

INVESTIGATION**NUMBER:** LOG #1072855 /U #14-40**INVOLVED****OFFICER:** "Officer A"; (Chicago Police Officer); Hispanic/Male; 26 years old; Year of Appointment- March 2013**OFFICER'S
INJURIES:**

None reported

SUBJECT:

"Subject 1"; Hispanic/Male; 20 years old

SUBJECT'S**INJURIES:**

A gunshot wound under the right breast; a gunshot wound on the right side of torso; and a gunshot wound with the bullet lodged in the center of the back. Non-fatal.

SUBJECT'S**WEAPON:**

Llama .32 caliber, semi-automatic handgun; silver finish; There were seven live rounds in the magazine.

LOCATION:

4755 S. Ada Street (Alley)

DATE/TIME:

06 December 2014, at 2245 hours

TIME OF IPRA**NOTIFICATION:** 06 December 2014, 2320 hours**TIME OF IPRA****RESPONSE:** 07 December 2014, 0030 hours**SUMMARY OF INCIDENT:**

On 06 December 2014, at approximately 2245 hours, Officer A and Officer B were assigned to beat 932. Officer B was the driver and Officer A was passenger of their marked SUV police vehicle. The officers responded to a report of persons flashing gang signs in the back of a gray pickup truck parked at 4739 S. Ada Street. Officer B drove the police vehicle north on Ada Street and parked it behind the suspect vehicle, which was double-parked at 4739 S. Ada Street. The officers observed a male exit a residence at 4739 S. Ada Street and go to the driver's door of the pickup truck. Officer A heard the male say, "Run," in Spanish, to two males who were standing on the east sidewalk of Ada Street. One of those two males, now known as Subject 1, began running south on Ada Street, on the sidewalk, while holding a gun in his right hand. Officer A observed Subject 1 with the gun. Officer A exited his SUV and pursued Subject 1 on foot. Officer A was within approximately eight feet of Subject 1, while still observing him holding the gun. Subject 1 ran south to 48th Street. Officer A continued running after him, announced

his office, and ordered Subject 1 to drop the gun. Subject 1 turned toward Officer A, while holding the gun in his right hand. Officer A, fearing for his life, fired four rounds at Subject 1. Subject 1 did not fire his weapon. Subject 1 fell to the alley pavement. Officer A then handcuffed him. Officer A stated other uniformed officers arrived to assist him. As a result of the gunfire, onlookers approached the alley. Officer A told Officer C to pick up the firearm which was on the ground a few feet from where Subject 1 had been handcuffed. Officer C gave the weapon to Officer B, who in turn rendered the weapon safe. Officer B placed the firearm and the magazine in his police vehicle. (Att's 3, 8)

The IPRA Preliminary Report and the Major Incident Notification Report essentially related the same information as reported in the Summary of Incident of this report. (Att's 29, 53)

INVESTIGATION:

The **Department Reports** (R.D. # HX532986, Event # 1434015670 and Arrest Report, CB# 19024910¹ reflects that On 06 December 2014, at approximately 2245 hours, Officer A and Officer B, were assigned to Beat 932. They responded to a report of persons flashing gang signs from the back of a gray pickup truck parked at 4739 S. Ada Street. Officer B drove north on Ada Street and parked the police vehicle behind a pickup truck that was double-parked at the Ada address. They saw a male exit 4739 S. Ada Street and go to the driver's door of the pickup truck. Officer A heard the male say, "run," in Spanish to two males who were standing on the east sidewalk of Ada Street. One of those two males, now known as Subject 1, began running south on Ada Street, on the sidewalk, while holding a gun in his right hand. Officer A observed Subject 1 with the gun. Officer A exited his police vehicle and pursued Subject 1 on foot. Officer A was within approximately eight feet of Subject 1, while still observing him holding the gun.

Subject 1 ran south to 48th Street. Officer A continued running after him, announced his office, and ordered Subject 1 to drop the gun. Subject 1 turned toward Officer A, while holding the gun in his right hand. Officer A, fearing for his life, fired four rounds at Subject 1. Subject 1 did not fire his weapon. Subject 1 fell to the alley pavement. Officer A then handcuffed him. Officer A stated other uniformed officers arrived to assist him. Officer A pointed out Subject 1's handgun to Officer C and directed him to recover the weapon. Officer C recovered the weapon from the ground a few feet from where Subject 1 had been handcuffed. Officer C turned the weapon over to Officer B. Officer B rendered the weapon safe, and placed it and the magazine in his police vehicle.

