magazine at P.O. Givens, which prompted him to enter the Jeep in order to close the distance. P.O. Givens announced his office as ██████████ pointed the firearm at the him. Multiple shots were then heard from the location of the Jeep. A bullet can be seen impacting a support beam

near a gas pump being used by an unknown civilian. Furthermore, the support beam was behind P.O. Givens position and in front of the passenger's line of sight². The Jeep then turned to its left and P.O. Givens fell out of the vehicle to the ground, losing possession of his firearm. P.O. Schillaci then discharged multiple rounds at the Jeep with his firearm while the vehicle was still near P.O. Givens and as it exited the gas station property. P.O. Schillaci reported "Shots fired!" over the radio and added, "He shot at my partner." The Jeep then exited Citgo's property and reached the traffic median on Stony Island Avenue when it spun around to face the gas station.

P.O. Givens stood up, picked up his firearm, and reported over the radio a "10-1" at "92nd and Stony." P.O. Givens then ran to the sidewalk, pointed his firearm at the stationary Jeep across the street and provided verbal directions to the offenders to show him their hands. [REDACTED] (" [REDACTED] exited the driver's side of the Jeep, and P.O. Givens took cover behind a light pole and continued pointing his firearm at the direction of the Jeep. [REDACTED] also had a firearm in his hand, but it was pointed at the ground. [REDACTED] then pointed his firearm at P.O. Givens, which impelled P.O. Givens to fire one shot and repeat his verbal directions to [REDACTED] [REDACTED] then discharged multiple rounds in the direction of P.O. Givens who then ran toward the gas station to find better cover as he continued to exchange gunfire with the offenders. Meanwhile, P.O. Schillaci reloaded his firearm behind a civilian vehicle at a gas pump and discharged numerous rounds in the direction of the Jeep to provide cover fire for P.O. Givens as he retreated to the gas station lot. At some point, during the exchange of gunfire, [REDACTED] crossed Stony Island Avenue heading westbound.

As P.O. Givens ran back to the gas station, he exclaimed, "Ah, fuck!" P.O. Schillaci momentarily paused discharging his firearm as his partner and a northbound civilian vehicle crossed his line of vision before continuing to fire his weapon. P.O. Givens sought cover behind a second civilian vehicle and reported over the radio, "10-1, squad, shots fired, I'm hit." P.O. Schillaci then fired one more round in the direction of the Jeep. [REDACTED] then ran across the southbound lanes of Stony Island Avenue. P.O. Schillaci provided verbal directions to a civilian to seek cover inside of the gas station store. He next ran to P.O. Givens and applied a tourniquet on his partner's left leg. P.O. Schillaci then assisted other responding officers in placing P.O. Givens inside of an unmarked police vehicle. P.O. Givens was transported to the University of Chicago Hospital for treatment.

Shortly thereafter, [REDACTED] and [REDACTED] were placed into custody by assisting officers on the 9100 block of South Harper Avenue. [REDACTED] was then transported to [REDACTED] Medical Center (" [REDACTED] for a gunshot wound to his left leg. [REDACTED] was also transported to [REDACTED] for a graze wound to his right leg.

P.O. Givens fired eight rounds and P.O. Schillaci fired thirty-one rounds. One fired bullet was recovered from the sole of P.O. Givens' right boot and forensic testing determined that it was fired by one of the firearms that were found in the Skyway Motel dumpster after [REDACTED] appeared to place an item there. The Skyway Motel is located at 9132 S. Stony Island Avenue. Evidence Technicians recovered two fired cartridge casings from the rear floor of the Jeep, which were attributed to P.O. Givens' firearm. Six additional cartridge casings from the Citgo gas station sidewalk were inventoried and attributed to P.O. Givens' firearm, while twenty-eight fired cartridge cases that were recovered from various locations on the Citgo property were attributed to P.O. Schillaci's firearm. Finally, seven fired cartridge cases were recovered from the grass on the traffic median and one fired cartridge case was recovered from the top of the Jeep. Forensic testing determined that the eight fired cartridge cases had been discharged from the same firearm that had discharged the round that struck P.O. Givens.

