

INDEPENDENT POLICE REVIEW AUTHORITY  
LOG# 1042532/U# 11-04

**SUBJECT:** LOG# 1042532  
U# 11-04

**REFERENCE:** RD# HT-112745

**DATE/TIME:** 07 January 2011 @ 0133 hours

**INVOLVED**

**OFFICER #1:** A; Chicago Police Officer; Star #XXXX; Unit 007; Male Hispanic; DOA: 30 September 2002; On-duty; In Uniform; Assigned to Beat 0713R.

**OFFICER #1's**

**WEAPON:** Sig Sauer, model P226, semi-automatic pistol, Serial #U663435; Sig Sauer 9mm Luger +P ammunition; Weapon capacity of fifteen (15) rounds plus one (1) in chamber; Eight (8) live rounds recovered from firearm; Weapon fired seven (7) to eight (8) times.

**OFFICER #1's**

**INJURIES:** None reported

**INVOLVED**

**OFFICER #2:** B; Chicago Police Officer; Star #XXXXX, Unit DOA: 27 November 2006; On-duty; In Uniform; Assigned to Beat 0713R.

**OFFICER #2's**

**WEAPON:** Springfield Amory, model XD45ACP, semi-automatic pistol, Serial #US594549; Springfield Amory .45 caliber ammunition; Weapon capacity of thirteen (13) rounds plus one (1) in chamber; Thirteen (13) live rounds recovered from firearm; Empty thirteen (13) round magazine also recovered; Weapon fired thirteen (13) to fourteen (14) times.

**OFFICER #2's**

**INJURIES:** None reported

**SUBJECT:** Subject; Address: X

**SUBJECT**

**INJURIES:** Multiple gunshot wounds, fatal.

**LOCATION:** X

**WITNESS:** Civilian 1; Male Black; Address: X

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**WITNESS**

**INJURIES:** Bruised and lacerated left hand; possible concussion with swelling and bruises to torso.

**SUMMARY OF INCIDENT:**

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

On 07 January 2011, at 0133 hours at X, Officers A and B observed a vehicle resembling the description of a vehicle that was reportedly involved in a shooting on 06 January 2011. The officers activated the emergency lights on their marked SUV and curbed the vehicle, which was driven by Subject. Officer B, who was driving the SUV, positioned the SUV in front of Subject's vehicle to prevent Subject from fleeing. The officers exited the SUV and approached Subject's vehicle. Officer B attempted to remove the passenger in the front seat, Civilian, from the vehicle. Simultaneously, Subject placed his vehicle in reverse, accelerating backwards until striking a light pole at the intersection of X Road and X Street. Officer A discharged several rounds in the direction of Subject's vehicle as Officer B and Civilian 1 were thrown from the vehicle. Subject placed his vehicle in drive, and drove in Officer A's direction. Officer B and Officer A discharged several rounds in the direction of Subject's vehicle. Subject was fatally wounded and pronounced dead at the scene.

**ALLEGATIONS<sup>1</sup>:**

On 07 January 2011, at X, it is alleged that Officer B provided a false statement to the Independent Police Review Authority (IPRA) by stating:

- The all call message that was heard pertained to a vehicle that was an "Oldsmobile Aurora by make and model and dark color that was wanted for shots fired."

On 13 June 2013, at X, it is alleged that Officer B provided false deposition testimony by stating:

- "I remember that the message that I heard said something about the vehicle fleeing from the 4<sup>th</sup> district and that it may have something to do with shots fired."
- "It said a dark Aurora, four-door, with temporary plates and rims;"
- "I knew that there was gun in the car because dispatch had earlier notified everyone that this particular car that matched the description could be armed."

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<sup>1</sup> IPRA did not present Officer A with any allegations prior to his resignation on 26 August 2016.

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On 25 February 2015, at X, it is alleged that Officer B provided false trial testimony by stating:

- “Earlier that day I heard a message that came over our radio, and the message was something about a dark vehicle with rims and a yellow, obviously yellow temporary plate that had fled the 4th district officer, and that it could possibly be armed, and it had something to do with a shooting.”

It is alleged that on 07 January 2011, at approximately 1:30 a.m. at or near the location of X, Officer B initiated a traffic stop of Subject without legal justification, in that Officer B pulled over Subject based on a Zone 6 dispatch which did not contain specific and articulable facts to form a basis of the seizure, which violated Fourth Amendment principles.

It is alleged that on 07 January 2011, at approximately 1:30 a.m. at or near the location of X, Officer B initiated a traffic stop of Subject without legal justification, in that Officer B pulled over Subject based on a Zone 6 dispatch which did not contain specific and articulable facts to form a basis for the seizure, which brought discredit upon the Department.

It is alleged that on 07 January 2011, at approximately 1:30 a.m. at or near the location of X, Officer B violated Department policy when he fired his weapon at or in the direction of Subject.

**APPLICABLE LAW AND RULES:**

Rules and Regulations of the Chicago Police Department:

- 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 14: Making a false report, written or oral.

Chicago Police Department General Orders:

- G03-02: Use of Force Guidelines (eff. 01 October 2002)
- G03-02-03: Deadly Force (eff. 01 October 2002)<sup>2</sup>
- G03-02-06: Weapon Discharge Incidents Involving Sworn Members (eff. 01 October 2002)
- G03-02-01: The Use of Force Model (eff. 15 August 2003)

**INVESTIGATION:**

**Zone 8 Radio Transmission**

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<sup>2</sup> Also referred to as G02-08-03 (eff. 01 October 2002).

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The Chicago Police Department has thirteen radio zones that cover the twenty-five (25) police districts. Ten (10) of the districts share a zone, and three of the districts have their own zone. The 004<sup>th</sup> and 007<sup>th</sup> Districts are involved in this investigation. The 004<sup>th</sup> District calls go out on the police radio channel known as Zone 8; the 004<sup>th</sup> District shares the Zone 8 radio channel with the 006<sup>th</sup> District.<sup>3</sup> The 007<sup>th</sup> District calls go out on the police radio channel Zone 6; the 007<sup>th</sup> District shares Zone 6 with the 008<sup>th</sup> District.<sup>4</sup> According to the Attendance & Assignment sheets, Officers B and A were assigned to the 007<sup>th</sup> District, 1<sup>st</sup> Watch from 9:00 p.m. to 6:00 a.m. (2100-0600 hours), and working Beat 0713R, on 06 January 2011.

On 06 January 2011, at approximately 9:56 p.m. (2156 hours), the 004<sup>th</sup> District broadcast a pursuit call over Zone 8 (which reaches members assigned to the 4<sup>th</sup> and 6<sup>th</sup> Districts). In the transmission, police officers reported that they were chasing a black, two-door model Oldsmobile Aurora with rims bearing plate number XXXXXXXX. Towards the end of the transmission, the chasing officers called off their pursuit of the car, told the dispatcher that the car was wanted for “fleeing and eluding,” and opined that “with the way he was drivin’ and the amount of shootings that happened in prob’ly [sic] that area today we’re gonna assume that there was weapon in that car.”<sup>5</sup> The dispatcher who took the call ran the temporary plate given by the 004<sup>th</sup> District officer involved in the pursuit and then stated over the air that the 1998 Oldsmobile Aurora was registered to a particular name and address, which was not Subject.<sup>6</sup> Officers terminated their pursuit of the vehicle upon the vehicle entering the expressway at X. (Att. #45)

On 06 January 2011, at approximately 10:00 p.m. (2200 hours), Zone 6 (which reaches members assigned to the 007<sup>th</sup> and 008<sup>th</sup> Districts) broadcast information regarding the aforementioned vehicle having been pursued moments earlier in the 004<sup>th</sup> District; “Zone 8 initiated a traffic pursuit at X, they were chasing a XXXXXXXX, 98 Olds Aurora, last seen at X traveling westbound, 420 terminated it.” This dispatch did not provide any further description of the vehicle, its occupants, or why the vehicle was being pursued by officers. (Att. #47)

The Zone 6 alert related to the 004<sup>th</sup> District call was different than the original call. Specifically, the Zone 6 alert did not give the car’s color, did not mention that the car had rims, did not mention that the car was a two-door model. The Zone 6 alert described the chase as a “traffic pursuit” unlike the original Zone 8 call which mentioned “fleeing and eluding.” The Zone 6 alert did not include any speculation that there might be a weapon in the car connected to recent shootings in the 004<sup>th</sup> District.

In a **statement** to IPRA on 07 January 2011, **Witness Civilian** 1 stated that, on the evening in question, he was riding in an Oldsmobile Aurora with Subject. Subject made a left turn onto X. Civilian 1 observed a marked police SUV behind them with its emergency lights activated. Officers in the SUV instructed Subject to curb his vehicle.

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<sup>3</sup> Trial testimony of OEMC Witness, Dkt. #405, pages 125-6, lines 24-9.

<sup>4</sup> *Id.*

<sup>5</sup> OEMC transmission from Zone 8, page 6.

<sup>6</sup> OEMC transmission from Zone 8, page 6.

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When Subject decreased the speed of his vehicle the officers positioned their SUV in front of his vehicle. Officer B approached the passenger side door and instructed Civilian 1 to open the door. Civilian 1 informed Officer B that he could not open the door from the inside. Civilian 1 lowered the passenger window, reached out the window and opened the door. As Civilian 1 was exiting the vehicle, Subject "hit the gas real, real hard, and all [Civilian] heard was [the sound], errrrrr." Civilian 1 stated that the sound was Subject's tires screeching. Civilian 1 heard the officers yell numerous times to Subject to stop.

Subject placed his vehicle in reverse, and struck Civilian and Officer B with the car door. Officer B fell to the ground, and Civilian 1 was knocked into the air. Upon landing on the pavement, Civilian 1 rolled to the curb of the street, and lost consciousness. Civilian did not recall how long he was unconscious. Officer B woke Civilian 1 and stated, "Don't move." Officer B asked Civilian if he was alright. Civilian 1 stated that he was in pain. Civilian 1 observed that several officers had arrived at the scene. Responding officers transported Civilian 1 to Holy Cross Hospital for medical treatment. Civilian 1 received three sutures to his left arm. Civilian 1 had no knowledge or recollection of any officer discharging his weapon during this incident. (Att. #8, 28)

Civilian's **medical records** from Holy Cross Hospital report that his chief complaint was a laceration to his left hand. Civilian 1 told hospital personnel that his friend drove his vehicle over his hand. Records describe Civilian 1 as "mildly intoxicated" with "alcohol on breath." Three sutures were used to close the laceration to Civilian 1's hand. (Att. #41)

In a **statement** to IPRA on 07 January 2011, **Involved Member Officer B** related that he was working with Officer A, and that he was the driver of the police SUV. During routine patrol, Officer B observed a vehicle (now known to be Subject's vehicle) that matched the description of a vehicle from which shots were fired earlier in the day. Officer B discussed the matter with Officer A, and they decided to curb the vehicle. Officer B positioned the SUV behind Subject's vehicle, and activated the emergency lights. Having prior knowledge that the vehicle had reportedly fled during the earlier incident, Officer B positioned the SUV alongside the left front bumper of Subject's vehicle. Officers B and A exited the SUV. Officer B approached the passenger's side of the vehicle with his weapon in a low ready position, and Officer A approached the driver's side of the vehicle.

