

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1061722

INTRODUCTION:

On 25 April 2013, at approximately 1212 hours, while standing on the corner at XXXX South Jeffery Boulevard, Subject 1, Subject 2, and Juvenile 1, age 14, were detained and seized by Officer A. Subject 1 was taken into custody by Officer A and issued a citation for Disorderly Conduct, which was dismissed in Administrative Hearing. Subject 2 was arrested by Officer A and charged with Disorderly Conduct, which was dismissed in Criminal Court. Juvenile 1 was released without any charges.

ALLEGATIONS:

On 25 April 2013, at approximately 1308 hours, an anonymous Reporting Party Third Party, contacted the Independent Police Review Authority (IPRA) and registered this complaint with Intake Aide A. It is alleged by victim Subject 1 that on 25 April 2013, at approximately 1212 hours, at XXXX South Jeffery Blvd Blvd., **Officer A, # XXXXX, Unit XXX;**

- 1) Threw Subject 2 against a glass window, in violation of the Rules and Regulations of the Chicago Police Department, Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty;
- 2) Kneed Subject 2 in the groin, in violation of the Rules and Regulations of the Chicago Police Department, Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty;
- 3) Threw Juvenile 1 onto a car, in violation of the Rules and Regulations of the Chicago Police Department, Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty;
- 4) Failed to obtain medical attention for Subject 2, in violation of the Rules and Regulations of the Chicago Police Department, Rule 6: Disobedience of an order or directive, whether written or oral and Rule 10: Inattention to duty;
- 5) Failed to obtain medical attention for Juvenile 1, in violation of the Rules and Regulations of the Chicago Police Department, Rule 6: Disobedience of an order or directive, whether written or oral and Rule 10: Inattention to duty;

It is further alleged by Investigator A, #XXX that on 25 April 2013, at approximately 1212 hours at XXXX South Jeffery Blvd., **Officer A, # XXXXX, Unit XXX;**

- 6) Detained Subject 1 without justification, in violation of the Rules and Regulations of the Chicago Police Department, Rule 1: Violation of any law or ordinance;

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- 7) Detained Juvenile 1 without justification, in violation of the Rules and Regulations of the Chicago Police Department, Rule 1: Violation of any law or ordinance;
- 8) Detained Subject 2 without justification, in violation of the Rules and Regulations of the Chicago Police Department, Rule 1: Violation of any law or ordinance;
- 9) Failed to complete a Tactical Response Report (TRR) documenting his Use of Force against Juvenile 1, in violation of the Rules and Regulations of the Chicago Police Department, Rule 6: Disobedience of an order or directive, whether written or oral and Rule 10: Inattention to duty;
- 10) Failed to complete a (TRR) documenting his Use of Force against Subject 2, in violation of the Rules and Regulations of the Chicago Police Department, Rule 6: Disobedience of an order or directive, whether written or oral and Rule 10: Inattention to duty;
- 11) Seized Subject 1 without justification, in violation of the Rules and Regulations of the Chicago Police Department, Rule 1: Violation of any law or ordinance;
- 12) Seized Juvenile 1 without justification, in violation of the Rules and Regulations of the Chicago Police Department, Rule 1: Violation of any law or ordinance; and
- 13) Seized/arrested Subject 2 without justification, in violation of the Rules and Regulations of the Chicago Police Department, Rule 1: Violation of any law or ordinance.

It is further alleged that on 25 April 2013, at approximately 1212 hours at XXXX South Jeffery Blvd., **Officer B, # XXXXX, Unit XXX;**

- 1) Struck Subject 2 on his right ear with a Taser, in violation of the Rules and Regulations of the Chicago Police Department, Rule 9: Engaging in any unjustified verbal or physical altercation with any person, while on or off duty; and

It is further alleged by Investigator A, #XXX that on 25 April 2013, at approximately 1212 hours at XXXX South Jeffery Blvd., **Officer B, # XXXXX, Unit XXX;**

- 2) Failed to complete a TRR documenting his Use of Force against Subject 2, in violation of the Rules and Regulations of the Chicago Police Department, Rule 6: Disobedience of an order or directive, whether written or oral and Rule 10: Inattention to duty.

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It is alleged by Subject 1 that on 25 April 2013, at an unknown time while at the XX District Police Station located at XXXX South Cottage Grove Avenue, **Officer C**, #XXXXXX, Unit XXX;

- 1) Threatened to send Subject 1 to the Police District located on 51st Street which is "real cold and dirty" where Subject 1 would be kept for a long time in order to convince Subject 1 to sign the Disorderly Conduct citation Subject 1 was given, in violation of Rule 2.

APPLICABLE RULES AND LAW:

- Rule 1:** Prohibits violation of any law or ordinance.
- Rule 2:** Prohibits any action or conduct which impedes the Department's effort to achieve its policy and goals or brings discredit upon the Department.
- Rule 6:** Prohibits disobedience of an order or directive, whether written or oral.
- Rule 9:** Prohibits engaging in any unjustified verbal or physical altercation with any person, while on or off duty.
- Rule 10:** Prohibits inattention to duty.

United States Constitution, Fourth Amendment: Prohibits the seizure of a person without probable cause. Probable cause exists if the totality of the facts and circumstances known to the officer at the time of the arrest or detention would warrant a reasonable, prudent person in believing that the arrestee had committed, was committing, or was about to commit a crime. *Abbott v. Sangamon County, Ill.*, 705 F.3d 706, 713-14 (7th Cir. 2013); *See Thayer v. Chiczewski*, 705 F.3d 237, 246 (7th Cir.2012); *see also Michigan v. DeFillippo*, 443 U.S. 31, 37 (1979); *Beck v. Ohio*, 379 U.S. 89, 91 (1964).

General Order G03-02-05: Requires officer to complete a Tactical Response Report for all incidents which involve a subject fitting the definition of an active resister.

General Order G06-01-01: In the event that an arrestee requires immediate medical care, the arrestee will be transported to the nearest approved emergency room, as delineated by Department directive entitled "Approved Medical Facilities," prior to any further arrest processing.

INVESTIGATION:

In an interview with IPRA on 29 April 2013, victim, Subject 1 stated that on 25 April 2013, she traveled by bus with her 14-year-old son Juvenile 1 and her boyfriend Subject 2 to a health food store at the corner of 72nd and Jeffery Blvd. It was Subject 1's understanding that the store was supposed to open at 1200 hours. Subject 1 and her party arrived at the store at approximately 1203 hours; the store had not yet opened. As they were waiting near the door for the store to open, an officer, now known as Officer A, #XXXXXX, told them to move away from the corner because it was a drug corner. Subject 1 explained to Officer A that they had just arrived and were waiting for the store to open.

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Subject 1 stated that she also moved a few feet away from the corner. Subject 1 stated Officer A exited his marked squad car, approached Juvenile 1 and asked Juvenile 1 why he was not in school. Subject 2 told Officer A that he and Subject 1 were his guardians, and that he should direct his questions to them. Subject 1 stated Officer A then grabbed Subject 2. Subject 1 stated that when Officer A grabbed Subject 2, Subject 2 was “fighting with [Officer A] a little bit.”¹ Subject 1 stated that Subject 2 spun around away from Officer A and Officer A grabbed Subject 2 by his arm and threw Subject 2 against the store window and kned Subject 2 on his groin area.² Subject 1 stated that is when another officer, now known as Officer B, #XXXXX, got out of his car and grabbed Subject 2. Subject 1 stated that Officer B put a “Taser gun” to Subject 2’s head and struck Subject 2 on the head with the taser.³ Subject 1 stated she then attempted to record the incident with her cell phone, but Officer A grabbed Subject 1, threw her arm behind her back, the two “tussled,” and Officer A wrestled the cell phone away from Subject 1.⁴ Subject 1 stated this is when an officer wearing a white shirt, now known as Sergeant A #XXXX, drove up. Subject 1 stated Officer A handcuffed her, threw her in the squad car, then “jumped in his car and sped off.”⁵ Subject 1 stated the officers also threw Juvenile 1 on the trunk of the squad car and “twisted his arms all the way back”⁶ and then threw him into the “Paddy wagon.”

Subject 1, Juvenile 1 and Subject 2 were all transported to the police station. Subject 1 stated that, while at the police station, she requested that Juvenile 1 be taken to the hospital because he was complaining of back pain, but Officer A ignored her request. Subject 1 stated she heard Subject 2 request to go to the hospital as well, but Officer A denied Subject 2’s request. According to Subject 1, Subject 2 later went to Mount Sinai Hospital after he was released. Subject 1 stated others present at the scene that day included a black female officer, now known as Officer C, #XXXXX. In her statement to IPRA, Subject 1 stated that Officer A “talked [her] into taking the ticket” by telling Subject 1 that she didn’t want 51st street, which would be where she would go if she didn’t take the ticket.⁷ Subject 1 also stated Officer A had a black male prisoner, now known as Witness 1, seated in the backseat of his squad car. Subject 1 further stated that when Office A walked away with her phone, he deleted some of the photos that she had taken of the incident on her phone.⁸ (Atts. #15-17)

¹ Attachment 17, p.12

² Attachment 17, p.3

³ Attachment 17, p.5-6, p.13, p.15, p.26 “Because they – the dude hit him. Now I wasn’t looking at that part right there; I just seen when the dude came to tazer and stuck it to his head, all in his mouth up and stuff; I thought he was going to pull the trigger . . .”