² Att. 249 at 0:42.

Subsequently, it was determined that [REDACTED] had a warrant, and he was charged with two counts of attempt first degree murder, possession of a stolen vehicle, and being an armed habitual criminal. [REDACTED] was charged with two counts of attempt first degree murder, aggravated unlawful use of a weapon, and possession of a stolen vehicle.

ANALYSIS

Constitutional Precedent - Police Use of 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 excessive force used 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 such as the severity of the crime, the threat posed by the suspect, and any attempts by the suspect to resist or evade arrest³.

In *Tennessee v. Garner*, the Court held that the Fourth Amendment prohibits the use of deadly force unless it is necessary to prevent the escape of a fleeing felon and the officer has probable cause to believe that the suspect poses a significant threat of violence to the officer or the community⁴.

Illinois State Law - 720 ILCS 5/7-5

Peace Officer's Use of Force in Making Arrest (Eff. Jul. 1, 2021)

A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes, based on the totality of the circumstances, to be necessary to effect the arrest and of any force which he reasonably believes, based on the totality of the circumstances, to be necessary to defend himself or another from bodily harm while making the arrest. However, he 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 such other person; or when he reasonably believes, based on the totality of the circumstances, both that such force is necessary to prevent the arrest from being defeated by resistance or escape and the officer reasonably believes that the person to be arrested is likely to cause great bodily harm to another; and the person arrested committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay⁵.

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. 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. Peace 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

³ *Graham v. Connor*, 490 U.S. 386 (1989).

⁴ *Tennessee v. Garner*, 471 U.S. 1 (1985).

⁵ 2021 Ill. Legis. Serv. P.A. 102-28 (H.B. 3443) (WEST). 720 ILCS 5/7-5. Eff. Jul. 1, 2021.

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 officer⁶.

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 than with the benefit of hindsight, and that the totality of the circumstances shall account for occasions when officers may be forced to make quick judgments about using force⁷.

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 others⁸.

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 time⁹.

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 harm¹⁰.

Firing into crowds is a prohibited use of firearms. However, this prohibition does not preclude the discharge of a firearm directed at a specific person who is near or among other people, but the discharge of a firearm in such circumstances is only permitted in the limited circumstances when such force is necessary, based on the specific circumstances confronting the sworn member, to prevent death or great bodily harm to the sworn member or to another person, and no reasonable alternative exists. In such circumstances, the discharge of a firearm is permissible only if the member has identified the appropriate target prior to discharging the firearm and has taken precautions to minimize the risk that people other than the target will be struck¹¹.

⁶ *Id.*

⁷ *Id.*

⁸ Chicago Police Department Directive, *De-Escalation, Response to Resistance, and Use of Force*. General Order G03-02. Pg. 1. Eff. Apr. 15, 2021.

⁹ *Id.* at 2.

¹⁰ *Id.* at 4.

¹¹ Chicago Police Department Directive, *Firearm Discharge Incidents - Authorized Use and Post-Discharge Administrative Procedures*. General Order G03-02-03. Pg. 1. Eff. Apr. 15, 2021.

Firing at or into a moving vehicle is prohibited when the vehicle is the only force used against the sworn member or another person, unless such force is a last resort and necessary, based on the specific circumstances confronting the sworn member, to protect against an imminent threat to life or to prevent great bodily harm to the sworn Department member, another person, or a group of people. When a vehicle is the only force used against a member, the member will not place themselves in the path of the moving vehicle and will make every effort to move out of the path of the vehicle.¹².

Allegation #1 Against P.O. Givens

The Department concurs with COPA's finding of not sustained.

Allegation #1 Against P.O. Schillaci

This allegation should not be sustained. In light of the totality of the circumstances faced by P.O. Schillaci during this incident, the force he used against ██████████ and ██████████ was objectively reasonable, necessary, and proportional in order to protect himself, P.O. Givens, and the community from death or great bodily harm. COPA did not assess the reasonableness of P.O. Schillaci's use of force based on the totality of the circumstances related to the incident.

