

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1053111

INTRODUCTION:

This case involves the Subject 1, and his girlfriend Subject 2. Off-duty Officer A reportedly observed Subject 1 physically abusing Subject 2 in the doorway of Subject 1's residence, by striking her head against the wall and the door. Officer A intervened, and a verbal confrontation ensued between Subject 1 and Officer A. Subject 1 was having an impromptu get together with his friends¹ at the time, and called for his friends to come outside. Officer A called 911 and drew his gun. Subject 1 was arrested and charged with Aggravated Assault to a Peace Officer, and Domestic Battery.

ALLEGATIONS:

On 06 April 2012, Reporting Party Third Party Law Firm 1 registered this complaint with IPRA Intake Aide A on behalf of the Subject 1. Subject 1 alleges on 08 July 2011 at 2331 hours at XXXX W. Chestnut Street **Officer A, #XXXX, Unit XXX:**

- 1) Used excessive force toward Subject 1, in violation of Rule #8: "Disrespect/maltreatment of any person while on or off duty;"
- 2) had Subject 1 falsely arrested, in violation of Rule #14: "Making a false report, written or oral;"
- 3) caused Subject 1 to be maliciously prosecuted for Aggravated Assault against a Police Officer, in violation of Rule #2: "Action/conduct impedes Department policy or brings discredit;"
- 4) caused Subject 1 to be maliciously prosecuted for Domestic Battery, in violation of Rule #2: "Action/conduct impedes Department policy or brings discredit;"
- 5) conspired to maliciously prosecute Subject 1, in violation of Rule #2: "Action/conduct impedes Department policy or brings discredit."

Subject 1 further alleged that **Officers B, #XXXXX, Unit XXX and C, #XXXXX, Unit XXX:**

- 1) Falsely arrested him, in violation of Rule #14: "Making a false report, written or oral;"
- 2) caused him to be maliciously prosecuted for Aggravated Assault against a Police Officer, in violation of Rule #2: "Action/conduct impedes Department policy or brings discredit;"
- 3) caused him to be maliciously prosecuted for Domestic Battery, in violation of Rule #2: "Action/conduct impedes Department policy or brings discredit;" and
- 4) conspired to have him falsely arrested, in violation of Rule #2: "Action/conduct impedes Department policy or brings discredit."

APPLICABLE LAW and RULES:

- Rule 2: Action/conduct impedes Department policy or brings discredit.
- Rule 8: Disrespect/maltreatment of any person while on or off duty.
- Rule 14: Making a false report, written or oral.

¹ Friends Witness 1, Witness 2, Witness 3, Witness 6, Witness 4 and neighbor Witness 5.

INDEPENDENT POLICE REVIEW AUTHORITY
LOG# 1053111

General Order G03-02 Use of Force Guidelines
General Order G04-04 Domestic Incidents

INVESTIGATION:

According to the **Arrest Report (RD# XX-XXXXXX) dated 09 July 2011 (Att. #6)**, on 08 July 2011, Subject 1 was arrested on signed complaints by victims Subject 2 and Officer A and charged with Aggravated Assault to a Peace Officer and Domestic Battery. According to the Arrest Report, off-duty Officer A observed Subject 1 grab Subject 2 by her hair and strike Subject 2's head against a wall and door. Officer A observed bruising and swelling to Subject 2's forehead. Officer A announced his office, identified himself as a Chicago Police Officer, and displayed his star. In response, Subject 1 stated, "I don't give a fuck who you are, this is none of your business." Subject 1 moved toward Officer A with his fists clenched in a threatening manner. In fear of receiving a battery, Officer A placed Subject 1 into custody. The arresting officers were Officers B and C. The Arrest Report listed Officer A as the assisting arresting officer. Per the Visual Check of Arrestee, there was no obvious pain or injury to Subject 1.

In a **Tactical Response Report (RD# XX-XXXXXX) dated 09 July 2011 (Att. #9)**, Officer A identified Subject 1 as an Assailant/Assault. According to the report, Subject 1 did not follow verbal direction, approached Officer A with clenched fists, and was an imminent threat of battery. Officer A's response to Subject 1's actions included member presence, verbal commands, takedown/ emergency handcuffing, and display of weapon.

In an **Officer's Battery Report (RD# XX-XXXXXX) dated 09 July 2011 (Att#10)**, Officer A related he was off-duty in civilian dress at the time of incident. The manner of attack by Subject 1 against Officer A was verbal attack. Officer A did not sustain any injury.

In a deposition taken on 27 August 2012 in civil case number XX CV XXXX (Att. #20), filed in the United States District Court, Northern District of Illinois Eastern Division,² Subject 1 stated that he and his girlfriend, Subject 2, were in the backyard of his apartment building when they began to argue in a loud tone. Subject 1 did not recall what he and Subject 2 were arguing about. An individual, now known to be off-duty officer Officer A, walking on the other side of the street stated to Subject 1 and Subject 2, "Hey." Subject 1 responded, "Who the fuck are you?" Officer A walked towards Subject 1 and Subject 2. Subject 1 told Officer A to keep walking. Officer A pointed his weapon toward Subject 1. Subject 1 pushed Subject 2 inside his apartment. As Subject 1 walked toward Officer A, he yelled to his friends who were inside his apartment, "This motherfucker has a gun on me." Subject 1's friends came outside. Subject 1 asked Officer A if he was going to shoot him. Officer A did not reply and never stated anything further after initially stating, "Hey."

