



CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

INTEGRITY • TRANSPARENCY • INDEPENDENCE • TIMELINESS

TO: Patricia Banks
Interim Chief Administrator
Civilian Office of Police Accountability

FROM: Investigator Daniel Kobel, #67

SUBJECT: Log #1069058, E.O. #14-30

REFERENCE: RD #HX-251611, Resisting Arrest (2 counts), Issuance of Warrant,
Felony Retail Theft

**DATE/TIME
OF INCIDENT:** 07 May 2014 at approximately 0017 hours

**LOCATION
OF INCIDENT:** 248 W. North Avenue
Beat 1814

**INVOLVED
MEMBER:** YANEZ, Juan; Chicago Police Officer, #18438, Unit 018, M/H,
Employee # [REDACTED]; DOB: [REDACTED] 73; DOA: 16 Mar 98; On-duty;
In Uniform.

**OFFICER'S
WEAPON:** Model #: TASER_ECD_X2; Serial #: [REDACTED] Taser Dart ID
#s: [REDACTED]. Fired two (2) cartridges.
Inventory #13166865.

**OFFICER'S
INJURIES:** None Reported.

SUBJECT: [REDACTED] M/B, DOB: [REDACTED] 91, IR # [REDACTED],
Address: [REDACTED], Chicago, IL.

**SUBJECT'S
WEAPON:** None.

**SUBJECT'S
INJURIES:** Deceased. Significant head trauma after Mr. [REDACTED] struck his
head on a light pole.

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SUMMARY OF INCIDENT:

On 07 May 2014, at approximately 0347 hours, Reporting Third Party, Chicago Police Department (CPD) Deputy Chief Carlos Velez, #211, of Unit 140, notified Operations Command of a Taser discharge by Officer Juan Yanez, #18438. It was reported that officers attempted to arrest the victim/subject, [REDACTED] for retail theft, but Mr. [REDACTED] resisted them and fled. As Mr. [REDACTED] fled, Officer Yanez deployed his Taser twice to gain control of Mr. [REDACTED] and to place him in custody. During the incident, Mr. [REDACTED] ran into a light pole, lost consciousness and ultimately expired. The original Independent Police Review Authority (IPRA)¹ Taser notification was logged under Log #1069000. On 09 May 2014, the notification was converted into an Extraordinary Occurrence investigation under Log #1069058/E.O. #14-30. (Att. 1, 4)²

INVESTIGATION:

CPD Reports

The **Arrest Report** related to RD HX251611, authored by Officer Michael Cosentino, #4487 on 07 May 2014 indicates Mr. [REDACTED] was placed into custody on signed complaints for retail theft. Per the report, Mr. [REDACTED] entered the Walgreens drugstore, located at 1601 N. Wells Street, where he placed a 750ml bottle of vodka inside his pants and left the store without paying for it. Mr. [REDACTED] was then taken into custody; the vodka was recovered and returned to the store. A receipt of the item taken totaled \$35.52 U.S.C. and was inventoried under Inventory #13166870. The arresting officers were Officer Juan Yanez, #18438, and Officer Cosentino, #4487. It was noted Mr. [REDACTED] never entered the 18th District Lockup because he was being treated at Northwestern Memorial Hospital for a head injury. His condition was critical, but stable. (Att. 5)

Detective Supplementary Reports related to RD HX251611, indicate Walgreens Security Guard [REDACTED] observed a man enter the store, walk to the liquor aisle, and remove a bottle of Ketel One Vodka (\$35.52 U.S.C.) from the shelf. Mr. [REDACTED] then placed the bottle down the front of his pants, walked past the last point of purchase and out of the store without paying for the vodka. Security Guard [REDACTED] followed Mr. [REDACTED] out of the store, but was unable to stop Mr. [REDACTED] before he fled the scene.

Walgreens employees then flagged down CPD officers assigned to Beat 1813R (now known as Officers Yanez and Cosentino) as the officers were traveling south on Wells Street. The employees pointed out Mr. [REDACTED] and stated he stole items from the store. The officers caught up to Mr. [REDACTED] at 248 W. North Avenue and approached him. The officers gave verbal commands to Mr. [REDACTED] to remove his hands from his waistband and lie on the ground. Mr. [REDACTED] refused to show his hands to the officers and

¹ On September 15, 2017 the Independent Police Review Authority (IPRA) transitioned into the Civilian Office of Police Accountability (COPA), pursuant to Chapter 2-78 of the Municipal Code of Chicago.

² The matter was converted into an Extraordinary Occurrence because the use of a Taser resulted in serious bodily injury or death while a subject was in police custody.

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Officer Yanez deployed his Taser. Mr. ██████ fell to the ground and Officer Cosentino approached Mr. ██████ to place him into custody. Mr. ██████ was “resistant and flailed his arms.” Officer Yanez yelled a warning to Mr. ██████ that he would discharge the Taser again, but Mr. ██████ refused to comply. Officer Yanez again deployed his Taser, and Mr. ██████ took several steps and fell. Mr. ██████ struck his head against a metal light pole as he fell. Mr. ██████ was unconscious. The officers called for medical assistance. CFD Ambulance #11 responded and transported Mr. ██████ to Northwestern Hospital. A minor laceration to Mr. ██████ right side temple area was noted. Additionally, a bottle of Ketel One vodka was recovered from the arrestee. The bottle, which was identified as the item stolen from the Walgreens store, was returned to the store.

CPD detectives canvassed Mr. ██████ flight path, but no independent witnesses could be located. (Att. 8, 9, 93, 94, 95)

The **Tactical Response Report** (TRR) completed by Officer Juan Yanez on 07 May 2014, indicates Officer Yanez deployed his Taser (via probe discharge) during his arrest of John Doe (now known as Mr. ██████). Mr. ██████ was an active resister who resisted being handcuffed on two occasions and then attempted to flee. During Mr. ██████ attempt to flee, he ran into a light pole, which caused him to injure himself, rendering him unconscious. Two cartridges were discharged. (Att. 6)

The **Taser Device Report** documents that Officer Yanez’s Taser’s trigger was pulled, and the first cartridge was deployed, on 07 May 2014 at 00:17:17 hours for 9 seconds. There was another trigger pull at 00:17:53 hours for 5 seconds and the second cartridge was deployed. (Att. 7)

The **CPD Property Inventory Report** for Inventory #13166865 shows two Taser cartridges (Serial #: ██████) were recovered from the scene. Additionally, the CPD Property Inventory Report for Inventory #13166870 documents a Walgreens receipt was inventoried “with item taken from a theft being a Ketel One 750 ml bottle.”³ (Atts. 10, 12, 43)

Office of Emergency Management and Communication (OEMC) Event Query records indicate Beat 1813R (Officers Yanez and Cosentino) called in a Taser deployment on 07 May 2014 at 00:18:58 hours. One of the officers requested an ambulance at approximately 00:20:26 hours, and CFD Ambulance #11 responded. The records further indicate Beat 1813R’s arrestee (now known as Mr. ██████) was reported as being in critical but stable condition at Northwestern. (Atts. 19, 20)

Photographs taken by Evidence Technician Delis, #17875, depict Mr. ██████ lying in a hospital bed and show various images of the incident scene at N. North Park Avenue and W. North Avenue. (Att. 35)

Video Evidence

³ Attachment 43.

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A check for **Police Observation Devices (PODS)** around the incident was met with negative results. (Att. 14)

Surveillance video footage retrieved from the Walgreens, located at 1601 N. Wells Street, depicts a black male (now known as Mr. ██████████) entering through the front doors of the store on 07 May 2014 at approximately 00:14:19 hours. Mr. ██████████ enters through the front revolving doors.⁴ Mr. ██████████ is wearing a dark plaid shirt, dark pants and gray sneakers with a contrasting color trim. The male also has a gray hooded sweatshirt underneath the plaid shirt. When he walks in the revolving door, he is observed wearing the hoodie over his head. While he is walking straight ahead to where the store aisles are located, he is simultaneously looking to the left of him (towards the cashier area). He continues to walk straight while looking to the left until he exits the view of the camera.⁵ At 00:15:10, Mr. ██████████ briefly enters the front door camera view again and is seen looking and walking straight ahead. Prior to exiting the camera view, he turns to look in the direction of the cashier area again. Additional video footage from the liquor aisle area shows Mr. ██████████ grab an item off a shelf at 00:16:03 hours. Mr. ██████████ is seen adjusting his shirt down as he walks away towards the back of the liquor aisle and out of the camera's view. At 00:16:33 hours, the back side of Mr. ██████████ body enters the frame of the front door camera again. He appears to be walking quickly towards the front/exit doors. His right arm is swinging to his side but his left arm/hand are not moving. His left arm/hand appears to be tucked into the front of his body. Mr. ██████████ exits the store by using his right arm area to push the left side door open. As he exits the door, a black male dressed in all black enters the camera view—he appears to be walking towards Mr. ██████████. Once Mr. ██████████ has exited onto the street, the male stops walking (still inside Walgreens) and turns around to speak to a white male that is wearing a gray vest with a red Walgreens logo.

At 00:17:01, two bright flashes are seen from the outside through the right-side door. At 00:17:03, the black male turns in the direction of the flashes. He walks to the front door and points his hand in the direction of the flashes (to the right) as he exits Walgreens. As he opens the right-side door, a white SUV, a Chicago Police Department vehicle, appears to be parked outside.⁶ The SUV is parked on Wells street facing south bound. At 00:17:18, the back side of a white woman enters the Walgreens camera view. She appears to be a Walgreens employee (wearing a light blue polo). She walks towards the right-side door and is also seen pointing to the right. The Walgreens door, to the right, that faces the corner of Wells Street and North Avenue remains open. The camera shows the parked CPD vehicle make a right turn (heading west) onto North Avenue.⁷ At 00:18:12, the white female and the black male enter the Walgreens again through the right-side door. They are

⁴ The front entrance area has 1 set of revolving doors and an individual side door on each side of the revolving doors.

