

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1056252

U #12-22

INVESTIGATION

NUMBER: Log #1056252/U #12-22

INVOLVED

OFFICER #1: “Officer A” (Chicago Police Officer); Male/Black; 42 years old; Off-Duty; Civilian Uniform; Year of Appointment – 2004

OFFICER #1’S

INJURIES: Injured left shoulder; fractured left foot; multiple abrasions.

SUBJECT #1: “Subject 1”; Male/Black; 26 years old

SUBJECT #1’S

INJURIES: Gunshot wound to groin; Deceased.

SUBJECT #2: “Subject 2”; Male/Black; 18 years old

SUBJECT #2’S

INJURIES: Unspecified minor injures. Treated at Loyola Medical Center.

SUBJECT #3: “Subject 3”; Female/Black; 4 years old

SUBJECT #3’S

INJURIES: Struck by motorcycle; minor injuries. Treated at Loyola Medical Center.

DATE/TIME: 11 August 2012 / approximately 2151 hours.

LOCATION: 1107 S. 1st Avenue, Maywood, IL 60153 (Beat 3100)

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SUMMARY OF INCIDENT:

On 11 August 2012, at approximately 2151 hours, off-duty Chicago Police Officer A on his motorcycle traveling north on 1st Avenue in Maywood, Illinois. In the vicinity of 1106 S. 1st Avenue, Officer A attempted to avoid a collision with four year-old Subject 3, who ran across the street from east to west. Officer A intentionally laid his motorcycle down after which the motorcycle skidded approximately thirty feet on its left side before striking Subject 3 and her adult cousin Subject 2. When Officer A, who was injured in the accident, attempted to render aid to Subject 3 he was confronted by her father, Subject 1. Subject 1 physically attacked Officer A and threw him repeatedly to the ground. The evidence also suggests that Subject 1's cousin also participated in the attack on Officer A. Officer A announced his office and attempted to defend himself from the attack. However, at some point, Officer A started to fear for his life. Officer A then removed his firearm from its holster on the right side of his body and discharged one round, striking Subject 1 to the left side of his groin area.

Subject 1, Subject 3, Subject 2, and Officer A were each transported by ambulances to Loyola Hospital. Subject 1 died from the gunshot wound.

SUMMARY OF INVESTIGATION:

The accident involving Subject 1's daughter, Subject 3, and Chicago Police Officer A occurred at 1106 S. 1st Avenue in Maywood Illinois. The accident happened on 11 August 2012, at approximately 2151 hours, near the Tropical Times Restaurant, which was located at 1117 S. 1st Avenue. The restaurant is located on the northeast corner of 1st Avenue and Legion Street. The accident, and subsequent altercation, occurred just north of the restaurant.

There were several individuals who may have witnessed, or heard, what transpired. Subject 1's two cousins, Witness 1 and Subject 2, were outside with him as was his daughter, at the time of the incident. Subject 3's mother, Citizen 1, was inside her second floor apartment located at XXXX S. 1st Avenue. During a canvass of the location IPRA Investigators spoke with Witness 2. Witness 2 told the Investigators that he witnessed the incident, but refused to provide a statement. The owner of the Tropical Times Restaurant, Owner 1, also witnessed a portion of the incident.

Subject 1's listed residence was XXX S. 2nd Avenue. Subject 3's mother, Citizen 1's address was XXXX S. 1st Avenue, 2nd floor. Witness 1 also lived at XXXX S. 1st Avenue. Subject 2's listed address at the time of incident was XXX Morris Avenue, Bellwood, IL.

