

INDEPENDENT POLICE REVIEW AUTHORITY

Log #1070445/ U#14-025

TO: Chief Administrator
Independent Police Review Authority

FROM: IPRA Investigator 1, #XXX

SUBJECT: Log #1070445
U #14-025

REFERENCE: RD #HX-XXXXXX, (Aggravated Assault to Officer/Firearm)

DATE/TIME: 19 July 2014, 0610 hours

INVOLVED

OFFICER #1: Officer A; Chicago Police Officer, Star #XXXXXX; Unit XXX; white male; Employee #XXXXXX; DOB: XX XXXX; DOA: XX XXXX; On-Duty; In Uniform; Beat XXXX.

OFFICER #1's WEAPON: Glock Model 21; Semi-Automatic pistol; .45 Caliber; Serial #XXXXXX; City Registration # XXXXXXXXX; FOID #XXXXXXX; weapon capacity of 13 + 1; six rounds recovered in magazine and one in the chamber; Fired seven (7) times.

OFFICER #1's INJURIES: None reported

OFFICER #2: Officer D; Chicago Police Officer; Star #XXXXXX; Unit XXX; black male; Employee #XXXXXX; DOB XX XXXX; DOA XX XXXX; On-Duty; In Uniform; Beat XXXX.

OFFICER #2's WEAPON: Did not fire.

OFFICER #2's INJURIES: None reported.

SUBJECT: Subject 1; Hispanic male; DOB: XX April XXXX; XXXX S. Springfield Avenue, Chicago, IL; IR #XXXXXXX; CB #XXXXXXX

SUBJECT'S INJURIES: Gunshot wound to the upper right side of chest and a through and through gunshot wound to the right thigh; non-fatal. Treated at Hospital 1.

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SUBJECT'S

WEAPON: Smith & Wesson Model 5906; 9mm semi-automatic pistol; Serial #XXXXXXX; three live rounds in the magazine, one live round in the chamber; weapon recovered at the scene; stolen under RD #HS-191338

LOCATION: XXXX S. Avers Avenue

TIME OF IPRA

NOTIFICATION: 0650 hours

TIME OF IPRA

RESPONSE: 0730 hours

IPRA ON SCENE: Deputy Chief A
Supervising IPRA Investigator B
IPRA Investigator C

IPRA

NOTIFICATIONS: Chief Administrator A

APPLICABLE RULES:

Chicago Police Department General Order, GO 03-02-03; Deadly Force, which states:

- A. "a sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:
 - 1. to prevent death or great bodily harm to the sworn member or to another person, or;
 - 2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
 - b. is attempting to escape by use of a deadly weapon or;

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- c. otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.”

SUMMARY OF INCIDENT

On 19 July 2014, at approximately 0610 hours, Officers A #XXXXXX and B #XXXXX assigned to Beat XXXX, and Officers C #XXXXXX and D #XXXXXX assigned to Beat XXXX, responded to a call of a man with a gun at XXXX S. Hamlin Avenue.

Upon arriving, the officers met with the residents of XXXX S. Hamlin Avenue, who informed them that they observed two Hispanic males, now known as Subject 1 and Subject 2, in the yard of their building. They observed these two individuals loading a firearm. Subject 1 and Subject 2 west through the gangway of the residence and shortly thereafter, the involved officers arrived.

Officers A and D walked southbound through the alley on the west side of Hamlin Avenue, towards XX Street. Officers B and C continued walking west through different yards and gangways along Avers Avenue. Officer A and D exited the alley and observed Subject 2 standing at the intersection of XXXX S. Avers Avenue. Subject 2 was observed facing west and shouting gang slogans towards a mini van. The officers ordered Subject 2 to turn around. Officer D ordered Subject 2 to drop a radio and a phone that he was holding.

As Officer A approached Subject 2, he glanced to the right and observed Subject 1 advancing towards him while pointing a firearm in his direction. Officer A announced his office and ordered Subject 1 to drop his weapon. Subject 1 advanced and leveled the gun at the officers. At that time, Officer A fired multiple shots in the direction of Subject 1. Subject 1 was shot twice but continued to flee northbound until he stumbled and fell to the ground.

Officer A announced via the radio that he had fired his weapon and requested medical attention for Subject 1. Subject 1 was transported to Hospital 1 via ambulance for gunshot wounds.

