

INVESTIGATION

NUMBER: Log# 1070148 / U#14-022

INVOLVED

OFFICER #1: “Officer A” Chicago Police Officer; Male/White; 40 years old; On-Duty; in uniform; Year of Appointment - 1998

OFFICER #1

INJURIES: Contusion to finger on right hand.

SUBJECT #1: “Subject 1”; Male/Hispanic; 14 years old

SUBJECT’S

INJURIES: Multiple gunshot wounds – Deceased on scene.

WITNESS

OFFICER: “Officer B”, Chicago Police Officer; Male/White; 49 years old; On-duty; in uniform; Year of Appointment - 1999

LOCATION: 4748 W. Berenice (Sidewalk/alley)

DATE/TIME: 04 July 2014 at 2153 hours

TIME OF IPRA

NOTIFICATION: 2208 hours

SUMMARY OF INCIDENT:

On 04 July 2014, at approximately 2153 hours, Officers A and B, while on patrol, observed a Hispanic male, later identified as Subject 1, walking in traffic while clutching an object on/near his right side. Officer B gave Subject 1 verbal commands to show his hands and to stop, which were ignored. Officer B then made a u-turn, while continuing to give Subject 1 verbal commands. Officer A exited the vehicle and gave Subject 1 further verbal commands, which were also ignored. Subject 1 then fled eastbound on the north sidewalk of Berenice Avenue from Cicero Avenue, with Officer A in pursuit on foot and Officer B in pursuit by vehicle. Officer A reported that Subject 1 turned toward him while raising a large firearm. Officer A discharged one round from his firearm. Subject 1 continued to run and turned north in the east alley of Cicero Avenue. Officer A continued to chase Subject 1; Officer A reported that Subject 1 turned and pointed his firearm at him a second time. Officer A fired two additional shots at Subject 1 causing Subject 1 to fall and drop his firearm, and then continue to flee. Officer A relayed information over the radio to OEMC that shots were fired by the police and the direction that Subject 1 was running.

Officer A stopped in the alley and secured Subject 1's firearm, then continued his pursuit. Officer B passed Subject 1 and Officer A; he then blocked Subject 1's escape route with his vehicle and a fence. Officer B used the police vehicle to block Subject 1 flight path; Subject 1 made contact with the police vehicle and fell to the ground.¹ Subject 1 jumped up, turned, and collided into Officer A, at which time Officer A, while holding Subject 1's weapon, struck Subject 1 in the head with his right hand and then dropped Subject 1' weapon to the ground. Both Subject 1 and Officer A fell to the ground. Subject 1 was then placed in custody, after which both officers observed that Subject 1 had been shot. The officers called for an ambulance, however, Subject 1 was pronounced deceased on the scene by medical personnel and was not transported to a hospital. Officer A was transported to Resurrection Hospital where he was treated for a hand injury and released. There were no civilian or police officer witnesses identified during the investigation.

INVESTIGATION:

The **IPRA Preliminary Report** and the **Major Incident Notification Report** essentially related the same information as reported in the Summary of Incident of this report. (Att. 4, 75)

The **Department Reports** were generally consistent with the narrative in the Summary of Incident and documented the investigation of Aggravated Assault to a Police Officer – Handgun in all of the related reports. The Department reports provided substantially the same information as the Summary of Incident and the preliminary reports. (Atts. 6, 58 – 59)

The **Tactical Response** and **Officer's Battery Reports** of Officer A indicated that the subject, a Hispanic male, now identified as Subject 1, was armed with a .44 caliber revolver. The report indicated that Subject 1 did not follow verbal direction, fled, and presented an imminent threat of death of great bodily harm, when he pointed a revolver at Officer A. Officer A

¹ The contact between the CPD vehicle and Subject 1 is being investigated under Log #1080378.

responded by discharging his weapon three times at Subject 1, who later tackled Officer A to the ground. Officer A sustained a minor injury to his hand. (Atts. 7 - 8)

The **Traffic Crash Report** (RD# HX-331709) documented that upon coming to a stop after a small pursuit of a man with a gun, Officer B struck a fence at XXXX W. Byron. (Att. 11)

Evidence Technician Photographs depict the scene of the shooting from various angles and various locations of incident. Photographs were taken of Officer A's injury to his hand and his uniform, markers that were placed in the areas, Subject 1's weapon, and any other evidence related to this incident. The photographs of Subject 1 depicted abrasions to both of his knees, his upper left back and chest areas, and the right side of his face and body. (Atts. 37 - 40)

The **Event Queries** and **OEMC 911 Calls** indicated that shots were fired on 04 July 2014 at 2153 hours at the east alley of Cicero Avenue and Berenice Avenue at the location of 4748 W. Berenice Avenue, involving Beat 1634. The event queries and 911 calls also showed that the Crime Scene and the Evidence Technician Units were called while Beat 1731R stayed with the offender, now identified as Subject 1. (Atts. 19, 27-32).