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Witness 1 refused to cooperate with IPRA, but he provided a recorded statement to Maywood Police Detectives 1 and 2 on 11 August 2012. Witness 1 stated that he walked across the street with Subject 1 to pick up food he had ordered from the Tropical Time Restaurant. Subject 2 was walking with Subject 3. The restaurant's owner, Owner 1, told them that the food was not ready, so Witness 1 and Subject 1 stepped outside intending to smoke cigarettes and wait for the food order. As they exited the restaurant Witness 1 heard a loud noise and turned toward the street. Witness 1 saw sparks on the street and a motorcycle. Witness 1 and Subject 1 ran to the street, where they found Subject 1's daughter Subject 3 and cousin Subject 2 apparently struck by the motorcycle. Subject 1 picked Subject 2 up from the curb. He handed his daughter to Witness 1 and repeatedly asked, "Man, cuz, is my baby ok?" Witness 1 then heard Officer A ask, "Is the baby ok? I didn't see her, the guy let her go." Officer A attempted to explain to Subject 1 that it was an accident. Subject 1 charged at Officer A and punched him two or three times on the right side of his face. Officer A fell to the ground and Subject 1 continued to attack Officer A by repeatedly punching him about his face and body. Witness 1 saw Subject 2 kick Officer A about his body. Officer A repeatedly attempted to get up but was unable to do so. Witness 1 did not hear Officer A say anything during the physical altercation. A short time later, Witness 1 heard one gunshot and saw people running from the scene. (Atts. 13, 14, 37, 59, 61, 70, 74, 83).

Witness **Subject 2** refused to cooperate with IPRA, but he provided a recorded statement to Maywood Police Detectives 1 and 2 on 11 August 2012. Subject 2 identified Subject 1 as his cousin. Subject 2 stated that he was inside Witness 1's apartment when he heard Subject 3 crying. He asked her why she was crying, and she replied that she wanted her father. Subject 2 knew that Subject 1 went across the street to the restaurant with Witness 1, so he held Subject 3's hand and began to walk across the street with her. Subject 2 stated that he lost his grip on Subject 3 and that she ran across the street. Subject 2 ran after her and they were both struck by the motorcycle driven by Officer A. Subject 2 stated that he never saw the motorcycle coming. According to Subject 2, after he was struck by the motorcycle, Subject 2 fell to the ground. As he lay on the ground, he heard Subject 1 yell, "What happened? What Happened? Man, my baby got hit, my baby got hit." Subject 2 then saw Subject 1 "tossing" Officer A around. Subject 2 explained that Subject 1 repeatedly grabbed Officer A and threw him to the ground, while yelling, "You hit my kid! You hit my kid!" Subject 2 denied seeing Subject 2 punch Officer A, and repeatedly described the physical encounter as "wrassling." Subject 2 described the physical altercation as Subject 1 "tossing the cop around" by grabbing Officer A's upper body and throwing him around like a wrestler. Subject 2 stated that he observed Officer A attempt to get up from the ground, but Subject 1 grabbed him and again tossed him to the ground. Subject 2 then saw Officer A pull out a black handgun from an unknown location on his body. Subject 2 immediately ran away and then heard one gunshot. Subject 2 stated that he did not see Officer A shoot Subject 2. Subject 2 denied that he kicked or struck Officer A, and did not hear Officer A or Subject 2 say anything during the physical altercation. (59, 62, 68, 83).

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Citizen 1, mother of Subject 3, did not cooperate with IPRA's investigation, but she provided a statement to Maywood Police Detectives 1 and 3 and Assistant State's Attorney A on 12 August 2012. She was inside her second floor apartment watching children when she heard an "accident-type" noise outside. Citizen 1 looked out a window and saw Subject 1 and Officer A fighting in the street. Citizen 1 stated that both men were swinging their fists at each other. Citizen 1 stated that both men fell to the street and began to wrestle with each other. Citizen 1 then ran downstairs and out of the apartment building. Citizen 1 saw Subject 1 stand up and saw Officer A trying to get up from the ground when she heard a gunshot. Citizen 1 ran over to Subject 1 and threw herself on top of his body yelling, "No, no, stop, don't shoot no more." Citizen 1 heard Subject 1 say, "You didn't have to shoot me." Citizen 1 then dialed 911 for assistance. (Atts. 16, 37, 39, 59, 83).

In a statement to Maywood Police Detectives 1 and 4 on 13 August 2012, **Owner 1**, the owner of the "Tropical Times Restaurant," stated that on the night of the incident two male black subjects (NKA Subject 1 and Witness 1) entered his restaurant to pick up their food. Owner 1 told them that the food order was not ready yet. Subject 1 and Witness 1 exited the restaurant, and a short time later, Owner 1 saw sparks on the roadway directly in front of his restaurant. Owner 1 ran outside to investigate and he saw a motorcycle and two unknown people on the ground. Owner 1 ran back inside his restaurant and telephoned 911 for help. Owner 1 stated that while he was inside the lobby of his restaurant he heard a gunshot. Witness 2 ran inside the restaurant holding a baby (NKA Subject 3) and yelling, "He shot my cousin! He shot my cousin." (Atts. 59, 60).