Subject 1 was arrested and charged with Aggravated Unlawful Use of Weapon/No FOID; and Aggravated Assault to a Police Officer. (Att.'s 3, 7, 8)

According to **Officer A's Tactical Response Report (TRR)**, Subject 1 did not follow verbal direction; he became an active resister when he fled; and he became an assailant, when he pointed the weapon at Officer A. Officer A responded with member's

¹ Subject 1's Arrest History has been included in the file as attachment 92.

presence, verbal commands, and pursued Subject 1 on foot. Officer A fired his weapon at Subject 1 when Subject 1 pointed his weapon at him (Att. 4)

According to the **Officer's Battery Report (OBR)**, on the date and time of the incident, Officer A was on duty, in uniform, assigned to Beat 932. Officer A responded to a call of a gang disturbance. The Officer's Battery Report documented Subject 1 pointed a weapon at Officer Cotton. (Att. 5)

Evidence Technician Photographs documented the shooting scene. Numerous photographs were taken of the location, as well as the weapon recovered at the scene. In addition, photographs were taken of Subject 1's injuries. (Att. 45)

Office of Emergency Communications (OEMC) Event Query and Radio Transmission Summary documented that the dispatcher sent a number of police units to 4755 S. Ada Street, the scene of a police-related shooting. OEMC Transmission documented that a 311 caller, called 311 and stated that "The street lights were out on the whole block of 47th and Ada, south. And there were about eight gang bangers out here. They had a truck doubled parked, and the cars are going by, and they're stepping in front of cars and giving gang signs out here." The 311 dispatcher transferred the call to 911 to report the gang activity to the 911 dispatcher who related the above information to the beat 933R. (Att. 36)

The Event Query entries relevant to the initial events are summarized as follows:

| Time | Activity | Text |
|-------------|-----------------|------------------------------------|
| 22:47:19 | DSP | 933R |
| 22:47:26 | DSP | 933R |
| 22:49:23 | MISC | EB 48 th BLK HOODY |
| 22:49:25 | MISC | EB 4 ^{8th} BLK HOODY |
| 22:49:33 | MISC | SHOTS FIRED |
| 22:49:40 | MISC | IN THE ALLEY |
| 22:49:53 | MISC | 10-1 ² |
| 22:50:05 | MISC | WEAPON RECOVERED |
| 22:50:10 | MISC | OFFICERS OK |
| 22:50:23 | MISC | EMS FOR 22 YO M/H |
| 22:50:26 | MISC | 23 mh |
| 22:50:35 | MISC | east alley 47/ada |
| 22:50:35 | MISC | EAST ALLEY OF 47 TH ADA |
| 22:51:00 | DSP | 4604 |
| 22:51:14 | ASST | 906 |
| 22:51:16 | DSP | 4713 |
| 22:51:29 | MISC | EMS REQ VIA MSG |
| 22:51:32 | ASST | 999 |
| 22:51:38 | ASST | 990 |

² A 10-1 is OEMC transmission code for a police officer needs help.

(Att. 38, 39)

IPRA Investigators conducted **personal visits to Christ Hospital** on two occasions on 7 December 2014 to see if they could interview Subject 1. At approximately 0130 hours, Investigator A discovered that Subject 1 was in surgery. At approximately 1100 hours, Investigator B learned that Subject 1 was heavily sedated. On 10 December 2014, the Reporting Investigator conducted a third personal visit to interview Subject 1, who declined to be interviewed. (Att's. 16, 18, 30)

IPRA Investigators conducted a canvass in an attempt to locate additional witnesses and/or evidence. There were no video cameras in the immediate area of the shooting. The majority of the residents contacted during the canvass said that they did not hear or see anything. However, one resident stated he heard three gunshots, but he did not see anything. It should be noted that there is no physical or testimonial evidence that refutes the statement provided by the involved officer. (Att. 15)

A Chicago Fire Department EMS Report reflects that CFD Ambulance #01 responded to the scene and found Subject 1 laying on his right side in the alley, handcuffed. Subject 1 was transported to Christ Medical Center with gunshot wounds to his abdomen and lower back above his buttocks. (Att. 60)

