

INDEPENDENT POLICE REVIEW AUTHORITY

Log# 1067652/U#14-05

INVESTIGATION

NUMBER: LOG # 1067652/U#14-05

INVOLVED

OFFICER: “Officer A” (Chicago Police Officer); Male/Hispanic; 40 years old;
Off- Duty; Plain Clothes; Year of Appointment – 2000

OFFICER’S

INJURIES: None reported

SUBJECT #1: “Subject 1”; Male/Hispanic; 20 years old

SUBJECT #1’S

INJURIES: Gunshot wound to knee

SUBJECT #2: “Subject 2”; Male/Hispanic; 18 years old

SUBJECT #2’S

INJURIES: None reported

LOCATION: 4318 W. Fullerton Avenue

DATE/TIME: 22 FEB 2014, 2106 hours

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SUMMARY OF INCIDENT:

This investigation, in conjunction with the information gained through the investigation conducted by the Chicago Police Department, revealed the following:

On 22 FEB 2014, at approximately 2106 hours, off-duty Officer A, was having dinner at Mariscos Nayarit Restaurant with his girlfriend, [Girlfriend]. Officer A and [Girlfriend] were dining with [Girlfriend]'s brother, his family and friends. Subjects 1 and 2 were seated approximately ten feet away from Officer A and his dining party. Subject 1 and Subject 2 appeared to be intoxicated and became disruptive toward Officer A and his party. The subjects asked Officer A if he was affiliated with a gang. Officer A approached the subject's and asked them to be quiet and to calm down. Officer A returned to his table.

A short time later, the subjects approached Officer A's table. The subjects stood to the right and to the left of Officer A. Officer A announced his office, un-holstered his weapon, and held it along the side of his body. The subjects exited the restaurant and Officer A yelled for someone to call 911. Officer A exited the restaurant in an attempt to obtain the subject's vehicle information. Officer A observed Subject 2 approaching the restaurant with a bottle in his hand. Subject 1 had driven a vehicle to the entrance of the restaurant. Subject 1 exited the vehicle with a gun in his hand. In fear for his "well being" and the "well being" of others inside the restaurant, Officer A discharged three rounds toward Subject 1.

Thereafter, both subjects entered the aforementioned vehicle and fled from the scene. Approximately thirty minutes later, the subjects were apprehended. It was later learned Subject 1 sustained a gunshot wound to his right knee.

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Attempts to contact and interview Subject 2 via personal visit and certified letter requesting his cooperation with this investigation were unsuccessful. As of the date of this summary, Subject 2 has not contacted IPRA.

In his statement to IPRA on 14 November 2014, Subject 1 related that he and Subject 2 went to Mariscos Nayarit Restaurant to drink some beers. Subject 1 placed \$20 in the jukebox, and began selecting songs. Officer A approached Subject 1 and made a comment about the music he selected. Subject 1 ignored Officer A and returned to his table. Officer A approached the subjects' table and told them he did not want to listen to their music; he wanted to listen to his music. Subject 2 told Officer A that after their music played, he could listen to his music. Officer A returned to his table.

Later, Officer A approached the subjects' table and stated, "You got to leave." You got to leave." Subject 1 stood to his feet. Subject 1 and Officer A were approximately two feet apart. Restaurant employee/witness [Employee] stood between Officer A and Subject 1. Thereafter, Subjects 1 and 2 exited the restaurant. Subject 2 drove a vehicle up to the entrance of the restaurant and exited the vehicle. Subject 2 was standing outside the entrance of the restaurant, and Officer A was also standing outside the entrance of the restaurant. As Subject 1 walked across the front of the vehicle to enter the passenger side of the vehicle, Officer A began shooting toward him.