⁴ Attachment 17, p.6

⁵ Attachment 17, p.6

⁶ Attachment 17, p.27

⁷ Attachment 17, p.19

⁸ “When he go off with my phone, my phone was unlocked and he – he erased some of the pictures that mean something, or whatever, I guess; because my phone, I guess . . . Because I had like about five videos on there and pictures, because the first time I pulled out the phone . . . I was taking pictures at first . . . I know I was taking pictures and then I had finally switched over . . . and it caught end when he just told me to put my phone down, he was going to arrest me and then he jumped at me and he just hit like the eye view on the background with my hand over the – you know, over the camera thing --.” Attachment 17, p.25

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In a deposition on 04 April 2014 in relation to Civil Lawsuit #XXCVXXXX, Subject 1 provided an account of the incident not completely consistent with the statement she gave to IPRA on 29 April 2013. In her deposition, Subject 1 states that when Officer A was coming toward her to take away her phone, Officer A said “you going to jail too, bitch.”⁹ However, in Officer A’s interview and deposition, he stated that he did speak to Subject 1 while arresting her, something to the effect of “you’re going too,” indicating that Subject 1 was also being arrested.¹⁰ Additionally, Subject 1 states in her deposition that she does not remember Officer A ever telling the group to move from the corner.¹¹

Subject 1 stated that she saw the hand that Officer B was holding the taser in move backward and then forward but she did not see Officer B hit Subject 2 with the taser.¹² At another point in the deposition, Subject 1 stated that she saw Officer B put the taser to the back of Subject 2’s head, and that she could see the tip of the taser touching Subject 2’s head.¹³ Subject 1 also stated that when she saw Officer B’s hand move backward and then forward, Officer A was coming toward Subject 1 to take her cell phone from her.¹⁴ This statement by Subject 1 is also inconsistent with the cell phone video recorded by Subject 1. The cell phone video shows that when Officer A is coming toward Subject 1, Subject 2 is standing with the front of his body against the window and Officer B is standing to Subject 2’s left, facing Subject 2 with his right hand on Subject 2’s body as Officer A was handcuffing Subject 2. The video also shows Officer B holding a yellow colored taser in his left hand pointed down, placed against Officer B’s left leg, while Officer B’s right forearm is resting against Subject 2’s left shoulder and neck area. Additionally, in the deposition, Subject 1 stated that she never saw Subject 2 try to pull his body or his arms away from Officer A.¹⁵ This is in contrast to the statements Subject 1 made during her interview with IPRA, where she stated that she saw Subject 2 “fighting with [Officer A] a little bit.”¹⁶ Furthermore, Subject 1 stated that other than Officer A grabbing Subject 2’s arm and pushing Subject 2 against the window, she did not observe Officer A do anything else physically to Subject 2.¹⁷ Subject 1 does not mention Subject 2 being kned in the groin during her deposition.

Once the parties arrived at the police station, Subject 1 stated that they requested medical attention for Juvenile 1 and Subject 2, and were denied.¹⁸ Subject 1 also stated that she

⁹ Attachment 107, p.60

¹⁰ Attachment 91, p.30; Attachment 103 p.67

¹¹ Attachment 107, p.29, 100. Q: “Prior to the police officer grabbing Subject 2’s right wrist, had the officer told you guys that you couldn’t wait on the corner?” A: “No.” Q: “He never told you guys that you had to leave the corner?” A: “Not to my recollection.”

¹² Attachment 17, p.56-58, 138. “Q: Did you ever see any police officer hit Subject 2? A: Like I stated, I didn’t see contact. I just seen his arm went back and then forward, that’s it.”

¹³ Attachment 107, p.37, 39, 40

¹⁴ Attachment 17, p.57-58. “Q: . . . And it’s at that point when you see [Officer B’s] hand moving backward and then forward that Officer A was coming to you.” “A: Yes.”

¹⁵ Attachment 107, p.37

¹⁶ Attachment 17, p.12

¹⁷ Attachment 107, p.117 “Q: Other than seeing Officer A grab Subject 2 by his wrist and putting his arm behind his back and putting him up against the wall, and Officer A grabbing your arm, did you see Officer A do anything else?” “A: Besides roughhandling us? No. . . .”

¹⁸ Attachment 107, p.59

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had overheard Officer A telling Subject 2 to clean himself up; Officer A said “. . .wipe the blood. If you don’t wipe the blood, I’m gonna call your parole officer.”¹⁹

In the same deposition, Subject 1 again referenced Officer A giving Subject 1 a ticket, but Subject 1 did not say that Officer A threatened her into signing and taking the ticket. Specifically, Subject 1 stated “. . . they was wanting me to sign a ticket. And at the time, I was refusing to sign the ticket because I didn’t do anything. And she came in, she talked me into signing the ticket because she – you know, she told me about there wasn’t no holding cells for womens at the police station, and they had to transfer me to 51st, to the police station at 51st; I didn’t really want to go there, it was real cold and dirty, and I’m being there forever with the processing, so it’d be my best bet just to sign the ticket, that way I’d be able to go home when my son leave.”²⁰ (Atts. #15-17, #93, #107 & #112)

JUVENILE INFORMATION REDACTED, 2 PARAGRAPHS

Attempts to contact and interview victim, Subject 2 were unsuccessful. Subject 2 refused to give a statement to IPRA on 29 April 2013. He stated he wanted to consult with an attorney before he gave a statement. Subject 2 did not respond to the IPRA Investigator’s attempts to contact him by mail. Furthermore, Subject 2’s attorney, Attorney 1 informed the IPRA Investigator during a telephone conversation on 24 June 2013, he was not going to allow Subject 2 to be interviewed by IPRA.

In a deposition on 24 March 2014 in relation to Civil Suit #XXCVXXXX,²¹ Subject 2 stated that he, Subject 1, and Juvenile 1 had arrived at the health food store around 1155 hours, and a police officer, now known as Officer A, arrived about a minute after that.²² Officer A advised the parties that the entrance to the store was actually a different door, about six feet away from the door they were currently standing at.²³ Subject 2 stated that Officer A then told them they couldn’t stand on the corner, to which Subject 2 replied that the store opened at 1200 hours, and Officer A insisted that they could not stand on the corner.²⁴ According to Subject 2, Officer A then asked Subject 2 for his ID, and as Subject 2 was simultaneously reaching for his ID and telling Subject 1 that they should leave, Officer A began making comments regarding civil rights and radioed for more officers.²⁵ Officer A then grabbed Subject 2’s arm and threw him up against the wall.²⁶ At that time, Officer A “slapped” Subject 2’s face and his face hit a metal gate, causing “bruise marks, scratches” on the left side of Subject 2’s face that were still visible after

¹⁹ Attachment 107, p.75

²⁰ Attachment 107, p.73

²¹ This lawsuit was filed in Federal Court and was later settled for \$35,000.00

²² Attachment 105, p.38

²³ Attachment 105, p.37-38

²⁴ Attachment 105, p.38

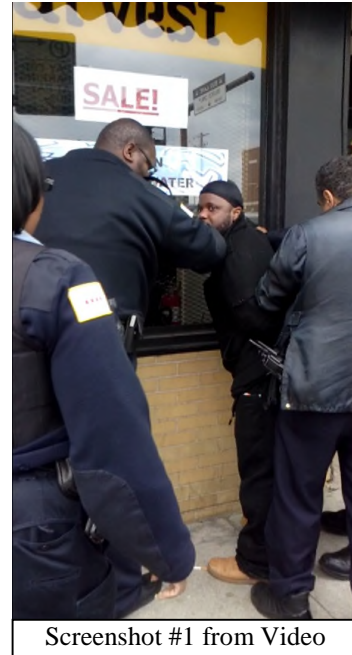
²⁵ Attachment 105, p.43 “A: He said you-all are going to learn about civil rights, something like that. You-all going to learn about you-all civil rights, something like that . . .”

²⁶ Attachment 105, p.47

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Subject 2 was released from custody.²⁷ Subject 2 also stated that another police officer²⁸ grabbed Subject 2 by the throat roughly and turned Subject 2's body to face him.²⁹ Subject 2 also stated that, while Sergeant A was still holding him by the throat, Officer B "started searching me aggressively . . . I think he kned me in my crotch at one point."³⁰ Subject 2 also stated he sustained injury to his left ear³¹, but he did not know how he sustained the injury. Subject 2 also stated that Juvenile 1 told him his ear was bleeding when he and Juvenile 1 were seated inside the police vehicle before they were transported to the police station.³² Subject 2 stated that Subject 1 later told him that the officer struck Subject 2 on the left ear with a taser.³³ Later in his deposition, Subject 2 stated that he assumed the officer struck Subject 2 on the left ear when Subject 2 was against the wall.³⁴ Subject 2 stated that he did not see the officer strike him on the ear.³⁵ Subject 2 stated that he felt something hit his left ear, but he did not know what it was.³⁶ Subject 2 rated the pain level he felt after being struck on the ear as 7 out of 10.³⁷ Subject 2 stated that he went to the hospital for treatment to his ear, but did not receive any stitches to this ear.³⁸ Subject 2 further stated that he told Officer A his ear was hurting and that he wanted to go to the hospital. According to Subject 2, in response, Officer A gave him a wet paper towel to clean the blood from his ear, and told Subject 2 that he if he didn't use the paper towel, Officer A would call his parole officer.³⁹ (Atts. #27, 33, 35-36 & #105)



Screenshot #1 from Video

Video footage, which contains audio, recorded by the complainant Subject 1's cell phone on 25 April 2013, captured Subject 2, wearing a black jacket, zipped up to his neck area, a pair of black pants and a pair of light colored boots standing against and facing a store window, being handcuffed by Officer A. Sergeant A was observed standing on the right side of Subject 2 holding Subject 2 and Officer B was observed standing to the left of Subject 2. Officer B was observed facing the left side/back side of Subject 2's body and Officer B's right arm was observed extended with his right hand placed on Subject 2's body. (See Screenshot #1) Officer B was also observed with a

²⁷ Attachment 105, p.48, 51-52. "Q: And where were the bruises on your face that you saw? A: Left side of my face, jaw area and my ear. . . When I went home, I think I saw it. I looked in the mirror."

