

INDEPENDENT POLICE REVIEW AUTHORITY

Log # 1028633/U# 09-32

INVESTIGATION

NUMBER: Log #1028633, U #09-32

OFFICERS

INVOLVED: “Officer A” (Chicago Police Officer); Male/Hispanic; 29 years old; On Duty; Civilian Dress; Covert Unit; Year of Appointment – 2003

“Officer B” (Chicago Police Sergeant); Male/Hispanic; 42 years old; On Duty; In Civilian Clothes; Covert Unit; Year of Appointment – 1990
(Did not fire.)

OFFICER’S

INJURIES: #1: None Reported.

#2: None Reported.

SUBJECT: “Subject 1”; Male/Hispanic; 27 years old

SUBJECT’S

INJURIES: Gunshot wound to lower left leg. Subject 1 was transported to Mt. Sinai Hospital for treatment where he was in good condition.

DATE/TIME

OF INCIDENT: 28 July 2009, 1234 hours

LOCATION

OF INCIDENT: 4335 W. 31st Street, rear (initially reported as 3108 S. Kolin)

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SUMMARY OF INCIDENT:

On 28 July 2009, at approximately 1233 hours, officers from the Narcotic Unit were conducting a covert operation involving a pre-arranged narcotics deal in the rear dock of the Special Produce building at 4335 W. 31st Street. The location of the deal was chosen by the target of the covert operation, Subject 1. Subject 1 had been involved in several prior deals with this covert narcotics team and the deal scheduled for 28 July 2009 involved one kilogram of cocaine, a larger amount than had previously been involved. Subject 1 arrived at the location in a pickup truck driven by co-arrestee Subject 2. Subject 2 got into the Chevy Tahoe that was assigned as the "buy vehicle" and Subject 1 remained in the truck. Other officers, including Officer A, were in the vicinity to conduct surveillance. Subject 2 showed the buy officer the cocaine. The buy officer got out of the Tahoe and retrieved the money from the "money car" that was parked next to it. The buy officer handed Subject 2 the money and Subject 2 handed the officer the drugs. The buy officer gave the signal to the rest of the team that the transaction had been completed and Officer B gave the signal to the enforcement officers to move in on Subject 1 and Subject 2. Officer B arrived first, parked his Ford Expedition behind the truck where Subject 1 was located, and got out of the vehicle. Subject 1 got out of the truck and started running north between the trailers parked in the dock area and the vehicles parked on the apron. Officer B announced his office and ordered Subject 1 to stop, but Subject 1 continued running and started reaching for his waistband. Officer B also ran north on the east side of the vehicles parked on the apron.

Officer A, who had been in a vehicle parked on the east side of Kolin, got out of his vehicle and crossed the street to assist Officer B. Officer A and Officer B both gave commands to Subject 1 as they ran toward him. Subject 1 pulled a handgun out of his waistband, turned toward the officers and pointed the weapon at them. Officer A fired two rounds at Subject 1, striking him once below the left knee. Subject 1 dropped his gun, fell to the ground and was detained. The gun was recovered on the north side of the trailer parked at the north end of the dock. The gun had thirteen live rounds and had the safety off. The other round fired by Officer A went through the trailer and came to rest on its west side. Two shell casings were recovered on the east side of the building of 4335 W. 31st Street. Subject 2 got out of the Tahoe and dropped the money from the drug deal. The drugs and money were recovered and Subject 2 was taken into custody. A video camera located on the east side of the building captured the incident. The video recording begins with a SUV later identified as Officer B's vehicle, pulled up behind the pickup truck identified as Subject 1's truck. Subject 1, who was wearing a cowboy hat and a white shirt, got out of the truck and proceeded north in the area between the cars parked on the apron and the trailers parked at the dock. Officer B also moved north at the rear of the parked vehicles. Subject 1 reached for his waistband. His shirt was raised and a dark object became visible at his waistband.

Officer B had his gun in his hand and Officer A entered the frame with his gun also drawn. Both of them were pointing their weapons at Subject 1. Subject 1 turned to face the officers and appeared to have his gun in his right hand. Subject 1 fell to the ground and the officers placed him into custody. The video recording also showed Subject 2 being taken into custody on the far side of the pickup truck.