⁵ He does not appear to be speaking or greeting anyone with verbal or nonverbal motions while looking towards the cashier area.

⁶ The white SUV has a blue stripe around the center and what appear to be lights on the hood. It does not appear that any special emergency lights are on or that anything other than the standard headlights are on.

⁷ It does not appear that any emergency lights are activated as the right turn is made.

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seen talking to one another. The female is wearing a lanyard around her neck with an ID and the front of her polo shirt has the red Walgreens logo. At 00:19:02, blue light flashes are observed passing outside the Walgreens-the flashes are heading in a west bound direction on North Avenue. At 00:20:06, the white female employee is seen exiting the store again. She is followed by a black female who is also a Walgreens employee (wearing the blue Walgreens logo). At 00:20:37, additional blue flashes enter the camera again. They are again observed heading west on North Avenue. The female Walgreen employees re-enter the store. They appear to be smiling. The black female appears to be animated and smiling as she points towards the West side of North Avenue. She is seen calling over another employee with her hand and they exit the store again. (Atts. 22-25, 44, 46)

Additional surveillance video footage retrieved from the southeast camera at North Park Tower apartments, located at 300 W. North Avenue. It should be noted that the video footage from the North Park Tower Apartments is not of the highest quality or resolution. The camera itself is not stationary and it pans continuously from the building entrance on North Avenue to the intersection of North Park Avenue to the east, as it records. During the part of the video where Mr. ██████ strikes the pole on North Avenue, the camera is already panning out of the North Avenue view onto the side street. The footage depicts an individual (now known as Mr. ██████) running and striking a light pole on 07 May 2014 at 00:18:18:281 hours. At 00:18:19:093 hours, a second individual (now known as Officer Yanez) is observed following closely behind Mr. ██████. At 00:18:19:687 hours, Mr. ██████ is observed falling onto the sidewalk. It does not appear on the video that Mr. ██████ ever gets back up again. At 00:18:35:703 hours, police vehicles are shown arriving on the scene with their emergency lights activated. At 00:24:24:453 hours, a CFD ambulance is observed on the scene. At 00:47:41:250 hours, the CFD ambulance is no longer on the scene. The video does not show the Taser discharge. (Atts. 26-28, 45)

Video footage retrieved from the XSport Fitness, located at 230 W. North Avenue, did not depict the actual incident. (Atts. 110-112)

Attempts to Identify Witnesses

A **canvass** conducted by IPRA Investigators Heather Looby and William Abbruzzese on 23 May 2014 of the area surrounding the incident scene did not reveal any independent witnesses or additional video cameras which may have captured footage of the incident. (Atts. 59, 79)

A **personal visit** by IPRA Investigator Looby to the XSport Fitness, located at 230 W. North Avenue, revealed the name of an independent witness, former XSport employee, "█████". On 25 September 2014, at approximately 1641 hours, the R/I spoke to ██████ on the telephone. He related unidentified police officers were chasing an unknown black male subject westbound down North Avenue when they got into a "scuffle" and the subject fell and hit his head. ██████ indicated he did not witness any misconduct by the police officers. When asked if he would be willing to come into IPRA to provide a statement, he stated he is currently working as a designer for ██████ and is living in ██████. He stated he would be willing to come into IPRA to provide an official statement upon his return to

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Chicago, but he did not know when that would be. [REDACTED] then failed to return a subsequent phone call from the R/I regarding his return date and scheduling a statement. (Att. 113)

In a telephone conversation, **Walgreens manager Nasser Shahtaji** informed IPRA that he did not actually witness the incident involving Mr. [REDACTED] and the police. According to Mr. Shahtaji, their security guard, [REDACTED] observed Mr. [REDACTED] steal a bottle of vodka and notified some police officers who were across the street from the store. Mr. Shahtaji is not aware of anyone from Walgreens who witnessed the police foot chase and/or saw the police discharge a Taser at Mr. [REDACTED] (Att. 78)

A **CLEAR service calls search** did not yield any calls made by any civilian witnesses to the incident. (Att. 52)

Online newspaper articles were reviewed to locate additional independent civilian witnesses. According to two witnesses who observed the incident from their apartment, they observed a male offender (now known as Mr. [REDACTED]) resist arrest which prompted an unknown uniformed officer (now known as Officer Yanez) to ask Mr. [REDACTED] whether he wanted him to use his Taser on him. Mr. [REDACTED] broke free from Officer Yanez and started running. Moments later, Officer Yanez used his Taser on Mr. [REDACTED] who stiffened and fell against a light pole. Mr. [REDACTED] fell to the ground and appeared to be unresponsive, even as paramedics loaded him into an ambulance minutes later. A man who was exercising in a gym overlooking the crime scene also gave a similar account of the incident. (Atts. 21, 53, 54)

Medical Evidence

The **Chicago Fire Department EMS Ambulance Report for Incident No. 141270022** indicates that Ambulance 11 (Paramedics Boguslaw Talaga and Jaime Quezada) were dispatched to the intersection of North Avenue and North Park Avenue at 00:21:35 hours. They marked themselves as en route to the scene at 00:23:39 hours and arrived at 00:29:00 hours. The paramedics found Mr. [REDACTED] unresponsive and in the care of CPD. According to CPD, Mr. [REDACTED] was the recipient of a Taser discharge prior to EMS arrival. It was reported Mr. [REDACTED] fell but then stood up and started running away. Mr. [REDACTED] was chased by CPD and received a second Taser discharge. Mr. [REDACTED] then fell and hit head on a light pole, after which he became unresponsive. Upon examination, Mr. [REDACTED] had a hematoma on the forehead. Mr. [REDACTED] was found lying on his back and was in asystole⁸. The paramedics initiated CPR and full ALS (advance life support) care. They requested additional help for CPR, which was continued by TL (Tower Ladder) 10. The report documented "about 4" Taser probes attached to Mr. [REDACTED] back. (Att.16)

⁸ ASYSTOLE AND PULSELESS ELECTRICAL ACTIVITY. Jun 2, 2017 *available at* <http://www.cardiachealth.org/asystole-and-pulseless-electrical-activity>. Asystole is a cardiac arrest rhythm in which there is no discernible electrical activity on the ECG monitor. This is sometimes referred to as "flat lining."

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In a statement to IPRA on 03 June 2014, CFD paramedic, Boguslaw Talaga, stated he had been a paramedic for thirteen years and was the paramedic in charge of Mr. ██████ treatment. He was working with his partner, Paramedic Jaime Quezada, at the time of this incident. According to Paramedic Talaga, the CFD ambulance report contains all significant findings regarding Mr. ██████ condition at the time of his treatment. Paramedic Talaga stated he drafted the present history narrative which appears in the report.

Upon their arrival at the incident scene, Paramedic Talaga observed a black male lying in the street near the curb. Paramedic Talaga recalled Mr. ██████ had a hematoma (bump) on his forehead which measured approximately an inch and a half in diameter. According to Paramedic Talaga, Mr. ██████ was not bleeding. The paramedics, assisted by one or two police officers, immediately placed Mr. ██████ on a stretcher. According to Paramedic Talaga, Mr. ██████ was completely unresponsive and not breathing. He requested additional help for CPR so that he and Paramedic Quezada could concentrate on providing advanced life support (“ALS”). Tower Ladder 10, a CFD truck, arrived. The firefighters in that unit also have EMT or paramedic training. One of them performed CPR while Paramedics Talaga and Quezada intubated Mr. ██████ hooked up a monitor and an IV of saline, and administered drugs. They did not use a defibrillator because the monitor showed that Mr. ██████ was in asystole, meaning that he did not have any heart rhythm.⁹ The paramedics gave Mr. ██████ epinephrine to get his heart started.

After they finished the initial treatment, the paramedics transported Mr. ██████ to Northwestern Memorial Hospital. Paramedic Quezada drove while Paramedic Talaga and an EMT or fireman remained in the back with Mr. ██████. One of the firefighters from Tower Ladder 10 was with them to assist. When they arrived at the hospital, Mr. ██████ had regained blood pressure and a pulse, but he went into cardiac arrest three additional times in the ER. Paramedic Talaga was aware Mr. ██████ received a Taser discharge during the incident. He did not actually see any Taser probes on Mr. ██████ but overheard someone at the hospital state there were four probes on Mr. ██████ back. Paramedic Talaga included this information in the ambulance report, which he prepared immediately after they arrived at the hospital.

Paramedic Talaga did not have an opinion regarding the cause of Mr. ██████ cardiac arrest. Paramedic Talaga has never seen a Taser discharge cause someone to go into cardiac arrest. Paramedic Talaga did not have any opinions regarding whether Mr. ██████ was under the influence of drugs or alcohol that night. (Att. 69, 80)

In a statement to IPRA on 03 June 2014, CFD paramedic, Jaime Quezada, stated he had been a paramedic for fourteen years. On the date of the incident, Paramedic Quezada was the driver of the ambulance. He recalled getting a call over the radio for a “sick person” with no further details. Upon their arrival at the scene, he recalled observing

⁹ Paramedic Talaga explained that a defibrillator works by resetting the heart by stopping and restarting it. This does not work if there is no heartbeat or rhythm to stop.

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approximately ten police officers and two or three civilians standing around. Paramedic Quezada and his partner were the first CFD personnel to reach the scene of the incident.

