

**INTRODUCTION:**

On 04 December 2014, at approximately 1150 hours, brothers Subject 1 and Subject 2, were on the way to their father's (Civilian 1) job. Prior to departing, Subject 2 went into the house, located at XXXX S. Loomis Blvd., Chicago, Illinois. Subject 1 remained outside. Simultaneously, Officers A and B arrived in the area of XXXX S. Loomis Blvd. driving an unmarked grey Ford Explorer. Upon exiting the police vehicle, Subject 1 and Subject 2 alleged that Officer A detained and searched Subject 1 without justification, placed Subject 1 in a chokehold and choked him, and threatened to Taser Subject 1. Officer B entered the house without permission and detained Subject 2. Furthermore, one of the two officers pushed Subject 2 into the unmarked Ford Explorer. Both officers were verbally abusive and made racist and inappropriate remarks towards Subject 1 and Subject 2. The officers then entered the unmarked Ford Explorer and left the area of XXXX S. Loomis Blvd. without making an arrest.

**ALLEGATIONS:**

On 05 December 2014, at 1000 hours, Sergeant A, #XXXX, registered a complaint on behalf of the complainant, Civilian 1, with IPRA Intake Aide A. It is alleged that 04 December 2014, at approximately 1150 hours, while at XXXX S. Loomis Blvd., **Officers A #XXXXX and B #XXXXX:**

- 1) Entered Subject 1 and Subject 2's home without a warrant or permission, in violation of Rule 1 – Violation of any law or ordinance, and Rule 2 - Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- 2) Grabbed and pulled Subject 1 and searched him without justification, in violation of Rule 1 – Violation of any law or ordinance, and Rule 2 - Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department;
- 3) Put Subject 1 in a chokehold and choked him, in violation of Rule 9 – Engaging in any unjustified verbal or physical altercation with any person, while on or off duty;
- 4) Threatened to Taser Subject 1, in violation of Rule 8 – Disrespect to or maltreatment of any person, while on or off duty;
- 5) Pushed Subject 2 into the squad car, in violation of Rule 8 – Disrespect to or maltreatment of any person, while on or off duty;
- 6) Made racist and inappropriate remarks towards Subject 1 and Subject 2, in violation of Rule 8 – Disrespect to or maltreatment of any person, while on or off duty; and
- 7) Verbally abused Subject 1 and Subject 2, in violation of Rule 8 – Disrespect to or maltreatment of any person, while on or off duty.

**APPLICABLE LAW and RULES:**

Rule 1: Violation of any law or ordinance.

Rule 2: Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department.

Rule 8: Prohibits disrespect to or maltreatment of any person, while on or off duty

Rule 9: Prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

**INVESTIGATION:**

An **Initiation Report** dated on 05 December 2014, completed by Sergeant A #XXXX indicated that Civilian 1 and Subject 1 came to XXX<sup>th</sup> District to file a complaint. Civilian 1 and Subject 1 stated that an unmarked dark grey Ford Explorer, occupied by two uniformed police officers, stopped in front of their home located at XXXX S. Loomis Blvd. One officer was a white male, 6'0", 190 lbs., with blue eyes wearing a red baseball hat and short facial hair,<sup>1</sup> and the other a white male, 5'10", 190 lbs., wearing a blue baseball hat.<sup>2</sup> The officer with the red hat entered the front yard, grabbed Subject 1 off the front stairs, detained him, handcuffed him, searched him without a reason, choked him and made derogatory comments towards Hispanics. Sergeant A did not observe any signs of injury to Subject 1's neck. The officer with the blue hat entered XXXX S. Loomis Blvd. without a warrant or permission and detained and handcuffed Subject 2. After several minutes Subject 1 and Subject 2 were uncuffed and the officers left the scene. (Att. #4)

[Juvenile content redacted]

In a statement to IPRA on 05 December 2014, the **victim, Subject 2**, stated that he and his brother, Subject 1, were on their way to their father's place of employment, when he decided to go back into the house to send his father a message via Facebook. While Subject 2 was inside the house, someone knocked on the door, and Subject 2's other brother, Witness 1, opened the door.<sup>3</sup> An officer (Officer B) appeared in the doorway and requested that Subject 2 come back outside.<sup>4</sup> Subject 2 was standing near the computer which is located in the hallway and he asked Officer B what was going on

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<sup>1</sup> Based on Officer A's To-From-subject report to IPRA dated 08 September 2015, the R/I believes Subject 1 to be describing Officer A.