Maywood Police Department Reports further documented the initial incident as consistent with the Summary of Incident. Subject 2 was subsequently arrested and charged with Aggravated Battery to a Police Officer and Aggravated Battery on the Public Way.¹ Additionally, Officer A's urine drug screen was negative for Amphetamines, Barbiturates, Benzodiazepines, Cannabinoids, Cocaine, Opiates, Phencyclidine. (Atts. 19-22, 40, 51, 59-62).

During a canvas of the location of incident, IPRA Investigators spoke with **Dennis Moore** who claimed to be a witness. Mr. Moore refused to cooperate with this investigation. **Canvasses** of the location of incident did not produce any additional witness or information relevant to this investigation. (Atts. 13, 15, 35, 37, 69, 73, 83).

On 17 August 2012, witness **Owner 1, the owner of the Tropical Times Restaurant**, conveyed a substantially similar narrative to IPRA as he earlier provided to Maywood detectives.

¹ Subject 2 was charged with four felony counts of Aggravated Battery to a Peace Officer and Aggravated Battery in a Public Place from this incident; he was found Not Guilty on 28 May 2015. (Att. 82).

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(Att. 36).

In a statement to Maywood Police Detectives 1 and 2 on 12 August 2012, **Officer Timothy A** stated that he finished his tour of duty as a Chicago Police Officer on 11 August 2012 at 2130 hours. Officer A was driving home on his motorcycle and, as he traveled north on 1st Avenue in Maywood, Illinois, he observed Subject 3 running east across the street with Subject 2 attempting to catch her. To avoid striking Subject 3, Officer A quickly applied his brakes and began “laying his bike down.” Officer A stated that his motorcycle fell to the pavement and struck the curb. Officer A stated that he was unable to stop and his motorcycle struck Subject 3 and Subject 2. Officer A stated that he got up from the street and limped towards Subject 3 and Subject 2 in an attempt to check their well-being. Officer A stated that he limped a few feet when he heard Subject 1 yelling, “That’s my daughter!” Subject 1, who was very irate, approached Officer A. Officer A attempted to calm Subject 1 by saying, “It was an accident. She ran out into traffic. Is she ok?” Subject 1 yelled, “You hit my baby. You hit my baby” and other intelligible phrases. Officer A continued his attempts to calm Subject 1, and at one point identified himself as a Chicago Police Officer. Subject 1 replied, “I don’t give a fuck” and punched Officer A on the left side of his head. Subject 1 continued to punch Officer A as Officer A staggered backwards. Officer A felt someone hit him from behind and he fell to the street. While on the ground Officer A heard several other voices yelling unintelligible phrases. Officer A stated that he was repeatedly struck about his head and body. Officer A yelled, “Back off! I’m the police!” as he attempted to get up from the ground. Officer A stated that eventually he just covered his head and body as best as he could to shield himself from the beating. Officer A also explained that he feared he would not survive the beating. Fearing that he would be killed, Officer A drew his firearm from its holster on the right side of his body and discharged it one time. (Att. 59).

Evidence Technician Photographs captured images of the scene, motorcycle and clothing Officer A wore at the time of the incident. The photographs depict Subject 3 with abrasions and contusions to her arms, legs and feet. The photographs also depicted Subject 1, who appeared to have a gunshot wound to the left side of his groin. The photographs also depicted Officer A, who appeared to be prone on a bed with abrasions to his left arm, left, and ankle. (Atts. 52, 65).

911 Audio Transmissions recorded several calls made regarding a motorcycle crash and of a person shot. One of the 911 callers also stated that two men were beating a third man in the street. Citizen 1 also telephoned 911 and stated that her fiancé had been shot. Officer A called 911, identified himself as a police officer, and notified the call-taker of the police-involved shooting. Four minutes and twenty two seconds passed from the first 911 call regarding the motorcycle crash until any 911 calls were made regarding a person being shot. (Atts. 41, 42, 63).

The recording from the **POD located at 1st Avenue and Green Street** did not capture any part of this incident. (Atts. 76, 79).

