

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1026454/U#09-14

INVESTIGATION

NUMBER: U#09-14, Log #1026454

OFFICER

INVOLVED #1: “Officer A” (Chicago Police Officer); Male/Black; 54 years old;
On Duty; In Uniform; Year of Appointment – 1995

OFFICER

INJURIES: None Reported

OFFICER I

INVOLVED #2: “Officer B” (Chicago Police Officer); Male/Hispanic; 52 years old;
On Duty; In Uniform; Year of Appointment – 2005

OFFICER

INJURIES: None Reported

SUBJECT: “Subject 1”; Male/Black; 42 years old

SUBJECT

INJURIES: One gun shot wound through and through to the right thigh.
Treated at Holy Cross Hospital.

INITIAL

INCIDENT: Officers observed three vehicles driving at a high rate of speed
with their headlights off.

DATE/TIME: 17 May 2009 at approximately 0220 hours

LOCATION: 5359 S. Homan – outside

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SUMMARY OF INCIDENT:

On 17 May 2009, at approximately 0220 hours, Officers A and B had completed an assignment in the vicinity of 5300 S. Sawyer and observed three vehicles, (a green Taurus, a black Aurora and a blue sedan) with their headlights turned off, traveling westbound, the wrong way on a one-way street. The officers notified the Zone, turned off their headlights, then followed the vehicles westbound on 53rd Street as the involved officers continued to follow them. Two vehicles turned south onto Homan Avenue and stopped at 5400 S. Homan Avenue. The officers observed the Subject, Subject 1, exit the passenger front side of the Taurus and walk to the northeast corner of 5400 S. Homan. Subject 1 began shooting at the sedan that was now traveling westbound on 54th Street. The sedan left the area. The officers ordered Subject 1 to drop his weapon. Subject 1 turned toward the officers and pointed his weapon in their direction. The officers, in fear of their safety, discharged their weapons at Subject 1. Subject 1 fell to the ground and dropped his weapon onto the pavement. Subject 1 was transported to Holy Cross Hospital after he sustained a single gunshot wound to his right thigh.

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At the Roundtable, CPD Detective 1 related an account that was consistent with the Summary of Incident. CPD Detective 1 added that Officers A and B detained the driver of the Taurus and the occupants of the Aurora, which was parked behind the Taurus. The driver of the Taurus and the occupants of the Aurora were transported to Area One Detective Division as witnesses to be interviewed.

At the Roundtable, Witness 7 stated he observed a male figure jump out of a vehicle that was stopped at the corner of 54th and Homan. The male figure shot at his vehicle. Witness 7 then heard a male voice yell, “Drop the weapon!” Witness 7 accelerated and drove out of the intersection. Witness 7 was stopped by the police in the vicinity of 55th and Central. Witness 7 related that he did not see the police fire their weapons, but did see flashes as he drove away.

At the Roundtable, Witness 4 related that Witness 7 picked him up in the vicinity of 55th and Kedzie. As Witness 7 approached the intersection of 54th and Homan, Witness 4 saw flashing blue lights. He then observed a male police officer in full uniform behind a black male and heard the officer yell, “Drop the weapon!” At that point Witness 7 took off at a high rate of speed. Witness 7 drove in the vicinity of 55th and Central. Two officers curbed his vehicle and they were transported to Area One. Witness 4 did not witness the police fire their weapons.

At the Roundtable, Witness 9 stated that she was a passenger in a vehicle being driven by her boyfriend, Witness 2. Witness 9 was in the front passenger seat and Witness 5, Witness 3, Witness 6 and Witness 8 were passengers in the rear of the vehicle. As Witness 2 drove around the area he came upon a friend, Witness 1, in a green Taurus with a black male in the passenger seat. Witness 2 and Witness 1 had a brief conversation. Witness 2 began following Witness 1 in a green Taurus. As the two vehicles drove around the area they drove down an alley on Kedzie and exited on the 5400 block of Homan. As the vehicles approached the intersection of 54th Street and Homan, Witness 9 observed a black male¹ exit the green Taurus with a gun in his hand and fire toward a vehicle traveling westbound on 54th Street. Witness 9 then observed a black male officer in full uniform approach the passenger side vehicle and yell, “Drop the weapon!” The officer then fired two times at the black male, who fell to the ground. The black male officer ordered her, Witness 9 and then the other passengers from the vehicle.

