

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1052718/ U#12-09

INVESTIGATION

NUMBER: Log #1052718 / U #12-09

OFFICER

INVOLVED: "Officer A" (Chicago Police Detective); Male/Spanish; 43 years old; Off-Duty; In Civilian Clothes; Year of Appointment – 1991

OFFICER'S

INJURIES: None Reported

SUBJECT: "Subject 1"; Female/Black; 21 years old

SUBJECT'S
INJURIES: One (1) gunshot wound to head; FATAL

SUBJECT: "Subject 2"; Male/Black; 39 years old

SUBJECT'S
INJURIES: One (1) gunshot wound to right hand

DATE/TIME: 21 March 2012, at approximately 0105 hours

LOCATION: 3116 W. 15th Place

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ALLEGATIONS:

IPRA Investigator A, alleges that on 21 March 2012, at approximately 0105 hours, at 3116 W. 15th Place, Accused Chicago Police Officer A, Unit 376:

1. failed to qualify with his weapon;¹
2. violated the provisions of General Order 03-02-03, Section III, by discharging his firearm at Subject 2;
3. fired his firearm into a crowd, in violation of the provisions of General Order 03-02-03, Section III, striking Subject 1; and
4. provided inconsistent accounts of this event in his deposition, detective interview, his Tactical Response Report (TRR), and to the State's Attorney's Office (SAO).

¹ Officer A was given an allegation for having an unregistered firearm during this incident. It was later learned that he was already disciplined by the Chicago Police Department for the infraction on the date of the incident. Officer A was given a Summary Punishment Action Request (SPAR), because he failed to register his weapon with the Chicago Police Department as required by the Chicago Police Uniform and Property Order U04-02. It should be noted that Officer A's weapon was legally purchased and owned. Officer A cannot be disciplined twice for the same infraction of having an unregistered weapon. However, Officer A did not qualify with this same weapon as required by CPD Directives. This infraction will be addressed in this investigation.

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INVESTIGATION:

The IPRA Preliminary Report documents that on 21 March 2012, shortly after 2300 hours, off-duty Officer A, arrived home, located at XXXX S. Albany Avenue, after working the Illinois Primary Elections. When he arrived home, Officer A subsequently observed a large group of people in Douglas Park. Officer A observed a disturbance in the park and contacted 911.

Officer A then entered his residence, showered and changed clothes to leave. At approximately 0100 hours, Officer A exited his residence through the rear door, opened his rear gate, entered his vehicle, and started to drive from the rear of his residence. Officer A turned south into the alley between Albany Avenue and Kedzie Avenue and proceeded to drive towards 15th Place. As Officer A drove south in the alley, he observed two black males, now identified as Subject 2 and Witness 1, walking westbound on the sidewalk. Officer A then observed two females, now identified as Subject 1 and Witness 2, approximately 10 feet behind Subject 2 and Witness 1.

As Officer A approached the mouth of the alley, he yelled to Subject 2 and Witness 1 through the open driver's side window of his vehicle, "Hey, keep it down, people live here!" Subject 2 responded, "Fuck that," and, according to Officer A, pulled a gun from his waistband and extended his arm towards Officer A. Officer A crouched down in the front driver's seat of his vehicle and stated, "Please don't. Police! Police!" Subject 2 proceeded to walk towards Officer A's vehicle with the gun in his hand and his arm extended. Officer A fired five shots from the open driver's side window of his vehicle. Subject 2 and Witness 1 then ran west on 15th Place. Officer A observed Witness 2 standing in the mouth of the alley while Subject 1 was lying face down on the ground in the mouth of the alley.

Subject 2 and Witness 1 flagged down a marked police vehicle, Beat 1022R, which was occupied by Officer B, and Officer C. Subject 2 told the officers that he had been shot by a white male (Officer A) and the officers then proceeded towards Officer A. As Officers B and C approached Officer A, Officer A was calling 911 to request an ambulance and make notification of shots fired by the police. The officers exited their vehicle and instructed Officer A to drop his weapon. Officer A identified himself as a Chicago Police Detective and explained the situation. As Officers B and C spoke with Officer A, Subject 2 returned to the scene and Officers B and C instructed him to sit on the curb by the alley. Subsequently, Subject 1 and Subject 2 were transported to Mount Sinai Hospital. Officers and the canine unit searched the area for the gun Officer A reported he believed Subject 2 possessed at the time of the shooting, but no weapon was ever recovered.

The Major Incident Notification (MIN) Report essentially related the same information as reported in the IPRA Preliminary Report.

In his statement to IPRA on 21 March 2012, **Subject 2** stated that on the date of the incident, he was in Douglas Park with his friend, Witness 1, and two of Witness 1's

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female friends, Subject 1 and Witness 2. Subject 2 stated there were several more people in the park and they were all drinking beer and “smoking a blunt.” At some point, Subject 1 or Witness 2 stated they needed more cigarettes, so Subject 2, Witness 1, Subject 1, and Witness 2 decided to walk to a store on Kedzie Avenue.

As the group walked westbound on 15th Place, Subject 2 and Witness 1 walked side by side, with Witness 1 just slightly ahead of Subject 2. Subject 2 recalled that Subject 1 was in front of him to his right side but he could not recall Witness 2’s position. As the group approached the mouth of the north alley² on 15th Place, a black Mercedes drove slowly out of the alley. Subject 2 observed a white male, now known as Officer A, driving the vehicle. Officer A yelled something out of the window and Subject 1 replied, but Subject 2 could not recall the statement.

At that same time, Subject 2 was attempting to place a phone call on his cellular phone to his cousin, Witness 3, but the call did not go through. After hearing the exchange of words between Officer A and Subject 1, Subject 2 told Officer A to “get the fuck up outta here”³ as he waved off Officer A with his cellular phone in his right hand.

Subject 2 described the waving motion as his right hand in front of his body waving his hand as if to say “go.” Subject 2 stated he told Officer A to “get the fuck up outta here” because he believed that Officer A was trying to buy drugs. At that time, Officer A fired four to five shots from inside his vehicle. Subject 2 stated that he was approximately six feet from Officer A’s vehicle when Officer A fired his weapon. Subject 2 ran towards Kedzie Avenue and realized he was shot in the hand. Subject 2 observed a police vehicle turning eastbound onto 15th Place. Subject 2 flagged down the police vehicle and told Officers B and C that he was shot by a “white man in a small car.”⁴

Officers B and C proceeded towards the alley on 15th Place while Subject 2 walked back towards the scene with Witness 1. Subject 2 stated neither he nor Witness 1 ever left the scene. Subject 2 sat down by a pole at which time he observed that Subject 1 was laying in the alley, apparently shot. Subject 2 then asked Officer A “why the fuck did you shoot me?” Subject 2 said Officer A replied, “I thought that your phone was a gun.”⁵ Shortly afterwards, Subject 2 attempted to pick up his cellular phone from the ground, but the officers told him to put it down. Subject 2 denied that he was armed with a gun during the incident and denied that Witness 1, Subject 1 or Witness 2 were in possession of a gun during the incident. Subject 2 stated that prior to the incident he had been drinking a small amount of beer and liquor, and had smoked some marijuana. Subject 2 stated he was not intoxicated during the incident.

² The alley is west of Albany Avenue and runs north and south.

³ Page 7, Lines 6-8

⁴ Page 8, Line 31

⁵ Page 9, Line 13

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Subject 2 stated he was shot in his right thumb and was transported via ambulance to Mt. Sinai for medical treatment. Subject 2 denied knowing Officer A prior to the incident. Subject 2 stated Officer A never identified himself as a police officer.

In his statement to IPRA on 22 March 2012, **Witness 1** stated that on the date of the incident, he was with “[Nickname]” (Subject 2), “[Nickname]” (Subject 1), and “[Nickname]” (Witness 2). The group was at Douglas Park and at some point decided to walk to the store. As the group walked westbound on 15th Place, Witness 1 was ahead of the others walking on the sidewalk. Subject 1 and Witness 2 were behind him, and Subject 2 was behind Subject 1 and Witness 2. Witness 1 then observed a white male subject, now known to be Officer A, in a black BMW drive out of the alley. At that time, Officer A stated, “Keep the fuckin noise down,”⁶ to which Witness 1 replied, “Fuck you.”⁷ Officer A then turned east on 15th Place⁸ and pulled to the side of the curb. At the same time, Subject 2 started to walk towards the sidewalk from the street while Witness 1 walked behind Officer A’s vehicle and across the alley.

After he walked across the alley, Witness 1 heard approximately five to six gunshots and immediately began to run west on 15th Place. Witness 1 stated he did not know if Subject 2 and Officer A exchanged words prior to Officer A firing his weapon. While Witness 1 was running down the street, he observed Subject 2 running alongside of him stating, “I just got shot. I just got shot in my hand.”⁹

Subject 2 then observed a police vehicle and flagged down the officers in the vehicle. Officers B and C spoke to Subject 2 and then proceeded towards Officer A. Subject 2 and Witness 1 then walked back towards the scene. Witness 1 denied leaving the scene and stated he heard Subject 2 and Officer A arguing. During the argument, Witness 1 heard Officer A tell Subject 2 that “he (Subject 2) pointed a phone at him.”¹⁰ Witness 1 related Officer A told Officers B and C to “not let him (Subject 2) touch the phone.”¹¹

Eventually, Witness 1 left the scene when he observed Witness 2 leave. Witness 1 then drove to Mt. Sinai Hospital. At the hospital, Witness 1 was not allowed to see Subject 2 or Subject 1, so he left. Witness 1 then went home to his girlfriend, now known as Witness 4. Approximately an hour or two later, the police came to Witness 1’s residence and transported him and Witness 4 to Area 3 Detective Division.

Witness 1 stated while at Area 3 Detective Division, an unknown male detective told him to say that he saw Subject 2 pointing his phone at Officer A. Witness 1 was told

⁶ Page 8, Lines 7-8

⁷ Page 8, Line 8

⁸ Officer A turned the wrong way by driving east on a one way westbound street.

⁹ Page 8, Lines 16-17

¹⁰ Page 10, Lines 17-18

¹¹ Page 44, Lines 13-15, 21-22

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that if he did not make the statement the detective would “put a case on him.”¹² Witness 1 stated he then provided an account of the incident to Assistant State’s Attorney 1, stating that Subject 2 had his arm extended and was pointing his phone at Officer A. After Witness 1 provided the account to Assistant State’s Attorney 1, detectives transported him to 26th and California to provide a statement in front of the Grand Jury. When Witness 1 arrived at 26th and California, he refused to provide a statement to the Grand Jury.

Witness 1 explained that part of his account was inaccurate and he did not want to lie to the Grand Jury. Witness 1 spoke to Assistant State’s Attorney 2 and informed her that he did not observe Subject 2 extend his arm out, and that he had been told to make the statement by a detective. Assistant State’s Attorney 2 then informed Assistant State’s Attorney 1 about the incident. Assistant State’s Attorney 1 approached Witness 1 and asked him why he did not inform him of this, to which Witness 1 explained that he, “was scared to say something.”¹³ Witness 1 was excused and did not provide a statement to the Grand Jury.