² The parties in XX CV XXXX agreed to a settlement and the case was dismissed with prejudice on January 7, 2014.

INDEPENDENT POLICE REVIEW AUTHORITY
LOG# 1053111

As Officer A had his weapon pointed in the direction of Subject 1 and his friends, he made a call from his cellular telephone. Moments later, several officers arrived at the scene. Officer A displayed his star to Subject 1, and Subject 1 was placed in custody by a responding officer. According to Officer A, prior to displaying his star, Officer A never identified himself as an officer. Subject 1 claimed that he approached Officer A with clenched fists mainly because he did not know Officer A was an officer at the time. Subject 1 noted that Officer A was dressed in civilian clothing. Subject 1 believed Officer A was “woozy” during this incident. Subject 1’s opinion was based on how Officer A was walking; a glazed look in Officer A’s eyes; and Officer A being non-responsive to his questions. Subject 1 did not expand on how Officer A was walking. Subject 1 denied physically abusing Subject 2 in any manner.

In a deposition taken on 20 December 2012 in civil case number XX CV XXXX (Att. #21, 42), filed in the United States District Court, Northern District of Illinois Eastern Division, Witness Subject 2 stated that she could not clearly observe Officer A during this incident, other than to say that he was wearing a White Sox jersey, because she was in the doorway of Subject 1’s apartment. Subject 2 was agitated with Subject 1 and the two were speaking loudly with one another before the incident. Subject 2 recalled hearing someone yell, “Hey,” from the street. Subject 1 then told Subject 2 to go into the apartment, putting his hands on her arm in a way that Subject 2 described as non-offensive and guiding her inside. Subject 2 overheard Subject 1’s verbal interaction with Officer A, indicating that she believed Subject 1 was angry with Officer A, but also fearful when she overheard Subject 1 encourage Officer A to use his gun. Officer A did not say anything during the incident. Subject 2 indicated she was not in a position to observe whether Officer A showed his star to Subject 1, and she could not see Officer A pointing a firearm at Subject 1. Although she signed a blank Domestic Battery complaint form, Subject 2 denied that Subject 1 physically abused her. Subject 2 indicated that an officer told her that if she did not sign the form, which the officer was going to complete with Officer A’s version of events, she would be taken to jail with Subject 1.

The next morning, Subject 2 asked Witness 4 to take pictures of her to prove that Subject 1 had not injured her. The photos were taken at Subject 1’s residence, in his bedroom. The photographs were taken between Saturday and Sunday, (09 July – 10 July 2011), with a digital camera. Subject 2 had the photographs developed later during the week at Walgreens. The photographs show the front of Subject 2’s face, and side profiles of Subject 2’s face and shoulders. Subject 2 is wearing a beige colored tank-top and a necklace in the photographs.

Subject 2 later changed clothing and took additional photographs in Subject 1’s bathroom. Subject 2 changed clothing to expose more of her, to show that she did not sustain any injury. These photographs were also taken by Witness 4 and were taken using Subject 1’s iPhone. The photographs are of Subject 2’s left arm/shoulder, right arm/shoulder, neck/back, and left/right facial profile.

INDEPENDENT POLICE REVIEW AUTHORITY
LOG# 1053111

On Sunday, 10 July 2011, Subject 2 took additional photographs at her residence. Subject 2 took the photographs herself, with her digital camera. The photos are of Subject 2's face and she is wearing a multi-colored bra in the photographs.³

In a deposition taken on 17 May 2012 in civil case number XX CV XXXX (Att. #23), filed in the United States District Court, Northern District of Illinois Eastern Division, Witness 1 gave an account of the events. Witness 1 was leaving Subject 1's residence with Witness 2 when he first heard two voices yelling, and then a third voice yelling. Witness 1 turned around and ran toward Subject 1's backyard. Witness 1 recognized two of the voices as Subject 1's and Witness 6's. Witness 1 heard Subject 1 state words to the effect of, "What are you doing, are you going to shoot me?" Witness 6 was standing between Subject 1 and Officer A, who were approximately six feet apart. Witness 1 asked Officer A what he was doing, and why he had a gun. Officer A had his gun pointed downward, but would raise and point his gun in the direction of Subject 1, Witness 6, and Witness 1 whenever they moved. Although he could not remember specifically what Officer A said, Witness 1 indicated that what was said seemed incoherent to him, somewhat slurred, and sounded drunk. However, Witness 1 went on to state that this was his first time coming into contact with Officer A, and he did not know if Officer A normally speaks/sounds that way. Witness 1 had no knowledge as to how the interaction between Subject 1 and Officer A began. Witness 1 had no knowledge of their being a verbal or physical altercation between Subject 1 and Subject 2.

In a deposition, taken on 18 October 2012 in civil case number XX CV XXXX (Att. #24), filed in the United States District Court, Northern District of Illinois Eastern Division, Witness 2 gave an account of the incident from the time he arrived at the scene. Witness 2 heard Subject 1 yelling, "If you're going to shoot me, shoot me!" Witness 2 approached Subject 1's backyard, and observed Witness 6 attempting to pull Subject 1 away, stating, "Come on, let's get out of here." Witness 2 did not observe Officer A identify himself as an officer. Subject 1 later informed Witness 2 that Officer A approached him as he was talking with Subject 2. Subject 1 related to Witness 2 that he believed Officer A was drunk. Witness 2 considered the possibility that Officer A may have been drunk based on the following: the manner in which Officer A held his gun, there are bars in the vicinity of incident, Officer A was wearing a Chicago White Sox paraphernalia (a Chicago White Sox game had recently ended), and Officer A's eyes were red. However, Witness 2 went on to state that without knowing Officer A's blood alcohol content, he could not say with certainty if Officer A was drunk or not. Witness 2 stated Officer A did not have slurred speech. Witness 2 had no knowledge as to how the interaction between Subject 1 and Officer A began. Witness 2 had no prior knowledge of a verbal or physical altercation between Subject 1 and Subject 2.