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The recording from the **POD located at 1st Avenue and Wilcox Street** did not depict the location of the incident or any relevant information until approximately 2153 hours, at which time several individuals can be seen standing in the outer northbound lane of 1st Avenue. Another individual appears to be lying on the street blocking traffic. Positive identification of those individuals was not possible because of the poor quality of the recording. At approximately 2154 hours, an ambulance arrived on the scene and obstructed the POD's view of the incident. Throughout the remaining recording several additional emergency vehicles appear, further obstructing the camera view. (Atts. 77, 78).

The **Chicago Police Department's General Offense Case Report (RD# HV426-529)** classified off-duty Chicago Police Officer A's use of force in Maywood, Illinois as non-criminal. During the incident, Officer A sustained injuries to his left shoulder and left foot. Maywood Police Department Report #12-14259 was also generated. (Att. 6).

Officer A documented in his **Tactical Response Report** that he discharged his firearm once in defense of his life while kneeling as he was being kicked and beaten by two offenders who had him on the ground. Officer A sustained serious injury as a result of the incident; the subject was DOA. (Att. 10).

The **Officer's Battery Report** documented that Officer A was ambushed by one offender while off duty and obtained Major Injury from the incident. (Att. 9).

The **Bellwood Fire Department's Ambulance Report** documented that on 11 August 2012, at 2159 hours, Ambulance #600 was dispatched to 1100 1st Avenue in response to a traumatic injury/mutual aid for gunshot wound and a motor vehicle collision. Bellwood Ambulance #600 arrived on scene at 2203 hours and was directed to care for four year-old Subject 3. Responders on the scene stated that Subject 3 was struck by a motorcycle at a high rate of speed and was initially unresponsive to all stimuli. Subject 3 had gross swelling to her forehead with various abrasions and laceration to her arms and neck. No other gross injuries were noted. Bellwood Ambulance #600 transported Subject 3 to Loyola Medical Center. (Att. 43).

The **Westchester Fire Department's Ambulance Report** documented that on 11 August 2012, at 2200 hours, Ambulance #300 was dispatched to 1100 1st Avenue, Maywood Illinois, in response to a motor vehicle collision and shooting. Ambulance #300 arrived on scene and found Officer A sitting in a police vehicle complaining of pain to his left shoulder and left foot. Officer A informed the paramedics that he was riding his motorcycle when two people ran into the street in front

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front of him and he went down on his left side to try and avoid them. Officer A also stated that he banged the back of his head but denied any loss of consciousness. Examination of Officer A determined a fracture or dislocation to his upper left arm, abrasions to his lower left arm, and a fracture or dislocation to his left foot. Officer A was transported to Loyola Medical Center. (Att. 44).

Loyola Medical Center Records for Subject 2 stated that he was seen in the emergency room because he had been struck by a motorcycle. Subject 2 reported a brief loss of consciousness. Subject 2 complained of pain to his heel and left shoulder. X-rays of Subject 2's heel and shoulder did not reveal any fractures or dislocations. Subject 2 was diagnosed with unspecified injury. Subject 2's blood test results indicated he did not have alcohol or drugs in his system. (Att. 56).

Loyola Medical Center Records for Subject 1 documented that he was found pulseless and with no vital signs. EMS staff performed CPR. It was noted that Subject 1 sustained a gunshot wound to his left groin. Subject 1 was intubated by emergency room physician and was subsequently pronounced dead at 2214 hours. Subject 1 was diagnosed with a gunshot wound, cardiac arrest/traumatic arrest, and an open wound of abdominal wall. (Att. 55).

Loyola Medical Center Records for Officer A documented that he was riding his motorcycle when a child ran out in front of him and he subsequently struck the child and crashed. Officer A denied any loss of consciousness. The primary diagnosis was that Officer A suffered blunt force chest trauma, pain in joint, ankle, and foot. Officer A complained of pain to his left shoulder and left ankle. X-Rays determined that Officer A suffered a displaced fracture to his left foot and contusions to his left shoulder. (Att. 58).

