

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

INVESTIGATION

NUMBER: LOG #1026112 / U# 09-10

INVOLVED

OFFICER: "Detective A" (Chicago Police Officer); Male/White; 43 years old; On-Duty; In civilian dress; Year of Appointment – 1991

OFFICER'S INJURIES: None Reported

FBI SPECIAL

AGENT INVOLVED: "FBI Special Agent A" (Federal Bureau of Investigations); Male/White; 37 years old; On-Duty; In civilian dress

FBI SPECIAL

AGENT INJURIES: None Reported

INVOLVED

SUBJECT: "Subject 1"; Male/White Hispanic; 34 years old

INVOLVED

SUBJECT'S INJURIES: Fatal, Multiple gunshot wounds.

DATE/TIME: 06 May 2009, 0700 Hours

LOCATION: Marathon Gas Station, 6630 W. Montrose Avenue, Harwood Heights, Illinois, 60634
Beat: 3100 (No Beat Number)

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

SUMMARY OF INCIDENT:

On 06 May 2009, at approximately 0650 hours, Detective A and FBI Special Agent A were assigned to the FBI Violent Crimes Task Force and investigating a robbery pattern on the Northwest side of Chicago. The investigation involved a male offender who wore a surgical mask and drove a white Dodge van. FBI Special Agent A drove the covert vehicle and Detective A was the passenger. They were driving south on Harlem when they observed a white Dodge Caravan driving east on Forest Preserve Drive. FBI Special Agent A made a u-turn and followed the Caravan to the vicinity of the Marathon Gas Station at 6630 W. Montrose, in Harwood Heights. The Caravan slowed down and the covert vehicle drove past it. The Caravan drove north on a side street near the gas station. The covert vehicle circled around and stopped on Forest Preserve Drive, the northern side of the gas station. FBI Special Agent A and Detective A then observed a male Hispanic, later identified as the victim/subject, Subject 1, with a surgical mask on his face, walking along the rear of the gas station. FBI Special Agent A and Detective A did not observe the Caravan.

Detective A then observed Subject 1 take out a handgun and walk around the west corner of the gas station toward the entrance to the gas station store. Detective A notified a citywide dispatcher via radio that there was a robbery in progress and gave a description of both Subject 1 and the Caravan. FBI Special Agent A and Detective A both exited the covert vehicle. Detective A, armed with a .45 caliber Glock pistol, and FBI Special Agent A, armed with a MP5 submachine gun,

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

positioned themselves at the west corner of the gas station to observe the front door of the gas station store. Subject 1 exited the gas station minutes later while holding a black gun in his right hand. Detective A yelled, "Police! Police!" Subject 1 raised his gun while standing in the vestibule entranceway to the gas station store. Detective A fired at Subject 1, fatally wounding him. Subject 1 fell to the ground, dropping his weapon, which was later found to be a Crossman Air Pistol (BB gun). Witnesses who were inside the gas station told officers that Subject 1 had robbed the gas station. Detective A discharged his weapon eight times. FBI Special Agent A did not discharge his weapon. Although Detective A and FBI Special Agent A thought there might have been a possible second offender, an intensive search after the incident failed to locate this possible second offender.

INVESTIGATION:

Witness 1 related to the **Roundtable Panel** that she had worked at the Marathon gas station for ten years and that she had opened the station for business on 06 May 2009. At approximately 0700 hours, Subject 1 walked into the station without a visible weapon but had a mask over his mouth that she assumed he wore because of the recent swine flu outbreak. Witness 1 was not immediately suspicious of Subject 1, who walked to the rear of the store. Subject 1, who had a gun in his right hand and wore a glove on his left hand, approached Witness 1, who was near the cash register. Subject 1 stated, give him "the money," three times to Witness 1. Witness 1 called out for the owner, Witness 2, who stood by the Illinois Lottery terminal. Witness 2 walked over to Witness 1 and Subject 1

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

jumped over the counter, waved his gun and repeatedly said, "Give me the money." Subject 1 opened the cash drawer that contained rolled coins as he continued saying, "Give me the money." Witness 2 asked him what money he was talking about as she opened the cash register and pulled out some currency, which Subject 1 grabbed with his left hand. Subject 1 also tried to grab some change from the register but dropped it. Garcia jumped back over the counter and told Witness 1 and Witness 2, "Don't move."

