

Independent Police Review Authority
Log #1064607/ U #13-30

INVESTIGATION

NUMBER: Log #1064607/ U #13-30, Officer-Involved Shooting

INVOLVED

OFFICER: “Officer A” (Chicago Police Officer); Male/White; 41 years old;
Off- Duty; In Civilian Clothes; Year of Appointment – 2001

INVOLVED

OFFICER’S

INJURIES: None.

INVOLVED

SUBJECT:

“Subject 1”; Male/Black; 28 years old

INVOLVED

SUBJECT’S

INJURIES:

Bullet wound to the right chest, fatal.

INITIAL

INCIDENT:

Burglary.

DATE/TIME:

31 AUG 13, 2340 hours

LOCATION:

1937 N. Lincoln Avenue – gangway
Beat 1814

SUMMARY OF INCIDENT:

On 31 August 2013, Officer A was returning to his residence located at XXXX N. Lincoln Avenue on foot through the rear alley from his brother's bar, Gamekeepers, located at 345 W. Armitage Avenue.¹ Upon approaching his residence, Officer A observed a male subject, now known as Subject 1, on the rear porch of the second floor of an apartment at 1937 N. Lincoln Avenue. Knowing that 1937 N. Lincoln Avenue was vacant and in the process of being rehabbed, Officer A asked Subject 1 what he was doing. Subject 1 responded by stating words to the effect of, "You don't want any of this. You are going to get hurt. I will kill you." Officer A, who was still in the alley, announced his office, displayed his badge and ordered Subject 1 down from the second floor. At the same time, Officer A used his cellular phone to dial 911. Subject 1 then shined a flashlight in Officer A's direction before proceeding down the rear stairs. As Subject 1 proceeded down the stairs, Officer A observed him carrying a backpack and with his hand in his waistband. As Subject 1 arrived on the first floor, he approached Officer A while stating, "I'm going to kill you." Officer A then struck Subject 1 on the head with the butt of a revolver. Subject 1 fell backward and Officer A ordered him to surrender. Subject 1 stood up and fled in the opposite direction of Officer A; however, his path was blocked by a brick wall. Subject 1 then turned toward Officer A, at which time Officer A observed Subject 1 holding a shiny object near his waist. In fear for his safety, Officer A fired two rounds, striking Subject 1 in the chest area. Subject 1 was pronounced dead at the scene. No weapon was recovered, however a large, chrome colored watch was found near Subject 1.

¹ At the time, Officer A was carrying a revolver belonging to his brother, [Brother of Officer A], which he subsequently used against Subject 1. [Brother of Officer A] gave Officer A the revolver at the bar to take to his home for safekeeping.

INVESTIGATION:

In a statement to IPRA on 03 September 2013, **Officer A** stated he had just finished having dinner at his brother's, [Brother of Officer A] bar, Game Keepers, located at 1971 N. Lincoln Avenue.² When Officer A prepared to leave the bar, [Brother of Officer A] asked him to bring his gun home for safekeeping, as he had routinely done in the past, and [Brother of Officer A] would pick it up from him later. [Brother of Officer A], a licensed private investigator, had his gun with him because he came to the bar from work. [Brother of Officer A] does not like to have his gun in the bar and prefers not to leave it in his car. Officer A left the bar with [Brother of Officer A's] gun and walked up the alley, commonly used as a pedestrian way, toward his residence. Officer A was wearing citizen dress and did not have his own gun on him at the time.

As Officer A neared his neighbor's property, he noticed the top floor light that is normally on was off, and the gate was ajar. Officer A found it odd because the property is vacant and his neighbor is in the process of rehabbing the building to rent it out. Officer A continued to his garage but doubled back to check if everything was okay. When Officer A went back to his neighbor's property, he saw a silhouette and noticed a subject holding a flashlight with the screen door open. Officer A identified himself as a police officer and asked the subject, now known as Subject 1, what he was doing. Subject 1 replied to Officer A, "You don't wanna get hurt... You don't want any of this. Mind your own business."³

Officer A repeated that he was a police officer and dialed 911 on his cell phone to report a possible burglary in progress. Officer A pulled out his gun and badge and announced to Subject 1 that he had his gun and badge. Subject 1 closed the screen door and shined a flashlight down on Officer A. Officer A then drew his weapon and came onto the property from the alley. Officer A saw one of his neighbors, Witness 1, walking down the alley with two people Officer A does not know. Officer A asked Witness 1 to stay with him because there was a possible burglar. Officer A told Witness 1 to take cover behind a brick building at 1939 N. Lincoln Avenue and told Witness 1's companions to leave because it was not safe. Witness 1's companions went on their way.