Paramedic Quezada recalled seeing a man (now known as Mr. ██████) lying on his back on the sidewalk. Paramedic Quezada recalled Mr. ██████ had a head injury, was bleeding, and was in complete cardiac arrest. Paramedics Quezada and Talaga transferred Mr. ██████ into the ambulance, so they could work on him there. They put him on a cardiac monitor, started an IV, gave him medication, stabilized his neck, and bandaged his head wound. Due to the nature of Mr. ██████ condition, Paramedic Talaga called for assistance from another CFD unit. Firefighters from Tower Ladder 10 arrived and helped with CPR. The paramedics did not spend a lot of time on the scene because they wanted to get Mr. ██████ to the hospital. Consistent with Paramedic Talaga's account, Paramedic Quezada stated he had never seen a Taser discharge cause someone to go into cardiac arrest. Paramedic Quezada assumed the Taser probes hit Mr. ██████ back, but he did not see them and did not know how many Taser probes actually contacted Mr. ██████. He further stated Paramedic Talaga completed the report and he would defer to Paramedic Talaga's account of the incident. He did not recall any relevant information about the incident that was not contained in the report. (Att. 84, 86)

On 07 May 2014, at approximately 0833 hours, IPRA investigators attempted to interview Mr. ██████ at **Northwestern Memorial Hospital**. The investigators met with neurology resident, Dr. Mitra Afshari, who related blood flow to Mr. ██████ brain was limited because his heart was not working properly. Dr. Afshari opined, "the shock from being Tasered was the likely cause of Mr. ██████ cardiac arrest." (Att. 29)

To/From Reports document the fourteen telephone calls to Northwestern made by IPRA investigators over a two-week span to obtain updates on Mr. ██████ medical condition. (Att. 30-32, 34, 36, 41)

Medical records from Northwestern Memorial Hospital document Mr. ██████ was treated at Northwestern from 07 May 2014 through 21 May 2014. On 20 May 2014 at 1416 hours, Mr. ██████ final clinical diagnoses were listed as protein-calorie malnutrition; rhabdomyolysis¹⁰; airway protection; thrombocytopenia¹¹; acute hypernatremia¹²; acute renal insufficiency; hypoxic ischemic encephalopathy (HIE)¹³;

¹⁰ Rhabdomyolysis. Jun 2, 2017 available at <http://www.nlm.nih.gov/medlineplus/ency/article/000473.htm> Rhabdomyolysis is the breakdown of muscle tissue that leads to the release of muscle fiber contents into the blood. These substances are harmful to the kidney and often cause kidney damage.

¹¹ Thrombocytopenia. Jun 9, 2017 available at <http://www.nlm.nih.gov/medlineplus/ency/article/000586.htm>. Thrombocytopenia is any disorder in which there is an abnormally low amount of platelets. Platelets are parts of the blood that help blood to clot. This condition is sometimes associated with abnormal bleeding.

¹² Hypernatremia. Jun 9, 2017 available at <http://emedicine.medscape.com/article/241094-overview>. Hypernatremia is a common electrolyte problem and is defined as a rise in serum sodium concentration to a value exceeding 145 mmol/L.

¹³ Hypoxic. June 9, 2017 available at <http://www.mountsinai.org/patient-care/health-library/diseases-and-conditions/hypoxic-ischemic-encephalopathy>. Hypoxic ischemic encephalopathy (HIE) is a condition in

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cerebral ischemia; cerebral edema; coma; cardiac arrest; and electrocution caused by electroshock gun used in legal intervention.¹⁴

According to Clinical Notes from on or around 08 May 2014, Mr. [REDACTED] was presented to Northwestern with a traumatic brain injury (“TBI”) after hitting his head on a metal pole and undergoing thirty minutes of resuscitation. Mr. [REDACTED] was unresponsive and intubated with increased brain swelling.¹⁵ Mr. [REDACTED] was brought in by EMS to the Northwestern ED in cardiac arrest. According to the records, an electroshock weapon (Taser) was used on Mr. [REDACTED] twice by the police. Mr. [REDACTED] became unresponsive after the second usage of the weapon and was subsequently found to be in cardiac arrest when EMS personnel arrived. He was resuscitated and then developed into pulseless electrical activity,¹⁶ but eventually regained a normal heart rhythm, perceptible pulse, and stable blood flow. It was noted there was uncertainty as to whether the coma was due to anoxic¹⁷ injury alone or the effects of TBI and electroshock injury/induced seizure.¹⁸

The report documenting Mr. [REDACTED] medical history states that police officers discharged a Taser at him twice while they were pursuing him. After receiving the second discharge, Mr. [REDACTED] fell forward and hit his head on a lamp post, after which he was unresponsive and found to be pulseless. It was reported that EMS was called and arrived five (5) minutes later, at which time Mr. [REDACTED] was found to be asystolic. EMS initiated advanced cardiovascular life support on Mr. [REDACTED] who was intubated and transported to Northwestern ED. Mr. [REDACTED] was asystolic for approximately 20 minutes.¹⁹

Under the Neurological Recommendations, it is noted that Mr. [REDACTED] toxicology screening was positive for cannabinoids. Additionally, Mr. [REDACTED] blood alcohol level was approximately .061 at the time his sample was collected on 07 May 2014 at 0111 hours.

An Emergency Department note from 07 May 2014 indicates, per the report from CPD, Mr. [REDACTED] was being actively pursued by police when an officer discharged a Taser at him. Mr. [REDACTED] was down on the ground, but fought with the police as they tried to handcuff him. Mr. [REDACTED] then stood up and ran again. Per the CPD report, the officer

which the brain does not receive enough oxygen. HIE can be fatal. Brain cells can begin dying after four (4) minutes without oxygen.

¹⁴ Attachment 107, Pages 1-3

¹⁵ Attachment 107, Page 116

¹⁶ Pulseless electrical activity. Jun 9, 2017 available at <http://www.cardiachealth.org/asystole-and-pulseless-electrical-activity>. Pulseless electrical activity occurs when the patient is unresponsive and has no pulse, but some heart rhythm is noted on an ECG monitor.

¹⁷ Anoxic Brain Damage. Jun 9, 2017 available at <http://www.mountsinai.org/patient-care/health-library/diseases-and-conditions/anoxic-brain-damage>.

Anoxic brain damage is injury to the brain due to lack of oxygen. Hypoxia is the term to describe low oxygen. Brain cells without enough oxygen will begin to die after about four (4) minutes.

¹⁸ Attachment 107, Page 118

¹⁹ *Id.* at Page 122

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discharged a Taser at Mr. [REDACTED] a second time, after which he collapsed and hit his head a pole. He was found to be unresponsive and in asystole.²⁰

A Clinical Note by Dr. [REDACTED] states, "I am not sure of the cause of the patient's cardiac arrest, but the etiology of the patient's traumatic arrest may have been multifactorial including the multiple Tasers the patient received causing a cardiac disturbance versus the patient sustaining a traumatic cardiac contusion and intra-cranial hemorrhage (ICH) from running into a pole."²¹

Mr. [REDACTED] father, also his Power of Attorney, withdrew Mr. [REDACTED] from life support on 20 May 2014 at 1400 hours. Mr. [REDACTED] was pronounced dead at Northwestern on 20 May 2014 at 1649 hours.²² (Att. 107, 108)

In a **deposition conducted on 07 December 2015**, [REDACTED] M.D., stated he was a neurology resident at Northwestern Memorial Hospital in May 2014. Dr. [REDACTED] stated on that 07 May 2014 he was called to the trauma bay in the emergency department to determine if a John Doe, now known to be Mr. [REDACTED] was a candidate for therapeutic hypothermia²³ protocol, which is where a cardiac arrest patient is kept cool to improve neurological recovery. Dr. [REDACTED] further stated he learned from either CPD officers or paramedics that Mr. [REDACTED] was fleeing from the police. The officers attempted to stop Mr. [REDACTED] by discharging a Taser. When the initial Taser discharge did not stop Mr. [REDACTED] the officers discharged the Taser a second time, during which time Mr. [REDACTED] stopped, fell, and struck his head against a metal pole. Dr. [REDACTED] also knew the officers initiated CPR when they determined Mr. [REDACTED] was unresponsive following the fall. Based on his assessment, Dr. [REDACTED] determined Mr. [REDACTED] was a candidate for therapeutic hypothermia, pending the outcome of Mr. [REDACTED] head CT scans. Dr. [REDACTED] could not recall what the CT scan showed and did not know whether the therapeutic hypothermia was initiated. Dr. [REDACTED] further confirmed he discussed his recommendations for Mr. [REDACTED] with Dr. [REDACTED]. Dr. [REDACTED] stated he did not have any involvement in the direct care of Mr. [REDACTED] after conducting the consultation in the emergency department and that he did not reach any conclusions regarding Mr. [REDACTED] prognosis at the time of his consult. (Att. 121)

In a **deposition conducted on 14 December 2015**, [REDACTED] M.D. related he was a supervising doctor in the Neurologic Intensive Care Unit at Northwestern Hospital and he had been at Northwestern Hospital since July 2011. Dr. [REDACTED] indicated he was the attending physician assigned to Mr. [REDACTED] care, after Mr. [REDACTED] had been treated by physicians in the Emergency Department and the Cardiac Care Unit. Despite Dr. [REDACTED] initial review and recommendation, Dr. [REDACTED] recommended against therapeutic

²⁰ *Id.* at Page 128

²¹ *Id.* at Page 136

²² *Id.* at Page 127-128, 166

²³ Therapeutic hypothermia. Jun 9, 2017 available at

<http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2998647/>. Therapeutic hypothermia is defined as controlled induced hypothermia; i.e. induced hypothermia with the potentially deleterious effects such as shivering, being controlled or suppressed.

