

INDEPENDENT POLICE REVIEW AUTHORITY
LOG# 1029583/U#09-35

INVESTIGATION

NUMBER: Log #1029583/U# 09-35

OFFICER

INVOLVED: #1 “Officer A” (Chicago Police Sergeant); Male/White; 41 years old;
On-Duty; In Uniform; Year of Appointment – 1992

OFFICER’S

INJURIES: None Reported.

SUBJECT: “Subject 1”; Male/Black; 23 years old

SUBJECT

INJURY: One through-and-through gunshot wound to left hand with bullet lodged in
left cheek. Taken to Christ Hospital for treatment, stable condition.

DATE/TIME: 26 August 2009, 2310 hours

LOCATION: 5849 S. Kedzie
Beat #0824

SUMMARY OF INCIDENT:

On 27 August 2009, Supervising Investigator A registered a complaint with the Independent Police Review Authority concerning an incident which took place on 26 August 2009 at approximately 2310 hours, at the location of 5849 South Kedzie. It is reported that after an undercover narcotics transaction, the offender, Subject 1, continually refused to comply with officers' orders to stop a vehicle that he had gained control of and was using to attempt to flee the scene. The offender struck the involved officer (Officer C) with his vehicle. In fear for his safety and lives of other officers, Officer A discharged his firearm once at the offender, striking the offender.

INVESTIGATION:

The **Preliminary Investigation**, conducted by **IPRA Investigator A**, stated that an Officer-Involved Shooting occurred on 26 August 2009 at 2310 hours, at the location of 5849 S. Kedzie. The Involved Officer was Officer A. Officer A fired one round from a Springfield Armory 9mm semi-automatic. The Sergeant reported no injuries. The offender involved subject was Subject 1 of XXXX S. Sacramento. The offender sustained one through-and-through gunshot wound to the left hand with a bullet lodged in the left cheek. Subject 1 was taken to Christ Hospital for treatment and remained in stable condition. Subject 1 had no weapons in his possession.

CPD Detective 1, began the Roundtable presentation by summarizing the incident under investigation:

On 26 August 2009, officers received information that Subject 1 was selling narcotics. Officer set up a “buy bust” to meet at the strip mall located at 5849 S. Kedzie. Subject 1 was going to be at the strip mall in a green- colored vehicle. Officers observed Subject 1 pull into the strip mall in a green Mercury Sable. An unidentified black female approached the vehicle and made a purchase. Officer B, who was the undercover officer making the purchase, went to Subject 1’s vehicle and made a hand-to-hand transaction with Subject 1. Officer B signaled the other officers towards Subject 1’s vehicle.

Officers surrounded Subject 1’s vehicle blocking him in. Subject 1 jumped into the front seat, sitting on top of Witness 1 and proceeded to “floor” the vehicle forward and backward. Officer A and several officers gave Subject 1 verbal directions to “stop” and “exit the vehicle”. However, Subject 1 did not comply and continued to move the vehicle forward and backward. Officer A, in fear of Subject 1 slamming into officers standing in front of the Mercury Sable, discharged his weapon once striking Subject 1 in the face. Subject 1 was transported to Christ Hospital for treatment.

Statements by Officer B, Officer C, Officer A, CPD Detective 2, and Civilians Unnamed Witness, Witness 1, Witness 2, and Witness 3 corroborated the above statement of events.

The **Original Arrest Report** stated that Subject 1, of XXXX S. Sacramento Ave., Chicago, IL, was charged with two counts of Aggravated Battery, five counts of Aggravated Assault and one count of Possession of a Controlled Substance. The offender was placed in custody after having sold Officer B five small plastic bags of suspect crack cocaine. While being placed in custody, the offender was in control of a vehicle, with which he struck Officer A and attempted to drive toward the other officers. The offender was eventually placed in custody and identified as the person who had just sold Officer B the suspect crack cocaine.

The **Original Case Incident Report** documented all officers and civilians who had been victims or witnesses to the incident. The offender, Subject 1 (“Nickname”), sustained a gun shot wound to the left hand and to the left cheek. Subject 1 was transported to Christ Hospital. Officer A and Officer C refused medical attention.