At the Roundtable Witness 5 related that he was a passenger in a vehicle being driven by Witness 2. They were following a green Taurus around the area. As they exited an alley onto Homan, he observed a police vehicle behind them with a spotlight on. He then observed a black male exit the green Taurus and fire at a vehicle that was traveling westbound on 54th Street. Witness 5 then observed a white male officer yell, “Drop the weapon!” The black male ran, turned toward the officer with a gun in his hand and the officer fired. Witness 5 related that the black male did not drop the weapon when he was ordered to.

¹ A black male now known as Subject 1

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At the Roundtable, Officer B stated that he and his partner, Officer A, who was the driver, were completing a job in the area and began to travel westbound on 53rd Street when he observed three vehicles traveling the wrong way on a one-way street, with their lights out. Officer B got on the radio and notified the Zone of the vehicles' actions and directions. The officers drove in the direction of the vehicles, but then only observed two vehicles with their headlights off. The officers followed the two vehicles, but did not activate their emergency equipment and turned out their headlights. As the officers continued to follow the vehicles they radioed in and reported the vehicles' activities and gave their locations and directions of travel of the vehicles. The two vehicles then traveled southbound on Homan and stopped at the intersection of 54th Street and Homan. Subject 1, who was the passenger in the first vehicle, exited with a gun in his hand and stood on the northeast corner of 54th Street and Homan as the third vehicle came toward him. Subject 1 fired at the third vehicle. Officer B exited his vehicle with his gun out and ordered Subject 1 to drop the gun. Subject 1 started to run westbound, then turned and pointed his weapon at Officer B. Officer B fired at Subject 1, who fell to the ground and dropped the gun. Officer B stated that he was at the rear of the first vehicle, approximately fifteen feet away from Subject 1 when he fired. Officer B continued that the illumination of the street lights allowed him to clearly see a weapon in Subject 1's hand.

At the Roundtable, Officer A related that he and his partner were completing a job in the area of 54th and Sawyer when they observed a blue vehicle and a green vehicle traveling westbound on 53rd Street with their headlights out. The officers turned off their headlights and followed the vehicles in order to observe the drivers' activities. The vehicles turned onto Homan and Officer A, who was the driver, stopped his vehicle approximately 20 feet away from the second vehicle, a dark colored Aurora. A male now known as Subject 1, exited the passenger side of the green Taurus with a weapon in his hand, ran at an angle in the street, and fired at the vehicle that was traveling westbound on 54th Street. Officer A exited the squad car, and then crossed over to the rear passenger side of the Aurora. Officer B exited the police vehicle from the passenger side, crossed in front and approached the driver's side of the green Taurus. The officers announced their office and ordered Subject 1 to drop the gun.

Officer A also stated that Subject 1 failed to comply, turned and started to run. Subject 1 turned with his weapon in his hand pointed toward Officer B. Officer A fired approximately three rounds and Subject 1 fell to the ground, dropping the weapon as he fell. Officer A was standing approximately fifteen to twenty feet away from Subject 1 when he fired his weapon. Officer A clearly observed Subject 1 with a gun in his hand. The weapon fell under the front bumper of the green Taurus.

