

INDEPENDENT POLICE REVIEW AUTHORITY

LOG #1052241/U# 12-06

INVESTIGATION

NUMBER: U# 12-06, Log# 1052241

OFFICER

INVOLVED #1: "Officer A" (Chicago Police Officer); Male/White; 51 years old; Off-duty; Civilian Dress; Year of Appointment – 1991

OFFICER'S

INJURIES: Abrasions to his left hand and contusions to his left leg.

SUBJECT:

"Subject 1"; Male/Hispanic; 17 years old

SUBJECT'S

INJURIES: Gunshot wound to the left side of forehead/scalp (possible bullet fragments to the head) and a laceration to the chin. Transported to Mount Sinai Hospital. Condition: Non-Fatal

INITIAL

INCIDENT: Verbal Altercation

DATE/TIME

OF INCIDENT: 29 February 2012, 2148 hours.

LOCATION:

3141 W. 26th Street
Beat 1033

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SUMMARY OF INCIDENT:

On 29 February 2012, at approximately 2135 hours, two Hispanic male subjects, now known as Subject 1 and “Third Male¹,” and a Hispanic female subject, now known as Witness 3, entered Los Comales restaurant. The group used the restroom in the restaurant and left shortly afterwards. Before the group left the restaurant, Subject 1 had a verbal confrontation with an unidentified male waiter. After the confrontation, Subject 1 made a “crown” sign at Officer A and left the restaurant. The “crown” sign signifies the Latin King street gang. At that time, Officer A followed the group to the parking lot to ensure that they left the premises. Subject 1 walked to a dark colored Nissan Altima, with license plate number “XXXXXXX,” which was already running in the restaurant’s parking lot. An unidentified driver of the Nissan Altima exited and Subject 1 got into the driver’s seat. Officer A had his baton out and continued to tell the group to leave the premises. Subject 1 then placed the Nissan Altima into drive and drove directly towards Officer A.

At that point, Officer A moved out of the way of the oncoming car. Subject 1 drove the Nissan Altima in reverse and then sped forward again towards Officer A, who had now moved towards a wooden fence. Officer A was nearly pinned between the Nissan Altima and the fence. Officer A, in fear of his life, got on the hood of the Nissan Altima and fired three shots into the driver’s side windshield of the Nissan Altima. Officer A then fell to the ground and Subject 1 drove northbound through the restaurant’s entrance driveway. As Officer A got off the ground, he observed Subject 1 applying the brake lights on the Nissan Altima. Officer A, in fear that Subject 1 was going to reverse the vehicle, fired his weapon two more times. Subject 1 then drove the Nissan Altima east onto 26th Street and then made an immediate turn going southbound onto Troy Street. Officer A then ran to the front of the restaurant and called 911 to report the incident. Subject 1 ultimately was involved in a traffic crash at 3158 W. 31st Street. He attempted to flee the scene, but he was eventually placed in custody after being tasered by an officer². Subject 1 was subsequently transported via ambulance to Mt. Sinai for medical treatment.

¹ During preliminary information, the second male subject was initially identified as Witness 4. The Case Supplementary Report documented that “Third Male” was the other male subject that entered the restaurant with Subject 1. There is no further information on “Third Male.”

² Subject 1 was tasered by CPD Sergeant 1 and the incident was reported under Log # 1052242.

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In a statement to IPRA on 02 March 2012, Involved Officer A stated that on the date of the incident he was off-duty and working secondary employment at Los Comales Restaurant. While working, Officer A observed two male subjects (now known as Subject 1 and “Third Male”) and one female subject (now known as Witness 3) enter the restaurant and go immediately to the washrooms. Shortly afterwards, the group exited the restaurant. Prior to the group exiting the restaurant, Subject 1 made a statement to a male waiter. Officer A stated that he could not make out what Subject 1 told the waiter, but it sounded belligerent because it had an aggressive tone. Subject 1 then exited the restaurant. As Subject 1 exited the restaurant, he made eye contact with Officer A and “threw out the crown sign with his hand.” According to Officer A, the crown sign signifies the Latin King gang sign. Officer A then exited the restaurant and followed Subject 1, “Third Male,” and Witness 3. As Officer A followed the group, he told them to “keep going.”

