

INDEPENDENT POLICE REVIEW AUTHORITY
LOG# 1021184/U# 08-41

INVESTIGATION

NUMBER: LOG# 1021184/U# 08-41

OFFICER #1

INVOLVED: “Officer A” (Chicago Police Sergeant); Male/White; 38 years old; On-Duty; Civilian Dress; Year of Appointment – 1994

OFFICER’S

INJURIES: Abrasions and bite marks to the right hand, swelling to both knees, treated and released.

OFFICER #2

INVOLVED: “Officer B” (Chicago Police Officer); Male/White; 37 years old; On-Duty; Civilian Dress; Year of Appointment – 1994(Did not fire.)

OFFICER’S

INJURIES: Bruising both knees, swelling to both hands, bite marks on left hand, treated and released.

SUBJECT: “Subject 1”; Male/Black; 34 years old

SUBJECT’S

INJURIES: One gunshot wound to the head (FATAL).

INITIAL

INCIDENT: Attempted street stop.

DATE/TIME

OF INCIDENT: 27 Oct 08, 2224 hours

LOCATION:

841 N. Homan (alley)
Beat 1121

SUMMARY OF INCIDENT:

On 27 Oct 08 at approximately 2223 hours, Officer A and Officer B were on patrol, in civilian dress, in an unmarked vehicle, driving west on Chicago Avenue. Officer A was driving. As their vehicle approached Homan Avenue, the officers observed a male black subject, Subject 1, standing in the street, waving and gesturing to passing vehicles with his hands in the air. Subject 1 observed the officers approaching and immediately began running north on Homan Avenue while holding his right side. Subject 1 ran into the alley north of Chicago Avenue.* Officer B exited the vehicle and began pursuing Subject 1 on foot while Officer A followed in the police vehicle. Subject 1 quickly turned around and exited the alley he had just entered and ran north on Homan Avenue and then east on Rice Street. As Subject 1 turned, Officer B observed Subject 1 holding a black semi-automatic handgun in his right hand. Officer B announced his office and ordered Subject 1 to stop running. Subject 1 ignored the commands and continued running north into the alley east of Homan Avenue.

Subject 1 was approximately twenty to twenty-five feet in front of Officer B and Officer A who was following in the squad car. At approximately 841 N. Homan Avenue, in the east alley, Subject 1 tripped and fell to the ground. Officer B caught up to Subject 1 and attempted to handcuff Subject 1 while yelling for Subject 1 to stop resisting and drop his gun. Officer B and Subject 1 began fighting as Officer B attempted to disarm Subject 1. Officer A exited the vehicle and assisted Officer B in an attempt to subdue Subject 1. Officer B was on the east side of Subject 1 and Officer A was on the west side of Subject 1 as all three struggled on the ground. During the struggle, Subject 1 bit Officer B on the left hand several times and Officer A on the right hand. Officer B struck Subject 1 with his expandable baton, an Armament & Systems and Procedures (ASP) several times in order to subdue him but the blows were ineffective as Subject 1 continued to fight and reached for Officer B's weapon, partially tearing the holster from the belt. Officer A attempted to call for assistance via the radio but Subject 1's hand slapped the radio out of his grasp, sending the radio to the ground and out of Officer A's reach. Officer A observed Subject 1 point his weapon at Officer B. Officer A discharged his weapon, one time, at Subject 1, striking him in the head. Officer A and Officer B were both transported to Northwestern Memorial Hospital, treated and released.¹ Subject 1 was pronounced dead at the scene.

¹ Officer A was treated for a human bite wound on his right hand, 2nd digit. Officer B was treated for a human bite wound on his left hand, 3rd digit. (Att. #50-57).

INVESTIGATION:

Officer A related to the **Roundtable panel** an account of the incident that was consistent with the Summary of Incident. Officer A added that when Subject 1 fell in the alley, Officer B attempted to handcuff him, all the while yelling for Subject 1 to stop resisting and drop his gun. Officer A heard Officer B yell, "He bit me." Officer A grabbed Subject 1 in a "bear hug" from behind. Officer B withdrew his ASP and struck Subject 1 but the blows were ineffective as Subject 1 then reached for Officer B's holster, partially tearing the holster from his belt. Officer A continued struggling to hold down Subject 1's right hand that was holding a gun. Subject 1 bit Officer A's right hand. Officer A attempted to call for assistance, but Subject 1's hand hit the radio causing it to fall to the ground. Officer A observed Subject 1's right hand point his gun at Officer Band Officer A fired once, striking Subject 1 in the head.