Medical Records obtained from Resurrection Hospital stated that on 20 August 2012, Officer A underwent surgery to repair his broken left foot, specifically, the proximal intra-articular metatarsal on the left foot. The report stated that Officer A sustained a fracture to the base of the first metatarsal on his left foot caused when he came off of the motorcycle he was riding in an attempt to avoid a child in the street. The report continued that the purpose of the procedure was to surgically set a fractured bone using pins, screws, wire, and/or plates as necessary. (Att. 84)

Orthopedic Specialist, Dr. 1, office notes stated that during a re-evaluation of Officer A's foot on 26 October 2012, Officer A complained he had pain to his left rib cage due to being assaulted after the motorcycle crash. An examination of Officer A's rib cage determined he had tenderness over the 7th and 8th rib. Dr. 1 diagnosed Officer A as having a possible healing rib fracture. (Att. 91)

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The **Cook County Medical Examiner's Post-Mortem Report** documented that Subject 1 sustained a gunshot wound near the left side of his groin. Examination of Subject 1 determined that the gunshot wound coursed left to right and upward through his body. Examination of the skin surrounding the wound of entrance showed no evidence of close-range firing. Further examination revealed that Subject 1 sustained an abrasion to the lower left quadrant of his abdomen and the fingernail on the first finger of his left hand is broken and bloody. The Medical Examiner reported that Subject 1 died of the gunshot wound to his groin. The results of the toxicology analyses stated that Subject 1 tested positive for ethanol (alcohol). One expended bullet was recovered from Mr. Subject 1's body. (Atts. 54, 64).

A report from the **Illinois State Police (ISP) Division of Forensic Services** dated 11 September 2012, documented that Officer A's semi-automatic firearm was examined and found to be in firing condition. The expended casing and bullet were also examined and determined to have been fired from Officer A's firearm. (Att. 81).

In a statement to IPRA on 21 July 2014, **Officer A** stated that he left work at the 011th District Station approximately 2150 hours. Officer A stated that he was traveling north on 1st Avenue in Maywood, Illinois on his motorcycle at approximately 30 mph. Officer A stated that he was in the inner-northbound lane of 1st Avenue when he saw Subject 3 running across the street. Officer A stated that the first time he saw Subject 3; she was nearly in the middle of the street. Officer A stated that upon seeing Subject 3 running across the street he immediately veered into the right lane to avoid her but she continued to run into the motorcycle's path. Officer A then veered to the left, which is when he first saw Subject 2 chasing after Subject 3. Realizing that he now had to attempt to avoid a collision with Subject 3 and Subject 2, Officer A decided to lay the motorcycle on its left side to more quickly stop the motorcycle and to lessen any damage should there be a collision. Officer A stated that his motorcycle skidded along the pavement for an unknown distance, and when it came to a stop he got out from under the motorcycle and attempted to approach Subject 3 to render her aid. Officer A also stated that he sustained serious injury due to laying the motorcycle on its side and skidding along the pavement. Officer A explained that he did not believe that his motorcycle collided with Subject 3 because Subject 2 pushed her out of the way. An unknown adult female was already holding Subject 3 in her arms. Officer A stated that the adult female would not let him check on Subject 3.

Subject 1 then exited the restaurant and approached him in an aggressive manner. Officer A explained that Subject 1 immediately assumed a fighting stance. Officer A took a step back, identified himself as a police officer, and told Subject 1 that they needed to call for an ambulance. Officer A stated that he also displayed his badge, which was on his belt on the left side of his body. Subject 1 replied, "I don't give a fuck who you are" and swung his fist at Officer A, striking him on the left side

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the left side of his face. Officer A stated that he ducked and he felt an unknown person strike him on the back of his head with an unknown object. Officer A stumbled forward and Subject 1 grabbed him by his arms and threw him into oncoming traffic. Officer A stumbled to the ground and heard the sound of braking vehicles and feared that he may be struck by a vehicle. Subject 1 and Subject 2 chased Officer A into traffic and repeatedly punched and kicked him about his body as he was the ground. Because of his injuries and the continuous attack, Officer A stated that he was unable to get up from the street. Officer A stated that he balled himself up in an attempt to cover himself from further injury from the attack. Officer A added that he was unable to call for help because his cell phone had been damaged in the motorcycle crash. Subject 1 and Subject 2 continued to kick and strike Officer A about his head and body. Officer A believed that he was attacked by more people than Subject 3 and Subject 2. Fearing for his life, Officer A produced his firearm and from a kneeling position discharged it once at Subject 1. Subject 1 fell to the street and the rest of the assailants ran away. An unknown female allowed Officer A to use her cell phone to call 911 for assistance. Officer A added that Subject 2 returned to the location of incident a short time later and was arrested by the police. (Att. 75)