INVESTIGATION:

According to the **Department Reports**, Subject 1 was arrested on 19 July 2014, at 0610 hours, at XXXX S. Avers Avenue, and charged with two counts of Aggravated Assault with a firearm, one count of Unlawful Use of a Weapon (UW) and one count of Armed Habitual Criminal. It is reported that Subject 1 was arrested after pointing a handgun at Officer A. Subject 1 sustained gunshot wounds to his right chest and right leg and was treated and released from Hospital 1. Subject 2 was arrested and, later released without being formally charged due to a lack of evidence.

It is reported that at the crime scene there were seven expended shell casings recovered east of the building at XXXX S. Avers Avenue and a live cartridge at the curb

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of the northeast corner of XX Street and Avers Avenue. A loaded 9mm semi-automatic pistol, described as a Smith & Wesson, model XXXX, serial #XXXXXXX¹, with a stainless steel and black finish, was recovered on scene. This firearm was reported to be that of Subject 1.

Subject 1 was interviewed by Area Central detectives on the date of incident while at Hospital 1. It is reported that Subject 1 admitted to be a Gang 1 member. He further reported that prior to this incident, he was walking on Avers Street when he was approached by a Gang 2 gang member that was driving a black vehicle. Subject 1 believed that the passenger in that black vehicle fired shots at him. Subject 1 felt pain and then recalled waking up inside of the hospital. No further details were documented relative to Subject 1's interview with detectives while at Hospital 1. However, the reports further document that Subject 1 was re-interviewed at Area Central after he was released from the hospital. At that time, Subject 1 denied that he had a weapon and provided conflicting accounts of his activities prior to this incident.

Subject 2 was interviewed by Area Central detectives, to whom he reported that prior to this incident, Subject 1 notified Subject 2 that he had shot at a rival gang earlier that morning. Following the shooting with a rival gang, Subject 1 and a gang member by the name of Gang Member 1 (real name unknown), went to a garage on Ridgeway Avenue to retrieve a different gun. A short time later, Subject 1 returned, without "G-Dog," with a 9mm handgun. According to Subject 2, Subject 1 and Subject 2 got into an argument, while they were in a backyard, as Subject 1 wanted Subject 2 to hold and shoot the gun. Subject 2 refused to take the weapon but agreed to hold a police scanner that also belonged to Subject 1. Subject 1 instructed Subject 2 to stand watch and provoke rival gangs by flashing gang signs. Subject 2 was holding the police scanner² when he saw the police approach. Subject 2 overheard the approaching officers yelling at Subject 1 to drop the gun. According to Subject 2's account as provided to the detectives, Subject 1 disobeyed the officers' verbal commands and pointed a gun at the officer, at which time they fired their weapon³.

Subject 2 led the police to a garage at XX Street and Ridgeway Avenue where they recovered a firearm (not related to this incident). Subject 2 was released without being formally charged due to lack of evidence.

The reports further document that witnesses Witness 1 and his wife, Witness 2, who reside at XXXX S. Hamlin Avenue, reported that they observed two white males in their yard arguing and loading a silver and black handgun. Shortly thereafter, they observed both males exiting the yard and then heard yelling and shots fired. Both

¹ An ATF trace was requested by IPRA which resulted in a report of this firearm being stolen on 04 March 2010, from the residence of a Chicago Police Officer under RD #HS191338. This same firearm was documented incorrectly, under Serial #XXXXXXX, in the Crime Scene Processing Report.

² According to the Detective Supplemental Report, Officer D heard CPD Zone 10 radio calls upon their encounter with Subject 2.

³ The information that Subject 2 provided during his statement with IPRA and that he provided during his statement with detectives are inconsistent.

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witnesses were shown a photo array and were unable to identify Subject 1 or Subject 2. However, they were able to identify the recovered handgun. (Att. #4, 6, 94)

The **General Progress Reports** (GPR) from Area Central Detectives, relative to RD #HXXXXXXXX, are consistent with the information outlined in the other related department reports.

In addition, witnesses Witness 2 and Witness 1 described one of the Hispanic males in their backyard, at XXXX S. Hamlin Avenue, as having braided and/or twisted hair⁴ and what appeared to be a white hairnet. Witness 1 further stated that the male with the hairnet was loading a handgun.

The reports also document that Subject 1 was wearing a black t-shirt.