At that time, Subject 1 became belligerent and he and Officer A exchanged words. Witness 3 and “Third Male” did not say anything. Officer A continued to follow Subject 1 as he went to the restaurant’s parking lot. In the parking lot, Officer A observed a small dark vehicle running with two subjects in the vehicle. At that point, Officer A felt that something was wrong so he pulled out a pen and wrote the license plate number of the vehicle on his left hand palm. Officer A explained that he felt very apprehensive because there were additional people. Subject 1 and the group then started to be belligerent towards Officer A. Officer A then pulled out his wooden baton and announced his office. Officer A started to swing his baton, so that the group would back down and leave the premises.

At that time, the driver of the vehicle exited and Subject 1 got into the driver’s seat. Officer A stated that at this time two people were in the vehicle, Subject 1 and an unknown passenger³, and two people⁴ were standing outside hovering behind the vehicle. The vehicle started revving and Officer A placed his baton back in his belt ring. Officer A then pulled out his gun. A moment later, Subject 1 drove the vehicle towards Officer A. Officer A moved towards a guard shack as Subject 1 attempted to strike him with the vehicle. Officer A stated that the vehicle was going at least fifteen miles an hour. Subject 1 pinned Officer A in so that he had no where to go. Subject 1 then placed the vehicle in reverse, and Officer A moved to the front of the guard shack. A male subject⁵, who was initially hovering behind the vehicle, approached Officer A and pushed a garbage can at him in an attempt to strike him. The garbage can missed Officer A.

³ The Case Supplementary Report documented that Witness 3 stated that she was in the vehicle when Subject 1 entered the vehicle.

⁴ The Case Supplementary Report documented that Witness 3 stated that she was in the vehicle with Subject 1 while Witness 4 and “Third Male” stood by the vehicle.

⁵ The Case Supplementary Report documented that Witness 4 admitted to pushing the garbage can at Officer A.

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At that point, Officer A heard the vehicle's car revving again. Officer A then backed up with his gun in his hand. As he backed up, Subject 1 accelerated the vehicle at least fifteen to twenty miles per hour. Officer A noticed that he had no where to go and that he was trapped against a fence, so he attempted to mitigate the hit by trying to jump up a little. The vehicle struck the lower part of Officer A's legs or knees. Officer A stated that he struck his right shoulder on the vehicle which caused him to be untethered onto the hood of the vehicle. At that time, Officer A, in fear of his life, fired his gun three times towards Subject 1 while falling off the hood of the vehicle. Subsequently, Officer A fell to his feet on the passenger side of the vehicle. As Subject 1 drove the vehicle towards the entrance of the restaurant's parking lot on 26th Street, he stopped the vehicle. Officer A, still in fear of his life, observed the brake lights come on and believed that Subject 1 was going to come back for him by reversing the vehicle, so he fired his weapon two more times. Subject 1 then turned the vehicle eastbound on 26th Street. Officer A proceeded to go into the restaurant and made a motion with his hand for the cashier to call 911.

Officer A stated that he was so shaken by the incident that he did not think to use his own cellular phone to call 911. Officer A then called 911 and reported the incident. Shortly afterwards, the police responded to the scene. Officer A stated that he later learned that Subject 1's car crashed on 31st and Kedzie and that Subject 1, Witness 3, and Witness 4 were apprehended and placed into custody. Officer A stated that he sustained abrasions and cuts to his lower left leg and cuts to his left hand. He went to Mt. Sinai hospital for medical treatment.

In an interview with IPRA dated 07 November 2012, Witness 1 stated that he was at home playing his video game when he heard a loud noise outside. Witness 1 went to his window and observed a black vehicle facing a security guard (now known as Officer A) and two guys were next to the vehicle. Witness 1 stated that his window looks into the Los Comales Restaurant parking lot. Shortly afterwards, Witness 1 observed the vehicle drive towards Officer A. Witness 1 stated that the two guys were still standing outside next to the car. According to Witness 1, the vehicle moved forward and stopped approximately three times towards Officer A. The third time, the vehicle forced Officer A to move towards a fence. Once Officer A was against the fence, he held his hands up while his back was against the fence. Officer A then took out his gun and shot at the vehicle. Witness 1 stated that Officer A fired his weapon three to five times at the vehicle. After Officer A fired at the vehicle, the vehicle drove off and turned eastbound on 26th Street. Officer A then attempted to follow the vehicle. The vehicle then turned southbound on Troy Street and two guys entered the vehicle. The vehicle then drove off.

