



Brandon Johnson
Mayor

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

Fred L. Waller
Interim Superintendent of Police

August 28, 2023

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

RE: Superintendent's partial Non-Concurrence with COPA's recommendation and proposed penalty
Log Number #2022-0001742
Police Officer Carlos Rojas, Star #14347

Dear Chief Administrator:

After a careful review, the Superintendent concurs with the sustained finding for Allegation #1 against Officer Rojas for failure to identify himself as a police officer prior to taking police action and for Allegation #3 against Officer Rojas for failure to immediately notify OEMC that he had discharged his firearm. Based on the facts detailed in the investigation, the Superintendent believes that a ten (10) day suspension is an appropriate penalty.

The Superintendent does not concur with the sustained finding for Allegation #2 against Officer Rojas for violation of the Chicago Police Department's use of force policies when he discharged his firearm at unknown offenders. The Superintendent believes that the facts made available through COPA's investigation have shown that Officer Rojas' decision to discharge his firearm in this incident was in compliance with Department Orders.

On the morning of April 28, 2022, Officer Rojas was returning home from his tour of duty on the 1st Watch midnight shift in Unit 059. After entering his residence, Officer Rojas decided to take his dog for a walk and while standing near his front door, he observed a white vehicle driving slowly and then stop near a van which was parked on the street. Officer Rojas then observed three (3) individuals exit the white car and one of the individuals immediately began to raise up the van with a car jack. Believing this to be an attempt catalytic converter theft, Officer Rojas exited his house and began to walk towards the suspects. Officer Rojas claims he yelled in the suspects' direction upon his initial approach, believing he shouted, "Police."¹ As Officer Rojas got closer to the suspects, he unbuttoned his jacket with the intention of exposing his Chicago Police star symbol which was embroidered on the uniform polo he was wearing underneath his jacket. Officer Rojas then shouted, "Motherfucker, come on! Come on!" at the suspects while simultaneously going for shielding behind a tree on the parkway. It should be noted that at this point, the distance between Officer Rojas and the suspects was approximately eighty-five (85) feet. At this point, one of the suspects fires one (1) shot from a firearm at Officer Rojas which can be both seen and heard, knocking a branch from a tree behind Officer Rojas.² The suspects begin to re-enter the white vehicle and as Officer Rojas is peering from his shielding position behind

¹ Att. 49, Transcript Interview of P.O. Rojas with COPA, at p. 24, lines 20-21.

² Att. 5, Private Nest camera video 2 of 2 at 04:42.

the tree, he fires three (3) shots in the offender's direction.³

Officer Rojas then calls 911 at 05:47 hrs. and tells the OEMC dispatcher that he is an off duty officer who had just been shot at, giving a description of the offenders and vehicle involved, but fails to tell the dispatcher that he had also discharged his weapon.⁴ The first responding officer, Officer Ciach, arrives at the location at 05:55 hrs. and is approached by Officer Rojas who immediately pulls his jacket to the side with his left hand, showing his embroidered Chicago Police Star displayed on his uniform polo shirt.⁵ Officer Rojas tells Officer Ciach that he observed individuals stealing a catalytic converter and then states, "I get their attention, I open it up, I yell at them, show them my star, one of them takes a shot at me, I return fire, my casings are right here."⁶ Officer Ciach then reports this to the Sergeant on scene, Sgt. Arroyo, at 05:57 hrs.⁷ Sgt. Arroyo then notifies OEMC at 05:58 hrs. that an off-duty officer had discharged his weapon.⁸ The vehicle and offenders were never apprehended.

The evidence is legally insufficient with regard to the allegation against Officer Rojas of discharging a firearm in violation of CPD General Order 03-02. The determination of legal insufficiency of the evidence is based upon the statements of Officer Rojas as well as the footage of the incident captured on a "Nest" camera attached to a private residence.

COPA ultimately found Officer Rojas "generally credible" and determined "that any discrepancies between Officer Rojas' account and the available evidence were likely the result of his compromised ability to accurately perceive the events due to the stressful nature of the incident."⁹ In its finding, COPA noted that Officer Rojas "not only initiated but also escalated the encounter."¹⁰ In the Department's view, Officer Rojas observed what he expected to be a crime in progress and took action as a police officer by approaching the suspects. Officer Rojas stated in his statement to COPA, "My whole contention was to get their attention, let them get in their car, and leave -- leave the area."¹¹ It appears that Officer Rojas initially attempted to deescalate the situation by his presence and verbal comments, intending to scare the offenders off. It was the offender rather than Officer Rojas, who then escalated the situation by firing the gun at Officer Rojas.