It is documented that on the date of incident, at approximately 0737 hours, Witness 1 and Witness 2 were escorted to the location of where the weapon was recovered, on the grass/parkway, in front of XXXX S. Avers Street. They both stated that the weapon on the ground was the same as the one that was held by the male with the hairnet. (Att. #96)

Handwritten Statements were obtained from witnesses, Subject 2 and Witness 1, by Cook County State's Attorney, Civilian 1, on the date of incident. Both handwritten statements were reviewed and signed by each witness. The handwritten statements, provided by Subject 2⁵ and Witness 2, document their account of the events that are consistent with the information contained in the GPR's and Detective Supplementary Report.

In addition, Witness 1 stated that when he observed the two male Hispanics in his backyard, he was standing at his kitchen window which was approximately five feet away from the two male Hispanics that were sitting on a picnic table. He was unable to see their faces as their backs were facing his direction. Witness 1 observed the male with the braids placing bullets in a silver gun with a black handle. (Att. # 98, 100)

In his statement to IPRA, on 07 January 2015, witness, Subject 2 stated that, on the evening prior to the date of the incident, 18 July 2014, he was consuming alcohol at a friend's house, Civilian 2, at XXXX or XXXX S. Ridgeway Avenue. Subject 2 was with his brother, Civilian 3, and Subject 1⁶. They had been drinking since approximately 2200 hours and did not leave the residence until approximately 0540 hours on 19 July 2014. According to Subject 2, Subject 1 drank approximately two cups of vodka and more than five cups of beer. Subject 2 stated that he drank approximately four cups of vodka, more than five beers and was intoxicated. Subject 2 stated that Subject 1 appeared "tipsy" as they left the residence and he asked Subject 2 to walk him home. Subject 2 and

⁴ Crime Scene photographs and the Detective Supplemental Report document Subject 1 with braided hair.

⁵ Subject 2 provided a handwritten, sworn and signed statement to SAO Civilian 1 with an account of events that was similar to what he reported to detectives.

⁶ Subject 1 stated that he did not encounter Subject 2 until Subject 1 was en route to his home.

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Subject 1 walked down XX Street towards Springfield Avenue. Subject 2 walked him home because Subject 1 is a gang member with the Gang 1 and his residence is in a different gang territory⁷. As they were walking, Subject 1 was on his cell phone arguing with his girlfriend, Civilian 4.

Subject 2 stated that, prior to arriving to the location of incident; they stopped at Subject 2's friend's house (name not provided) who resides on the XXXX block of Hamlin Avenue. They entered her backyard because they each had a beer bottle in their hand and did not want to be seen walking with the bottles. They remained in the backyard until they finished drinking their beer, left the beer bottles, then proceeded to exit the residence. While inside the backyard there was no further activity other than drinking their beers. They walked southbound towards XX Street and then west towards Avers Avenue. As they approached the corner of XX Street and Avers Avenue, Subject 1 walked back through a gangway to urinate near the alley. Subject 2 continued to walk towards the northeast corner of the intersection, towards XX street and Avers Avenue, to be on the look-out for rival gangs while waiting for Subject 1 to exit the alley.

Subject 2 looked behind him and observed a black male uniformed police officer and a white female⁸ uniformed officer running towards him with their guns drawn towards him. They ordered him to "Freeze! Get on the floor." Subject 2 complied. Prior to Subject 2 getting down on the ground, he had observed Subject 1, near the same gangway he had entered, walking southbound on Avers Avenue towards Subject 2. He did not observe when Subject 1 exited the gangway onto Avers Avenue. Subject 2 observed Subject 1's cell phone in his hand as he walked toward Subject 2.

At this time, the officers continued to face Subject 2 and did not see Subject 1 as their view was obstructed by the residence on the corner. Subject 2 laid on the ground, approximately 5 feet away from the officers and faced east towards the direction of Hamlin Avenue. Subject 2 stated that he no longer looked towards Subject 1 once he was on the ground. As the officers continued to approach Subject 2, the black male officer saw Subject 1 and told him to "Freeze!" At that time Subject 2 lifted his head from the ground and looked towards Subject 1. He observed Subject 1 with his hands up as two shots were fired by the officer. Subject 1 then turned around and began to run northbound⁹ on Avers Avenue. Subject 2 stated that both officers continued to fire their weapons toward Subject 1 as he ran. Subject 1 then fell to the ground approximately two houses north of the intersection.

While the officers approached Subject 1, Subject 2 remained on the ground until assisting police units arrived. Subject 2 did not see anything in Subject 1's hands before the shots were fired. He speculated that the officers may have observed Subject 1's cell phone in his hand and believed it was a gun. Subject 2 stated that the black male officer¹⁰ fired his weapon towards Subject 1 without giving him an opportunity to comply with his

⁷ Subject 1 denied being a member of the Gang 1 during his statement with IPRA.