In an interview with IPRA dated 21 March 2012, Witness 2 stated that he parked his vehicle on Troy Street, just east of the Los Comales Restaurant parking lot. At that time, Witness 2 observed a black vehicle reverse on Troy Street and enter the parking lot of Los Comales. An unknown male and female subject exited the vehicle and entered the restaurant. The driver of the vehicle stayed in the car. Witness 2 then heard a loud noise and what sounded like people arguing. A moment later, he heard five to six

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gunshots in rapid succession. Witness 2 then observed the black vehicle turn onto Troy Street from 26th Street. The vehicle continued heading southbound on Troy Street. Shortly afterwards, several squad car arrived on the scene. Witness 2 was unable to provide any further information.

Attempts to contact and interview Subject 1 were unsuccessful. Subject 1's attorney, Attorney A, refused to allow him to be interviewed.

The related **Department Reports, which include the Arrest Report and Original Case Incident Report**, included an account of the incident that is consistent with the Summary of Incident. Subject 1 and Witness 4 were both arrested and charged with Attempted Murder.

An Illinois Traffic Crash Report documents that Unit 1, Subject 1's vehicle was driving westbound at a high rate of speed to evade CPD Beat 1032. Subject 1 lost control of his vehicle and spun into oncoming traffic. Unit 2, driven by Witness 6, was driving eastbound when Subject 1's vehicle slid in front of Witness 6 vehicle, striking the vehicle in the front. Subject 1's vehicle slid into a vacant lot and struck a fence. All passengers in Subject 1's vehicle was subsequently placed into custody.

The Case Supplementary Report included accounts of the incident that were consistent with the summary of the incident. In the Case Supplementary Report, Witness 1, Witness 2, and Officer A provided essentially the same account in their statements with IPRA. Officer A added that Subject 1 and Witness 4 became aggressive and directed profanities at him while in the restaurant's parking lot. Subject 1 and Witness 4 were aggressively clinching their fists and appeared to be ready to rush Officer A to strike him. After Subject 1 got into the vehicle, he drove towards Officer A at a high rate of speed in an attempt to strike him.

In the Case Supplementary Report, Subject 1 provided an account of the incident. Subject 1 stated that he was "sorry" and that he "had too much to drink." Subject 1 stated that he tried to scare the officer (now known as Officer A) by displaying the "crown," which is a Latin King gang sign. Once Subject 1 was behind the wheel of the car, he attempted to scare Officer A by driving the car towards him. Subject 1 stated that he learned that Officer A was an officer when Witness 3 told him that the person escorting him out of the restaurant was a cop. Subject 1 stated that he was not trying to kill the officer.

In the Case Supplementary Report, Witness 3 provided an account of the incident. Witness 3 stated that she, "Nickname" (Subject 1), "Nickname" (Witness 4) and "Third Male" were driving around and stopped at Los Comales Restaurant because she had to go to the bathroom. After she exited the bathroom, she observed Subject 1 and "Third Male" in the restaurant being loud and one of them stated, "King love," which she knew as a Latin King gang slogan. Witness 3 warned Subject 1 and "Third Male" that there was a police officer acting as a security guard in the restaurant. At that time, Subject 1 stated, "Fuck the police," and the police officer (now known as Officer A) told Subject 1 to

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leave. Shortly afterwards, Witness 3 got into the backseat of the vehicle while Subject 1, Witness 4, and “Third Male” stood by the vehicle. Witness 3 then observed Subject 1 throwing up the “crown,” which is a Latin King hand gesture. At that point, Subject 1 got in the driver’s seat and drove the vehicle towards Officer A in an attempt to run him over. Officer A then shot at the car. Witness 3 stated that she observed Officer A on the hood of the vehicle. At that time, Subject 1 drove the car out of the lot and picked up Witness 4 and “Third Male” on Troy Street. Subsequently, Witness 4 and “Third Male” exited the vehicle and Subject 1 was involved in a traffic accident.