Witness 1 stated he observed Subject 2 with his cellular phone in his hand prior to the shooting. Witness 1 could not recall if Subject 2 was talking on his cellular phone prior to the incident, but denied observing Subject 2 make any motion with the cellular phone. Witness 1 stated he did not know if Subject 2 pointed his cellular phone at Officer A during the incident. According to Witness 1, he consumed one cup of tequila and smoked marijuana prior to the incident, but he was not intoxicated. Witness 1 denied that he, Subject 2, Witness 2, or Subject 1 were in possession of a weapon during the incident. Witness 1 believed that Officer A had been drinking prior to the incident.

In a second statement to IPRA on 30 July 2012, Witness 1 clarified that on the date of the incident he was walking on the street and Subject 1 and Witness 2 were walking behind him while Subject 2 was walking in the street. When Officer A drove up in his car, Witness 1 was “right up on the car”¹⁴ on the driver’s side. Officer A made a comment and Witness 1 replied, “Fuck you.”

At that time, Subject 2 and Officer A had contact with each other. Witness 1 recalled that Subject 2 and Officer A were within three feet of each other when they exchanged words. Witness 1 could not recall what Subject 2 and Officer A stated to one another. Witness 1 then heard gunshots. Witness 1 denied observing Subject 2 walk towards Officer A’s vehicle prior to hearing the gunshots. Witness 1 stated Subject 2 had a phone in his hand during the incident, but he denied observing Subject 2 reach for his waistband or take the phone out of his pocket. Witness 1 recalled that after the first two

¹² A confidential complaint number was filed regarding Witness 1’s allegation that he was coerced into providing a statement. The complaint was investigated by the Chicago Police Department Bureau of Internal Affairs. During the investigation, Witness 1 decided not to pursue the complaint.

¹³ Page 39, Lines 17-18

¹⁴ Page 4, Line 24

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officers arrived on the scene, he heard Officer A state, "I thought your phone was a gun."¹⁵

After the ambulance arrived on the scene, Witness 1 walked off with Witness 2 and Witness 3. Witness 2 then went to the hospital with an unknown male subject and he went to the hospital by himself. When Witness 1 finally got home, he informed his girlfriend, Witness 4, of the incident. Witness 1 denied telling Witness 4 that Subject 2 used his phone to represent a gun. Witness 1 denied observing Subject 2 wave a phone during the incident and that an unknown detective coerced him into making the statement.

In her statement to IPRA on 24 March 2012, **Witness 2** stated that on the date of the incident, she was at Douglas Park with Subject 1, Subject 2, Witness 1, and several other people. At some point, Subject 2 and Witness 1 decided to go to the store and Subject 1 and Witness 2 decided to walk with them. As the group walked to the store, Subject 2 and Witness 1 walked ahead of Witness 2 and Subject 1. Shortly afterwards, Witness 2 observed Officer A drive a black vehicle out of the alley.

Officer A yelled to the group, "Yall need to watch it with the noise. That's why the fucking police always around here."¹⁶ At that time, Witness 1 stated "fuck you" three times and waved his left hand as if to "flick dude (Officer A) off as if whatever."¹⁷ Witness 1 and Subject 2 then continued walking across the alley with Witness 2 and Subject 1 following behind. Witness 2 stated she believed that they all walked around the front of Officer A's vehicle. After going around the vehicle, Witness 2 heard gunshots. Witness 2 then ran to a tree that was not far from the alley.

When Witness 2 did not notice Subject 1 running past her, she turned around and observed Officer A firing a gun while seated inside his vehicle. Witness 2 recalled she heard twenty (20) gunshots, but only saw "five sparks"¹⁸ coming from Officer A's gun. According to Witness 2, Officer A had his left arm resting on the outside of the driver's door while he fired his weapon with his right hand out of the driver's window. Witness 2 stated Officer A's vehicle was halfway in the alley and halfway in the street, as he had not made a complete left turn.

Witness 2 stated Subject 2 and Witness 1 ran towards Kedzie Avenue and flagged down the police. Witness 2 observed Subject 1 lying on the ground in the alley and started to scream and cry. Witness 2 approached Subject 1 and observed that she was bleeding from her head. At that time, the police were on the scene. Officers B and C spoke with Officer A while Subject 2 attempted to pick his cellular phone up from the ground, as he had dropped the phone when he was shot. Witness 2 stated she could not recall where Witness 1 was located after the shooting, but could recall that Subject 2 sat on the curb

¹⁵ Page 9, Lines 19-20

¹⁶ Page 8, Lines 5-7

¹⁷ Page 8, Lines 8-10

¹⁸ Possibly muzzle flashes; Page 15, Line 28

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As Subject 2 sat on the curb, he asked Officer A “why did you shoot me?”¹⁹ to which Officer A replied, “I thought your phone was a gun.”²⁰ The officers then told Witness 2 to leave the scene.

Witness 2 walked back to the park and then went to Mt. Sinai Hospital. After Witness 2 left the hospital, she went to Area 3 Detective Division.

Witness 2 stated that Subject 2 was not talking on his cellular phone when the group walked across the alley in front of Officer A’s vehicle. Witness 2 stated Officer A never identified himself as an officer before he fired his gun. Witness 2 denied observing Subject 2 say anything or do anything with his hands prior to Officer A firing his gun. Witness 2 denied observing anything in Subject 2’s hands during the incident and denied that Subject 2 had a weapon.

In his statement to IPRA on 22 March 2012, **Witness 3** stated that on the date of the incident, he was at Douglas Park with his cousin, Subject 2, and several other friends. At some point, Subject 2 decided to go to the store to get some more cigarettes and Witness 1, Subject 1, and Witness 2 went with him. At approximately 0103 hours, Witness 3 called Subject 2 on his cellular phone to remind him to buy potato chips while at the store. While Witness 3 was on the phone, he heard Subject 2 state, “Who is this? Who is this rolling up?”²¹ Witness 3 asked Subject 2 who was he referring to, but Subject 2 did not respond. Witness 3 then heard a male voice state, “Yall selling drugs? What yall doing right here?”²²

Witness 3 overheard Witness 1 respond to the male that they were coming from the store and were headed back to the park. Witness 3 then heard Witness 1 say “they were not on none of that” and “to get away from here.”²³ Based on the context of what he overheard through the open phone line, Witness 3 inferred that the group believed that the male was looking for drugs.

While Witness 3 was still on the phone, he heard five gunshots. Witness 3 stated that he heard the gunshots from the park and through the open phone line. Witness 3 then lost the phone call with Subject 2. Subsequently, Witness 3 attempted to call Subject 2 back five or six times, but could not get an answer. Witness 3 then got into his vehicle and drove to 15th Place and Albany Avenue. When he arrived at the location, he observed Subject 1 bleeding from her head and Subject 2 sitting against a light pole.

Witness 3 stated he had one beer prior to the incident. Witness 3 denied observing Subject 2, Witness 1, Subject 1, or Witness 2 with any weapons prior to the incident.

¹⁹ Page 23, Lines 1-2

²⁰ Page 23, Lines 2-3

²¹ Page 5, Line 12

²² Page 5, Lines 21-22

²³ Page 5, Lines 27-28

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In her statement to IPRA on 20 July 2012, Witness 4 stated that on the date of the incident, Witness 1 came home and told her that somebody “came up the alley” and he (Witness 1) stated, “Fuck you.” Witness 1 then heard gunshots and Subject 2 got shot. About an hour or two later, the police came to their residence and took them to the police station. At the police station, Witness 4 was questioned by detectives. Witness 4 denied witnessing the incident. Witness 4 denied telling the detectives Witness 1 told her that Subject 2 had a cell phone in his hand and pointed it at Officer A.

In his statement to IPRA on 23 March 2012, **Witness 5** stated that on the date of the incident, he was at Douglas Park drinking with Subject 2, Witness 1, Witness 3, Witness 2 and Subject 1.

At some point, Subject 2, Witness 1, Subject 1, and Witness 2 decided to walk to the store. Five minutes after the group walked to the store, Witness 5 heard five gunshots. Witness 5 then ran towards the direction of the store. When he got near the location of the incident, Witness 5 observed Officer A with “a look of shock on his face.”

Witness 5 observed Subject 2 sitting on the ground with his back up against a pole. Witness 5 ran towards Subject 2 and attempted to talk with him, but Subject 2 continued to repeat, “Why did he do that? Why did he do that?”²⁴

Witness 5 looked in the alley and observed Subject 1 lying on the ground. Witness 5 had no additional knowledge about the incident. Witness 5 stated that he knows Officer A because they are neighbors. Witness 5 denied observing Subject 2, Witness 1, Subject 1, or Witness 2 with a gun prior to the incident.

In his statement to IPRA on 22 March 2012, **witness Police Officer B** stated that on the date of the incident, he and his partner, Officer C, were stationed on Kedzie Avenue, between 15th and 16th Street. While they were stationed, Officer B heard three gunshots and drove in the direction of the gunshots. As Officer B drove onto 15th Place, he observed two male subjects, Subject 2 and Witness 1, on the street and one of the male subjects (Subject 2) was yelling, “Officers, I’ve been shot in the hand.”²⁵

The officers asked Subject 2 who shot him and Subject 2 replied, “The guy in a black BMW shot me.”²⁶ Officers B and C drove east on 15th Place, in the direction that Subject 2 had indicated. As they approached, Officer B observed Officer A standing in the street with a gun on his hip. The officers exited their vehicle and told Officer A to “show his hands.” Officer A put his hands up and stated that he was a detective. After verifying that Officer A was a police officer, Officer B observed a female subject, Subject 1, lying in the alley with a gunshot wound to her head.

Officer B related that Subject 2 walked back to the scene and again explained to the officers that Officer A had shot him. Officer B stated he no longer saw Witness 1.

²⁴ Page 6, Lines 4-5

²⁵ Page 6, Line 17

²⁶ Page 7, Lines 18-19

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Officer B told Subject 2 to calm down and that an ambulance was on the way. Shortly afterwards, an ambulance and several other police officers responded to the scene.

Officer A told Officer B that Subject 2 pulled out a gun and he (Officer A) fired his weapon. Officer B stated the entire perimeter was searched for Subject 2's weapon, but no weapon was recovered.

In a second statement to IPRA on 02 May 2012, **witness Police Officer B** stated he responded to the scene in a matter of seconds after hearing the gunshots. As he and Officer C were driving east down 15th Place, they encountered Subject 2 and Witness 1.

Officer B recalled that Subject 2 was bleeding in one hand and he had nothing in his other hand. After speaking to Subject 2, the officers then re-entered in their vehicle and drove towards Officer A. Shortly afterwards, Subject 2 walked toward the officers and Officer A. Officer A and Subject 2 argued, during the course of which Officer B heard Subject 2 state he "only had a cell phone."²⁷

Officer B stated that when he arrived on the scene he observed a cell phone on the ground not far from Subject 1's body. Officer B recalled that Witness 1 stayed further back when Subject 2 returned to the scene.