⁸ The involved officer, as well as all witness officers, are male.

⁹ Subject 1 stated to IPRA that at no time did he run.

¹⁰ The shooting officer, Officer A, is a male white.

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verbal order. According to Subject 2, Subject 1 did not have a gun at any time during the incident. Subject 2 also stated that at no time did Subject 1 point any object towards the officers nor did he throw an object during this incident, to include as he fell to the ground.

According to Subject 2, Subject 1 was still slightly intoxicated at the time of his encounter with the officers, prior to them discharging their weapon.

Furthermore, in his statement to IPRA, Subject 2 stated that the detectives at the “area” forced him to “give up” information about the Gang 1 and guns. According to Subject 2, the detectives threatened to “pin” a gun on Subject 2 if he would not give up information and they would take away his children. (Att. #68)

According to the **Tactical Response Report (TRR)**, completed by Officers A and D, Subject 1 did not follow verbal directions, was an imminent threat of battery and pointed a weapon in the direction of Officers A and D. Officers A and D responded with member presence, verbal commands, and Officer A discharged his firearm. (Att. #8, 10)

According to the **Officer’s Battery Report (OBR)**, on the date, time, and location of the incident Officers A and D were in uniform investigating the report of man with a gun. Subject 1 pointed a weapon in Officers A and D’s direction. Officers A and D did not sustain any injuries. (Att. # 9, 11)

The **Crime Scene Photographs** depict the scene of the shooting from various angles. The photographs depict multiple pictures of the location of incident and marked evidence to include but not limited to; a silver and black semi-automatic pistol on the parkway in front of XXXX S. Avers, articles of blood-stained clothing in a gangway in between XXXX S. Avers and XXXX S. Avers belonging to Subject 1, several shell casings and, Subject 1 while he was at Hospital 1 for treatment. (Att. #63, 64)

The **Property Inventory Reports** document the evidence recovered relative to this incident. This includes Inventory Reports #13224802, 13224819, 13224810, #13225242, #13224655, #13224874, #13224849, #13225245, #13224980, #13224788, 13224711, #13224662, #13224731, #13224726, #13224881, #13224848, #13224860, #13224883, #13224843, #13468863, #13224839 and #13224823.

Inventory Report #13224711, documents the clothing worn by Subject 1 to include, but not limited to, a black t-shirt with green lettering. Inventory report #13224726 documents a Kenwood Police Scanner that was held by Subject 2. Inventory Report #13224662, documents a white t-shirt and dark jeans belonging to Subject 2. (Att. #103)

Illinois State Police (ISP) Forensic Science Laboratory Reports, Case # C14-XXXXXX, document the examination of ballistic, DNA and Latent print results as tested and compared to submitted evidence. The firearms tested were found to be in proper firing condition.

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It was documented that a total of seven (7) fired cartridges, Exhibits #9 through #15, were determined to be fired from Officer A's weapon.

An ISP report dated September 15, 2014, documented the evaluation of a sample taken from Subject 2's hands and indicated a positive finding to which he discharged a firearm, contacted a PGSR¹¹ related item, or had the right hand in the environment of a discharged firearm. (Att. #77, 92)

The **Office of Emergency Management and Communication (OEMC) Event Queries and Radio Transmissions** were collected and made part of this case file. The audio recordings entries relevant to the incident are summarized as follows:

At 06:00:54 hours, an unknown Spanish-speaking male called¹² for police assistance requesting that police respond to XXXX S. Hamlin Avenue as there were two gang members and one of the males, who was wearing a black t-shirt¹³, had a gun. Between 06:04:08 hours and 06:09:15 hours, OEMC dispatch announced over the radio that there was a man with a gun, described to have a black t-shirt, at XXXX S. Hamlin.

At 06:10:04 hours, an unknown Spanish-speaking female caller stated that there was a shooting "in front" her house. She wished not to provide her address. The dispatcher asked if the shooting was near XXXX S. Avers Avenue and the female caller confirmed.

At approximately 06:10:13 and 06:10:54 hours, two unknown female callers called 911 reporting that they heard shots fired near the area of incident. One of the females also stated that she heard someone yelling Gang 2¹⁴ approximately ten minutes prior to hearing shots fired.