Officer A engaged in conversation with Subject, and Officer B gave Civilian 1 verbal direction to exit the vehicle. Civilian 1 was not complying with Officer B's verbal commands. Officer B holstered his weapon. Civilian 1 lowered the window and Officer B reached inside the vehicle and unlocked the door. Officer B opened the door and gave Civilian 1 verbal directions to exit the vehicle. As Civilian 1 was removing his seat belt, Officer B felt something pushing his body. Subject's vehicle was moving in reverse. The door on Subject's vehicle struck Officer B about his body and knocked him to the ground. The door also struck Civilian 1, and knocked him to the ground. Immediately

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thereafter, Officer B heard shots fired, and stood to his feet. The tires on Subject's vehicle were screeching, as he drove his vehicle in reverse and struck a light pole.

Officer B observed Officer A in the middle of the street. Subject's tires were screeching as he placed the vehicle in drive and drove in the direction of Officer A. Fearing for Officer A's life, Officer B discharged his weapon in the direction of Subject. Officer B discharged all the rounds (14) in his weapon. Officer B stated that he was attempting to "eliminate the threat" of Subject running over Officer A. Officer B reloaded his weapon, but he did not discharge his weapon again. After the vehicle stopped, Officer B handcuffed Civilian 1 and asked him if he needed medical attention. When asked, Civilian 1 informed Officer B that there was a gun under the front seat of Subject's vehicle. Officer B informed Officer A about the gun in the vehicle. Officer A requested medical assistance, and Officer B secured the scene. Officer B related that he heard Officer A discharge his weapon, but he did not visually observe Officer A. Officer B did not sustain any injuries during this incident. (Att. #19, 25)

In the **deposition** of **Accused Member Officer B** taken on 13 June 2013 in the related civil matter (*Subject v. B*, et al; 12-cv-4855), Officer B testified that what first brought his attention to Subject's vehicle was that the vehicle matched a flash description he had heard over his Zone 6 radio.<sup>7</sup> The Zone 6 flash came in over his radio after he started his shift at 9:00 p.m. (2100 hours).<sup>8</sup> Based on the information he learned from the flash, Officer B felt there was probable cause to pull the vehicle over because he believed there was a gun in the car.<sup>9</sup> Later in his testimony, Officer B testified that his intentions were to initiate an investigative stop because he was "investigating" if the Subject vehicle was the vehicle mentioned in the flash because it fit the description that was given.<sup>10</sup> Specifically, Officer B testified that he "knew" the vehicle had fled from the 004<sup>th</sup> District police officers and that they may be armed or may have something to do with shots fired.<sup>11</sup> According to Officer B, the physical description of the suspect vehicle that came over Zone 6 radio was a "dark Aurora, four-door, with temporary plates and rims."<sup>12</sup> Officer B told Officer A that Subject's vehicle was the "same vehicle in the flash...and that they may be armed."<sup>13</sup> Officer B initially testified that he only believed one person to be in the vehicle at the time they initiated the stop.

Officer B testified that when he attempted to pull Subject's vehicle over, the vehicle refused to stop after he had activated the emergency lights and spot light. At the time Officer B initiated the stop, he did not see the driver making any furtive movements and he could not tell that there was a passenger in the vehicle.<sup>14</sup> Officer B testified that the vehicle pulled over to the right and slowed but continued to drive and "not stop."<sup>15</sup>

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<sup>7</sup> Deposition of Officer B, page 210, lines 8-13.

<sup>8</sup> *Id.* at page 208, lines 5-13.

<sup>9</sup> *Id.* at page 39; pages 213-4, lines 23-2.

<sup>10</sup> *Id.* at page 80, lines 5-9.

<sup>11</sup> Deposition of Officer B, page 226, lines 13-16.

<sup>12</sup> *Id.* at pages 211-12, lines 20-1.

<sup>13</sup> *Id.* at page 47, lines 7-9.

<sup>14</sup> *Id.* at page 221, lines 2-12.

<sup>15</sup> *Id.* at page 15, lines 18-22.

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Instead of stopping completely, the vehicle continued to drive for approximately 20-30 more feet. At some point, Officer B pulled in front of the Subject vehicle at an approximate 30-degree angle. At the time he initiated the traffic stop, Officer B did not feel it was necessary to call for “backup” because it was just an “investigative stop.”<sup>16</sup> Because of the information he allegedly heard over the flash description, Officer B approached with caution and with his gun drawn.<sup>17</sup> Officer B walked to the rear of his police vehicle and around the back so he could approach the passenger side of the Subject vehicle. At this time, Officer A approached the driver side. While Officer B was on the passenger side of the vehicle, he testified that he was not aware whether or not Officer A had his gun drawn because his focus was solely on the passenger side of the vehicle.<sup>18</sup> Officer B testified that he heard Officer A ask Subject to step out of the vehicle and Subject responded that he did not have to. Other than that exchange, Officer B did not pay attention to any further exchange between Officer A and Subject.<sup>19</sup>

Officer B testified that when he approached the passenger window he holstered his weapon and knocked on the window. He asked Civilian 1 to step out of the vehicle. Officer B initially felt that Civilian 1 did not hear his request to step out of the vehicle because Civilian 1 continued to look forward and not acknowledge Officer B’s presence. Civilian 1 eventually rolled down the window and Officer B asked him to step out of the vehicle.<sup>20</sup> Officer B testified that Civilian 1 complied with the request and began to step out of the vehicle. At the point Civilian 1 was exiting the vehicle, Officer B could not see or hear the interaction between Subject and Officer A.<sup>21</sup> Officer B testified that as Civilian 1 was stepping out of the vehicle, he heard the engine of the car “rev” and the “tires squeal.”<sup>22</sup> At that point, the car began to go in reverse down X Road. According to Officer B, his back was to the passenger door and he was dragged for a few feet as the car went into reverse. Officer B testified that he first heard approximately two shots being fired when the car was dragging him in reverse.<sup>23</sup> Officer B was able to turn away from the car and land on the parkway. At that point, he could see Officer A in the middle of the street but could not recall if Officer A was still firing his weapon.<sup>24</sup> In general, Officer B could not testify to Officer A’s specific position, except to say that he was in the middle of the street.

Officer B testified that the car continued to go into reverse and hit a tree, causing the passenger door to break and bend forward.<sup>25</sup> At the point of impact with the tree, located in the middle of the parkway, Officer B saw Civilian 1 being thrown from the vehicle while the car continued in reverse. Civilian 1 landed near the tree. The car eventually rear ended the light pole at the corner of X and X Street. Officer B could not

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<sup>16</sup> *Id.* at page 36, lines 16-21.

<sup>17</sup> *Id.* at page 244, lines 16-20.

<sup>18</sup> *Id.* at page 67, lines 9-24.

<sup>19</sup> *Id.* at page 84, lines 6-21.

<sup>20</sup> *Id.* at page 90, lines 7-16.

<sup>21</sup> *Id.* at page 96, lines 3-19.

<sup>22</sup> *Id.* at page 110, lines 12-17.

<sup>23</sup> *Id.* at page 98, lines 19-24; page 116, lines 2-3.

<sup>24</sup> *Id.* at page 116-7, lines 23-2; page 118, lines 1-5.

<sup>25</sup> *Id.* at page 119, lines 3-11.

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tell how fast the car was going after it hit the tree, only that it was going at a “high rate of speed.”<sup>26</sup> He also could not tell the distance between the tree and the light pole.<sup>27</sup> Right before Subject hit the light pole with his vehicle, Officer B drew his weapon. Officer B testified the reason for drawing his weapon was because he heard two rounds go off behind him.<sup>28</sup> After the car hit the light pole, Officer B testified that he heard the car’s engine rev again and then begin to drive forward in the direction of his partner.<sup>29</sup> Officer B could not give an opinion regarding the speed of the vehicle at any point in time, including the speed of the vehicle as it allegedly drove towards his partner.<sup>30</sup> Officer B testified that the car “was going in a manner where I felt my partner’s life was in danger as he was in the middle of the street.”<sup>31</sup>

According to Officer B, as the car drove in the direction of his partner, he began to fire at the driver of the vehicle.<sup>32</sup> Officer B fired approximately 13-14 shots. Officer B fired into the passenger side of Subject’s vehicle as he drove past Officer B. Officer B was standing on the parkway when he fired the approximately 13-14 shots. As Subject passed him, Officer B testified that he saw him reach under the seat of the vehicle.<sup>33</sup> Officer B’s main concern was to “eliminate the threat” because Subject was driving towards his partner.<sup>34</sup> Officer B repeatedly testified that he was solely focused on the driver as he was firing and could not give an exact location of where Officer A was standing or what Officer A was doing while the car was coming towards him.<sup>35</sup> Despite not knowing Officer A’s exact location, Officer B fired at the vehicle as it approached his partner. Officer B could not “say for sure” if his partner could have gotten out of the way of the vehicle but he believed his partner was in mortal danger.<sup>36</sup> After B finished firing, he testified that he could not estimate the distance the vehicle traveled from the light pole to its final stopping point.<sup>37</sup> Officer B could not “say for sure” how far the vehicle was from Officer A when it hit the light post or how far away the vehicle was from Officer A as it drove forward.<sup>38</sup> He never saw Officer A fire his gun during the incident. After the car had stopped, Officer B cuffed Civilian 1 and asked where the gun was. According to Officer B, Civilian 1 told him the gun was under a seat in the front of the vehicle. (Att. #64)

In the **trial testimony** of **Accused Member Officer B**, on 25 February 2015 in matter 12-cv-4855, Officer B testified that he suspected Subject’s vehicle to be the same vehicle that had fled other officers from the 004<sup>th</sup> District earlier in the day. He testified

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<sup>26</sup> *Id.* at page 123-4.

<sup>27</sup> *Id.* at page 123, lines 19-22.

<sup>28</sup> *Id.* at page 125, lines 15-23.

<sup>29</sup> *Id.* at pages 269-70, lines 18-1.

<sup>30</sup> *Id.* at page 270-1, lines 19-1.

<sup>31</sup> *Id.* at page 271, lines 16-19.

<sup>32</sup> *Id.* at, page 274, lines 14-21.

<sup>33</sup> *Id.* at, page 152, lines 4-11.

<sup>34</sup> *Id.* at pages 142-3.

<sup>35</sup> When asked if Officer A was standing in the direction of his line of fire, Officer B responded that he did not know because he was “focused on the driver.”

<sup>36</sup> *Id.* at pages 280-1, lines 21-5; page 286, lines 14-22.

<sup>37</sup> *Id.* at page 145-6, lines 18-18.

<sup>38</sup> *Id.* at page 303, lines 5-23.