In his statement to IPRA on 22 March 2012, **witness Police Officer C** stated that on the date of the incident, he was working with Officer B and they were parked on Kedzie Avenue and 15th Street. While parked, Officer C heard three loud reports that sounded like gunshots. Officers B and C proceeded to investigate the gunshots by driving down 15th Place. As they drove east down 15th Place, Officer C observed two male subjects, Subject 2 and Witness 1, in the middle of the block. Subject 2 had a gunshot wound to his hand and was waving the officers down while stating, "I'm hurt. I've been shot. It's over there in the alley and there's a woman that's been shot."²⁸

Subject 2 then pointed eastbound and the officers told him to stay where he was. At that time, Officer C radioed for an ambulance to respond to the scene. The officers then continued to drive east on 15th Place and observed Officer A with his hands up and a gun in his waistband.

The officers then exited their vehicle, identified themselves, and told Officer A to "keep his hands up." Officer C then took Officer A's weapon. Officer A told the officers that "he was the police" and showed them his identification.

Officer C looked in the alley and observed Subject 1 lying on the ground with a gunshot wound to her head. Officer C requested an ambulance for Subject 1. Officer C observed Subject 2 as he walked back to the alley and instructed him to sit on the curb. Officer C recalled that he no longer saw Witness 1. At that time, Officer C turned his attention to Witness 2, who was claiming that Subject 1 was her sister. Officer C recalled

²⁷ Page 13, Line 11-13

²⁸ Page 7, Lines 14, 18-19, 22-23

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overhearing Subject 2 and Officer A arguing back and forth. Officer C stated that during the argument he recalled Subject 2 yelling, “This is a misunderstanding.”²⁹

Officer C stated Officer A told him that Subject 2 pointed a gun at him (Officer A). Officer C stated he searched the area for a weapon, but no weapon was recovered.

In a second statement to IPRA on 02 May 2012, **witness Police Officer C** stated he responded to the scene in a matter of seconds after hearing the gunshots. As he and Officer B were driving east down 15th Place, they encountered Subject 2 and Witness 1. The officers then spoke to Subject 2 who informed them of the situation. Officer C recalled that Subject 2’s hand was bleeding. Officer C could not recall if anything was in Subject 2’s other hand because he was the passenger officer and did not have a good view. The officers then drove towards Officer A. Officer C recalled observing a cell phone in the middle of the alley when he arrived on the scene.

Officer C focused his attention on Subject 1 to ensure she received immediate medical attention. Officer C stated that Subject 2 and Officer A argued on the scene, but he was unable to hear the content of their argument.

In his statement to IPRA on 26 April 2012, **witness CPD Sergeant 1** stated he responded to the incident location after hearing a flash message over the radio. When CPD Sergeant 1 responded, he observed Subject 2, who was shot in the hand, sitting down with his back against a light pole. CPD Sergeant 1 also observed Subject 1 lying face down on the ground.

CPD Sergeant 1 spoke to Officer C, who related that Subject 2 had reportedly pointed a gun at Officer A and that Officer A shot Subject 2. Officer C then informed CPD Sergeant 1 that he had Officer A’s weapon and CPD Sergeant 1 instructed Officer C to hold onto the weapon until a deputy relieved him of it. CPD Sergeant 1 then ensured that the scene was secured. CPD Sergeant 1 stated that efforts were made to locate the gun reportedly belonging to Subject 2, but no weapon was recovered.

In his statement to IPRA on 02 May 2012, **witness CPD Sergeant 2** stated he responded to this incident. Officer A approached CPD Sergeant 2 and told him that he was driving down the alley and into the street when he observed a group of people causing a disturbance. Officer A told the group to calm down the disturbance because there were citizens who wanted to sleep. As Officer A was driving Subject 2 approached him with a pistol. Officer A drew his weapon, announced his office, and stated, “Don’t shoot. Don’t shoot. Police! Police!”³⁰

Officer A told CPD Sergeant 2 he was in fear for his life, so he fired his weapon. CPD Sergeant 2 asked Officer A what kind of weapon Subject 2 was carrying, but Officer A could not provide an accurate description of the weapon. CPD Sergeant 2

²⁹ Page 18, Lines 5-6

³⁰ Page 8, Line 6

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stated a systematic search of the area was conducted and a canine unit was called to the scene to search for the weapon, but no weapon was located.

In a telephone conversation to IPRA on 06 May 2012, **Witness 6** stated that on the date of the incident, he was at Douglas Park with Subject 2, Witness 3, Witness 5, and several other people. Witness 6 recalled that Subject 1, Witness 2, and Witness 1 were with Subject 2 while they were at the park.

Witness 6 recalled that the group left the park to walk to the store, and shortly after they left he heard twelve to thirteen gunshots. Shortly afterwards, Witness 6 went to see what had happened. Witness 6 then observed Officer A with a gun in his hand stating to Subject 2, "Don't pick up the phone. The phone is the weapon."

After the shooting, Witness 6 stated he drove Witness 2 to the hospital. Witness 6 recalled that Witness 5, Witness 3, and Witness 1 also went to the hospital. At the hospital, Witness 6 and the group were not allowed to see Subject 2 or Subject 1. Witness 6 denied observing Subject 2 or Witness 1 with a gun on the date of the incident.

In his statement to IPRA on 06 May 2013, Witness 7 stated he was the brother of Subject 1. Witness 7 stated that during the month of June 2012, he and a film crew went to the scene of this incident to film a documentary for Chicago State University on crime and violence in Chicago. While Witness 7 was filming the documentary, Officer A drove up to the back of his home. Officer A then approached Witness 7 and the film crew and asked them what they were doing. Witness 7 told him about the filming of the documentary. Officer A then realized that Witness 7 was Subject 1's brother and asked Witness 7 for a hug, and Witness 7 agreed. As Officer A hugged Witness 7, he asked that the cameras remain off. Officer A then apologized to Witness 7 and stated, "Man, it didn't suppose to happen like this."³¹

Officer A explained that he "was not supposed to be talking to Witness 7 because he could get in so much trouble"³² and that "his (Officer A) family, everybody thinks that he is a murderer."³³ Officer A went on to explain what occurred during the shooting; However, when Officer A was asked "did Subject 2 have a gun" he replied, "If you want to find that out, why don't you come to the court date."³⁴ Officer A then showed Witness 7 where Subject 1 and Witness 2 were standing when he started shooting. Witness 7 stated Officer A told him Subject 1 and Witness 2 were standing on the sidewalk where the alley begins/ends and next to Officer A's fence where it ends. Officer A further stated he "tried to kill that motherfucker,"³⁵ referring to Subject 2, and not Subject 1, who was an innocent bystander.

³¹ Page 6, Line 4

³² Page 6, Lines 9-12

³³ Page 6, Line 16

³⁴ Page 14, Lines 1-2

³⁵ Page 18, Lines 7-8

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Civil Suit, XX X XXXX, lists [Subject 1's Mother], mother of Subject 1, as the plaintiff, and Officer A as the defendant. The civil suit claimed that Officer A fired a series of shots in the direction of Subject 1 and others despite being aware of the presence of a number of individuals. Officer A also fired his weapon upon Subject 1 and other individuals when no one was armed with a weapon at any time.

Civil Suit, XX X XXXX, documents that the plaintiff, Subject 2, was walking with other individuals, which included Subject 1, when Officer A approached the group. Officer A identified himself as a police officer, brandished a firearm, intentionally aimed the firearm in Subject 2's direction, and fired at him several times. The Civil Suit contends that Subject 2 was unarmed and did not pose any risk of imminent harm to Officer A.

According to an **Arrest Report** for Subject 2, he was arrested on 21 March 2012, at 0105 hours, at 3116 W. 15th Place, and charged with Aggravated Assault. The arresting officers were Officers B and C. It was reported that Subject 2 was arrested after pointing a handgun at Officer A.

According to the **Tactical Response Report (TRR)**, completed by Officer A, Subject 2 did not follow verbal direction, was an imminent threat of battery, had a handgun, and used force likely to cause death or great bodily harm. Officer A responded with member presence, verbal commands, and the discharge of his firearm five times. The TRR further documents that Officer A fired first.³⁶

According to the **Officer's Battery Report (OBR)**, on the date, time, and location of the incident, Officer A was in citizen's dress when he encountered a disturbance. Subject 2 pointed a handgun in Officer A's direction. Officer A did not sustain any injuries.

The **Evidence Technician Photographs and Video** depict the scene of the shooting from various angles and the recovered evidence. Photographs were also taken of Officer A's 1996 black Mercedes and his home, XXXX S. Albany Avenue. There was a blood trail from 3124 to 3146 W. 15th Place and on the sidewalk from 3122 to 3144 W. 15th Place.³⁷ In the area of 3146 W. 15th Place, a concentration of blood evidence was located that appears to be greater in volume and concentration. This evidence was marked by the Forensic Investigators as "K." In addition, at 3122 W. 15th Place, Forensic Investigators photographed a sewer. The sewer was marked by the Forensic Investigators as "T." The sewer is approximately twenty-five (25) feet from the incident scene. The sewer grate has openings at the top that are approximately two (2) inches wide. There is also a vehicle, a silver Chevrolet Malibu, adjacent to the sewer which appeared to have blood drops on the front passenger bumper. The blood on the vehicle was marked by the Forensic Investigators as "U." Further, photographs of Subject 2 and Subject 1 were taken while at Mt. Sinai Hospital.

³⁶ In a statement with IPRA on 17 August 2015, Officer A stated that he believes that Subject 2 fired first, but he was not certain (Att. 200, Page 98, Lines 15-21).

³⁷ This information is also documented in the Crime Scene Processing Report.

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The **Crime Scene Processing Report** documented that no weapon was recovered from Subject 2, but a bloodstained black LG T-mobile cell phone, reportedly belonging to Subject 2, was recovered at the mouth of the alley at 3116 W. 15th Place, along with a wooden handled folding knife,³⁸ in the closed position, which was recovered on the parkway grass at 3118 W. 15th Place. In addition, two expended shell casings were recovered on the driver's floor of Officer A's 1996 Mercedes and three expended shell casings were recovered on the street at 3114 W. 15th Place.

The **Chicago Fire Department Ambulance Reports** documented that Subject 2 had a gunshot wound to his right hand. Subject 1 was lying on her stomach in an alley unresponsive and had brain matter on the left side of her head. Subject 1 and Subject 2 were both transported to Mt. Sinai Hospital.

Medical Records from **Mt. Sinai Hospital** document that Subject 2 sustained a gunshot wound to his right hand.

Medical Records from **Mt. Sinai Hospital** document that Subject 1 sustained a gunshot wound to her head. Subject 1 was pronounced deceased on 22 March 2012, at 1313 hours.

The Office of the Medical Examiner Report of Postmortem Examination documents that Doctor A, conducted the autopsy of Subject 1. Subject 1 sustained a gunshot wound on the left side of her head. A deformed medium-caliber lead bullet and three lead fragments were recovered from Subject 1's head. The cause of death was determined to be a gunshot wound to the head and the manner of death was homicide.

Attendance and Assignment (A & A) Sheets from Unit 610, Detective Area Central, dated 20 and 21 March 2012, documented that Officer A was not working.

A Breathalyzer Test taken on 21 March 2012, at 0656 hours, revealed that Officer A's BAC was .000. Officer A also submitted to a drug test on the same date, at 0705 hours, which revealed negative results.

A Bureau of Alcohol, Tobacco, Firearms, and Explosives Report documents that Officer A purchased a Glock, model 26, Serial # NNA332, on 09 October 2009. The weapon was legally purchased and owned. However, Officer A failed to register and qualify his weapon with the Chicago Police Department as required by the Chicago Police Department Uniform and Property Order U04-02.