COPA argues that P.O. Schillaci's use of deadly force was not objectively reasonable, necessary, and proportional because the threat of death or great bodily harm presented by the alleged unknown Jeep's occupants had already occurred. COPA also claims that P.O. Schillaci never alleged that the Jeep's occupants were about to fire their weapons at him which would have presented a threat of death or great bodily harm. Furthermore, COPA claims that P.O. Schillaci's actions increased the risk that the Jeep in motion could have caused to bystanders¹³.

COPA's argument that the threat already occurred is not the standard that must be applied to determine whether P.O. Schillaci's use of force was objectively reasonable, necessary, and proportional, under the totality of the circumstances. 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 retrospection¹⁴. 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 others¹⁵.

Since reasonableness is not capable of a precise definition or mechanical application, factors of objective reasonableness to be considered in determining if P.O. Schillaci's 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 resources¹⁶.

¹² *Id.* at 2.

¹³ Civilian Office of Police Accountability ("COPA"), *Summary Report of Investigation CR# 2021-0004795*. Pg. 7.

¹⁴ *Graham v. Connor*, 490 U.S. 386 (1989).

¹⁵ Chicago Police Department Directive, *De-Escalation, Response to Resistance, and Use of Force*. General Order G03-02. Pg. 1.

¹⁶ *Id.* at 2.

In determining whether the threat the offenders posed to P.O. Schillaci and the people surrounding him may be considered imminent, three factors must be taken into account, which is explained in G03-02¹⁷. First, it must be objectively reasonable for P.O. Schillaci to believe that the Jeep occupant's actions were immediately likely to cause death or great bodily harm unless an action was taken. Second, it must be considered whether it was objectively reasonable for P.O. Schillaci to believe that the offenders had the means or instruments to cause death or great bodily harm. Finally, it must be considered whether it was objectively reasonable for P.O. Schillaci to believe that the offenders had the opportunity and ability to cause death or great bodily harm.

The amount of time P.O. Schillaci had to evaluate and consider the circumstances must also be taken into account to put oneself in his position at the instance he decided to use deadly force. P.O. Schillaci's initial discharge of his firearm in the Citgo parking lot happened within a couple 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.

Like *Graham v. Connor*, *Tennessee v. Garner* is a leading United States Supreme Court case that set the governing standards for appropriate use of force by police. During a chase, a police officer shot a 15-year-old boy from escaping over a fence. The boy was suspected of burglarizing a nearby house. The police officer admitted that before he shot he saw no evidence that boy was armed and "figured" he was unarmed. The bullet hit the boy in the back of the head. The boy was taken to the hospital where he died a short time later. The Court held that where a police officer has probable cause to believe that a criminal suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force; thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious physical harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given¹⁸.

The crux of COPA's argument leans on a Seventh Circuit case, *Estate of Starks v. Enyart*. In *Starks*, an unarmed suspect stole a taxicab and drove it to a nearby Taco Bell. Three uniformed police officers quickly surrounded the cab and confronted the suspect. Instead of submitting to the authorities, the suspect attempted to escape. As the suspect drove toward an officer, all three officers opened fire and killed him¹⁹. The Court in *Starks* held in favor of the plaintiff by ruling that fleeing felons who have not resorted to violence are accorded less intrusive seizures than by use of deadly force, and the threat of danger presented by fleeing felon must be willful in order to warrant use of deadly force in response²⁰.

Whereas, the facts in the instant case are more similar to those in *Ybarra v. City of Chicago*, another Seventh Circuit case. In *Ybarra*, police officers had probable cause, based on suspect's involvement in a drive-by shooting and his extremely reckless driving, to believe that suspect presented a threat of serious physical harm to others if allowed to escape from a parking lot, and thus, it was not unreasonable for officers to prevent suspect's escape by using deadly force. While on patrol in an unmarked police car, officers witnessed gunshots being fired from suspect's vehicle at occupants of another vehicle and then followed suspect as he drove ten to forty miles per hour over the speed limit, ending in a parking lot, which was in vicinity of pedestrians, cyclists, and other vehicles, where suspect failed to stop after officers yelled at him to stop, and instead, suspect

¹⁷ Chicago Police Department Directive, *De-Escalation, Response to Resistance, and Use of Force*. General Order G03-02. Pg. 4. Eff. Apr. 15, 2021.