During the **canvass** of the location of incident, Investigators spoke with Witness 1, who lives at XXXX W. Berenice and with her brother, Witness 2, who was visiting from out of town. Witnesses 1 and 2 stated that they were sitting on the porch watching the fireworks when at approximately 2130 hours, they observed a male Hispanic (now identified as Subject 1) walk out of the north alley and walk past their residence. Witnesses 1 and 2 stated that Subject 1 was holding his pants near his "crotch" area with his right hand and that it appeared that Subject 1 was holding something inside his pants. They did not observe anything further. Additional information was not discovered during the canvass. (Att. 15, 17)

In a conversation with **Witness 3** conducted on 05 July 2014 by Investigators during a canvass of the location, it was learned that on 04 July 2014 Witness 3 was in the alley by her residence (which forms a "T" with another alley) watching fireworks when she observed a marked police Tahoe coming down the alley. Witness 3 then observed as the Tahoe crashed into her fence. She went into the other alley and observed a "kid" (now identified as Subject 1) lying on the ground. A police officer was holding his head, while another officer stood off to the side. A silver gun approximately a foot and half long was also on the ground and the second officer appeared to be guarding it. Prior to the car crashing into the fence, Witness 3 did not hear or see anything unusual. In addition, Witness 3 did not see anyone else in the alley other than the two officers and the kid. (Att. 16)

A video recording from Alert Protective Services, one of the businesses in the area, located at XXXX N. Cicero, where the incident occurred, captured parts of the incident. The video recording captured a Hispanic male, now identified as Subject 1, fleeing from officers; Officer A pursuing Subject 1 on foot then Subject 1 slightly turning toward Officer A; Officer A fired a round while he chased Subject 1. Subject 1, who continued to flee, can be seen on the video falling to the ground and tossing what it appeared to be a gun. The video also shows Subject 1's baseball cap fall to the ground as he got up and continued to flee from the officers.

The video shows that the patrol car passed both Officer A and Subject 1, then blocked Subject 1's flight path through the alley. Subject 1 can be seen falling to the ground after either colliding with the patrol vehicle that blocked his way or being struck by the patrol vehicle as it blocked his escape. After falling to the ground, Subject 1 immediately jumped up, turned away from the patrol car, and ran into Officer A. When Subject 1 collided into Officer A, they both fell to the ground. The video then shows that Officer A and Officer B placed Subject 1 in handcuffs. Subject 1 remained on the ground, handcuffed and motionless. Officers Officer A and Officer B remained near Subject 1 as additional police units arrived to the scene. (Att. 35, 47 – 48, 70)

A **second video** recording of the scene was completed after the incident occurred by a Chicago Police Evidence Technician. This video recording captured the location of incident, the scene, markers, victim/offender, evidence, and so on. (Att. 56)

The **In-Car Camera** recording from Beat 1621 captured the incident after the fact. This video recording documented the location of incident, the arrival of additional officers, supervisors and crime scene lab personnel. The in-car camera captured Subject 1 on the ground in the alley, the officers that placed yellow tape around the crime scene area and on-going police activity in the alley. The incident occurred in the parking area of one of the buildings at the location. (Att. 50 - 51)

The **In-Car Camera** for Beat 1634 was reported as inoperable at the scene; footage for Beat 1634, Vehicle #8613 was not found upon request. (Atts. 4, 14, 49)

The **Chicago Fire Department Ambulance Report** documented that ambulance #39 responded and that there was a person down from an unknown cause. (Att. 22)

The **Crime Scene Processing Reports** and **Property Inventory Reports** documented all the evidence collected and secured which included firearms: Ruger Super Redhawk .44 magnum revolver (which belonged to Subject 1) and a Sig Saur P220ST .45 semi-automatic (which belonged to Officer A); a handgun magazine with eight capacity belonging to the Sig Saur P220ST, three casings, one fired bullet, blood swabs, GSR kits, clothing of Subject 1, and Surveillance recording. The reports documented all the Department members that were involved, had responded and the investigating officers and technicians, the inventory items, photographs taken of the victim, offender, the locations of incident and a brief summary of the incident. (Atts. 25 - 26).