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that he heard a message over his radio about a dark-colored vehicle with rims and a temporary plate that had fled 004<sup>th</sup> District officers and that the vehicle possibly could be armed and had something to do with a shooting. Officer B testified that calls from different zones could be dispatched over other radio zones as a “flash description” in order to alert officers to descriptions of vehicles or persons. However, Officer B stated that he was listening to Zone 6 radio at the time he heard the call. He relayed to his partner Officer A that he believed it was the same car that was wanted in a shooting or had something to do with a shooting. After telling Officer A that the vehicle Subject was driving was a “wanted” vehicle, Officer B told him to get ready to initiate a traffic stop. Officer B did not discuss a plan for the traffic stop but felt it was understood that both individuals were to be taken out of the car.<sup>39</sup> Officer B testified that the traffic stop was a “high risk traffic stop.” Officer B positioned his vehicle in a manner to “where the driver would stop his car” because “he wasn’t stopping.” Officer B admitted that during high risk traffic stops he is supposed to stop the suspect vehicle from behind and he was never trained to stop a vehicle from the front. Officer B also admitted that during high risk traffic stops, he is trained to call for back-up. Officer B testified that he got out of his police vehicle and circled behind the car to approach the passenger side of the car. Officer B could not see Officer A or hear any conversation because he was focused on the passenger and not on the driver. At this point, Officer B testified that he did not know if either individual had a gun. Officer B’s whole purpose in stopping Subject was to “investigate” because “earlier that day I heard a message that came over our radio and the message was something about a dark colored vehicle with rims and a yellow ... temporary plate that had fled 004<sup>th</sup> District officers and that it possibly could be armed, and it had something to do with a shooting.”<sup>40</sup>

After approaching the passenger side, Officer B knocked on the window to get the attention of Civilian. Officer B testified that Civilian 1 initially ignored his requests to step out of the vehicle. Officer B opened the passenger door and again asked Civilian 1 to step out of the vehicle. Officer B was standing in the well of the passenger door at this point. Officer B remembered Civilian 1 taking one step out of the vehicle when he heard the tires screech and the engine rev. At that point, the vehicle began to go in reverse and Officer B testified that he was being dragged backwards. Officer B did not fall under the passenger door at any time but was pushed by the vehicle. Officer B testified it was hard to say how far the vehicle dragged him backwards.<sup>41</sup> As he was being taken backward by the passenger door, he heard shots fired. Officer B testified that he was able to spin away from the door and fall to one knee on to the parkway. Officer B watched the car continue to go backwards until the passenger door struck a tree in the parkway. At that point, Officer B saw Civilian 1 being thrown from the vehicle. When the car hit the tree, Officer B testified that he knew Officer A was somewhere in the middle of the street. Officer B did not remember if Officer A was still firing at that point. After standing up, Officer B

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<sup>39</sup> In his trial testimony, Officer B testified that he and his partner knew there were two occupants in the Pinex vehicle. This testimony was in contradiction to deposition testimony in which he testified that he did not know there were two passengers in the vehicle upon initiation of the traffic stop.

<sup>40</sup> Trial Testimony of Officer B, Dkt. #404, page 27-28, lines 25-5.

<sup>41</sup> Officer B refers to being “dragged” while counsel for the Pinex Estate and Civilian 1 refer to him being “pushed” by the passenger door.

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called in over his radio “shots fired.” He could not remember at what point he drew his weapon out.<sup>42</sup> Officer B testified that after Subject hit the tree, he continued to reverse into the light pole. Officer B never walked towards the vehicle but stayed roughly in the same location in the parkway.

Officer B heard the engine rev again and then saw Subject drive the vehicle in the direction of where he believed his partner was located. Officer B testified that he had a “general idea” of where Officer A was in the street but “couldn’t exactly tell” where he was. Officer B started firing because he “believed the car was going to run him [Officer A] over and kill him [Officer A].” Officer B repeatedly testified that he knew his partner was going to be run over without knowing “exactly” where Officer A was located. When asked specifically how he knew Officer A was in danger even though he could not give the exact location of where Officer A was standing, Officer B testified that he knew that Officer A was in the street and the vehicle was heading in his direction. Officer B testified that he fired his weapon from the “general area” of the tree that was located in the parkway. He fired at the car to try and “get it to stop.” He began to fire as soon as the vehicle came forward from the light pole and continued to fire his weapon as the vehicle went past him. As the vehicle passed, he could see into the interior because the passenger door was broken open. Officer B testified that he believed the driver to be reaching for a gun.<sup>43</sup> Officer B could not give an opinion as to how fast the car was going at any point except for that it was going “really fast.” Officer B testified that he hoped the car would stop if he “just kept firing at it” but it never stopped. After the vehicle stopped, Officer B asked Civilian 1 where the gun was located and was told that it was under the seat. Officer B told Officer A about the gun and instructed him not touch it.

After the conclusion of Officer B’s testimony, he was recalled to testify. At this point in the trial, the Zone 6 “all call” or flash message that went out on 06 January 2011 was presented to the jury. Previously, the recording had not been made available. Based on the Zone 6 “all call” or flash message, Officer B was recalled to testify regarding the discrepancies between his previous testimony and the actual content of the “all call” message. In pertinent part, Officer B admitted that the actual Zone 6 message did not mention that the vehicle had rims, the vehicle was dark in color, the vehicle may be involved in a shooting, a passenger in the vehicle might be armed, or that the vehicle was involved in any type of felony or dangerous situation.<sup>44</sup> Additionally, Officer B testified that while the “all call” message did not mention anything about a shooting, it did mention a “pursuit” and, according to Officer B, a “vehicle pursuit can be for a shooting and also for high risk traffic pursuits.”<sup>45</sup> This was the first time Officer B raised the theory that a pursuit call could mean a pursuit involving a shooting or some other type of high risk traffic pursuit. (Att. #66)

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<sup>42</sup> An attorney for Subject’s estate impeached Officer B with his deposition testimony regarding when he drew his weapon. In his deposition, Officer B testified that he drew his weapon just before Subject hit the light pole.

<sup>43</sup> At this point in Officer B’s trial testimony, he begins to contradict himself as to whether or not his partner was in danger because Subject had a gun or was in danger of being hit by the vehicle driven by Subject.

<sup>44</sup> Trial Testimony of Officer B, Document #408, pages 34-36, lines 24-8.

<sup>45</sup> Trial Testimony of Officer B, Document #408, page 12, lines 5-12.

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In a **statement** to IPRA on 12 September 2016, **Accused Member Officer B**, after being provided a copy and the opportunity to review his IPRA statement, deposition, and civil trial testimony relative to the fatal shooting of Subject, confirmed and stood by the following statements and testimony:

On 07 January 2011, in a statement to IPRA at X, Officer B stated:

- The “all call” message that was heard pertained to a vehicle that was an “Oldsmobile Aurora by make and model and dark color that was wanted for shots fired.”

On 13 June 2013, during his deposition at X, Officer B made the following statements:

- “I remember that the message that I heard said something about the vehicle fleeing from the 4<sup>th</sup> district and that it may have something to do with shots fired.”
- “It said a dark Aurora, four-door, with temporary plates and rims.”
- “I knew that there was gun in the car because dispatch had earlier notified everyone that this particular car that matched the description could be armed.”

On 25 February 2015, during his trial testimony in the civil matter, Officer B made the following statement:

- “Earlier that day I heard a message that came over our radio, and the message was something about a dark vehicle with rims and a yellow, obviously yellow temporary plate that had fled the 4th district officer, and that it could possibly be armed, and it had something to do with a shooting.”

Officer B also confirmed that he was assigned and working in the 007<sup>th</sup> District on the date in question, and that the 007<sup>th</sup> District utilizes Zone 6 radio, and that the 004<sup>th</sup> District utilizes Zone 8 radio. (Att. #61, 62)

In a **statement** to IPRA on 04 November 2016, **Accused Member Officer B** addressed the allegations of violating the Fourth Amendment principles in regards to the seizure of Subject; bringing discredit upon the Department by violating the Fourth Amendment principles, and violating Department policy by firing his weapon at or in the direction of Subject.

Prior to his statement, Officer B was provided a copy and the opportunity to review his IPRA statement, deposition, and civil trial testimony relative to the fatal shooting of Subject. Officer B stood by his IPRA statement, deposition, and civil trial testimony. Officer B did not wish to add or change anything in regards to his IPRA

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statement, as well as confirmed that there was nothing incorrect in the transcriptions of his deposition and civil trial testimony. (Att. #71, 72)

In a **statement** to IPRA on 07 January 2011, **Involved Member Officer A** related that he was working with Officer B. They observed a vehicle (now known to be Subject's vehicle) that matched the description of a vehicle from which shots were fired earlier in the day. Officer A was the passenger, and Officer B was the driver of the SUV (Beat 713R). The officers activated their emergency lights and attempted to curb the vehicle. Subject applied the brakes to his vehicle several times, and eventually came to a complete stop. Officer B positioned the SUV in front of Subject's vehicle so that Subject could not flee. As Officer A exited the SUV, he drew and pointed his weapon toward Subject. Officer A stated that he had his finger on the trigger of his gun. Officer A approached Subject, who was seated in the driver's seat, and stated, "Let me see your hands, let me see your hands!" Subject already had his driver's license and insurance information in his hand, and handed it to Officer A.

Officer A commanded Subject to exit his vehicle. Subject stated, "For what, Officer?" Officer A repeated the command to Subject, and Subject answered the same. Officer A stated that Subject's hands began shaking, and that he was noticeably nervous. Officer A related that he was about to open the door and remove Subject from his vehicle. However, Officer B was removing Civilian 1 from the passenger side of the vehicle, and for safety reasons, Officer A stepped away from the vehicle. Suddenly, Subject placed his vehicle in reverse, pressed on the accelerator, "revved up the tires and peeled out in reverse." Officer A noticed that Officer B had been struck by the open passenger door and knocked to the ground.

At that point, Officer A discharged his weapon approximately 2-3 times in the direction of Subject. Officer A related that the vehicle was approximately 5-10 feet away from him when he discharged his weapon. Officer A stated that he was in fear of Officer B's life, in that he believed Officer B might be dragged underneath Subject's vehicle. Subject continued driving in reverse at a high rate of speed. Subject struck a tree, at which time Civilian 1 was ejected from the vehicle. Subject continued driving in reverse, until striking a light pole. At this point, Officer A had stopped shooting.

Officer A stopped shooting because he observed Officer B stagger to his feet, and he knew that Officer B was alive. As Officer B was about to approach Subject, Subject placed his vehicle in drive. Subject "revved the engine" and drove in the direction of Officer A at a high rate of speed. Officer A feared for his life, as he did not have any cover from Subject's oncoming vehicle. At a distance of approximately 5-10 feet, Officer A discharged his weapon approximately 3-4 times in the direction of Subject's vehicle. Officer A stated that, whether he moved to his left or right, he believed Subject's vehicle would have struck him because Subject was driving so fast.

Officer A stopped discharging his weapon when Subject veered to the right of the street and was no longer a threat in striking him. Officer A moved to secure the vehicle, and radioed for medical assistance. Officer B was standing on the other side of the street.