Medical Records from Christ Hospital indicate that Subject 1, patient, was received from CFD # 1, EMS, with gunshot wound to the abdomen and back. Per EMS 1 and police, patient pulled a gun on police, who fired their weapon. Christ's Hospital Trauma Sheet documented that Subject 1 had a gunshot wound to his lower right abdomen and two gunshot wounds to his back area above his buttocks. The gunshot wound to Subject 1's lower right abdomen would suggest that Subject 1 possibly turned in the direction of Officer A as he ran. The two gunshot wounds to Subject 1's back area above his buttocks would suggest that as Subject 1 turned and ran from Officer A. (Att. 61)

The **CPD Inventory List Report** documents that several items of Subject 1's clothing were recovered pursuant to the investigation including a black hood sweatshirt, a black hooded jacket, black jeans, and a pair of black cloth stretch gloves.³ (Att. 9)

The **CPD Crime Scene Processing Report** for RD- HX532986 documents that Officer A's weapon pistol was loaded with a magazine with a capacity of 17 rounds. A total of 13 live rounds were found in the magazine when it was recovered. A total of 4 expended shell casings were recovered at the scene. (Att. 31)

The **Crime Scene Photographs** show the items of evidence recovered pursuant to the investigation, including the 4 expended shell casings. A photograph of the shell casings as identified by markers 1, 2, 3, and 4 shows that the casings were found in

³ A photograph of the gloves shows that they were of the type with cutoff fingertips such that, when worn, the gloves would leave the outermost portions of the fingers uncovered. (Att. 45)

succession in a relatively straight path, with the first no more than approximately XX feet from the last. (Att. 45)

Illinois State Police Forensic Science Laboratory Reports document the examination of the recovered ballistic evidence, in comparison to Officer A's firearm. Officer A's weapon was test fired and found to be in proper firing condition. Subject 1's weapon was test fired and found to be in proper firing condition. (Att. 49)

Illinois State Police Forensic Science Laboratory Reports document that a buccal standard was taken from Subject 1 and swabs from the Llama 32 caliber handgun were taken. According to Illinois State Police Forensic Science Laboratory Report, DNA material present on the swabs taken from the Llama 32 caliber handgun recovered at the scene of the shooting included a mixture of at least three human DNA profiles. A major human male DNA profile was identified which does not match the DNA profile of Subject 1. A minor human DNA profile identified among the mixture of profiles was found potentially incomplete and not suitable for comparisons. (Att's 69, 70)

Court Documents regarding the criminal case against Subject 1 reflect that Subject 1 is out on bond and is scheduled for a court hearing on July 7, 2016. Subject 1's felony counts include: Possession of a firearm/gang member; two counts of aggravated assault to a peace officer and aggravated unlawful use of a weapon. (Att. 91)

In a Statement to IPRA, on 08 December 2014, Officer A provided an account of the incident that was consistent with the Summary of Incident and Chicago Police Department Reports. Officer A stated that he and his partner, Officer B, responded to a radio call of a gang disturbance at 4755 S. Ada Street. According to the information received by the officers, gang members were coming from the back of the pickup truck, flashing gang signs, and interrupting on-coming traffic. Officer A stated that, upon his approach to the area of the reported disturbance, he observed a male Hispanic walk around the pickup truck and touch the driver's side door, and he heard, "Correr", which is "run" in Spanish. Officer A looked at two male Hispanics who were standing on the sidewalk at 4739 S. Ada Street, when one of subjects, who was wearing a black hoodie, began to run southbound on Ada Street. As this individual began running, he crouched down in an attempt to possibly block Officer A's view. Officer A exited his vehicle and he observed this individual, now known as Subject 1, with a silver pistol in his right hand. Officer A stated Subject 1 ran from the 4700 block of Ada Street to 48th Street and ran northbound in the alley. As Subject 1 was running, he turned his right shoulder with the weapon pointed in Officer A's direction. Officer A gives a verbal command to drop the gun twice. When Subject 1 failed to comply with the verbal commands, Officer A discharged his weapon four times.⁴ According to Officer A, he fired his weapon at Subject 1 "[b]ecause at the time his weapon was in my general direction" and, therefore, he felt he was in imminent threat. At the time he discharged his weapon, Officer A estimates that he was within approximately 5 to 10 feet from Subject 1. Officer A stated that, once Subject 1 lay flat on the stomach, he handcuffed Subject 1 with his hands behind his back. Officer A observed the weapon laying a few feet from Subject 1's feet.