There is no dispute that in this situation, Officer Rojas was permitted to use deadly force after being fired upon by the offender. However, COPA has issue with the timing in which Officer Rojas responded with deadly force noting that, "...at the time Officer Rojas used deadly force, the unknown person did not pose an imminent threat, and Officer Rojas's belief to the contrary was objectively unreasonable."¹²

In the Department's view, COPA did not assess the reasonableness of Officer Rojas' use of force as directed by General Order 03-02, the United Supreme Court, and COPA's own Rules and Regulations.¹³ Based on General Order 03-02, the U.S. Supreme Court's finding in *Graham v. Connor*, and COPA's Rules and Regulations, "reasonableness" should be judged from the perspective of a reasonable police officer on scene, rather than with the benefit of 20/20 hindsight and that reasonableness determination should embody allowance for that fact that officers are often forced to make "split-second judgements -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation." *Graham*

³ Att. 5 at 04:48.

⁴ Att. 15, 911 Audio Recording of P.O. Rojas.

⁵ Att. 29, Body-Worn Camera of P.O. Ciach, at 02:31.

⁶ Att. 29 at 02:42.

⁷ Att. 29 at 04:00.

⁸ Att. 32, Body-worn Camera of Sgt. Arroyo at 02:21.

⁹ Att. 71, COPA's "Summary Report of Investigation" at pp. 13-14.

¹⁰ Att. 71 at p. 15.

¹¹ Att. 49 at p. 24, line 12-14.

¹² Att. 71 at p. 16.

¹³ CPD General Order G02-02, Section II-D-1, *Graham v. Connor*, 109 S.Ct. (1989), COPA Rules and Regulations, § 3.10.3.5.

v. *Connor*, 109 S.Ct. 1865, 1872 (1989). COPA contends that after the offender fired his weapon at Officer Rojas, the offender no longer posed an imminent threat because all the offenders began to enter the offending vehicle. However, COPA failed to apply the appropriate reasonableness standard, taking into account the perspective of Officer Rojas and how a reasonable police officer would have reacted in this relatively short incident.

From the time Officer Rojas was fired upon until he stopped engaging was approximately eight (8) seconds.¹⁴ After he was shot at, Officer Rojas resorted to his training and took tactical shielding and positioning in response to the offender's imminent threat of death and great bodily harm. While COPA was able to slow down the video down and replay the footage over and over, Officer Rojas did not have the time or opportunity to look and see what the offender's immediate actions were after the offender shot at Officer Rojas. Officer Rojas has been consistent with his statements to both COPA and Detectives regarding what he perceived to be occurring immediately after he was shot at. Officer Rojas believed the armed offender was still engaging him and going to take another shot at him. Officer Rojas stated to COPA that he took cover behind a tree, then took a peek to the left of the tree and observed one of the offenders enter the vehicle. Officer Rojas continued to say that after he peeked to the right of tree, he observed the offender who shot at him still outside the vehicle.¹⁵

COPA has issue with the fact that Officer Rojas waited approximately six (6) to seven (7) seconds after being fired upon to return fire.¹⁶ After being fired upon, a reasonable officer would attempt to find shielding and would use extreme caution when attempting to peer around that shielding to access the threat. In his statement to Detectives, Officer Rojas related that the armed offender walked around the open front door and advanced toward his position and in fear of his life, he fired his weapon.¹⁷ Officer Rojas' perception was that the offender was still engaging him and he had to make a split-second decision.

In its analysis of Officer's Rojas' violation regarding his firearm discharge, COPA divided its analysis into two subsection arguments. The first being that Officer Rojas' first shot violated CPD policy where the unknown offender who had earlier fired at him no longer posed an imminent threat and the second being that Officer Rojas' second and third shots were prohibited by CPD policy.¹⁸ COPA contends that quickly after he had been shot at, Officer Rojas "had enough time to assess the situation and understand that the circumstances had changed, the threat had substantially diminished, and that the unknown individuals were in the process of fleeing."¹⁹

Again this was a rapidly moving event which required split-second decision making. The time between Officer Rojas' first shot and his second and third shots is approximately one (1) second.²⁰ After he was shot at by the offender, Officer Rojas appears to peer out from the right side of the tree from which he was taking shielding and at this time, the offender appears to be running from the front of his or her vehicle near the hood around the open driver's side door.²¹ Officer Rojas has stated that when he peered from behind the tree, he saw the offender holding the gun and believed the offender was continuing to engage the officer. When Officer Rojas fires the first shot, it appears that all offenders are inside the vehicle, however the driver's door remained open.²² COPA found that "Immediately prior to Officer's first shot, the unknown individual had entered the white sedan, started closing the driver's side door, and appeared to have activated the brake lights."²³ COPA

¹⁴ Att. 5 at 04:42-0:4:50.