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Officer A had no knowledge at the time of the incident that Officer B had discharged his weapon. (Att. #20, 26, 27)

In a subsequent **follow-up statement** to IPRA on 28 January 2011, due to an audio equipment malfunction from his first interview, **Officer A** answered some clarifying questions. Officer A related what type of weapon he was carrying at the time of the incident, he spoke about the communication that he and Officer B had with OEMC, his training relative to conducting traffic stops, and reiterated his answers from his prior statement. OEMC provided a vague description of a vehicle involved in an incident earlier in the day. OEMC described the vehicle as dark in color with temporary tags (license plate). Officers A and B did not communicate the traffic stop of Subject's vehicle to OEMC. Officer A had no recollection of OEMC providing any further detail about the vehicle such as direction or occupants. (Att. #21, 26)

In the **deposition of Involved Member Officer A**, taken on 29 May 2013 in civil matter 12-cv-4855, Officer A testified that the traffic stop was initiated because the vehicle Subject was driving was a "wanted" vehicle.<sup>46</sup> Officer A admitted that, other than the vehicle being wanted, he did not observe Subject commit any traffic violations prior to the traffic stop.<sup>47</sup> According to Officer A, the vehicle was wanted for a "shooting in the 4<sup>th</sup> District" and the shooting involved a vehicle "just like the vehicle" he and Officer B pulled over.<sup>48</sup> Officer A testified that Officer B was "adamant" that the vehicle driven by Subject was the same vehicle involved in the 004<sup>th</sup> District matter and that the vehicle matched the description. Additionally Officer A testified that there was an "all call message" regarding the 004<sup>th</sup> District incident that Officer B had heard.<sup>49</sup> Officer A could not recall if he ever heard the "all call message." Officer A testified that once Officer B stated that the vehicle "matched everything" and that it was "wanted in a shooting," they initiated the traffic stop. Officer A testified that when they pulled the vehicle over, they pulled the police car in front and cut the vehicle off. Upon exiting the vehicle, Officer A immediately had his gun drawn as he approached the driver side of the vehicle.<sup>50</sup> Officer A made it clear that as he was approaching Subject, he could see Subject's hands. Officer A testified that when he approached the driver side window, he immediately asked Subject to step out of the vehicle but Subject refused to comply and attempted to hand Officer A his driver's license and insurance. At this point, Officer A testified that he was shouting at Subject to exit the car. Officer A did not know what Officer B was doing at the time because he was focused on the driver but could see Officer B out of his peripheral.<sup>51</sup>

Officer A testified that Subject reversed the vehicle about 45 seconds into the stop.<sup>52</sup> As Subject put the vehicle in reverse and accelerated, Officer A testified he saw

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<sup>46</sup> Deposition of Officer A, page 26, lines 7-13.

<sup>47</sup> *Id.* at page 25, lines 18-22.

<sup>48</sup> *Id.* at page 27, lines 20-23.

<sup>49</sup> *Id.* at page 31-32, lines 24-3.

<sup>50</sup> *Id.* at page 48, lines 9-11.

<sup>51</sup> Officer A repeatedly testified that he could not be sure what Officer B was doing or saying at the passenger side of the vehicle because he was personally focused on the driver of the vehicle.

<sup>52</sup> Deposition of Officer A, page 71, lines 16-21.

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his partner dragged down by the opened passenger door and he thought Officer B was under the moving vehicle.<sup>53</sup> At this point, Officer A testified that he fired into the reversing vehicle. Officer A was originally on the driver side of the vehicle, but as the vehicle reversed, he was in front of the vehicle.<sup>54</sup> He knew he was in front of the vehicle because he was aiming at Subject and the windshield. Officer A believed he was about 5-10 feet from the reversing vehicle as he began to shoot. Officer A testified that he fired his first set of shots as the vehicle was reversing and he could no longer see Officer B. Officer A stopped firing when he saw Civilian 1 and Officer B on the parkway.<sup>55</sup> As the vehicle was reversing, Officer A saw it hit a tree in the parkway and continue until it hit a light pole at the end of the block. At that point, the car was no longer moving. After his initial shots, Officer A testified that he began to approach and was walking in the middle of the street towards the vehicle.<sup>56</sup> As he approached, Officer A testified that Subject put the car in drive and accelerated towards him. Officer A could not give an opinion regarding how close he got to the vehicle but believed that when Subject was travelling forward from the light pole at a speed of approximately 25-30 miles per hour.<sup>57</sup> Additionally, Officer A testified that Subject accelerated forward “within seconds” of Officer A walking towards the vehicle.<sup>58</sup> At this point, Officer A fired a second volley of shots. Officer A fired his second round of shots at the windshield and towards the driver because he was angled towards the driver’s side.

Officer A testified that after the car had passed him, he no longer fired his weapon because Subject was no longer an “instant threat” to him.<sup>59</sup> Officer A witnessed Officer B firing his weapon but could not give an exact location of his firing position. However, Officer A testified that Officer B was in the parkway and facing the passenger side of the vehicle while he was firing. Officer A testified that the vehicle travelled another 50-60 feet after it had passed him. (Att. #65)

The **trial testimony of Involved Member A** on 24 February 2015 was consistent with his deposition. In summary, Officer A testified he and Officer B initiated the traffic stop of Subject after Officer B was adamant that the vehicle was wanted for a shooting from another district. At trial, Officer A could not recall whether or not he heard the Zone 6 flash message. Specifically, he could not remember whether or not he ever heard a flash message describing an “Aurora with rims wanted for a shooting.” Officer A was impeached with his deposition in which he testified that he heard on his radio an “all call” message for a vehicle wanted for a shooting in the 4<sup>th</sup> district.” However, after impeachment, Officer A still could not remember if he actually heard an “all call” message with those details. Upon initiating the emergency lights, Officer A testified that he could see the driver and the passenger reach under their seats. Officer A testified that Officer B pulled the police vehicle in front of the Subject vehicle in order to prevent a vehicle pursuit. Upon exiting the vehicle, Officer A had his gun drawn immediately and

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<sup>53</sup> *Id.* at page 90, lines 11-21.

<sup>54</sup> *Id.* at page 75, lines 5-11.

<sup>55</sup> *Id.* at page 91, lines 10-13.

<sup>56</sup> *Id.* at page 114, lines 4-11.

<sup>57</sup> *Id.* at page 114, lines 4-14; page 127, lines 16-17.

<sup>58</sup> *Id.* at page 217, lines 7-10.

<sup>59</sup> *Id.* at page 109, lines 6-10.

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pointed it at the center of the windshield. Officer A testified that he was yelling with his gun pointed at Subject because he was not listening to his commands to exit the vehicle. Officer A testified that he could see Officer B out of his peripheral and that he had opened the passenger door and was reaching into the vehicle. Officer A could not tell how much of Officer B's body was inside the vehicle. Officer A testified that without warning, Subject "gunned" the car in reverse. Officer A testified that he saw his partner being dragged down by the car as it went into reverse. He testified that he saw Officer B go "underneath." As Subject went into reverse, Officer A observed the passenger being thrown from the vehicle. Officer A testified he was standing by the side of the vehicle when he discharged approximately 3-4 times as the car was reversing. Officer A testified that he was aiming at the driver but acknowledged that there were no bullet holes to the windshield of the car or to the front headlights or grill. Officer A testified that he stopped firing once he saw Officer B stand up in the parkway. Officer A testified that the vehicle hit a tree and then a light pole. Officer A testified that immediately before striking the light pole the vehicle was picking up speed. After hitting the light pole, Officer A testified that he began to approach the vehicle at an angle. He testified that he was walking in the street in order to approach the vehicle. Officer A testified that he began firing again when the car accelerated from the light pole towards him. Officer A could not testify as to his proximity to the accelerating vehicle but testified that he fired 3-4 more times and then moved out of the way. Officer A did not have an opinion as to when Officer B began to discharge his weapon during the incident. (Att. #65)

In a **To-From Report** dated 07 January 2011, Sergeant A, Star# XXX, related that he conducted breath tests and collected urine specimens from Officers B and A between 0736 and 0831 hours on 07 January 2011. Sergeant A attached the paperwork associated with the testing, which reflect Officer B and A's blood alcohol content as .000 and the drug test results as negative. (Att. #4)

A **canvass** conducted by IPRA investigators on 07 January 2011 was successful in locating witness Civilian 2, who resides at X. Civilian 2 was at home working on his computer when he heard loud music from a vehicle outside his residence. The music stopped, and a male voice stated, "Let me see your hands!" Moments later, Civilian 2 heard approximately 15 gunshots. After a brief pause, Civilian 2 heard approximately 9 gunshots. A male voice then stated, "Stay down!" Thereafter, Civilian 2 looked out his window onto X Road, and observed an Oldsmobile vehicle. The vehicle was approximately at X Road, facing eastbound. Civilian 2 observed damage to the rear-end of the Oldsmobile. Civilian 2 declined to provide IPRA with a follow-up interview.<sup>60</sup> (Att. #5, 11, 15, 22)

The **autopsy** of Subject was performed on 07 January 2011 by Doctor of the Cook County Medical Examiner's Office. Subject sustained three gunshot wounds to his

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<sup>60</sup> Two other residents in the area of the incident informed IPRA investigators that they heard shots, but did not know how many shots they heard and did not witness the incident. Another resident in the area of the incident indicated that although he did not witness the incident, his wife did. The resident declined to provide any information regarding his wife's observations.

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upper torso. Tears in Subject's clothing (jacket and t-shirt) roughly correspond to where he sustained the gunshot wounds to his body.

Subject sustained a penetrating gunshot wound to the right side of his head/right ear; located in the posterior aspect of the right ear. It is 4 ½ inches from the back, 4 ¼ inches down from the top of the head, and 3 ½ inches to the left of the midline. A deformed semi-jacketed, hollow-point projectile was recovered from Subject's brain. The direction of the gunshot wound is right to left, front to back, and slightly upward. No final exit wound was identified.

Subject sustained a penetrating gunshot wound to his right arm. The entrance wound is 13 inches from the top of the head, 2 ½ inches right of midline, and 4 inches from the back. An exit/re-entering wound is noted located over the inner aspect of the right axilla. It is 19 ½ inches down from the top of the head, 3 ½ inches from the back, 9 inches to the right of the midline. A deformed semi-jacketed, hollow point projectile was recovered from beneath the skin over the left anterior chest wall. The projectile was similar to the projectile recovered from Subject's brain. The direction of the gunshot wound is basically right to left, front to back, and downward. The projectile path was through the heart and toward the apex. The final exit wound was not identified.

Subject sustained a second gunshot wound to his right arm. The entrance wound is 14 ½ inches down from the top of the head, 11 ½ inches to the right of the midline, and 1 ½ inches from the back. A large caliber bullet similar to that recovered from the previous gunshot wounds was recovered from Subject's spinal canal (5<sup>th</sup> thoracic vertebrae level). The bullet completely severed Subject's spinal cord. The direction of the gunshot wound appears basically right to left, back to front, and slightly upward. The final exit wound was not identified.