¹⁸ *Garner*, 471 U.S. 1.

¹⁹ *Estate of Starks v. Enyart*, 5 F.3d 230 (7th Cir. 1993).

²⁰ *Id.*

continued driving in officers' general direction toward the parking lot exit. The *Ybarra* Court held that an officer does not violate the Fourth Amendment by firing at a suspect when the officer reasonably believed that the suspect had committed a felony involving the threat of deadly force, was armed with a deadly weapon, and was likely to pose a danger of serious harm to others if not immediately apprehended²¹.

Similarly, in *Horton v. Pobjecky*, the Seventh Circuit held that a Sheriff's deputy's use of deadly force in a fatal shooting of an attempted robbery suspect was objectively reasonable and, thus, did not violate the Fourth Amendment. The deputy's belief that the suspect posed an immediate threat of death or serious injury was reasonable, based on the information that the deputy had. Given that the suspect participated in an armed robbery while wearing a sweatshirt allowing easy concealment of a gun, and even if the deputy shot the suspect in the back as he crawled away, the shooting would still have constituted a reasonable prevention of escape and a reasonable act of self-defense and defense of others, as the suspect could have turned and rapidly produced a gun²².

The Court holdings in *Ybarra* and *Horton* should be applied to the instant case. P.O. Schillaci stated that he heard multiple gunshots and a bullet hit a metal object near him, which was also behind P.O. Givens' position and directly in front of the passenger's line of sight. Moreover, a Citgo surveillance camera captured a bullet strike a support beam next to a gas pump near P.O. Schillaci's location²³, which corroborated his claim. Furthermore, P.O. Schillaci believed that the offenders were shooting at P.O. Givens inside of the vehicle or at him while he was running up to the vehicle. He then saw the Jeep drive recklessly as P.O. Givens was propelled out of the backseat of the vehicle. P.O. Schillaci firmly believed that P.O. Givens was shot and injured badly. P.O. Schillaci also saw muzzle flashes, which prompted him to draw his firearm and shoot at the offenders who he believed were shooting at him and P.O. Givens. Likewise, P.O. Schillaci did not believe that the offenders would stop shooting at P.O. Givens who was laying on the ground on his back within close proximity to the Jeep's wheels. He also assumed that P.O. Givens lost his firearm and was defenseless. The incident happened within seconds, and P.O. Schillaci shot at the vehicle until it exited Citgo's property for the protection of his life and the lives of other people surrounding him, including his partner. Moreover, like the officers in *Ybarra* and *Horton*, P.O. Schillaci reasonably believed that the offenders had the means and the opportunity to execute this act, and the threat was clearly imminent.

Regardless of whether P.O. Schillaci reasonably believed that occupants of the Jeep presented a direct threat to the officers' own safety—whether by driving toward or shooting at them—there is no genuine dispute of material fact that P.O. Schillaci acted reasonably in using deadly force to prevent [REDACTED] and [REDACTED] escape to protect others in the immediate vicinity of the gas station. The threatened individuals need not have been placed in the direct path of the threat. Deadly force may be exercised if the suspect's actions place the officer, his partner, or those in the *immediate vicinity* in imminent danger of death or serious bodily injury²⁴. P.O. Schillaci's use of deadly force to prevent escape continued to be reasonable even as the offenders drove past the officers.

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

²¹ *Ybarra v. City of Chicago*, 946 F.3d 975 (7th Cir. 2020).

²² *Horton v. Pobjecky*, 883 F.2d 941 (7th Cir. 2018).

²³ Att. 249 at 0:42.

²⁴ *Scott v. Edinburg*, 346 F.3d 752 (7th Cir. 2003).