Witness 1 continued that Subject 1 exited the gas station store through the front door and into the vestibule, still holding the gun as he exited. Witness 1 related that advertising signs blocked her view into the vestibule and she did not know if he still held the gun in his hand after exiting the store. Witness 1 heard a voice say, "Stop. Stop. Stop." Witness 1 then heard shooting. Subject 1 stumbled and fell back. Witness 1 stated that she later learned that the voice who said, "Stop," was that of a police officer. (Att. 8).

In a **statement** to IPRA on 06 May 2009, **Witness 1** re-iterated the account of the incident that she provided to the Roundtable Panel. Witness 1 added that she heard "five quick gunshots" before observing Subject 1 fall back in the vestibule. Witness 1 then looked up at video monitors and observed several police vehicles enter the gas station lot. A white male police officer then approached Subject 1, checked his pulse, and then checked his waistband for additional weapons. (Att. 12).

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

Witness 2 related to the **Roundtable Panel** that she arrived at the gas station at approximately 0630 hours. Witness 2 saw Subject 1 enter the store wearing a white surgical mask and walk to the rear of the store, which Witness 2 described as “normal” customer behavior. Witness 2 was writing up orders when she saw Subject 1 approach Witness 1 while holding a gun in his right hand. Subject 1 had a glove on his left hand and stated, “Give me the money.” Witness 2 stated, “What money?” and Subject 1 jumped over the counter and then opened a drawer containing rolled coins while telling Witness 2 to open the cash register. Witness 2 opened the cash register and gave him some money. Subject 1 told her to give him more money and took a roll of quarters from the coin drawer. Witness 2 gave him some more currency. Subject 1 put his hand on the change in the register and Witness 2 told him that she had no more money to give him. Subject 1 told Witness 2, “Don’t move,” and then jumped back over the counter. Subject 1 exited the front door of the gas station store and Witness 2 heard someone say, “Stop!” and “Don’t Shoot,” followed by another “Stop!” Witness 2 then heard shots fired while she called for police.

(Att. 8).

In a **statement** to IPRA on 06 May 2009, **Witness 2** re-iterated the account of the incident that she provided to the Roundtable Panel. Witness 2 added that she heard three quick gunshots after Subject 1 exited the gas station store door into the vestibule and she heard someone yell, “Stop.” Witness 2 stated that Subject 1 had the gun in his hand when he left the store, but that advertising signs in the window blocked her view of

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

Subject 1 below the neck and that she could not see if Subject 1 had pointed a weapon when he was shot. (Att. 11).

Witness 3 related to the **Roundtable Panel** that she is a regular customer of the Marathon Gas Station and that she usually goes there at 0700 or 0705 hours to buy lottery tickets. On 06 May 2009, Witness 3 drove to the station and parked her van at the west end of the station property. Witness 3 exited the van, walked around the rear of the van, and then walked straight toward the gas station store door while looking down and reaching into her purse. Witness 3 heard someone scream, "Police! Police! Police." Witness 3 stood still and saw an officer, now known as Detective A, raise his weapon and fire toward the gas station store entrance. Witness 3 stated that she was behind Detective A when he fired his weapon and that she did not see a person at the gas station entrance. Responding officers then placed Witness 3 in a police car.

In a **statement** to IPRA on 06 May 2009, **Witness 3** provided essentially the same account of the incident as she had to the Roundtable Panel, adding that Detective A fired three shots at the gas station store entrance and that she then saw a person fall backwards to the ground. Witness 3 did not see this person holding a gun, nor did she see a gun on the ground. Witness 3 estimated that she was one "van-length" behind Detective A when he fired his weapon. (Att. 10).

Witness FBI Special Agent A related to the **Roundtable Panel** that he was working with Detective A as part of the Violent Crimes Task Force, assigned to

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

investigate an armed robbery pattern that involved one or more offenders who robbed gas stations and Dunkin' Donut shops over the last several months. During a 0500 hours briefing on 06 May 2009, FBI Special Agent A learned that he and Detective A were looking for a Dodge Caravan van, from the late 1990s or early 2000s, and that the Caravan might contain one or two Hispanic males.