An x-ray of Subject's body revealed multiple metal fragments present in the right hip area. The fragments appear to be from an old gunshot wound. In the opinion of Doctor, the cause of death for Subject was multiple gunshot wounds. The manner of death was ruled Homicide. (Att. #6, 42, 43, 44).

Officer A's **Tactical Response Report** categorized Subject as an Assailant/Deadly Force. Subject did not follow verbal direction, he was an imminent threat of battery, he used force likely to cause death or great bodily harm, and he used his vehicle as a weapon. Officer A's response was member presence, verbal commands, and use of firearm. Officer A discharged eight (8) rounds from his weapon.<sup>61</sup> Officer A was approximately 5-10 feet away from Subject when he discharged his weapon. Officer A's firearm was holstered on his right side and he utilized a strong side draw. Watch Commander James Keating approved Officer A's report noting that "Officer A was placed in fear that his partner was being injured seriously and his own safety was threatened by the offender using the vehicle he was driving as a weapon to run him and

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<sup>61</sup> Although Officer A's Tactical Response Report references eight (8) rounds fired, it should be noted that only five (5) fired cartridge casings were recovered at the scene on 07 January 2011 that match the caliber, type, and manufacturer of the unfired cartridges recovered from Officer A's firearm.

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his partner over. Officer A used the necessary force to defeat an attack against himself.” (Att. #29)

Officer A’s **Officer’s Battery Report** relates that he did not sustain any injury. The type of weapon/threat used by Subject was his vehicle. Subject attempted to strike officers with his vehicle. (Att. #30)

Officer B’s **Tactical Response Report** categorized Subject as an Assailant/Deadly Force. Subject did not follow verbal directions, attacked with weapon (vehicle), used force likely to cause death or great bodily harm, and he used his vehicle as a weapon, in that he dragged Officer B with his vehicle. Officer B’s response to Subject’s actions was member presence, verbal commands, and use of firearm. Officer B discharged fourteen (14) rounds from his firearm and reloaded thirteen (13) additional rounds.<sup>62</sup> Officer B was approximately 5-10 feet from Subject when he discharged his first shot. Officer B’s firearm was holstered on his right side and he utilized a strong side draw. Watch Commander James Keating approved Officer A’s report noting that “Officer B was placed in fear that his partner’s safety was threatened by the offender who was using the vehicle he was driving as a weapon to run Officer A over. Officer B used the necessary force to defeat an attack against his partner.” (Att. #31)

Officer B’s **Officer’s Battery Report** relates that he sustained minor injuries (bruises/swelling/minor abrasions). The type of weapon/threat used by Subject was his vehicle. Subject struck Officer B with his vehicle. (Att. #32)

**Dash-cam video** from Officer A and B’s marked SUV depicts the officers driving eastbound on X Road (67<sup>th</sup> Street). Upon approaching Racine Avenue, Subject’s vehicle is seen stopped at the traffic light at X Road and X Avenue. The officers pull alongside the passenger side of Subject’s vehicle. Upon the traffic light changing to green, Subject drives eastbound on X Road. The officers position themselves behind Subject’s vehicle and moments later activate the SUV’s flashing lights. Subject’s brake lights flash approximately three times before Subject curbs his vehicle just east of X Road and X Street. The officers place their vehicle on an angle, in front of Subject’s left side bumper. Minutes later, responding units arrive at the scene. The video does not contain any audio, and does not capture the shooting or Officers A and B. (Att. #50)

In a **Case Supplementary Report (HT112745)**, Detective A, #21088, related that he was assigned to follow-up on this fatal police involved shooting. The report relates that a 4-door dark green Oldsmobile Aurora registered to Subject was at the scene. The vehicle was facing northeast as it sat in the westbound lane of X Road. The vehicle sustained severe right end rear damage. The driver’s window was rolled down. Both passenger side windows and the right side of the rear windshield were shattered. The right front door was fully open and the interior of the door appeared to be damaged by

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<sup>62</sup> Although Officer B’s Tactical Response Report references fourteen (14) rounds fired, certain records in the investigative file reference Officer B firing only thirteen (13) rounds. It should also be noted that only ten (10) fired cartridge casings were recovered at the scene on 07 January 2011 that match the caliber, type, and manufacturer of the unfired cartridges recovered from Officer B’s firearm.

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recent impact. Subject's deceased body was seated in the driver's seat. The involved marked Department SUV was parked diagonally, facing southeast on X Road.

Detective A was informed by numerous patrol units securing the scene that Civilian 1 was ejected from the Oldsmobile Aurora. Civilian 1 was transported to Holy Cross Hospital. Forensic Investigator Dave Ryan, #7636, informed Detective A that a handgun was visible underneath the powered driver's seat. The handgun was not recovered at the scene due to the car battery being inoperable. The handgun was later recovered when the driver's seat was removed. The handgun was identified as a black Hi Point Firearms, .45 caliber semi-automatic, 4.5 inch barrel, and fully loaded with eight (8) rounds in the magazine plus one (1) in the chamber.

In an interview with Detective A and Detective B, #21061, Officer B essentially related the same account of the incident as he did in his statement to IPRA. Officer B noted that he had monitored a police radio simulcast earlier in his shift and remembered a flash look-out message for a dark colored or black Aurora with temporary plates from the 004<sup>th</sup> District. In addition, Officer B related as he felt himself being knocked down by the front passenger door of Subject's vehicle, he somehow spun away from the front passenger door and stumbled onto the parkway. Officer B, fearing for the life of Officer A, aimed at Subject as he drove in the direction of Officer A from the light pole and emptied his weapon, firing fourteen (14) rounds.

In an interview with Detective A and Detective B, Officer A essentially related the same account of the incident as he did in his statement to IPRA. Officer A recalled that a dark colored Aurora with temporary tags was mentioned in a look-out message earlier in the day. In addition, Officer A related that, after handing Officer A his driver's license and registration, Subject did not comply with his verbal commands, and he refused to turn off and exit his vehicle. Officer A stated that Subject moved his hands downward in a furtive movement. Officer A threw the driver's license and registration in Subject's lap and then pointed his weapon at Subject and ordered him to show his hands.

In an interview with Detective C, #20069, Civilian 1 essentially related the same account of the incident as he did in his statement to IPRA. In addition, Civilian 1 related that 15 minutes prior to the incident, he came into contact with Subject at a liquor store, and that Subject was giving him a ride to the Red-Line train at X. Civilian 1 also related that when he was ejected from Subject's vehicle, a tire on Subject's vehicle rolled over his left hand and that he lost consciousness. Upon follow-up with Civilian 1 after his initial interview, Civilian 1 denied knowing anything about a gun in Subject's vehicle.

According to the report, Officer A discharged eight (8) shots in the direction of Subject in two separate volleys. The first volley of 2-4 rounds was from the front left side of the Oldsmobile. Subject had accelerated his vehicle in reverse, endangering the lives of Officer B and Civilian 1. Officer A ceased fire when Officer B and Civilian 1 were clear of Subject's reversing vehicle. The second volley of 4-6 rounds was also from the front left side of the Oldsmobile. Officer A was in fear of his own safety, as Subject

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revved the engine of the Oldsmobile and drove toward Officer A. Officer A ceased fire when he no longer felt in jeopardy.

Officer B discharged thirteen (13) rapid shots in the direction of Subject from the right rear side of the Oldsmobile; fully discharging his firearm after Subject had crashed his vehicle, shifted to drive, revved the engine, squealed the tires, and drove forward toward Officer A. Officer B reloaded and re-aimed but did not fire because Subject's vehicle had come to a stop and was motionless.

Department members canvassed the area and spoke with residents at X and X. Although three residents reported hearing shots fired, none were witness to the incident. (Att. #23)

**The Illinois State Police Division of Forensic Services** test-fired Officer B's weapon (Springfield Armory, model XD-45, 45 Auto caliber semiautomatic pistol, serial #US594549) and found it to be in firing condition. Officer A's weapon (Sig Sauer, model P226, 9mm Parabellum caliber semiautomatic pistol, serial #U663435) was also test-fired and found to be in firing condition. (Att. #24)

Toxicology results from the **Office of the Medical Examiner** states that Subject tested positive for ethanol (136 mg peripheral blood and 105 mg vitreous humor) in his body. (Att. #43)

**Chicago Police Department Evidence Technician Photographs and Videotape** show the aftermath of the crime scene, photographs of the involved vehicles, interior photographs of Subject's vehicle, Subject's deceased body in the driver's seat of his vehicle, a handgun under the driver's seat of the vehicle, and a bottle of alcohol and plastic cups in the backseat of the vehicle. (Att. #35)

Per a Department **Personnel Action Report**, Officer A resigned from the Department on 26 August 2015. (Att. #49)

After a jury trial in **civil matter 12-cv-04855**, the jury found in favor of Officers A and B on all counts. The plaintiffs were Civilian 1 and the Subject estate. The trial spanned eight days and encompassed testimony from multiple fact and expert witnesses.<sup>63</sup>

*Plaintiffs' Theories:*

Plaintiffs presented evidence that Officers A and B exited their police vehicle and rushed towards the Subject vehicle with their weapons drawn and screaming at the occupants. Plaintiffs presented additional evidence that Officer A fired *first* hitting Civilian 1 and causing Subject to flee. A theory as to why he officers singled out the

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<sup>63</sup> A jury verdict was returned in favor of the Defendants despite the discovery violation regarding the withheld Zone 6 OEMC transmission. As a remedy for the discovery violation, the court ordered a new trial. The matter settled prior to the commencement of the second trial.

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Subject vehicle or why they approached the traffic stop in that manner was not explored. After the Zone 6 flash message came to light, Plaintiffs' theory shifted; a cover-up theory was presented in light of the newly revealed evidence. The Plaintiffs argued that the officers lied regarding the actual content of the Zone 6 flash message in order to justify the traffic stop and their treatment of the encounter as a "high-risk traffic stop." Plaintiffs relied on Civilian's eyewitness testimony in order to establish that Officer A fired first. Plaintiffs also presented multiple expert witnesses in an attempt to establish that Officer A fired first, striking Civilian 1 in the hand. Plaintiffs' theory that Officer A fired the first shot was centered on the idea that Officer A panicked moments into the stop and fired one, single round.

*Defense Theories:*

Defendants argued that Subject was highly intoxicated and displayed bad judgment when he reversed his car in an attempt to flee the officers. After challenging the veracity of Plaintiffs' witness Civilian 1, the Defendants focused on the fact that Plaintiffs' eyewitness changed his version of events three times, including during his trial testimony. Defendants focused on the medical records and detective reports which stated that Civilian 1 was taken to the hospital with an abrasion and laceration, not a bullet wound. Civilian 1 testified that Officer A was standing in front of the driver's side rearview mirror when he fired his first shot which caused Subject to go into reverse, however, Defendants argued that there was no physical evidence to support this angle because Officer A's shots hit low on the driver side door. Additionally, Defendants challenged the testimony of Plaintiffs' trajectory expert regarding the shots fired by Officer A. Specifically, Defendants emphasized that the shots fired by Officer A that hit the car did not go through the driver side door at an angle that would have hit Civilian 1 in the hand.