⁴ This is consistent with the Crime Scene Processing Report which documents that 4 expended shell casings were recovered.

Once he placed Subject 1 into custody, Officer A noticed Officer C at the mouth of the alley. A family had exited their residence and was approaching the scene. Officer A directed Officer C to secure the weapon. Officer C took possession of the weapon and turned it over to Officer B, who rendered it safe. Officer B locked the firearm in his police vehicle. Officer A called for emergency medical services. (Att. 21)

In a Statement to IPRA, on 7 December 2014, Officer B provided an account of the incident. According to Officer B, he and his partner, Officer A, responded to a radio call of a gang disturbance at 4755 S. Ada Street. Officer B was the driver of the police vehicle. Upon his arrival, Officer B observed a male subject attempt to get into the double-parked truck. The subject, now known as Subject 1, began to run southbound on Ada Street. Officer A then exited the police vehicle and began to pursue Subject 1. Officer B did not know why Officer A pursued Subject 1. Initially, Officer B was going to talk to the subject who was seated in the truck. However, then Officer B turned his attention to an individual who was standing on the sidewalk. As Officer B was about to approach that person, he heard Officer B over the police radio giving his location as he was chasing Subject 1. As Officer B was about to enter his vehicle to assist his partner, he heard at least three gunshots. After he heard the gunshots, Officer B radioed over the air and asked for Officer A's location. Officer A responded that he was in the alley. Officer B drove to the alley where he observed his partner, other officers and the offender, Subject 1, laying on the ground, already in handcuffs. As Officer B approached, he observed another officer, now known as Officer C, recover a gun. According to Officer B, he took the gun from Officer C, rendered it safe, then secured the gun in his police vehicle. Officer B believed that Officer C picked up the gun because a crowd had started to gather. Officer B did not see Officer A discharge his weapon, nor did he see Officer A handcuff Subject 1. (Att. 23)

In a Statement to IPRA, on 7 December 2014, Officer C provided an account of the incident that was consistent with the Summary of Incident and related Department Reports. Officer C stated he was working a four man car, on a violence suppression mission, assigned to the area of 23rd to 47th streets from Ashland to Damen Avenues. He was seated in the rear passenger side. The other officers in the vehicle were: Officers D, C, and F. The police vehicle did not have an in-car camera. Officer C stated that they responded to an "all-call" of a gang disturbance at 4739 S. Ada Street. Upon the officers' arrival, Officer C noticed Officer A struggling with the offender. He sprinted towards the incident, and he was alerted by Officer A that there was a weapon within a couple of feet of the offender. A crowd started to gather and Officer A told Officer C to secure the weapon. Officer C picked up the gun and released the magazine from the gun. Officer C turned the gun over to Officer B, who rendered it safe. Officer C stated he did not hear any gunshots. He added that, when he arrived at the scene, he saw Officer C handcuffing Subject 1. (Att, 25)

In a Statement to IPRA, on 9 July 2014, Officer F provided an account of the incident that was consistent with the Summary of Incident and related Department Reports. Officer F stated he was working a four-man car, on a violence suppression mission, in the area of 23rd to 47th streets from Ashland to Damen Avenues. He was in the rear driver's side seat. Officer F stated they responded to a call of a foot chase on Ada Street. Upon his arrival to the location, he observed the offender, now known as Subject

1, run into the alley with Officer A running behind him. Officer F stated he heard gunshots, but he did not see Officer A fire the shots. Officer F stated he saw the offender and the weapon on the ground. Officer F observed Officer C secured the weapon. (Att. 64)

In a Statement to IPRA, on 9 July 2014, Officer E provided an account of the incident that was consistent with the Summary of Incident and related Department Reports. Officer E stated he was working a four-man car, on a violence suppression mission, in the area of 23rd to 47th streets from Ashland to Damen Avenues. He was in the front seat passenger seat. Officer E stated that they responded to an all-call of a gang disturbance at 4739 S. Ada Street. Upon arrival to the location, in an alley, Officer E observed Officer D and Officer C secure the offender, now known as Subject 1, by grabbing and holding down his arms. Officer E added he observed Officer C recover a gun and turn it over to Officer B. (Att. 66)