Between 06:09:14 and 07:10:05 hours, radio transmissions depict a call of "shots fired by police," announced by beat "XX" (XXXX), in the area of XX Street and Avers Avenue. A few seconds later a call for medical assistance was requested. A "10-1" was announced over the radio and additional units responded that they were en route. Within seconds, an unknown unit announced over the radio that there was a weapon recovered at XXXX S. Avers Avenue.

The remaining radio transmissions were relevant to securing the scene, to include the recovered weapon, units assigned to Hospital 1, the "paper" car and announcing the RD #HXXXXXXXX and event numbers. (Att. #13 – 15, 76-85)

¹¹ PGSR stands for Primer Gunshot Residue.

¹² The male caller did not identify himself. Per the event query, the phone number associated with this call was XXX-XXX-XXXX which is the same phone number for Witness 5. Witness 5 refused to identify the male caller.

¹³ Inventory #13224711 documents that Subject 1 was wearing a black t-shirt at the time of incident.

¹⁴ Gang 2 is the name of a street gang.

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The **OEMC POD #XXXX** and **POD #XXXX** did not depict any footage relative to this incident. (Att. #19)

The **Chicago Department Ambulance Report** documents that Subject 1 was located lying on his back when the paramedics arrived to the scene. The narrative further documented that Subject 1 appeared to have a gunshot wound to his right upper chest area and to his right upper leg. Subject 1 was transported to Hospital 1. (Att. #25)

Medical Records from **Hospital 1** document that Subject 1 sustained a gunshot wound to the right of his chest, exiting to the right of his back, and one gunshot wound to his lateral thigh. It is also documented that Subject 1 was intoxicated. (Att. #31)

According to Subject 1's **Criminal History Report** under IR #XXXXXXXX, it is documented that he has had prior convictions to include Aggravated Battery in a Public Place on 24 January 2013; Reckless Conduct on 16 June 2011; Criminal Defacement of Property on 06 October 2010; and Attempted Armed Robbery with a Dangerous Weapon on 22 March 2006. Furthermore, Subject 1's criminal history report documents that he had been arrested and charged with other crimes to include, but not limited to Aggravated UUV; Aggravated Discharge of a Firearm/OCC Vehicle; Attempted First Degree Murder; Battery; Cannabis; Domestic Battery; Criminal Damage to Property; Drinking Alcohol on a Public Way; and other offenses between May 2004 and April 2012.¹⁵ (Att # 93)

According to the **Clerk of the Circuit Court of Cook County** records, on 19 October 2016, Subject 1 entered a plea of guilty to Felony Possession/Use of Firearm and, Aggravated Assault/Peace Officer. Subject 1 was sentenced to serve 10 years at the Illinois Department of Corrections. (Att. #104)

IPRA Investigators conducted a canvass, in an attempt to locate additional witnesses and/or evidence. Witness 3, who resides at XXXX S. Avers Avenue, stated that when he arrived at his residence, he observed a police officer photographing a black gun that was lying on the ground near the front of his residence. Witness 4, who resides at XXX S. Hamlin Avenue, stated that he heard arguing prior to hearing approximately 4 to 5 shots fired. Additional information was not discovered and there were no additional witnesses who observed this incident. (Att. #27, 28)

During a **personal visit** to XXXX S. Hamlin Avenue, on 11 May 2016, IPRA Investigators spoke to occupants who had no knowledge of the incident. Furthermore, it was determined that Witness 1, Witness 2, and Witness 5, no longer live at this residence. (Att. #86, 87)

During a **telephone conversation** (in Spanish) with **Witness 5**,¹⁶ she stated that she and her husband¹⁷ lived at XXXX S. Hamlin Avenue, 2nd floor, on the date of

¹⁵ As will be outlined below, Subject 1's arrest information is included herein for factual reasons only and is not intended to show any propensity to engage in firearms-related offenses.

¹⁶ Witness 5 refused to provide a statement to IPRA relative to this investigation. The account Witness 5 provided via telephone is the only account available from her.

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incident and moved out of this residence in November 2014. According to Witness 5, on the date of incident, she observed two unknown males in her yard. One of the males had a beer in his hand and the other male had a gun. The two males were speaking to each other in English and appeared to be drunk. Witness 5 notified her husband of her observation and he called the police. Her husband did not look out the window. Shortly thereafter, the police arrived and the males were no longer in the yard. Witness 5 then heard two gun shots. Witness 5 did not see the faces of the males as she was looking down from her 2nd floor apartment. Witness 5 stated that she did not know any further information relative to this incident. (Att. #88)

Illinois State Police (ISP) Forensic Science Laboratory Reports document the examination of the recovered ballistic evidence, in comparison to the firearm belonging to Officer A. The firearm was found to be in proper firing condition. Based upon analysis of ISP Reports and Forensic Reports, it was determined that Officer A fired seven times. The shell casings and fired bullets were compared to Officer A's firearm and found to match his weapon.