*Civilian's Injuries:*

Defendants presented medical testimony which reflected that Civilian 1 sought treatment for an abrasion and laceration to his left hand. According to this testimony, Civilian 1 told the treating nurse and physician that his hand had been run over by his friend's car. Civilian 1 received three stitches to close the wound. Medical records contemporaneous with the event also indicate that Civilian 1 stated that his hand was run over by a vehicle. Civilian 1 did not claim that the injury was the result of a gunshot wound until his deposition in 2013.

Plaintiffs' expert opined that the wound to the palm was a graze wound. However, Plaintiffs were unable to present physical evidence to support the theory that the alleged graze wound came from Officer A. Again, Plaintiff's expert testified that none of the shots fired by Officer A would have hit Civilian 1 in the palm of the hand. Also, over the course of his deposition and trial testimony, Civilian 1 gave three variations about where his hand was located between the time the vehicle was stopped and when he was ejected. Defendants highlighted the inconsistencies in Civilian's various versions of the events to cast further doubt on the theory that Officer A fired first and hit Civilian 1. The opinion

espoused by Plaintiffs' medical expert was based largely on a photograph of the wound taken after sutures were in place. The expert opined that based on the shape and appearance of the suture area of the wound as shown in the photograph taken contemporaneously with the medical treatment, it appeared that it was a graze wound. The expert did not review Civilian 1's previous deposition in the matter.

*Civilian's Recollection of the Incident:*

Cross-examination of Civilian 1 revealed a number of inconsistencies in his testimony. Defendants focused on Civilian 1's inconsistent statements and testimony regarding Officer B's positioning during the incident. Civilian 1 originally testified in his deposition that Officer B fired his final shots from behind and to the left side of Subject's vehicle. Later, at trial, Civilian 1 testified that he saw Officer B walk up to the passenger side of the vehicle and fire the final shot that struck Subject. Upon being challenged, Civilian 1 re-stated that the correct testimony was that the officer fired the last shot from behind and to the left of the vehicle.

Plaintiffs' trajectory expert opined that Officer B was firing from the grassy parkway based on the groupings of his casings. Additionally, Plaintiffs' medical expert opined that none of the shots that entered Subject was at close proximity, and that all of the shots entered Subject from Subject's right side and from a ninety degree radius. Furthermore, none of the shots hit Subject while he was travelling in reverse. Plaintiff's expert concluded that Subject was shot as he drove forward from the light pole.

Civilian 1 also testified that the car was only idling forward (or going zero miles per hour) from the light pole when Officer B walked up and shot Subject through the passenger side window.<sup>64</sup> However, Civilian 1 also testified that he had his head down during the course of the incident until the last shot was fired. The notes taken by the detective who interviewed Civilian 1 after the incident indicate that, per Civilian 1, he was unconscious during the incident and did not remember the shooting. The final detective supplemental report also stated that Civilian 1 was unconscious during the incident. In closing, Plaintiff's counsel conceded that Civilian 1 most likely did not see the shots fired by Officer B.

*Expert Testimony Regarding Bullet Trajectories:*

Plaintiffs' expert focused on four potential shooting scenarios in his reconstruction of the scene. The expert based his opinions on the evaluation of bullet exit and entry holes, casing locations, and the deposition abstracts of Officer A and Officer B. The expert did not consider the deposition testimony of Civilian 1 in his examination. Based on this evidence, the expert approximated a range from which Officer A and B *could* have fired. The expert was unable to conclusively determine the sequence of the shots that impacted the vehicle or if Officer A's bullets impacted the vehicle as it traveled forward or in reverse. Based on where the casings were grouped, the expert opined that

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<sup>64</sup> Civilian 1 used the term "passenger window" even though it was accepted by both parties that the passenger side door had been bent forward during the incident.

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Officer B fired from the grassy parkway. The expert opined that Officer A was never in a position in which he was firing from the front of the vehicle. Further, the expert opined that because Officer A's casings were found in an area in front of where Subject's vehicle came to rest, Officer A was not firing from the middle of the street. In the course of his testimony, the expert conceded because he did not reconstruct the scene to scale. In closing, Plaintiffs conceded that their expert was wrong in his physical reconstruction of the scene and that mistakes benefitted the Defendants' theory of the case.

Defendants presented expert testimony regarding the potential movement and rate of speed of Subject's vehicle. Defendants' expert acknowledged that his determinations were theoretical because he lacked sufficient physical evidence regarding the particular path of the vehicle. Defendants' expert opined that, in order to cause the type of visible damage to Subject's vehicle, the vehicle had to have been traveling in reverse between 18-20 mph when it struck the light pole. Defendants' expert further opined that, after striking the light pole, the vehicle then traveled approximately 68 feet in the opposite direction to its final stopping point. Defendants' expert estimated that Subject's car could have reached a maximum speed 20 mph while traveling from the light pole to its final stopping point. Defendants' expert could not form an opinion as to the slowest rate of speed the vehicle may have been traveling between those two points.

Although the Defendants' expert offered no opinion on bullet trajectories or the location of officers as they were firing, he did estimate measurements as to the location of casings attributable to both Officers A and B relative to Subject's vehicle and the light pole. The trial testimony implies that Defendants' expert estimates regarding the position of Officer A when he fired were more accurate than those of Plaintiffs' expert. Defendants' expert estimated that casings attributable to Officer A were approximately 27-28 feet east from the light pole and that Subject's vehicle had traveled approximately 68 feet east from the light pole to its final resting place. Measured from the front of Subject's vehicle at the moment it was against the light pole, Defendants' expert estimated that the grouping of Officer A's casings was roughly 10 feet east from where the front of Subject's vehicle would have been on the other side of X.

*Toxicology:*

A toxicology expert testified that Subject's blood alcohol content was .136, and that someone with Subject's physical characteristics would likely have experienced impaired sensory perception and cognition due to the level of alcohol ingested. More specifically, the expert testified that, in his opinion, Subject's visual acuity, ability to hear accurately, and ability to be aware of one's surroundings would likely have been negatively impaired. Moreover, Subject's brain functioning related to ability to process information, perform judgments, and interpret information accurately would likely have been negatively impaired as well.

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Submitted:

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Inv. Darren Bowens #124

Approved:

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Supervising Investigator Mark Hitt #21

## **DISCUSSION OF THE EVIDENCE**

### Use of Deadly Force

The relevant portion of General Order G03-02-03 (Deadly Force), in place at the time of the incident, states that 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 to prevent death or great bodily harm to the sworn member or to another person.

Additionally, the directive states in section III(B) that firing at or into a moving vehicle is *only* authorized to prevent great bodily harm to the sworn member or another person. The order specifically states that when confronted with an oncoming vehicle and that vehicle is the only force used against them, the sworn members will move out of the vehicle's path. Finally, in section V, the order outlines the "affirmation of protection of life policy" which states that sworn members will not unreasonably endanger themselves or another person to conform to the restrictions of the directive.

This investigation relied largely on the testimony and physical evidence presented at the civil trial to determine the reasonableness of Officer B's use of deadly force. Officer B's sole justification for using deadly force against Subject was his fear that his partner was in imminent danger. Officer B repeatedly testified that he believed his partner was in danger of being struck by Subject's vehicle. Specifically, Officer B testified that he believed Officer A to be in mortal danger and that he fired into Subject's moving vehicle to "eliminate the threat" posed to his partner.

### *Shots Fired by Officer A*

After the incident occurred, Officer A turned in his service weapon in which there were seven unfired cartridges in the magazine and one unfired cartridge the chamber. Assuming that Office A had a full magazine, he fired either seven or eight times during the incident. This is consistent with Officer A's previous trial and deposition testimony in which he testified that he fired 3-4 shots as the car was reversing and another 3-4 shots as the car was headed in his direction. Of these seven or eight shots, four fired bullets were recovered that were identified as having originated from Officer A's service weapon and that all of those shots impacted the driver side of the vehicle. It was further determined that none of the shots fired by Officer A impacted Subject; one of Officer A's shots hit the upper corner of the driver's door (near the driver's side mirror), one hit above the front wheel of the driver's side door and the remaining bullet impacts were to the rear lower portion of the driver's door. Additionally, there was insufficient physical evidence presented to determine the exact location of Officer A when he fired either his first or second volley of shots. Finally, Plaintiff's trajectory expert could not form an opinion regarding the sequence of shots fired by Officer A.

Officer A's testimony regarding his first volley of shots may account for the impact near the upper corner of the driver's side door and one of the impacts to the lower

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portion of the driver side door. However, this cannot be confirmed or refuted by any physical evidence or Officer B's testimony. Officer A's testimony regarding the second volley of shots may account for the two impacts to the lower portion of the drive side door. Again, this cannot be confirmed or refuted by any physical evidence or Officer B's testimony.

Because Officer A is no longer an active member of the Department, we make no findings here regarding Officer A's conduct. However, we note that IPRA found that statements provided by Officer A in an unrelated officer-involved shooting investigation (Log # 1045950) to be unreliable. As such, we give no credit to Officer A's account of the events here. Without reliable, unbiased witness testimony regarding where Officer A was standing when he fired the second round of shots in response to seeing Subject's vehicle move forward from the light pole, we must rely solely on inferences that can be drawn from the physical evidence.

*Physical Evidence*

Officer B testified that he saw Subject drive the vehicle in the direction of where he believed his partner was located. Officer B testified that he had a "general idea" of where Officer A was in the street but "couldn't exactly tell" where he was. Officer B started firing because he "believed the car was going to run him [Officer A] over and kill him [Officer A]." Officer B repeatedly testified that he knew his partner was going to be run over without knowing "exactly" where Officer A was located. When asked specifically how he knew Officer A was in danger even though he could not give the exact location of where Officer A was standing, Officer B testified that he knew that Officer A was in the street and the vehicle was heading in his direction.

The casings recovered from the scene provide some indication as to where both officers were standing when they fired at Subject's vehicle. Based on the grouping of ten recovered casings, it appears most likely that Officer B fired from the grassy parkway across from where Subject's vehicle came to rest. This is also supported by Officer B's testimony that he fired from the parkway as the vehicle drove forward and continued to fire as the vehicle passed him. However, the location of the casings attributed to Officer A is inconclusive as to Officer A's position. According to the Plaintiffs' expert, one casing attributed to Officer A's firearm was recovered in the middle of the street and five additional casings were recovered on the grassy area north of where Subject's car came to rest. Defendants' expert opined that Officer A's casings were approximately 27-28 feet from the light pole and that Subject's vehicle travelled approximately 68 feet from the light pole from to its final resting point. Plaintiffs' expert relied on a theory that casings tend to eject to the right of the firing individual and at a range of 3-4 feet. Defendants' expert opined that the vehicle could have been going up to 20 mph from the light pole to its final stopping point. Additionally, neither expert opined on the sequence of the shots fired by either officer. Thus, there is insufficient physical evidence from which to infer when each shot was fired or if the shots were fired when the car was travelling forward or rearward. The sole evidence for the sequence of shots is based on the officers' testimony, which for reasons to be outlined below, is not reliable. Based on the evidence technician

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photos and his testimony, Officer B's bullet impacts originated from the passenger side of the vehicle. Officer A's delivered at least four (4) shots that impacted the driver side of the vehicle and none of those shots impacted Subject.