The **Medical Examiner's Postmortem Examination Report** and **Photographs** indicated that Subject 1 had a perforating gunshot wound entrance on his back. The wound course was back to front and slightly upward involving the skin, subcutaneous tissue, and musculature in the area, producing an exit wound in his front left shoulder. There was also a second gunshot wound of entrance on his right lower back.² The wound course was back to front, right to left, and upward. The wound involved the skin and subcutaneous tissue in the area, lacerating the right lobe of the liver, perforating the diaphragm, penetrating the upper lobe of the left lung, coming to rest in the upper lobe of the left lung. The wound caused injury to the

² Although the location of this entry wound is identified as on his lower back, a photograph of the gunshot wound established that it is on the side of his body, above his right hip. (Att. 52, Photograph #47)

liver and diaphragm, contusions of the lower lobe of the right lung, injury to the left lung, and bleeding into the chest and abdomen. A large-caliber, copper-jacketed, lead bullet was recovered from the upper lobe of the left lung. The results of the toxicology analysis revealed that Subject 1 was positive for ethanol, with the results of 72 mg/dl.³ Medical Examiner photographs depicted the body, injuries and clothing of Subject 1 as well as the fired bullet retrieved from the body of Subject 1. The cause of death was multiple gunshot wounds. The manner of death was homicide (Att. 13, 52)

The **Illinois State Police (ISP) Forensic Science Laboratory Report** that was completed on 23 September 2014 documented that both firearms: a Ruger model Super Redhawk.44 Magnum caliber revolver (belonging to Subject 1) and a Sig Sauer, model P220 ST 45 Auto caliber, semi-automatic pistol (belonging to Officer A) were tested and found to be in proper firing conditions. Exhibit #4 – the Sig Sauer, model P220 ST 45 Auto caliber, semi-automatic pistol was operable and the shell casings and fired bullets were compared to Officer A's firearm and found to match this weapon. The examination of the recovered ballistic evidence in Exhibits #3 and #11 were both fired from the weapon documented in Exhibit #4. (Att. 57)

The **Illinois State Police Forensic Science Laboratory Report** that was completed on 15 September 2014 indicated that the revolver (Ruger model Super Redhawk.44 Magnum caliber revolver)⁴ with five live cartridges recovered from the scene revealed no latent impressions suitable for comparison on the weapon. (Att. 60)

The **Synoptic report** documented that Sgt. A received notification from CPIC regarding the firearms discharge incident and proceeded to respond to Area North. Upon arrival, Sgt. Fiedler began the 20 minute observation period of Officer A, immediately after he was made available to him. Officer A was presented with the Notice of Alcohol and Drug Testing and a breath test was conducted at 0157 hours, and the BAC was .000. Sgt. A collected the urine specimen of Officer A at 0210 hours. The results for the entire tests that were conducted came back negative. (Att. 53)

On 07 May 2015, **Civil Suit #15-CV-03119** was received at IPRA. The civil suit was filed by the father of Subject 1 on behalf of his son, Subject 1, who died as a result of the injuries he sustained at the hands of the involved officers. The Complaint at Law alleged that the decedent (Subject 1) was struck by a police vehicle and died from multiple gunshot wounds to the back. It alleged that the involved officers used deadly force against Subject 1 under circumstances in which he presented no threat of death or serious bodily harm to the police officers or any other individual. The Complaint at Law further alleged that Subject 1 was unarmed at the time he was shot, and denied that the decedent pointed a gun at the officers at or before the time shots were fired at him. (Att. 61, 67)

In a statement to IPRA, **Witness Officer B** stated that on 04 July 2014, he and his partner, Officer A, were on patrol, going southbound on Cicero Avenue and as they approached Berenice, they saw an individual, now identified as Subject 1, crossing the street directly in front

³ (72 mg/dl) is the equivalent of a .072 Blood Alcohol Concentration level.

⁴ This firearm was linked to Subject 1 through the surveillance videos, officer statements and inventory sheets. (Atts. 24, 35, 46, 63, and 70)

of them, without stopping or looking at them. Officer B noticed that Subject 1 had his right arm clutched tight to his armpit like he was holding something or concealing something from their view. Officer B gave Subject 1 a command to "stop," which he failed to do, and instead continued to walk away. Officer B did a U-turn, stopped the car as he and Officer A attempted to conduct a field interview with Subject 1 due to the way he crossed in front of oncoming traffic without looking. Officer B stated that he hit the horn and gave Subject 1 verbal commands to show his hands and to stop, but Subject 1 failed to follow the verbal commands. As a result, Officer A exited the vehicle and gave further verbal commands to Subject 1, which also went ignored. Subject 1, in an attempt to flee Officer A, took off running. Officer A followed in pursuit of Subject 1. Officer B stated that he backed up the police vehicle and proceeded to go eastbound, parallel to Officer A and Subject 1 on Berenice.