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hypothermia, because Mr. ██████ was found to have bleeding around his brain. Additionally, Dr. Mass was initially unsure whether Mr. ██████ coma was primarily due to a traumatic brain injury or an anoxic injury, which is an injury caused by lack of oxygenated blood flowing through the brain tissue. The most common cause of anoxic injury is cardiac arrest.²⁴ Mr. ██████ presented both types of brain injuries. For traumatic injuries, therapeutic hypothermia is not recommended for patients with pulseless electrical activity, which is the type of cardiac arrest Mr. ██████ had. Dr. ██████ further related that during the course of his care of Mr. ██████ he “came to the conclusion that the majority of [Mr. ██████] brain injury was due to anoxic injury;”²⁵ however, he acknowledged it is not possible to “differentiate the effects of those two [types of injuries] with one hundred percent certainty.”²⁶ Dr. ██████ confirmed Mr. ██████ cardiac status stabilized quickly, but Mr. ██████ remained in a persistent coma and developed “myoclonus,”²⁷ which Dr. Mass described as an “abnormal, involuntary body movement that is characterized as brief, irregular contractions of muscles.”²⁸ Dr. ██████ explained myoclonus can be caused by a number of factors, including seizures. Dr. ██████ indicated myoclonic seizures are a “well-described and fairly common complication”²⁹ associated with anoxic brain injuries, and the presence of myoclonic seizures after an anoxic brain injury is considered “a very dismal prognostic factor for neurologic recovery.”³⁰ Following a head CT scan, Dr. ██████ also diagnosed Mr. ██████ with “global brain edema,”³¹ which Dr. ██████ explained as a widespread collection of fluid in the brain. Dr. ██████ related that developing fluid in body tissue is a standard response to injury in the body; however, Dr. ██████ said for Mr. ██████ to develop edema in the whole brain, he would have had to sustain an injury that would affect the whole brain. Therefore, Dr. ██████ opined Mr. ██████ global cerebral edema was the result of the anoxic brain injury, as opposed to the traumatic brain injury Mr. ██████ sustained from striking his head, which included an area of swelling that was identified via brain imaging. Dr. ██████ also opined that the most significant debilitating brain injury to Mr. ██████ was the anoxic brain injury, which was caused by cardiac arrest. Dr. ██████ further indicated, based on the reported use of an electroshock weapon (Taser) on Mr. ██████ the most likely reason Mr. ██████ had a cardiac arrest was due to the deployment of the Taser. Dr. ██████ added he only received information regarding the use of the Taser on Mr. ██████ from the available medical records, and that he did not receive any information regarding the Taser deployment from the paramedics or CPD members. Dr. ██████ related that, if the information contained in the available medical records regarding the events that had occurred prior to Mr. ██████ admittance to Northwestern Hospital were accurate, his opinion is that Mr. ██████ “would not likely have had a cardiac arrest if he would not have been exposed to the electroshock weapon.”³² (Att. 122)

²⁴ Attachment 122, at Page 17, lines 8-23.

²⁵ *Id.* Page 38, Line 4-5.

²⁶ *Id.* Page 37, Line 16-17.

²⁷ *Id.* Page 38, Line 11.

²⁸ *Id.* at Line 18-20.

²⁹ *Id.* at Page 39, Line 1.

³⁰ *Id.* at Line 16-17.

³¹ *Id.* at Page 40, Line 4.

³² *Id.* at Page 88, Line 19-21.

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In a deposition conducted on 18 February 2016, ██████████ M.D., stated he was an Interventional Cardiologist at Northwestern and that his practice focused on conducting procedures on individuals who have presented with a heart attack. Dr. ██████████ said he was the attending physician in the Northwestern Memorial Hospital Intensive Care Unit (ICU) on 07 May 2014, which was when he met Mr. ██████████. Dr. ██████████ confirmed his only interaction with Mr. ██████████ was while Mr. ██████████ was in the ICU. Dr. ██████████ reported he knew Mr. ██████████ had a head bleed and a cerebral edema from hitting his head after receiving Taser discharges. Dr. ██████████ indicated he knew Mr. ██████████ had received a Taser discharge after trying to steal from a liquor store, and he believed he may have heard the patient's story from the overnight resident. Dr. ██████████ said he did not speak to EMS personnel directly, nor did he read any police reports regarding Mr. ██████████. Dr. ██████████ also knew from the records Mr. ██████████ had suffered cardiac arrest for approximately thirty minutes. Dr. ██████████ testified that Mr. ██████████ cardiac arrest was not due to a cardiac origin or a cardiac blockage, but could not say it was a result of the Taser discharge. Dr. ██████████ added that Mr. ██████████ brain injury likely resulted from a combination of the cardiac arrest and hitting his head. Dr. ██████████ confirmed Mr. ██████████ death certificate lists Mr. ██████████ cause of death as anoxic brain injury and cardiac arrest. (Att. 123)

A report of observation of the postmortem examination of ██████████ by IPRA Investigator Roberto Soto states Mr. ██████████ autopsy was conducted on 21 May 2014, at approximately 0800 hours, at the Cook County Medical Examiner's (ME) Office. Dr. ██████████ performed the postmortem examination. Dr. ██████████ noted that she was aware that Mr. ██████████ had been the subject of a Taser discharge and that his head had struck an object. Dr. ██████████ concluded that further examination of Mr. ██████████ brain by a pathologist would be required to ascertain the cause of death. Dr. ██████████ could not determine where the Taser probes had penetrated Mr. ██████████ body. (Att. 58)

The Report of Postmortem Examination for ██████████ states that the medical opinion was Mr. ██████████ "died of closed head injuries due to fall as a result of a police chase."³³ The manner of death was "accident."³⁴ A subsequent "brain autopsy"³⁵ was performed by the Northwestern Memorial HealthCare (NMH) Department of Pathology. An Outside Consultation Final Report by NMH, included in this Report of Postmortem Examination, indicates that the final brain autopsy diagnoses include evidence of head trauma, specifically bruising and bleeding in various areas of Mr. ██████████ brain; as well as associated secondary effects, which include swelling, herniation, and necrosis in multiple areas of Mr. ██████████ brain. (Att. 109)

Photographs taken by the Medical Examiner's Office depict Mr. ██████████ (Case #335 May 14) lying on a steel gurney at the ME's Office. Several photographs were taken of Mr. ██████████ head and brain which appear to show a sizeable dark red hematoma towards the front of Mr. ██████████ head, at the top of his forehead. (Att. 82)

³³ Attachment 109, Page 6.

³⁴ *Id.*

³⁵ *Id.* at Page 13.

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In a deposition conducted on 19 November 2015, Assistant Medical Examiner, [REDACTED] M.D.,³⁶ related that she performed the post mortem examination of [REDACTED] on 21 May 2014. Dr. [REDACTED] related that Mr. [REDACTED] was the second individual that she had ever examined that had been tased. Dr. [REDACTED] observed Mr. [REDACTED] to have bruising on the frontal aspect of the brain and requested a neuropathology consultation to investigate further. The consultation was conducted by Northwestern Medical Center, which Dr. [REDACTED] indicated is regularly utilized to conduct consultations and was not chosen based on the location where Mr. [REDACTED] received medical attention.

During Dr. [REDACTED] examination of Mr. [REDACTED] she observed pulmonary congestion/edema (i.e. fluid in the lungs) which she noted. Dr. [REDACTED] did not reach any conclusion as to the cause of the fluid in Mr. [REDACTED] lungs. Dr. [REDACTED] did not observe any evidence of a Taser discharge on Mr. [REDACTED] body. Dr. [REDACTED] did not observe any evidence of an anoxic brain injury during her examination of Mr. [REDACTED] nor did she observe any evidence Mr. [REDACTED] suffered a heart attack and/or cardiac arrest. The anoxic brain injury, which would not be visible during the postmortem examination, was discovered during the further neuropathology examination. Dr. [REDACTED] incorporated the findings of that consultation into her own report. Dr. [REDACTED] had no opinion as to the cause of Mr. [REDACTED] anoxic brain injury. Dr. [REDACTED] acknowledged that at some point, prior to or after her examination of Mr. [REDACTED] she reviewed a neurological consultation findings report from Northwestern Hospital and Departmental reports, including the Taser download, relative to Mr. [REDACTED]. Dr. [REDACTED] also confirmed she viewed video footage depicting a portion of the incident involving Mr. [REDACTED]. Dr. [REDACTED] did not speak with any of Mr. [REDACTED] physicians while determining Mr. [REDACTED] cause of death. Dr. [REDACTED] opinion was that Mr. [REDACTED] cause of death was a closed head injury due to a fall. The manner of death was "accident," meaning "the circumstances surrounding his death were accidental in nature from a forensic pathology perspective."³⁷ (Att. 124)

Taser Training

In a conversation with an IPRA investigator on 02 June 2014, CPD Taser Instructor Officer George Cancel³⁸ provided a Taser overview. He explained that after a one second spark test, the Taser is ready to be used. Officer Cancel stated each Taser trigger pull discharges 2 probes from a single cartridge. The initial pull initiates an electric current for a five second cycle and then stops, unless the trigger is still being held down. Each Taser X2 is equipped with two cartridges, each of which contains two probes that are connected to the cartridge by a thin 25-foot-long wire. When the trigger is pulled, a single cartridge is deployed and, upon circuit connection (2 probes attached within 1 inch of the body), the subject will receive 1200 volts.

³⁶ Dr. Watkin's testified that began her employment with the Cook County Medical Examiner's Office as of 7/1/13. Her title was that of "Assistant Medical Examiner-Fellow" until 7/1/14 when she became "Assistant Medical Examiner". Mr. [REDACTED] autopsy took place on May 21, 2014.

³⁷ Att. 124, Page 36, Line 23 – Page 37, Line 1

³⁸ In addition to his CPD training, Officer Cancel is also certified by Taser International as a Master Taser Trainer.

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Officer Cancel explained a Taser discharge causes a subject to experience neuromuscular incapacitation.³⁹ Once neuromuscular incapacitation occurs, it is difficult to determine how a subject will react, i.e., how the person is going to fall or in what direction. After a Taser cycle is finished, the subject is again able to move freely. A Taser can be shot from over 18 feet away. Four inches or more of spread between the Taser probes is necessary to get neuromuscular incapacitation. There is a one foot spread of the Taser probes per every nine feet between the Taser and the subject. The closer a subject is to the Taser, the less effective it is.