In a deposition taken on 17 October 2012 in civil case number XX CV XXXX (Att. #25), filed in the United States District Court, Northern District of Illinois Eastern Division, Witness 3 gave an account of the incident from the time he arrived at

³ The R/I obtained copies of the aforementioned photographs from the Department of Law on September 23, 2016 and October 26, 2016.

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1053111

the scene. Subject 2 was inside the house, and he had no interaction with her. Witness 3 heard Subject 1 yelling, "Why do you have a gun pointed at me?" Subject 1 had his arms raised above his shoulders. Subject 1 then stated, "Fucking shoot me if you're going to shoot me!" Prior to this, Witness 3 did not hear Subject 1 yelling or having a conversation with anyone. As Witness 3 approached Subject 1, he observed Officer A pointing his weapon in Subject 1's direction. Subject 1 was standing in the middle of the street. Subject 1 continued to yell at Officer A, "Shoot me!" Officer A did not respond to Subject 1. Officer A had his gun in one hand and a cellular phone in the other hand. Witness 3 did observe Officer A display a police star. Witness 3 came within 10 feet of Officer A. Witness 3 looked into Officer A's eyes, and did not notice anything out the ordinary. According to Witness 3, Officer A stood still, and was not swaying. Witness 3 had no knowledge as to what precipitated the incident between Subject 1 and Officer A. Subject 1 later informed Witness 3 that the incident supposedly started from argument between him and Subject 2. Witness 3 had no prior knowledge of there being a verbal or physical altercation between Subject 1 and Subject 2.

In a deposition taken on 18 October 2012 in civil case number XX CV XXXX (Att. #26), filed in the United States District Court, Northern District of Illinois Eastern Division, Witness 6 gave an account of the incident from the time he arrived at the scene. Witness 6 was standing in front of Subject 1's building when he heard Subject 1 screaming his name. Subject 1 was in the backyard of his residence. Witness 6 ran inside Subject 1's apartment to get to the backyard. In the process, Subject 2 told Witness 6 that someone (now known to be Officer A) had pulled a gun on Subject 1. As Witness 6 approached the backyard/alley, he observed Officer A and Subject 1 standing in the middle of the alley. Subject 1 was asking Officer A why he pulled a gun on him. As Witness 6 approached Subject 1, Officer A drew his gun and stepped backwards, away from Subject 1. Officer A pointed the gun in the direction of Subject 1, who was approaching him. Witness 6 described Subject 1's demeanor as upset. As Witness 6 was attempting to pull Subject 1 from the scene, Officer A told Witness 6 to get Subject 1 before he shot him. Witness 6 asked Officer A what was going on, but Officer A did not respond. Officer A told everyone to stay back as he made a call on his cellular telephone. Witness 6 did not observe Officer A show a star or identify himself as an officer. Witness 6 did not have any recollection of Officer A displaying signs of intoxication. Witness 6 did not get close enough to Officer A to determine if Officer A's eyes were "bloodshot," or if he smelled of alcohol. Witness 6 had no knowledge as to how the interaction between Subject 1 and Officer A began. Witness 6 had no knowledge of their being a verbal or physical altercation between Subject 1 and Subject 2. Witness 6 did not observe any injury to Subject 2.

In a deposition taken on 15 January 2012 in civil case number XX CV XXXX (Att. #27), filed in the United States District Court, Northern District of Illinois Eastern Division, Witness Sergeant A stated that he responded to Officer A's 10-1 (officer in need of assistance) 911 call. Sergeant A did not witness the interaction between Officer A and Subject 1. Upon arriving at the scene, Officer A briefed Sergeant A about the incident between him and Subject 1. Sergeant A stated that he observed a "lump" on Subject 2's forehead, which was consistent with Officer A's account of

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1053111

Subject 1 striking Subject 2's head against a wall. According to Sergeant A, Subject 2 refused to remain at the scene to be photographed. Sergeant A assigned the incident to Officers C and B, because the incident occurred on their beat.

In a deposition taken on 12 February 2012 in civil case number XX CV XXXX (Att. #28), filed in the United States District Court, Northern District of Illinois Eastern Division, Witness 5 stated that, from his third floor condominium window, he heard voices arguing for approximately one minute, and then someone state words to the effect "Come on, why don't you do it!" Witness 5 observed several men in the middle of the street, one person (now known to be Subject 1) clearly egging on another person (now known to be Officer A). Officer A had his gun pointed toward Subject 1, as Subject 1 was yelling at him. Officer A and Subject 1 were approximately three feet apart. After police arrived at the scene, Witness 5 stopped watching the incident. He did not observe Subject 1 being taken into custody. Witness 5 stated that Subject 1 appeared to be encouraging Officer A to shoot him. Witness 5 called 911 to report the incident. Witness 5 could not provide any further detail about the incident.