²⁸ Now known as Sergeant A

²⁹ Attachment 105, p.60

³⁰ Attachment 105, p.61, 66, 110

³¹ Attachment 105, p.49-50

³² Attachment 105, p.83-84. Subject 2 and Juvenile 1 were transported to the 3rd District Police Station in a Squadrol by Beat #XXX, Officer D and Officer E

³³ Attachment 105, p.48

³⁴ Attachment 105, p.72, 112

³⁵ Attachment 105, p.72

³⁶ Attachment 105, p.49-50, 72-73

³⁷ Attachment 105, p.73

³⁸ Attachment 105, p.111

³⁹ Attachment 105, p.95

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yellow taser in his left hand as Officer B stood next to Subject 2. The taser was observed pointed in a downward position, placed against Officer B's left leg. (See Screenshot #2) Officer C and victim Juvenile 1 were observed standing and watching Officer A handcuff Subject 2. Subject 1 can be heard saying "What y'all doin' that for? He ain't did nothin'." The video footage captured Officer A walk toward Subject 1 as Sergeant A can be seen in the background saying "first of all, you about to go next." This is when the video footage becomes blurred but the audio recording continued. Subject 1 can be heard asking the officers several times "why they were doing that" to Subject 2. Subject 1 was also heard several times saying that Subject 2 did not do anything. Although the video did not capture Subject 1 and Juvenile 1 being placed into custody, the recording did capture Subject 1 and Juvenile 1 screaming and yelling, telling the officer they did not do anything.



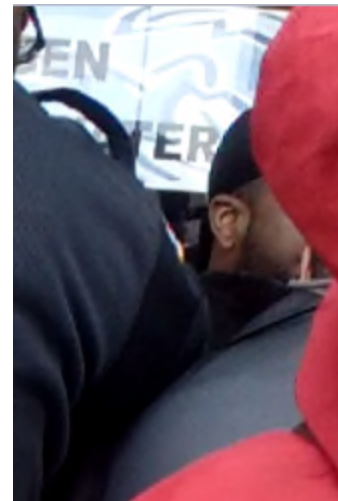
Screenshot #2 from Video

It should be noted that at 00:01 seconds, the video footage captured the right side of Subject 2's head and Subject 2's right ear as Subject 2 turned his head. The video footage did not capture or depict any blood on Subject 2's right ear. (See Screenshot #3, Zoomed)

It must also be noted that the video footage did not capture any images or commentary relating to Subject 2 having been struck by Officer B with the taser. (Atts. #93-94 & #112)

Attempts to contact Witness, 1⁴⁰ at his residence were unsuccessful. (Att. #42)

A **Canvass** of the area of the incident was conducted in an attempt to locate additional witnesses and/or evidence. No additional witnesses or additional evidence were located. (Att. #32)



Screenshot #3 from Video,
Zoomed

The **Arrest Report** of Subject 2 completed by Officer A under CB #XXXXXXXX documents that under event #XXXXX,⁴¹ Subject 2 was arrested on 25 April 2013, at approximately 1212 hours, at XXXX S. Jeffery Blvd for Disorderly Conduct. The report documents that he and two other individuals (Subject 1 and Juvenile 1) were observed in the doorway of a store at XXXX S. Jeffery Blvd., a location that was the subject of numerous complaints of narcotic activity, and complaints from stores and the Alderman's office of subjects standing outside the store. The report noted that the store was not open at the time of arrest and

⁴⁰ Witness 1 was the black male subject of the 911 call to the Dominick's Food store. He was seated in the rear seat of Officer A's vehicle during the incident waiting to be transported to Jackson Park Hospital.

⁴¹ The complete Event number is XXXXXXXX.

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that the 7100 block of Jeffery Blvd was the subject of shots fired calls on 03 March 2013 and 22 March 2013, a narcotic call on 15 April 2013 and robberies on 04 March 2013, 13 March 2013, 22 January 2103 and 29 January 2013.⁴² Officer A noted that he asked Subject 2, Subject 1 and Juvenile 1 to leave many times, but they refused to leave or to provide identification. Subject 2, Subject 1 and Juvenile 1 only started to leave when backup officers arrived. (Att. #5) The Arrest Processing Report section of this document indicates that the visual check of Subject 2, which was conducted by C.P.D. personnel at District XXX, listed “no” in response to whether the arrestee exhibited any obvious signs of pain or injury. (Att. #5 p. 4).

The misdemeanor Criminal Charge of Disorderly Conduct (Chicago Municipal Code 8-4-010(A)) against Subject 2 was filed under Municipal Case Number XX-XXXXXXXXXX and was dismissed via non-suit on 26 April 13. (Att. #71)

Photographs of Subject 2 were taken, pursuant to his arrest. (Att. #48). An Evidence Technician from CPD also took photographs of Subject 2 after his release from custody. (Att. #30).

Administrative Notice of Violation #XXXXXXXXXX documents that Officer A issued Subject 1 a citation at XXXX S. Jeffery Blvd for Disorderly Conduct. According to the citation, Subject 1 was standing in front of a closed store where there were prior complaints about narcotic activity by citizens, businesses, and the alderman’s office. The violation noted that Subject 1 gave no legitimate reason for staying at the location and refused repeated requests to leave and to identify herself. This citation was dismissed by the City of Chicago Department of Administrative Hearing on 26 June 2013. (Att. #84)

A **Contact Card** completed on 26 April 2013 documents Officer A’s contact with Juvenile 1 on 25 April 2013, at approximately 1212 hours, at XXXX S. Jeffery Blvd Blvd. The Contact Card documents that Juvenile 1 verbally and physically interfered when Officer A arrested Subject 2 and detained Subject 1. The Contact Card also documents that Juvenile 1, Subject 2 and Subject 1 initially refused to provide Juvenile 1’s name, but eventually provided Juvenile 1’s name and the name of the school Juvenile 1 attended. Officer A noted on the Contact Card that he contacted the school and determined that Juvenile 1 was out of school due to a suspension. (Att. #8)

Photographs of Subject 2 taken by a Chicago Police Evidence Technician (ET) on 26 April 2013 depict dried blood on the inside and outside of Subject 2’s right ear. (Att. #30)

Medical records from Mt. Sinai Hospital document Subject 2’s treatment on 27 April 2013 for a laceration to his right ear. The medical records document three different accounts of how Subject 2 sustained the injury to his right ear. The first reference to his injury states that “while in jail hit in [right] ear.⁴³” The second reference documents that Subject 2 stated that he was “minding his own business when all of a sudden 3 police officers rushed him, [threw] him against a wall and beat him with their stun guns...3 days

⁴² None of these incidents involved Subject 1, Subject 2, or Juvenile 1.

⁴³ Attachment 47, p.3

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ago . . . Dried blood noted in the external ear canal of the right ear. No loss of hearing.⁴⁴ The third reference documents that Subject 2 stated he was “minding his own business and was struck by an officer in the right ear.⁴⁵” Subject 2’s injury was cleaned and he was discharged without receiving any further treatment. (Att. #47)

Chicago Police Department Event Query #XXXXXXXXXX documents that officers assigned to Beats #XXX, XXX, XXX and XXX⁴⁶ responded to the XXXXXXXXXXXX Finer Foods located XXXX East 71st Street⁴⁷ regarding a black male, now known as Witness 1 threatening an employee with a knife. (Att. #9)

In an interview with IPRA on 18 March 2015, accused Officer A stated he first observed Subject 1, Juvenile 1 and Subject 2 standing at the back door of a health food store while responding to an another assignment. He stated the health food store has complained many times about people standing and loitering in front of their store.⁴⁸ About 15-20 minutes later, after he left his first assignment, he was transporting Witness 1 to Jackson Park Hospital when he observed Subject 1, Juvenile 1 and Subject 2 still there standing in the doorway of the store.⁴⁹ Officer A stated he stopped to inquire why Subject 1, Juvenile 1 and Subject 2 were there. Officer A stated they told him they were trying to get into the store but the door was locked. Officer A stated he then pointed to the other door and told them “That’s the door that’s open for business.”⁵⁰ Officer A stated Subject 2 told him the store was not open.⁵¹ Officer A then exited his vehicle, explained to Subject 1, Juvenile 1 and Subject 2 about the complaints at that location, and looked at the time on the business door which indicated the business opens at 1200 hours. Officer A stated he looked at his watch and told Subject 1, Juvenile 1 and Subject 2 it was after 1200 hours already. When Officer A pointed out the correct door to the parties, he said “I told them that if they wanted to patronize the business, the entrance door was [a different door.] And they just stood there . . .they made no attempt to go to it, to go into the door and be a customer.”⁵² Officer A stated that, at point in his interview with the parties, “. . .their reason for being there didn’t, to me, hold water because when I first questioned them they seemed like they were trying to figure out how to get into the store. But when I pointed out where the entrance was, they already knew the store was closed. When I told them what time the store would have been open, and it wasn’t open, to come back later, there weren’t leaving.”⁵³ Officer A stated he reiterated to Subject 1, Juvenile 1 and Subject 2 about the complaints from the store owners and alderman’s office about gang activity and people illegally selling cigarettes outside the store, as well as citizen

⁴⁴ Id at p.8

⁴⁵ Id at p.13

⁴⁶ According to Department records for 25 April 2013, Officer C was assigned to Beat #XXX, Officer A was assigned to Beat #XXX, Officers D and E were assigned to Beat #XXX and Officer B was assigned to Beat #XXX.