Based on the location of the five casings attributed to Officer A's firearm that were found on the grassy parkway, a reasonable inference can be drawn that Officer A was not in the middle of the street facing Subject's vehicle when he fired, and, therefore, it was unreasonable for Officer B to believe that his partner was in danger of being hit by the car. As Plaintiffs argued at trial, the grouping of those five casings and the lack of bullet impacts to the front of the vehicle indicate that Officer A was never in front of the oncoming car but rather shot from the driver's side of the vehicle as it approached. However, there is insufficient evidence from which to infer that from Officer B's vantage point, it was clear that Subject's vehicle presented no imminent threat to Officer A.

*Credibility of Civilian*

Besides Officers A and B, Civilian 1 was the only other eyewitness to the event. At the civil trial, Plaintiffs' case heavily relied on Civilian's testimony to prove their theory of the case. However, Civilian's testimony proved unreliable, as outlined above, several inconsistencies in his various accounts of the events were brought out at trial.

*Credibility of Officer B*

Officer B's credibility became the focal point of the trial when the Zone 6 "all call" or flash message that went out on 06 January 2011 was revealed. Plaintiffs argued that the substantial discrepancies between Officer B's testimony regarding the "all call" message and the actual content of the all call message proved that Officer B lied during his entire testimony. Plaintiffs also argued that the content of the Zone 6 flash message revealed a "cover-up" by the involved officers.

**FINDINGS/CONCLUSION**

*Use of Deadly Force*

In order to find a violation of Departmental policies, an allegation of misconduct must be supported by a preponderance of evidence. To find a violation of the Department's policy regarding the use of deadly force, there must be a preponderance of evidence to establish that the officer's conduct was objectively unreasonable based on the totality of the circumstances. The question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). Consequently, "when an officer believes that a suspect's actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force." *Muhammed v. City of*

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*Chicago*, 316 F.3d 380, 683 (7th Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir.1988) (en banc) and omitting emphasis).

Here we express serious concerns regarding the use of deadly force by both Officer A and Officer B. However, there is limited testimonial or physical evidence to prove by a preponderance that either officer's belief that Subject' vehicle posed an imminent threat of death or bodily harm to Officer A was objectively unreasonable.

In this instance, Officer B admits and it is undisputed that he fired at or into a Subject' vehicle. However, Officer B claims he did so to prevent great bodily harm to Officer A who he believed was at risk of being hit. Officer B repeatedly testified that although he could not definitely state where Officer A was standing relative to the moving vehicle he reasonably believed his partner was in danger. Officer B's inability to definitely recall Officer A's position in relation to Subject' vehicle, although dissatisfying and perhaps unconvincing, is still plausible in light of the quickly evolving tense circumstances in which these kinds of incidents unfold. The physical evidence is largely inconclusive regarding the location of Officer A during the entire incident and is not sufficiently compelling to refute Officer B's belief that Subject was an imminent threat to his partner's life. While Officer B's credibility is undermined by our finding that material aspects of his testimony are untrue, that finding alone is insufficient to prove by a preponderance that his use of deadly force was outside of Department policy.

Based on the totality of the circumstances, there is insufficient evidence in the record to prove by a preponderance that Officer B's use of deadly force was excessive and outside of the Use of Force Model; the Illinois State statute; and the Chicago Police Department's General Order G03-02-03 (Deadly Force).

Therefore, the allegation that Officer B violated Department policy when he fired his weapon at Subject is **Not Sustained**.

***Rule 14 Violation***

On three separate occasions, Officer B willfully made statements that he knew to be false regarding an "all call" or flash message that he heard over his police radio. On each of these occasions, Officer B articulated necessary facts and details that he used to justify his actions on 07 January 2011. These facts were material in that they were probative to the justification for initiating a high-risk traffic stop that led to the death of Subject. The statements were willful because on three separate and distinct occasions Officer B restated the same core details relating to the incident that the evidence shows are false.

On 12 September 2016, Officer B was questioned by IPRA investigators regarding the materially false statements. In responding to the allegations, Officer B acknowledged and stood by his previous statement and testimony. Officer B violated Rule 14 by giving a false statement and false testimony.

## **Analysis**

### *Zone 8 Dispatch*

The basis for the Rule 14 violation begins with a discussion of the original 004<sup>th</sup> District call that went out over Zone 8. The 004<sup>th</sup> District dispatches calls on the police radio channel known as Zone 8. Zone 8 also airs dispatch calls from the 006<sup>th</sup> District. Dispatch calls from the 007<sup>th</sup> District go out on the police radio channel known as Zone 6. Zone 6 also airs dispatch calls from the 008<sup>th</sup> District.

On 06 January 2011, at approximately 9:56 p.m. (2156 hours), the 004<sup>th</sup> District broadcast a pursuit call over Zone 8.<sup>65</sup> The transmission stated that police officers were chasing an Oldsmobile Aurora; that the Aurora was black; that it was a two-door model; it had rims; and that it had a temporary plate with the number 378M393. Dispatch repeatedly asked the pursuing officers why they had initiated pursuit. In response, the 004<sup>th</sup> District officers told the dispatcher that the car was wanted for “fleeing and eluding.” Towards the end of the transmission, the pursuing officers opined that “with the way he was drivin’ and the amount of shootings that happened in prob’ly [sic] that area today we’re gonna assume that there was a weapon in that car.” The dispatcher who took the call ran the temporary plate given by the pursuing officers and over the air stated that the 1998 Oldsmobile Aurora being pursued was registered to a particular name and address, which name and address is not associated with Subject. Officers reported that they terminated their pursuit of the vehicle upon the vehicle entering the expressway at 103<sup>rd</sup> Street. Eventually, the subject vehicle was located after having been abandoned by the occupants.

On 06 January 2011, at approximately 10:00 p.m., Zone 6 broadcast what is known as an ‘all call’ or a ‘flash;’ the message broadcast was about the above mentioned vehicle being pursued earlier in the 004<sup>th</sup> District. The Zone 6 dispatcher repeated some but not all of the information from the 004<sup>th</sup> District call almost immediately after those calls originally aired over Zone 8. Specifically, the message that was broadcast stated, “Zone 8 initiated a traffic pursuit at X, they were chasing a XXXXXXXX, 98 Olds Aurora, last seen at X traveling westbound, 420 terminated it.” This dispatch did not provide any further description of the vehicle, its occupants, or why the vehicle was being pursued by officers. The dispatcher ended the message by repeating the description “1998 Olds Aurora, temp plate XXXXXXXX.”

Officer B was assigned to the 007<sup>th</sup> District on the night of 06 January 2011 and began his shift around 9:00 p.m. (2100 hours) with his partner, Officer A. Officer B admitted that the radio zone he was listening to during his shift was Zone 6 and that the message he heard regarding a vehicle being pursued in the 004<sup>th</sup> District was sent out over his radio.<sup>66</sup> The Zone 6 message is at the center of the Rule 14 analysis. It is more

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<sup>65</sup> The tape recording does not have time stamps but it does contain an on the air time check.

<sup>66</sup> Deposition of Officer B, page 210, lines 9-20; Trial Testimony, Document #404, page 28, line 8. It was stipulated at trial that neither Officer A or B heard the 004<sup>th</sup> District radio broadcast regarding the “pursuit”

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important than the detailed 004<sup>th</sup> District call because Officer B could only have heard the Zone 6 message.

*Argument*

Officer B could not have heard any of the detailed broadcasts from Zone 8. The only broadcast he could have heard from that night was the flash or “all call” message that went out over his own channel, Zone 6. The Zone 6 re-cap of the 004<sup>th</sup> District calls was different than the original dispatch: it did not give the car’s color; did not mention that the car had rims; described the car as being involved in a “traffic pursuit” rather than “fleeing an eluding;” and repeated *nothing* about a weapon or shots fired. Officer B has consistently claimed that he heard some variation of the Zone 6 call. Officer A claimed that he heard the call as well but later testified that he was not sure or could not remember if he had heard the Zone 6 message. However, Officer A testified that Officer B was “adamant” that the vehicle was wanted for a shooting in the 004<sup>th</sup> District and matched the description.<sup>67</sup>

The primary basis for Officer B’s decision to stop Subject’ vehicle was the detailed information that went out over the Zone 8 call. In his IPRA statement and during his testimony, Officer B referred back to the detailed Zone 8 dispatch for the articulable facts which he relied upon to initiate the high risk traffic stop. However, Officer B repeatedly made statements regarding details that he *never* could have heard over his Zone 6 radio. Additionally, Officer B admitted that on the night of the incident, he only heard dispatches that went out over Zone 6. Therefore, the only message he would have heard was: “Zone 8 initiated a traffic pursuit at X, they were chasing a XXXXXXXX, 98 Olds Aurora, last seen at X traveling westbound, 420 terminated it.”

The reasonableness of the traffic stop is dependent on what Officer B actually heard over Zone 6. The fact that Officer B never heard the detailed Zone 8 call completely undermines his version of the stop. Further, the fact that Officer B was able to virtually repeat verbatim a call he never heard presents an argument that the actual Zone 8 broadcast may have been disclosed at a later time to Officer B. This is supported by notes taken by Detective B. Detective B interviewed Officer B very close in time to the incident; his notes include that Officer B stated that the Aurora was a “wanted vehicle.”<sup>68</sup> The handwritten notes from the first on-the-scene interview do not mention anything about a chase, a gun, or the possibility of the car being involved in a shooting.<sup>69</sup> Later at Area 1, Detective B interviewed Office B a second time. The second interview by Detective B was shortly before Officer B gave his statement to IPRA. In the second interview, Detective B’s notes reflect that Officer B stated “observed car matching description of car wanted in all call message,” but again the notes are void of any

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and the testimony established that at some point earlier in his shift, Officer B heard a broadcast over the radio for Zone 6. Document #402, pages 44-45.

<sup>67</sup> Testimony of Officer A, Document #402, page 108, lines 8:17.

<sup>68</sup> 12-cv-04855, Dkt. 444 at pages 9-10.

<sup>69</sup> *Id.*

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mention of a gun or shooting.<sup>70</sup> Detective B's handwritten notes from that day also included the following quote:

“With the way he was driving and the amount of shootings that happened in and around that area today, we're gonna assume there was weapon in that car...”

This line was virtually quoted word for word the 004<sup>th</sup> District call that was broadcasted over Zone 8. The notes also mention a “blk” Aurora which was an additional piece of information *not* provided by the Zone 6 flash message. By the time of the second interview, Detective B had heard the detailed Zone 8 dispatch.<sup>71</sup> After his second interview with Detective B, Officer B sat for his statement with IPRA. During his IPRA statement, Officer B first reiterated the substantive information from the Zone 8 call. The detailed Zone 8 dispatch was not known to Officer B at the time he initiated the traffic stop of Subject. In fact, there is nothing to indicate that Officer B knew anything about the Zone 8 dispatch *previous* to his IPRA statement.<sup>72</sup> Therefore, his statement to IPRA and his following testimony regarding why he stopped Subject contained information he could not have known at the time of the incident.