Per Officer Cancel, the CPD Academy teaches police recruits to deploy a Taser for five seconds when dealing with a subject who fits the description of an active resister or above according to the Use of Force Guidelines. After the initial five second cycle, recruits are taught to look for a change in the subject's behavior. Police recruits are taught to use a series of up to three five-second cycles with a Taser. If there is still no change in the subject's behavior, police recruits are taught to consider utilizing another type of force.

The R/I and Officer Cancel next reviewed Mr. [REDACTED] Arrest Report, TRR, and Taser download documents. Based on his review of the reports, Officer Cancel stated Officer Yanez's initial nine-second trigger pull, followed by a second trigger pull, approximately thirty seconds later that lasted for the standard five-second cycle was not excessive. It followed both CPD Academy Training and the CPD Use of Force guidelines. Officer Cancel further noted that, per the Arrest Report, Mr. [REDACTED] was 5'9" tall and weighed 230 pounds. Officer Cancel explained the heavier a person is, the longer it usually takes that person to be incapacitated by a Taser Discharge.
(Att. 5-7, 81)

The **Taser X2 User Certification Course Version 19**⁴⁰, which was released by Taser International Incorporated in April 2013, includes warnings about several Taser-related factors that were present in this incident. The training warns of cardiac risks related to use of a Taser and instructs officers to, when possible: target the back, avoid targeting the chest, and avoid prolonged and repeated exposures to reduce these cardiac risks.⁴¹ Because a Taser discharge causes neuromuscular incapacitation, a subject may fall in an uncontrolled manner and be unable to catch or protect him- or herself. Officers are trained to consider the environment and the likelihood of a fall-related injury.⁴² The training also identifies a list of "Increased Deployment Risk Examples,"⁴³ which includes subjects who are "running or under momentum."⁴⁴ However, the training indicates that the use of a Taser

³⁹ Neuromuscular incapacitation. Jun 9, 2017 available at <http://www.ncbi.nlm.nih.gov/pubmed/15683517> Neuromuscular incapacitation (NMI) devices discharge a pulsed dose of electrical energy to cause muscle contraction and pain.

⁴⁰ It should be noted that the referenced version of the CPD Taser X2 User Certification training was the training that was in effect at the date and time of the incident.

⁴¹ Att. 119, Page 17

⁴² *Id.* at Page 164

⁴³ *Id.* at Page 166

⁴⁴ *Id.*

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on subjects who fall into the identified increased deployment risk category may still be an appropriate option, given the totality of the circumstances. (Att. 119)

The **CPD Education and Training Division's Taser X2 Training Review** (X2 Training Review) references General Order G03-02-02, "Force Options"; S03-02-02 "Other Weapon Discharge Incidents"; and U04-02-04 "Taser Devices." The X2 Training Review identifies the following two key factors considered regarding a Taser deployment: (1) whether the environment is appropriate for the use of a Taser; and (2) whether the Taser is a reasonable force option based on the totality of the circumstances. The training review document includes material on how to deploy a Taser and what to do post-deployment. The training review document encourages officers to aim at the subject's back for several reasons: the surprise factor, the back has higher muscle mass, clothing fits tighter, and targeting the back avoids inadvertent contact to the face, throat and groin. (Att. 48)

IPRA Statements and Civil Depositions in 14cv3849

In a deposition conducted on 10 February 2016, **Walgreens Security Guard** [REDACTED] related that he was working security at the Walgreens on 07 May 2014. He was not assigned to any specific Walgreens location at that time and floated between them as needed to provide security service. Mr. [REDACTED] recalled seeing a black male (now known to be Mr. [REDACTED]) enter the store and go to the liquor aisle. Mr. [REDACTED] could not see the aisle from where he was patrolling the store so he did not immediately know what Mr. [REDACTED] did in the aisle. He next saw Mr. [REDACTED] running toward the door while the manager, Mr. [REDACTED] yelled at him. Mr. [REDACTED] then ran out the door. Based on his previous experience in that store, Mr. [REDACTED] knew that most of the shoplifting occurs in and around the liquor aisle. Mr. [REDACTED] assumed that Mr. [REDACTED] had stolen something from that aisle. Mr. [REDACTED] went outside and saw that Mr. [REDACTED] had run west on North Avenue. A police car was stopped at the red light at Wells and North Avenue. Mr. [REDACTED] told the officers that Mr. [REDACTED] had just taken something from the Walgreens. The officers went in the same direction as Mr. [REDACTED]. Mr. [REDACTED] did not run after Mr. [REDACTED] because the security guards are not authorized to chase anyone per the store policy. Mr. [REDACTED] did not see what happened between Mr. [REDACTED] and the police officers. (Attachment 129)

In a statement to IPRA on 15 July 2014, **Witness Officer Michelle Chereso, #19179**, stated that on the date of the incident, she was on-duty, in uniform, and working with her partner, Officer Theresa Floyd. Officer Chereso stated she and Officer Floyd first met Mr. [REDACTED] when they heard a radio call involving a shoplifter and foot pursuit. She reported they headed to the location, which was in front of an XSport gym on North Avenue. Officer Chereso recalled the actual shoplifting incident had occurred at the Walgreens, located at the intersection of North and Wells. When they arrived on scene, Mr. [REDACTED] had already been detained and was on the ground. She stated he was completely unconscious. Officer Chereso recalled Officers Cosentino and Yanez being on scene. Officer Chereso believed Mr. [REDACTED] had a head wound, possibly a "bump" on his forehead. Officer Chereso had heard over the air and was told by Officer Cosentino that Mr. [REDACTED] had been the subject of a Taser discharge by Officer Yanez. She did not know

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how many times the Taser had been discharged. Officer Chereso did not know where on Mr. [REDACTED] body the Taser probes made contact or if the Taser probes were inventoried. Officer Chereso did not witness any of the foot pursuit and did not see Mr. [REDACTED] attempting to flee from the police officers. Officer Chereso stated she and Officer Floyd were not on scene when the paramedics arrived because they were at the Walgreens speaking to the manager on duty about the shoplifting incident. (Att. 97, 98)

In a statement to IPRA on 23 July 2014, Witness Officer Theresa Floyd, #3545, related similar information as her partner, Officer Chereso. Officer Floyd recalled she was the driver of their marked Tahoe and that she and her partner responded to a radio call of a foot chase. When they arrived on scene, Mr. [REDACTED] was already in handcuffs and lying on his side on the ground. She recalled Mr. [REDACTED] hands were behind his back and his eyes were slightly opened. She stated he was not talking, but was moving "a little bit." In addition to Officers Cosentino and Yanez, Officer Floyd recalled seeing Sgt. Tim Bridges on scene. While she could not recall observing injuries to Mr. [REDACTED] she did recall someone on scene telling her Mr. [REDACTED] had been received a Taser discharge and then fell forward and struck his head on a light pole. Officer Floyd had no additional knowledge regarding Mr. [REDACTED] being Tasered. (Atts. 99, 100)

In a statement to IPRA on 31 July 2014, Witness Sergeant Tim Bridges, #1407, stated that when he arrived on scene, Mr. [REDACTED] was unresponsive and lying in the street with his hands handcuffed behind his back. Sgt. Bridges recalled seeing possibly one or two Taser probes on Mr. [REDACTED] clothing. Sgt. Bridges recalled approximately three or four other police officers being on scene, including Officers Cosentino and Yanez. Officer Cosentino related to Sgt. Bridges that he and Officer Yanez pursued Mr. [REDACTED] after they were flagged down by the manager of Walgreens, who pointed to Mr. [REDACTED] and told them he stole a bottle of liquor from the store. Sgt. Bridges stated Officer Cosentino told him Mr. [REDACTED] had received a Taser discharge, went down, and then jumped back up and broke away as he and Officer Yanez attempted to handcuff him. Additionally, Officer Cosentino told Sgt. Bridges that Mr. [REDACTED] then ran right into the pole, and just dropped. Sgt. Bridges stated he did not observe any visible injuries to Mr. [REDACTED] Prior to the paramedics' arrival on scene, Sgt. Bridges attempted to perform CPR on Mr. [REDACTED] but was unable to resuscitate him. Sgt. Bridges reviewed Mr. [REDACTED] Arrest Report and stated it was an accurate representation of the circumstances surrounding Mr. [REDACTED] arrest. (Att. 103, 104)

In a statement to IPRA on 24 July 2014, Witness Officer Michael Cosentino, #4487, related he was working with his partner, the involved member, Officer Yanez, at the time of the incident. Per Officer Cosentino, he and Officer Yanez pursued Mr. [REDACTED] in their marked vehicle until they parked it next to the XSport and exited the vehicle to pursue Mr. [REDACTED] on foot.

Per Officer Cosentino, he instructed Mr. [REDACTED] to show his hands, which were inside of his pants, several times. Mr. [REDACTED] failed to comply with these commands. Officer Yanez warned Mr. [REDACTED] he was going to discharge his Taser if he did not comply. Mr. [REDACTED] then started sprinting away and Officer Yanez deployed his Taser.