⁴⁷ The XXXXXXXXXXXX Food Store is located in a shopping mall across the street from the incident address of XXXX S. Jeffery Blvd.

⁴⁸ Attachment 91, p.6, 11, 15

⁴⁹ Attachment 91, p.7

⁵⁰ Attachment 91, p.9

⁵¹ Attachment 91, p.10

⁵² Attachment 91, p.19-20

⁵³ Attachment 91, p.20-21

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complaints about people loitering in front of the businesses. Officer A stated he asked Subject 1, Juvenile 1 and Subject 2 to leave and come back after the store opened.⁵⁴ Officer A stated he did not recall exactly what was said, but Subject 1, Juvenile 1 and Subject 2 said they were not going anywhere and would stay there as long as they wanted.⁵⁵ Officer A stated that he then asked Subject 1, Juvenile 1 and Subject 2 if they had any identification. Subject 2 responded yes and began to reach for his identification. Subject 2 then told Officer A, “No, I’m not going to show you any card.”⁵⁶ Officer A then asked for the parties’ names, which they refused to give, and he may have asked why Juvenile 1 was not in school.⁵⁷ Officer A stated that Subject 1, Juvenile 1 and Subject 2 continued to refuse to leave. Officer A then told them he was going to call for assistance, and if Subject 1, Juvenile 1 and Subject 2 were still there when the first responding police car arrived, they were going to be arrested.⁵⁸ After the first car arrived to assist Officer A, Officer A stated he attempted to grab Subject 2, but Subject 2 swatted Officer A’s hand away and walked backwards into the street.⁵⁹ Officer A stated that he then grabbed Subject 2 by his coat and placed Subject 2 against the wall and handcuffed him. Officer A stated that, while he was handcuffing Subject 2, Subject 1, while holding her cell phone, began shouting and creating a scene, so he walked over to her and told her she was going to be arrested too.⁶⁰ He then placed handcuffs on Subject 1. Officer A stated that, while he was handcuffing Subject 1, Juvenile 1 “pushed and pulled” Officer A.⁶¹ He then grabbed Juvenile 1 and placed handcuffs on him. Officer A stated that, while he was handcuffing Juvenile 1, Juvenile 1 wrestled and tussled with him.⁶² Officer A stated Juvenile 1 did not swing at him but Juvenile 1 did try to get away from Officer A by pushing and pulling.

According to Officer A, he did not see Officer B strike Subject 2 with a taser.⁶³ Officer A stated that Subject 2 never told him that he was injured and that he wanted medical attention.⁶⁴ Officer A stated that Juvenile 1 did say that his arm was hurting and when Officer A went to call for an ambulance, Juvenile 1 could not say which arm was hurting. Officer A stated that Juvenile 1 asked Subject 1 which arm Juvenile 1 should say was hurting, and Officer A stated that he told Subject 1 and Juvenile 1 to let Juvenile 1 say what was wrong with him.⁶⁵ Officer A stated that since Juvenile 1 could not specify what exactly was wrong with him, the ambulance was never dispatched. After that, Officer A stated that neither Subject 1 nor Juvenile 1 said anything else about needing medical

⁵⁴ Attachment 91, p.11

⁵⁵ Attachment 91, p.26

⁵⁶ Attachment 91, p.26-27

⁵⁷ Attachment 91, p.27

⁵⁸ Attachment 91, p.28 “A: I said, I believe I said you’ve got from now until that first car comes. You can leave. I said if you wait until you see the first car come, then you’re going to be under arrest.”

⁵⁹ Attachment 91, p.29

⁶⁰ Attachment 91, p.29-30 “A: . . . I told her – I think I said you’re going, too. I’m not sure. But something to that effect.”

⁶¹ Attachment 91, p.30

⁶² Attachment 91, p.45

⁶³ Attachment 91, p.38

⁶⁴ Attachment 91, p.40

⁶⁵ Attachment 91, p.41

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attention.⁶⁶ Furthermore, Officer A denied the allegations made against him. (Atts. 44-45)

In a deposition on 18 April 2014 in relation to Civil Lawsuit #XXCVXXXX, Officer A provided an account generally consistent with the account he gave in his IPRA interview. Not addressed in the IPRA interview is that, upon Officer A arriving at the District XXX, Subject 1 immediately asked for her cell phone back and asked if Officer A had deleted any of the videos. Officer A responded that no, he had not “tampered with” the phone.⁶⁷ Officer A then returned the phone to Subject 1. Officer A also stated that, while at the police station, the parties continued to refuse to give their names. Officer A explained that he was trying to verify the identity of the parties so that he could ensure the safety and proper custody of the minor, Juvenile 1. Officer A told Subject 2 that if he did not cooperate with him regarding Juvenile 1’s name, Officer A was going to call Subject 2’s parole officer and advise him that Subject 2 was not cooperating with the police.⁶⁸ Additionally, Officer A stated that once he had verified the identities of the parties and learned that Subject 1 had no prior arrest history, he had intended to give Subject 1 a ticket so he could release her and Juvenile 1, rather than arresting her. It was at this point that Officer A was asking Subject 1 to sign the ticket.⁶⁹ According to Officer A, Subject 1’s response was that “she said she wanted me to lock her up so she can get some money.”⁷⁰ Subject 1 did eventually sign the ticket, after speaking with Officer A.⁷¹ (Att. #103)

In an interview with IPRA on 09 April 2015, accused Officer B stated that on 25 April 2013, he initially responded to a call about a person with a knife at the Dominick’s store, which resulted in the arrest of Witness 1. After he left that location, he stopped in the vicinity of 71st Place and Jeffery Blvd. to assist Officer A. Officer B stated that, when he arrived on scene, he observed Officer A handcuffing Subject 2, and since Officer A had a person in his vehicle from the previous call, Officer B exited his vehicle to assist Officer A. Officer B understood that Subject 2 was with Subject 1 and Juvenile 1. Officer B stated that he never put his hands on Subject 2 and he did not assist Officer A with handcuffing Subject 2.⁷² Officer B stated that he was the “guard officer” watching Subject 1 and Juvenile 1 while Officer A was handcuffing Subject 2.⁷³ Officer B stated that he did not see Officer A struggle with Subject 2 at all, including throwing Subject 2 against a window or kneeing him in the groin.⁷⁴ Officer B also claims that he did not see Officer A throw Juvenile 1 onto a car.⁷⁵ Officer B stated that because of the actions of Juvenile 1 (who “slammed his book bag down” and was “agitated” and “pacing back and

⁶⁶ Attachment 91, p.41

⁶⁷ Attachment 103, p.82

⁶⁸ Attachment 103, p.93

⁶⁹ Attachment 103, p.102 “A: . . .that’s when I went back into my – basically called it begging mode to ask her to sign a ticket so I could release her and the boy.”

⁷⁰ Attachment 103, p.105, 118

⁷¹ Attachment 103, p.107, 117

⁷² Attachment 100, p.9, 14

⁷³ Attachment 100, p.9

⁷⁴ Attachment 100, p.10-11

⁷⁵ Attachment 100, p.12

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forth”) and Subject 1 (who was “walking back and forth screaming” and “cursing”), he had his taser unholstered in his hand pointed toward the ground.⁷⁶ Officer B stated that, when a person sees a taser they tend to calm down and it lessens the chance of a physical conflict. Officer B denied that he struck Subject 2 on the right ear with the taser.⁷⁷ Officer B further stated that he did not complete a TRR (Tactical Response Report) because he had not taken any actions that would require one.⁷⁸ Officer B stated he did not see the misconduct alleged against Officer A. Officer B stated that he is left-handed but carries his taser on the right side of his body, per Department policy.⁷⁹

After reviewing the video from Subject 1’s cell phone that was presented to him by the IPRA Investigator, Officer B agreed that it appears that his right arm is extended and touching Subject 2, but stated that he did not recall his hand touching Subject 2.⁸⁰ Officer B denied striking Subject 2 with the taser.⁸¹ (Atts. #37-38)

In a deposition on 5 September 2014, in relation to Civil Lawsuit #XXCVXXXX, Officer B provided an account generally consistent with the account he gave in his IPRA interview. (Att. 104)

In an interview with IPRA on 10 April 2015, accused Officer C stated that she was working in uniform alone assigned to Beat #334 on 25 April 2013. Officer A stated that she responded, along with Officer A, to a call of an Aggravated Assault by a person⁸² with mental issues at the XXXXXXXXXX Finer Foods located at XXXX East 71st Street. Officer A stated that Witness 1 was transported to Jackson Park Hospital by either Officer A or Officer B. Officer A stated that, as the officers were leaving the incident at XXXXXXXXXX Food, Officer A observed Subject 2 standing on the corner of a known area for narcotics and loitering complaints with two other individuals, now known as Subject 1 and Juvenile 1. Officer A asked Subject 2 to leave the corner. According to Officer A, Subject 2 told Officer A that he did not have to leave and that he was waiting for the store to open. Officer A stated Subject 2 continued to refuse Officer A’s orders to leave the corner, so Officer A called for assistance. Officer A stated Officers B, D and E responded. Officer A stated Officer A then handcuffed Subject 2. Subject 1 and Juvenile 1 were also handcuffed because they were talking loudly, being obnoxious and became aggressive toward Officer A. Officer A advised that she did not see Officer A curse at the parties, throw Subject 2 against the window or the wall of the store, or knee Subject 2 in the groin.⁸³ Officer A also stated that she did not see any officer put a taser to Subject 2’s ear,⁸⁴ nor did she see Officer A throw Juvenile 1 onto a car.⁸⁵ Officer A stated that

⁷⁶ Attachment 100, p.15

⁷⁷ Attachment 100, p.16

⁷⁸ Attachment 100, p.16

⁷⁹ Attachment 100, p.15-16

⁸⁰ Attachment 100, p.19

⁸¹ Attachment 100, p.16

⁸² This person was identified as Witness 1.