At the Roundtable, CPD Detective 2 related that he responded to Holy Cross Hospital and interviewed Subject 1. Subject 1 provided a statement at the hospital while being held in Area One Violent Crimes. Subject 1 waived his Miranda Rights Warnings prior to each statement. Subject 1 related that he was in a vehicle with a friend, Witness 1. They stopped at the corner of 54th and Homan. He exited the vehicle and someone fired at him and he fired back. Subject 1 heard a voice yell, "Motherfucker, get down to

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the ground!” he then heard two shots as he went to the ground, felt a pin in his right leg, and knew that he had been shot. (Att.4)

The Report of Shots Fired by the Police from assistant Deputy Superintendent A included an account of the incident that is consistent with the Summary of Incident. Assistant Deputy Superintendent A added that both officers announced their office and fearing for their lives and of the occupants in the car, fired their weapons at Subject 1. Subject 1 ran, pointed his gun at Officer A, and was struck in the leg by a bullet. He fell to the ground and dropped the gun. He was taken into the custody and the vehicle Subject 1 shot at was located on 55th and Central Park. Subject 1 was taken to Holy Cross for treatment. (Att.5)

In a statement with IPRA, Subject 1 stated that he and his friend, Witness 1 were driving in the vicinity of 54th and Homan when he became sick and asked Witness 1 to pull over. Subject 1 exited the vehicle and noticed that a dark-colored vehicle had been following them. Subject 1 walked up to the vehicle to ask why he was being followed. The driver’s side front window of that car went down and he heard one gun shot. Subject 1 related that he returned fire and shot his weapon two to three times to defend himself. Subject 1 was on the sidewalk approximately eight feet away from the vehicle. As the vehicle drove away, Subject 1 heard, “Drop it mother fucker, drop it!” as he turned his head and observed lights. Subject 1 related that he did not know it was the police because he did not hear any sirens, nor did he notice the blue lights initially. Subject 1 turned his body in the officers’ direction while putting his weapon to the ground. Subject 1 stated that he was shot while putting his weapon on the ground. As he turned, he heard six shots coming from the officers’ direction. Subject 1 stated that he attempted to lie down on the ground and felt pain to his right thigh. Subject 1 related that he never shot at the police or pointed his weapon at them.

Subject 1 related that the officers referred to him as a “motherfucker” and a “nigger.” Subject 1 stated that while he was asking for medical attention the officers stated that they hope he dies and to “shut the fuck up.” Subject 1 was unable to provide any physical descriptions of the officers. Subject 1 went on to state that he was not intoxicated, and had only consumed a twenty-two ounce beer prior to the incident. (Att.7)

In a statement with IPRA, Witness 1 related that Subject 1 arrived at his residence and informed him that some rival gang members shot at his brother’s residence. Subject 1 asked Witness 1 to drive him around the area so that he could look for the gang members. Subject 1 stated that the gang members were driving a dark-colored Crown Victoria. Witness 1 and Subject 1 got into Witness 1’s vehicle, drove around, and searched the area. Witness 1 spotted the Crown Victoria and chased the vehicle to 54th & Homan. Witness 1 stopped his vehicle. Subject 1 exited and ran at an angle toward the southwest corner of Homan. Suddenly, Witness 1 heard three gun shots coming from Subject 1’s direction. Witness 1 remained in the vehicle and heard a loud voice yell something. Witness 1 observed a Hispanic male officer in full uniform² standing in front of the vehicle by the driver’s fire three shots in the direction Subject 1. Officer B turned

² Now know as Officer B

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toward Witness 1, pointed his weapon at him and ordered him out of the vehicle. Witness 1 exited the vehicle and Officer B instructed him to get out on the ground and lay on his stomach. Witness 1 stayed on the ground for a while and was handcuffed. Witness 1 stated the Subject 1 never informed that he had a gun but he suggested he had one by grabbing his shirt. Witness 1 related that he only saw Subject 1's gun after the initial incident. He did not see Subject 1 point his weapon at the officer, but knows that he fired his weapon because he heard three shots coming from that direction. Witness 1 related that after Subject 1 fired, he saw Officer B fire three shots as Subject 1. Witness 1 stated that he did not know the individuals in the second vehicle and believes that someone in the Crown Victoria shot once. (Att.9)