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On 28 July 2009, at approximately 1932 hours, a **Roundtable** panel was conducted regarding an officer involved shooting. Five involved officers appeared before the Roundtable panel. The following is a summary of the roundtable interviews:

Officer B, related to the Roundtable panel that he was involved in a covert narcotics operation involving Subject 1, a target from whom the team had previously made four to five drug purchases. The operation involved a plan to purchase one kilogram of cocaine from Subject 1 at a location picked by him. The undercover officer who was assigned to buy the drugs positioned himself in the area in a champagne-colored Chevy Tahoe and another officer was there with the money in a black Chrysler 300. Officer B monitored the transactions over Nextel radios. When the buy officer gave the signal that the transaction had been completed, Officer B gave the signal for a takedown. Officer B approached the scene in a blue Ford Expedition and parked behind the pickup truck. Immediately, he saw Subject 1 exit the passenger side of the truck. Officer B got out of his vehicle and drew his weapon. He yelled "police" in Spanish. Subject 1 ran between the trailers parked at the dock and the vehicles parked on the apron. Officer B followed Subject 1 on the other side of the vehicles. Officer B saw Subject 1 reach for his waistband and saw him retrieve something that Officer B believed to be a weapon. Officer B continued to give commands, as did the other officers on the scene. When Officer B got to the open area north of the parked vehicles, he clearly saw that Subject 1 had a gun in his right hand. Subject 1 turned toward the officers with the gun in his hand. Officer A fired two shots at Subject 1 who then fell to the ground and the officers then handcuffed him.

Officer A, related that he was engaged in the covert narcotics operation. He was in a covert vehicle parked on the east side of Kolin to act as an "eyeball officer," to witness the drug transaction. Once the purchase was made, Officer A heard Officer B give the command to takedown the target, Subject 1. Officer A was sitting in the driver's side of his vehicle and saw Officer B pull up behind Subject 1's vehicle. Officer A started to exit his vehicle and saw Subject 1, wearing a cowboy hat and white tank top, exit the passenger side of his truck. Officer B yelled, "Police, stop!" in both English and Spanish. Subject 1 fled northbound and Officer B followed in the same direction. Officer A began to approach at an angle to cut off Subject 1's avenue of escape. When Subject 1 cleared the last vehicle parked as he ran north and entered the open area, Officer A saw that he had his right hand on a black handgun that was in his waistband. Officer A yelled, "Police, stop!" He also yelled to the other officers that Subject 1 had a gun and heard other officers telling Subject 1 to drop the gun. Subject 1 removed the gun from his waistband as he turned to face Officer A and Officer B and pointed the gun in their direction. Officer A fired his weapon twice in succession. After the second shot, Subject 1 dropped the gun to his west and Officer A did not fire again. Officer A related that he was standing upright when he fired his weapon at Subject 1.

CPD Detective 1, related that he read Subject 2 his Miranda rights in Spanish at 1330 hours. Subject 2 related to CPD Detective 1 that he has known Subject 1 for approximately one year and has previously conducted narcotics transactions with him. One of those transactions occurred five days previously with the same undercover officer. Subject 1 telephoned Subject 2 on 28 July 2009 at approximately 1100 hours, and told him that they were going to do a narcotic transaction with more weight. Subject 2 drove past the location for the sale as instructed by Subject 1 and then went to Subject 1's house to get him. Subject 2 saw that Subject 1 had a black gun on his right side. Subject 1 told Subject 2 that he had the drugs in a bag and gave the drugs to Subject 2, who placed

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them under his shirt. Upon arrival to the location of the drug sale, Subject 2 saw the vehicle where the buyer (the undercover officer) would be. Subject 2 got out of the car and got in the officer's vehicle. He showed the officer the bag of drugs. The officer got out and retrieved a bag containing the money from another vehicle. They exchanged the bags. As Subject 2 started to get out of the car, he heard someone say, "Police!" Subject 2 threw the money under the truck and was taken down by the officers. He heard one gunshot, but did not know who fired the shot.

CPD Lieutenant 1, related that CPD Detectives 2 and 3 went to the hospital and advised Subject 1 of his rights. Subject 1 related to them that he was in the car with Subject 2, but did not know where Subject 2 was going. Subject 1 related that he had a gun with him, which he carries for protection. While he was in the car, he heard the screeching of tires. Subject 1 got out of the car and started to run. People got out of the other cars and started yelling at him, but he did not know what they were saying. Subject 1 reached for his gun because he was scared. The people continued to yell, but Subject 1 still did not know what they were yelling at or for, and did not know what was going on. Subject 1 pulled out his gun from his waistband, then heard gunshots and felt pain to his leg. Lt. Wojcik related that CPD Detectives 2 and 3 were at Mt. Sinai Hospital with an Assistant State's Attorney attempting to re-interview Subject 1 at the time of the Roundtable.