⁸³ Attachment 59, p.14-15

⁸⁴ Attachment 59, p.16

⁸⁵ Attachment 59, p.16

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she did not see any injuries to Subject 2, nor did he request medical attention.⁸⁶ Officer A was not asked directly about the allegations made against her by Subject 1. (Att. #58-59)

In an interview with IPRA on 10 April 2015, **witness Officer F** stated that she was working in uniform with Officer G assigned to Beat #XXX on 25 April 2013. Officer F stated that it was possible they were in the area because the incident occurred next to her beat of assignment. However, Officer F did not remember responding to a call/incident related to this investigation. (Atts. #55-56)

In an interview with IPRA on 10 April 2015, **witness Officer G** stated that she was working in uniform assigned to Beat #XXX on 25 April 2013 with Officer F. She stated that it is possible they were in the area of XXXX S. Jeffery Blvd but she did not recall responding to a call/incident related to this investigation. (Atts. #52-53)

In an interview with IPRA on 09 October 2014, **witness Officer D** stated that he and his partner, Officer E, #XXXX were assigned to the squadrol, Beat #XXX on 25 April 2013. They responded to the call from Officer A to transport a prisoner. When they arrived on scene, he observed two handcuffed males, now known as Subject 2 and Juvenile 1. He stated that a female, now known as Subject 1, was already sitting inside a squad car when he arrived on scene. Subject 2 and Juvenile 1 were escorted to the squadrol by Officer B and Sergeant A. He and Officer E transported Subject 2 and Juvenile 1 to the 3rd District and placed them inside a room for the arresting officer. Officer D stated that he did not observe any injury to Subject 2 or Juvenile 1 and neither complained of an injury. (Atts. #65-66)

In an interview with IPRA on 09 October 2014, **witness Officer E** stated that he and his partner, Officer Darrel Brantley, #18299 were assigned to the squadrol, Beat #XXX on 25 April 2013. They responded to the call from Officer A to transport a prisoner. When they arrived on scene, he observed two males, now known as Subject 2 and Juvenile 1 handcuffed and Officer A asked them to transport both to the District. He stated that there was female, now known as Subject 1, also involved, but he did not see her. He stated that Officer B, Officer A and Sergeant A were also on scene. Officer E stated that he did not observe any injury to Subject 2 or Juvenile 1 and neither complained of an injury. (Atts. #68-69)

In an interview with IPRA on 09 April 2015, **witness Sergeant A** stated that he was working in uniform assigned to either Beat #330 or Beat #320 on 25 April 2013. He responded to the call for assistance from Officer A. When he arrived on scene, Officer B and Officer A were already there. The officers were attempting to handcuff Subject 2. Sergeant A stated that his understanding was that Subject 2 was at the location with his girlfriend, Subject 1 and Subject 1's son, Juvenile 1. Sergeant A stated that Officer A and Officer B were trying to get the second handcuff on Subject 2 and he, Sergeant A, told Subject 2 to just cooperate with the officers at which time Subject 2 complied. Sergeant A stated that Subject 1 was recording the incident with her cell phone and one of the

⁸⁶ Attachment 59, p.15-16

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saying that while Sergeant A was still holding him by the throat, Officer B “started searching me aggressively . . . I think he kneed me in my crotch at one point.” This is contrary to Subject 1’s statement, where she stated that Officer A had kneed Subject 2 in the crotch, before Officer B had even arrived on scene. Furthermore, the video that Subject 1 recorded on her cell phone only captures part of this incident, but it does not depict any of the officers kneeling Subject 2. As such, there is insufficient evidence to prove or disprove by a preponderance of the evidence that the alleged conduct occurred and this allegation is Not Sustained.

Allegation #3: Not Sustained

IPRA recommends a finding of **Not Sustained** for **Allegation #3** against Officer A in that Officer A threw Juvenile 1 onto a car. This investigation revealed insufficient evidence to determine whether this conduct occurred. Subject 1 is the only person who consistently alleged that Juvenile 1 was thrown onto a car as he was being handcuffed. Subject 2 did not witness this portion of the incident and the video Subject 1 took on her cell phone did not capture Juvenile 1 being placed into custody. Furthermore, Juvenile 1 himself is inconsistent in his recollection regarding this allegation. In his statement to IPRA he indicates that he was thrown against the trunk of a police vehicle, however he denies this occurred at all when he is questioned about it at two separate times during his subsequent deposition. Accordingly, there is insufficient evidence to determine whether Officer A threw Juvenile 1 against a car and therefore the allegation must be NOT SUSTAINED.

Allegation #4: Not Sustained

IPRA recommends a finding of **Not Sustained** for **Allegation #4** against Officer A in that Officer A failed to obtain medical attention for Subject 2. In his deposition, Subject 2 stated he told Officer A that he (Subject 2) wanted to go to the hospital and that Officer A’s response was no. Subject 1 and Juvenile 1 also stated that Subject 2 asked Officer A if Subject 2 could go to the hospital and Officer A’s response was no. Subject 1, Juvenile 1 and Subject 2 stated that while at the police station Officer A gave Subject 2 a paper towel to wipe the blood from Subject 2’s ear, which indicates that Officer A was aware that Subject 2 was injured. Officer A stated that Subject 2 never said he was injured or that he wanted medical attention. Assuming that Subject 2 did ask to be taken to the hospital, the question becomes whether Officer A had a duty to seek medical attention for Subject 2, based on his injuries.

CPD General Orders state that when an arrestee requires “immediate medical care” they should be transported to a hospital (General Order 06-01-01). Additionally the CPD Guidelines for Arrestee Screening and Monitoring identifies physical conditions which would require an arrestee to be transported to a hospital. The guidelines state, in relevant part, that an arrestee exhibiting either serious/obvious pain, or significant bleeding should be transported to a hospital. In addition to CPD orders and guidelines, there is also a broader legal framework governing these determinations. Specifically, courts have

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applied the constitutional protections afforded both convicted prisoners and pretrial detainees, such as Subject 2, in determining whether medical treatment was necessary.⁸⁷ Under this standard, “plaintiff has the burden of showing that (1) the harm to the plaintiff was objectively serious; and (2) that the official was deliberately indifferent to [his] health or safety.”⁸⁸ A medical condition is deemed to be objectively serious if it is “one that has been diagnosed by a physician as mandating treatment or one that is so obvious that even a lay person would easily recognize the necessity for a doctor’s attention.”⁸⁹

After his release Subject 2 did receive medical treatment for a laceration to his right ear. However, that treatment only consisted of cleaning the wound. The laceration to Subject 2’s ear did not require stitches or any other form of treatment. Furthermore, photos taken of Subject 2’s right ear while he was in custody do not depict significant bleeding or obvious signs of visible injury. Therefore, under the CPD guidelines, Subject 2’s condition did not require hospitalization. Applying the constitutional standard, Subject 2 did not have a diagnosis by a physician that mandated treatment, nor was his injury so obvious that even a lay person would have identified the need for medical treatment. Accordingly, there is insufficient evidence to determine that Subject 2’s injury was “objectively serious” and required immediate medical attention. As such, there is insufficient evidence to prove by a preponderance of the evidence that the alleged conduct occurred and this allegation is Not Sustained.

Allegation #5: Not Sustained

IPRA recommends a finding of **Not Sustained** for **Allegation #5** against Officer A in that Officer A failed to obtain medical attention for Juvenile 1. Both Subject 1 and Juvenile 1 stated that they told Officer A that Juvenile 1 wanted to go to the hospital and Officer A refused. Officer A acknowledged that this request was made but stated that when he attempted to get medical attention for Juvenile 1, Juvenile 1 could not state exactly what his injury was and for that reason, the fire department did not dispatch paramedics. Juvenile 1 did not seek any medical treatment after he was released from custody and only described experiencing general back pain, which subsided the next day. There is no evidence to suggest that Juvenile 1 exhibited any signs of serious or obvious pain that would have required Officer A to seek medical treatment for Juvenile 1 under the CPD guidelines. Additionally, under the constitutional standard, Juvenile 1 did not have a diagnosis by a physician that mandated treatment, nor was his injury so obvious that a lay person would have identified the need for medical treatment. Accordingly, there is not sufficient evidence to determine that Juvenile 1’s injury was “objectively serious” and required immediate medical attention. As such, there is insufficient

⁸⁷ “The Eighth Amendment does not apply to pretrial detainees, but as a pretrial detainee, [Plaintiff] was entitled to at least the same protection against deliberate indifference to his basic needs as is available to convicted prisoners under the Eighth Amendment.” *Williams v. Rodriguez*, 509 F.3d 392, 401 (7th Cir. 2007); *see also Jackson v. Ill. Medi-Car, Inc.*, 300 F.3d 760, 764 (7th Cir.2002) (“when considering a pretrial detainee’s claim of inadequate medical care, we frequently turn to the analogous standards of Eighth Amendment jurisprudence”).