Criminal Trial of Subject 2, 28 May 2015

On 28 May 2015, **Witness 1 testified** during Subject 2's criminal trial that he, Subject 2, and Subject 1 are cousins. Witness 1 stated that on the night of the incident he and Subject 1 left his home at XXXX S. 1st Avenue and walked across 1st Avenue to Church's Chicken restaurant. Subject 1 remained outside smoking a cigarette while Witness 1 went inside the restaurant. From inside the restaurant Witness 1 heard a "loud bang"² from outside. Witness 1 looked outside and saw sparks on the street. He also saw Subject 2 and Subject 3 lying on the street near a motorcycle on its side. Witness 1 exited the restaurant and he and Subject 1 ran to the accident. Subject 1 picked up Subject 3 and gave her to Witness 1, who observed that she was bleeding from her face and she was crying. Subject 1 then approached Subject 2, who was still lying in the street. Witness 1 saw Officer A, who was approximately two to three feet away, stand up and repeatedly ask him if Subject 3 was alright. Witness 1 testified, "And I was angry at the moment, so I told him not to worry about the baby because he just hit my little baby with the bike."³ Witness 1 stated that Officer A paced back and forth and continued to ask if Subject 3 alright. Subject 1 was very upset and Witness 1 repeatedly told him that Subject 3 would be okay. Witness 1 stated that Subject 1 "was truly upset to the point where he was hisself [sic] no more. Then he stopped, turned around, and attacked the guy."⁴ Witness 1 stated that they were in the street when Subject 1 attacked Officer A. Witness 1 testified that Subject 1 repeatedly punched Officer A, who fell down on his right side in the street. Subject 3 continued to

² Trial Testimony of Witness 1, Att. 85, P. 20, L. 19

³ *Id.* at P. 24, L. 2-4

⁴ *Id.* at P. 25, L. 8-11

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continued to punch Officer A and Subject 3 and Officer A began to “tussle”⁵ with each other and ended up across the street, approximately 40 feet from where the fight began. Witness 1 continued to hold Subject 3 and paced back and forth yelling for someone to call the police. Witness 1 did not remember seeing Subject 2 get up, but he did see Subject 2 on the other side of the street within two feet of Subject 1 and Officer A. Subject 1 was on top of Officer A at this time. Witness 1 stated that he never saw Subject 2 strike or kick Officer A. Subject 1 and Officer A continued to “tussle” with each other, during which Witness 1 heard a gunshot. Witness 1 did not know where the gunshot originated, but immediately after hearing the gunshot he saw Subject 1 fall to the ground and Subject 2 run away. Witness 1 ran behind Church’s Chicken, adding that he did not know where Subject 2 ran.

A few moments later an ambulance and police personnel arrived. Witness 1 was subsequently transported to the Maywood Police Station where he voluntarily gave a videotaped interview To Maywood Police Detective A. During that interview Witness 1 stated that he saw Subject 2 repeatedly kick Officer A. When asked about the discrepancy, Witness 1 explained that he said he saw Subject 2 kick Officer A because he was afraid he would be charged with a crime himself.

During his testimony, Witness 1 denied telling the Assistant States Attorney that Subject 2 physically attacked Officer A. Officer A explained that he told the Assistant States Attorney that he assumed that Subject 2 also attacked Officer A.

Witness 1 stated that Officer A never identified himself as a police officer and never displayed his badge or any police insignia. (Att. 85)

On 28 May 2015, **Assistant States Attorney 1 (“ASA 1”)** testified during Subject 2’s criminal trial that she interviewed Witness 1 at the Maywood Police Department after the incident. ASA 1 stated that she watched the videotaped interview Witness 1 gave Det. 1 and read available reports before interviewing Witness 1. During that interview Witness 1 told her that he witnessed Subject 2 repeatedly kick Officer A during the altercation. (Att. 85)