The **Tactical Response Report** and **Officer's Battery Report**, filed by **Officer A and Officer C**, stated that the offender did not follow verbal direction and posed an imminent threat of battery. The assailant used the vehicle as a weapon, striking the member during the investigation. Officer A then used his firearm in response to the offender's actions. Officer A discharged his weapon after he became in fear of his life and in fear for the lives of the members of his tactical team.

A canvass of the location of the incident was conducted. IPRA Investigator B visited the Taconazo Restaurant which was able to provide a video of the incident from the restaurant to IPRA. IPRA Investigator B visited a number of other local establishments; however, they yielded no further information regarding the incident.

In a statement to the Independent Police Review Authority on 27 August 2009, Witness 1 stated that on 26 August 2009, at approximately 2300 hours, she was sitting in the driver's seat of her friend Witness 2's car which was parked in front of a Mexican restaurant. Witness 2 was seated in the front passenger seat and a male black she had just met by the name of "Subject 1" was seated in the rear passenger seat. Witness 1 stated that she did not hear or know any of the conversation between "Subject 1" and the female Hispanic.

Witness 1 stated that she had the car in reverse when she observed a police car and police officers through the rear view mirror. At that moment, "Subject 1" jumped on top of her and sat on her lap as the car moved backwards hitting the police car. The police yelled out, "Stop, put your hands up!" Witness 1 then heard two gun shots, the driver's window broke and she observed blood on the hands and face of "Subject 1."

Witness 1 observed a detective in plainclothes, an officer on the driver's side, and two in front of the car. She could not see in the rear of the car. Everyone was taken out of the car and placed in separate police cars. Witness 1 observed that "Subject 1" was taken to an ambulance. Witness 1 stated that she was handcuffed and transported to the police station.

Witness 1 stated that the officer/detective at the driver's side was a white/male, 6'0", heavy set, dark hair, late 30's to early 40's. Witness 1 stated that the two police officers in front of the car were in plainclothes and she did not have any further description of them. Witness 1 stated that the incident occurred very fast and she had ducked down.

In a statement to the Independent Police Review Authority on 27 August 2009, Witness 2 stated that on the date of the incident, she and her friends were going to a restaurant located at 5849 S. Kedzie Avenue. While waiting outside, an unknown black female and an unknown white female approached the vehicle. The unknown white female entered the back seat of the vehicle to speak to "Subject 1" who was sitting in the backseat of the vehicle. Witness 2 related that she does not know Subject 1 and has only seen him on a few occasions. Witness 2's friend Witness 1 (Nickname) was sitting in the driver's seat, and Witness 2 was sitting in the front passenger seat. Witness 2 related that the vehicle belongs to her.

Witness 2 related that she did not pay much attention to Subject 1 and the female because she was speaking to Witness 1. Witness 2 observed several officers approach the vehicle with their guns drawn and pointed toward them. The officers instructed everyone in the vehicle to place their hands in the air. Witness 2 related that she did as instructed by the officers, but she was not paying attention to the others in the vehicle.

At that time, Subject 1 jumped from the rear seat of the vehicle onto Witness 1, who was sitting in the driver's seat. Subject 1 began to shift the gears of the vehicle which caused the vehicle to move back and forth. The officers repeatedly instructed them to put their hands up or they were going to shoot. Subject 1 continued with his actions of moving the vehicle in an attempt to drive away. An officer on the front left driver's side of the vehicle fired his weapon once, striking Subject 1. Witness 2 does not know what part of Subject 1's body was struck by the bullet.

The officers continued to tell them to put their hands up, and instructed Subject 1 to get out of the car. Subject 1 crawled from the front passenger side of the vehicle and the officers then pulled Witness 2 and the others from the vehicle and handcuffed them.

Witness 2 related that she did not recall Subject 1 exiting the vehicle prior to the incident with the police. Witness 2 related that she does not know if Subject 1 had any weapons or drugs on his person, and he did not make any gestures to suggest that he may have had a weapon on his person. Witness 2 does not know why they were approached by the officers. Witness 2 could not provide any further identifying information about the involved officers or parties in this incident.