According to **Firearms Training and Certification Records** obtained from the CPD Academy, prior to this incident Officer A had last qualified with his prescribed weapon, a Smith and Wesson model 5943, 9mm semi-automatic pistol, on 23 February 2011. The records indicate that Officer A had last qualified with his alternate prescribed

³⁸ Although there was a knife recovered on the scene, there was no indication that it was involved in this investigation.

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weapon, a Sig Sauer model P220, .45 caliber semi-automatic pistol, on 23 February 2011. The records indicate that Officer A had last qualified with his auxiliary weapon, a Smith and Wesson model 642, .38 caliber revolver, on 4 June 2008.

The Training and Certification Records reveal that Officer A has never qualified with the Glock model 26, 9mm semi-automatic pistol used in this incident.

An attempt to gather **Video Surveillance footage** from the cameras affixed to the exterior of Officer A's home, located at XXXX S. Albany Avenue, met with negative results. Officer A claimed that the cameras did not work and had never worked.

Video Footage from Sacred Heart, located at 1550 S. Albany Avenue, failed to depict any footage relevant to the investigation.

POD #797, located at 3200 W. 15th Street, and **POD #745**, located at 3201 W. Douglas, failed to capture the incident.

Office of Emergency Management and Communications (OEMC) reports document that on March 2012, at 23:51 hours, Officer A called 911 and reported that people were in the 1400 through the 1600 block of south Albany Avenue having a big party. He went on to report he was afraid "something bad" was going to happen.

At 01:05:37 hours, Officer A called 911 again and reported shots fired by the police and that there was a civilian down. Nineteen seconds later, Beat 1022R arrived on the scene. Shortly after Officers B and C arrive, there is commotion heard in the background. A female can be heard screaming and a male is heard stating, "Oh my God!"

At approximately 01:07:48 hours, Officer A is heard stating, "Don't let him touch that phone! Don't let him touch that phone!" Shortly afterwards, Officer A is heard explaining the incident.

During Officer A's call to 911, the clarity of the conversation becomes muffled, presumably as Officer A's phone is placed either in his pocket, or in another location where full audio details are not captured. Additionally, sounds of static interfered with the phone call.

There were four callers who called 911 and reported hearing gunshots. Attempts to contact or interview those witnesses were unsuccessful.

Telephone records for Officer A, for cellular phone number XXX-XXX-XXXX, documented that he called 911 on 20 March 2012 at 23:49:36 hours, and the duration was thirty-three (33) seconds. On 21 March 2012, at 01:05:16 hours, Officer A called 911 again and the duration was two hundred and seventy (270) seconds.³⁹

³⁹ The length is also equivalent to four minutes and thirty seconds.

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Telephone records for Subject 2 documents that on 21 March 2012, at 0103 hours, he received an incoming phone call from telephone number XXX-XXX-XXXX, which is registered to Witness 3. The records indicate that the call was one minute long, however, the call duration is only recorded in minutes, not seconds, and therefore, the actual duration of the telephone call may have been up to one minute and fifty-nine seconds.

IPRA Investigators conducted two separate canvasses in an attempt to locate additional witnesses and/or evidence. During a second canvass on 29 March 2012, a resident of the neighborhood, Witness 8, who resides at XXXX W. 15th Place, stated that on the date of the incident, he heard five gunshots and he got on the floor. Shortly afterwards, Witness 8 heard police officers talking to someone. Witness 8 looked out of the window and observed police officers talking to a black male subject now identified as Subject 2. Subject 2 told the police officers, "I did not have a gun." Witness 8 stated he observed Subject 2 with a cellular phone in his hands. Police officers then told Subject 2 to "put his hands up, drop the phone, and sit down."

According to Witness 8, the police officers had their weapons pointed at Subject 2. Subsequently, Subject 2 put his hands up, dropped the phone, and sat down by a pole. The police officers then spoke to Officer A. Witness 8 was unable to hear the conversation between the police officers and Officer A.

The **Illinois State Police (ISP) Report**, dated 19 April 2012, documents the testing of Officer A's firearm, a Glock model 26, 9mm semi-automatic pistol, bearing serial # NNA332. The weapon was found to be in functional condition. A ballistic examination of the evidence from this incident was conducted in comparison to Officer A's firearm. It was determined that all five (5) shell casings recovered at the scene of the incident were fired from Officer A's weapon.

The **Illinois State Police (ISP) Report**, dated 18 May 2012, documents that the GSR results for Subject 1 were negative. The same report documents that the test of Subject 2's left hand was also negative. It is noted that a GSR kit was not collected from Subject 2's right hand, as he had underwent medical treatment that prohibited the effort.

Additional **Illinois State Police (ISP) Reports** document that the cell phone belonging to Subject 2 was examined for the presence of DNA evidence, as was the knife recovered at the scene of this incident. The knife did not have any latent impressions suitable for comparison and no blood-like stains were observed, but there was blood indicated on the cell phone. The reports document that the major human DNA profile detected on both the cell phone and the knife were consistent with originating from the same person. A male DNA profile was searched against the Combined DNA Index System (CODIS) which indicated that Subject 2 may be the donor of the DNA profile identified. The reports indicate that a definitive comparison could not be made without a buccal standard being collected from Subject 2.

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The Case Supplementary Report documented that detectives spoke with Officers B and C. Officers B and C provided essentially the same information provided in their statements to IPRA.

The Case Supplementary Report documents that detectives spoke with Witness 2. Witness 2 told the detectives that after Officer A told the group “you guys have to be quiet,” Subject 2 repeatedly stated to Officer A, “Fuck you.”

Witness 2 focused on Subject 2 yelling and did not see anything in his hands. Witness 2 did not see if Witness 1 had anything in his hands. Witness 2 heard several gunshots and started to run westbound. Witness 2 turned around and observed that Officer A’s vehicle was pulled up a bit further going towards Albany Avenue and that he was shooting over his shoulder from within his vehicle towards the group. Witness 2 recalled that prior to the incident she had drank a small quantity of tequila.

The Case Supplementary Report documents that detectives spoke with Subject 2. Subject 2 told the detectives that when Officer A drove towards the group, he asked him a question he did not understand. Subject 2 was holding his cellular phone up to his right ear with his right hand, when he replied to Officer A saying, “We don’t have it. Keep on going.” Subject 2 explained that as he said this, he lowered his cellular phone from his right ear with his right hand, pointed the cellular phone straight out at Officer A with his right hand, and waved the phone at Officer A as a way to tell him to leave the area.

Subject 2 told the detectives he may have waved his phone back and forth multiple times and may have moved forward towards Officer A slightly as he waved the phone. Subject 2 then heard four to five gunshots and ran westbound on 15th Place with Witness 1. According to Subject 2, he was not talking to anyone on his cellular phone prior to the incident because it was a “dead” call, which he described as a call that did not go through when dialed by him. Subject 2 then flagged down Officers B and C and told them what had occurred. The officers drove towards Officer A and Subject 2 walked back towards the scene. When he returned to the scene, Subject 2 asked for his cellular phone and then went over and picked up the phone from the ground at the mouth of the alley until a police officer told him to put the phone back on the ground.

Subject 2 reportedly told the detectives that he understood how Officer A could have thought that he was pointing a gun at him based on his own actions. However, Subject 2 denied having a gun during the incident.

The Case Supplementary Report documents that detectives spoke with Witness 1. Witness 1 told the detectives that after Officer A stated to the group, “Keep the fucking noise down,” he replied, “Fuck you.” As this occurred, Subject 1 and Witness 2 continued to walk west on 15th Place. Witness 1 then observed Subject 2 take his cell phone out of his pocket as Officer A drove out of the alley and turned left onto 15th Place going east. Subject 2 held the cell phone in his right hand and pointed the cell phone at the driver of the car “like he was holding a gun.”

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Witness 1 reportedly told the detectives that Subject 2 walked quickly towards the car like he was going to shoot Officer A. Witness 1 reportedly told the detectives Subject 2 was trying to “scare” Officer A.

After the police arrived on the scene and put the tape up, Subject 2 and Witness 1 returned to the scene. Witness 1 recalled that Subject 2’s cell phone was lying in the alley behind the crime scene tape. Subject 2 told Witness 1 to pick up the cell phone, but Witness 1 refused because the cell phone was evidence.

The Case Supplementary Report documents that detectives spoke with Witness 4. Witness 4 told the detectives that when Witness 1 arrived home, he told her what had occurred. Witness 1 told Witness 4 that Subject 2 had a cellular phone in his hand, pretending that the cellular phone was a gun, and pointed it at a man who had told them to be quiet. Witness 1 then demonstrated to Witness 4 how Subject 2 was pointing the cellular phone by holding his hand out in a similar manner.

In a statement taken by Assistant State’s Attorney 1 on 21 March 2012, at 1123 hours, Witness 2 provided the same information provided in the Case Supplementary Report. Witness 2 added that she did not see what caused Officer A to start shooting.

In a statement taken by Assistant State’s Attorney 1 on 21 March 2012, at 1346 hours, Witness 1 provided the same information provided in the Case Supplementary Report. Witness 1 added that after officers were flagged down, he and Subject 2 returned to the scene a few minutes later.

In-car camera footage from Beat 1022R depicts Subject 2 walking at a fast pace from the north sidewalk into the middle of the street. Subject 2 flags down the SUV with his hat in his left hand. A male subject, now known as Witness 1, was observed in the background.

The footage depicts that the squad car stops briefly with Subject 2, before continuing west towards Officer A’s position near the alley. Officer A’s black Mercedes is observed on the north side of the street with the driver’s side door opened.

The footage depicts Officer A apparently explaining what occurred to the responding officers. Officer A is observed with his right arm extend and appeared to be moving forward or lunging with the same arm extended.

At 01:11:26 hours in the video footage, officers put up red crime scene tape. At 01:12:23 hours, Citizen 1 is observed running towards the red crime scene tape. Officers intercept Citizen 1 and remove him from the scene.

At 01:18:41 hours, an ambulance responds to the scene. At 01:21:08 hours, Subject 2 is observed being escorted to the back of the ambulance. At 01:21:41, Citizen 1

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is observed in handcuffs. At 01:29:06 hours, the ambulance is observed leaving the scene with Subject 2. The police remained on the scene until the end of the footage. The video did not capture the officer involved shooting.

An Arrest Report documents that an Aaron Douglas was arrested on 21 March 2012, at 0115 hours, for going beyond the yellow police do not cross tape. Citizen 1 became combative and was placed under arrest.

The Case Supplementary Report documents that detectives spoke with **Officer A**, who told the detectives the weapon Subject 2 had was a dark handgun of an unknown caliber or type. Subject 2 held the gun up and pointed it at Officer A while running toward him. Officer A winced and tucked as he was bracing for the impact of being shot and at the same time stated, "Don't, don't. Police, police." At the same time, Officer A pulled his weapon from his holster, which was on his right hip, with his right hand and raised the gun up and over across his left shoulder. Officer A then fired his weapon four to five times out of the driver's window at Subject 2 who was still pointing a gun at him.