In addition, it is documented that the firearm recovered at the crime scene associated with Subject 1, under Inventory #13224810, revealed no latent impressions.

Further ISP reports document that a buccal standard was taken from Subject 1, as were swabs from a 'Pure' pineapple juice bottle, a 'Corona' beer bottle and swabs from the rough surfaces of a Smith & Wesson handgun, model XXXX. The results document that human DNA types were observed on the Corona beer bottle and handgun, but the DNA types were not suitable for comparison. (Att. #62, 72, 92)

In a statement to IPRA on 20 July 2014, Officer A stated that he and his partner, Officer B, responded as an assisting unit to a person with a gun call. When Officer A and Officer B arrived to the location of the call, XXXX S. Hamlin Avenue, they met with Officer D and Officer C. Officer A stated that they observed an open gate and proceeded towards the south side of the residence. They had their guns drawn to clear the area due to the nature of the call. Once inside of the yard, they encountered an unknown female who notified Officer B, in Spanish, that two Hispanic males had been in the backyard, that one of the males had a gun, and that they left through the rear of the yard. Officer A cleared the backyard and proceeded to walk through the alley at which time the officers split up. Officer D followed Officer A southbound towards XX Street. Once they reached the mouth of the alley, Officer A observed an individual, now known as Subject 2, on the northeast corner of XX Street and Avers Avenue. Subject 2 was motioning and yelling gang slogans towards a passing mini-van. At that time, Officer A began to advance westbound towards Avers Avenue. He announced his office and stated to Subject 2, "Chicago police, turn around, let me see your hands." Officer A stated that he observed Subject 2 holding a police scanner¹⁸ and could hear his zone.

¹⁷ Witness 5 did not wish to provide her husband's name to the Reporting Investigator.

¹⁸ A Kenwood XXXXXXXX police scanner was inventoried under #13224726.

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As Officer A approached Subject 2, he observed a second male, now known as Subject 1, north of XX Street. Subject 1 was approximately 15 to 20 feet from Officer A and was pointing a gun towards him. In fear for his life, Officer A discharged his weapon. Subject 1 turned around, ran and collapsed approximately two yards away from where he was shot.

At that time, Officer A observed Officer B emerging from the side of a house on the same side of Avers Avenue where Subject 1 was located. Officer D had Subject 2 in custody on the ground. Shortly thereafter, additional units and an ambulance arrived. According to Officer A, Subject 1's gun had fallen across from where he laid, on a strip of grass on the east side of Avers Avenue. Officer A had stated that the gun remained there until it was properly processed and collected by the responding forensics unit. He did not recall when or where Subject 1 threw the gun, he was only aware of where he observed it on the ground.

In a statement to IPRA on 19 July 2014, witness Officer C gave an account of the events that was similar to that provided by Officer A. In addition, Officer D stated that they were responding to a call of a "man with a gun" that was further described by dispatch as two male Hispanics, one of which was wearing a black shirt. Upon their arrival, Officer D and Officer A walked southbound through the alley, they could faintly hear male voices that appeared to be coming from the area of XXXX S. Avers Avenue. As they approached XX Street, they turned westbound at which time they observed a Hispanic male (now known as Subject 2) who had on a black t-shirt¹⁹ and matched the description of a person with a gun, as provided by the OEMC. Subject 2 was at the corner of XX Street and Avers Avenue flashing gang signs at an oncoming vehicle driving eastbound on XX Street. Officer A walked alongside a building going west towards Subject 2 and Officer D walked westbound on the street. Both officers had their weapons drawn. Upon approaching Subject 2, Officer D and Officer A announced their office and gave verbal commands.

Officer D then heard Officer A direct a different command, to a second person to his right, and observed Subject 1, approximately 10 to 15 feet in distance from Officer D and approximately 5 to 7 feet from Officer A, pointing a silver handgun in their direction. Officer D immediately took a step back and then took cover over Subject 2, to ensure his safety, after Officer A discharged his weapon towards Subject 1. (Att. #39, 40)

In his statement to IPRA on 19 July 2014, witness Officer B provided an account of the events that was similar to that provided by Officer A. Officer B's partner at the time of the incident was Officer A. Officer B further stated that upon their initial arrival, to XXXX S. Hamlin Avenue, he encountered a Hispanic female who informed him, in Spanish, that there were two Hispanic males that were drinking in her yard. One of the males had a gun and they both left through the alley.