During the civil trial, it was revealed that the Zone 6 message heard by Officer B was entirely different and missing the substance of the Zone 8 dispatch. When recalled to explain the discrepancies, Officer B admitted that the actual Zone 6 message did not mention rims, did not mention that the vehicle was dark, that the vehicle may have been involved in a shooting, that it was armed, or that the vehicle was involved in any type of felony or dangerous situation.<sup>73</sup> Officer B testified that while the message did not mention anything about a shooting, it did mention a “pursuit.” According to Officer B, a “vehicle pursuit can be for a shooting and also for high risk traffic pursuits.”<sup>74</sup> This was the first time Officer B testified that a pursuit call could mean a pursuit involving a shooting or some other type of high risk situation. However, the content of the Zone 6 dispatch does not support such an inferential leap. The actual content of the Zone 6 dispatch did not give any basis for the high risk situation Officer B created to justify his actions.

Based on the preponderance of the evidence, Officer B never heard the detailed Zone 8 dispatch regarding the 004<sup>th</sup> District pursuit when he initiated the traffic stop of Subject and as a result, he willfully gave three materially false statements and testimony and the allegation that he violated Rule 14, making a false report, written or oral is **Sustained**.

### Improper Traffic Stop

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<sup>70</sup> *Id.* at 11.

<sup>71</sup> *Id.*

<sup>72</sup> In a footnote, the Court reasoned that Detective B could have easily passed on the detailed Zone 8 dispatch information to Officer B and committed a basic investigatory mistake by providing information to a subject of the investigation. 12-cv-04855, Dkt. 444 at FN 7.

<sup>73</sup> Trial Testimony of Officer B, Document #408, pages 34-36, lines 24-8.

<sup>74</sup> Trial Testimony of Officer B, Document #408, page 12, lines 5-12.

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Based on Officer B's overall actions on the night of 07 January 2011, Officer B violated Rules 1 and 2 of the Chicago Police Department Rules of Conduct because he did not have reasonable suspicion to initiate the traffic stop of Subject.

As a separate matter, we want to reiterate our concern about the use of the "roadblock" tactic to affect a traffic stop. As outlined in the Advisory Letter we sent to the Department in August 2016, to which we have yet to receive a response, we believe the tactic of placing a Department vehicle in front of subject vehicle in an attempt to stop the vehicle or otherwise block the path of a subject vehicle is terribly problematic. This can often lead to placing the pursuing Department members in an unsafe position if the subject vehicle unexpectedly maneuvers around the Department vehicle to escape or avoid the stop. We believe that there is no Department directive currently in place that clearly addresses this issue. We continue to strongly urge the Department to consider creating a new directive or revising an existing directive to explicitly prohibit unsafe tactics intended to restrict the path of or otherwise prevent a subject vehicle from evading a traffic stop or arrest.

### **Analysis**

#### *The Seizure of Subject Violated Fourth Amendment Principles*

Based on the Zone 6 flash message that Officer B would have heard on 06 January 2011, Officer B was not justified in initiating the traffic stop of Subject or treating the stop as a high-risk encounter.

The Fourth Amendment not only requires reasonable suspicion to stop someone, it also requires that the investigation following it be reasonably related in scope to the circumstances that justified the stop in the first place. It is well established that stopping a vehicle and detaining its occupants constitute a "seizure" within the meaning of the Fourth Amendment. Such a seizure is analyzed pursuant to the principles set forth in *Terry v. Ohio*, 392 US 1 (1968). *See also Knowles v. Iowa*, 525 U.S. 113, 117 (1998) (a routine traffic stop is a relatively brief encounter similar to a *Terry* stop rather than to a formal arrest); *People v. Henderson*, 2013 IL 114040, ¶ 25, 370 Ill.Dec. 804, 989 (2013) (a vehicle stop is analyzed under *Terry* principles). Pursuant to *Terry*, an officer is within his or her rights to stop a vehicle if the officer has reasonable suspicion that a traffic violation or crime has occurred or is about to occur. The officer must have a "reasonable, articulable suspicion" that criminal activity is afoot. *People v. Timmsen*, 401 Ill.Dec. 610, 614 (2016). Although "reasonable, articulable suspicion" is a less demanding standard than probable cause, an officer's suspicion must amount to more than an "inchoate and unparticularized suspicion or 'hunch' of criminal activity." *Id.* at 614. The investigatory stop must be justified at its inception and the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion upon the constitutionally protected interests of the private citizen. *Id.* In judging the officer's conduct, an objective standard is applied and the totality of the circumstances is considered. However, an investigatory traffic stop must be temporary. It should not last any longer than is absolutely necessary

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to carry out the purpose of the stop. Additionally, the methods that the officer employs to investigate should be the least intrusive means that are available in order to confirm or dispel the officer's suspicion in a brief period of time.

It is well established that a seizing officer may initiate an investigative stop based on another officer's information, such as information received from a dispatch. *People v. Bascom*, 286 Ill.App.3d 124 (2d Dist. 1997). When it comes to making an investigatory stop based on a report of a crime, courts have held that, under the totality of the circumstances standard, "police observation of an individual, fitting a police dispatch description ... near in time and geographic location to the disturbance establishes a reasonable suspicion that the individual is the subject of the dispatch." *United States v. Broomfield*, 417 F.3d 654, 655 (7th Cir. 2005); *United States v. Barnett*, 332 F. App'x 324, 325 (7th Cir. 2009) ("[f]actors relevant in assessing reasonable suspicion ... include the specificity of the description of the suspect, the number of people in the area, where the person was stopped, and how long ago the crime occurred."). Moreover, "the dangerousness of the crime" is a factor in the reasonable suspicion analysis. *United States v. Burgess*, 759 F.3d 708, 711 (7th Cir. 2014). It has been held that it is appropriate to apply a "sliding scale" approach under which "greater danger requires less suspicion reasonable to initiate an investigative stop." *Id.* at 710 (citing *United States v. Goodwin*, 449 F.3d 766, 769 (2006)). A police dispatch that provides specific details about a vehicle and its occupants, specific details about the alleged crime, the location of the alleged crime, and the proximity in time to the alleged crime is enough information for an officer to form a reasonable basis to initiate an investigatory stop.

While factually distinct, the case of *United States v. Burgess* stands for the proposition that the totality of the circumstances justifies whether an officer was reasonable for initiating an investigative stop based on a dispatch message. 759 F.3d 708 (7th Cir. 2014). In *Burgess*, two Chicago police officers initiated a traffics stop after dispatch related a message that officers should respond to two specific areas within a mile of each other for shots fired. After multiple corroborating calls within two-minutes, dispatch relayed that a black car was wanted for the shots fired and gave the specific street the car was known to be travelling south on. After immediately responding to the dispatch, the two officers passed a dark vehicle travelling southbound from one of the areas specified by dispatch. The plaintiff challenged the stop on the basis that the officers lacked reasonable suspicion to justify the stop. The court addressed the specific factors of the dangerousness of the crime, the short lapse in time between the dispatch and the stop, the stop's proximity to the reported shots, the car's color, and the fact that the officers observed the car leaving the area as ample justification for initiating the stop. The court concluded that the officers had a reasonable, articulated, and particularized suspicion to stop the car and allow for further investigation.

In this instance, Officer B testified that based on the information he learned from the flash message he felt there was probable cause to pull the vehicle over because he believed there was a gun in the car.<sup>75</sup> In his deposition testimony, Officer B clarified that his intentions were to initiate an investigative stop because he was "investigating" if the

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<sup>75</sup> Deposition of Officer B at page 39; pages 213-4, lines 23-2.

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Subject vehicle was the vehicle mentioned in the flash because it fit the description that was given.<sup>76</sup> During trial, Officer B again testified that the main purpose in initiating the stop of Subject was investigatory.<sup>77</sup> He wanted to pull the vehicle over so he could “do my investigation.”<sup>78</sup> According to Officer B, the purpose of the investigation was to confirm whether or not the vehicle driven by Subject was the same vehicle he “knew” to have fled 004<sup>th</sup> District officers and was involved in a shooting or could be armed.

Unlike the *Burgess* case, Officer B did not have the required reasonable suspicion to initiate an investigatory stop based on the Zone 6 dispatch message. As we now know, the Zone 6 flash message that Officer B heard on January 6, 2011 did not contain any facts or information which would have provided a basis to stop Subject. Also, the Zone 6 flash message was void of any reasonable basis to form a belief as to what crime Subject had committed. The Zone 6 description of a “traffic pursuit” and that the officers were “chasing” a vehicle with no other information about the crime under suspicion and no direction to stop the vehicle was not enough for Officer B to initiate the stop. Additionally, unlike the *Burgess* case, Officer B initiated the traffic stop of Subject more than three hours after the original pursuit call aired over Zone 8 and in an area that was roughly six miles away from where the pursuit call originated.

Most importantly, the Zone 6 flash message gave a temporary license plate that *did not* match the plate of the vehicle driven by Subject. In assessing the reasonableness of the stop from that fact alone, the investigative stop was not justified because the Zone 6 flash message alerted the 007<sup>th</sup> District officers to a different vehicle.

It is also worth noting that this was not a situation in which other factors supported the stop. Officer A admitted that, other than the vehicle being “wanted,” he did not observe Subject commit any traffic violations prior to the traffic stop. Officer B similarly testified that he did not observe Subject do anything suspicious other than not coming to a complete stop after Officer B activated his emergency lights.<sup>79</sup> He also testified that he did not observe Subject commit any traffic violations.<sup>80</sup>

The Zone 6 flash message did not supply information regarding the nature of the alleged crime or any dangerous activity involving the vehicle or the driver. When Officer B initiated the stop of Subject’ vehicle based on the Zone 6 flash message, close proximity did not exist in terms of timing or location. Officer B was not given any facts that could lead an objectively reasonable officer to believe that Subject had committed, or was about to, commit a crime.

Based on the preponderance of the evidence, Officer B did not have the reasonable, articulable suspicion necessary from the Zone 6 flash message to initiate the

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<sup>76</sup> *Id.* at p. 80, lines 5-9. It is important to note that an investigative stop and a felony traffic stop have separate and distinct standards. An investigative stop requires reasonable suspicion while a felony stop requires probable cause.

<sup>77</sup> Trial testimony of Officer B, Dkt. #404, page 22, lines 3-12.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at page 20-21, lines 14-2.

<sup>80</sup> *Id.* at page 25, lines 13-15.

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traffic stop of Subject. The allegations that Officer B violated Rules 1 and 2 of the Chicago Police Department Rules of Conduct, when he pulled Subject over without reasonable suspicion, are **Sustained**.

Approved:

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Sharon Fairley  
Chief Administrator, IPRA