According to a **Cook County State's Attorney's Office (SAO) Investigative Report**, Officer A was interviewed on 18 January 2013 relative to this event. Officer A added that when he observed Subject 2 reach into his waistband, pull out a black handgun, and point it at him, he thought he heard a gunshot and felt "something" on the back of his head. Officer A stated that he believed that he had been shot, so he drew his weapon with his right hand and yelled, "Police don't, police don't." Subject 2 advanced toward Officer A while pointing the handgun at him. Officer A then pointed his weapon across his body and out of the window at Subject 2 and fired five times. Officer A stated he did not know if Subject 2 or anyone picked up the cell phone or moved it from its original position after the shooting.

According to a **Cook County SAO Investigative Report**, Subject 2 was interviewed on 17 September 2013 relative to this event. Subject 2 related he was walking with Witness 1, Subject 1, and Witness 2 when their group came in contact with Officer A. Subject 2 stated he was talking on his phone to Witness 3 when he observed the black sedan being driven by Officer A emerging from the alley. Subject 2 related that Witness 1 stated, "Fuck you," to Officer A, at which time Subject 2 added words to the effect of, "We ain't got no drugs, get your crack ass out of here." Subject 2 stated at that point, Officer A produced a handgun and began firing at the group. Subject 2 stated he was shot in his hand, at which time he dropped his phone to the ground and fled through the alley. Subject 2 fled towards a responding police vehicle and reported he had been shot. Subject 2 was then brought back to the scene by the responding officers. Subject 2 related that while at the scene Officer A said to him, "I thought your phone was a weapon."

According to a **Cook County SAO Investigative Report**, Witness 9 was interviewed on 27 November 2013 relative to this event. Witness 9 stated she was a registered nurse and was working at Mt. Sinai Hospital on 21 March 2012 when she had

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contact with Witness 2. Witness 9 stated that she had a conversation with Witness 2 regarding the shooting incident, wherein Witness 2 explained to her what had happened. Witness 2 told her that a white male in a black car was driving past their group, when he stopped, showed a badge, and informed them that he was a police officer. Witness 2 told her that Subject 2 replied by saying, "Fuck you, I don't give a fuck who you are." Witness 2 then told her that Subject 2 rapidly reached into his front pocket as if he was going to "pull something out," at which time the police officer began to fire his weapon. Witness 9 related that Witness 2 was upset with Subject 2, and indicated that the shooting was "his fault" and added, "I don't know why he (Subject 2) did that, just trying to spook him (Officer A)."

According to a **Cook County SAO Investigative Report**, Witness 2 was interviewed on 3 December 2013 regarding her conversation with Witness 9. Witness 2 confirmed that she did have a conversation with Witness 9 while at Mt. Sinai Hospital, though she did not recall making the comments as reported by Witness 9. Witness 2 stated she was angry with Subject 2 and Witness 1, but did not recall saying those specific things to Witness 9. According to the SAO report, Witness 2 added that she, "might have, but didn't think so." Witness 2 denied seeing Subject 2 reach into his pocket.

According to the **Transcripts from the Circuit Court of Cook County**, Subject 2 testified in Officer A's trial to his knowledge of this incident in a manner essentially consistent with the statement he gave to IPRA. Subject 2 testified that when he, Witness 1, Subject 1, and Witness 2 first came into contact with Officer A, they were all standing within two to three feet from his car at the mouth of the alley. Subject 2 testified that the car had partially turned out of the alley, eastbound onto 15th Place. Subject 2 testified he was on the phone with his cousin, Witness 3, at or about the time the shooting occurred. Subject 2 was challenged regarding inconsistencies in his prior statements about the particulars of the phone call, but maintained that he was on the phone with Witness 3 either immediately before, or during, the shooting event. Subject 2 testified that at the time he directed words to the effect of, "I don't have no drugs for you, get your crackhead ass out of here," to Officer A, the car was approximately five to six feet away. Subject 2 stated he had his phone in his hand, but that he did not point it at Officer A at anytime during this statement. Subject 2 testified he waved the phone back over his shoulder in a gesture to accompany this statement. Subject 2 was challenged regarding inconsistencies in his prior statements, and at his deposition, regarding whether he did or did not wave the phone in any manner. In his testimony on this date, Subject 2 maintained that he did wave the phone while speaking to Officer A. Subject 2 testified that the first two shots fired by Officer A were aimed at him and that the remaining shots were aimed at Subject 1 and Witness 2 as they stood in the alley. Subject 2 testified Subject 1 was not standing directly behind him at the time of the shooting, but was "in front of him" near the curb on 15th Place, just east of the alley.

According to the **Transcripts from the Circuit Court of Cook County**, Witness 9 testified in Officer A's trial to her knowledge of this incident in a manner consistent with the SAO Investigative Report.

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According to the **Transcripts from the Circuit Court of Cook County**, Witness 2 testified in Officer A's trial to her knowledge of this incident in a manner essentially consistent with the statement she gave to IPRA. Witness 2 stated Officer A's car was not moving while he was shooting. Witness 2 stated she and the group of people she was with were all only feet away from Officer A at the time he began firing. Witness 2 explained that Officer A's car was angled to the left, as he was turning out of the alley onto 15th Place. Witness 2 alleged that Officer A was "aiming at all of them because Subject 2 and Witness 1 were towards Kedzie Avenue and Subject 1 was already hit. She was out of sight and he was constantly shooting. He was trying to kill all of us."

Witness 2 testified that Witness 1 never returned to the incident scene after the shooting and that she did not see him again until she returned to Douglas Park. In her testimony, Witness 2 initially denied telling Witness 9 that Subject 2 had "reached into this pocket real fast." Witness 2 also denied stating words to the effect of, "I don't know why he did that, just trying to spook him." Witness 2 later stated that she "could have" stated words to this effect, but that she did not recall saying it. Witness 2 agreed she stated words to the effect of, "I don't understand why she is shot in the head and he is only shot in the hand; it's his fault." Witness 2 testified she was initially "mad" at Subject 2 and Witness 1, feeling that "had they not said anything to (Officer A), that maybe...he wouldn't have shot."

In a deposition dated 26 July 2013, Subject 2 provided essentially the same information as he did in his statement to IPRA. Subject 2 added that he, Witness 1, Subject 1, and Witness 2 arrived at Douglas Park at approximately 0001 hours and he drank a half can of beer and "took two or three hits off a blunt,"⁴⁰ but he did not feel the effects. As the group walked, Subject 2 was talking to his cousin, Witness 3, on his cellular phone. As Subject 2 talked to Witness 3 on the phone, he observed a black vehicle coming out of the alley. The vehicle stopped at the mouth of the alley blocking Witness 1's, Witness 2's, and Subject 1's path. According to Subject 2, Witness 1 and Subject 1 were standing side-by-side and Witness 2 was a step or two behind them. Subject 2 stated he was about five or six feet behind the group. When the vehicle stopped, the driver, Officer A, told Witness 1 and Witness 2 "all these polices around here and you're all making all this noise" and Witness 1 replied, "Fuck you." Subject 2 recalled that he did not hear Officer A or Witness 1 make their statements but Witness 1 and Witness 2 later told him.

After observing Officer A, Subject 2 moved his phone away from his ear and stated to Officer A, "We don't have no drugs for you. Get your crackhead ass out of here."⁴¹ Subject 2 stated that when he made the statement he was still on the phone. The phone was in his right hand and Officer A's vehicle was in the process of turning. Subject 2 then "turned around his left shoulder to look because he noticed that Officer A's vehicle was slowing down."⁴² When Subject 2 turned around, he observed Officer A had

⁴⁰ Page 54, Lines 4-8

⁴¹ Page 73, Lines 1-2

⁴² Page 74, Lines 22-23

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made a complete turn and had a gun resting on the driver's side window. Subject 2 stated that at that time he was about eight or nine feet away from Officer A. Officer A then fired his gun striking Subject 2 in his right hand.

According to Subject 2, when he was shot his cellular phone flew out of his hand. Subject 2 and Witness 1 then ran westbound towards Kedzie Avenue as Officer A fired his gun. Subject 2 then flagged down a police vehicle he observed coming towards the scene and told them what had occurred. Officers B and C then drove towards Officer A as Subject 2 and Witness 1 followed the officers by running behind the police vehicle. When Subject 2 returned, Witness 2 informed him that the driver of the black vehicle was a police officer.

Subject 2 then picked up his cellular phone in the alley, but the responding officers made him put the phone back down. Subject 2 then asked Officer A, "What the fuck you shoot me for if you're a police (officer),"⁴³ to which Officer A replied, "I thought you had a weapon. Sit down."⁴⁴ Subject 2 then sat down by a light pole and Officer A told him "I thought your phone was a weapon."⁴⁵ Subject 2 then told Officer A that he must have had a "mistaken identity"⁴⁶ because he did not have a gun. Subject 2 denied pointing his cellular phone like a gun or waving his cellular phone at Officer A during the incident. Subject 2 claimed detectives attempted to coach him into saying that he waved the phone in his hand at Officer A.

In a deposition dated 17 October 2013, Witness 4 added that prior to the police coming to her home she had smoked some marijuana and then went to sleep at approximately 2330 hours on 20 March 2012. Sometime later, Witness 1 arrived home and told her that Subject 2 had been shot in the hand and that Subject 1 had also been shot. Witness 4 denied that Witness 1 told her that Subject 2 had a cell phone in his hand and pointed it at Officer A and that Subject 2 pretended that his cell phone was a gun.

In a deposition dated 11 October 2013, witness Police Officer B stated that Officer A told him Subject 2 pointed or pulled out a gun on him, but Officer A did not tell him that Subject 2 discharged the gun.

In a deposition dated 11 October 2013, witness Police Officer C stated he observed Subject 2 return to the alley two to four minutes after he had flagged their squad car down. Officer A told Officer C that Subject 2 pointed a gun at him, but he did not give a description of the gun or tell Officer C that Subject 2 reached in his waistband to get a gun. Officer C stated he only had a brief conversation with Officer A. Officer C denied observing Subject 2 with a gun.

⁴³ Page 104, Lines 14-15

⁴⁴ Page 104, Lines 16-17

⁴⁵ Page 105, Lines 20-21

⁴⁶ Page 106, Line 21

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In a Deposition dated 12 September 2013, Officer A stated Subject 2 “tried to kill him with a handgun”⁴⁷ during the incident by “withdrawing a handgun from his waistband, pointing the handgun at (him), chasing (his) car from behind, and then firing a shot.”⁴⁸ Officer A recalled that Subject 2 had the handgun in his right hand and “fired the weapon at least once, maybe more.”⁴⁹ At that point, Officer A yelled, “Don’t, don’t, Police, police,” and drew his handgun firing at Subject 2.

Officer A stated that he “ducked away down to his right, drew his weapon, and fired over his left shoulder around his chest – firing behind him as Subject 2 approached.”⁵⁰ Officer A recalled that Subject 2 was behind his vehicle on the driver’s side of the vehicle. Subject 2 and Witness 1 then fled and Officer A called 911 while still pointing his handgun at Subject 2 as he fled. While Officer A was on the phone with 911 giving a description of Subject 2 and Witness 1, he observed that Subject 1 had fallen and was injured. At that time, Officer A realized that he had shot Subject 1 inadvertently. Officer A then requested an ambulance.