⁸⁸ *Cavalieri v. Shepard*, 321 F.3d 616, 620 (7th Cir.2003).

⁸⁹ *Henderson v. Sheahan*, 196 F.3d 839, 846 (7th Cir.1999) (quoting *Gutierrez v. Peters*, 111 F.3d 1364, 1374 (7th Cir.1997)).

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evidence to prove by a preponderance of the evidence that the alleged conduct occurred and this allegation is Not Sustained.

Allegations #6-8 & #11-13: Sustained

IPRA recommends a finding of **Sustained** for **Allegations #6-8 & 11-13** against Officer A in that Officer A detained Subject 1, Juvenile 1 and Subject 2 without justification; seized Subject 1 and Juvenile 1 without justification; and arrested Subject 2 without justification. Officer A arrested Subject 2 for Disorderly Conduct and issued Subject 1 a citation for Disorderly Conduct. Rule 1 of the Departments Rules and Regulations prohibits the violation of any law or ordinance. The unlawful seizure of Subject 1, Subject 2 and Juvenile 1 was in violation of the Fourth Amendment of the United States Constitution. There is more than a preponderance of evidence that on 25 April 2013, Subject 1, Juvenile 1 and Subject 2 were arrested simply because they were standing in front of a commercial business waiting for it to open. There is no dispute that these three individuals were seized by Officer A. Officer A admitted that each of them were handcuffed, placed in the squad car and transported to the XX District station. However, the evidence shows that there was no probable cause for the arrest of any of these individuals. Officer A's own explanation for the arrests shows the arrests were not legally justified.

In his interview and deposition, Officer A refers to the city's "hot spots,"⁹⁰ noting that there was a "hot spot" near the location of the incident⁹¹, but admits that the location itself was not a hot spot, and that an individual would have to be in a hot spot to be charged with gang- or narcotic-related loitering.⁹² This is an important distinction because the location of the store was XXXX South Jeffery Avenue, which is at the corner of Jeffery Avenue and E. XXst Place, and is about half a block south of the designated hot spot. Officer A also claims that the XXXX block of Jeffery is "on the CAPS mission board."⁹³ If the location of the incident had been within a hot spot, then Officer A could potentially have been justified in his seizure and arrest of the parties.

The gang and narcotics ordinances and the general orders direct officers, when observing an individual who is engaging in gang or narcotics loitering, to give a verbal order to disperse, and if they do not disperse, or if they return within 8 hours, the officer is authorized to arrest the individual.⁹⁴ If the parties had been in a hot spot, and Officer A

⁹⁰ "Hot spots," as authorized in Chicago Municipal Code Sections 8-4-015 "Gang Loitering" and 8-4-017 "Narcotics Loitering," direct the Superintendent of Police to designate areas of the city in which . . . enforcement of this section is necessary" due to increased gang and narcotic activity in those specific areas.

⁹¹ Attachment 77, p.77, effective 01 April 2013 through 30 September 2013, designates the area of "71st St (7100 S)" spanning "Paxton (2199 E) to Jeffery Blvd (2000 E)" as a priority #2 hot spot for both gang loitering and narcotic loitering.

⁹² Attachment 91, p.24, 34

⁹³ Attachment 91, p.24-25

⁹⁴ Ordinance 8-4-015(a): "Whenever a police officer observes a member of a criminal street gang engaged in gang loitering with one or more other persons in any public place designated for the enforcement of this section under subsection (b), the police officer shall, subject to all applicable procedures promulgated by the superintendent of police: (i) inform all such persons that they are engaged in gang loitering within an area in which loitering by groups containing criminal street gang members is prohibited; (ii) order all such

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had been able to articulate reasonable suspicions that the parties involved were engaged in gang loitering or narcotic loitering, he may have been able to arrest them under the special ordinances. However, in this case, Officer A articulated no factors that led him to believe that the parties were engaged in or about to be engaged in unlawful activity. Officer A stated that he had first seen the parties about 15 to 20 minutes before he stopped and investigated them.⁹⁵ Officer A also cited the fact that the parties were standing in front of a store that was presently closed, but admitted that the time listed on the door was 12:00 hours, and the time of the encounter was shortly after 12:00.⁹⁶ Officer A also noted that the individuals had been standing in front of the wrong entrance to the store, a door that is “never unlocked,” and once Officer A advised the parties that they were at the wrong door, Subject 2 told Officer A that the store wasn’t open.⁹⁷ To Officer A, this indicated that the parties had already known that the store was closed, and “their reason for being there didn’t, to me, hold water.”⁹⁸ This, combined with the fact that the parties did not leave when Officer A asked them to “leave and come back whenever they see the store open again,” led Officer A to believe that the parties were there for a purpose other than to patronize the store.⁹⁹

However, it is important to note that Officer A did not articulate any facts as to these specific individuals being engaged in gang- or narcotics-related loitering. Officer A made no mention of the parties engaged in any of the factors set forth in Special Order S10-02-03, including but not limited to “the wearing of distinctive emblems, tattoos or similar markings indicative of a specific criminal street gang;” “the use of signals or symbols of a specific criminal street gang;” “identification of the individual as a member of a specific criminal street gang by an individual who had provided reliable information to the Department in the past . . .;” “information contained in Department records . . .;” or “the individual’s admission of membership.”¹⁰⁰ Additionally, Officer A made no mention of any of the parties conducting any hand-to-hand narcotic transactions or soliciting drugs or to purchase drugs from passersby; of the parties making any furtive gestures that could indicate the hiding of narcotics; or any other signs that could lead a reasonable police officer to believe that the parties were engaged in gang- or narcotics-related loitering. Subsection II(B)(2)(c) of Special Order 10-02-03 specifically states that the officer should consider if “circumstances are present which provide some innocent explanation for the individual’s conduct (if the individuals are waiting at a marked bus stop, engaged

persons to disperse and remove themselves from within sight and hearing of the place at which the order was issued; and (iii) inform those persons that they will be subject to arrest if they fail to obey the order promptly or engage in further gang loitering within sight or hearing of the place at which the order was issued during the next eight hours.” Ordinance 8-4-017 mirrors this language but for narcotic-specific enforcement.

⁹⁵ Attachment 103, p.30, Attachment 91, p.7-8

⁹⁶ Attachment 103, p.43

⁹⁷ Attachment 91, p.10, 13

⁹⁸ Attachment 91, p.20-21

⁹⁹ Attachment 91, p.21

¹⁰⁰ Chicago Police Department Special Order S10-02-03, p.1-2, effective 29 February 2012 through 13 November 2013. This Order states that “probable cause to establish an individual’s membership in a criminal street gang must be substantiated by the Department member’s experience and knowledge of criminal street gangs, and be corroborated by specific, documented, and reliable information,” including but not limited to the factors laid out above.

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in a game of basketball on a basketball court, or otherwise engaged in activity that provides a reasonable basis for the conclusion that the loitering has an innocent explanation, the ordinance should not be enforced.”¹⁰¹ In this case, it is clear that not only was there an absence of any real factors involving gang- or narcotics-related loitering, there was a potential “innocent explanation” of the conduct of the parties involved, per the Order of the Chicago Police Department. This leads to the inevitable conclusion that Officer A could not have properly applied the gang- or narcotic-related loitering ordinance, despite the statements he made in his interview with IPRA and in his deposition. Finally, Chicago Police Department policy requires that, upon an officer’s determination that persons are engaged in gang loitering, the officer is to complete a contact card for those individuals, and request an event number from Office of Emergency Management Communications (OEMC) citing the exact location of the dispersal order and the number of persons to whom the order was issued.¹⁰² Furthermore, the Order also requires that the arresting officer complete an arrest report including the OEMC event numbers for both the original dispersal order and the subsequent arrest.¹⁰³ Subject 2’s arrest report does not contain any OEMC event numbers regarding a dispersal order.¹⁰⁴ Given that the seizures/arrest cannot be justified under the loitering ordinance, further analysis is required.

In Subject 2’s arrest report, Officer A listed the charge against Subject 2 as “8-4-010(a) – Disorderly Conduct – Breach of Peace,”¹⁰⁵ referencing the City of Chicago Municipal Code section regarding disorderly conduct. Section 8-4-010(a) states: “A person commits disorderly conduct when he knowingly . . . does any act in such unreasonable manner as to provoke, make or aid in making a breach of peace.” According to Officer A, the parties in this case were merely standing in the doorway or on the sidewalk in front of a closed store, for about 15 to 20 minutes before Officer A approached them.¹⁰⁶ The parties stated that they were trying to go into the store.¹⁰⁷ Officer A then explained to the parties that there had been several complaints about individuals loitering in that area, checked to see that the store wasn’t open, and asked the parties to leave the area.¹⁰⁸ According to Officer A, the parties replied that they weren’t going to leave, that they “could stay as long as they wanted to, all day if they wanted to.”¹⁰⁹ Officer A then asked the parties for identification, which they refused to provide, and Officer A then asked Juvenile 1 why he wasn’t in school.¹¹⁰ Subject 2 instructed Juvenile 1 not to answer the question, and Officer A then advised the parties of the prior loitering complaints.¹¹¹ The

¹⁰¹ CPD Special Order 10-02-03 p.4, effective 29 February 2012 through 13 November 2013.

¹⁰² Chicago Police Department Special Order S10-02-03, p.2-3, effective 29 February 2012 through 13 November 2013, subsection III(A)(3). The subsection regarding narcotics-related loitering has nearly identical language and is contained in III(B)(3)

¹⁰³ Chicago Police Department Special Order S10-02-03, p.5, effective 29 February 2012 through 13 November 2013, subsection IV(A)(1).