FBI Special Agent A stated that he drove the covert vehicle, a Ford Taurus with tinted windows, and Detective A sat in the front passenger seat. As FBI Special Agent A drove south on Harlem and approached Forest Preserve Drive, he observed a van fitting the description of the Caravan. FBI Special Agent A made a u-turn, followed the van, and ran the plate through an FBI dispatcher. FBI Special Agent A followed the van for at least one-half mile, driving past the Marathon Station and passing the van, which drove north onto a side street. FBI Special Agent A circled the vicinity of the gas station and then parked near the station, on its north side. FBI Special Agent A then saw a Hispanic male, now known as Subject 1, walking between a dumpster and a garage. Subject 1 then pulled his hood over his head and pulled a white surgical mask up over his mouth. FBI Special Agent A remarked, "There's our guy," to Detective A.

Subject 1 walked quickly along the rear wall of the Marathon gas station store as he lifted up the back of his sweatshirt. FBI Special Agent A related that he remarked to Detective A that Subject 1 would pull out a gun; however, FBI Special Agent A did not see Subject 1 pull out a gun because he walked out of FBI Special Agent A's sight. FBI Special Agent A parked the covert vehicle near the rear of the gas station store. Detective

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

A radioed information about the robbery in progress and requested assistance. FBI Special Agent A and Detective A exited the vehicle and ran toward the western corner of the gas station store. Detective A reached the corner first and crouched down three to four feet in front of FBI Special Agent A. They were positioned three to four feet from the western corner of the gas station store and had a clear view of the gas station store's front door. FBI Special Agent A had the MP5 weapon and Detective A had a handgun. Detective A instructed FBI Special Agent A to watch the rear door of the gas station store. FBI Special Agent A moved back and forth approximately three feet along a guardrail next to the western corner of the gas station store as he kept watch on both the front and rear doors.

FBI Special Agent A related that he observed Subject 1 exit the Marathon gas station store's front door and step outside while holding a black gun in his right hand. Cash protruded from a pocket of his hooded sweatshirt. FBI Special Agent A heard Detective A state, "Police! Police!" and saw Subject 1 move his gun up. FBI Special Agent A stated that he was moving as he heard the shots fired by Detective A, adding that he was approximately twelve feet from Subject 1 when Detective A fired his weapon.¹

(Att. 8).

In a **statement** to IPRA on 21 March 2011, **witness FBI Special Agent A** stated that he has been assigned to the Violent Crime Task Force, a group involving FBI agents, CPD officers, and Cook County Sheriffs, for approximately eight and a half years. FBI

¹ In a subsequent statement to IPRA, FBI Special Agent A stated that he was positioned within six feet of Detective A and covering the rear entrance of the gas station when he moved toward the front door of the gas station to aide Detective A.

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

Special Agent A related that he has worked on the Violent Crime Task Force with Detective A for approximately five years. FBI Special Agent A reiterated the account that he provided to the Roundtable Panel. FBI Special Agent A added that he recalled Detective A firing five to six shots at Subject 1, who had exited the Marathon Gas Station Store and was standing inside the vestibule with an external opening that did not have a door. FBI Special Agent A also stated that he heard Detective A state, "Police," very loudly to Subject 1, who raised the gun in his hand up towards Detective A and FBI Special Agent A before Detective A discharged his weapon. FBI Special Agent A related that he did not discharge his weapon because the threat posed by Subject 1 had ceased by the time that FBI Special Agent A was ready to discharge his weapon toward Subject 1. FBI Special Agent A stated that he kicked the gun away from Subject 1 once he had fallen back after being shot. (Atts. 38, 39).

Involved member Detective A related to the **Roundtable Panel** that he was detailed to the Violent Crimes Task Force and that he and FBI Special Agent A were investigating a robbery (previously described). FBI Special Agent A drove their covert vehicle south on Harlem and followed a van that matched the description of the van involved in the robberies. They continued east on Forest Preserve Drive. The van slowed down as it neared a Marathon gas Station and FBI Special Agent A drove past the van, which turned north onto a side street. Detective A never saw the van again. FBI Special Agent A drove back to the gas station, stopping just northwest of the gas station. Detective A saw Subject 1 wearing a black jacket and a white surgical mask as he walked

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

in back of the gas station store. Subject 1 reached to his waist and pulled out a black handgun.