Officer A told Subject 1 to drop whatever was in his hands and come downstairs. Subject 1 then shut off his flashlight and went to the south end of the balcony and picked up an object, which Officer A later learned was Subject 1's backpack. Subject 1 reemerged and walked down the stairs with his hand concealed underneath his shirt in his waistband area. Subject 1 repeatedly told Officer A he was "going to get hurt" and to "mind his own business." As Subject 1 continued down the stairs, Officer A repeatedly told Subject 1 to put his hands up and that the police were on the way. When Subject 1 reached street level he stated, "I'm gonna kill you motherfucker."⁴ Officer A repositioned himself so that he had a direct line of sight to Subject 1, approximately six

² Officer A stated he does not drink and did not consume any alcoholic beverages at the bar.

³ Transcribed statement of Officer A, page 11, lines 29-31.

⁴ *Ibid*, page 23, line 20.

feet away from him. Subject 1's right hand was still concealed underneath his shirt, in his waistband area, and he refused to show his hand.

Subject 1 then squared up his body with Officer A's body, with his left leg to the rear, and lunged at Officer A. While holding the revolver in his hand, Officer A struck Subject 1 on the forehead with his forearm, and kicked him in the midsection.⁵ Subject 1 stumbled backward and turned his back to Officer A. Officer A and Subject 1 were now four to five feet apart. Subject 1 put his hand underneath his shirt again and told Officer A he was going to kill him. Subject 1 then turned quickly toward Officer A and pulled his hand out of his waistband area. As his hand emerged from his waistband area, Officer A observed a shiny metallic object in Subject 1's hand area. Officer A fired two shots. Subject 1 fell to the ground and rolled backward down a steep decline on the property into an area that was completely dark. Officer A heard six or seven seconds of "gurgling" and knew that he struck Subject 1 at least once. Officer A then moved away and dialed 911 to make notification of the shooting and request an ambulance. Officer A turned to Witness 1, who was standing behind him and to the left, and asked him to go down the alley and look for the police.

The Detective Supplementary Report documents that **Officer A** gave detectives an account of this incident. Officer A stated as Subject 1 descended the stairs, he took position just outside a wrought iron fence and continued to give Subject 1 verbal commands to show his hands and get on the ground. Subject 1 disregarded Officer A's orders and instead charged at him. Officer A used direct mechanics to kick and strike Subject 1, after which Subject 1 stumbled backward and turned his back on Officer A with his right hand tucked in his waistband. Subject 1 again told Officer A he would kill him, and then charged him a second time while removing his hand from his waistband. Officer A observed a metallic object in Subject 1's right hand, and in fear for his life and safety, discharged his firearm twice.

The **Tactical Response Report** documents that Officer A used his handgun as an impact weapon and discharged his firearm after Subject 1 became an assailant who presented a weapon and used force likely to cause death or great bodily harm. The report notes that Subject 1 was armed with a metallic object.

The **Officer's Battery Report** documents that Subject 1 repeatedly threatened to kill Officer A, while implying that he was armed with a handgun by holding his right hand under his shirt at his waistband. Subject 1 then abruptly turned toward Officer A and removed a metallic object from his waistband.

In a statement to IPRA on 01 September 2013, **Witness 1** stated that he ran into his neighbor, Officer A, as he was leaving Gamekeepers bar. They chatted briefly and Officer A headed home. Witness 1 also headed home approximately five minutes later. As Witness 1 walked down the alley toward his building, he heard some indistinct yelling. Witness 1 stopped and observed Officer A in a heated exchange with a subject,

⁵ Officer A stated that in his Tactical Response Report, the checkbox for "kicks" should also be selected.

now known as Subject 1, who was on the back porch of a building on the third floor. Witness 1 stopped approximately ten feet behind Officer A. Officer A held his badge in his left hand, a gun in his right hand and identified himself as a police officer. Subject 1 yelled and screamed at Officer A. Officer A told Subject 1 to come down and drop whatever was in his hands.⁶

Witness 1 stated Subject 1 replied, "I'll kill you nigger...fuck yourself."⁷ Subject 1 eventually came down to the first floor landing. Subject 1's right hand was either in his pocket or underneath his shirt. Officer A told Subject 1 to take his hands out of his pocket and get on the ground. Subject 1 disregarded Officer A's orders. Subject 1 stated, "Fuck you. You're not a fucking cop..."⁸ and came toward Officer A. Officer A extended his forearm and kicked Subject 1. Subject 1 stumbled backward and Officer A yelled at him to stay down. Witness 1 stated he was scared and backed up to a distance of fifteen to twenty feet away from Officer A and Subject 1. Witness 1 then heard two gunshots, but could not see who fired the shots. Witness 1 then heard Officer A on his cell phone making notification of the weapon discharge. Officer A asked Witness 1 to call his brother, [Brother of Officer A].