In a statement with IPRA, Witness 2 related that he was driving south on Kedzie with his girlfriend, Witness 9, who was in the front passenger seat, Witness 3, and an unknown Hispanic male in the backseat. A blue car with tinted windows in the back pulled up on his left. Witness 2 stated that he could not identify the driver or the passenger but saw the passenger point something at Witness 2. Out of fear, Witness 2 made a right turn onto 53rd Street. The blue car followed them until they got to Spaulding. Witness 2 made a left turn on Homan and saw a marked squad car behind him. At 54th Street, Witness 2 saw a car stopped at the stop sign. He was still paying attention to the squad car. At that moment, he heard three gun shots, saw officers exit their vehicle and heard three or four more shots. Witness 2 ducked down and then one officer told everyone to get out of the vehicle and get on the ground, Witness 2 and his passengers were transported to Area One. (Att.11)

In a statement with IPRA, Witness 3 related that he and his friend, Witness 2, Witness 5, Witness 9, Witness 6 and an unknown male Hispanic were in a black Aurora. Witness 2 was driving the wrong way down a one- way street. Witness 3 stated that they were trying to get away from a black vehicle that was chasing them. When they arrived in the vicinity of 54th and Homan, a green vehicle was stopped in front of them and a police vehicle with its flashing lights on was behind them. Witness 3 stated that he turned to look back at the police and heard several gunshots coming from the front of the vehicle. Witness 3 saw a vehicle speed away. He then heard several more gunshots come from the rear of the vehicle (where the police were). Witness 3 saw a black male, who shot his weapon first, try to run away. He observed the officer shoot his weapon again, and the black male fell to the ground. Witness 3 stated that the police thought they were with the black male, pointed their weapons at the vehicle and made everyone get out of the vehicle. Witness 3 further stated that he observed the unknown vehicle speed away and the black male shooting at the vehicle. Witness 3 related that the officers placed them on the ground, handcuffed them and took them to the police station. Salgado stated that he does not know any of the people involved in the incident. (Att.13)

In a statement with IPRA, Witness 4 related that at the time of the incident he was a front seat passenger in his friend, Witness 7's³ navy blue Crown Victoria and were heading west on 54th Street. At the stop sign at 54th and Homan, Witness 4 observed a black Aurora traveling south on Homan that was stopped at the stop sign. Witness 4

³ Now known as Witness 7

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heard one shot, looked through his window to the right and saw a male (unsure of race) pointing a gun at them. Approximately fifteen feet behind the individual Witness 4 observed a light-complected uniform officer with his gun pointed at the individual. Witness 4 ducked and heard "Drop the weapon!" followed by two more shots. Witness 7 stepped on the gas and Witness 4 heard a possible two more shots. Witness 4 and Witness 7 picked up two more friends, [Both Friends' Name Withheld] at Spaulding and 54th Street. They traveled westbound on 55th Street and at Central Park they saw a marked squad car with flashers on. They pulled over and two officers ordered them out of the car. The officers searched the car, handcuffed all four and transported them, to Area One. (Att.15)

In a statement with IPRA, Witness 5 gave basically the same account of the incident as that given during the Round Table. Witness 5 added that he heard three to four shots coming from the two officers and observed a black male fall to the ground. Both officers came to Witness 2's car and ordered all occupants out of the car. The officers searched the car, handcuffed and transported them to Area One. (Att.17)

In a statement with IPRA, Witness 6 related that he was a passenger in the backseat of Witness 2's vehicle along with Witness 3, Witness 5, Witness 9 and Witness 8. At 53rd and Kedzie, Witness 2 told them that another car was following them and Witness 6 saw lights behind them. Witness 2 sped away traveling the wrong way west on 53rd Street. He made a left turn on Homan and realized that the car behind them with its lights off was a squad car. Witness 2 began to slow down at the stop sign located a 54th and Pulaski. Witness 6 kept looking back at the squad car and the heard 3-4 shots. Witness 6 looked ahead and observed someone in a white t-shirt walk in front of the car that was stopped in front of them. He heard, "Freeze, freeze" and 3-4 shots coming from behind them. Witness 6 observed the individual in the white t-shirt fall forward. A black male officer ordered all occupants out of the vehicle and onto the ground. They were arrested and transported to Area One. (Att.19)