Detective A continued that he radioed the Citywide dispatched and reported an armed robbery in progress, providing a description of the Subject 1 and the van. Subject 1 walked to the front of the gas station store entrance. Detective A and FBI Special Agent A exited their covert vehicle and positioned themselves at the western corner of the gas station store. FBI Special Agent A was to the left of Detective A, covering the rear door of the gas station store due to their concerns of a possible second offender and vehicle. Detective A stated that he did not follow Subject 1 into the gas station store because he did not know the layout of the store, and he did not want to endanger the female employees inside.

Detective A related that he saw Subject 1 exit the front door of the gas station wearing the black coat and mask, and holding the black gun in his right hand. Detective A yelled, "Police! Police! Police! Stop!" and words to the effect that Subject 1 should drop his weapon. Subject 1 did not comply with the order and made an upward motion with his gun. Detective A feared for his life and that of FBI Special Agent A. Detective A fired at Subject 1, who fell backwards into the vestibule. Detective A radioed "shots fired by the police" and requested an ambulance. Detective A related that he did not touch Subject 1's weapon and that he did not think Subject 1 stated anything. (Att. 8).

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

In a **statement** to IPRA on 27 April 2011, **Involved Member Detective A** reiterated the account of the incident that he provided to the Roundtable Panel, adding that he was approximately fifteen feet away from Subject 1 when he discharged his weapon at him. Detective A stated that after he yelled, "Police," Subject 1 did not drop his weapon, instead raising it up away from his waist, and moved toward Detective A and FBI Special Agent A. Detective A stated that he fired his weapon eight times at Subject 1. (Atts. 40, 42).

The report from **Acting Assistant Deputy Superintendent (ADS)** included an account that was consistent with the Summary of Incident. (Att. 4).

The **Chicago Police Department Case and Tactical Response Reports** contained an account of the incident that was consistent with the accounts provided to the Roundtable Panel and Summary of Incident. The reports were classified as Aggravated Assault to a Police Officer – Handgun." The reports stated that Detective A and FBI Special Agent A observed a van matching the description of a van wanted for robbery and followed it. The van was left in a residential area and Detective A and FBI Special Agent A toured the vicinity looking for the van when they observed the subject, Subject 1, wearing a mask and walking toward the entrance of the Marathon Gas Station store with a black handgun in his hand. The officers made notification of a Robbery in Progress. The subject exited the gas station store with a gun in his hand and raised it in the direction of Detective A and FBI Special Agent A when Detective A yelled, "Police."

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

Detective A, in fear for his life and safety, then discharged his weapon eight times at Subject 1. Subject 1 dies as a result of the gunshot wounds. (Atts. 5, 6, 7, 24, 25)

The **Chicago Police Department Case Supplementary Reports** included a canvass conducted by detectives and was closed “Non-‘Criminal” with a classification of “Homicide/Justifiable Homicide.” These reports contained essentially the same accounts of the incident that were provided to the Roundtable Panel and to IPRA by Detective A, FBI Special Agent A, Ms. Avila, Witness 2, and Ms. Avila. (Atts. 26 – 30, 78).

The **Harwood Heights Police Department Case and Supplementary Reports** included accounts of the incident that were consistent with the Summary of Incident, Roundtable Panel and Chicago Police Department reports. The reports add that FBI Special Agent A and Detective A had told responding officers that there had been a possible second offender that had fled. However, a second offender was not located. Harwood Heights Police Officer A, initially learned of the incident by monitoring the police radio and a search of the area was conducted with canines, helicopters, and officers on foot. It was reported that the Harwood Heights Police Department was assigned the Armed Robbery Investigation inside the Marathon Gas Station and the Chicago Police Department would investigate the external shooting. These reports also stated that the Chicago Police Department took possession of the Dodge Caravan van for further processing. (Atts. 48, 49).

The **Harwood Heights Tape Research Log** indexed the OEMC transmissions made through Chicago's OEMC and Citywide 2 channel. (Att. 50).

The **Chicago Police Department Vehicle Tow Report** stated that the Chicago Police Department took possession of the Dodge Caravan, Illinois License Plate #X-XXXXXX, from the Harwood Heights Police Department, 7700 W. Wilson. (Att. 43).