The Detective Supplementary Report documents that **Witness 1** told detectives essentially the same information he provided in his statement to IPRA. Additionally, Witness 1 stated he thought Subject 1 had a gun so he backed away. He also stated that when Subject 1 charged Officer A the second time, he heard Officer A shout, "Show me your hands!" at which time Witness 1 heard two gun shots. Witness 1 then asked Officer A if he was okay because he thought Subject 1 had a gun

In a statement to IPRA on 26 September 2013, [**Brother of Officer A**], an armed private investigator, stated that he and his brother, Officer A, watched a football game at their father's bar, which [Brother of Officer A] manages. When Officer A got ready to go home, [Brother of Officer A] asked him to take his [E. [Brother of Officer A's]] gun home with him, and secure it until he could pick it up when he left the bar. [Brother of Officer A] was going to be at the bar until closing and did not want to keep his gun because he was scolded by a sergeant in the past for carrying it in the bar. A short time after Officer A left the bar, [Brother of Officer A] received a call from Officer A's neighbor, Witness 1, who told him to go to his brother's house because something happened. [Brother of Officer A] walked down the block toward Officer A's house and learned that Officer A was involved in a shooting.

The Detective Supplementary Report documents that during a canvass, **Witness 2** told detectives he was watching TV when he heard two males arguing. Witness 2 muted the TV, opened his bedroom window and heard a male voice state words to the effect of "Get your hands out of your pockets." Witness 2 then heard two gunshots.

⁶ Witness 1 stated he never saw anything in Subject 1's hands.

⁷ Transcribed statement of Witness 1, page 6, line 5.

⁸ *Ibid*, page 14, lines 9-10.

In a statement to IPRA on 21 March 2014, **Witness 2** stated he and his wife were at home watching TV when they heard loud arguing within twenty five feet of their back door. After one or two minutes, Witness 2 muted the TV and heard a male voice state something to the effect of, "Get your hands out of your pockets."⁹ Witness 2 heard another male yell back something to the effect of, "I'm not going to get my f'in' hands out." The other person replied, "I'm not going to tell you again; get your hands out of your pocket. Let me see your hands." The other person said, "I'm not going to do it. You know who I fuckin' am," or something to the effect of, "you don't know who you're fucking with."¹⁰ Approximately four to five seconds later, Witness 2 heard two or three gunshots. He then told his wife to call the police.

In a statement to IPRA on 06 March 2014, **Witness 3**, identified as a witness during a CPD canvass, stated he was in his apartment with the balcony door open when he heard yelling and screaming. Witness 3 heard words to the effect of, "Show me your hands," "let me see your hands," or "get your hands up," but could not decipher anything else. Witness 3 looked outside and heard what sounded like a gunshot. Witness 3 then went back inside his apartment and did not see or hear anything further.

In a statement to IPRA on 27 March 2014, **Witness 4**, identified as a witness during a CPD canvass, stated he was in his bedroom when he heard someone shout, "Show me your hands!" twice. Witness 4 walked out onto his balcony, which is on the 20th floor, and saw a man across the alley standing next to a building at the base of the stairs, looking into a gangway. The man then extended his arm in front of him and fired two gunshots. The same man pulled out his cell phone and placed a call. Witness 4 then went inside his apartment and dialed 911. Witness 4 never saw the person who was shot.

The Detective Supplementary Report documents that during a canvass, **Witness 5 and Witness 6** told detectives that their balcony windows were open when they heard a male shouting. Witness 5 and Witness 6 walked onto the balcony and observed a white male in the alley giving someone orders and warnings. The white male stated, "Put your hands up and don't go into your pockets." Witness 5 and Witness 6 heard this statement made three times, followed by two gunshots.

During a phone conversation with IPRA, **Witness 5** stated she and her friend, Witness 6, were in their residence when they heard a man shout, "Put your hands up where I can see them!" three times. Witness 5 and Witness 6 stepped onto their balcony, on the eighth floor, but could not see anyone from their vantage point. Moments later they heard two gunshots. They then saw a male wearing a black shirt step back into the alley. The male was on his cell phone. Witness 5 stated she and Witness 6 later learned that someone had been shot but they never saw the subject.