On 28 May 2015, **Officer A testified** during Subject 2’s criminal trial that on the night of the incident he left work at 2130 hours and changed out of his uniform into regular clothes. Officer A then stated he was wearing jeans and a black, hooded sweatshirt. Officer A’s police star was displayed on his left hip and his semi-automatic pistol was in a holster on his right hip. Officer A left the 011th District Station, located at 3151 W. Harrison Street, on his motorcycle. Officer A drove on I-290 and exited on 1st Avenue. Officer A was in the far right lane on 1st Avenue, traveling north at approximately 30 mph when he saw Subject 3 from west to east across 1st Avenue in front of him. Officer A saw Subject 2 chasing Subject 3 into the street. Officer A first attempted to brake and

⁵ *Id* at P. 26, L. 8

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swerve to his left in an attempt to avoid a collision. Officer A quickly realized it was likely he would not be able to avoid colliding with Subject 3 and/or Subject 2 and Officer A intentionally laid his motorcycle on its left side close to the center yellow lines. Officer A estimated that he and his motorcycle slid approximately 10-15 feet. Officer A stated that he immediately felt pain to his left foot, left shoulder, and left elbow. Officer A stood up and saw Subject 2 standing near an unknown female subject holding subject 3 on the sidewalk near the curb on the east side of 1st Avenue. Officer A painfully walked over to them and asked the unknown female if he could check and see if Subject 3 was okay. Officer A identified himself as a police officer to the unknown female subject and told her that an ambulance needed to be called for Subject 3 and him. Officer A then heard a male voice coming from the restaurant's direction. Officer A turned toward the voice and saw Subject 1 approaching him. Subject 1 immediately took an aggressive stance and repeatedly yelled that Subject 3 was his daughter. Officer A lifted his hooded sweatshirt to show Subject 1 his police star while at the same time telling Subject 1 he was a police officer. Subject 1 replied, "I don't give a fuck who you are."⁶ Subject 1 then swung his right fist at Officer A and landed a glancing blow to the left side of Officer A's face. Officer A backed up and an unknown person struck him from behind. Officer A believed that person was Subject 2 because he was aware that Subject 2 was behind him. After being struck from behind Officer A fell to one knee. Subject 3 grabbed Officer A by his arms and swung him into the street. Officer A stated that he ended up near the center yellow lines on 1st Avenue. Officer A stated that Subject 1 and at least one other person continued to attack him in the middle of the street by punching and kicking him about his head, face, and body. Officer A stated that he believed the Subject 2 was one of the people attacking him. Officer A stated that he was unable to see who the other person was because he (Officer A) was trying to protect himself by covering his head and body from serious injury. Officer A stated was kicked several times on the left side of his ribs and punched repeatedly. Officer A also stated that he identified himself as a police officer, adding, "I was shouting to them to get back and that I was the police."⁷ Subject 1 and the other person(s) continued to beat him. Officer A related that no one came to his aid and fearing for his life he drew his firearm and fired once at Subject 1. Subject 1 fell to the ground and everyone else, including Subject 2, fled the scene. Officer A stood up and used an unknown female subject's cell phone to call 911.

Officer A stated that he was subsequently taken to Loyola Hospital. Officer A stated that he sustained a fracture to his left foot, and bruising and pain to his left elbow and his left shoulder from the motorcycle accident. Officer A also sustained four fractured ribs from being kicked and bruising and contusions to his face from being punched.

Officer A stated that he did not see Witness 1, and added that he never saw Witness 1 holding Subject 3. (Att. 85)

⁶ Trial Testimony of Officer A, Att. 85, P. 93, L. 1-2

⁷ *Id.* at P. 101, L. 21-22

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Subject 2 did not testify. (Att. 85)

During a court hearing on 03 June 2015, Judge Gerry Kull found Officer A's testimony credible, but found Subject 2 not guilty. Judge Kull stated that he was unable to find Subject 2 guilty beyond a reasonable doubt, particularly because Officer A could not affirmatively identify Subject 2 as one of his assailants. Judge Kull also noted that he did not find Witness 1 credible and added that Witness 1 continuously lied during his testimony. (Att. 86)

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CONCLUSION AND FINDING:

This investigation found that the use of deadly force by Officers A was in compliance with both Illinois State Law and Chicago Police Department Directives. According to the Chicago Police Department's General Order 02-08-03, III:

- A. "a sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:
1. to prevent death or great bodily harm to the sworn member or to another person, or;
 2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - a. has committed or has attempted to commit a forcible felony which involved the infliction, threatened infliction, or threatened use of physical force like to cause death or great bodily harm;
 - b. attempted to escape by use of a deadly weapon or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay."