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Mr. [REDACTED] who still had his hands in his pants, fell to the ground. Mr. [REDACTED] stiffened and would still not show his hands to the officers, who continued to ask him to show his hands. Officer Cosentino stated Officer Yanez warned Mr. [REDACTED] that he was going to discharge his Taser again if Mr. [REDACTED] did not show the officers his hands. Officer Cosentino grabbed Mr. [REDACTED] hand to pull it out of the pants. Officer Cosentino holstered his weapon⁴⁵ so he could handcuff Mr. [REDACTED]. Mr. [REDACTED] stood up and pushed Officer Cosentino away from him. Officer Yanez then yelled, "Taser, Taser, Taser," indicating he was going to deploy his Taser again. Officer Cosentino released his grip on Mr. [REDACTED] arm. Officer Yanez deployed the Taser a second time. According to Officer Cosentino, he was unsure if the Taser probes contacted Mr. [REDACTED]. He observed Mr. [REDACTED] who had been running, suddenly stop and fall towards the light pole. Officer Cosentino further explained Mr. [REDACTED] sudden stop after the second Taser discharge appeared different from when Mr. [REDACTED] had stopped following the first Taser discharge, in that Mr. [REDACTED] "kinda"⁴⁶ stopped, but then continued running. Officer Cosentino then observed Mr. [REDACTED] hit the pole, and fall into the middle of the street. Officer Cosentino believed Mr. [REDACTED] may have been looking back at him and Officer Yanez as he was running away, to determine if the officers were pursuing him, and when Mr. [REDACTED] turned back around he ran right into the pole.

Officer Cosentino immediately put handcuffs on Mr. [REDACTED] who was now unconscious, and called for an ambulance. Officer Cosentino had already reported the Taser discharge after the first time Officer Yanez used it. Officer Cosentino then recovered the bottle of vodka from Mr. [REDACTED] waistband. Officer Cosentino opined that the second Taser discharge did not have any effect on Mr. [REDACTED] because Mr. [REDACTED] continued to run after the Taser was discharged. When asked if he believed Mr. [REDACTED] appeared to be under the influence of drugs or alcohol the night of the incident, Officer Cosentino stated "Yes, he did."⁴⁷ When asked to elaborate why he believed so, Officer Cosentino stated "I don't have a clue"⁴⁸ and indicated Mr. [REDACTED] behavior was erratic. (Att. 101, 102)

In a deposition conducted on 08 October 2016, **Officer Michael Cosentino** provided an account of the incident that is consistent with the statement he gave to IPRA on 24 July 2014. On 07 May 2014, Officer Cosentino was on patrol with Officer Yanez, heading south on Wells Street. When they stopped at the red light at North Avenue he saw someone he later learned was Mr. [REDACTED] run west across the street in front of the officers' vehicle. Officer Yanez shined the vehicle's spotlight toward the Walgreen's at the northeast corner of North Avenue and Wells Street, which is the direction from which Mr. [REDACTED] was running. Officer Cosentino saw a security guard exit the Walgreen's and wave at them. The security guard pointed at Mr. [REDACTED] and told the officers that Mr. [REDACTED] had just "robbed"⁴⁹ the store. Officer Cosentino explained that there is a difference between the legal definition of the word "rob" and the way the word is commonly used. Because the

⁴⁵ Officer Cosentino did not specify when or why he removed his weapon from the holster in the first place.

⁴⁶ Att. 102, Page 11, Line 17.

⁴⁷ *Id.* at Page 16, Line 15.

⁴⁸ *Id.* at Line 19-20.

⁴⁹ Attachment 128, page 15, line 10.

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security guard used the word “rob” without further explanation, Officer Cosentino did not immediately know whether he meant that Mr. [REDACTED] had robbed someone or simply stolen something from the store, which would be a different charge. Officer Cosentino looked west down North Avenue and saw that Mr. [REDACTED] had stopped running and was looking back at them. Mr. [REDACTED] then continued walking west.

Officer Cosentino turned west onto North Avenue and stopped their vehicle. Both officers got out of the vehicle. Officer Yanez was on the passenger side and therefore closer to Mr. [REDACTED]. He told Mr. [REDACTED] to show his hands. When Officer Cosentino walked around the front of the CPD vehicle and got to the sidewalk, he saw that Mr. [REDACTED] had his hand inside the front of his pants. Officer Cosentino took out his own weapon at that point. He recalled that Officer Yanez had his Taser out. Officer Yanez had his hand on Mr. [REDACTED] arm or shirt and was holding Mr. [REDACTED] against a wall or window. Mr. [REDACTED] continued to keep his left hand inside his pants. Officer Cosentino could not recall if Mr. [REDACTED] right hand was against the wall or if Officer Yanez was holding it. Mr. [REDACTED] was facing the wall, but Officer Cosentino’s positioning to Mr. [REDACTED] left allowed him to clearly see Mr. [REDACTED] hand inside his pants. Officers Cosentino and Yanez both repeatedly instructed Mr. [REDACTED] to show them his hand. According to Officer Cosentino, Mr. [REDACTED] became an active resister by pushing and pulling out of Officer Yanez’s grasp. Officer Cosentino did not physically engage with Mr. [REDACTED] at that point. Officer Cosentino could not clearly see what was happening in the struggle, but it looked like Mr. [REDACTED] tried pushing away from Officer Yanez to get away from him. Officer Yanez repeatedly ordered Mr. [REDACTED] to stop his actions and show his hands, which Mr. [REDACTED] refused to do. Officer Yanez also repeatedly warned Mr. [REDACTED] that he was going to use his Taser. Mr. [REDACTED] started to turn away from Officer Yanez. It appeared as if Mr. [REDACTED] was going to be successful in getting away from Officer Yanez. Officer Yanez yelled, “Taser, Taser, Taser.”⁵⁰ Officer Cosentino then heard a popping sound, which he believed was the Taser discharge. Mr. [REDACTED] stiffened and fell to the ground next to the building where he and Officer Yanez had been struggling.

Both of Mr. [REDACTED] hands were underneath him. Officer Cosentino directed Mr. [REDACTED] to show his hands. Mr. [REDACTED] said, “Okay, okay, okay,” and put his hands out to his sides like an airplane.⁵¹ Officer Cosentino put his gun back in his holster and moved to handcuff Mr. [REDACTED]. As soon as Officer Cosentino grabbed Mr. [REDACTED] left wrist, Mr. [REDACTED] stiffened. He then lifted his upper body and put his hands underneath him again. Officer Cosentino still had a grip on Mr. [REDACTED] left wrist. Mr. [REDACTED] started kicking his legs and twisting his body to get away from Officer Cosentino. Officer Cosentino had his right knee on Mr. [REDACTED] back and Officer Yanez was near Mr. [REDACTED] legs. Officer Cosentino did not know whether Mr. [REDACTED] contacted Officer Yanez when he kicked his legs. Mr. [REDACTED] got out from under Officer Cosentino’s knee and got to his feet, where he continued to struggle with the officers. Officer Cosentino was surprised Mr. [REDACTED] was still struggling with him and told Mr. [REDACTED] to calm down because it was not a big deal. Officer Cosentino still had a hold on Mr. [REDACTED] left wrist.

⁵⁰ *Id.* at Page 28, line 9

⁵¹ *Id.* at Page 35, lines 2-4

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Mr. ██████ swung his right arm to get away from the officers. According to Officer Cosentino, Mr. ██████ did not appear to be swinging to strike them, but just to get to his feet and away from the officers. Officer Yanez warned Mr. ██████ he was going to use the Taser again, but Mr. ██████ did not cease his actions. Mr. ██████ was facing Officer Cosentino. He leaned back to use his body weight to break free from the officer, but Officer Cosentino maintained his grip.

Officer Yanez yelled again about the Taser and said he was going to use it. Officer Cosentino let go of Mr. ██████ at that point. Mr. ██████ went into “a sprinter’s stance and was in a full sprint.”⁵² Officer Cosentino heard a pop, which he took to be another Taser discharge. Mr. ██████ had been around a light pole at the time of the pop. Mr. ██████ looked back at the officers and then looked back in the direction in which he was running. He ran into the light pole, spun around, and fell to the ground in the street. Officer Cosentino explained that, after the initial Taser discharge in the middle of the encounter, Mr. ██████ contorted his body and fell to the ground. Per Officer Cosentino, this is what normally happens when someone receives a Taser discharge. After the second Taser discharge, however, Mr. ██████ did not react in the same way. Instead, Mr. ██████ continued running in a full sprint until he hit the light pole. Officer Cosentino expressed doubt that Mr. ██████ received that second Taser discharge.

Once Mr. ██████ hit the light pole and fell to the ground, Officer Cosentino handcuffed him behind his back. Mr. ██████ was not conscious and Officer Cosentino saw thick blood in his ears. Officer Cosentino had already used his radio at some point between the two Taser deployments to report the first Taser deployment and to request another car on the scene. When Officer Cosentino saw the blood in Mr. ██████ ear, he immediately used the radio to request an ambulance. A second police car arrived at some point after Mr. ██████ hit the light pole. More officers arrived after that, including Sgt. Bridges, who arrived before the ambulance. Officer Cosentino removed Mr. ██████ handcuffs so Sgt. Bridges could perform chest compressions.

Officer Cosentino made several requests for the ambulance because it seemed like it was taking a long time to arrive. Officer Cosentino described the situation as “stressful”⁵³ and did not know how long it took the ambulance to arrive. Two fire trucks arrived on the scene before the ambulance did. CFD personnel got off the trucks and began aiding Mr. ██████. Officer Cosentino was standing off to the side with Officer Yanez and did not see exactly what was happening. An ambulance arrived after the fire truck. Officer Cosentino saw a lot of people in the back of the ambulance working on Mr. ██████ (Attachment 128)

In a statement to IPRA on 06 August 2014, Involved Member Juan Yanez, #18438, stated he was working Beat 1813R, with his partner, Officer Cosentino, when a male (now known as Mr. ██████) ran out of the Walgreens. Officer Yanez stated a Walgreens security guard then exited the store and told them that Mr. ██████ had stolen

⁵² *Id.* at Page 43, line 23.

⁵³ *Id.* at Page 67, line 20.