In a deposition taken on 26 February 2012 in civil case number XX CV XXXX (Att. #29, 42), filed in the United States District Court, Northern District of Illinois Eastern Division, Witness Witness 4 stated that he did not witness the interaction between Subject 1 and Officer A. Witness 4 arrived at the scene after Subject 1 was in police custody. One to two hours after arriving, between 0100 and 0200 hours on 10 July 2011, at Subject 2's request, Witness 4 took four to six photographs of Subject 2 on Subject 2's cellular telephone. The photographs were of Subject 2's face, neck, and shoulder area. Subject 2 informed Witness 4 she wanted to take photographs to show she did not have any injuries and Subject 1 did not abuse her.⁴

In a deposition taken on 07 December 2012 in civil case number XX CV XXXX (Att. #30), filed in the United States District Court, Northern District of Illinois Eastern Division, Officer B did not witness the encounter between Officer A and Subject 1. Sergeant A informed Officer B and his partner, Officer C, of the incident between Subject 1 and Officer A. Sergeant A assigned the officers to do the paperwork on the arrest because the incident occurred on their Beat. Officer B stated that Subject 1 was arrested on signed complaints by Officer A and Subject 2. Officer B denied the allegations against him.

In a deposition taken on 13 December 2012 in civil case number XX CV XXXX (Att. #31), filed in the United States District Court, Northern District of Illinois Eastern Division, Officer C did not witness the encounter between Officer A and Subject 1. Sergeant A informed Officer B and his partner Officer C of the incident between Subject 1 and Officer A. Sergeant A assigned the officers to do the paperwork on the arrest because the incident occurred on their Beat. Officer C related Subject 1 was arrested for committing Aggravated Assault to Officer A, and Domestic Battery against Subject 2. Officer C denied the allegations against him.

⁴ The R/I obtained copies of the aforementioned photographs from the Department of Law on September 23, 2016 and October 26, 2016.

INDEPENDENT POLICE REVIEW AUTHORITY
LOG# 1053111

Per a Department **Personnel Action Report** dated 15 September 2014 (Att. #40), Officer A submitted his resignation from the Department effective 24 September 2014. IPRA did not interview Officer A prior to his resignation.

In a deposition taken on 28 August 2012 in civil case number XX CV XXXX (Att. #22), filed in the United States District Court, Northern District of Illinois Eastern Division, Officer A stated that after parking and exiting his vehicle at approximately 1545 West Pearson, he heard a man, now known to be Subject 1, screaming loudly and using profanity. As Officer A walked to his residence, he observed Subject 1 grab a defenseless woman, now known to be Subject 2, by the back of her hair, and push her face into the door of the residence several times. Officer A walked toward the couple. Officer A removed his star from his belt and displayed it to Subject 1. Officer A had his gun drawn, pointing down at the ground on his right side. Officer A did not recall if he stated he was a police officer. Officer A gave Subject 1 verbal commands to stop and to get on the ground.

Subject 1 walked towards Officer A in an aggressive manner with his fists clenched. Officer A pointed his gun toward Subject 1. Subject 1 stated to Officer A words to the effect of, "I don't give a fuck who you are, keep it moving." As Subject 1 drew closer to Officer A, Subject 1 stated words to the effect of, "Go ahead, shoot me." Subject 1 came as close as approximately 5 feet away from Officer A. Subject 1 repeatedly stated to Officer A that he did not "give a fuck" who Officer A was and dared the officer to shoot him. At that point, Officer A realized Subject 1 was not following verbal commands and was aggressive. Approximately five male blacks, friends of Subject 1, exited Subject 1's apartment and joined him in the street. From his cellular telephone, Officer A called 911 for police assistance.

Officer A continued pointing his gun toward Subject 1, and gave Subject 1 and his friend's verbal commands to "get back." Subject 1 and his friends stood their ground. Responding officers arrived at the scene. Officer A, with his star in hand, identified himself to responding officers. Officer A holstered his weapon, and placed Subject 1 in custody. Officer A described the incident to the officers and supervisor who had arrived on scene. Although Officer A did not observe any injury to Subject 2, an officer at the scene informed him that Subject 2 had bruising to her forehead. Officer A could not recall if he pointed his gun toward Subject 1's friends.

In Cook County Criminal Court, Domestic Violence Division, case XXDVXXXXXX (Att. #41), Subject 1 demanded a trial for the charges against him of Aggravated Assault of a Peace Officer and Domestic Battery. Subject 2, the Complaining Witness, did not respond to the order to appear in court, and both charges against Subject 1 were Stricken Off with Leave to Reinstate.

CONCLUSION:

Officer A, #XXXX:

INDEPENDENT POLICE REVIEW AUTHORITY
LOG# 1053111

The R/I recommends a finding of **EXONERATED** for **Allegation #1**, that Officer A used excessive force toward Subject 1 in of Violation of Rule #8: “Disrespect/maltreatment of any person while on or off duty.” Pursuant to Section III(B) of General Order G03-02 Use of Force Guidelines, department members may use “an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury.” When Officer A encountered Subject 1 and Subject 2, he directly witnessed a verbal (loud yelling) and physical altercation between the couple.⁵ According to the officer, he observed Subject 1 pull Subject 2’s hair and strike her head against the wall. Officer A did not observe any injury to Subject 2, but related that, subsequent to the incident, an officer informed him that Subject 2 sustained bruising to her forehead.⁶ This altercation appeared serious enough that Officer A reasonably feared that Subject 2 might be injured if he did not intervene. Thus, Officer A’s use of force, namely, the display of his service weapon, was necessary to perform the lawful task of protecting Subject 2 from injury. Moreover, based on Subject 1’s aggressive actions of walking toward Officer A with clenched fists, and encouraging Officer A to shoot him, Officer A was reasonably in fear of receiving a battery. Therefore, Officer A was justified in continuing to point his gun at Subject 1. Though Subject 2 and Subject 1 reported in their depositions that there was no physical altercation between them on the night of the incident, their testimony is not credible nor is it supported by corroborating evidence or testimony.⁷ Primary factors weighing against the credibility of Subject 2 and Subject 1’s denial that a physical encounter occurred that evening include: (1) another officer on the scene reported observing injuries to Subject 2’s forehead; (2) Subject 2 refused to have the EMT on scene take photos of her injuries; (3) neither Subject 2 nor Subject 1 ever produced to IPRA the pictures of Subject 2 taken subsequent to the incident; (4) as of the dates of their depositions, they are still in a romantic relationship; (5) Subject 2 did in fact sign a complaint alleging that Subject 1 had battered her that evening.

Regarding excessive force claims, the Fourth Amendment test “is an objective one, where the officer’s subjective good or bad intentions do not enter into the analysis.” *Jacobs v. City of Chicago*, 215 F.3d 758, 773 (7th Cir. 2000). Various factors are considered and weighed, including: “the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872, 104 L. Ed. 2d 443 (U.S. 1989), citing *Tennessee v. Garner*, 471 U.S. 1, 8-9, 105 S. Ct. 1694, 1699-1700, (1985). Also considered is

⁵ 720 ILCS 5/12-3: Battery. (a) A person commits battery if he or she knowingly without legal justification by any means (1) causes bodily harm to an individual or (2) makes physical contact of an insulting or provoking nature with an individual.

⁶ The R/I reviewed photographs of Subject 2 taken subsequent to the incident. The photographs do not reflect any clearly visible injuries to Subject 2, particularly in the area of her face and forehead. It should be noted, however, that the quality of some of the photographs is poor.

⁷ Although testimony from Subject 1, Witness 1, and Witness 2 raises a question of whether Officer A was intoxicated at the time of the incident, the testimony is inconsistent, and in the case of Witness 6 and Witness 3, contradictory. Additionally, IPRA’s review of the records indicates that Officer A was not administered any tests relative to intoxication or blood alcohol content following the incident.

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1053111

“whether the citizen was under arrest or suspected of committing a crime, was armed, or was interfering or attempting to interfere with the officer’s execution of his or her duties.” *McDonald v. Haskins*, 966 F.2d 292, 292–93 (7th Cir.1992). Finally, the excessive force inquiry “looks to whether the force used to seize the suspect was excessive in relation to the danger he posed — to the community or to the arresting officers — if left unattended.” *Id.* at 294 (citing *Wilkins v. May*, 872 F.2d 190, 193 (7th Cir.1989)).

Based on the totality of circumstances, Officer A’s use of force, specifically, the fact that he unholstered and pointed his weapon at Subject 1, was not excessive. The severity of the crime in progress as perceived by Officer A when he intervened was quite serious. Subject 1 was battering Subject 2 by smashing her face against the wall and door of the apartment. Subject 1 posed an immediate threat to the Subject 2’s safety. Such conduct if allowed to continue or escalate, could have resulted in serious injury to Subject 2. When Officer A identified himself to Subject 1, in responding, Subject 1 was aggressive, both verbally and physically. By stepping towards Officer A, and maintaining an aggressive posture, Subject 1 caused Officer A to reasonably believe that he posed a threat to Officer A. Officer A, upon seeing a crime being committed in his presence, had a duty to intervene to protect the victim. Subject 1’s aggressive and non-cooperative reaction was in direct contravention to the officer’s ability to assess the situation. The pointing of a firearm at a member of the public is a serious use of police power. It is certainly a frightening experience for the subject, and it can unnecessarily escalate a situation into one requiring the use of deadly force. Here, Officer A’s used his weapon finding it necessary to gain the cooperation of Subject 1. Officer A pointed his duty weapon at Subject 1, after he had identified himself and Subject 1 replied that he did not care who Officer A was. Subject 1 also stepped toward Officer A in an aggressive stance. The two parties had no physical contact, and Officer A never fired his weapon. Therefore, based on these circumstances, Officer A’s use of force was objectively reasonable.

The R/I recommends a finding of **UNFOUNDED** for **Allegation #2**, that Officer A had Subject 1 falsely arrested, in Violation of Rule #14: “Making a false report, written or oral.” The essential elements of a cause of action for false arrest or false imprisonment are: (1) that the plaintiff was restrained or arrested by the defendant, and (2) that the defendant acted without having reasonable grounds to believe that an offense was committed by the plaintiff. *Meerbrey v. Marshall Field & Co., Inc.*, 139 Ill. 2d 455, 474, 564 N.E.2d 1222, 1231 (1990). As is true of any cause of action, the failure to establish any one of the foregoing elements precludes recovery for malicious prosecution. *Fabiano v. City of Palos Hills*, 336 Ill.App.3d 635, 641, 271 Ill.Dec. 40, 784 N.E.2d 258 (2002).