CPD Commander A, related that at the time of this narcotics operation other officers from Unit 189 were outside of Subject 1's residence at XXXX S. Kildare to conduct surveillance and a search warrant. They had previously obtained a search warrant (09 SW 6864) for the residence with the plan to execute the warrant as soon as Subject 1 was taken into custody at the location of the buy. As per the plan, the warrant was executed after the shooting. The officers recovered cocaine, cannabis, money, and three weapons from the residence. Subject 1's wife, [Wife], and their five minor children were present at the time of the search. Subject 1's vehicle was seized and would be searched at a later time.

The **Tactical Response Report of Officer A**, states that Subject 1 did not follow verbal direction, fled, presented an imminent threat of battery, and attacked with a weapon/firearm. Officer A utilized his presence as a police officer, verbal commands and used a firearm in response. The Watch Commander's finding stated that Officer A and Officer B were attempting to arrest a narcotics offender when the offender produced a handgun, turned toward Officer A and Officer B and pointed the handgun in their direction. Officer A responded appropriately with deadly force after Officer A feared that the offender would use the handgun to kill or seriously injure Officer A, Officer B and/or other responding officers.

The **Tactical Response Report of Officer B** states that Subject 1 did not follow verbal direction given by him, fled, put the officer in fear of an imminent threat of battery, and used a weapon requiring Officer B to utilize member presence, verbal commands, and take down/emergency handcuffing techniques.

In a **To-From Subject Report**, IPRA Investigator A, notes that he went to Mount Sinai Hospital on 28 July 2009 in an attempt to speak to Subject 1. When he arrived at the hospital, he was informed that Subject 1 could only speak Spanish. Therefore, he was unable to interview him. IPRA Investigator A then spoke to Doctor A regarding Subject 1's condition and was told that he had sustained a through-and-through gunshot wound to the lower left leg that had fractured both his tibia and fibula. Doctor A indicated that Subject 1 would have to undergo surgery to have a rod inserted to hold his fractured bone.

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The **Arrest Report** of Subject 1 indicated that he was arrested for Delivery and Possession of Narcotics. The incident narrative of the report noted that the “above subject (Subject 1) was taken into custody after he delivered 103.6 grams of cocaine to Under Cover Officer (UCO) Officer C on 24 July 2009 in exchange for \$1750.00 U.S.C. of pre-recorded 1505 funds recorded under RD# HR-446445. On 28 July 2009, offender with a co-defendant delivered 1 kilogram of cocaine to UCO Officer C in exchange for \$18,500.00 U.S.C. of 1505 funds. Responding Officers announced their office in an attempt to place offender into custody, at which time the offender fled on foot and reached for a handgun from his waistband and in a menacing manner, placed the involved officers in fear of great bodily harm. Officers then used deadly force and fired at offender striking offender in the lower left leg. Chicago Fire Department (CFD) was then notified. CFD responded and the offender was then taken to Mt. Sinai hospital for medical treatment by CFD Ambulance #21.”

The **Arrest Report** for Subject 2 noted that the “above subject was taken into custody after he and co-defendant delivered one kilogram of cocaine to UCO Officer C in exchange for \$18,500.00 USC of 1505 funds.”

The **Original Case Incident Report** listed the following witnesses: Officer B, Officer D, Officer A, and Officer E with the suspect identified as Subject 1.

The **Case and Case Supplementary Reports** noted that officers responded to shots fired by police at 4335 W. 31st Street. Various Units from the Narcotics Section and the 010th District responded to the scene. CFD Ambulance # 21 took the offender (Subject 1) to Mt. Sinai Hospital for a gun shot wound to the lower left leg. He was treated and remained in stable condition. Under the investigation section of the Supplementary Report it noted that the reporting detectives responded to 4335 W. 31st immediately. Upon their arrival, the scene was already cordoned off with crime scene tape and they noticed that the scene was located at the rear truck dock/loading area of the Special Produce and More business. During their preliminary investigation, the detectives noticed that the businesses Special Produce and More, and Modern Processing Equipment, both had closed circuit security cameras on their premises. The Detectives were able to obtain video from both businesses.

CPD Detective 2, went to interview Subject 1 at Mt. Sinai Hospital where he was being treated for a gun shot wound. Upon arrival, Subject 1 told him that he was hanging out with his friend Subject 2, who he had known for the last six months, and both men were from Durango, Mexico. On the day of the incident, Subject 1 was seated in the passenger seat of Subject 2's grey colored truck. Subject 1 had a black colored Beretta .380 with him in his possession and he had obtained the gun from his brother. Subject 1 stated that he got the gun and carried it with him for his own protection. Subject 1 stated that on the date of the incident, he was shot by a police officer because he had a gun. Subject 1 stated that he had no knowledge of any narcotics being present at the scene, but admitted that he was trying to defend himself when he reached for his gun.