<sup>2</sup> Based on Officer B's To-From-subject report to IPRA dated 08 September 2015, the R/I believes Subject 1 and to be describing Officer B.

<sup>3</sup> Subject 2 noted that his brother his sister-in-law, Witness 2, was also at XXXX S. Loomis Blvd. at the time of the incident.

<sup>4</sup> Based on Officer B's To-From-subject report to IPRA dated 08 September 2015, the R/I believes the officer referred to by Subject 2 to be Officer B.

and told him that he could not come into the house. Officer B was in the house “half-way” from the computer where Subject 2 was standing and repeatedly told Subject 2 to “come here.” Subject 2 began walking toward Officer B, at which time Officer B grabbed Subject 2 by the hand, placed him in handcuffs, and led him out of the house.

According to Subject 2, when he got outside the house, he observed another officer (Officer A) choking Subject 1.<sup>5</sup> Subject 1 was asking Officer A, “What are you doing?” and the officer stated, “I’m going to Taser you. Stop resisting.” Officer A began searching Subject 1, during which time he stated, “You fucking Mexicans.” He further stated, “I’m going to take all of you like I took you all out of Pilsen” and, “You see how all the white people live in Pilsen? You don’t see no fucking Mexicans or black people like these nice neighborhoods.” Subject 2 reported that Officer B told him to “shut the fuck up,” and then pushed him against the car. Subject 2 related the officers verbally abused them the entire incident, at one point making a statement that Subject 2’s home had roaches. When the officers completed the search outside of the house, they uncuffed Subject 1 and Subject 2 and left the area. (Atts. #5, 17)

Several attempts were made to have Subject 1 and Subject 2 view a **photo array** of the accused officers. Between July 29, 2015 and August 4, 2015, the R/I attempted on three occasions to arrange for Subject 1 and Subject 2 to view a photo array of the accused officers through their father, Civilian 1. The R/I discontinued attempts to arrange the viewing after Civilian 1 failed to return a voice message left by the R/I on August 4, 2015. (Att. #19)

On 08 January 2016, a letter was sent to the **witness, Witness 1**, in an attempt to schedule an interview with him. The R/I received a signed confirmation of receipt that is dated 13 January 2016. As of today’s date, Witness 1 has not called IRPA to schedule an interview. (Att. #33, 34)

On 05 December 2014, at 1332 hours, an **evidence technician took photographs** of Subject 1’s face and neck area. The photographs do not depict any visible injuries. (Att. #30)

The **contact cards** completed for Subject 1 and Subject 2 on 04 December 2014, at 1639 hours, indicate that they were stopped for gang loitering in the vicinity of XXXX S. Loomis Blvd. Officers B and A completed separate Contact Cards for Subject 2 and Subject 1. (Att. #13)

In a To-From-subject report to IPRA dated 08 September 2015, the **accused, Officer A** stated that on 04 December 2014, he was working with Officer B. During their tour of duty they observed a Hispanic male, now believed to be Subject 2, look in their direction and then run into XXXX S. Loomis Blvd. There was another Hispanic male, now known as Subject 1, who did not run. Officer A smelled a strong odor of cannabis in the area XXXX S. Loomis Blvd. Officer A indicated that the only verbal

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<sup>5</sup> Based Officer A’s To-From-subject report to IPRA dated 08 September 2015, the R/I believes the officer referred to by Subject 2 to be Officer A.

contact he had with Subject 1 was to tell him to remove his hands from his pocket and waistband area. Officer A admitted that he conducted a protective patdown for his safety and that he pulled Subject 1 away from the fence as he conducted the patdown. Other than the patdown, Officer A denied having any verbal or physical contact with Subject 2. Officer A denied the allegations made against him. (Att. #24)