According to Officer A, he observed Subject 1 physically abuse Subject 2. After Officer A intervened to prevent further abuse to Subject 2, Subject 1 approached Officer A in a threatening manner with clinched fists. Pursuant to General Order Section V (A) of G04-04 Domestic Incidents, if there is probable cause to believe that a person has committed a crime of domestic violence, the preferred response of the officer is the arrest of the offender. Here, Officer A personally observed Subject 1 physically accost Subject

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1053111

2. Subject 2 signed a complaint against Subject 1 which alleged that Subject 1 struck her head against the wall and door at XXXX W. Chestnut. Based on Officer A's observations of bodily harm (*i.e.* Subject 1 pulling Subject 2's hair and striking her head against the wall) and Subject 2's signed complaint, there was probable cause to arrest Subject 1 on the allegations outlined in the arrest report.

Because there was probable cause to arrest Subject 1, his false arrest claim fails and this allegation is Unfounded.

The R/I recommends a finding of **UNFOUNDED** for **Allegation #3**, that Officer A caused Subject 1 to be maliciously prosecuted for Aggravated Assault against a Police Officer, in Violation of Rule #2: "Action/conduct impedes Department policy or brings discredit."

To sustain a claim for malicious prosecution, the following elements must be established: "(1) the commencement or continuance of an original criminal or civil judicial proceeding by the defendant; (2) the termination of the proceeding in favor of the plaintiff; (3) the absence of probable cause for such proceeding; (4) the presence of malice; and (5) damages resulting to the plaintiff." *Holland v. City of Chicago*, 643 F.3d 248, 254 (7th Cir. 2011), quoting *Swick v. Liautaud*, 169 Ill.2d 504, 512 (Ill. 1996) (internal quotation marks omitted).

The first element of the offense of malicious prosecution, "the commencement or continuance of an original criminal or civil judicial proceeding by the defendant," is not met because Officer A neither commenced nor continued the prosecution of Subject 1 for Aggravated Assault against a Police Officer. In Illinois, a prosecution may be commenced by: (a) a complaint; (b) an information; or (c) an indictment. 725 ILCS 5/111-1. However, "all prosecutions of felonies shall be by information or by indictment." 725 ILCS 5/111-2(a). Here, Subject 1 was undisputedly charged with Aggravated Assault, a misdemeanor, in violation of 720-5/12-2-A6. Thus, the State's Attorney is "vested with the exclusive discretion in the initiation and management of a criminal prosecution." *People v. Davis*, 213 Ill. 2d 459, 592 (Ill. 2004). A non-prosecutor could be found to commence or continue an action only if their participation was of so active and positive a character as to amount to advice and cooperation. *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 647, 784 N.E.2d 258, 270 (1st Dist. 2002). Additionally, while it is conceivable that a wrongful arrest could be the first step toward a malicious prosecution, the chain of causation is broken by the involvement of a prosecutor. Absent an allegation of pressure or influence exerted by the police officers, or knowing misstatements made by the officers to the prosecutor, it is the prosecutor's responsibility to determine whether proceeding with the charges is appropriate. *Ewing v. O'Brien*, 60 F. Supp. 2d 813, 818 (N.D. Ill. 1999). The court appears to deem this issue a rebuttable presumption – it is presumed that the indictment breaks the chain of causation, but this could be rebutted with a showing that Officer A made knowing misstatements to the prosecutor. Absent such a showing, this element appears to fail too. Additionally, it should be noted that while liability can extend to all persons who played a significant role in causing the prosecution of the plaintiff, that is only true if all of the other elements of the claim are present. *Rodgers v. Peoples Gas, Light & Coke Co.*, 315 Ill. App. 3d 340,

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1053111

348-49, 733 N.E.2d 835, 842 (1st Dist. 2000), citing *Frye v. O'Neill*, 166 Ill.App.3d 963, 975, 117 Ill.Dec. 882, 520 N.E.2d 1233 (1988) and 54 C.J.S. Malicious Prosecution §§ 18, 19 (1987). As discussed below, this is unlikely to occur in this case.

The malicious prosecution claim also fails because there was probable cause to arrest Subject 1. Probable cause, in the context of a malicious prosecution claim involving criminal proceedings, is defined as “a state of facts that would lead a person of ordinary caution and prudence to believe, or to entertain an honest and strong suspicion, that the person arrested committed the offense charged.” *Rodgers v. Peoples Gas, Light & Coke Co.*, 315 Ill.App.3d 340, 348 (1st Dist. 2000). At issue is the state of mind of the individual who swears out the complaint, rather than the actual facts of the case, or the guilt or innocence of the accused. *Reynolds v. Menard, Inc.*, 365 Ill.App.3d 812, 820 (1st Dist. 2006). In this case, Officer A stated that he had personally seen Subject 1 advance toward him (Officer A) in a threatening manner, with clenched fists, while screaming at Officer A. Officer A stated that he felt he was in danger, and that Subject 1 intended to have a physical confrontation with Officer A. Pursuant to the Illinois Compiled Statutes, an individual commits an assault when, “without lawful authority, he or she knowingly engages in conduct which places another in reasonable apprehension of receiving a battery.” 720 ILCS 5/12-1. In this case, Officer A was in reasonable apprehension of receiving a battery. Since Officer A himself was the victim of the aggravated assault, he had probable cause to arrest Subject 1 for the offense of Aggravated Assault against a Police Officer. Thus, Officer A was justified in causing Subject 1 to be arrested for Aggravated Assault against a Police Officer. Furthermore, pursuant to *Zitzka v. Vill. Of Westmont*, existence of probable cause is a complete defense to malicious prosecution. *Zitzka v. Vill. of Westmont*, 743 F. Supp. 2d 887, 926 (N.D. Ill. 2010), see also *Howard v. Firmand*, 378 Ill. App. 3d 147, 149, 880 N.E.2d 1139, 1142 (1st Dist. 2007). Therefore, not all of the elements of malicious prosecution can be sustained.

