

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1041660/U# 10-41

INVESTIGATION

NUMBER: LOG# 1041660/U# 10-41

OFFICER #1

INVOLVED: “Officer A” (Chicago Police Officer); Male/Hispanic; 37 years old;
On Duty; In Uniform; Year of Appointment – 1998 CORRAL,

OFFICER #1’S

INJURIES: None reported

OFFICER #2

INVOLVED: “Officer B” (Chicago Police Officer); Male/White; 52 years old;
On Duty; In Uniform; Year of Appointment – 1996

OFFICER #2’S

INJURIES: None reported

SUBJECT:

“Subject 1”; Male/Hispanic; 38 years old

SUBJECT’S

INJURIES: Gunshot wounds to the legs.

INITIAL

INCIDENT: Officers were attempting to apprehend subject due to a previous
incident in which subject fired at an officer and escaped in a
vehicle.

DATE/TIME

OF INCIDENT: 22 NOV 10, 1658 hours

LOCATION:

5852 S. Western Avenue, Beat 914

SUMMARY OF INCIDENT:

On 22 Nov 10 at approximately 1658 hours, officers were in the vicinity of 4500 S. Paulina Street, seeking the owner of a Dodge Durango SUV that was wanted for a robbery that was committed earlier in the day.¹ The officers learned the owner of the vehicle lived at 45XX S. Paulina Street. Upon being located, [Woman's Name Withheld] gave permission for officers search her home and stated that her boyfriend, Subject 1, also lived at 45XX S. Paulina Street with her. At the time of the search, detectives received a call from another detective in a covert vehicle, who stated that a person matching the description of Subject 1 had just exited a vehicle and was coming up the back entrance to the apartment. Subject 1 observed the officers in his apartment, fled down the stairs and out to the alley, going southbound. The detectives gave a flash message of Subject 1's description and direction of his flight and multiple assisting vehicles responded.

Involved Officer B responded to the flash message and pulled his vehicle into the mouth of the west alley of 4600 S. Paulina Street. He exited his vehicle and began searching the gangway, rear yard and front yard at 4604 S. Paulina Street. As Officer B turned back towards the rear of the yard, he observed something moving on the landing of the wrought iron stairway attached to the coach house of 4604 S. Paulina Street. Officer B approached the staircase and went up a few stairs when he observed a person lying on the landing. Officer B retreated down the stairs and ordered the subject, now known as Subject 1, to stand up and show his hands. Subject 1 stood up and pointed a handgun at Officer B. Officer B fired at Subject 1 once, striking him in the leg. As this was occurring, Involved Officer A, who had been searching the gangway at 4604 S. Paulina Street, heard someone yell, "Drop the gun! Drop the gun!" Officer A observed a subject with a gun in his hand and ordered him to drop his weapon in Spanish. Fearing for his life and that of Officer B's, Officer A fired his gun once, striking Subject 1 in the leg. Subject 1 was taken into custody and transported to Stroger Hospital, where he was treated for a gunshot wound to the each of his legs.²

¹ A dark Dodge Durango SUV was observed by officers during the commission of a robbery that was committed earlier in the day in the 010th district. The officers attempted to stop the vehicle and the driver of the vehicle pointed a gun at the officer then fled after the officer fired several rounds at the fleeing vehicle. The license plate number of the vehicle was obtained. (RD# HS-627820).

² The information for the Summary of Incident was obtained from the Chicago Police Department's Case Supplementary report. At the time of this incident the Roundtable panel was no longer being conducted and the IPRA had not yet implemented the post-shooting report that is completed after a police-involved shooting. The post-shooting report was implemented in August 2011. (Att. #26).

