

INDEPENDENT POLICE REVIEW AUTHORITY

Log#1033489 / U# 10-06

INVESTIGATION

NUMBER: 1033489 / U# 10-06

OFFICER

INVOLVED: "Officer A" (Chicago Police Officer); Male/Black; 43 years old;
Off-Duty; In Civilian Dress; Year of Appointment – 2000

OFFICER'S

INJURIES: None

SUBJECT: "Subject 1"; Male/Black; 40 years old

SUBJECT'S

INJURIES: Gunshot wound to the right leg. Treated at Christ Medical Center

INITIAL

INCIDENT: Walked into the Subway Sandwich Restaurant and displayed a
firearm

DATE/TIME: 28 Jan 10, 1030 hours

LOCATION: XXXX S. Halsted Parkway, inside Unit C
Subway Sandwich Restaurant
Beat 711

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SUMMARY OF INCIDENT AND INVESTIGATION:

On 28 January 2010, at approximately 1036 hours, Officer A proprietor of the Subway Sandwich Restaurant located at XXXX S Halsted Parkway, Unit C was off-duty and in the establishment. Also in the restaurant were employees, Witness 4 and Witness 1. Officer A and Witness 4 were behind the counter and Witness 1 was in the supply room located at the rear of the building. The three were preparing for the lunchtime crowd.

Officer A had his back to the front door when he heard the door chimes indicating that someone had entered the restaurant. A male black, now known to be Subject 1, entered the restaurant and walked toward the counter. Witness 4 walked toward the supply room as Subject 1 continued to walk toward the counter. Officer A asked Subject 1, "Can I help you?" when Subject 1 walked behind the counter. Once behind the counter, Subject 1 pointed a gun in the direction of Officer A. Officer A announced his office as he drew his firearm and fired at Subject 1. Subject 1 fell to the floor and crawled toward the front door in an attempt to exit the restaurant. Officer A followed Subject 1 to restrain him but he began to struggle with Officer A.

During this incident, Witness 4 ran out the back door to the Dunkin Donuts store and asked the manager to call the police. At the same time, Witness 1 ran to Walgreens where she observed on-duty Officer C and alerted her to the incident. Officer B walked in the restaurant while Officer A struggled on the floor with Subject 1. Officer B then assisted Officer A in restraining Subject 1 and Officer C arrived and handcuffed Subject 1.

Subject 1 sustained a gunshot wound to his right leg and was transported to Christ Medical Center for treatment. Subject 1 was charged with Attempted Armed Robbery.

In a **statement** provided at the Roundtable on 28 Jan 10, Officer B stated that he and Officer A had a scheduled meeting on 28 Jan 10, at 1030 hours, at XXXX S. Halsted Parkway, Unit C. As Officer B was parking his vehicle, he observed Officer A and Subject 1 through the glass door of the restaurant struggling on the floor. Officer B entered the restaurant and observed Subject 1 kicking and moving about the floor. Officer A asked Officer B for his handcuffs and Officer B stated that he did not have his handcuffs with him. Officer B then called "911" on his cell phone and notified the dispatcher of the shooting. A few minutes later Officer C entered the restaurant and handcuffed Subject 1.

In a **statement** provided at the Roundtable on 28 Jan 10, Officer C stated that she was in Walgreen's when she observed Witness 1, who she knows works at the Subway Sandwich Restaurant, enter the store. Witness 1 told Officer C that a man had entered the restaurant and was armed with a gun. Officer C radioed the incident to the dispatcher as she ran to the restaurant. When Officer C entered the restaurant, she observed Officer A restraining Subject 1 and she handcuffed Subject 1.

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In a **statement** provided at the Roundtable on 28 Jan 10, Officer A stated that he is the proprietor of the Subway Sandwich Restaurant located at XXXX S. Halsted Parkway, Unit C. On the morning of 28 Jan 10, he and his employees, Witness 1 and Witness 4 were preparing for the lunchtime crowd. Officer A and Witness 4 were behind the counter and Witness 1 was inside the supply room. Witness 4 was standing close to the supply room as she continued to prepare the food. Officer A then heard the door chimes and turned to see who had entered the restaurant. Officer A observed Subject 1 wearing a large hooded coat with the hood pulled over his head and tightened around his face walking in his direction. As Subject 1 walked behind the counter, Officer A asked him, "Can I help you?" Subject 1 pointed a gun at Officer A which prompted Officer A to identify himself as a police officer and then fire a shot at Subject 1. Subject 1 fell to the floor and began to crawl toward the door of the restaurant. Officer A followed Subject 1 and when he attempted to restrain Subject 1, Subject 1 began struggling with him. Off-duty Officer B arrived and assisted Officer A with restraining Subject 1. Shortly thereafter, on-duty Officer C arrived and handcuffed Subject 1.

In a **statement** provided at the Roundtable on 28 Jan 10 CPD Detective 1 stated that he responded to Christ Hospital and advised Subject 1 of his Miranda Rights. Subject 1 refused to provide a statement and requested an attorney. It was learned that Subject 1 sustained a gunshot wound to the right leg. The bullet entered above the right knee and lodged above the kneecap.

In a **statement** with the IPRA on 28 Jan 10, Witness 1 stated that she was working at the Subway Restaurant located at XXXX S. Halsted Parkway, Unit C. Also working with her was the owner, Officer A and another employee, Witness 4. Subject 1 walked in the restaurant wearing a baseball cap with a hood pulled over his head. Subject 1 walked directly behind the counter and grabbed Officer A and stated, "Give me your shit." Witness 1 and Witness 4 observed Subject 1 pull something out of his pocket. At that time, Witness 1 and Witness 4 ran toward the back of the restaurant. Witness 1 ran inside the freezer and Witness 4 ran out the backdoor. Shortly after Witness 1 ran inside the freezer, she heard two gunshots. Witness 1 then ran out of the freezer and out of the restaurant through the back door. As Witness 1 ran around to the front of the restaurant, she observed Officer A standing over Subject 1. Witness 1 then observed a squad car near the Walgreen's and ran to get help. Officer C ran to the restaurant and helped Officer A.