The malicious prosecution claim must fail because there is no evidence of malice. “Malice in the context of malicious prosecution means that the officer who initiated the prosecution had any motive other than that of bringing a guilty party to justice.” *Williams v. City of Chicago*, 733 F.3d 749, 759-60 (7th Cir. 2012), quoting *Aleman v. Village of Hanover Park*, 662 F.3d 897, 907 (7th Cir.2011) (internal quotation marks omitted). As noted above, Officer A did not actually prosecute Subject 1, and absent any additional evidence showing pressure, influence, or knowing misstatements, any malice in the prosecution could not be attributed to him. Nonetheless, as an element of malicious prosecution, malice is proven by showing that the actor was actuated by improper motives. It is well settled in Illinois that, absent actual evidence of malice, malice may be inferred from lack of probable cause if there is no direct evidence which refutes that inference. *Fabiano v. City of Palos Hills*, 336 Ill. App. 3d 635, 647, 784 N.E.2d 258, 270 (1st Dist. 2002); see also *Frye v. O'Neill*, 166 Ill. App. 3d 963, 977, 520 N.E.2d 1233, 1242 (4th Dist. 1988). In this case, there is no direct evidence showing any malice on the part of Officer A, nor can malice be inferred, because there is no lack of probable case in this case, as discussed above. Based on the above analysis, the allegation that Officer A caused Subject 1 to be maliciously prosecuted for Aggravated Assault against a Police Officer, in Violation of Rule #2: “Action/conduct impedes Department policy or brings discredit,” appears to be unfounded.

INDEPENDENT POLICE REVIEW AUTHORITY
LOG# 1053111

The R/I recommends a finding of **EXONERATED** for **Allegation #4**, that Officer A caused Subject 1 to be maliciously prosecuted for Domestic Battery, in Violation of Rule #2: “Action/conduct impedes Department policy or brings discredit.” Given the above analysis for Allegation #3, and the fact that probable cause is an absolute bar to the claim of malicious prosecution, and based on Officer A’s testimony as well as the signed complaints, probable cause was clearly established, and as such, this allegation is not substantiated.

The R/I recommends a finding of **EXONERATED** for **Allegation #5**, that Officer A conspired to maliciously prosecute Subject 1, in Violation of Rule #2: “Action/conduct impedes Department policy or brings discredit.” The 7th Circuit’s Pattern Jury Instructions, 5.09, define conspiracy as “an express or implied agreement between two or more persons to commit a crime.” Here, the R/I was unable to gather any evidence during the course of the investigation to prove any express or implied agreement between Officer A or anyone else to maliciously prosecute Subject 1.

Officer B, #XXXXX:

The R/I recommends a finding of **EXONERATED** for **Allegation #1**, that Officer B falsely arrested Subject 1, in violation of Violation of Rule #14: “Making a false report, written or oral.” Subject 1 was arrested on signed complaints from Officer A and Subject 2. Pursuant to General Order Section V (A) of G04-04 Domestic Incidents, if there is probable cause to believe that a person has committed a crime of domestic violence, the preferred response of the officer is the arrest of the offender. Here, Officer A personally observed Subject 1 batter Subject 2. Subject 2 signed a complaint against Subject 1, alleging Subject 1 struck her head against the wall and door at XXXX W. Chestnut. Based on Officer A’s observations and Subject 2’s signed complaint, there was probable cause to arrest Subject 1 on allegations outlined in the arrest report. Officer B was entitled to rely upon the signed complaint and Officer A’s information in participating in Subject 1’s arrest.

An officer may reasonably rely on information provided by other officers in assessing whether probable cause for an arrest exists. *Fitzgerald v. Santoro*, 842 F. Supp. 2d 1064, 1068 (N.D. Ill. 2012), *aff’d*, 707 F.3d 725 (7th Cir. 2012), citing *Duran v. Sirgedas*, 240 Fed.Appx. 104, 114 (7th Cir.2007) and *Martinez v. Simonetti*, 202 F.3d 625, 634 (2nd Cir.2000); see also *Rebolar v. City of Chicago*, 897 F. Supp. 2d 723, 735 (N.D. Ill. 2012). Furthermore, even if Officer A had been incorrect in determining that probable cause existed to arrest Subject 1, Officer B would still not have made a false report or arrest. Under *Threlkeld*, the probable cause inquiry “does not require that [an] officer's belief be correct or even more likely true than false, so long as it is reasonable.” *Threlkeld v. White Castle Sys., Inc.*, 201 F. Supp. 2d 834, 843 (N.D. Ill. 2002), quoting *Qian v. Kautz*, 168 F.3d 949, 953 (7th Cir.1999).