INVESTIGATION:

In a formal statement to the IPRA on 23 Nov 10, **Involved Officer B** stated that prior to the incident occurring he was working with Officer C and Officer D. They were assigned to work a seatbelt mission, which is working in a designated area where the officers set up and observe cars to ensure people are wearing their seatbelts while driving.³ Officer B was working on 43rd Street and Wood Street when he received a flash message via the radio requesting officers to respond to the area of 46th Street between Paulina Street and Hermitage Avenue for assistance. The flash message also indicated that a Hispanic male was being chased by detectives in that area. Officer B relocated to that area, and upon arriving at the alley between Paulina Street and Hermitage Avenue, he and Officer C and Officer D exited their squad car and began searching the alley for Subject 1. There were other officers already searching in the alley, so Officer B soon began searching the south gangway behind 4604 S. Paulina Street and into that residence's backyard. All the officers were searching as a unit, but were not near each other while searching. When Officer B reached the back of the residence, he observed a metal staircase leading up to the second floor, a landing, and a third set of stairs leading to a third floor. Officer B described the area as the back portion of the residence that was on Paulina Street; however, there was an additional structure behind the main residence, what appeared to be a coach house that also had a wrought iron stairwell leading to a second unit. Officer B went into the front yard of the residence to search bushes and thrush then returned to the rear of the residence at 4604 S. Paulina Street.

As he got closer to the rear of the residence, Officer B observed something on the landing of the stairwell that looked like it was moving. The object was black in color. Officer B drew his gun and walked up two of the stairs. As he reached the second stair, Officer B looked down and observed Subject 1's white gym shoe on the first landing of the stairway. Officer B retreated back down the stairs and began giving Subject 1 verbal direction, saying, "Let me see your hands, let me see your hands!" Subject 1 stood up. Officer B continued yelling, "Let me see your hands!" Subject 1 ignored Officer B's commands. Subject 1 had his hands in front of him, near his crotch area and was wearing a black jacket, preventing Officer B from seeing his hands. Officer B also stated that at the time it was pouring rain, which was affecting his ability to see Subject 1's hands clearly as well.⁴ Subject 1 began turning to his right and as he turned, Officer B was able to see his hands and observed that Subject 1 was holding a chrome gun. Officer B began yelling out to the other officers in the area that Subject 1 had a gun and yelling at Subject

³ Officer B stated he was scheduled to work the seatbelt mission from 1600-1800 hours and that he was actually on furlough from the Chicago Police Department and this was an overtime initiative called, "Click it or Ticket" through the Illinois State Police. The initiative generally occurs during a major holiday, such as the Thanksgiving Holiday.

⁴ The incident occurred at approximately 1658 hours. It should be noted that at that time it was dark outside with only artificial street lighting for visibility and throughout this incident and after there was heavy rainfall.

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1 to drop the gun. Subject 1 made no response and brought the gun up and pointed it at Officer B. Fearing for his life, Officer B fired once at Subject 1. After he fired at Subject 1, Officer B moved a little to the side and immediately heard another gunshot. Not knowing where it came from, Officer B looked back up to the stairs and observed Subject 1 begin falling from the landing to the stairs, falling approximately two stairs.

Officer B stated he did not know who fired the other gun but knew that it was not Subject 1. Officer B continued asking to see Subject 1's hands and kept his gun pointed at Subject 1. Subject 1 eventually put both hands up and Officer B could see that they were empty. Officer B then commanded Subject 1 to stand up, and as he did, Officer B observed the gun on the stairs. It was at that time that Officer B observed Officer A standing to his right. Upon seeing Officer A, Officer B holstered his weapon and grabbed Subject 1 by the arm. Officer A went over and assisted Officer B in taking Subject 1 down on the concrete apron and handcuffing him. Officer B stated that at that time he still did not know who had also fired at Subject 1 but was aware that there were other officers in the immediate area. Once Subject 1 was in custody he informed the officers that he had been shot in the leg and they requested medical assistance for him. (Att. #15-16).

In a formal statement to the IPRA on 23 Nov 10, **Involved Officer A** stated he was working Beat 931 with Officer E and responded to an emergency 10-1 called over the radio. Officers were chasing a person that was wanted for a number of armed robberies. The chase was in the area of 46th Street and Paulina Street, which bordered Officer A's beat. Upon arriving in the area, Officer A and Officer E parked in the alley near 4640 S. Paulina Street and began searching for Subject 1. There were multiple other units and officers already present and searching for Subject 1 when Officer A and Officer E arrived. Officer A began walking through the gangways in an attempt to locate Subject 1. Officer A stated he was in the yard of the residence at 4602 S. Paulina Street when he heard Officer B yelling out that someone had a gun. Officer A described the residence at 4602 S. Paulina Street as a very large/long front yard and the residence sitting far back into the yard. Officer A heard Officer B yelling and turned, seeing that Officer B was approximately ten feet away from him, he ran over to assist him. Officer A observed Officer B standing at the bottom of a set of stairs in the rear of 4604 S. Paulina Street. Officer A explained that the layout of the property consisted of the main residence, a yard and a second unit, a coach house.