In a Statement to IPRA, on 9 July 2014, Officer D provided an account of the incident that was consistent with the Summary of Incident and related Department Reports. Officer D stated he was the driver of the marked vehicle. He was working a four-man vehicle when he and his partners responded to 4755 S. Ada Street, regarding a foot chase. Officer D stated upon his arrival, he could see Officer A struggling with the offender, now known as Subject 1. Officer D grabbed Subject 1's arm so Officer A could handcuff him. Officer D stated he saw a small silver handgun laying on the pavement of the alley. Officer C picked it up and secured it. (Att. 68)

CONCLUSION AND FINDING:

Based on the totality of the facts and circumstances, the R/I finds that there is sufficient evidence to prove that Officer A was reasonable in his belief that Subject 1 posed an immediate threat to his safety. The R/I finds that Officer A's use of deadly force was objectively reasonable and within policy as outlined by the Use of Force Model; the Illinois State Statute; and the Chicago Police Department's General Order 03-02-03, 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 involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
 - b. is attempting to escape by use of a deadly weapon, or;

otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.”

Officers A and B responded to a 911 call stating that there were eight Hispanic “gangbangers” near an SUV that was parked in the middle of the street and they were flashing gang signs. The caller also reported that the street lights were out and that the street area was dark. When the Officer A arrived, he overheard a voice saying “run” in Spanish and he saw Subject 1 take evasive action. After he got out of the car, he saw a gun in Subject 1’s hands, then he saw Subject 1 take off running. The evidence supports that Subject 1 did, in fact, possess a firearm which officials recovered at the scene. Although DNA evidence did not definitively connect Subject 1 to the firearm, there are two possible explanations: (1) Subject 1 may have been wearing gloves because the inventory report documents that gloves were recovered along with his clothing (inventory #13329349); and (2) both Officers C and B handled the gun after it was recovered. The recovery of the firearm prior to the arrival of CPD evidence technicians is a tactical issue that should be addressed. There are times when, for safety reasons, it is not possible to leave a firearm in place for recovery by CPD evidence technicians. However, recovery by officers other than evidence technicians should be done only when absolutely necessary, and officers should be trained to take all possible steps to secure the scene without having to move evidence. Moreover, officers should be trained on the proper handling of physical evidence where it is necessary to collect or move evidence for safety reasons.

As outlined above, the available evidence supports that a gun was recovered near where Subject 1 lay after having been shot. The CPD Event Query shows that the responding officers arrived at the scene at 22:47 hours. The Event Query then shows that the officers reported a subject running eastbound on 48th Street wearing a black hooded at 22:49 hours. Seconds later, the event query documents the reporting of shots fired. The fact that a weapon was recovered was documented at 22:50 hours. The Event Query then documents the arrival of Beats 4604, 906, 4713, 999, and 990 at 22:51 hours. Officers B, D, and E, all observed Officer C recover the firearm from where it was found near where Subject 1 went down after which he gave the gun to Officer B who secured it in his vehicle.

Given that the evidence shows that Subject 1 was armed, the question remains, whether Subject 1 presented an imminent threat of harm to Officer A as he fled. It is undisputed that Subject 1 was running away from Officer A when the officer fired at him. To be sure, medical records show that Subject 1 had two bullet wounds to the back. However, the assessment of the reasonableness of an officer’s conduct must provide “allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving.” *Graham v. Connor*, 490 U.S. 386, 397 (1989). According to Officer A, during the chase, he saw Subject 1 turn in his direction and point the gun at him. There are no witnesses of the incident to confirm or refute Officer A’s assertion that Subject 1 turned and pointed the gun at him. However, even if Subject 1 did not intentionally point the gun at Officer A, it is possible, if not likely, that Subject 1 turned to see whether and how closely the officer was in pursuit and, in so doing, gave the officer the impression that he was threatening use of the gun. The photographs of the expended shell casings show that they were found

in a row within fairly close proximity to each other which indicates that they were fired in quick succession comprising a single episode of force. Whether Subject 1 merely turned to see if the officer was in pursuit, or turned and pointed the gun, Officer A had no time to explore other tactical options and it was reasonable under the circumstances for him to use deadly force to defend himself. Based on the totality of the circumstances Officer A was reasonable in the discharge of his weapon at Subject 1.