In a **statement** with the IPRA on 28 Jan 10, Witness 2 stated that she is an employee of the U.S. Cellular store, located at XXXX S. Halsted Parkway, Unit D, next door to the Subway Sandwich Restaurant. Witness 2 was helping a customer with a wireless device when she heard a commotion coming from the Subway Restaurant. Witness 2 then heard someone yell, "Stop Chicago Police," followed by two to four gunshots. Witness 2 heard someone yell, "My leg, my leg!" Store Manager Witness 3 then called the police. Witness 2 observed, through the store front window, a female police officer running from the direction of the Walgreen's store toward the Subway Restaurant. Witness 2 noticed that the unknown customer that she was helping left the

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store when the first police units arrived on the scene. Witness 2 further stated that she was unaware that the owner of the Subway Restaurant, Officer A, is a Chicago Police Officer.

In a **statement** with the IPRA on 28 Jan 10, Witness 3 stated that he is the manager of the US Cellular Store. Witness 3 was attending to a customer when he heard a loud commotion coming from the Subway Sandwich Restaurant located next door. Witness 3 heard someone say, "Stop, Chicago Police! Stop, Chicago Police!" Witness 3 further stated, "I never heard gunshots before and thought that the sound I heard were tables being thrown against the wall." He called "911" twice and the first time he reported, "Possible Robbery in Progress," and the second time he reported, "I heard gunshots."

In a **statement** with the IPRA on 28 Jan 10, Witness 4 stated that she is an employee of the Subway Sandwich Restaurant. On 28 Jan 10 she was working along with another employee, Witness 1 and Officer A. Witness 4 observed Subject 1 through the front window as he looked inside and continued to walk away. Suddenly, Subject 1 entered the store and walked right behind the counter. Witness 4 heard a shot fired and observed Subject 1 grab Officer A by his collar. Officer A stated, "Hold on, hold on," as he was reaching for his gun. Witness 4 ran to the Dunkin Donuts and told them to call the police and they did.

A **Chicago Fire Department Ambulance** responded to a call of a gunshot victim, known to be Subject 1. Paramedics noted a gunshot wound to the right mid-thigh. Chicago Police Beat 712 accompanied Subject 1 in the ambulance to the hospital.

Medical Records from Christ Hospital and Medical Center indicate that Subject 1 was admitted on 28 Jan 10, at 1214 hours. The records further indicate that Subject 1 was shot by police during an attempted robbery at a store. Subject 1 sustained a gunshot wound on the lateral aspect of his right thigh with a retained bullet. X-rays showed a single entry wound and fracture to the distal femur. The final diagnosis was classified as a right distal femur fracture and a gunshot wound to the right leg.

Subject 1 refused to provide a **statement** to the IPRA.

The **Evidence Technician photographs** depict the outside and inside of XXXX S. Halsted Parkway, Unit C.

The footage from the **security camera** shows Subject 1 walk inside the Subway Sandwich Restaurant. The video shows Subject 1 holding an object in his hand and Officer A firing a weapon in the direction of Subject 1.

A **report from the Illinois State Police** ("ISP"), Division of Forensic Services, dated 21 Feb 10, indicates that Officer A's 9mm Luger Caliber semiautomatic pistol was found to be in firing condition and test fired. One recovered casings and one bullet were found to have been fired from Officer A's weapon.

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A report from the **Illinois State Police** (“ISP”), Division of Forensic Services, dated 04 Oct 11, indicates that the recovered firearm is a BB gun with no latent impressions suitable for comparison.

The **Arrest Report** of Subject 1 indicates that he was charged with Attempt-Robbery-Armed with a Firearm.

The **detectives’ Supplementary Report** indicates that Subject 1’s weapon recovered from the scene is a Crossman, repeater BB gun, .177 cal, black finish. In addition, the Supplementary Report includes accounts of the incident from Officers Johnson, Normand and Tankson that are consistent with their Roundtable accounts.

The **OEMC audio transmissions and summary** shows that several calls were made to “911” concerning the Armed Robbery at the Subway Sandwich Restaurant. One of the callers reported that “Somebody started shooting at the employees.” One of the callers reported that someone had been shot. Responding units arrived at the Subway Sandwich Restaurant.

Officers A, B and C provided statements to the IPRA and their accounts were essentially consistent with the accounts they provided to the Roundtable participants and to the detectives.

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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 in his place of business, Subway Restaurant, working along with his employees, Witness 4 and Witness 1 when Subject 1 entered the restaurant. Subject 1 immediately walked toward Officer A who was behind the counter with employee Witness 4. Subject 1 pointed a gun at Officer A which prompted him to identify himself as a Chicago Police Officer as he drew his firearm. Officer A fired a shot at Subject 1 as he continued to point a gun at Officer A. The security camera located inside the Subway Restaurant captured the events as they unfolded. The footage from the security camera corroborated the account of the incident provided by Officer A. Officer A and his employees were confronted in the restaurant by an armed Subject 1. A gun was recovered from the restaurant that belonged to Subject 1. Officer A was in fear for his life and the life of his employees and fired at an armed Subject 1 to prevent death or great bodily harm to him and/or his employees. Therefore, based on the totality of the circumstances surrounding this incident, Officer A was justified in using deadly force.