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something. He and Officer Cosentino then proceeded westbound on North Avenue in an attempt to catch up to Mr. [REDACTED]. Officer Yanez said they then parked their vehicle in front of the XSport and exited the vehicle. Officer Yanez stated that, when they finally caught up to Mr. [REDACTED] they gave him verbal directions to stop. Officer Yanez notified Mr. [REDACTED] he was going to discharge his Taser unless Mr. [REDACTED] complied with the verbal orders. Mr. [REDACTED] stood on the sidewalk and appeared to be trying to figure out what he should do next. The officers put their hands-on Mr. [REDACTED] to handcuff him. Once they did, he flailed his arms to break away from them.

Officer Yanez discharged his Taser at Mr. [REDACTED] twice that day. Per Officer Yanez, the first discharge, which lasted nine seconds, occurred when the officer was approximately four to nine feet away from Mr. [REDACTED]. Officer Yanez explained that the initial trigger pull lasts five seconds. The first discharge lasted nine seconds because Officer Yanez did not realize he was still holding the trigger for an additional four seconds. After the first Taser discharge, Mr. [REDACTED] fell to the ground and was initially cooperative, stating, "You got me. You got me."⁵⁴ Mr. [REDACTED] put up his hands, but as soon as Officer Yanez approached him, Mr. [REDACTED] hid his hands in his waistband. According to Officer Yanez, he was concerned that Mr. [REDACTED] had a weapon in his waistband. Officer Cosentino removed his own weapon at this point.

When Officer Yanez put his hand on Mr. [REDACTED] arm to place him into custody, Mr. [REDACTED] again flailed his arms and pulled away from the officers. Mr. [REDACTED] got to his feet. Officer Yanez warned that he would use the Taser again. Mr. [REDACTED] "started running at full sprint."⁵⁵ Officer Yanez's Taser was on the ground at that point so it took him a few seconds to retrieve it and raise it toward Mr. [REDACTED]. Officer Yanez then discharged his Taser a second time at Mr. [REDACTED]. Per Officer Yanez, Mr. [REDACTED] was traveling at a "high rate of speed"⁵⁶ then stiffened up and "went straight for the pole."⁵⁷ Officer Yanez saw the side of Mr. [REDACTED] head strike the light pole after which he immediately went unconscious. Officer Yanez recalled seeing a minimal amount of blood coming from Mr. [REDACTED] head. After handcuffing Mr. [REDACTED] Officers Yanez and Cosentino rolled Mr. [REDACTED] onto his side to check his waistband and located the bottle of vodka. Per Officer Yanez, he initially thought Mr. [REDACTED] was "playing possum,"⁵⁸ but quickly realized there was something wrong and instructed Officer Cosentino to call for an ambulance. Officer Yanez recalled Sgt. Bridges arriving on scene and starting chest compressions on Mr. [REDACTED]. Officer Yanez noted Mr. [REDACTED] had a large build and it usually takes longer for a heavier person to respond to a Taser discharge. (Att. 105, 106)

In a deposition conducted on 27 October 2015, **Officer Juan Yanez** provided an account of the incident that is consistent with the statement he gave to IPRA on 06 August 2014. On 07 May 2014, Officer Yanez was working with partner Officer Cosentino. On that date, they were traveling south on Wells Street approaching a red light at the North

⁵⁴ Attachment 106, Page 12, Line 1-2.

⁵⁵ *Id.* at Page 15, Line 1-2.

⁵⁶ *Id.* at Line 18-19.

⁵⁷ *Id.* at Line 19.

⁵⁸ *Id.* at Page 16, Line 24.

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Avenue intersection when Officer Yanez observed a male, now known as ██████████ run out of the Walgreen's at 1601 N. Wells. Mr. ██████████ ran west across Wells in front of their squad car. Because of how quickly Mr. ██████████ was running, the officers looked toward Walgreen's to see if there was anything going on at that location. Officer Yanez shined his light in that direction and saw a security guard exit the store. Officer Cosentino talked to the security guard, who told them that someone had taken something from the store. Officer Yanez was in the passenger seat and could not hear the entire conversation between Officer Cosentino and the security guard, so he did not hear what had been taken. Officer Cosentino then made a right turn onto North Avenue and drove west.

Officer Yanez stated they caught up with Mr. ██████████ near the end of the block. Mr. ██████████ was no longer running but was walking quickly at that point. As the squad car drove up near the curb, Officer Yanez instructed Mr. ██████████ to stop so they could talk to him. Mr. ██████████ looked at Officer Yanez, but did not initially verbally respond. When Mr. ██████████ stopped walking, Officer Yanez got out of the car and tried to talk to Mr. ██████████ about what happened at Walgreen's. Officer Yanez informed Mr. ██████████ that whatever happened was not a big deal, and was most likely a misdemeanor. Mr. ██████████ continued to not verbally respond, but he complied with Officer Yanez's directions to turn around and put his hands on the wall. As Officer Yanez grabbed one of Mr. ██████████ hands to handcuff him, Mr. ██████████ stiffened his arms. Officer Yanez looked to Officer Cosentino, who had exited the vehicle and was standing to Officer Yanez's left. Mr. ██████████ then pushed himself away from Officer Yanez and flailed his arms to prevent the handcuffing. Officer Yanez tried to gain physical control of Mr. ██████████ so he could put on the handcuffs, but he was unable to do so. Mr. ██████████ pushed Officer Yanez and ran west on North Avenue, at which time Officer Yanez took the Taser off his vest and deployed it at Mr. ██████████. Mr. ██████████ was running and was approximately two to nine feet away from Officer Yanez at the time of this first Taser deployment. Officer Yanez believed the Taser probes struck Mr. ██████████ somewhere on the back or back area. Officer Yanez testified the initial Taser discharge appeared to be effective because Mr. ██████████ fell. Mr. ██████████ then yelled, "Okay, you got me, you got me."⁵⁹ Mr. ██████████ was lying face down on the ground and spread out his arms out.

As Officer Yanez approached to handcuff Mr. ██████████, Mr. ██████████ put his hands underneath his body at the waist. Officer Cosentino removed his firearm and instructed Mr. ██████████ to show his hands. Officer Yanez set the Taser on the ground so he could try to bring Mr. ██████████ arms behind his back to handcuff him. After Officer Cosentino approached to assist Officer Yanez, Mr. ██████████ pushed himself off the ground and got to his feet. Officer Yanez released his hold on Mr. ██████████ arm, retrieved the Taser, and yelled at Mr. ██████████ that he was going to use the Taser again. Officer Cosentino was still holding Mr. ██████████ at that point. Officer Yanez told him release his grip. Mr. ██████████ then ran at a full sprint. Officer Yanez deployed the Taser a second time. Officer Yanez did not know the approximate distance between himself and Mr. ██████████ at the time of the second Taser deployment, but it had to be less than thirty feet, which is the maximum range

⁵⁹ Attachment 125, Page 30, Line 16.

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of the Taser. Officer Yanez noted that he believed Mr. [REDACTED] was further from him than he had been at the time of the first Taser deployment. At the time of the second Taser deployment, Officer Yanez said Mr. [REDACTED] was close to the intersection of Wells and North Branch, which is the next street to the west, but had not crossed into the street. Officer Yanez said Mr. [REDACTED] stiffened up, moved toward a pole, and struck the pole as he fell to the ground.

Officers Yanez and Cosentino approached Mr. [REDACTED] handcuffed him, and rolled him over, where Officer Yanez said they found a bottle of vodka in his waistband. Officer Yanez confirmed Mr. [REDACTED] was not conscious at this point. Officer Yanez observed that Mr. [REDACTED] breath was shallow, which caused him to realize that something was wrong. Officer Yanez removed Mr. [REDACTED] handcuffs and told Officer Cosentino to call for an ambulance. Additional officers arrived on the scene soon after Officer Cosentino requested an ambulance. Officer Yanez later learned that Officer Cosentino had previously requested assistance from more officers at some point. A sergeant arrived within a minute of the second Taser deployment and administered chest compressions on Mr. [REDACTED]. Officer Yanez confirmed CPD officers are not trained in how to use CPR; rather they are trained to call paramedics to the scene. Officer Yanez opined the sergeant took it upon himself to try to help Mr. [REDACTED]. Officer Yanez said he was upset about what happened to Mr. [REDACTED] and that Officer Cosentino pulled him away from the immediate vicinity. Officer Yanez stood out of the way near the building, shortly after which the paramedics arrived. Officer Yanez did not know how long it took for the ambulance to get there but he said it felt like a long time. Officer Yanez did not remember if any officers had put crime scene tape around the area by the time the ambulance got there; however, Officer Yanez noted that if they had, the paramedics would still have had easy access to Mr. [REDACTED] from the street. Officer Yanez observed the paramedics put Mr. [REDACTED] in the ambulance, where they treated him there for a while before leaving the area. Officer Yanez said he had gone to sit in his squad car to calm down after the paramedics arrived, and he was still in the car when the ambulance left. (Att. 125)

Civil Complaint

An **Amended Complaint** was filed on 23 May 2014, after this investigation, by Mr. [REDACTED] father, on his own behalf and as the Administrator of the Mr. [REDACTED] estate, in the United States District Court for the Northern District of Illinois, Eastern Division, under Civil Suit Number 14 C 3849. Per the allegations outlined in the complaint, Officers Yanez, Cosentino, and “John Doe,”⁶⁰ repeatedly “tased”⁶¹ Mr. [REDACTED] without justification, “causing his death.”⁶² (Att. 117)⁶³

⁶⁰ Attachment 117, Page 8.

⁶¹ *Id.*

⁶² *Id.*

⁶³ In June 2017, the civil matter settled for an unknown monetary amount.