In a statement with IPRA, Witness 7 gave basically the same account of the incident as that given during the Round Table. In addition, Witness 7 related that he had no prior relationship with the shooter and if unsure if the shooter was black, white or Hispanic. (Att.2)

In a statement with IPRA, Witness 8 related that he was a passenger asleep in the backseat of a vehicle being driven by Witness 2. Witness 8 stated that he was "buzzed, not intoxicated". Upon hearing 5-6 shots, Witness 8 sat up and observed lights behind him. A white male officer jumped out of his vehicle and fired several shots at the black male. The black male appeared to be standing in front of the vehicle that was parked in front of Witness 2's. The white male officer shot again and the black male fell to the ground. The white male officer instructed Witness 8, Witness 2 and Witness 3 out of the vehicle. Witness 9 was left in the car. Witness 8 related that he did not see the black male with a gun nor did he see the black male shoot the weapon. Witness 8 stated that both of the involved officers were white. (Att.23)

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In a statement with IPRA, Witness 9 gave essentially the same account of the incident as that given during the Round Table. In addition, Witness 9 stated that she clearly saw the black male with a gin in his hand. However, she did not see the black male turn the gun toward the officers. Furthermore, she is unsure if the black male dropped the weapon when ordered by the police. (Att.25)

The related Department Reports, including the Arrest Report, General Offense Case Report, Supplementary Report and Crime Scene Processing Report included an account of the incident that is consistent with the Summary of Incident. Subject 1 was arrested for Aggravated Assault with a handgun and Attempted First Degree Murder. The reports indicate that Subject 1 was transported to Holy Cross Hospital by Chicago Fire Department Ambulance #8 and was treated at the hospital by Doctor A . (Att.27, 31, 35, 42, 43, 52)

A Tactical Response Report from Officer A documented that he fired his weapon at Subject 1 after Subject 1 pointed his weapon at him. (Att.29)

Officer A's Battery Report documents that he did not sustain any apparent injuries. (Att.32)

A Tactical Response Report from Officer B documented that he fired his weapon at Subject 1 because Subject 1 was shooting at victims and then pointed his weapon at Officer B. (Att.29)

Officer B's Battery Report documents that he did not sustain any apparent injuries. (Att.32)

The Crime Scene Processing Report #85368 documents that a Sundance Industries, BOA, serial number 0938898, .25 Caliber, semi-automatic pistol, 2.5" barrel, with a nickel finish, that was in Subject 1's possession was recovered in the vicinity of the incident and inventoried under number 11672296. Officer B's weapon, a Sig Sauer, Model P220, serial number G367403, .45 caliber, semi-automatic 4.5" barrel with a blue steel finish was inventoried under number 11672307. Officer A's weapon, a Smith & Wesson 9mm, Model 5943, serial number VCH6762, 9mm caliber, semi-automatic pistol, 4" barrel with a blue steel finish was inventoried under number 11672303.

Crime Scene Processing Report #85396 documents that Evidence Technician 1 took photographs of an aggravated assault and a five person line-up. Subject 1 was identified by a witness.