According further to the Supplemental Reports, Subject 2 was also interviewed by the detectives and he stated that he had known Subject 1 for about a year. About five days prior to the interview, he assisted Subject 1 in a narcotics transaction in the same location as the one that took place on the date of this incident. Subject 1 had given him \$100 for his assistance at that time. Subject 2 stated that he and Subject 1 had conducted five separate narcotic transactions and each time he was given \$100-\$200 for assisting. Subject 2 stated that for each transaction he was always

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the driver and used his Grey Ford F-150. Subject 2 had gotten a call from Subject 1 three days prior to this incident. Subject 1 told him that a person that he had met previously wanted to purchase a larger amount of cocaine and agreed to pick up Subject 1 at 31st and Kostner. Subject 1 handed him a black bag containing narcotics. Subject 2 said he placed the bag under his shirt and Subject 1 instructed him to go to the place of the incident. He also told him that they were going to meet the guy he had met previously. Upon arrival, the person that they were going to meet was already at the location. Subject 1 instructed Subject 2 that he was to give the black bag to this person. Subject 2 stated that when the police arrived he saw a white female, along with a male, approach from behind. The male and female yelled, "Police!" and the female had a gun pointed at him. He then heard the word "Police!" yelled several more times and then additional unmarked police cars arrived at the location. Subject 2 said that when the police arrived, he observed that Subject 1 had exited his truck and had begun to run northbound. At that point, he exited the Tahoe and put his hands against his truck and ducked down. As his head was down, he heard a gunshot. The police then placed him down on the ground and handcuffed him. Subject 2 continued to state that he did not see who was shot or who fired the shot, but overheard the officers talking about Subject 1. Subject 2 concluded that when he picked Subject 1 up, he observed the gun in his waistband.

In an interview with IPRA on 28 July 2009, **Witness 1**, brother-in-law of [Witness 1 Brother In Law], stated that he was at his house fixing a window when he heard someone yell, "Police, stop, don't run, get on the floor!" Witness 1 ran outside and saw a man wearing a cowboy hat and a white shirt standing in front of a Durango pickup truck that was parked on the grass in front of the building. The man in the cowboy hat was surrounded by three police officers dressed in civilian clothes and police vests. Witness 1, who was standing approximately 5-7 feet away on his front stairs, saw the man turn towards the officers and reach towards his waist. Witness 1 did not see a gun, but then heard two to three shots. No one was outside with Witness 1 at the time of the shooting, but Witness 2 and another unidentified friend, who were also working with Witness 1, came outside shortly thereafter.

In an interview with IPRA on 28 July 2009, **Witness 2**, stated that he was at [Home Owner]'s house (address unknown) replacing a window with his son Witness 3, Witness 1, and Witness 4 when he heard someone yell, "Police, stop!" Witness 2, looked out of the window that they just removed and observed two police officers with bulletproof vests exit a car. Witness 2, observed a tall, slim, Hispanic male in a white hat and shirt turn toward the officers and attempted to remove something from his waistband. Witness 2, did not see him remove anything from his waistband, but he did hear two consecutive gun shots being fired when the motion was made by the male Hispanic.

In a statement given to IPRA on 28 July 2009, **Witness 3**, stated that on the day of the incident he arrived at work around 0930 hours to put up windows on a house that was currently being remodeled. He was with his father, Witness 2, and a friend Witness 4, working on some windows when he heard screams. Witness 3, turned to look and observed three officers in pursuit of a man who was running in and out between cars. The Hispanic male was wearing a white shirt and a cowboy hat. Witness 3 heard the officers scream at the Hispanic male, "Stop, stop, police!" several times. The Hispanic male suddenly stopped when he realized he was cornered and that was when he turned towards his right side waist area, and made an attempt to pull something out. He did not see a weapon in the Hispanic male's hand. Witness 3, stated that he heard two shots being fired by the officer.

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In a statement given to IPRA on 28 July 2009, **Witness 4** stated that on the date in question he was helping his friends, Witness 2, and Witness 3, to put up windows when he heard a scream. Upon turning to see what was going on, he observed three officers in pursuit of a man who was running in and out between cars. Witness 4 stated that he heard the officers scream at the offender several times, "Stop, Stop, Police!" The offender suddenly stopped when he realized that he had nowhere to go because he had been cornered by the officers. The offender then turned towards his right side waist area, and made an attempt to pull something out. Witness 4 stated he did not see a weapon in the offender's hand. Witness 4 heard approximately two to three shots fired by the officer.