Officer B observed his partner chasing Subject 1, while still giving verbal commands for him to stop. Subject 1 continued to run while still holding his arm tightly. Then Officer B saw Subject 1 turn toward Officer A from his right side and Officer B then heard a gunshot. Officer B did not see the shot being fired. Officer B then saw Officer A chasing Subject 1 as he ran toward the end of the Alert Protective Services building located at XXXX N. Cicero. Officer B saw Officer A fire two shots at Subject 1. Officer B turned left into the alley, following his partner and Subject 1. Officer B proceeded down the alley passing both Officer A and Subject 1, and positioned his police vehicle to block Subject 1 path of flight. Officer B got out of the vehicle, and cautiously walked around to the rear of the police vehicle where he observed that his partner had Subject 1 on the ground with his gun drawn out. Officer B placed handcuffs on Subject 1 to secure him. Both officers radioed dispatch to request an ambulance and a supervisor. Officer B then noticed a large caliber silver gun lying in front of Subject 1. (Att. 12, 45)

In a statement to IPRA on 06 July 2014, **Involved Officer A** stated that on 04 July 2014, he and his partner, Officer B, were on regular patrol heading southbound in the right lane of Cicero Avenue approaching Berenice when Subject 1 entered and crossed the street without looking, going eastbound. Officer A stated that Subject 1 was clutching the right side of his body with his right hand and right arm. Officer B called out to Subject 1 as he was crossing Cicero Avenue and Subject 1 disobeyed the verbal commands his partner had given. Officer B made a U-turn so that they were facing northbound as Subject 1 crossed the center lane. Officer A also gave verbal commands to Subject 1 to stop, which were also ignored. Officer B used the air horn to get the attention of subject 1, but Subject 1 ignored that as well. Officer A exited the vehicle, gave additional commands to Subject 1, who continued to ignore the officers. Officer A approached Subject 1 from behind, and Subject 1 took off running eastbound on the north sidewalk of Berenice, still clutching the right side of his body.

Officer A stated that in his professional experience, he believed that Subject 1 had a weapon and was attempting to conceal it. As Officer A continued his pursuit, he saw Subject 1 cross his left hand over to the right side of his body. He then saw Subject 1 drop his right hand and use both of his hands to place a large revolver into his right hand, while continuing to run. It is at this point, that Officer A drew his weapon from the holster. Subject 1 began to turn his body to his right, back towards Officer A, while raising his gun. Officer A, in fear for his life, drew his weapon and fired one round. Officer A stated that Subject 1 did not seem affected by the shot because he had no reaction, so Officer A did not believe that Subject 1 had been hit. He stated

that Subject 1 continued running at full speed eastbound on Berenice, and then turned northbound into the east alley of Cicero Avenue.

As Officer A turned into the alley, he observed that there was an empty parking lot behind the building adjacent to the alley. Subject 1 then turned to his left, still going northbound and still holding the gun. Officer A saw Subject 1 pointing the gun at him again, and in fear for his life, he fired two rounds in the direction of Subject 1. Officer A stated that Subject 1 fell to the ground and lost control of the gun, but Subject 1 immediately got up and began to run at full speed again northbound in the alley.

Officer A then noticed that his partner was parallel to him on Berenice, pulled the police vehicle into the alley and chased after Subject 1 northbound. Officer A saw the gun that Subject 1 had dropped on the ground and recovered it with his left hand, while holding his gun in his right hand. At that time, Officer A broadcast over the radio that 'shots had been fired' and provided the location of incident. He then saw his partner drive the police vehicle toward a fence to cut off Subject 1' path of flight. Officer A saw Subject 1 fall down alongside the squad car, but he immediately got back up and began to flee southbound in the alley. Officer A gave Subject 1 verbal direction to get down on the ground as Officer A began to move closer to Subject 1 to cut off his path. Subject 1 then charged directly at Officer A in an attempt to tackle him.