Seconds later, a marked police vehicle with two officers, Officers B and C, arrived on the scene. Officer A spoke to the officers and explained to them the circumstances that led to him firing his weapon. Officer A also gave the officers the direction of flight for Subject 2 and Witness 1 and explained how to track them down. Officer A stated that eight to ten minutes later he observed Subject 2 return to the scene. Officer A admitted he did not show Subject 2 anything to indicate that he was a police officer and he did not attempt to let Subject 2 or anybody else know that he was a police officer when he first spoke to Subject 2.⁵¹

According to Officer A, he was taking police action when he told Subject 2 and the group to “keep it down.”⁵²

An Arrest Report from the Cook County State Attorney Police Department for Officer A documents that on the date of the incident he was seated in the driver’s seat of his vehicle when he recklessly fired five rounds from a 9mm handgun in the direction of Subject 2, who he believed was pointing a weapon at him. Subject 1 was one of three people who were walking on a nearby sidewalk when Officer A fired his weapon. Subject 1 was struck in the head by one of Officer A’s shots and she died as a result of that gunshot wound. Officer A was arrested on 25 November 2013 and charged with Manslaughter – Involuntary, Reckless Discharge of a Firearm – Endanger, and Reckless Conduct.

A Synoptic Report from CPD Sergeant 3, from the Bureau of Internal Affairs, documents that Officer A was relieved of his police powers on 26 November 2013, at 1155 hours.

⁴⁷ Page 21, Line 22 and Page 22, Line 2

⁴⁸ Page 22, Line 12-13

⁴⁹ Page 24, Line 22

⁵⁰ Page 45, Line 2-5

⁵¹ Page 43, Line 11-19

⁵² Page 43, Line 23-24; Page 44, Line 1

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Court Documents pertaining to the disposition of Subject 2's case were obtained. Said documents reflect that the charges against Subject 2 were 'Nolle Prosequi.'⁵³

According to the **Directed Verdict Order** dated 20 April 2015, and signed by the Honorable Judge A of the Circuit Court of Cook County, the court found that the State could not sustain its burden of proof in the criminal case against Officer A. A 'Not Guilty' finding was reached on all counts.

In his statement to IPRA on 17 August 2015, Officer A provided an account of this event. Officer A stated that on 20 March 2012, he had worked in a secondary employment capacity as an investigator for the Board of Elections from 0500 hours until 2300 hours. Following this assignment, Officer A drove to his home at XXXX South Albany Avenue. Officer A related as he neared his home, he observed a large crowd gathered in Douglas Park. Officer A related that there were cars double and triple parked around Douglas Park and estimated that there were between 200 and 300 people in the park drinking, smoking marijuana, and "partying." Officer A related that the language from the people in the park was becoming "loud and aggressive," prompting him to call 911 from his cellular phone and report the loud disturbance. Officer A explained he "felt something bad was going to happen."⁵⁴

Officer A stated he went inside his home, showered, changed clothes, and prepared to leave his home in order to meet a female friend for a late dinner. Officer A related as he was exiting his home, he observed Subject 2, Witness 1, Witness 2, and Subject 1 directly in front of 1528 South Albany Avenue. As he drove his car from the rear yard of his home into the alley, he observed the individuals walking west along the sidewalk. Officer A related that the two men were walking approximately ten (10) "paces"⁵⁵ ahead of the women, and that they appeared to be arguing with the women.

Officer A related that the men were "berating" the women and that Subject 2 was yelling, swinging his arms, and acting "extremely aggressive." Subject 1 and Witness 2 were close to one another, with their heads down, leading Officer A to believe they were consoling one another. As Officer A drove towards the mouth of the alley at 15th Place, he pulled up directly in front of Subject 2 and Witness 1 as they reached the east side of the alley where it meets the sidewalk. The men were momentarily quiet when they saw him, at which time Officer A stated words to the effect of, "Guys keep it down, people live here, do whatever you want in the park, drink, smoke, nobody is going to call the police on yall, but people live here."⁵⁶

Officer A related he made this statement to "restore peace," as the men were being extremely disruptive and he was concerned that the men "might batter the women."

⁵³ No longer prosecute

⁵⁴ Page 11, Line 21

⁵⁵ Officer A equated "ten paces" to the length of the boardroom where his interview was conducted which measures to sixteen (16) feet, Page 19, Line 12 and Page 107, Lines 7-12.

⁵⁶ Page 25, Lines 10-13

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Officer A stated that he was attempting to “soothe” the situation. According to Officer A, he was taking police action, but did not identify himself as a police officer for fear of being “attacked.” Subject 2 looked at Officer A and became quiet. Officer A related it was his intention to approach the men, indicating he could have done that through his chain link fence before entering his vehicle. Officer A indicated that the intersection of their paths, and the request for quiet, “just happened to occur that way.”

Officer A began to turn left onto 15th Place, at idle speed, when he heard Subject 2 say words to the effect of, “Man, I don’t give a fuck!” Officer A turned his attention and observed Subject 2 behind him and at an angle consistent with being at Officer A’s 8 o’clock position. Officer A observed Subject 2 standing on the sidewalk and now had his hand at or on his waistband. Officer A stated Subject 2 pulled a black handgun from his waistband, pointed it at him with his right hand, and began to chase his car at a diagonal approach. Officer A related that Subject 2 moved from the sidewalk, across the parkway, and to about a foot and a half away from his car. Officer A related that his vehicle was still moving at that moment, and was approximately three feet away from the curb.

As Subject 2 approached him, Officer A saw a “flash” that he believed to be a muzzle flash. Officer A ducked down towards the center console of his vehicle and stated, “Don’t, don’t! Police, police!”⁵⁷ Officer A stated he thought he felt a blunt pain in the back of his head and was “scared” that Subject 2 was “trying to kill” him. At that time, Officer A drew his firearm from his holster on his right side, twisted his left shoulder back, brought his firearm to the mid line of his chest with his right hand near his left nipple area, and “instinctively” fired two shots at Subject 2. Officer A then brought his firearm to eye level, obtained a sight picture of Subject 2, and fired two additional shots. Officer A stated he later learned after the incident that he fired five shots.

Officer A estimated that Subject 2 was approximately eight feet away from him when he began firing his weapon. Officer A did not recall stopping his car and believed he was still moving as Subject 2 was coming towards him. Officer A recalled he had to “make a split second decision to either hit the gas, try to get out of there, and get shot in the back of the head, or duck and fight.”⁵⁸ Officer A explained that he has been trained that, in a life or death situation, to begin firing as soon as his firearm breaches his holster, and that sight picture alignment is not necessary, especially in contact that occurs within twenty-five (25) feet.

Subject 2 continued to move towards Officer A as he was firing and it was not until Subject 2 turned his back and fled that Officer A stopped firing. Officer A then exited his vehicle while pointing his weapon at Subject 2 as Subject 2 fled west on 15th Place. Witness 1 also fled west on 15th Place on the sidewalk. Officer A then pulled his phone from his pocket and called 911 to report that shots had been fired. Officer A recalled that one of the two males, either Subject 2 or Witness 1, ran north into a vacant lot or between the houses. Officer A then looked towards the alley and observed Witness

⁵⁷ Page 41, Lines 24-25

⁵⁸ Page 48, Lines 2-5

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2 standing over Subject 1, who was lying on the ground. Officer A related he realized he had shot Subject 1, at which time he “felt like he got kicked in the gut.”⁵⁹

Officer A related that almost immediately a CPD squad car, Beat 1022R occupied by Officers B and C, accelerated towards him, traveling east on 15th Place. Officer A surrendered his firearm to the officers and identified himself as a police officer explaining that Subject 2 had “tried to kill” him. Officer A provided the officers with a description of Subject 2 and his last known direction of travel. Officer A then requested that the officers summon medical attention for Subject 1.

Officer A explained that while he was on the phone with the dispatcher, and as the officers were arriving, an unknown black male had attempted to retrieve a phone that was on the ground in the alley. Officer A confirmed that it was his voice on the OEMC recording stating, “Don’t let him touch that phone.”⁶⁰ Officer A clarified that this subject attempting to retrieve the phone was not Subject 2, but another subject, now identified as Citizen 1, who was attempting to retrieve the phone to contact Subject 1’s family members. Officer A related that Citizen 1 was subsequently arrested after becoming involved in a “violent” physical struggle with officers protecting the incident scene.

After speaking to the officers, Officer A moved his car from out of the street to the south side of 15th Place, along the curb, in order to make way for responding emergency services. Officer A recalled that Subject 2 returned to the scene eight to ten minutes later, after the crime scene tape was up and additional officers and detectives had arrived at the scene. Officer A first observed Subject 2 sitting on the curb inside the yellow tape, at which time he pointed at Subject 2 and stated, “That’s him! That’s the guy that tried to kill me!”⁶¹

Officer A stated Subject 2 was looking in the direction of Subject 1, shaking his head, and responded to Officer A stating, “It was a misunderstanding. I thought you were looking for prostitutes.”⁶² Officer A explained that at no time did he make a statement to the effect of, “I thought your cell phone was a gun.” Officer A stated he was certain that he saw a firearm and certain that he saw a “flash.” Officer A related that his memory of some of the details was inconsistent, in that he sometimes recalls hearing a gunshot, and he sometimes can not. Officer A volunteered that he often believes that Subject 2 did actually fire at him, and conversely sometimes believes that he did not. Officer A stated that 90% of officers experience “auditory exclusion during a traumatic situation,”⁶³ which could potentially have an impact on his recollection.

Officer A admitted that at the time he fired his weapon he did not know where Witness 1 was, stating, “I didn’t see him. I saw Subject 2 running towards my car, that’s

⁵⁹ Page 58, Line 26

⁶⁰ Page 72, Lines 12-15

⁶¹ Page 61, Lines 29-30

⁶² Page 66, Lines 17-19

⁶³ Page 110, Lines 5-7

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all I saw.”⁶⁴ In regards to where Subject 1 and Witness 2 were standing, Officer A stated he “assumed that they were where I had last seen them which were ten paces behind Subject 2.”⁶⁵ Officer A further stated that “the last time I saw them was seconds prior.”

Officer A stated he never saw Subject 2 talking on his cell phone prior to the shooting. Officer A was adamant that the object that Subject 2 pointed at him was a firearm and not a phone. Officer A stated that there was some blood handprints near a sewer⁶⁶ in the vicinity of the incident which was never searched. According to Officer A, “it appeared as if a person was crouching down bloody next to the sewer.”⁶⁷ Officer A stated that CPD never checked the sewer and he did not alert CPD to check the sewer.

Officer A stated he did not violate General Order 03-02-03 when he fired at Subject 2. He explained that Subject 2 was pointing a weapon at him and may have even fired said weapon at him. Officer A stated he was “in sync with the General Order, with (his) training, and with (his) survival human instinct.”⁶⁸

Officer A stated he did not fire into a crowd and that he was firing at Subject 2, stating, “At the time that I fired I believed that the other people were not in harms way. As Subject 2 closed the distance toward me...his body got bigger...the background got smaller. And when I focused on the sights to shoot him center mass, I did not have a clear vision of the background. Subject 2 obviously blocked my view because I obviously shot Subject 1.”⁶⁹

Officer A stated the gun, Glock model 26, Serial #NNA332, he used during the incident was not registered with the Chicago Police Department. Officer A also stated he did not qualify with the gun because he did not carry it as a primary or as an auxiliary handgun.