Allegation #2 Against P.O.s Givens and Schillaci

This allegation does not assert a situation that so clearly and obviously presented such danger to uninvolved members of the public that every objectively reasonable officer confronted with the situation that P.O.s Givens and Schillaci encountered would have known that discharging their firearms at the offenders would violate an established law or Department policy. Moreover, any danger to the community was created by the offenders' decision to engage the police with deadly force.

According to Department policy on use of force, firing into crowds is a prohibited use of firearms. However, this prohibition does not preclude the discharge of a firearm directed at a specific person who is near or among other people, but the discharge of a firearm in such circumstances is only permitted in the limited circumstances when such force is necessary, based on the specific circumstances confronting the sworn member, to prevent death or great bodily harm to the sworn member or to another person, and no reasonable alternative exists. In such circumstances, the discharge of a firearm is permissible only if the member has identified the appropriate target prior to discharging the firearm and has taken precautions to minimize the risk that people other than the target will be struck²⁵.

A peace officer need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest²⁶. P.O.s Givens and Schillaci were involved in a fight for their lives, clearly identified their targets, and had probable cause to fire their weapons at the offenders. It is undisputed that they were in pursuit of armed suspects who opened fire on them on a public street, endangering the lives of the officers and the community. It is uncontroverted that the officers fired at the offenders when they had a clear view of their targets and took the necessary precautions to minimize the risk to other people in the area. Furthermore, P.O.s Givens and Schillaci both stated to COPA that they did not see any bystanders in their periphery while firing, such that it cannot be said that the officers failed to exercise discretion in discharging their firearms. Nor is there any evidence that any bystanders were in the direct line of fire during the shootout such that a question of fact was presented as to whether officers' discharge of their firearms violated Department policies. Moreover, COPA provided no evidence that a bystander was injured during the course of the shootout. Additionally, there is no indication that a traffic crash resulted from the shootout.

There is a preponderance of the evidence demonstrating that the officers' use of force was objectively reasonable, necessary, and proportional, based on the totality of the circumstances. Furthermore, their actions were in line with CPD policy, and the evidence presented by COPA is legally insufficient to sustain these allegations.

Allegation #3 Against P.O. Givens

This allegation should not be sustained. Police officers need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest²⁷. 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 others²⁸.

²⁵ Chicago Police Department Directive, *Firearm Discharge Incidents - Authorized Use and Post-Discharge Administrative Procedures*. General Order G03-02-03. Pg. 1. Eff. Apr. 15, 2021.

²⁶ 2021 Ill. Legis. Serv. P.A. 102-28 (H.B. 3443) (WEST). 720 ILCS 5/7-5. Eff. Jul. 1, 2021.

²⁷ *Id.*

²⁸ Chicago Police Department Directive, *De-Escalation, Response to Resistance, and Use of Force*. General Order G03-02. Pg. 1. Eff.

The offenders were posing an imminent threat to the officers and others, likely to cause death or great bodily harm. Moreover, the offenders were in striking distance and had access to weapons. Undeniably, COPA applauded the de-escalation techniques used by P.O. Givens. COPA specified that he called for backup, including a helicopter; he announced his office to the offenders; he prevented a vehicle pursuit; and he only resorted to deadly force after [REDACTED] pointed a firearm at him²⁹. Also noteworthy, P.O. Givens can clearly be heard giving verbal directions to the offenders to show their hands before [REDACTED] pointed his firearm at him.

Continuing to use de-escalation techniques would have been ineffective since the officers were engaged in an active shootout and had no duty to retreat. P.O. Givens made a judgment call to close the distance between himself and the offenders in order to stop the threat and make lawful arrests. Unfortunately, the opportunity to find cover and concealment lessened as he approached the offenders on Stony Island Avenue, thus, affecting the zone of safety. However, P.O. Givens' decision to pursue the offenders did not violate a clearly established law or the Department's use of force policy. In fact, P.O. Givens should be complemented for demonstrating such weapon discipline by only firing six rounds on the street when he sustained heavy gunfire at him. His other two cartridge casings were recovered from the rear floor of the Jeep, which was detached from the shootout on Stony Island Ave. Chiefly, any danger to the community was created by the offenders' decision to engage the police with deadly force, not P.O. Givens' actions.