¹⁹ According to property Inventory Report #13224662, Subject 2 had on a white t-shirt and dark jeans. Inventory Report #13224711 documents that Subject 1 had on a black t-shirt on the date of incident.

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Officers B, A, D and C walked through the yard, towards the alley at which time Officer B observed a half-empty bottle of beer. He then heard a conversation west of his location, in the direction of Avers Avenue. While facing westbound, Officer B had observed what appeared to be two males walking southbound on Avers Avenue, towards XX Street. Officer B notified the other officers.

Officer A and Officer D proceeded to walk southbound through the alley. Officer B and Officer C proceeded to walk through the alley and into an open yard at XXXX S. Avers Avenue. Shortly thereafter, Officer B heard Officer A yell "police," and heard approximately 5 to 6 shots fired. Officer B stated that he and Officer C were 20 to 30 feet away from the front sidewalk of Avers Avenue when they heard the shots fired. They proceeded to run through a gangway towards that direction.

Officer B stated that he observed Subject 1 run northbound, toss his weapon, and then fall to the ground. As Officer B arrived to the entrance of that residence, he was approximately 5 to 10 feet from where Subject 1 collapsed. Officer B observed Officer A and Officer C approach Subject 1 and place him in handcuffs. Officer B then focused his attention on Officer D who was alone with Subject 2. Officer B did not observe Officer A discharge his weapon. (Att #33, 34)

In a statement to IPRA on 19 July 2014, witness Officer C provided an account of the events that was similar to that provided by Officer B. Officer C's partner at the time of the incident was Officer D. Officer C stated that while he and Officer B were in the backyard at XXXX S. Avers Avenue, he heard Officer A yell out verbal commands that were immediately followed by gunshots. Officer C and Officer B ran through the gangway towards Avers Avenue and as they approached the front, Subject 1 collapsed approximately 5 to 10 feet in front of them. Officer C and Officer B commanded Subject 1 to show his hands. Subject 1 repeatedly stated, "I got shot." Officer A approached Subject 2 as he was on the ground and both he and Officer C handcuffed Subject 1. Officer C did not observe when shots were fired and only heard the gunshots. (Att. #36, 37)

In his statement to IPRA on 05 August 2014, Subject 1 stated that, on the evening prior to the date of the incident, 18 July 2014, he was consuming alcohol at his friends house on XX Street and Ridgeway Avenue. Subject 1 stated that he decided to walk home because he felt intoxicated. Subject 1 drank approximately three mixed vodka drinks, each approximately 14 – 16 ounces. On his way home, he encountered his friend Subject 2, now known as Subject 2, who he observed standing near the intersection of XX Street and Avers Avenue.

As Subject 1 approached Subject 2, he observed two officers (now known as Officer A and Officer D) tackle Subject 2 to the ground. Subject 1 was approximately five houses away from the intersection of XX Street and Avers Avenue when Officer A came around the corner, off of XX Street, and told him to "freeze" and put his hands up.

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Subject 1 stated that he observed Officer A with his hand on his firearm and as Subject 1 turned to lay on the ground, Officer A shot him twice, once in his back and once in his thigh, while his hands were still up. Subject 1 stated that at no time did he run, but rather he fell straight to the ground and “passed out.”

Subject 1 stated that he does not recall what took place after he was shot, as he lost consciousness, and woke up inside of an ambulance. He was taken to Hospital 1. Subject 1 stated that he did not have a firearm in his possession and it is unknown to him if Subject 2 did.

After Subject 1 was treated and released from Hospital 1, he was taken to the police station. It was at this time that Subject 1 learned that Subject 2 informed the officers of the location of a gun, not related to this incident, in exchange for Subject 2 to be released. Subject 1 was transferred to the Cook County Department of Corrections and then on 28 July 2014, he was transferred to Statesville prison. Subject 1 was charged with Unauthorized Use of Weapon (UW) and two counts of assault towards the police. Subject 1 stated that he has had no prior UW arrests. (Att. #49)

CONCLUSION AND FINDING:

Based on the totality of the circumstances, there is more than a preponderance of evidence showing that Subject 1 presented an imminent threat of death or bodily harm to Officer A and his partner Officer D because Subject 1 pointed a loaded firearm in their direction. The use of deadly force by **Officer A** against Subject 1 was objectively reasonable and, therefore, **Within Department Policy** as outlined by the Use of Force Model; the Illinois State statute; and the Chicago Police Department’s General Order 03-02-03, III, which states:

- A. “a sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:
 - 1. to prevent death or great bodily harm to the sworn member or to another person, or:
 - 2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;

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- b. is attempting to escape by use of a deadly weapon or;
- c. otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.”