¹⁰⁴ Attachment 5

¹⁰⁵ Attachment 5, p.1

¹⁰⁶ Attachment 103, p.30, Attachment 91, p.7-8

¹⁰⁷ Attachment 103, p.36

¹⁰⁸ Attachment 91, p.10-11

¹⁰⁹ Attachment 91, p.26

¹¹⁰ Attachment 91, p.26-27

¹¹¹ Attachment 91, p.27-28

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parties then refused to provide their names to Officer A, and Officer A advised them that he was calling for assistance from other officers, and that if the parties were still there when the other officers arrived, they would be arrested.¹¹² About a minute and a half later, another police officer arrived, at which point Subject 2 told Subject 1 that they should leave.¹¹³ Officer A then informed Subject 2 he was under arrest.¹¹⁴ Even by Officer A's own account, Subject 2 did not act in any "unreasonable manner as to provoke, make or aid in making a breach of the peace," as set forth in the disorderly conduct ordinance. Even giving Officer A the benefit of the doubt, and checking other subsections of the disorderly conduct ordinance, none can be used to support Officer A's seizure of the parties and arrest of Subject 2. The subsections closest to being relevant are (d)¹¹⁵ and (g).¹¹⁶ However, (d) requires that there are three or more persons committing acts of disorderly conduct in the near vicinity. This is inapplicable to the current case because the other parties in the vicinity, Subject 1 and Juvenile 1, were not engaged in any acts of disorderly conduct prior to Officer A arresting Subject 2. Subsection (g) deals with an offender blocking access to a commercial establishment, but requires that a person in charge of the establishment request that the offender clear the area first. There is no evidence from any of the witnesses interviewed that any store employees had asked the parties to clear the entrance; in fact, this entire incident occurred because the store was closed. Given that the seizures/arrest cannot be justified under the disorderly person ordinance, further analysis is required.

Illinois also has a state statute addressing disorderly conduct, 720 ILCS 5/26-1.¹¹⁷ The most relevant portion of this statute states, in part, "A person commits disorderly conduct when he or she knowingly . . . does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace." For the reasons given in the analysis above, this statute cannot be used to support the seizures/arrest, and so further analysis is needed.

The United States Constitution provides "[t]he right of the people to be secure . . . against unreasonable searches and seizures, shall not be violated . . . but upon probable cause . . ."¹¹⁸ It is well settled that citizens may not be searched or seized without a warrant, unless a specific exception applies, such as consent or exigent circumstances,

¹¹² Attachment 91, p.28

¹¹³ Attachment 103, p.55-56

¹¹⁴ Attachment 103, p.56

¹¹⁵ Chicago Municipal Code Section 8-4-010(d): ". . . fails to obey a lawful order of dispersal by a peace officer who has identified himself as such . . . issued under circumstances where three or more persons are committing acts of disorderly conduct in the immediate vicinity, which acts are likely to cause substantial harm . . ."

¹¹⁶ Chicago Municipal Code Section 8-4-010(g): ". . . remains in the public way in a manner that blocks customer access to a commercial establishment, after being asked to clear the entrance by the person in charge of such establishment . . ."

¹¹⁷ Illinois Compiled Statutes

¹¹⁸ The Supreme Court has also held that the Fourth Amendment is enforceable against the States via the Fourteenth Amendment. *Mapp v. Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 1691, 6 L. Ed. 2d 1081 (1961) The Chicago Police Department, as an agent of the State of Illinois, is thus bound by the Fourth Amendment.

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none of which apply here.¹¹⁹ Thus, when a warrantless arrest does not fall under a recognized exception, it must be supported by probable cause. The Fourth Amendment applies not only to arrests, but to “every seizure having the essential attributes of a formal arrest,”¹²⁰ “including seizures that involve only a brief detention short of traditional arrest.”¹²¹ However, the Court also recognized that in some circumstances, an individual “may be detained briefly, without probable cause to arrest him, [however], any curtailment of a person’s liberty by the police must be supported at least by a reasonable and articulable suspicion that the person seized is engaged in criminal activity.”¹²² While “reasonable suspicion” is a less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence, the Fourth Amendment requires at least a minimal level of objective justification for making the stop.¹²³ The officer must be able to articulate more than an “inchoate and unparticularized suspicion or ‘hunch’ ” of criminal activity.¹²⁴ Notwithstanding this, “law enforcement officers do not violate the Fourth Amendment by merely approaching an individual on the street or in another public place, by asking him if he is willing to answer some questions, [or] by putting questions to him if the person is willing to listen . . .”¹²⁵ The individual may also refuse to cooperate with the officer, ignore him completely, or walk away. The individual “may not be detained even momentarily without reasonable, objective grounds for doing so; and his refusal to listen or answer does not, without more, furnish those grounds.”¹²⁶

A police officer may lawfully stop a person for brief questioning when the officer reasonably believes that the person has committed, or is about to commit, a crime. The Illinois legislature has codified this *Terry* standard which provides the following: “An officer may, after identifying himself as a peace officer, stop any person in a public place for a reasonable period of time when the officer infers from the circumstances that the person is committing, is about to commit, or has committed an offense . . .”¹²⁷

Thus, the *Terry* standard allows an officer to conduct a brief investigative stop when there is reasonable, articulable suspicion of criminal activity.¹²⁸ The purpose of a *Terry* stop is to permit police to investigate situations or circumstances that provoke suspicion in order to dispel or confirm those suspicions. Officers initiating an investigatory stop must be able to point to specific and articulable facts, which taken together with rational

¹¹⁹ Recognized exceptions to the warrant requirement are: consent; search incident to a lawful arrest; plain view; stop and frisk; automobile; hot pursuit; exigent circumstances.

¹²⁰ *Michigan v. Summers*, 452 U.S. 692, 700, 101 S. Ct. 2587, 2593, 69 L. Ed. 2d 340 (1981)

¹²¹ *Reid v. Georgia*, 448 U.S. 438, 440, 100 S. Ct. 2752, 2753, 65 L. Ed. 2d 890 (1980), citing *Davis v. Mississippi*, 394 U.S. 721, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969)

¹²² *Reid v. Georgia*, 448 U.S. 438, 440, 100 S. Ct. 2752, 2753, 65 L. Ed. 2d 890 (1980), citing *Brown v. Texas*, 443 U.S. 47, 51, 99 S.Ct. 2637, 2640, 61 L.Ed.2d 357 (1979)

¹²³ *Illinois v. Wardlow*, 528 U.S. 119, 123–24, 120 S. Ct. 673, 675–76, 145 L. Ed. 2d 570 (2000), citing *United States v. Sokolow*, 490 U.S. 1, 7, 109 S.Ct. 1581, 104 L.Ed.2d 1 (1989).

¹²⁴ *Illinois v. Wardlow*, 528 U.S. 119, 123–24, 120 S. Ct. 673, 675–76, 145 L. Ed. 2d 570 (2000), quoting *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)

¹²⁵ *Florida v. Royer*, 460 U.S. 491, 497, 103 S. Ct. 1319, 1324, 75 L. Ed. 2d 229 (1983)

¹²⁶ *Florida v. Royer*, 460 U.S. 491, 498, 103 S. Ct. 1319, 1324, 75 L. Ed. 2d 229 (1983)

¹²⁷ 725 ILCS 5/107-14 (2008)

¹²⁸ *People v. Jackson*, 366 Ill.Dec.164, 170 (1st Dist. 2012)

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inferences from those facts, suggest criminal activity.¹²⁹ Context is extremely important in these instances; the reasonable suspicion needed to initiate a *Terry* stop can arise from behavior that may in other circumstances be considered innocent.¹³⁰ Therefore, the behavior and characteristics of the suspect can be taken into consideration by the officers.

Reasonable suspicion is a lower threshold than probable cause and considerably lower than a preponderance of the evidence.¹³¹ When reviewing an officer's actions in the context of *Terry*, the situation confronting the officers must be so far from the ordinary that any competent officer would be expected to act quickly.¹³² Therefore, the facts should be considered from the perspective of a reasonable officer confronted with the situation.¹³³

Moreover, a *Terry* stop can ripen to the level of an arrest, becoming custodial in nature, and require probable cause. This occurs when the stop becomes too long or unreasonably intrusive.¹³⁴ A seizure qualifies as an arrest only if a reasonable person in the suspect's position would not have felt free to leave.¹³⁵ Factors to consider include the threatening presence of several officers, the display of a weapon by an officer, the physical touching of the suspect's person, or the officer's language or tone of voice which indicates that compliance with the officer's request could be compelled.¹³⁶

In this case, Officer A may have had the lawful authority to conduct a *Terry* stop when he approached the parties and inquired as to their reason for standing outside the door of a closed store, given what the officer knew about activity in that vicinity. However, Subject 2's initial cooperation (by answering questions related to the purpose of their presence) and then his later non-cooperation (by refusing to show identification to Officer A and refusing to leave the scene) did not provide any facts that would lead a reasonable officer to conclude that criminal activity was afoot; nor did his non-cooperation on its own constitute probable cause sufficient to justify Officer A to seizing the parties.