Officer A stated as his car was moving eastbound and Subject 2 was chasing him in a diagonal manner it “changed the angle”⁷⁰ and Subject 2’s body obstructed his view. Officer A believed that Subject 1 and Witness 2 were still “ten paces” east of the alley, on the sidewalk.

CPD General Order G03-02-03, Deadly Force, Section III, reads in part, “Use of firearms in the following ways is prohibited: A. Firing into crowds.”

CPD Uniform and Property Order U04-02, Department Approved Weapons and Ammunition, Section II, F, reads in part, “Department members must qualify with all

⁶⁴ Page 90, Lines 17-20

⁶⁵ Page 90, Lines 30-31 and Page 91, Lines 1-2

⁶⁶ According to the Crime Scene Processing Report (Att.28), the location of the sewer is 3122 W. 15th Place.

⁶⁷ Page 95, Lines 30-32

⁶⁸ Page 100, Lines 29-31

⁶⁹ Page 101, Lines 4-11

⁷⁰ Page 101, Line 26

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prescribed, alternate prescribed, or auxiliary weapons prior to carrying the weapon on or off duty.”

CONCLUSION AND FINDING:

The R/I recommends a finding of **Sustained** for **Allegation #1**, that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, Officer A possessed on public property and fired a weapon he failed to qualify with pursuant to CPD Directives.. Officer A stated he did not qualify with his gun because he did not carry it as a primary or as an auxiliary handgun; however, Uniform and Property Order U04-02, Department Approved Weapons and Ammunition, reads in part, “Department members must qualify with all prescribed, alternate prescribed, or auxiliary weapons prior to carrying the weapon on or off duty.” Although Officer A stated his gun was not his primary or auxiliary weapon, he decided to carry the gun while off-duty, which puts him in violation of the Directive. All firearms carried on or off duty under the peace officer authority conveyed by the Chicago Police Department must qualify with the weapon pursuant to CPD Directive U04-02.

The ATF firearm trace report details that Officer A purchased the Glock, model 26, Serial # NNA332, on 09 October 2009. The Firearm Training and Certification records from the CPD Academy show that Officer A qualified with his primary weapon on 1 May 2009; 23 April 2010; and 23 February 2011. Officer A had no fewer than three (3) opportunities to qualify with his Glock model 26 prior to this incident occurring on 21 March 2012. Officer A had ample opportunity to comply with CPD Directive U04-02, yet failed to do so.

Therefore, based upon the preponderance of evidence, the R/I recommends that Allegation #1 be Sustained.

The R/I recommends a finding of **Sustained** for **Allegation #2**, that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, Officer A violated the provisions of General Order 03-02-03, Section III, by firing his firearm at Subject 2.

In his statement to IPRA, Officer A related that Subject 2 moved towards him while pointing a black in color handgun at him. Officer A has related that he may have seen a “flash,” and that he may have heard a gunshot as Subject 2 moved towards him. Officer A related that, in fear for his life, he fired his weapon at Subject 2.

Although Officer A has been adamant in his claim that Subject 2 had a firearm, no weapon was ever recovered. There is no evidence whatsoever that Subject 2 was in possession of a weapon, nor is there evidence that anyone fired a weapon other than Officer A.

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Subject 2 denied being in possession of a gun during the incident. Witness 1 and Witness 2 denied observing Subject 2 with a weapon during the incident and Witness 3 and Witness 5 denied observing Subject 2 with a weapon prior to the incident. In addition, during a canvass, resident Witness 8 stated that he heard Subject 2 tell officers after the incident that “he did not have a gun,” and Officer B stated that he heard Subject 2 state that he “only had a cell phone.”

After Officer A fired his gun, Subject 2 ran west on 15th Place towards the responding CPD squad car and reported that he had been shot. Subject 2 then directed the officers to Officer A. Not only is it highly unlikely that Subject 2 would have initiated contact with the officers if he had been armed, the in car camera footage and Officer B both support the fact that Subject 2 did not have a gun. The in car camera footage depicted that Subject 2 ran directly towards the responding officers after being shot and flagged the officers down. In addition, Officer B stated that Subject 2 was bleeding in one hand and did not have anything, such as a gun, in his other hand.

Additionally, blood evidence at the scene, attributed to Subject 2, suggests that Subject 2 ran approximately 200 feet west on 15th Place before encountering the responding CPD officers. It is in the area of 3146 W. 15th Place that a concentration of blood evidence was located that appears to be greater in volume and concentration. This evidence was marked by the Evidence Technicians as “K.” This evidence is consistent with a person standing in one place while bleeding, leading to the reasonable determination that Subject 2 stopped his flight at this point in order to address the responding CPD officers.

The blood trail suggests that Subject 2 then walked back east on 15th Place after alerting Officers B and C. The blood trail continues back to the area of 3122 W. 15th Place, where it appears that Subject 2 may have stopped near a vehicle, a silver Chevrolet Malibu, parked on the north side of 15th Place. It is noted by the R/I that there is a sewer grate at this location, and that the grate has openings at the top that are several inches wide. In his statement to IPRA, Officer A opined that Subject 2 possibly could have discarded a gun in the sewer. However, Officer A never notified CPD that a weapon possibly could have been thrown in the sewer. In addition, the sewer is within approximately twenty-five feet of the scene. It would be highly unlikely that Subject 2 would return this close to the scene while still in possession of a firearm.

Officer A asserts that Subject 2’s whereabouts were unknown for a period of time following the shooting, and he may have discarded a weapon in that time period; however, there is no evidence to establish that Subject 2 left the scene beyond what has already been related. Subject 2 stated after Officers B and C spoke with him, they drove towards Officer A. Subject 2 followed the officers on foot and subsequently engaged in a verbal altercation with Officer A. Witness 2, Witness 1, and Officers B and C all stated that Subject 2 returned to the scene and became involved in a verbal altercation with Officer A. None of the witnesses indicated that Subject 2 was gone for a substantial amount of time. While Officer A asserts that Witness 1’s whereabouts are questionable,

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Witness 1 stated that he remained on the scene and heard Officer A tell Officers B and C not to let Subject 2 “touch the phone.”

Officer A claimed that the OEMC recording of him stating, “Don’t let him touch that phone,” was in reference to Citizen 1 attempting to retrieve the cell phone from the scene, but there is no evidence to support his account. The in car camera footage documents that Citizen 1 did not approach the scene until 0112 hours, which is approximately five minutes after Officer A made the statement “don’t let him touch that phone” on the OEMC recording. Citizen 1’ arrest report also documents that he was not arrested until 0115 hours. Witness 2 stated Subject 2 attempted to pick up the cell phone after the officers arrived on the scene, and Witness 8 stated that he observed Subject 2 pick up the phone after the officers arrived. Subject 2 then dropped the phone after Officers B and C told him to do so. Further, the Crime Scene Processing Report and ISP reports document that there was blood on Subject 2’s phone.

Subject 2 related in his deposition that he was holding his cell phone in his hand and that he “waved” his phone at Officer A while telling him to leave the area. Witness 2 initially told Witness 9 that Subject 2 ran towards Officer A while holding an object in his hand, presumably in an effort to scare Officer A. Though Witness 2 would later deny that she could recall making these statements, she admitted that she “didn’t think so, but could have” made the statement. Witness 1 initially told the responding CPD detectives and representatives from the SAO that Subject 2 had pointed his phone at Officer A “as if it was a gun.” Witness 1 later recanted this statement, claiming that he did so only after being threatened by CPD detectives.

Though their accounts have evolved, or been outright recanted, Subject 2, Witness 1, and Witness 2 have all expressed, in one form or another, at one time or another, that Subject 2 was holding an object and moving in a manner that could have been perceived as aggressive. Based on the totality of the facts and circumstances, the R/I finds that an officer with similar training and experience as Officer A could reasonably believe that Subject 2 posed a threat to his or her safety. However, the same officer would also reasonably identify the inherent danger that could result in firing his or her weapon at a subject in close proximity to innocent bystanders. The level of care and concern expected of an officer with similar training and experience, in a similar circumstance, makes Officer A’s use of deadly force objectively unreasonable, and therefore in violation of policy as outlined by the Use of Force Model and the Chicago Police Department’s General Order 03-02-03, III, which states:

III. DEPARTMENT PROHIBITIONS FOR USE OF DEADLY FORCE

Use of firearms in the following ways is prohibited:

- A. Firing into crowds**
- B. Firing warning shots
- C. Firing into buildings or through doors, windows, or other openings when the person lawfully fired at is not clearly visible.

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- D. Firing at a subject whose action is only a threat to the subject himself (e.g., attempted suicide).
- E. Firing at or into a moving vehicle when the vehicle is the only force used against the sworn member or another person

The decision by Officer A to engage Subject 2 and Witness 1 precipitated this incident. Officer A himself has characterized his contact with the men as his “taking police action,” though he admits that in the course of taking this action, he never identified himself as a police officer. Officer A had available to him more reasonable options, not limited to his calling 911 again, as he had done so less than an hour before this event occurred, and not initiating any encounter with the group of individuals as he was leaving his residence in his personal vehicle.

By his own description of this event, Officer A observed the men acting in a disorderly and aggressive manner well before he elected to leave his property. Officer A also described that he pulled his vehicle in front of the men, initiating the contact that triggered the events that followed.

The R/I finds that Officer A had reasonable and available options to avoid firing upon Subject 2, and subsequently into the crowd of people he was with. Based upon his own description of this event, Officer A was driving away from the alley, and from the group of people that included Subject 2, at the time that Subject 2 allegedly began to approach him. Aside from the inconsistent evidence of whether or not Subject 2 was actually approaching his vehicle, an officer with similar training and experience, in a similar situation, would not have been unreasonable in deciding a better course of action was to accelerate away from the threat in an effort to avoid a perceived attack. This potential action is especially reasonable when weighed against the alternative action of firing from his vehicle across his body at an 8 o'clock position, at the perceived threat, thereby endangering the other persons, or crowd, in close proximity.

Officer A contends that his use of deadly force was within policy; however, Officer A's account of the incident and reaction to the incident are questionable. This investigation has shown that Officer A's use of Deadly Force was in violation of Section III of the same CPD General Order, and is therefore, by definition, a violation of the General Order as a whole because Officer A was prohibited from firing into crowds. Therefore, based upon the preponderance of evidence, the R/I recommends that Allegation #2 be Sustained.

The R/I recommends a finding of **Sustained** for **Allegation #3**, that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, Officer A was inattentive to duty in that he fired his firearm into a crowd, in violation of the provisions of General Order 03-02-03, Section III, striking Subject 1.

In his statement to IPRA, Officer A stated Subject 1 and Witness 2 were “ten paces” behind Subject 2 and Witness 1 at the time he had initial contact with the men. Officer A also stated that at the time he fired his weapon, he could not see Subject 1,

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Witness 2, or Witness 1, and that he was focused only on Subject 2. Officer A related he believed Subject 1 and Witness 2 were still on the sidewalk where he had last seen them. Officer A further explained that Subject 2's movement towards him as he pulled away from the alley "changed the angle" of the contact.