In a statement to the Independent Police Review Authority on 27 August 2009, Witness 3 stated that on 27 August 2009, she was at a restaurant with her cousin, Unnamed Male. Witness 3 went outside and saw a bluish or gray sedan pulled up to her cousin's vehicle with a female driver and two other passengers inside. Witness 3 believed that the passenger seated in the backseat was a black male. Witness 3 did not know what the white male and black male exchanged, although she saw them exchange something and part ways.

A Hispanic female then approached the vehicle on the driver side and got in the car. Immediately afterwards, two officers walked up in front of the vehicle stating "Put your hands up!" Witness 3 then observed a vehicle driving slowly behind Unnamed Male's vehicle. The female driver put the sedan in reverse and crashed into an unidentified car with police lights. At that time, Witness 3 only observed one car behind her. A white delivery van was parked backwards on the opposite side of the sedan. The female driver reversed again and an officer stated, "Stop or you will be shot!" At this time, two officers were standing in front of the sedan with their weapons drawn and two officers in the back of the sedan. Witness 3 stated that all officers were in uniform.

Witness 3 stated that more officers and vehicles arrived on the scene. Witness 3 then observed the black male subject leaning over the front seat holding onto the steering wheel. Witness 3 initially thought that the male subject was an officer trying to get control of the vehicle. Witness 3 described the male subject with a low cut hairstyle, in his early twenties.

Witness 3 stated that she heard a shot and the sedan crashed into Johnson's vehicle. Witness 3 did not see who fired their weapon. Witness 3 got out and went inside the restaurant. A female police officer came in the restaurant and identified Witness 3 as a witness. The female officer took Owens outside the restaurant and obtained a statement from her. Witness 3 observed the black male subject get into an ambulance with a bandage on the left side of his face. Witness 3 stated that Unnamed Male did not witness the incident. Witness 3 stated that she did not witness anyone get struck by the sedan. Witness 3 stated that there was damage to the sedan, Crown Victoria, and white delivery van. Witness 3 did not know if there was any damage to Unnamed Male's vehicle.

The **Crime Scene Processing Report** details the officers involved, the evidence collected, and the narrative of the incident. The F/Is assigned to Beat 5803 responded to the Police Involved Shooting at 5849 S. Kedzie. Upon arrival, the F/Is met with CPD Detective 1 who described the incident. The F/Is videotaped and photographed the scene and evidence.

Photos of the crime scene depict the scene of the incident and the evidence collected. The photos corroborate all prior oral descriptions of the incident.

The **Crime Scene Videotape** provides views of the scene of the incident and confirms all prior oral description of the incident.

The **Property Inventory Report** details the evidence collected at the scene, including the .9 mm Luger used by Officer A, Subject 1's bloody clothes, and multiple cell phones found in the vehicle that was being operated by Subject 1.

EMS Incident Record. The report details the treatment and transportation information from the ambulance used to transport Subject 1 to Christ Hospital.

An Inmate Search for Subject 1 on the Illinois Department of Corrections website. The report revealed that Subject 1 had been an inmate at the Statesville Correctional Center beginning on 13 June 2008 for the Possession of a Stolen Motor vehicle.

In a statement to IPRA at the Statesville Correctional Facility on 14 September 2009, Subject 1 stated that on the date of the incident he was on his way to get food from Subway with his sister, Witness 1, a friend, Witness 2, and another unnamed friend "Nickname". They were all in Witness 2's car. While in the car, an unknown male called Nickname's cell phone and told Subject 1 that he had a bottle of vodka that he would give to him in exchange for crack cocaine. When they arrived at Subway, a black female dressed in a blue and white hoodie was talking to the unknown male voice on the phone (who is now known as a police officer). This same officer who was talking to Subject 1 on the phone and to the unknown female black walked over to their vehicle and gave him a bottle of vodka after Subject 1 gave him \$20. About eight minutes later, Witness 1 put the car in reverse and attempted to pull off. At that moment, Witness 1 hit a police vehicle which was parked directly behind them. There were no officers in the vehicle. Subject 1 stated that when he looked up there were three white male officers and one white male sergeant standing in front of their vehicle. Subject 1 stated that