According to Officer A, he told the Subject 2, Subject 1, and Juvenile 1 they could not stand on the corner at the store and that they had to leave. When the three individuals refused to leave, all three were handcuffed and transported to the 3rd District Police District. Based on the facts of this investigation, Officer A had no justification to detain, seize and/or arrest Subject 1, Juvenile 1 or Subject 2. The parties had not committed any crime, and they were not in violation of any law/ordinance prior to their contact with Officer A. Subject 1 gave Officer A a reasonable explanation for being at the location. She told Officer A they were waiting for the store to open and that the store was

¹²⁹ *U.S. v. Ruiz*, 785 F.3d 1134, 1141 (7th Cir. 2015)

¹³⁰ *U.S. v. Ruiz*, 785 F.3d 1134, 1141 (7th Cir. 2015)

¹³¹ *U.S. v. Ruiz*, 785 F.3d 1134, 1141 (7th Cir. 2015)

¹³² *People v. Shipp*, 393 Ill. Dec. 301, 309 (Ill. App. Ct. 2d Dist. 2015) quoting *People v. Thomas*, 198 Ill.2d 103 (2001)

¹³³ *People v. Shipp*, 393 Ill. Dec. 301, 309 (Ill. App. Ct. 2d Dist. 2015) quoting *People v. Thomas*, 198 Ill.2d 103 (2001).

¹³⁴ *People v. Shipp*, 393 Ill. Dec. 301, 309 (Ill. App. Ct. 2d Dist. 2015)

¹³⁵ *U.S. v. Hill*, 818 F.3d 289, 292 (7th Circuit 2016)

¹³⁶ *People v. Santovi*, 2014 Ill. App. 3d 130075 ¶44 (2014)

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scheduled to open at 1200 hours. Officer A acknowledged that he confirmed that the store was supposed to open at 1200 hours when he looked at the sign posted on the business. Officer A had no justification to tell Subject 1, Juvenile 1 and Subject 2 they had to leave and come back when the store was open. Officer A cited previous complaints at the incident location as a reason for his contact with Subject 1, Juvenile 1 and Subject 2.¹³⁷ The evidence in this investigation indicates that Officer A violated Subject 1's, Juvenile 1's and Subject 2's Fourth Amendment Rights when he detained and seized Subject 1 and Juvenile 1 without probable cause and when he detained and arrested Subject 2 without probable cause. Therefore, based on a preponderance of the evidence, these allegations must be Sustained

Allegations #9-10: Sustained

IPRA recommends a finding of **Sustained** for **Allegations #9-10** against Officer A in that Officer A failed to complete a TRR documenting his Use of Force against Juvenile 1 and failed to complete a TRR documenting his Use of Force against Subject 2. Pursuant to Section II-A(2) of General Order G03-02-05 "Incidents Requiring the Completion of Tactical Response Report," an officer is required to complete a tactical response report for "all incidents which involve a subject fitting the definition of an active resistor except for incidents in which: (a) the subject's only action of resisting is fleeing; and (b) the member's actions did not extend beyond verbal commands and/or control holds utilized in conjunction with handcuffing and searching techniques which do not result in injury or allegation of injury.

The actions of both Subject 2 and Juvenile 1 constituted active resistance. Officer A stated when he attempted to grab Subject 2 in order to arrest him, Subject 2 swatted Officer A's hand away and walked backwards into the street. Subject 2's actions made him an active resistor.¹³⁸ Officer A also stated that when he grabbed Juvenile 1 to arrest him, Juvenile 1 wrestled and tussled with him. Officer A stated Juvenile 1 did not swing at him, but Juvenile 1 did try to get away from Officer A by pushing and pulling at Officer A. Juvenile 1's actions made him an active resistor as well. As previously stated, a TRR must be completed for all incidents involving an active resistor. The only exception to that rule applies when the only act of resistance is fleeing and the officer's actions do not extend beyond verbal commands and/or control holds that do not result in injury. However, both Subject 2 and Juvenile 1 committed physical actions of resistance that extended beyond merely fleeing. Therefore, the exception does not apply and a TRR should have been completed with respect to both Subject 2 and Juvenile 1, under the plain meaning of the General Order. While Officer A's actions alone may not have required the completion of a TRR, it is the actions of the subjects, Subject 2 and Juvenile 1, and their status as active resistors that triggers Subsection II-A(2) of General Order

¹³⁷ Attachment 91, p.11 "I reiterated what I told them before about the complaints from the store, the aldermen, the neighborhood, about the narcotics activity, the gang activity, and people selling cigarettes around here and people complaining about people hanging out on the sidewalks in front of businesses."

¹³⁸ The Chicago Police Department Use of Model describes the actions of an Active Resistor as "Movement to avoid physical control."

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G03-02-05, thus requiring a TRR to be completed. Accordingly, based on a preponderance of the evidence, these allegations must be Sustained.

Accused: **Officer B, #XXXXXX, Unit XXX**

Allegation #1: **Not Sustained**

IPRA recommends a finding of Not Sustained for Allegations #1-2 against Officer Rama B in that Officer B struck Subject 2 on the right ear with a taser, and failed to complete a TRR documenting his use of force against Subject 2.

The video provided by Subject 1 does not support the allegation that Officer B hit Subject 2 in the ear with a taser gun. The beginning of the video shows a clear shot of Subject 2's right ear, which appears to be unblemished (see Screenshot #3 from Video, above). According to Subject 1, Officer B had just hit Subject 2 with the taser.¹³⁹ Subject 1 states that she started filming almost immediately after Officer B struck Subject 2, and she references Officer A coming toward her, which coincides with the video. In the video, Subject 2's ear is not bloody, nor does it even appear to be red or inflamed in any way, as one may expect from a strike to the ear hard enough to cause bleeding.

Although the evidence does support that Subject 2 sustained an injury to his right ear, based on this investigation there is insufficient evidence to prove or disprove that Subject 2's injury was a result of Officer B striking Subject 2 with a taser, or if Subject 2 sustained an injury to his ear when Officer A pushed Subject 2 against the gate, brick wall, or window. Therefore, based on a preponderance of the evidence, this allegation must be Not Sustained.

Allegation #2: **Not Sustained**

IPRA recommends a finding of Not Sustained for Allegation #2 against Officer B in that Officer B failed to complete a Tactical Response Report related to the interaction with Subject 2. As previously stated, Section II-A(2) of G03-02-05 requires that all incidents involving active resistors be documented in a TRR. However, Section II-B addresses scenarios that do *not* [emphasis added] require the completion of a TRR which include: 1) the use of a firm grip hold which does not result in an injury or allegation of injury; 2) force necessary to overcome passive resistance due to physical disability or intoxication which does not result in injury or allegation of injury; 3) control holds utilized in conjunction with handcuffing and searching techniques which do not result in injury or allegation of injury and which by themselves are not described in Item II-A of this directive; and 4) the use of force in an approved training exercise. Based on Officer B's statement as to what he observed when he arrived on scene, he was not required to complete a TRR for his participation in the arrest of Subject 2.

¹³⁹ Attachment 17, p.5-6. “. . . that's when the other big, big tall officer, black; he came with a tazer gun – which [inaudible], and he grabbed him and he put to his head . . . And I'm, 'Look, that's my style,' whipping out my phone . . . So then, Officer A turned around and . . . he lunged [sic] at me and grabbed my arm and stuff.”

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if she can get [Subject 2] out on a ticket,”¹⁴¹ so that the parties could leave together. This was not an obligation on Officer C’s part, it appears to be a voluntary undertaking for the benefit of the parties. Subject 1 also states that Officer C is the one who gave Subject 1 the contact information for IPRA so that she could make a complaint about in the incident.¹⁴² Subject 1’s allegation that Officer C threatened her into taking the ticket is unsupported by Subject 1’s other statements about Officer C.

Furthermore, this allegation was first made by Subject 1 during her deposition 04 April 2014; Subject 1 did not make any mention of it during her interview with IPRA on 29 April 2013. Officer A was interviewed by IPRA on 18 July 2014 as a witness at which time IPRA was not aware of Subject 1’s deposition and allegation against Officer C. Officer C retired from the Chicago Police Department and was never given the opportunity to respond to this allegation. Accordingly, by a preponderance of the evidence, this allegation must be Not Sustained.

However, IPRA finds Officer C’s conduct concerning. Although there is insufficient evidence to prove that Officer C threatened Subject 1, the officer’s treatment of Subject 1 does appear coercive in nature. Subject 1 was presented with the unappealing choice between signing a ticket for an offense that she correctly believed she did not commit, or being unlawfully detained for an undetermined additional period of time. Under these circumstances, it appears that Subject 1 was essentially coerced into signing the ticket. We find this problematic, and would likely have presented this as an additional allegation against Officer C, had she not retired from the Department.

FINDINGS

Accused #1

Officer A, #XXXXX, Unit XXX – Currently Retired

- Allegation #1** **Not Sustained**
- Allegation #2** **Not Sustained**
- Allegation #3** **Not Sustained**
- Allegation #4** **Not Sustained**
- Allegation #5** **Not Sustained**

**Allegations #6-8,
11-13**

Sustained- Violation of Rule 1, “Prohibits violation of any law or ordinance.” which was a violation of the Fourth Amendment of the United States Constitution in the unlawful seizure of Subject 1, Subject 2, and Juvenile 1.

Allegations #9-10

Sustained- Violation of Rule 6 “Disobedience of an order or directive whether written or oral” and Violation of Rule 10 “Prohibits inattention to duty” in his failure to complete a TRR documenting his use of force against Juvenile 1 and Subject 2 pursuant to Section II-A(2) of General Order G03-02-05.

¹⁴¹ Attachment 107, p.83

¹⁴² Attachment 107, p.81

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Accused #2 **Officer B, #XXXXXX, Unit XXX**

Allegation #1: **Not Sustained**
Allegation #2 **Not Sustained**

Accused # 3 **Officer C, #XXXXXX, Unit XXX – Currently Retired**

Allegation 1 **Not Sustained**