Officer A stopped at the edge of the coach house and observed Officer B to his right, standing at the bottom of the back stairs of the main residence at 4602 S. Paulina Street, yelling at Subject 1 to drop his gun. Officer A observed Subject 1 standing on a landing approximately 10 stairs above Officer B. At that time, Officer A also began yelling at Subject 1 to put his gun down and as he did, Subject 1 turned his body slightly in Officer A's direction making his gun visible to Officer A. Subject 1 then turned back towards Officer B and Officer A heard one gunshot. Officer A did not know at that time who had fired a gun, Subject 1 or Officer B. Subject 1 was still standing after the gunshot and so Officer A continued yelling at Subject 1 to drop his gun. Subject 1 turned towards

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Officer A again and Officer A saw that Subject 1 was still holding the gun and had it pointed in Officer B's direction. In fear for his life and uncertain if Subject 1 had already fired at Officer B, Officer A fired once at Subject 1. At that time, Subject 1 fell to the landing on the stairs and both Officer A and Officer B began commanding Subject 1 to show his hands and to let them see his hands. Officer A was unable to see all of Subject 1's body but observed Subject 1 raised both hands in the air. Subject 1 was no longer holding a gun in his hands. Officer A holstered his weapon and approached Subject 1 and observed Subject 1's gun at his side. Officer B reached Subject 1 before Officer A and together they pulled Subject 1 down the stairs by the arms. As soon as they reached ground level, Subject 1 started complaining that he had been shot in the leg as he was being handcuffed. Officer A did not see any injury to Subject 1 but stated that other officers requested medical assistance for Subject 1. Officer A estimated that he was standing approximately fifteen feet away and was standing below Subject 1 when he fired at him, as Officer A was on ground level and Subject 1 was on stairway landing. (Att. #17, 18).

A **canvass** was conducted and potential witnesses, Witness 1 and Witness 2, were identified. Multiple attempts were made to interview Witness 1 but she refused to provide a statement and later stated that she was not a witness to the incident. Attempts to contact Witness 2, who was a minor, were met with negative results. Neither Witness 2 nor her guardians cooperated with the investigation. (Att. #19, 22, 27, 28, 30, 32, 39).

Attempts to interview **Subject 1** were met with negative results. He did not cooperate with the investigation. (Att. #4, 23, 29, 33, 38).

Department reports including the Case Supplementary Report include accounts of the incident that are consistent with the Summary of Incident and the accounts provided to IPRA. (Att. #5-10, 26).

Subject 1 related to detectives that he was aware that police were looking for him for a parole violation and that he was running from officers for approximately two minutes when he ran onto a building's second floor landing. Subject 1 stated that he hid on the second floor landing because it was not at eye level and police would not see him there. Subject 1 stated he did have a gun on his person but that it did not contain a clip because he did not want to hurt anyone. Subject 1 stated he lay facedown on the landing with his arms bent at the elbow and his hands at his shoulders. Subject 1 stated he heard a police officer yell, "I got him! I got him!" The police officer told him to come down the stairs and that when the officer saw the gun on the floor he said, "Put it down!" Subject 1 stated he put the gun down on the ground and yelled, "It's right there. Don't shoot! Don't shoot!" Subject 1 then heard two shots. When questioned regarding the discrepancies in his story, Subject 1 had no response.

Subject 1 also admitted to his earlier participation in a robbery with a friend, [Man's Name Withheld], and initially stated he had only committed one robbery with [Man's Name Withheld] but later stated that during the commission of robberies he

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always held onto the gun (without a clip) because he did not trust [Man's Name Withheld] not to hurt anyone.