Officer B related to the **Roundtable panel** an account of the incident that was consistent with the Summary of incident. Officer B added that upon observing Subject 1 running into the alley holding a gun, he drew his firearm while continuing the foot pursuit. When Subject 1 fell to the ground, he re-holstered his firearm and tackled Subject 1. Subject 1 was lying on the ground, on his stomach, initially holding the gun underneath him. Subject 1 began fighting. Officer B had his hands around Subject 1's neck when Subject 1 bit his left hand several times. While on his knees, Officer B withdrew his expandable baton and struck Subject 1 on the left shoulder. This was ineffective as Subject 1 reached for Officer B's holster with his left hand, partially tearing the holster from his belt. Officer A was attempting to restrain Subject 1's right hand because Subject 1 was still holding the gun. Subject 1 raised his right hand with the gun in it and turned it toward Officer B. Officer A fired his gun at Subject 1 one time. (Att. 4).

In a statement to the IPRA on 11 June 2009, the Involved Member, **Officer A**, provided an account of the incident that was consistent with the Summary of Incident, related Department reports and the account he provided to the Roundtable panel. Both officers announced their office to Subject 1 from the car window. Subject 1's response was to run away, holding his waistband with his right hand. Officer A, who was driving, followed Subject 1 who ran eastbound on Rice Street and was observed by both officers holding a pistol in his right hand. Officer B exited the vehicle at Rice Street and pursued Subject 1 northbound through the east alley of Homan. Officer A followed into the alley in the vehicle. Officer B was approximately eight to ten feet away from Subject 1 when Subject 1 fell. Officer B reached Subject 1, holstered his weapon, and grabbed Subject 1's shoulders and arms. Officer B and Subject 1 were both on the ground.

Officer A exited the vehicle and assisted Officer B. Both officers gave Subject 1 verbal commands to stop, drop the gun and to let go of the gun, which he ignored. He was extremely combative and fought, holding his gun against his body. Subject 1 was on his knees, shifting from one elbow to the other, but was not lying flat on the ground. Officer B was to Subject 1's right and in front of him and Officer A was behind and a bit to the left. Officer A attempted to gain control of Subject 1's gun by putting his arms

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1021184/U# 08-41

around Subject 1's upper waist and holding Subject 1's hand that held the gun. Subject 1 was kicking and thrashing. Officer B yelled, "He bit me!" Officer B yanked his hand away from Subject 1, took his ASP out and struck Subject 1 several times in the upper back, shoulders and head. The strikes were not effective as Subject 1 reached up and attempted to pull Officer B's gun with his left hand. One of the eyelets of the holster ripped off of the belt but the holster did not completely rip off. Subject 1 was not able to pull Officer B's weapon free.

At the same time, Subject 1's right hand was still holding his weapon against his torso and Officer A was still trying to gain control of the weapon. Officer A pulled his right hand away because Subject 1 had just bitten it. Officer A attempted to call for help over the police radio while trying to gain control of Subject 1's weapon with his left hand. Subject 1's right hand knocked the radio out of Officer A's hand and at this point, Officer A left hand started to lose control of Subject 1's weapon. Subject 1 had both hands on his weapon and began to point his weapon toward Officer B. Officer B was holding his own weapon with both of his hands because the holster was broken. Subject 1's hands were close to his torso, coming up toward Officer B. Subject 1's legs were beneath him and he was in the process of standing, rising from a crouch. Fearing for Officer B's life, Officer A fired his weapon once at Subject 1's head. Officer A stated that Subject 1 was inches from him when he fired. Officer A indicated that the struggle lasted approximately four to five minutes and Subject 1 was combative and refused to follow commands the entire time. (Att. 47).

In a statement to the IPRA on 10 June 2009, the Involved Member, **Officer B**, provided an account of the incident that is consistent with the Summary of Incident, related Department reports and the account he provided to the Roundtable panel. Officer B stated that he was on patrol with Officer A, who was driving, traveling westbound on Chicago and observed a male, now known as Subject 1, creating a disturbance on the north side of Chicago Avenue. He was in the street at Homan throwing his hands up and making gang signs. Before Officer B could exit his vehicle, Subject 1 started running northbound on Homan on the east side of the street and as he was running he was holding his waistband with his right hand. Subject 1 turned east on Rice and at this point, Officer B exited the vehicle, drew his weapon and pursued Subject 1 on foot. As Subject 1 was approaching Rice, he pulled the gun out of his waistband and held it in his right hand. Officer B pursued on foot as Subject 1 turned north into the alley east of Homan Avenue. Subject 1 tripped and fell at approximately 841 N. Homan.