There is a preponderance of the evidence demonstrating that the P.O. Givens' use of force was objectively reasonable, necessary, and proportional, based on the totality of the circumstances. Furthermore, his actions were lawful and in line with CPD policy. The evidence presented by COPA is legally insufficient to sustain the allegation that he failed to use de-escalation techniques to prevent or reduce the need for force.

Allegation #4 Against P.O. Givens and Allegation #3 Against P.O. Schillaci

This allegation should not be sustained. Both officers advised OEMC that shots were fired, provided their location, and requested additional resources. For all firearm discharge incidents, the involved members will immediately notify OEMC providing all relevant information and requesting additional resources³⁰. According to Department policy on radio communications, an officer responding to an on-view incident will immediately notify the dispatcher via voice radio (on the primary channel) and include the type of incident and the address of incident³¹.

COPA acknowledged that both officers reported over the radio that shots were fired, but failed to specify that the shots had been fired by police officers. This is just a matter of semantics in that COPA ascribes a different meaning to the phrase "shots fired".

The officers were engaged in a firefight and did not have the opportunity to provide the dispatcher with a more detailed account of what transpired on scene. Additionally, most officers who have been involved in a deadly force shooting episode have described one or more alterations in perception, thinking, and behavior that occurred during the event³². Furthermore, officers can experience a range of psychological, emotional, and

Apr. 15, 2021.

²⁹ Civilian Office of Police Accountability ("COPA"), *Summary Report of Investigation CR# 2021-0004795*. Pg. 8.

³⁰ Chicago Police Department Directive, *Firearm Discharge and Officer-Involved Death Incident Response and Investigation*. General Order G03-06. Pg. 5. Eff. Apr. 15, 2021.

³¹ Chicago Police Department Directive, *Radio Communications*. General Order G03-01-01. Eff. Jul. 13, 2016.

³² Miller, Laurence. "Officer-Involved Shooting: Reaction Patterns, Response Protocols, and Psychological Intervention Strategies." *International Journal of Emergency Mental Health*, Vol. 8, No. 4, Pg. 239-254. 2006 Chevron Publishing ISSN 1522-4821. Accessed

physiological reactions that distort time, distance, sight, and sound³³. Needless to say, both officers were transported to the hospital for treatment, P.O. Givens for a gun-shot wound and P.O. Schillaci for shortness of breath and stress. The officers should be commended for speaking so clearly on the radio during such a traumatic situation and promptly providing their location and requesting more resources for a shots fired incident. Additionally, OEMC was fully apprised of the shots fired by the police by Beat 499 in a reasonable period of time after the shooting occurred³⁴. The officers also fully cooperated with the post shooting investigation and were completely transparent about their use of deadly force.

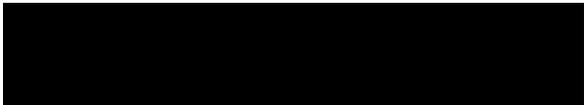
There is a preponderance of the evidence demonstrating that the officers complied with G03-01-01 and G03-06. The evidence presented by COPA is legally insufficient to sustain the allegation that the officers failed to notify OEMC that they discharged their weapons.

CONCLUSION

COPA sustained three allegations from a total of four made against P.O. Givens. Allegations two through four are not legally sufficient. The Department concurs with COPA's finding of not sustained for allegation one. COPA sustained three allegations from a total of three made against P.O. Schillaci. The allegations are not legally sufficient.

CPD looks forward to discussing this matter with you pursuant to MCC 2-78-130(a)(iii). If COPA and the CPD find themselves at an impasse on the resolution of this matter, the CPD asks that COPA include all attachments from the log investigation to the member of the Police Board selected to conduct the review.

Sincerely,



Dan J. Brenning
Superintendent of Police
Chicago Police Department

on Feb. 24, 2024.

³³ "Police Responses to Officer Involved Shootings." National Institute of Justice Journal. Issue 253. Jan. 1, 2006. Accessed on Feb. 24, 2024.

³⁴ Att. 19 at 59 and 100.