In a To-From-subject report to IPRA dated 08 September 2015, the **accused Officer B** indicated that he Officer A came into contact with Subject 2 and Subject 1 after one of them made eye contact with the squad car and ran in his residence. Once Officer B exited his vehicle he smelled a strong odor of cannabis in the area where Subject 2 and Subject 1 were standing. Officer B did not recall which of the brothers ran in the house, but he told that particular brother to come back outside. Officer B denied entering the house. Officer B indicated that the only physical contact he had with the brothers was a protective patdown. Officer B denied pulling and searching Subject 1 without justification. Officer B reported that he did not threaten to Taser Subject 1. Officer B indicated that he did not push Subject 2 and did not make racist or verbally abusive remarks to the brothers. Officer B denied calling the brothers “fucking Mexicans.” Officer B related that he did not tell the Subjects that their home was nasty and had roaches. Officer B denied making any statements directed toward the brothers regarding “Black,” “Mexican,” “Pilsen,” and being “nasty.” (Att. #29)

## CONCLUSION:

### Officer A - Allegation #1:

IPRA recommends a finding of **Unfounded** for allegation #1 against Officer A, that he entered Subject 1 and Subject 2’s home without a warrant or permission. Witness 1 was identified as a witness to the incident, but the R/I was unsuccessful in scheduling an interview with Witness 1. Officer A denied the allegation. The statements from Subject 2, Subject 1, and Officer B corroborate that Officer A remained outside of XXXX S. Loomis Blvd. with Subject 1 and never entered the residence, while Officer B attempted to ascertain the whereabouts of Subject 2 who had retreated inside the residence.

### Allegation #2:

IPRA recommends a finding of **Not Sustained** for allegation #2 against Officer A, that he grabbed and pulled Subject 1 and searched him without justification. There is no constitutional or statutory requirement that a police officer must have probable cause to make an arrest before the officer may stop an individual. In *Terry v. Ohio*, the United States Supreme Court held that when a police officer observes unusual conduct, the officer may stop and detain a person without probable cause in order to investigate criminal activity. *Terry v. Ohio*, 392 U.S. 1, 20, L.Ed. 889, 88 S.Ct. 1868 (1968). The purpose of a *Terry* stop is to conduct a brief investigation to confirm or deny that the suspect is involved in criminal activity. A lawful *Terry* stop must be based on “reasonable suspicion,” which has been defined as “articulable facts that would lead a

reasonable officer to conclude that criminal activity is afoot. More than an unsupported hunch but less than probable cause and even less than a preponderance of the evidence.” *U.S. v. Sokolow*, 490 U.S. 1, 7, 109 S. Ct. 1581, 104 L. Ed. 2d 1 (1989).

Based on the information provided by Officer A, Officer A believed that he had enough reasonable suspicion to justify a *Terry* stop of Subject 1. Upon viewing the officer’s CPD vehicle, Subject 2 made eye contact and retreated into the house. Officer A noted that he smelled marijuana in the air when he exited his vehicle. However, he did not articulate evidence linking the brothers to the smell, nor is there any indication that Officer A observed contraband. Furthermore, the contact card completed by Officer A references gang loitering as the reason for the contact. This information provided by Officer A demonstrates that he had reasonable suspicion to justify conducting a *Terry* stop.

Officer A noted that, upon approaching Subject 1, and believing that he may be concealing something, he requested that Subject 1 remove his hands from his pockets/waistband. When Subject 1 failed to comply with that request, Officer A conducted a brief search of Subject 1’s outer clothing, to determine if he had a weapon. If the police reasonably suspect the person is armed and dangerous, they may conduct a reasonable search for weapons for the protection of the police officer, regardless of whether there is probable cause to arrest the individual for a crime. *Terry v. Ohio* at 27. Subject 1’s behavior, coupled with his refusal to comply with Officer A’s command likely provided sufficient justification for the protective patdown that Officer A conducted.

Subject 1, however, provides a different account of how the events unfolded after Officers B and A saw Subject 2 enter XXXX S. Loomis Blvd. Subject 1 alleged that Officer A detained and searched him without justification, and then placed him in a chokehold and choked him, as well as threatened to Taser him. Furthermore, both brothers indicate that they were placed in handcuffs, an act which would require the officers to have probable cause to arrest, a standard which the officers could not meet based on the statements obtained from the brothers and the officers. However, based on the information gathered, no one was arrested and Subject 1 and Subject 2 were allowed to leave.