While the R/I makes note of Officer A's assertions, the available evidence factually disproves them. It cannot be disputed that Subject 1 was standing within close proximity to Subject 2 at the time Officer A fired his weapon. This conclusion is most strongly supported by the mere fact that both Subject 2 and Subject 1 were struck by gunfire. Witness 1 and Witness 2, though not struck by gunfire, were no less in close proximity to both Subject 2 and Subject 1, culminating in the four persons being crowded together in a group for which a reasonable officer would have recognized posed the significant potential for collateral casualties to be incurred.

In a conversation with Witness 7, Officer A explained that at the time he fired his weapon, Subject 1 and Witness 2 were standing in the immediate area where the sidewalk met his alley, near his fence. This fact as related to Witness 7 demonstrates that Officer A was aware that there were additional people within his line of fire. This statement is supported by the physical evidence in this incident.

Additionally, although Officer A stated to IPRA that he believed Subject 1 and Witness 2 were "where he had last seen them," which was ten paces behind Subject 2, he admits these two civilians were behind the subject he was shooting. It is incumbent upon a reasonable officer in a situation similar to this to constantly evaluate the position of persons that could potentially be in harm's way. It is not enough to act based upon where a person *was* prior to the incident unfolding, as the level of care and concern required mandates that Officer A know where they *are* at the time they take action. Subject 2, Witness 1, and Witness 2 all relate that their group was walking together, and that they were moving around Officer A's car, together, at the time this incident occurred. The physical evidence supports that Subject 1 was part of this crowd of people at the moment Officer A elected to use deadly force. This investigation has shown that Officer A's use of Deadly Force was in violation of subsection III General Order No. 03-02-03. Therefore, based upon the preponderance of evidence, the R/I recommends that Allegation #3 be Sustained

The R/I recommends a finding of **Sustained** for **Allegation #4**, that Officer A was inattentive to duty in that he provided inconsistent accounts of this event in his deposition, detective interview, his TRR, to the SAO, and to IPRA

Departmental reports regarding the interview with Officer A on the night of this incident do not reflect any reference made by Officer A to his seeing a "flash" or hearing a gunshot. These observations were first made known in Officer A's interview with the investigators from the SAO. These observations later evolved in Officer A's deposition, where he announced that he may have heard more than one gunshot.

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In his statement to IPRA, Officer A explained that the discrepancies in the departmental reports in comparison to his statements at deposition were rooted in the authoring detective's interpretation of what he related on the night of this incident. Officer A was adamant that he has provided a consistent account of this event. Officer A related that "sometimes" he recalls a gunshot, and that "sometimes he does not." Officer A cited the traumatic nature of the event as possibly having an impact on his ability to recall this incident with complete certainty.

While Officer A asserts the traumatic nature of the incident, the physical evidence establishes that his accounts of the incident are erroneous.

Subject 2 denied being in possession of a gun during the incident and there was no evidence proving he ever was in possession of a gun. Witness 1 and Witness 2 denied observing Subject 2 with a weapon during the incident and Witness 3 and Witness 5 denied observing Subject 2 with a weapon prior to the incident. In addition, during a canvass, resident Witness 8 stated that he heard Subject 2 tell officers after the incident that "he did not have a gun," and Officer B stated that he heard Subject 2 state that he "only had a cell phone."

After Officer A fired his gun, Subject 2 ran west on 15th Place towards the responding CPD squad car and reported that he had been shot. Not only is it highly unlikely that Subject 2 would have initiated contact with the officers if he had been armed, but the in car camera footage and Officer B both support the fact that Subject 2 ran directly towards the responding officers after being shot and flagged the officers down as well. In addition, Officer B stated that Subject 2 was bleeding in one hand and did not have anything, such as a gun, in his other hand, and the in car camera footage supports Officer B's account.

Additionally, blood evidence at the scene, attributed to Subject 2, suggests that Subject 2 ran approximately 200 feet west on 15th Place before encountering the responding CPD officers. It is in the area of 3146 W. 15th Place that a concentration of blood evidence was located that appears to be greater in volume and concentration. This evidence was marked by the Evidence Technicians as "K." This evidence is consistent with a person standing in one place while bleeding, leading to the reasonable determination that Subject 2 stopped his flight at this point in order to address the responding CPD officers.

The blood trail further suggests that Subject 2 then walked back east on 15th Place after alerting Officers B and C. The blood trail continues back to the area of 3122 W. 15th Place, where it appears that Subject 2 may have stopped near a vehicle, a silver Chevrolet Malibu, parked on the north side of 15th Place. It is noted by the R/I that there is a sewer grate at this location, and that the grate has openings at the top that are approximately 2 inches wide. In his statement to IPRA, Officer A opined that Subject 2 possibly could have discarded a gun in the sewer. However, Officer A never notified CPD that a weapon possibly could have been thrown in the sewer. In addition, the sewer is within

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approximately twenty-five feet of the scene. It would be highly unlikely that Subject 2 would return this close to the scene while still in possession of a firearm.

Though Officer A asserts that Subject 2's whereabouts were unknown for a period of time following the shooting, and he may have discarded a weapon in that time period, there is no evidence to establish that Subject 2 left the scene beyond what has been described. Subject 2 stated after Officers B and C spoke with him, they drove towards Officer A. Subject 2 followed the officers on foot and subsequently engaged in a verbal altercation with Officer A. Witness 2 and Witness 1 both stated that Subject 2 returned to the scene and got into a verbal altercation with Officer A. While Officer A asserts that Witness 1's whereabouts are questionable, Witness 1 stated that he remained on the scene and heard Officer A tell Officers B and C not to let Subject 2 "touch the phone."

Officer A claimed that the OEMC recording of him stating, "Don't let him touch that phone," was in reference to Citizen 1 attempting to retrieve the cell phone from the scene, but there is no evidence to support his account. The in car camera footage documents that Citizen 1 did not approach the scene until 0112 hours, which is five minutes after Officer A made the statement "don't let him touch that phone" on the OEMC recording. Citizen 1's arrest report also documents that he was not arrested until 0115 hours. Witness 2 stated Subject 2 attempted to pick up the cell phone after the officers arrived on the scene, and Witness 8 stated that he observed Subject 2 pick up the phone after the officers arrived. Subject 2 then dropped the phone after Officers B and C told him to do so.

Based upon the available evidence, Officer A provided misleading and inconsistent information and accounts of the incident. Not only did Officer A provide inconsistent statements in his deposition, detective interview, and to the SAO, he also provided an inconsistent statement to IPRA. Consequently, Officer A's TRR does not accurately reflect the incident because he documented that Subject 2 had a handgun. There is no evidence to support that anyone but Officer A was in possession of a firearm. The only gunshots heard and muzzles flashes observed came from Officer A's firearm. When asked, Officer A could not report an accurate description of Subject 2's handgun to CPD Sergeant 2 on the night of the incident. He also did not report to detectives on the night of the incident that Subject 2 fired a handgun at him, or he heard a gunshot and believed that he had been shot. Therefore, based upon the preponderance of evidence, the R/I recommends that Allegation #4 be Sustained

The Reporting Investigator Recommends that **Officer A** be cited for a **Rule 2 violation** in that his overall conduct during the incident on 21 March 2012 brought discredit upon the Department. Officer A violated the provisions of General Order No. 03-02-03, Section III, which ultimately resulted in the death of Subject 1. Because of Officer A's actions during this incident, he tarnished the image of the CPD and subjected the entire Department to negative public opinion and media attention when he was arrested, charged, and indicted for this incident. Officer A impeded the Department's efforts to achieve its policy and goals in that on 21 March 2012, at 0105 hours, at 3116

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W. 15th Place, Officer A, brought discredit upon the Department in that he discharged his firearm at Subject 2, who was in the forefront of a crowd; fired his firearm into a crowd striking Subject 1; and provided inconsistent accounts of this event in his deposition, detective interview, to the SAO, to IPRA, and in his TRR.

FINDINGS:

Accused:

Officer A

Allegation #1:

Sustained. Violation of Rule 10, “Inattention to duty,” in that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, while off-duty, Officer A was inattentive to duty by not qualifying with his weapon.

Count 2:

Sustained – Violation of Rule 6, “Disobedience of an order or directive, whether written or oral,” in that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, while off-duty, Officer A was inattentive to duty by not qualifying with his weapon.

Allegation #2:

Sustained. Violation of Rule 6, “Disobedience of an order or directive, whether written or oral,” in that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, while off-duty, Officer A violated the provisions of General Order 03-02-03, Section III, A, by discharging his firearm at Subject 2 who was in the forefront of a crowd.

Count 2:

Sustained. Violation of Rule 2, “Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department,” in that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, while off-duty, Officer A discharged his firearm at Subject 2 who was in the forefront of a crowd.

Count 3:

Sustained. Violation of Rule 10, “Inattention to duty,” in that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, while off-duty, Officer A was

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inattentive to duty by discharging his firearm at Subject 2 who was in the forefront of a crowd.

Count 4: **Sustained.** Violation of Rule 38, “Unlawful or unnecessary use or display of a weapon,” in that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, while off-duty, Officer A discharged his firearm at Subject 2 who was in the forefront of a crowd.

Allegation #3 **Sustained.** Violation of Rule 6, “Disobedience of an order or directive, whether written or oral,” in that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, while off-duty, Officer A discharged his firearm into a crowd, striking Subject 1.

Count 2: **Sustained.** Violation of Rule 2, “Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department,” in that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, while off-duty, Officer A discharged his firearm into a crowd, striking Subject 1.

Count 3: **Sustained.** Violation of Rule 10, “Inattention to duty,” in that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, while off-duty, Officer A was inattentive to duty by discharging his firearm into a crowd, striking Subject 1.

Count 4: **Sustained.** Violation of Rule 38, “Unlawful or unnecessary use or display of a weapon,” in that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, while off-duty, Officer A discharged his firearm into a crowd, striking Subject 1.

Allegation #4: **Sustained.** Violation of Rule 10, “Inattention to duty,” in that on 21 March 2012, and subsequent dates, Officer A provided inconsistent accounts of this event in his deposition, detective interview, and to the SAO.

Count 2: **Sustained.** Violation of Rule 2, “Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department,” that on 17 August 2015, at 1125 hours, at 1615 W. Chicago Avenue, IPRA, Officer A provided an inconsistent account

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to IPRA regarding the incident that occurred on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place.

Count 3:

Sustained. Violation of Rule 10, “Inattention to duty,” in that on 21 March 2012, at 1139 hours, Officer A generated an inconsistent TRR relating to the police-involved shooting.

Other Violations:

Sustained. Violation of Rule 2, “Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department,” in that on 21 March 2012, at 0105 hours, in the vicinity of 3116 W. 15th Place, while off-duty, Officer A brought discredit upon the Department by his overall actions and conduct specifically by firing his weapon into a crowd striking Subject 2 and Subject 1, providing inconsistent accounts of this event in his deposition, detective interview, to the SAO, to IPRA, and in his TRR. Further, Officer A was arrested and charged with Manslaughter – Involuntary, Reckless Discharge of a Firearm – Endanger, and Reckless Conduct, thereby bringing discredit upon the Department.