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Submitted:

[REDACTED]

Investigator (Daniel Kobel)

Approved:

[REDACTED]

Supervising Investigator Shannon Hayes

CONCLUSION/FINDING:

Whether Officers Yanez and Cosentino Lawfully Seized Mr. [REDACTED]

A person may be arrested without a warrant when a police officer has reasonable grounds to believe he has committed a crime. *People v. Doyle*, 233 Ill. App. 3d 706. "Reasonable grounds" is synonymous with the term probable cause. *People v. Garmon*, 196 Ill. App. 3d 549. Probable cause does not require legal certainty, nor does it demand that all the facts in the officer's possession point in only one direction. Probable cause exists where the facts and circumstances within the officers' knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant [an officer] of reasonable caution in the belief that an offense has been committed. *Zappa v. Gonzalez*, 819 F.3d 1002. An identification or a report from a single, credible victim or eyewitness can provide the basis for probable cause. *Woods v. City of Chicago*, 234 F.3d 979, 996 (7th Cir. 2000). Probable cause is tested by considering the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213.

Here, prior to engaging Mr. [REDACTED] Officers Yanez and Cosentino saw him flee Walgreens. Immediately thereafter, Walgreen's security identified him as someone who had just stolen from the store. The totality of those circumstances, the officers' own observations of Mr. [REDACTED] fleeing the store coupled with the security officer's identification of Mr. [REDACTED] as an offender, caused the officers to believe criminal activity occurred and Mr. [REDACTED] was the perpetrator. In response, the officers pursued Mr. [REDACTED] in their vehicle, then approached him on foot. Officer Cosentino saw Mr. [REDACTED] hands inside the front of his pants, further raising suspicions. Mr. [REDACTED] was ordered to remove his hands from his pants, but Mr. [REDACTED] ignored that order. Officer Yanez grabbed Mr. [REDACTED] to execute an arrest. At that point, Mr. [REDACTED] was seized and his Fourth Amendment interests were triggered. (The word "seizure" readily bears the meaning of a laying on of hands or application of physical force to restrain movement, even when it is ultimately unsuccessful. *Cal. v. Hodari D.*, 499 U.S. 621, 626.) However, the totality of information available to the officers prior to Mr. [REDACTED] seizure made it objectively reasonable, including: 1) Mr. [REDACTED] flight from Walgreens, 2) The Walgreens security officer's identification of Mr. [REDACTED] as an offender, and 3) Mr. [REDACTED] refusal to follow the officers' verbal commands.

In the alternative, those circumstances at minimum warranted Mr. [REDACTED] detention for investigative purposes (also known as a *Terry* stop.) An officer may conduct

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a brief investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot. *Illinois v. Wardlow*, 528 U.S. 119. Reasonable suspicion is a less demanding standard than probable cause. *Id.* When an officer observes “circumstances that would reasonably lead an experienced, prudent policeman to suspect” a crime occurred, that officer is justified in “accosting (the suspect), restraining his liberty of movement briefly, and addressing questions to him.” *Id.* at 33. Here, before they seized Mr. [REDACTED] the officers had two significant pieces of information: 1) they saw Mr. [REDACTED] flee from Walgreens, and 2) Walgreens security identified him as someone who had stolen from the store. Separately, either of those facts arguably amounted to reasonable suspicion for police to detain Mr. [REDACTED] for investigative purposes. However, together they amounted to probable cause to arrest Mr. [REDACTED] for Retail Theft [see 720 ILCS 5/16A-3(a).] Therefore, Mr. [REDACTED] seizure was lawful.

Whether Officer Juan Yanez’s Taser Use Was Within Department Policy.

The Chicago Police Department’s General Order G03-02-02 outlines the force options available to department members based on the categorization of the encountered subject:

- Cooperative subject
- Passive resister
- Active resister
- Assailant

An active resister is “a person whose actions attempt to create distance between that person and the member’s reach with the intent to avoid physical control and/or defeat the arrest.” Prior to deploying a Taser, department members must ensure two circumstances exist:

- 1) A Department member is confronted by an offender classified as an assailant or active resister; and
- 2) The Taser device operator can safely approach the subject to within the eighteen-foot effective range of the device. Chicago Police Department Uniform and Property Order U04-02-04, Section II (D)(3)(a) and (b).

Additionally, Special Order S03-02-02, Section (IV)(A) details member responsibilities when a Taser is discharged:

- (1) A member who is about to discharge a Taser will, when possible:
 - (a) inform all other Department members on the scene of the imminent deployment of the device.
 - (b) give verbal commands to the subject prior to, during, and after the deployment of the Taser.
 - (c) for back shots, aim for the subjects back below the neck area; for frontal shots, aim for the lower center mass...
- (2) after deployment of the initial Taser five-second cycle, members will:
 - (1) give the subject an opportunity to comply with his or her demands.

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- (2) assess the situation and, if the subject is still not under control, consider the following options:
 - (a) drive stun, ...
 - (b) give additional five-second cycles,
 - (c) reload and redeploy another cartridge, or
 - (d) use another use of force option... (Att. 50)

A. Officer Yanez's First Taser Deployment.

Here, Mr. ██████ presented himself as an “active resister” prior to and leading up to the first Taser discharge. Specifically, he:

- Attempted to evade arrest by fleeing the scene after stealing from Walgreens
- Actively resisted arrest by flailing and pulling away from Officer Yanez
- Attempted to create distance between himself and Officer Yanez by pushing Officer Yanez and running to escape arrest

In response, Officer Yanez warned Mr. ██████ he would deploy his Taser. Mr. ██████ remained uncompliant. Officer Yanez got within 4-9 feet of Mr. ██████ then deployed the Taser probes into Mr. ██████ back. Officer Yanez's action met both circumstantial requirements for Taser deployment: 1) Mr. ██████ presented himself as an active resister, and 2) Officer Yanez got within the device's eighteen-foot effective range. Officer Yanez also satisfied his responsibilities as a department member handling a Taser, in that he:

- informed his partner of the imminent deployment of the device,
- gave verbal commands to Mr. ██████ prior to and after the deployment of the Taser, and
- aimed for Mr. ██████ back, below the neck area

Officer Yanez, did however, deliver a nine-second Taser cycle to Mr. ██████ four-seconds longer than directed. Officer Yanez attributed the extended cycle to him not realizing his finger was still on the trigger, given his focus on gaining control over Mr. ██████ Further, per CPD Taser Instructor Officer George Cancel, department members are taught that larger subjects may require longer Taser cycles to submit to the effects of the device. He said, given Mr. ██████ 5'9" 230-pound stature, a nine-second cycle falls within Department guidelines.

For those reasons, Officer Yanez's use of force was objectively reasonable. Further, the use of force was reasonable to quell a potential threat of harm. The Walgreens security guard told Officer Cosentino Mr. ██████ had “robbed” the store, which is a forcible felony. (see 720 ILCS 5/2-8.) Mr. ██████ kept at least one of his hands inside the front of his pants while Officer Yanez tried to handcuff him. Mr. ██████ refusal to show both hands raised concerns he had a concealed weapon. That concern was later confirmed when officers recovered a bottle of liquor from Mr. ██████ That item could have been used as a weapon against the officers during the encounter. Given the totality of the circumstances,

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when Officer Yanez discharged his Taser the first time, his actions were objectively reasonable.

B. Officer Yanez's Second Taser Deployment.

Under Chicago Police Department's General Order G03-02-02, Mr. ██████ was an active resister prior to and leading up to the second Taser discharge. After the first Taser discharge, Mr. ██████ fell to the ground. Officer Yanez heard Mr. ██████ say, "OK. OK. You got me." While on the ground, Mr. ██████ placed his hands underneath his body, out of the officers' view.⁶⁴ Both officers again ordered Mr. ██████ to show his hands. Instead, Mr. ██████ got to his feet and ran. Officer Yanez's Taser was on the ground. As Mr. ██████ ran, Officer Yanez picked up his Taser and warned Mr. ██████ he would deploy it. Officer Yanez deployed the Taser, hitting Mr. ██████ back. Mr. ██████ stiffened, and ran into a light pole. Officer Yanez did not recall his proximity to Mr. ██████ when he deployed the Taser the second time.

Ultimately, Mr. ██████ actions of resisting arrest by burying his hands under his body and flailing his arms to get out of Officer Cosentino's grip categorized him as an active resister. Further, Mr. ██████ refusal to show his hands posed a threat to the officers' safety, especially since he concealed an object capable of being used as a bludgeon. Mr. ██████ active resister status is corroborated by the recovered surveillance video. The video shows Mr. ██████ running from officers during the encounter. Therefore, Officer Yanez's second Taser discharge was objectively reasonable given the totality of the circumstances.

C. Findings

Given Mr. ██████ active resistor behavior, Officer Yanez's first Taser discharge was reasonable. Mr. ██████ ignored orders to show his hands, resisted handcuffing, and ignored warnings that Officer Yanez was about to use a Taser. Officer Yanez's decision to deploy his Taser a second time was also reasonable considering Mr. ██████ failure to submit to the officers' show of authority. Despite already receiving a Taser discharge, Mr. ██████ again resisted handcuffing, got up from the ground, and pushed Officer Cosentino before attempting escape. Further, the injury to Mr. ██████ head from running into the light pole supports Officer Cosentino's account of Mr. ██████ looking in the officers' direction while attempting to create distance between himself and the officers. Given the totality of the circumstances, Officer Yanez was justified in discharging a Taser at Mr. ██████ both times. There is no consensus as to what ultimately led to Mr. ██████ death. However, Officer's Yanez's use of the Taser was reasonable and did not amount to excessive force.

⁶⁴ Officer Yanez was already concerned Mr. ██████ might have a weapon when he refused to show his hands prior to the first Taser discharge.

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COPA recommends finding Officer Juan Yanez's use of a Taser against Mr. [REDACTED] complied with Department rules and regulations, and was not excessive based on the totality of the circumstances.

[REDACTED]
Joshua Hunt
Deputy Chief Administrator

[REDACTED]
Andrea Kersten
Deputy Chief Administrator