Ultimately, there is insufficient evidence to prove and/or disprove the allegation, and as such it must be **Not Sustained**.

Allegation #3:

IPRA recommends a finding of **Not Sustained** for allegation #3 against Officer A that he put Subject 1 in a chokehold and choked him. Again, there are differing narratives as to how the events unfolded after Officers B and A saw Subject 2 enter XXXX S. Loomis Blvd. Although the evidence technician photographs, taken the day after the incident, do not depict any visible injury to Subject 1, this certainly is not

conclusive, and may also explain why Subject 1 was still able to communicate with the officer, as overheard by Subject 2

Although statements from Subject 1 and Subject 2 are consistent in that they both indicate that Officer A was engaged in some tactic that involved his arm around Subject 1's neck, there are not enough facts to determine whether the tactic alleged to have been used by Officer A violated Departmental policy.

If the accounts provided by Subject 1 and Subject 2 are true, and assuming that Subject 1 gave Officer A a reason to conduct a protective pat-down, physical contact of this nature would have been inappropriate. Furthermore, Officer A's pat-down did not reveal any contraband or weapons.

Officer A, however, denied having any physical contact beyond pulling Subject 1 away from the fence and conducting the protective pat-down.

Although not interviewed, family members Witness 1 and Witness 2 would likely corroborate Subject 1 and Subject 2's account. Notwithstanding, the lack of independent evidence (physical evidence or audio/video of the encounter) or unrelated third party witnesses to the incident, to determine by a preponderance that the misconduct occurred as alleged. Due to the lack of evidence to either prove or disprove the allegation, IPRA recommends a finding of Not Sustained.

#### Allegation #4:

IPRA recommends a finding of **Not Sustained** for allegation #4 against Officer A, that he threatened to Taser Subject 1. Subject 1 reported that Officer A stated to him, "Stop resisting or I'll Taser you." Officer A denied the allegation, indicating that he was not carrying a Taser and, at the time, was not qualified to carry one.

It is unclear from Subject 1's statements whether Officer A ever displayed a Taser during the incident. Subject 2 also reported that he heard Officer A threaten to Taser Subject 1, but Subject 1 indicated that Officer A made the statement prior to Subject 2 exiting the house, suggesting that Subject 2 may not have been in a position to overhear the statement from inside the house.

Although not interviewed, family members Witness 1 and Witness 2 would likely corroborate Subject 1 and Subject 2's account. Notwithstanding, the lack of independent evidence (physical evidence or audio/video of the encounter) or unrelated third party witnesses to the incident, to determine by a preponderance that the misconduct occurred as alleged. Due to the lack of evidence to either prove or disprove the allegation, IPRA recommends a finding of Not Sustained.

#### Allegation #5:

IPRA recommends a finding of **Unfounded** for allegation #5 against Officer A, that he pushed Subject 2 into the squad car. Officer B reported that he was the person that was with Subject 2 during the incident, not Officer A. Subject 2 never specified which officer pushed him. Based on the evidence IPRA recommends a finding of **Unfounded**.

Allegation #6:

IPRA recommends a finding of **Not Sustained** for allegation #6 against Officer A, that he made racist and inappropriate remarks towards Subject 1 and Subject 2. Officer A denied the allegation. Subject 1 and Subject 2 gave varying accounts of what was said. Subject 1 indicated that one of the officers stated, "That why they kicked us (Mexicans) out of Pilsen neighborhood." He further related, "Oh, that's why you live in a shitty ass hood, and all this neighborhood's shitty ass houses with roaches." Subject 2 indicated that one of the officers said, "You fucking Mexicans. I'm going to take all of you like I took you all out of Pilsen. You see how all the white people live in Pilsen? You don't see no fucking Mexicans or black people like these nice neighborhoods."

Although not interviewed, family members Witness 1 and Witness 2 would likely corroborate Subject 1 and Subject 2's account. Notwithstanding, the lack of independent evidence (physical evidence or audio/video of the encounter) or unrelated third party witnesses to the incident, to determine by a preponderance that the misconduct occurred as alleged. Due to the lack of evidence to either prove or disprove the allegation, IPRA recommends a finding of Not Sustained.