Attempts to obtain in-person interviews from **Witness 5 and Witness 6** were unsuccessful.

⁹ Transcribed statement of Witness 2, page 4, lines 15-17.

¹⁰ *Ibid*, page 4, lines 19-24; page 5, lines 1-2.

The Detective Supplementary Report documents that during a canvass, **Witness 7** told detectives that he was watching TV when he heard a gunshot. Witness 7 went out onto the balcony and saw a male backing up and heard a second gunshot. Witness 7 related he could see the individual who was shooting but could not see who or what he was shooting at.

During a phone conversation with IPRA, **Witness 7** stated he lives in Newport, Kentucky and was in town visiting at the time of the incident. He stated that he was watching TV when he heard one gunshot. He went out on the balcony, and from the 17th floor he looked down into the alley and saw a male who appeared to be on his cell phone. Witness 7 stated he heard voices but was too far away to decipher the conversation. He also stated that from his vantage point, he could not see enough of the alley to see what happened.

Attempts to reach **Witness 8, Witness 9, Witness 10, Witness 11, Witness 12, Witness 13, and Witness 14**, identified as witnesses during a CPD canvass, were unsuccessful.

Contact with **Witness 15, Witness 16 and Witness 17**, also identified as witnesses during a CPD canvass, produced no additional information.

A **canvass** of the vicinity of the alleged incident by IPRA personnel produced no additional information.

A search for **Police Observation Devices (PODs)** in the area met with negative results.

The **Crime Scene Processing Report** reveals that Subject 1 was in possession of several IPODS, cell phones, gloves, a watch with a white plastic band and silver face, a silver handheld radio, \$55 USC, a Master Card in someone else's name, a flashlight, and a canvas Black and Decker bag with tools. Evidence technicians also recovered a watch with a black wrist band and silver face from the ground by Subject 1's head.

The **Office of Emergency Management and Communications (OEMC) transmissions** document that Officer A called OEMC, identified himself as a police officer, and requested a cruiser at XXXX N. Lincoln Avenue for an attempted burglary at his next door neighbor's house. Officer A provided a description of the subject and stated the subject refused to come down. Approximately two minutes later, Officer A called and reported that he just shot someone. The remainder of the transmissions contain calls to 911¹¹ and CPD radio transmissions. Analysis of the calls and transmissions are consistent with Department reports and witness accounts.

¹¹ Witnesses Witness 2 and Witness 4 called 911 and reported hearing gunshots.

A **Chicago Police Department Event Query** documents that Officer A placed the first 911 call at approximately 23:38 hours, 11 seconds; and the second call at 23:41 hours, 00 seconds.

A **Synoptic Report** from the Bureau of Internal Affairs documents that Officer A tested negative for drugs and/or alcohol in his system at the time of the incident.

A **CFD Ambulance Report** documents that Subject 1 was found to be deceased upon their arrival. Fire Department personnel contacted Northwestern Memorial Emergency Room but no orders were given.

Evidence Technician photographs depict Subject 1, recovered evidence, and various angles of the scene.

The **Postmortem Examination Report** documents that Subject 1 died from one gunshot wound of the right side of the chest. The manner of death was ruled a Homicide. There was no evidence of close-range fire. Toxicological analyses returned negative results.

A **report from the Illinois State Police Division of Forensic Services** dated 14 January 2014 documents that the Smith & Wesson, .38 caliber revolver, serial #CJR3407, used by Officer A, was test fired and found to be in firing condition. Further testing revealed that one fired bullet submitted for examination was fired from the .38 caliber revolver submitted for analysis. Additionally, two fired cartridge cases and three unfired cartridges were examined for caliber and type.

Civil Suit 14-L-8588, filed 15 August 2014, alleges wrongful death against the City of Chicago in that Officer A used deadly force against Subject 1, who was unarmed and did not pose a threat to any individual, including Officer A.

CONCLUSION AND FINDING:

This investigation found that Officer A's use of deadly force was in compliance with Chicago Police Department policy. According to the Chicago Police Department's General Order 03-02-03, II:

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

Officer A's actions were in accordance with the conditions of CPD's deadly force policy. All available evidence corroborates statements made by Officer A, in that Officer A fired at Subject 1 after Subject 1 repeatedly refused to show his hands, threatened to kill Officer A, charged at him, and turned toward Officer A with a shiny, metallic object in or near his hand, placing Officer A in imminent fear of great bodily harm or death. There are multiple independent witnesses whose statements are consistent with Officer A's account.