Officer B was about six to ten feet behind Subject 1 before he fell so when Subject 1 fell, Officer B, who had drawn his weapon during the foot pursuit, went down with Subject 1, his left arm wrapped around Subject 1's upper body by his head. During the pursuit, Officer B identified himself as a police officer several times and ordered Subject 1 to stop and drop the gun. Officer B related that he and Subject 1 were on the ground. Officer B had his pistol in his hand and was ordering Subject 1 to stop, drop the gun and put his arms up. At that point, Officer A pulled up, exited the vehicle and ran over to attempt to gain control of Subject 1's gun, which Subject 1 was holding under his torso as Officer A approached. Officer A was on top of Subject 1 trying to hold Subject

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1021184/U# 08-41

1's gun down or at the very least hold it in place so they would not get shot. The whole time, Subject 1 was trying to raise the gun. Subject 1 was struggling with Officer A the whole time, trying to pull the gun away from Officer A's grasp. Officer B was to the right of Subject 1, towards the upper part of his body with his left arm wrapped around Subject 1's shoulder and head. Subject 1 was face down with his knees up and his hands up struggling to keep control of his gun with one hand while trying to lift himself up. Officer A was behind Subject 1 with his arms around Subject 1's torso. Officer B then felt a sharp pain to his forearm and realized that Subject 1 had bitten him in the forearm. Subject 1 then bit Officer B between his thumb and index finger. Subject 1 also bit him on his two middle fingers. When Officer B realized that he could not dislodge his fingers from Subject 1's mouth, he holstered his firearm, removed his ASP and struck Subject 1 approximately five or six times on his shoulders, back and left arm. Officer B was able to free his fingers but Subject 1 continued to struggle and then bit Officer A also. Subject 1 lunged up and with his left hand went to grab Officer B's gun from his holster. Subject 1 grabbed onto the holster and broke it from Officer B's belt. Subject 1 was not able to remove the holstered weapon. Subject 1 at that point was able to pull his own handgun from under his chest and point it in Officer B's direction. Officer B stated that when he struck Subject 1 with the ASP, Officer B, was on one knee but standing partially up. Officer B was approximately one foot or less away from Subject 1 when Subject 1 pointed his gun at Officer B. Officer A drew his gun and fired one shot striking Subject 1. Officer A did attempt to call for assistance during the struggle but Subject 1 knocked his radio away from him. (Att. #45).

The report from **Acting Assistant Deputy Superintendent (ADS)** included an account that was consistent with the Summary of Incident. (Att. #5).

A **canvass** was conducted in the vicinity of 841 N. Homan. The canvass identified one individual, **Individual A**, as the mother of Subject 1's child. Individual A indicated that she was not at home at the time of the incident. She stated that Subject 1 did not live with her. She was not aware that Subject 1 owned a firearm. Individual A informed IPRA Investigators of a possible female witness that she did not name. A business card was left for Individual A to give to this person and she was further asked to contact IPRA with the identity of the witness. The IPRA was never contacted by a potential witness to the incident. (Att. #23).

A **POD** Video from the location of 800 N. Homan Avenue, Beat 1121, was obtained for the incident date 27 October 2008, starting at 2200 hours – 28 October 2008, 0100 hours. The POD CD was viewed, however, there was no recording of the incident. (Att. #22).

The **Chicago Fire Department (CFD) Ambulance Record** indicates that paramedics responded to a call of a gunshot victim at 900 N. Homan and found Officer A, an on duty police officer, ambulatory, at the scene of an altercation with an offender who became combative and violent. Officer A sustained a bite mark to his right index finger, broken skin and minimal bleeding. Officer A also showed signs of redness to face

and neck and has blunt trauma with abrasions to both knees. Officer A was transported to Northwestern Memorial Hospital where he was treated and released. (Att. #13).

The **Chicago Fire Department (CFD) Ambulance Record** indicates that paramedics responded to a call of a gunshot victim at 900 N. Homan and found Officer B, an on-duty police officer, who was involved in an altercation. During arrest, offender became combative, fighting and biting officer. Officer B sustained bite marks to left hand, bleeding noted to middle digit, trauma to both knees with abrasions incurred. Officer B was transported to Northwestern Memorial Hospital where he was treated and released. (Att. #14).