In a **To-From Subject Report**, IPRA Investigator B, she notes that on 29 July 2009, at approximately 1240 hours, she viewed the video footage captured from the rear parking lot camera of Modern Process Equipment Corporation at 3125 S. Kolin Avenue. The footage depicted the vehicle in which the subject, Subject 1, was in prior to the police shooting. The driver of the vehicle, wearing a blue shirt, was seen exiting the vehicle and then going out of the camera's view. Within seconds, the passenger, wearing a white sleeved t-shirt and white cowboy hat, exits and then disappears out of camera view.

In **To-From Subject Report**, IPRA Investigator B, notes that on 30 July 2009 at approximately 0925 hours, she arrived at Mt. Sinai Hospital, at 1500 S. California in an attempt to interview Subject 1. Subject 1 refused to sign the Miranda Warnings and a medical release form. He indicated that he wanted to consult within his lawyer first.

Several **attempts** were made to interview **Subject 1** and **Subject 2**. Certified letters were sent to their residences and personal visits to the Cook County Department of Corrections were made in attempt to secure their interviews. An interview request was sent to Cook County Jail in order to interview Subject 2 for 11 August 2009. Upon meeting with Subject 2 on the date of his interview, he informed IPRA Investigator C, that he did not wish to provide an interview at this time, nor sign any documents other than his Miranda Rights. Telephone calls were made and messages left with their family members.

According to the Cook County Circuit Court website, Subject 2 was released on bond on 08 September 2009. On 09 June 2010, Subject 2 did not appear in court and forfeited his bond. On 09 March 2011, Subject 2 once again did not appear in court, a warrant was issued and on 20 May 2011, his cash bond was refunded to his attorney. On 13 August 2009, IPRA Investigator C responded to the Cook County Department of Corrections in order to interview Subject 1. Subject 1 stated that he did not wish to provide a statement, nor sign any documents. He related that he wanted to obtain the advice and permission of his Attorney, Attorney A before providing any statement. Subject 1 and Subject 2 both refused to provide an interview or further cooperate with this investigation.

In **To-From Subject Report**, IPRA Investigator B, notes that on 03 August 2009, a personal visit was conducted to Modern Process Equipment, located at 3125 S. Kolin Avenue, to meet with [Manager]. The purpose of the visit was to obtain a copy of the security video recording from 28 July 2009 and to identify any possible witnesses. [Manager] informed IPRA Investigator B that after reviewing the security equipment, he was unable to retrieve any security video from the system since the security system automatically recorded over previously recorded video every three days. IPRA Investigator B inquired of [Manager] about a delivery man observed on video in a

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white van making a delivery on 28 July 2009 at approximately 1230 hours. She was told that a man named “[Male Name]” was the deliveryman. He worked for a company called Office Equipment. IPRA Investigator B also learned that [Office Manager] was across the street during the incident with the Plant Supervisor, [Male Name #2]. Attempts were made to interview these possible witnesses, but the attempts were met with negative results.

In a **To-From Subject Report** summarizing the video footage obtained from __ regarding of this incident, IPRA Intern described the following: In the first video recording, entitled, “Right Side of Parking Lot,” Subject 1 is seen inside his vehicle. The footage depicted the driver, wearing a blue shirt, exiting the vehicle and moving out of view. A dark truck pulled up behind the subject’s truck and a police officer exited with his gun drawn. A man in a white shirt and a cowboy hat exited the subject’s vehicle and ran out of frame to the right of the parking lot. Another police officer came from the bottom left side of the frame to take the driver into custody. The second video recording was called “Left Side of Parking Lot,” and it indicated that at approximately 1234 hours, two male police officers and one female police officer exited from separate cars and ran toward the left of the frame. No other activity was viewed from the recording. In the video entitled “Produce I,” a dark vehicle pulled up behind the subject’s truck and two police officers come into view from the truck as the Hispanic male in a cowboy hat and white shirt ran towards the camera. This male can be seen reaching into his waistband and then there is something dark in his hand. At this time, the male Hispanic turned back towards the vehicle. Shots are then fired and the male in the cowboy hat falls to the ground.

A **canvass** of the area yielded Witness 5, an employee at Maxwell Services at 3130 S. Kolin. Witness 5 heard two gunshots and saw a male run past the window towards 31st Street with a gun in hand. She did not see anything further. Another employee, Witness 6, of Maxwell Services, also heard two gunshots and saw a white male in a short shirt with a gun in hand running toward 31st Street.

Photographs of the scene showed the offender’s weapon lying on the ground along with his sandals and sunglasses. In addition, the truck the offender arrived in is visible as is the Chevy Tahoe and the “buy car.”