Allegation #7:

IPRA recommends a finding of **Not Sustained** for allegation #7 against Officer A, that he verbally abused Subject 1 and Subject 2. Officer A alleged that that the only verbal contact he had with Subject 1 involved telling him to remove his hands from his pockets. Subject 1 and Subject 2 indicated that both officers told them to "shut the fuck up" multiple times, along with other profane language.

Although not interviewed, family members Witness 1 and Witness 2 would likely corroborate Subject 1 and Subject 2's account. Notwithstanding, the lack of independent evidence (physical evidence or audio/video of the encounter) or unrelated third party witnesses to the incident, to determine by a preponderance that the misconduct occurred as alleged. Due to the lack of evidence to either prove or disprove the allegation, IPRA recommends a finding of Not Sustained.

Officer B - Allegation #1:

IPRA recommends a finding of **Not Sustained** for allegation #1 against Officer B, that he entered Subject 1 and Subject 2's home without a warrant or permission.

A warrantless entry into private residence is per se unreasonable. U.S.C.A. Const. amend. 4; Ill. Const. art. 1, § 6. Therefore, the Fourth Amendment prohibits police from making a warrantless and nonconsensual entry in order to make a routine felony arrest absent exigent circumstances. *Payton v. New York*, 445 U.S. 573, 576, 100 S. Ct. 1371, 1374-75, 63 L.Ed 2d 639 (1980). The guiding principle in determining if exigent circumstances justified a warrantless entry into a residence is reasonableness of the officers' actions, and each case is based upon totality of circumstances known to the officers at the time of warrantless entry. Illinois State courts have held the general factors relevant to a determination of the existence of exigent circumstances include whether (1) the crime under investigation was recently committed; (2) there was any deliberate or unjustified delay by the police during which a warrant could have been obtained; (3) a grave offense was involved, particularly a crime of violence; (4) there was a reasonable belief that the suspect was armed; (5) the police officers were acting on a clear showing of probable cause; (6) there was a likelihood that the suspect would escape if he was not swiftly apprehended; (7) there was strong reason to believe that the suspect was in the premises; and (8) the police entry was made peaceably, albeit nonconsensually. *People v. Williams*, 161 Ill. 2d 1, 26, 641 N.E. 2d 296, 306 (1994). Courts have also found exigent circumstances to exist when police are in "hot pursuit" of a suspect who flees from a public place into his residence. *See, e.g., United States v. Santana*, 427 U.S. 38 (1976) (holding that a suspect may not defeat an arrest which has been set in motion in a public place by the expedient of escaping to a private place).<sup>6</sup> However, this reasoning is premised on the existence of probable cause to arrest the subject. There is no applicable "hot pursuit" analysis in the context of a *Terry* stop, where an officer merely has a reasonable suspicion of criminal activity committed by the subject. *People v. Wear*, 229 Ill. 2d 545, 567, 893 N.E.2d 631, 323 Ill. Dec. 359 (2008).

Assuming the information provided by Subject 1 and Subject 2 as true, Officer B's entry of the residence to search for Subject 2 would be unreasonable because the evidence does not indicate that Officer B had probable cause to place Subject 2 under arrest for a felony, or any other criminal offense. The information available to Officer B at the time he encountered the brothers was limited (seeing someone run into the house and then subsequently smelling marijuana) and, as articulated, does not constitute probable cause to make an arrest. Officers B and A's primary motivation in making contact with the brothers appears to have been to detain and question. Furthermore, their contact cards only reflect "gang loitering" as their reason for making contact. There's no indication that the officers observed contraband, which negates the possibility of hot pursuit or need for urgency to enter the house. If Officer B entered the house as alleged, the evidence reflects no exigent circumstances that would have allowed him to overcome the warrant requirement. Furthermore, both Subject 1 and Subject 2 are clear and consistent that they did not provide consent to enter their home.