The **Tactical Response Reports** from Officer A and Officer B indicate that Officer A fired his weapon one (1) time and Officer B did not fire his weapon. (Att. #7, 9).

Department reports, including the Case Supplementary Report includes accounts of the incident that are consistent with the Summary of Incident and the accounts provided at the Roundtable. (Atts. #6-10, 26, 27, 36-42).

The Office of Emergency Management and Communications (OEMC) Event Query provides information consistent with the Summary of Incident as to the reporting of shots fired by the police and ambulance requests. (Att. #20, 21).

The Evidence Technician Photographs and Video Tape depict the location of the incident and the locations of recovered evidence. Crime scene photographs further depict Officer A and Officer B's various injuries. (Atts. #11, 24).

A report from the **Illinois State Police, Division of Forensic Services (ISP)**, dated 26 November 2008, reflects that of the fired evidence recovered at the scene and at the autopsy, one (1) cartridge case and one (1) fired bullet jacket was matched to Officer A.² Officer A's weapon, a Smith & Wesson, Model 457D, .45 caliber with a 7 cartridge capacity was examined, found to be in firing condition and test fired. Subject 1's weapon, a Hi-Point, Model C9, 9mm caliber was not examined or test fired. (Att. #25, 33).

A report from **ISP**, dated 26 Nov 08, reflects that a blood standard obtained from Subject 1 and swabs taken from Subject 1's Hi-Point 9mm weapon were preserved. A report from Orchid Cellmark dated 18 Jun 09, reflects that DNA testing was conducted using the preserved swabs and Subject 1's blood standard.³ The report further indicates that the DNA profile obtained from the dry swabs of the gun was a mixture of at least

² The fired cartridge case was recovered from the grass near the alley in the rear of 841 N. Homan Avenue and the fired bullet was recovered from the Medical Examiner's Office. The ISP report further indicated that two (2) lead fragments were not suitable for further comparison, one fired bullet jacket, obtained during Subject 1's autopsy, was not fired by Officer A's weapon and one (1) lead core and one (1) lead fragment were not suitable for further comparison. (Att. #11, 32, 33).

³ The DNA testing was outsourced from ISP to Orchid Cellmark. (Att. #49).

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1021184/U# 08-41

three individuals including at least one male. Subject 1 could not be excluded as a possible contributor to the mixture. The major profile originated from an unknown male and the minor originated from at least two unknown individuals. Subject 1 could not be excluded as a possible minor contributor to the mixture. (Att. #34, 49).

A report from **ISP** dated 26 May 09, reflects that Subject 1's weapon and live cartridge were examined for latent impressions but revealed no latent impressions suitable for comparison. (Att. #48).

The **Medical Examiner's Report** indicates that Subject 1 had a circular gunshot wound entrance on the back of the neck. The wound course involves the skin and subcutaneous tissues in the area, enters the cranial cavity through the occipital bone of the skull producing internal beveling, courses through the cerebellum and involves the right temporal lobe of the brain, where a deformed copper jacket and lead bullet fragments were recovered. The cause of death was a gunshot wound to the neck. The manner of death was homicide. The results of the toxicologic analyses revealed that Subject 1 was positive for ethanol. Medical Examiner photographs depict the body, injuries and clothing of Subject 1 as well as the fired evidence retrieved from the body of Subject 1. (Att. #32, 43).

CONCLUSION AND FINDING:

This investigation found that the use of deadly force by Officer A was in compliance with Department policy. According to the Chicago Police Department's General Order No. 02-08-03, III. *Department Policy*:

- 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 likely to cause death or great bodily harm or;
 - b. is attempting 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."

Officer A's use of deadly force was in compliance with Department policy. The evidence shows that at the time he fired at Subject 1, Officer A believed that Subject 1 was going to shoot and cause great bodily harm or death to either himself or Officer B. Subject 1 had already physically resisted the officers, becoming an assailant. Subject 1 had bitten both officers, was holding his own weapon and attempting to gain possession of Officer B's weapon. The officers' attempts to both disarm and gain control of Subject 1 using defensive tactics were ineffective. Both officers were in danger of great bodily harm if Subject 1 either obtained Officer B's weapon or was able to put his own weapon in a firing position.