In the Case Supplementary Report, Witness 4 provided an account of the incident consistent with Witness 3. Witness 4 added that he drove his mother’s boyfriend’s vehicle to Los Comales Restaurant. When Subject 1 exited the restaurant, he got into the driver’s seat of the vehicle without Witness 4 permission. After Subject 1 got into the vehicle, Witness 4 observed a white man (now known as Officer A). Subject 1 seemed angry and Witness 4 believed that Subject 1 was going to try to run Officer A over with the car. At that time, Witness 4 kicked a garbage can to the ground so that Subject 1 could drive the car at Officer A. Officer A started shooting at the car and Subject 1 drove away. Subject 1 then drove around and picked up Witness 4 and “Third Male.” Subsequently, Witness 4 jumped out of the vehicle and was apprehended by the police.

In the Case Supplementary Report, Witness 5 provided an account of the incident. Witness 5 stated that she was at home and heard noise outside, which she described as something hitting metal. She looked out of her bedroom window, which is adjacent to the parking lot of Los Comales Restaurant, and observed a dark colored vehicle speed towards a man (now known as Officer A) and try to hit him. The vehicle backed up, chased Officer A, and then struck Officer A. Officer A pulled out a gun and shot at the vehicle while he was in front of the vehicle. Officer A then landed onto the hood of the vehicle and fell off. The vehicle then sped away turning onto 26th Street. Witness 5 then observed the car turn onto Troy Street and head southbound. The vehicle then stopped at a parking lot entrance to the restaurant on Troy Street. At that time, two men entered the vehicle and the car sped away.

In the Case Supplementary Report, Witness 6 stated that his vehicle was struck by another vehicle, which was Subject 1’s vehicle. Subject 1 had no further knowledge of the incident.

Attempts to contact and interview witnesses Witness 4, Witness 3, Witness 5, and Witness 6 were met with negative results.

The Chicago Fire Department (CFD) EMS Incident Report documents that paramedics responded to 3200 W. 31st Street and observed Subject 1 conscious and alert. Subject 1 had a gunshot wound to his head with a possible entrance to the top left forehead. Subject 1 was not cooperative. Paramedics noted that Subject 1 did not have any other obvious sign of injury. Subject 1 was transported to Mt. Sinai Hospital for medical treatment.

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Medical Records from Mt. Sinai Hospital for Subject 1 document that he tested positive for alcohol. Subject 1 was diagnosed with an acute scalp laceration and an acute subarachnoid hemorrhage.

Medical Records from Mt. Sinai Hospital for Officer A document that he was diagnosed with abrasions to his left hand and contusions to his left leg s/p⁶ struck by auto.

The Tactical Response Report (TRR) completed by Officer A documents that Subject 1 was an “assailant” who “did not follow verbal direction, posed an imminent threat of battery, attacked with a weapon (motor vehicle), and used force likely to cause death or great bodily harm.” Officer A used member presence and his firearm in an attempt to subdue Subject 1. Officer A fired a total of five shots from his firearm, a Smith & Wesson, Model 649.

An Officer’s Battery Report (OBR) documents that Officer A sustained non-fatal – minor injury.

The Crime Scene Processing Report listed that Officer A’s weapon, a Smith & Wesson, Model P649, .38 caliber, revolver, was inventoried under number 12550913, and no bullets were recovered from his weapon.

Evidence Technician Photographs and Videotape depict what appear to be the location of incident, the recovered evidence, and photographs of Subject 1, Witness 4, and Officer A. The photographs of Officer A depict a bruise to his left leg and left hand. In addition, Officer A had “XXXXXXX” written on the palm of his left hand.

Office of Emergency Management and Communications Records (OEMC) document that on 29 February 2012, an unidentified female employee from Taqueria Los Comales called 911 and reported that there were gang bangers shooting, fighting, and provoking a big chaos. The unidentified female employee stated that her manager told her that individuals were hitting and fighting a cop (now known as Officer A) in front of the restaurant. On the same date, two unidentified male callers called 911 on separate occasions and reported hearing gunshots in the vicinity of 26th and Troy. On 29 February 2012, Officer A, called 911 and reported “10-1,” shots fired by the police, at 26th and Troy. Officer A reported that a dark colored car, with license plate number “XXXXXXX,” struck him with the car and went eastbound on 26th Street. Officer A went on to report that the three occupants in the car were male Hispanics between the ages of 19-25. He also stated that two guys ran off and that there was a camera at the location of incident. Officer A clarified that the location of incident was Los Comales Restaurant located at 3141 W. 26th Street. Officer A further stated that he shot at the windshield of the vehicle that fled the scene.