The officers and the victims provided differing narratives as to how the events unfolded after Officers B and A saw Subject 2 enter XXXX S. Loomis Blvd. The officers indicated that they intended to conduct a stop of Subject 1 and Subject 2, because

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<sup>6</sup> It is important to note that there is uncertainty in the law concerning whether the hot pursuit of a person suspected of a misdemeanor is sufficient to constitute an "exigent circumstance."

they observed Subject 2 retreat into the house upon observing the officers arrive in the area in their unmarked vehicle, and then smelled a strong odor of cannabis after exiting the vehicle. Officer B denied that he entered the house and reported that he verbally told Subject 2 to exit the house.

Although not interviewed, family members Witness 1 and Witness 2 would likely corroborate Subject 1 and Subject 2's account. Notwithstanding, the lack of independent evidence (physical evidence or audio/video of the encounter) or unrelated third party witnesses to the incident, to determine by a preponderance that the misconduct occurred as alleged. Due to the lack of evidence to either prove or disprove the allegation, IPRA recommends a finding of Not Sustained.

Allegations #2, 3, and 4:

IPRA recommends a finding of **Unfounded** for allegations #2, 3 and 4 against Officer B, that he grabbed and pulled Subject 1 and searched him without justification, put Subject 1 in a chokehold and choked him and threatened to Taser Subject 1. Based on the information provided by Subject 1 and Subject 2, the physical contact Officer B had with the brothers was limited to Subject 2, and the accounts from Officers B and A tend to corroborate this.

Allegation #5:

IPRA recommends a finding of **Not Sustained** for allegation #5 against Officer B, that he pushed Subject 2 into the squad car. Based on the information provided by Subject 1 and Subject 2, the physical contact Officer B had with the brothers was limited to Subject 2, and the accounts from Officers B and A tend to corroborate this. Subject 2 did not sustain any injuries consistent with being pushed into a car and Subject 1 did not provide IRPA information indicating that Subject 2 was pushed into a car.

Although not interviewed, family members Witness 1 and Witness 2 would likely corroborate Subject 1 and Subject 2's account. Notwithstanding, the lack of independent evidence (physical evidence or audio/video of the encounter) or unrelated third party witnesses to the incident, to determine by a preponderance that the misconduct occurred as alleged. Due to the lack of evidence to either prove or disprove the allegation, IPRA recommends a finding of Not Sustained.

Allegation #6:

IPRA recommends a finding of **Not Sustained** for allegation #6 against Officer B, that he made racist and inappropriate remarks towards Subject 1 and Subject 2. Officer A denied the allegation. Subject 1 and Subject 2 gave varying accounts of what was said. Subject 1 indicated that one of the unspecified officers stated, "That why they kicked us (Mexicans) out of Pilsen neighborhood." He further related, "Oh, that's why you live in a shitty ass hood, and all this neighborhood's shitty ass houses with roaches." Subject 2 indicated that one of the officers said, "You fucking Mexicans. I'm going to

take all of you like I took you all out of Pilsen. You see how all the white people live in Pilsen? You don't see no fucking Mexicans or black people like these nice neighborhoods.”

Although not interviewed, family members Witness 1 and Witness 2 would likely corroborate Subject 1 and Subject 2's account. Notwithstanding, the lack of independent evidence (physical evidence or audio/video of the encounter) or unrelated third party witnesses to the incident, to determine by a preponderance that the misconduct occurred as alleged. Due to the lack of evidence to either prove or disprove the allegation, IPRA recommends a finding of Not Sustained.

Allegation #7:

IPRA recommends a finding of **Not Sustained** for allegation #7 against Officer B, that he verbally abused Subject 1 and Subject 2. Officer B denied the allegations. Subject 1 and Subject 2, indicated that both officers told them to “shut the fuck up,” multiple times, along with other profane language. Witness 1 was identified as a witness to the incident, but he failed to provide IPRA with an interview.

Although not interviewed, family members Witness 1 and Witness 2 would likely corroborate Subject 1 and Subject 2's account. Notwithstanding, the lack of independent evidence (physical evidence or audio/video of the encounter) or unrelated third party witnesses to the incident, to determine by a preponderance that the misconduct occurred as alleged. Due to the lack of evidence to either prove or disprove the allegation, IPRA recommends a finding of Not Sustained.