The **Chicago Police Department Inventory Receipts** started that Detective A's weapon, a black Glock .45 caliber pistol, was taken into inventory, as was the magazine containing five bullets. One live bullet from the chamber was also inventoried. The weapon belonging to Subject 1, a black Crossman Pro-77 BB Gun, was also inventoried.² (Atts. (70 – 72)).

The **Office of Emergency Management and Communication (OEMC)** Event Queries and recordings provide information consistent with the Summary of the Incident as to the reporting of a robbery in progress and shots fired by the police. (Atts. 15, 55, 56, 61, 66).

The **Evidence Technician photographs and Video Tape** depict the location of incident, the external premises of the Marathon Gas Station, the recovered evidence including the Dodge Caravan, Subject 1's body, and Subject 1's weapon. Subject 1 is

² According to the official Glock website, the standard magazine for the Glock 21 SF .45 Caliber pistol holds thirteen bullets.

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

seen lying on his back in the vestibule entry to the Marathon Gas Station store with currency and his weapon immediately outside the vestibule doorway. (Atts. 18, 19, 59).

A **Postmortem Examination** was performed on Subject 1 on 07 May 2009 at the Cook County Medical Examiner's Office by Dr. "F". The examination revealed multiple gun shot wounds to Subject 1's torso, left leg, back and left arm. Seven large caliber bullets were recovered from the body of Subject 1: three from his torso, one from the lower groin, two from the back and one from the buttocks. The left and right lungs, as well as heart, were struck by bullets, which coursed front to back and then left to right. The bullet recovered from the groin coursed left to right and then downward. Both bullets recovered from the left side of the back coursed front to back and left to right. The bullet recovered from the left buttock coursed back to front. Examination of the skin surrounding each of the entrance wounds showed no signs of close-range firing. The toxicological analysis indicated that Subject 1 tested positive for opiates and morphine. It was determined that Subject 1 died of multiple gunshot wounds and the manner of death homicide. (Atts. 16, 55).

The **Medical Examiner photographs** depict the body of Subject 1 in detail, his clothing and personal effects, the permanent marking on his body such as tattoos, and the bullets recovered from his body. (Att. 53, 54).

A **Report from the Illinois State Police Division of Forensic Sciences** dated 29 May 2009, stated that the firearm belonging to Detective A was test fired and found to be

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

in firing condition. The report also stated that five fired bullets and three fired bullet jacket fragments were fired from Detective A's weapon. Four metal fragments submitted for testing could not be identified specifically as having been fired from Detective A's weapon. (Atts. 31, 33).

The **Surveillance Recording** from the interior of the **Marathon Gas Station store** depicts Subject 1 walking into the store and then going out of camera range toward the rear of the store. Subject 1 returned to the front of the store, by the counter, and then jumped over the counter with what appeared to be a gun in his hand. Subject 1 directed a female employee to open the cash register and he then took cash from the opened register drawer. Subject 1 looked in other drawers of the counter before jumping back over the counter with the gun still in his left hand, walking out of camera range. No surveillance recording from the external surveillance cameras at the Marathon Gas Station was available because the external surveillance cameras were inoperable at the time of the incident. (Atts. 23, 57, 58).

The **Surveillance Recording** from the exterior of an address on the 6600 block of W. Norwood did not record the armed robbery or subsequent police-involved shooting. (Atts. 67, 68).

A **canvass** of the location of incident did not yield any additional witnesses. (Att. 23).

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

CONCLUSION/FINDING:

This investigation found that the use of deadly force by Detective A was in compliance with Chicago Police 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."

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026112 / U #09-10

Detective A's use of deadly force was in compliance with Department policy because at the time he fired at Subject 1, Detective A believed that Subject 1 was going to shoot and cause great bodily harm or death to either himself or FBI Special Agent A. Subject 1 had just committed an armed robbery, held a gun in his hand, and failed to drop the weapon when confronted by police. Although Subject 1's weapon was later found to be a Crossman BB gun (air pistol), he presented it as a legitimate firearm during the armed robbery. Detective A could not have known that Subject 1 was armed with a BB gun and was, therefore, in fear of his life and that of FBI Special Agent A's, which resulted in Detective A firing his weapon at Subject 1 to prevent death or great bodily harm.