On the same date, a caller by the name of “[Female]” called 911 and requested police assistance at 3141 W. 26th Street, Los Comales Restaurant. She stated that the

⁶ Abbreviation for status post

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security guard (Officer A) of the restaurant ran outside after two Hispanic gang bangers and a Hispanic girl. “[Female]” stated that Officer A told her to call the police. On 29 February 2012, shots fired by an off-duty police officer, Officer A, were reported at 2600 S. Troy. The dispatcher provided a license plate number of “XXXXXXX” and stated that three male Hispanics were involved. The dispatcher later clarified the location of incident as 3141 W. 26th Street, Los Comales Restaurant. An unknown officer reported that a black Nissan Altima, with license plate number of “XXXXXXX,” crashed at 31st and Kedzie.

In Car-Camera footage from Beats 1013, 1032, and 1020 did not capture the incident. In addition, the footage failed to provide anything significant to this investigation.

Video Surveillance from Los Comales Restaurant showed that at 21:38:14 hours, two male subjects (now known as Subject 1 and “Third Male”) and one female subject (now known as Witness 3) were observed exiting Los Comales in Camera View 5. Shortly afterwards, another male subject (now known as Officer A) exited the restaurant in Camera View #5. All the subjects walked eastbound and then southbound to the restaurant’s parking lot, which was observed in Camera Views #3 and #4. At 21:39:03 hours, Camera View #2 showed a dark colored vehicle driving slowly in Los Comales’ parking lot with two subjects, one who appeared to be Subject 1, walking behind the vehicle. Subject 1 and one of the subjects approached the dark colored vehicle and appeared to be speaking to the driver. The driver of the vehicle then exited. Officer A, Subject 1, and the driver then appeared to have an exchange of words.

At that point, one of the male subjects, now identified as Subject 1, got into the driver’s set of the dark colored vehicle. Subject 1 then sped forward towards Officer A. Subject 1 then drove the vehicle in reverse and it appeared that a male subject (now known as Witness 4) knocked a garbage can to the ground. After Subject 1 put the vehicle in reverse, Subject 1 then drove towards Officer A again. At 21:39:56 hours, Officer A was observed falling off the hood of dark colored vehicle. Officer A then ran against what appeared to be a wooden fence, and Subject 1 appeared to drive alongside the fence as well in an attempt to strike or pin Officer A against the fence. Officer A then appeared to fire his weapon three to four times because muzzle flashes were observed by the fence.

At 2140 hours, Subject 1 drove northbound through the entrance of Los Comales Restaurant located at 26th Street, which is observed in Camera View #1. When the vehicle reached the opening of the entrance, Subject 1 applied the brake lights. Simultaneously, Officer A appeared to fire his weapon again twice. Officer A then walked to the front of the restaurant and appeared to be talking on a cellular phone. At 21:53:47 hours, the police arrived on scene.

A **canvass** of the vicinity of the location of incident did not produce any other witnesses.

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A Breathalyzer Test taken on 01 March 2012, at 0126 hours, revealed that Officer A's BAC was .000. Officer A also submitted to a drug test on the same date, at 0135 hours, which revealed negative results.

An ISP Report, dated 30 March 2012, documented that Officer A's weapon, a Smith & Wesson, Model 649, was test fired, examined, and found to be in firing condition.

Court Records document that Subject 1 case is still pending and he has an outstanding warrant for his arrest.

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FINDINGS:

The investigation found that the use of deadly force by Officer A was in compliance with Chicago Police Department policy. According to the Chicago Police Department's General Order No. 03-02-03, II:

- 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.

Subject 1 was an assailant who attempted to strike Officer A with a vehicle. The witnesses' account of the incident is consistent with the Department Reports. In addition, video surveillance footage from Los Comales Restaurant showed Subject 1 driving a car towards Officer A's direction twice placing Officer A in fear of his life. As a result, Officer A fired his gun several times at Subject 1 to eliminate the threat. Therefore, based on the totality of the circumstances, Officer A was reasonably in fear of his life and fired his weapon at Subject 1 to prevent death or great bodily harm.