¹⁵ Att. 49 at p. 26, lines 11-18.

¹⁶ Att. 71 at p. 16.

¹⁷ Att. 58, Detective Case Supplementary Report, at p. 16.

¹⁸ Att. 71 at pp. 16-17.

¹⁹ Att. 71 at p. 15.

²⁰ Att. 5 from 04:49 to 04:50.

²¹ Att. 5 at 04:43.

²² Att. 5 at 04:49.

²³ Att. 71 at p. 16.

also determined that "When he fired the additional shots, the unknown individuals were inside of the white sedan, the door of the sedan was closing, and the sedan was moving away from Officer Rojas."²⁴

The Department's concern with COPA determining that the offenders were no longer a threat is that they were only able to reach the conclusion after watching the video multiple times with the capability of slowing down the video, which is a benefit that Officer Rojas did not have in real time as the incident unfolded. After being shot at, Officer Rojas attempted to re-access the very stressful situation and perceived that the offender was still targeting him. The door remained open as Officer Rojas returned fire and there is no evidence suggesting that the offender was not attempting to continue to target Officer Rojas from the open door. The shots fired from Officer Rojas began and ended in one (1) second. COPA's summary report reads as if Officer Rojas fired his first round and then waited some time and failed to re-access before firing his second and third rounds. Again, COPA had the advantage of slowing down the video. A reasonable police officer in this situation would be under tremendous stress after being fired upon and may experience tunnel vision. Regarding this specific portion of the incident, Officer Rojas stated to COPA, "As he's entering the vehicle, he's still -- I still see him. I still has his profile. I go to eliminate the threat that -- thinking that he's going to shoot at me again. I shoot, quick succession."²⁵ In this incident, Officer Rojas observed the offender who shot at him just seconds before running from the front of vehicle, still armed and could have understandably failed to observe that the brake lights of the vehicle had activated and comprehend that the offender was attempting to flee in the short time frame of one (1) second. A reasonable officer's decision to fire is different that when the weapon is actually discharged. Officer Rojas perceived the offender to still be a threat when the offender was still partially outside the vehicle with the door still opened. When asked by COPA about when and why he decided to return fire, Officer Rojas Stated, "You can go easily enter a vehicle, come -- and still -- you can still make this turn. You can still make your turn and take a shot back...you don't have to be completely outside the vehicle in order to pose -- to pose a threat."²⁶

Officer Rojas was authorized to use his firearm in this incident as it was necessary to protect against an imminent threat to his life and to prevent great bodily harm. The assailant had already fired at Officer Rojas and Officer Rojas has continually stated that in this short time frame, he believed the assailant was still engaging him. The first thing Officer Rojas saw after immediately taking cover was the assailant coming around the car and in that split-second, Officer Rojas did not perceive that his intention was to enter the vehicle to flee. The driver's door of the offender's vehicle in which the offender entered was still open when Officer Rojas began to fire his weapon. COPA's analysis contends that there was enough time for Officer Rojas to realize that the assailant was fleeing after Officer Rojas fired his first shot but states in the beginning of its summary report that, "Officer Rojas fired three gunshots in rapid succession..."²⁷ It is advantageous to have the capability to slow down the video footage to analyze both the offender's and Officer Rojas' actions but Officer Rojas and any other reasonable officer in this situation, doesn't have that advantage. Officer Rojas while engaged in this very short yet stressful situation, reasonably believed that his life was still in danger after he was first fired upon.

Officer Rojas has no disciplinary history. The evidence is legally sufficient to warrant sustained findings and a suspension of ten (10) days with regard to the allegations that Officer Rojas failed to properly announce his office and failed to promptly notify OEMC of his weapon discharge. However, the evidence is not legally sufficient to warrant a sustained finding or penalty with regard to the allegation that Officer Rojas violated the Chicago Police Department's use of force policies when he discharged his firearm at the unknown offenders.

²⁴ Att. 71 at p. 17.

²⁵ Att. 49 at p. 28, lines 3-7.

²⁶ Att. 49 at p. 52, lines 8-18.

²⁷ Att. 71, at p. 1.



Interim Superintendent of Police
Chicago Police Department