within seconds an officer shot him on the left side of his face and his left hand. The white male sergeant was the officer that shot him. Subject 1 stated that he had been sitting in the back seat reaching for the radio to put some compact discs in when he was shot. Subject 1 was told by Witness 2 and Witness 1 that he had been shot. Once he was shot, Subject 1 fell out of the vehicle onto the ground. While face down on the ground, a white male officer stepped on Subject 1's hand. Subject 1 told the officer that he was shot and the officer responded, "I know, that's good. Do you see the white light yet? Die, mother fucker, die." The officer then told Subject 1 to hold out his hand like he was Superman. Subject 1 was then handcuffed. Approximately ten minutes later, an ambulance arrived and took Subject 1 to Christ Hospital.

As a result of this incident, Subject 1 sustained a gunshot wound to the left side of his face and his left hand. Subject 1 did not see the officer who had purposely stepped on his hand because he was face down on the ground and there was blood in his eyes. "Nickname" was not present at the incident because they dropped him off before they got to the restaurant. Subject 1 also stated that the police car which was parked behind them did not have its lights or sirens activated. Subject 1 said that if he saw photographs of the officers that approached his car he would be able to identify them.

The ISP Laboratory Report documents the evidence relevant to the incident. Forensic Scientist A determined that one round had been fired out of a .9 mm Luger semiautomatic pistol, serial #US836305.

The Medical Records for Subject 1 from Christ Hospital and Medical Center confirms the gunshot wounds which he received from the above incident. Doctor A reported that Subject 1 was in stable condition.

The Chicago Police Department Event Query and the OEMC 911 Transcriptions for 26 August 2009, relating to the incident involving Subject 1, show that a male officer reported that an offender was "runnin". The Dispatcher then reported that the shots had been fired at 59th and Kedzie. A male officer reports that everything is contained on the scene and an ambulance is on its way.

In a statement to IPRA, Officer A related in essence the same information he provided during the roundtable and as it appears in the Department reports. Officer A added that he along with other officers was in the area to conduct and undercover drug buy. They were given information that a person by the name of "Nickname", now known as Subject 1, would be there to sell narcotics to an undercover officer. After receiving a signal that a positive narcotics transaction occurred, Officers C and D pulled their vehicle south of Subject 1's vehicle and Officer A pulled in south behind Officers C and D. Officer A got out of his vehicle and yelled, "Put your hands up." Subject 1 jumped in the front seat and literally on Witness 1. Subject 1 reversed the vehicle and struck an unmarked squad car parked in the rear. Subject 1 then accelerated forward toward four officers who were standing on the sidewalk. Subject 1 reversed and then struck Officer A and brushed Officer C. Officer A lost his balance but got back up and continued to tell Subject 1 to "stop the vehicle". Subject 1 continued to ignore all verbal commands and went backwards. In fear for his life and the life of the other officers, Officer A fired one shot at Subject 1. Subject 1 was removed from the vehicle and taken to Christ Hospital.

In a statement to IPRA, Officer C related in essence the same information she provided during the roundtable and as it appears in the Department reports. Officer C essentially reiterated the same information as Officer A. In addition, Officer C yelled “Stop” as she stood behind the bumper of Subject 1’s vehicle. Subject 1 continued to accelerate the vehicle backward and forward and Officer C was brushed with the vehicle. She did not sustain any injuries. Officer C stated that Officer A discharged his weapon because Subject 1 was using deadly force against herself and Officer A. Officer C stated that she did not witness any physical or verbal abused directed toward Subject 1.

CONCLUSION AND FINDING:

This investigation found that Officer A's use of deadly force 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 was taking part in the "buy bust" of Subject 1 who had been suspected of selling narcotics. Following the hand-to-hand transaction between Officer B and Subject 1, officers surrounded Subject 1 and attempted to take him into custody. Subject 1 attempted to evade arrest by taking control of the vehicle and moving backwards and forwards into the police vehicles and towards the officers. Officer A was in fear for his life and the life of his fellow officers and fired at Subject 1 to prevent death or great bodily harm to him and his fellow officers. All witnesses and officers present at the incident confirm the story as stated above. Therefore, based on the totality of the circumstances surrounding this incident, Officer A's actions were in compliance with the Use of Force Model.