The **Crime Scene Processing Report** indicated the following items were inventoried: A Sig Sauer P226 9mm Semi-Automatic Pistol 4.5inch barrel stainless finish, Serial No. U664781, cleared and registered to Officer A. Officer A’s handgun was inspected inside forensic truck #6787 at the scene and found to contain one live round in the chamber and 12 live rounds in the magazine. (Inventory No. 11741164, Item IDs (3518467, 68). In addition, a Beretta Mod 84F Cal 9 Short Semi-Auto Pistol, 3.5in Barrel Black Finish, Serial No. 092915Y, was inventoried under Inventory #11741186, Item ID 3518512. One WW380 Auto Cartridge was located in the chamber of the weapon and 12 WW380 Auto Cartridges were in the magazine of the weapon. The Reporting Forensic Investigators recovered all related fired evidence except the fired bullet in the offender’s leg. Those include: two expended WIN 9mm Luger + P cartridge cases, located in the grass at the east side of the building at 4335 W. 31st Street (Inventory 11741245, Item ID 3518601), and one metal fragment from the driveway at the rear of a truck at 4335 W. 31st Street (Inventory 11741253, Item ID 3518617). Finally, a package of white powder wrapped in black plastic was recovered from inside the Chevy Tahoe parked in the parking lot at 4335 W. 31st Street (Inventory 11741321, Item ID 3518779).

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Event Query No. 0920908358 indicated that several shots were fired in the area.

Event Query No. 0920908361 indicated that at the location of 4335 W. 31st several shots were fired. An offender was shot in the leg and was in good condition at Mt. Sinai Hospital Emergency Room. Officer B, #1733, was attempting a traffic stop when offender displayed a gun. Officer A, Beat 6243E, shot two times at Subject 1, hitting him once in leg.

The Illinois State Police Laboratory Report for RD# HR453003 lists Exhibit 2 as two (2) Winchester 9mm Luger + P fired cartridge cases marked #2A and #2B. It is noted that both of these fired cartridge cases were fired in Exhibit 5, Sig Sauer model P226, 9mm Luger semiautomatic pistol, serial #U664781, which was found to be in firing condition and test fired. Exhibits 3 and 4, consisting of two fired bullets, were also fired from Exhibit 5.

Illinois State Police Laboratory Report for RD#HR453003, Inventory 11741321 lists 997.8 grams of compressed powder found to be cocaine.

Illinois State Police Laboratory Report for RD#HR453003, Inventory # 11741186 lists exhibit 9 as a Beretta, model 84F, 380 Auto semiautomatic pistol, serial #D92915Y. It was examined and found to be in firing condition and test fired. A test shot from Exhibit #9 was compared to the IBIS database; however no identification was made. Exhibit 12, a detachable box magazine, was found to fit and function in the Beretta.

Illinois State Police Laboratory Report for RD#HR453003 lists Exhibits 9-12 included (9) a pistol, (10) one live cartridge, (11) twelve live cartridges, (12) one magazine. Examination of exhibits 9-12 revealed no latent impressions suitable for comparison.

Search Warrant 09-SW-6864 was executed on 28 July 2009 at 1236 hours at the residence of Subject 1 located at XXXX S. Kildare Avenue, Chicago, IL. The search warrant was executed shortly after the shooting occurred and Subject 1 was placed under arrest.

The **Supplementary Report/Field Investigation Lab Report** for RD#HR453003 reports that Subject 1's weapon was inventoried under # 11741186 and was a Beretta-Us-(Bantam, Brigadier 951, Empire, Puma) 84f, 9, Semi-Automatic pistol, 3.5 inch, with the Serial No. 092915Y--13 live rounds were present in the firearm. Inventoried under Number 11741321 was 1 kilo of cocaine wrapped in black plastic and recovered from Subject 2.

In a **statement to IPRA** on 3 April 2012, **Witness Officer C**, stated that on 28 July 2009 at approximately 1234 hours, he was working in an undercover capacity. Officer C had met Subject 1 previously through an introduction and prior to 28 July 2009, he had purchased drugs from him on at least two occasions. On this date, a phone call was made to pre-arrange another drug transaction. It was agreed that Officer C would be purchasing a kilo of cocaine for a set amount of U.S. Currency. In his previous dealing with Subject 1, Officer C never saw that he was armed in any manner. Part of the pre-arranged meeting was that they would meet close to where they were dealings before about a block from where this incident occurred, somewhere near 31st and Kolin. Prior to the arranged meeting time, Officer C parked in a space behind the business, in an area that a truck would pull into, and waited. During the debriefing that morning, everyone learned that Officer C would be in one vehicle and that there would be another officer in a separate car with the

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money. The whole ruse was that when Officer C saw the drugs, the other person would show the money so there could be no robbery.