Subject 1 returned to the driver's side of the vehicle and Subject 2 entered the passenger side of the vehicle. The subjects fled from the scene. Subject 1 drove to the backyard of his residence. Upon exiting his vehicle, Subject 1 noticed that he sustained a gunshot wound to his knee. Subject 1 entered his residence and treated his wound. Moments later, Subject 2 attempted to transport Subject 1 to the hospital in the aforementioned vehicle. While en route to the hospital, the subjects were stopped by a marked police vehicle and taken into custody. Subject 1 related he did not have any object in his hand/possession at any time during the incident with Officer A. Subject 1 stated he consumed approximately five beers prior to the incident with Officer A. Subject 1 related Officer A stated he was a Chicago Police Officer, but Officer A never showed identification identifying himself as such. Subject 1 stated initially he did not want to drive, because he was previously arrested for Driving Under the Influence.

According to **Department Reports**, Subjects 1 and 2 were arrested on 22 February 2014, at 2147 hours, at 3307 N. Pulaski Road. Subject 1 was charged with Aggravated Assault/Officer Firearm, and Subject 2 was charged with Aggravated Assault/Peace Officer/Weapon. The arresting officers were Officer B and Officer C. It is reported that Subject 1 was arrested after pointing a handgun at Officer A; and Subject 2 was arrested after brandishing a knife and approaching Officer A in an aggressive manner.

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Witness 1 and **Witness 2** related Subject 1 exited his vehicle, placed his hand in his pants, and then pointed a gun in the direction of Officer A. Officer A then discharged his weapon. The aforementioned witnesses' vehicle was struck by gun fire during this incident. The aforementioned witnesses positively identified Subject 1 in a line-up. **Restaurant employee/witness [Employee]** related that she did not observe either subject with a knife. [Employee]'s son, [Son], and daughter, [Daughter], refused to cooperate with this investigation.

911 caller/Witness 3, related she was in her residence when she heard gunshots. Looking from the window of her residence, Witness 3 observed Officer A outside the restaurant with a gun in his hand. Subject 1 was at the driver's side of a vehicle, and Subject 2 was walking toward said vehicle with a beer bottle in his hand. Members of Officer A's dining party refused to cooperate with this investigation. The witnesses that cooperated with this investigation, provided no information that was inconsistent with Officer A's account of the incident.

According to the **Tactical Response Report (TRR)** completed by Officer A, Subject 1 was an imminent threat of battery, and was likely to use force that caused death or great bodily harm. Officer A responded with member presence, and the discharge of his firearm.

According to the **Officer's Battery Report (OBR)** on the date, time and location of the incident, Officer A was in citizen's dress and off-duty. Subject 1 pointed a handgun at Officer A. Officer A did not sustain any injuries.

The **Evidence Technician Photographs** depict the scene of the shooting from various interior and exterior angles of the restaurant. Photographs were not taken of the involved parties. Interior and exterior photographs were taken of the subject's vehicle and of a vehicle that was struck by gunfire during this incident.

The **OEMC** and **PCAD** reports were collected and made part of this case file. Officer A called 911 to report the incident and provided a description of the subjects and of the vehicle in which they fled. An analysis of said documents show no information that is inconsistent with the facts as related by Officer A and the witnesses.

The **Police Observation Device (POD)** did not contain footage relative to this investigation.

IPRA conducted a canvass in an attempt to locate additional witnesses and/or evidence. Additional information was not discovered.

The **Chicago Fire Department Ambulance Report** documented Subject 1 was sitting in a Chicago Police Department squad car upon the paramedics' arrival. Subject 1 was alert, but very uncooperative. The narrative related Subject 1 sustained a through-and-through gunshot wound above his right knee. Subject 1 was transported to Illinois Masonic Hospital for medical treatment.

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Medical Records from **Illinois Masonic Hospital** indicate Subject 1 sustained two gunshot wounds to his right leg.

Illinois State Police Forensic Science Laboratory Reports document the examination of the recovered ballistic evidence, in comparison to Officer A's firearm. Based upon the analysis of the ISP Reports, it was determined Officer A fired three times. The cartridge casings were compared to Officer A's firearm and found to match Officer A's firearm. Officer A's firearm was tested and found to be in proper firing condition.