Crime Scene Processing Report #85366 documented that Evidence Technician 2 responded to Holy Cross Hospital to administrate a gun shot residue kit, obtain photographs of Subject 1 and collect his clothing. (Att.33)

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Evidence Technician Photographs and videotape depict what appears to be the location of incident and the recovered evidence. Photographs of Subject 1 depict a wound to the right leg and bloody stained clothing. (Att.43, 46)

The **Chicago Fire Department (CFD) EMS incident Report** indicated that Subject 1 was transported to Holy Cross Hospital by CFD Ambulance #8. The report documented that Subject 1 sustained a single gunshot to his right upper thigh. Subject 1 admitted to alcohol consumption. (Att.66)

Medical Records from Holy Cross Hospital for Subject 1 documented that he was diagnosed with a gunshot wound to his right thigh. Subject 1 was treated and released. (Att.41)

A laboratory report from the **Illinois State Police (ISP), Division of Forensics Services** dated 10 September 2009, indicated that an Illinois State Police gunshot residue kit administered to Subject 1 was tested, and results reveal that he discharged a firearm, contracted a PGSR⁴ – related item, or had his left in the environment if a discharged firearm.

A laboratory report for the **Illinois State Police (ISP), Division of Forensic Services** dated 07 January 2009, document that previously-reported suitable latent impressions recovered and labeled Exhibit 8 to the inked fingerprint standards labeled as two inked fingerprint standards marked “Witness 1” (Exhibit 13) did not reveal identification. (Att.48)

The related **O.E.M.C. Event Queries** and **CD recordings** document that on 17 May 2009, several calls were made to report shots fired on or around Homan and 54th Place. The information provided was essentially the same information as the Roundtable panel and the Department reports. (Att.45, 51)

In a statement with IPRA, Officer B related in essence the same information he provided during the Roundtable and as appears in Department reports. Officer B added that he observed the vehicle that was pursuing Subject 1 traveling westbound at a high rate of speed, at which point he saw Subject 1 begin shooting at the vehicle. There were no return shots fired from anyone in the vehicle traveling westbound. Officer B exited his vehicle and ran toward Subject 1. Officer B told Subject 1 to drop the weapon, at which time Subject 1 turned in his direction with the gun still in his hand. Officer B stated that because he was in fear of both his and his partner’s lives, he discharged his weapon. Although Officer A discharged his weapon, Officer B stated that he did not hear his partner’s shot. (Att.64)

In a statement with IPRA, Officer A related in essence the same information he provided during the Roundtable. In addition, Officer A stated that Officer B ordered Subject 1 to drop the weapon, at which point Subject 1 turned around, pointed the gun at Officer B and pulled the trigger. Subject 1 started to run in front of the vehicle he

⁴ Positive Gun Shot Residue

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previously exited from which was the second vehicle, and as he turned to face Officer A, the gun went, “click.” Officer A fired his weapon and Subject 1 fell down. Subject 1 hit the ground, the gun dislodged from his hand and went under his vehicle. (Att.65)

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CONCLUSION AND FINDING:

This investigation found that the use of deadly force by Officer B and Officer A was in compliance with Chicago Police Department Policy and Illinois State statutes. According to the Chicago Police Department's General order 02-08-03, III:

- A. "a sworn member only 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:
 - a. To prevent death or great bodily harm to sworn members or to another person, or:
 - b. To prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - i. Has committed or attempted to commit forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
 - ii. Is attempting to escape by use of a deadly weapon or;
 - iii. Otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay."

Subject 1 was in possession of a firearm as the time of the incident, regardless of his explanation. Subject 1 related that he did not know the police were behind him because he did not hear any sirens, nor did he notice the blue lights initially. Subject 1's weapon was recovered from the scene and tested by ISP. The gunshot residue results from ISP show scientifically that Subject 1 discharged a firearm, contacted a PGSR related item, or his left hand in the environment of a discharged firearm. Accounts by the officers and witnesses describe Subject 1 in possession of a handgun, and firing that handgun. The weapon was recovered. The officers' and witness' accounts also describe officers telling Subject 1 to drop the weapon. Subject 1 refused to comply with the officers' verbal direction to drop the weapon and suddenly pointed it in the direction of Officer B and Officer A. Therefore, based on the totality of the circumstances, Officer B and Officer A were reasonably in fear for their life and fired at Subject 1 to prevent death or great bodily harm.