The R/I recommends a finding of **EXONERATED** for **Allegation #2**, that Officer B caused Subject 1 to be maliciously prosecuted for Aggravated Assault against a Police Officer, in Violation of Rule #2: “Action/conduct impedes Department policy or

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1053111

brings discredit.” Given the above analysis for Officer A, Allegation #3, and the fact that probable cause is an absolute bar to the claim of malicious prosecution, and based on Officer A’s testimony, probable cause was clearly established, and as such, this allegation is not substantiated. Furthermore, Officer B was not present during the incident between Officer A and Subject 1, and was assigned the ministerial task of filling out paperwork on the arrest because the incident occurred on his Beat.

The R/I recommends a finding of **EXONERATED** for **Allegation #3**, that Officer B caused Subject 1 to be maliciously prosecuted for Domestic Battery, in Violation of Rule #2: “Action/conduct impedes Department policy or brings discredit.” Given the above analysis for Officer A, Allegation #3, and the fact that probable cause is an absolute bar to the claim of malicious prosecution, and based on Officer A’s testimony as well as the signed complaint, probable cause was clearly established, and as such, this allegation is not substantiated. Officer B was not present during the incident between Officer A and Subject 1, and was assigned the ministerial task of filling out paperwork on the arrest because the incident occurred on his Beat.

The R/I recommends a finding of **EXONERATED** for **Allegation #4**, that Officer B conspired to have Subject 1 falsely arrested, in Violation of Rule #2: “Action/conduct impedes Department policy or brings discredit.” The 7th Circuit’s Pattern Jury Instructions, 5.09, define conspiracy as “an express or implied agreement between two or more persons to commit a crime.” Here, the R/I was unable to gather any evidence during the course of the investigation to prove an express or implied agreement between Officer B or anyone else to falsely arrest Subject 1. Pursuant to General Order Section V (A) of G04-04 Domestic Incidents, if there is probable cause to believe that a person has committed a crime of domestic violence, the preferred response of the officer is the arrest of the offender. Here, Officer A personally observed Subject 1 physically accost Subject 2. Subject 2 signed a complaint against Subject 1 alleging Subject 1 struck her head against the wall and door at XXXX W. Chestnut. Based on Officer A’s observations and the Subject 2’s signed complaint, there was probable cause to arrest Subject 1 on allegations outlined in the arrest report.

Officer C, #XXXXX:

The R/I recommends a finding of **EXONERATED** for **Allegation #1**, that Officer C falsely arrested Subject 1, in Violation of Rule #14: “Making a false report, written or oral;”. Subject 1 was arrested on signed complaints from Officer A and Subject 2. Pursuant to General Order Section V (A) of G04-04 Domestic Incidents, if there is probable cause to believe that a person has committed a crime of domestic violence, the preferred response of the officer is the arrest of the offender. Here, Officer A personally observed Subject 1 batter Subject 2. Subject 2 signed a complaint against Subject 1 alleging Subject 1 struck her head against the wall and door at XXXX W. Chestnut. Based on Officer A’s observations and the Subject 2’s signed complaint, there was probable cause to arrest Subject 1 on allegations outlined in the arrest report. Officer C was entitled to rely upon the signed complaint and Officer A’s information in

INDEPENDENT POLICE REVIEW AUTHORITY

LOG# 1053111

participating in Subject 1's arrest. For further analysis of this Allegation, please see the above analysis for Officer B, Allegation #1.

The R/I recommends a finding of **EXONERATED** for **Allegation #2**, that Officer C caused Subject 1 to be maliciously prosecuted for Aggravated Assault against a Police Officer, in Violation of Rule #2: "Action/conduct impedes Department policy or brings discredit." Given the above analysis for Officer A, Allegation #3, and the fact that probable cause is an absolute bar to the claim of malicious prosecution, and based on Officer A's testimony, probable cause was clearly established, and as such, this allegation is not substantiated. Officer C was not present during the incident between Officer A and Subject 1, and was assigned the ministerial task of filling out paperwork on the arrest because the incident occurred on his Beat

The R/I recommends a finding of **EXONERATED** for **Allegation #3**, that Officer C caused Subject 1 to be maliciously prosecuted for Domestic Battery, in Violation of Rule #2: "Action/conduct impedes Department policy or brings discredit." Given the above analysis for Officer A, Allegation #3, and the fact that probable cause is an absolute bar to the claim of malicious prosecution, and based on Officer A's testimony as well as the signed complaint, probable cause was clearly established, and as such, this allegation is not substantiated. Furthermore, Officer C was not present during the incident between Officer A and Subject 1, and was assigned the ministerial task of filling out paperwork on the arrest because the incident occurred on his Beat

The R/I recommends a finding of **EXONERATED** for **Allegation #4**, that Officer C conspired to have Subject 1 falsely arrested, in Violation of Rule #2: "Action/conduct impedes Department policy or brings discredit." The 7th Circuit's Pattern Jury Instructions, 5.09, define conspiracy as "an express or implied agreement between two or more persons to commit a crime." Here, the R/I was unable to gather any evidence during the course of the investigation to prove an express or implied agreement between Officer C or anyone else to falsely arrest Subject 1. Pursuant to General Order Section V (A) of G04-04 Domestic Incidents, if there is probable cause to believe that a person has committed a crime of domestic violence, the preferred response of the officer is the arrest of the offender. Here, Officer A personally observed Subject 1 physically accost Subject 2. Subject 2 signed a complaint against Subject 1 alleged Subject 1 struck her head against the wall and door at XXXX W. Chestnut. Based on Officer A's observations and the Subject 2's signed complaint, there was probable cause to arrest Subject 1 on allegations outlined in the arrest report.