Court Documents pertaining to the disposition of this case were obtained. Said documents reflect a verdict of guilty was found for the charges against Subject 1. Subject 2 pled guilty to the charges against him.

In his statement to IPRA on 24 February 2014, Officer A related he and his girlfriend, [Girlfriend], went to meet [Girlfriend]'s brother's family for dinner. There were eight people in their dining party. Upon being seated at their table, Officer A observed Subjects 1 and 2 sitting approximately five feet from them. The subjects were looking in the direction of Officer A's dining party and speaking "underneath their breath." As Officer A and [Girlfriend] were selecting songs on a jukebox, Subject 2 motioned for Officer A to approach him.

Officer A initially ignored Subject 2. Subject 2 spoke louder and requested that Officer A come over to his table. Officer A approached Subject 2's table. Subject 2 stood up and stated, "What's up nigger?" Subject 1 then stood to his feet. Officer A took a few steps backwards, and informed the subjects he was a Chicago Police Officer and not a gang member. Employees of the restaurant intervened, and told Subject 1 and Subject 2 they had to leave. Officer A instructed his dinner party to call 911 and inform the dispatcher that an off-duty officer needed assistance.

Officer A informed the subjects the owner wanted them to leave the restaurant, and that they were currently trespassing. Subject 2 removed a knife from his jacket pocket and held it behind his leg. Officer A un-holstered his gun from his ankle holster, and held it in a downward position along the side of his body. Officer A identified himself again as a Chicago Police Officer, and told the subjects to leave. As the subjects exited the restaurant, Subject 2 stated, "I'm gonna fuck you up motherfucker. I'm gonna get you." From the vestibule of the restaurant, Officer A observed the subjects approach a dark-colored vehicle. Subject 1 entered the driver's side of the vehicle, as Subject 2 intentionally broke a beer bottle on the sidewalk.

As Officer A was looking through the restaurant window, he observed Subject 2 rushing toward the window with a broken bottle in his hand. Subject 2 made a motion as if he was going to throw the bottle. Officer A ducked, and stood back up. Subject 2 was still standing in front of the window. Officer A, who had his gun down by his side, partially exited the restaurant. Officer A stated to Subject 2, "Get the fuck out of here!"

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Officer A observed Subject 1 double-park his vehicle and run around the front of the vehicle. Officer A observed a handgun in Subject 1's hand. As Subject 1 began to point the gun in Officer A's direction, Officer A announced his office and discharged three rounds toward Subject 1.

Officer A related Subject 1 sustained a gunshot wound to his knee, at which point Subject 1 retreated to his vehicle. Both subjects entered the vehicle and fled the scene. Thereafter, Officer A informed the 911 dispatcher of the subject's route and license plate. Officer A informed a responding Sergeant about the incident.

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CONCLUSION AND FINDING:

This investigation revealed that the use of deadly force by Officer A was in compliance with the Chicago Police Department Policy pertaining to the use of Deadly Force. According to the Chicago Police Department's General Order 03-02-03, III:

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

Off-duty Officer A had a verbal altercation with Subjects 1 and 2 at a restaurant. The verbal altercation led to Subjects 1 and 2 leaving the restaurant. Moments later, Subjects 1 and 2 approached the entrance of the restaurant. Subject 2 had a broken beer bottle in his hand, and Subject 1 had a gun in his hand, which he pointed in the direction of Officer A. In fear for his life and patrons of the restaurant, Officer A discharged his weapon, striking Subject 1 about his knee. Both subjects were later apprehended, as Subject 2 attempted to transport Subject 1 to the hospital for medical treatment.

The facts and circumstances surrounding this event show that Officer A was in compliance with the statute "to prevent death or great bodily harm to the sworn member or to another person" as he reasonably believed his life and restaurant patrons lives were in imminent danger when Subject 1 pointed a firearm in his direction.