In a subsequent statement to detectives Subject 1 stated that when officers were chasing him, he went into a back yard and lay down on a wrought iron stairway landing that was above eye level and thought the police would not see him. Subject 1 stated that when the officers were yelling commands at him, he stood up with his hand raised and that the officers had no reason to shoot him. When questioned as to why officers were yelling at him to drop his gun, Subject 1 stated that when he stood up, the gun was in his hand but he dropped it and it was then that he was shot by the two officers. Subject 1 thought that he had been shot by only one of the officers, the one standing in front of him. (Att. #26).

The **Chicago Fire Department's Ambulance Report** indicates that paramedics responded to a call of a gun shot victim at 4219 S. Wabash Avenue.⁵ Upon arriving, paramedics encountered the subject, Subject 1, with gunshot wounds to both thighs lying on his back in the yard of 4219 S. Wabash Avenue. Subject 1 was transported to Stroger Hospital. (Att. #20).

Medical records from Stroger Hospital for Subject 1 indicated he was treated for a gunshot wound to both thighs. (Att. #35).

The **Tactical Response Report** Officer B indicates he fired his gun one (1) time. The Tactical Response Report for Officer A indicates he fired his gun one (1) time. (Att. #7-10).

An **Alcohol and Drug Test** was conducted on Officer B and Officer A. The testing consisted of a twenty minute observation period and a breath test and resulted in a Blood Alcohol Content (BAC) reading of .000. (Att. #34).

The **Office of Emergency Management Communications (OEMC)** Event Query indicates that at 16:51:47 hours a flash message was sent regarding a subject fleeing from police on foot; the subject was wearing all black and was in the alley at 45XX S. Paulina Street, between Paulina and Hermitage Streets; at 16:58:19 hours, a shots fired notification was made; officers initially suspected that there were 2 offenders and later determined that there was only one. (Att. #14, 21).

Evidence Technician Photographs and Crime Scene Videotape depict the crime scene; forensic evidence; and photographs of Subject 1 and his injuries at the hospital. (Att. #11-13).

⁵ The address of 4219 S. Wabash Avenue appears to be a typographical error as the address of the incident is not disputed and the patient, Subject 1, and his injuries were correctly notated in the report. (Att. #20).

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A report from the **Illinois State Police, Division of Forensic Services (ISP)** dated 14 Dec 10, indicated that Officer B and Officer A's weapons were examined, found to be in firing condition and test fired; one (1) fired cartridge case, recovered at 4604 S. Paulina Street, was fired from Officer B's weapon; one (1) fired cartridge case, recovered at 4602 S. Paulina Street, was fired from Officer A's weapon; and one (1) fired bullet, recovered from the pavement at 4604 S. Paulina Street, was fired from Officer B's weapon; Subject 1's weapon was inoperable as received due to a broken firing pin. It was rendered operable using reference parts and test shots were fired. The serial number on Subject 1's gun was obliterated and standard restoration techniques revealed only a partial serial number.⁶ (Att. #37).

⁶ Fired/unfired evidence locations were determined by cross referencing the Crime Scene Processing Report's photographs, markers and inventory numbers with the ISP report dated 14 Dec 10. (Att. #11, 37)

CONCLUSION AND FINDING:

This investigation found that the use of deadly force by Officer B and Officer A was in compliance with Department policy. According to the Chicago Police Department's General Order No. 02-08-03, III. *Department Policy*:

- A. "a sworn member is justified in using force likely to cause death or great bodily harm **only** when he or she reasonably believes that such force is necessary:
1. to prevent death or great bodily harm to the sworn member or to another person, or;
 2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - a. has committed or has attempted to commit a forcible felony which involved the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
 - b. is attempting to escape by use of a deadly weapon or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay."

Officer B and Officer A were justified in using force likely to cause death or great bodily harm when they fired at Subject 1 because at the time that they fired they were aware that Subject 1 had already committed a forcible felony in which bodily harm was threatened and reasonably believed that Subject 1 would use a gun to inflict great bodily harm or death to either of them. Both officers were aware that Subject 1 was wanted in connection to an armed robbery that had occurred earlier that day and that Subject 1 had already pointed a gun at a police officer while making good his escape. Subject 1 was holding a gun and was given repeated verbal commands to drop the weapon by both officers and he ignored the commands.