Officer C believed that there were about 10 people participating in the covert operation that day. Once Officer C arrived at the set location, he called Subject 1 and told him he had arrived. Subject 1 arrived in a truck, which was unusual. Typically, in their previous dealings, Subject 1 walked or came on a bicycle to the set location. When Subject 1 arrived, he was driven by another Hispanic male whom Officer C had never met before. Both men pulled up, greeted Officer C and then the driver, now known as Subject 2, got out of his vehicle and got into Officer C's Tahoe. Up to this point, Officer C had never met Subject 2 before. Once in the Tahoe, Subject 2 opened up his shirt. Officer C told Subject 2 to take it easy because he did not know who he was or what he had on him, and feared being robbed. At that point, Subject 2 pulled out a big black object from under his shirt and showed it to Officer C. Officer C then knew it was the kilo of cocaine and told Subject 2 that he had the money. Officer C exited his vehicle and went to retrieve the money from his partner's car and then both the money and the drugs were in his Tahoe. During the exchange, Subject 1, who was still sitting in the pickup truck, leaned over, looking inside. Suddenly, Officer C heard cars and people, and he knew then that the officers were approaching them. Both Subject 2 and Subject 1 looked back and then the vehicles were all surrounded. All Officer C heard was "Police, Police!" and "Get out of the car!" Suddenly, Officer C was pulled out of the Tahoe and thrown to the ground. Officer C never saw the shooting occur or Subject 1 running. Once on the ground, Officer C was handcuffed and placed in a different car.

In a **statement to IPRA** on 04 April 2012, **Officer F**, stated that on 28 July 2009 at approximately 1234 hours, he was assigned as an enforcement officer for a covert operation. His duties as an enforcement officer were to listen for the takedown signal and then arrest the involved subject. He believed that there were about six to eight enforcement officers that were assigned to the operation. Officer F was also to be part of the search warrant team as well once the undercover buy was done. Prior to 28 July 2009, Officer F had never dealt with Subject 1. During the debriefing he was informed that there would be an undercover buy of a substantial amount of narcotics. The undercover officer was going to give a signal. Officer B would be listening through a small Nextel phone to overhear everything that was happening during the buy transaction. Officer F was parked about a half block to three-quarters of a block east of the buy location in the parking lot of Pietrowski Park. Therefore, Officer F saw none of what was happening and was only able to hear the updates through the radio. Officer F was by himself in a gray color Grand Prix. Once he heard the takedown signal, he got to the scene in less than 10 seconds. Officer F stated that he drove up from the east and went southbound on Kolin then stopped just short of the where Subject 1 was located. As Officer F was coming toward 31st Street, he saw Subject 1 run between the cars and trucks located in the loading dock. Officer F then saw Subject 1 pull a weapon from his waistband. Subject 1 then pointed the gun in the direction of the officers coming from the east. Subject 1 ran north, but was looking back in a southeast direction as he ran. All of a sudden, Subject 1 pointed the weapon at Officer A and Officer B. Officer F stated that he then heard, "Policia, policia!" and a "pop-pop" indicating that shots were fired. The whole interchange took about five seconds. Once Officer F exited his car, Subject 1 was already down on the ground and the officers were converging on him at that point. Officer F then ran back to his car and called in shots fired by the police. Officer F then asked for an ambulance.

In a **statement to IPRA** on 04 April 2012, **Witness Officer E**, stated that on 28 July 2009 at approximately 1234 hours, he was assigned as the "eyeball" officer for Officer B's undercover

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operation. At approximately 1200 hours, Officer E and the other officers arrived at the location to find a place to park. He and Officer A arrived a little before the others to check the location out. The enforcement officers drove M-plated undercover cars and remained around the perimeter. Everyone else was using undercover vehicles. Officer A was driving that day and Officer E was in the back. They parked in the parking lot directly across the street. He saw a vehicle that parked next to Officer C. The driver of that vehicle then exited the pickup truck and went into the passenger seat of Officer C' vehicle. Officer E, stated that the next thing that he remembered was that the takedown signal was given. At this point, Officer E, who was still filming, observed Officer B pull up and face his vehicle southbound. Officer E then heard as Officer B blocked the subject's vehicle. Officer E then saw Officer B exit his undercover car with his badge around his neck. At this time, he and Officer A exited their car and they saw Officer B yell, "Policia!" At this point, Officer E lost focus on them because he knew his teammates were coming. Officer E then observed the passenger (Subject 1) of the pickup truck exit from the truck and makes a movement toward his waistband area. At this moment, Officer E observed a black handgun in Subject 1's waistband area. Officer A was about 10 feet in front of Officer E at this point. Officer B was still yelling, "Police!" Officer E saw Subject 1 point his pistol in Officer B's direction and as a result shortly thereafter, Officer A fired his weapon, striking Subject 1, who was then handcuffed and taken into custody.