Officer A used his right hand while holding his gun in it, to protect himself from the attack and made contact with the left side of the head or face of Subject 1, inadvertently striking Subject 1 with his gun. Officer A stated that he did not intentionally struck Subject 1 with his weapon which he was still holding. Then, both Subject 1 and Officer A fell to the ground. Officer A was able to immediately get up and cover Subject 1 with his pistol. Officer B then placed Subject 1 in handcuffs. Officer A placed Subject 1' gun down on the ground to assist his partner, while still covering Subject 1 with his pistol. Officer A stated that he placed the firearm belonging to Subject 1 on the ground in the alley away from Subject 1. He observed blood on the face of Subject 1 and both officers called for an ambulance. According to Officer A, Subject 1 did not speak with either officer, nor did either officer attempt to communicate with Subject 1. (Att. 46)

CONCLUSION AND FINDING:

This investigation found that the use of deadly force by Officer A was in compliance with both Illinois State Law and Chicago Police Department Directives as outlined by the Use of Force Model; the Illinois State statute; and the Chicago Police Department's General Order 03-02-03, III, which states:

- 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.”

Although Officer A's firearm discharges at Subject 1 were outside the frame of the surveillance cameras, the moments immediately before and after the shooting were recorded, and are consistent with the narrative provided by Officer A and support that Subject 1 was armed as he fled. Similarly, the physical evidence, including the position of the recovered cartridge casings, the weapon recovered from Subject 1 dropped it, and the path of a bullet through Subject 1's body are consistent with Officer A's description of the incident.

The video footage from the south side of the building recorded the initial encounter between the officers and Subject 1; it documented Subject 1 running from the officers on the sidewalk along the building. The video footage shows Subject 1 holding the right side of his waist, and then removing a shiny object from his right side. Officer A then removes his weapon from his holster. According to Officer A, during this foot pursuit, Subject 1 pointed a weapon at him. Although the surveillance footage did not capture this gesture, the actions of both parties before they ran out of the camera frame supported the narrative reported by Officer A.

The locations of the cartridge casings are also consistent with Officer A's description of where he discharged his firearm. Officer A reported that when Subject 1 initially pointed a weapon at him, he feared for his life and fired a single shot at Subject 1, who continued running. A single cartridge case from Officer A's weapon was recovered on the south side of the sidewalk along the path of the foot pursuit. Additionally, Officer B reported that prior to Officer A firing his weapon, Officer B observed Subject 1 turn towards Officer A. According to Officer A, Subject 1 continued to run and then pointed his weapon at Officer A a second time. Again, in fear for his life, Officer A fired his weapon two more times at Subject 1. Two additional cartridge cases were recovered farther along the path of the foot pursuit, near the intersection of the sidewalk, parking lot and alley.

The video footage that records the alley to the east of the building is also consistent with Officer A's description of events following his firearm discharge. Officer A reported that after he fired his weapon the second and third times, Subject 1 fell and dropped a firearm, which Officer A then recovered. The video footage from the east side of the building documented that as Subject 1 ran into the alley; he fell to the ground and dropped a large shiny object. Subject 1 quickly regained his footing and continued running. Although the video footage does not clearly identify the dropped object, it captured Officer A as he stopped to pick up the shiny object that Subject 1 had dropped. We now know that this item, which was recovered and entered into evidence, was a .44 Caliber Magnum Revolver.

The evidence clearly supports that Subject 1 was armed. The question remains whether Subject 1 presented an imminent threat of harm to Officer A as he fled. According to Officer A, he fired his weapon both times because he perceived that Subject 1 had turned and pointed his firearm in the officer's direction. Unfortunately, the video recording did not capture either of these gestures and there are no witnesses to confirm or refute Officer A's assertion that Subject 1 pointed his gun at the officer. It is undisputed that Subject 1 was running away from Officer A both times the officer fired his weapon. Medical records suggest that Subject 1 may have turned his body at some point as he fled. According to the medical examiner's report, the bullet that killed Subject 1 entered through the right side of his body and lodged in his upper left lung. This supports that that Subject 1 had presented the right side of his body to Officer A while Officer A fired his weapon. This bullet path is consistent with Officer A's report that while running, Subject 1 turned and used his right hand to point a weapon at Officer A. Even if Subject 1 did not intentional point the gun at Officer A, it is possible, if not likely, that Subject 1 turned to see whether and how closely the officer was in pursuit, and, in so doing, gave the officer the impression that he was threatening use of the gun. Whether Subject 1 merely turned to see if the officer was in pursuit, or turned and pointed the gun, Officer A had no time to explore other tactical options and it was reasonable under the circumstances for him to use deadly force to defend himself.

Based on the totality of the facts and circumstances, the R/I find that an officer with similar training and experience as Officer A would reasonably believe that Subject 1 posed an immediate threat to his safety. The R/I finds that the use of deadly force by **Officer A** is therefore objectively reasonable and **Within Policy**.