There is an abundance of evidence and it is uncontroverted that Officer A was being beaten by Subject 1 when the officer discharged his weapon. There are multiple witnesses who saw the beating take place. In separate statements, Witness 1, Subject 2, and Subject 3, stated that Subject 1 attacked Officer A after the motorcycle accident by repeatedly punching and throwing Officer A to the ground. Witness 1 stated that although Officer A repeatedly attempted to get up from the ground he was unable to do so. Subject 2 stated that he saw Officer A with the gun after Subject 1 repeatedly threw him to the ground. Subject 3 added that she saw Officer A on the ground when she heard the gunshot.

There was a 911 call made contemporaneously with the incident that documented that the officer was being beaten by two men.

The question here is, was the physical threat to Officer A sufficient to warrant his use of deadly force. The witness descriptions of the altercation make clear that the physical altercation was quite

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quite serious. Citizen 1 described seeing punches thrown between the two men and them wrestling on the ground. She also recounted seeing the officer unsuccessfully attempt to get up. Subject 2 described seeing Subject 1 “tossing” the officer around while yelling “you hit my kid.” Although, at Subject 2 criminal trial, his credibility was called into question, Witness 1 claims that he saw Subject 3 lunge at the officer and repeatedly hit him around the face and body.

Whether Subject 2 participated in the altercation is less clear. He was acquitted of the criminal charges. But, in that forum, the charges must be proven beyond a reasonable doubt. Officer A perceived that he was being attacked by more than one person. A 911 caller reported seeing two persons attacking a third person. Based on the totality of the evidence, it is more likely than not that Subject 2 was a participant in the attack on Officer A. Officer A claims that he was hit from behind by a person that he believed was Subject 2.

Officer A’s medical report shows that he sustained some injuries during the incident – a fractured foot and a displaced shoulder. However, these injuries could have resulted from the motorcycle crash. Officer A did not report any other injuries that could be directly attributable to the beating that he suffered at the hands of Subject 1. This begs the question as to how serious the beating actually was.

However, it is also important to assess the context of the incident. Officer A had just been involved in a motorcycle accident in which Subject 1’s daughter was injured. Although, fortunately, the daughter’s injuries were not serious, that may not have been immediately apparent to Subject 1. As such, it is possible that Subject 1 may have been overcome with anger thinking that his daughter had been seriously injured in the accident. The fact that Officer A was in a defensive position is corroborated by the medical examiners report which found that Subject 1’s gunshot wound was consistent with the fact that he was standing over the officer at the time the shot was fired. In addition, there was a time lapse of over four minutes between the time the motorcycle crash was reported and the first call came in about shots having been fired. This is a fairly substantial amount of time to withstand a physical beating, which indicates that the officer did not resort to deadly force immediately. Moreover, Officer A reasonably perceived that he was being attacked by more than one person. Based on this context, a reasonable person in Officer A’s position could perceive that he was in imminent threat of serious bodily injury necessitating the use of deadly force to protect himself.

Based on the totality of the facts and circumstances, the evidence established that an officer with similar training and experience as Officer A would reasonably believe that Subject 1 posed an immediate threat of death or great bodily harm. The investigation determined that the use of deadly force by **Officer A** is therefore objectively reasonable and **Within Policy** as outlined by the Use of Force Model; the Illinois State statute.

However, it is important to point out that it is possible that had the officer given a verbal warning before discharging his weapon, the use of deadly force may have been averted. Although

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CPD's directive on the use of force model and directive as outlined in General Order G03-02-01 provides that "[w]henever reasonable, members will exercise persuasion, advice, and warning prior to the use of physical force," CPD's current policy specific to deadly force as outlined in General Order G03-02-03 does not require or even suggest that such a warning should be given. Therefore, the officer cannot be faulted for failing to provide such a warning, if the circumstances would have allowed him to do so without unnecessarily jeopardizing his own safety. This is the type of case that demonstrates the importance of having a policy that requires officers to provide a warning before resorting to the use of deadly force where possible. IPRA will address this issue via the appropriate procedures related to policy recommendations.