In a **statement to IPRA** on 20 April 2012, **Involved Officer A**, stated that on 28 July 2009, his assignment was to be the surveillance officer for a narcotics purchase that Officer B was heading up. He did not believe that he had worked with any of the other involved officers before, except for Officer E and Officer F. Officer A was not aware until the morning of 28 July 2009, that he would be participating in the undercover operation. He believed that there were about 30 officers involved in the operation that day.

Officer A was partnered with Officer E in a covert vehicle (a blue Chevy Uplander). Officer B asked both men if they would videotape the transaction, to which they agreed because they had a van. Officer E agreed to get in the back of the van while Officer A drove. Officer A pulled his vehicle across the street from Officer C and Officer G's cars. Officer C was facing westbound so he could see the back of his vehicle while Officer G's car was facing him. About 15 minutes after arriving at the location, Officer E spotted a gray pickup truck coming southbound on Kolin from 31st. It looked suspicious because there was one Hispanic male in the vehicle traveling very slowly.

The Hispanic male turned and looked in the direction of both undercover officers then continued driving. Shortly thereafter, the truck drove northbound on Kolin back toward 31st Street and they lost sight of the pickup truck. This time around the pickup truck returned with two Hispanic males inside. The same individual who drove the truck initially was still driving it, but this time there was a Hispanic male with a cowboy hat in the passenger seat. The pickup truck parked facing westbound, directly north of Officer C. The Hispanic male that drove the vehicle got out of the vehicle and entered Officer C' covert vehicle on the passenger side. A short time later, Officer C exited the vehicle, and went over to Officer G's car. He then returned back into his covert Tahoe. Shortly after that, Officer A believed that he heard Officer B say, "Converge enforcement, come in." Officer A then saw Officer B's Expedition pull up behind the pickup truck containing the two Hispanic males. Officer A pulled up directly behind Officer B's vehicle and then exited his vehicle. When Officer A saw Officer B alone, he made the decision exit the vehicle too. The passenger of the pickup truck, Subject 1, got out and looked like he was about to run. Subject 1's hand was down toward his waistband area. Officer A then heard Officer B yell out, "Policia!"

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It was at this point that Officer A drew his weapon, and as this occurred, Officer A, who was about two car lengths away from Subject 1, observed Subject 1 run northbound. Officer A stated that he had a view of Subject 1's front and right sides. He observed that Subject 1 appeared to be focused on Officer B as he ran. Officer A stated that he attempted to cut off Subject 1 before he reached 31st Street because there was a high school on 31st Street. Officer A stated that Subject 1's right hand stayed on his waistband, and at some point, Subject 1 was no longer moving. As he looked at Subject 1's direction, he noticed that Subject 1 reached and gripped at something down in and by his waistband. Officer A, who was about 15 feet from Subject 1, was able to see that Subject 1 had the butt of a gun in his hand and had pulled the gun out from his waistband. Subject 1 then started to turn almost at the direction of Officer B with the gun in his hand. Officer A stated that someone yelled out, "Gun!" At this point, Officer A was focused on Subject 1 and within seconds of seeing the gun, he fired in fear of Officer B's life and his own life. Officer A fired two shots in quick succession, aiming at the center mass of Subject 1. After firing, Officer A saw Subject 1's weapon fling back behind his body. Officer A believed that he was about 10 feet from Subject 1 when he fired. Once Subject 1 was shot, he yelled out loud and hit the ground.

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CONCLUSION AND FINDING:

This investigation found that the use of deadly force by 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 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;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay."

Officer A's actions were in accordance with both conditions of CPD's deadly force policy. Officer A observed Subject 1 exit his vehicle, reached for something in his waistband, turn toward Officer A's and Officer B's direction and point a handgun at them. Subject 1 was ordered to stop his actions immediately after he was observed reach for the weapon in his waistband. Officer A stated that he gave the orders both in Spanish and English. Officer A being in fear for his life and that of other involved officers fired his weapon two times in the direction of Subject 1 striking him on the leg and causing him to go down onto the ground. When Subject 1 fell to the ground, he dropped his gun and he was immediately approached by other officers who then handcuffed Subject 1 and took him into custody. Several officers arrived on scene shortly thereafter as well as an ambulance. Subject 2 was also placed under arrest. Therefore, based on the totality of the circumstances, Officer A was in compliance with the use of deadly force and in reasonably in fear for his life and the life of Officer B and other involved officers. Officer A was justified when he fired two shots at Subject 1, who pointed a gun at him and Officer B. Officer A was in compliance with his use of deadly force in order to prevent death or great bodily harm to himself, Officer B and other involved officers.