1. The evidence supports that Subject 1 was armed with a loaded 9mm semi-automatic pistol.

In their interviews with IPRA personnel, both Subject 1 and Subject 2 deny that Subject 1 was armed that evening. Nonetheless, these statements are inconsistent with their own statements made on the night of the incident, the statements of independent witnesses, and the other forensic evidence obtained. The preponderance of the evidence shows that Subject 1 was, in fact, armed.

There are three independent witnesses who saw two males handling a firearm in the backyard of a residence near where the shooting occurred just minutes before the shooting. Moreover one of the Hispanic males observed matched Subject 1’s description, a Hispanic male with braids wearing a black t-shirt.

Witnesses Witness 1 and his wife Witness 2, both reported that they observed two males in their yard arguing and loading a silver and black handgun. Although they were unable to identify Subject 1 and Subject 2 as the individuals they saw, they did identify the firearm recovered at the scene as the one they saw being handled by the two men in their backyard. Although IPRA was unable to obtain formal statements from these two witnesses, the information provided by them as reported in the detective reports is consistent and Witness 1 provided a written statement to the CCSAO on the date of the incident which memorialized his observations in writing.

In addition, Witness 5 reported that she had observed two unknown males in her yard, one of whom had a gun. According to Witness 5, her husband reported this information to the police. To be sure, a Spanish-speaking male placed a 911 call at approximately 0600 hours in which he reported seeing two male gang members in his yard, and that one of the males who was wearing black t-shirt had a gun.

Subject 2’s statement to IPRA is inconsistent with what was reported by detectives in their report. The detectives reported that, on the evening the incident occurred, Subject 2 told them that Subject 1 had asked him to stand watch while Subject 1 was provoking rival gangs by flashing gang signs. The report also states that Subject 2 told detectives that Subject 1 disobeyed verbal commands and pointed a gun at the officer. However, in his statement to IPRA, Subject 2 denied that either of them had a gun and also stated that Subject 1 had his hands up and may have been holding his cell phone when he was shot by the officers.

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When confronted with the inconsistencies in his account, Subject 2 stated that he “told the detectives what he thought they wanted to hear” in order to be released without being charged. Subject 2 was released that night without being charged after showing the officers where another gun could be found. However, Subject 2’s account as documented by the detectives is more consistent with other relevant evidence, including the fact that a scanner was recovered, and that at least one of the neighborhood witnesses claims to have heard the two men yelling gang slogans. In addition, the ISP testing indicated that Subject 2 had gunshot residue on his hands, indicating that he had discharged a firearm or handled or been near a recently discharged firearm.

In his statement to IPRA, Subject 1 contended that he did not point a firearm at the officers, nor was he in possession of a firearm at the time of this incident. However, the analysis of evidence gathered has documented multiple discrepancies and inconsistencies which have resulted in diminished credibility as to the information provided by Subject 1. Subject 1 stated that at no time on the date of incident did he have a gun. Subject 1 then specifically stated that he had never been arrested for an Unauthorized Use of a Weapon (UW) until this incident. This is inconsistent with Subject 1’s criminal history report which documents that Subject 1 has had an Aggravated UW charge and an Attempted First Degree Murder charge on 14 November 2004²⁰ and was convicted for Attempted Armed Robbery with a Dangerous Weapon on 22 March 2006. On 19 August 2001, Subject 1 was also charged with a UW- Weapon – Vehicle/Concealed on person; Firearm without a Valid FID; False Personation and Registration of Firearms²¹.

In additional consideration of Subject 1’s credibility, Subject 1 stated that he did not have any contact with Subject 2 on the evening of 19 July 2014, prior to the shooting – relating that he had been walking by himself when he encountered Subject 2. Subject 1 never indicated that he was in a backyard prior to the shooting. Subject 1 stated that Officer A shot him in his back after he had turned to lay on the ground, though this is factually inaccurate and not consistent with medical records.

Subject 1 entered a guilty plea, on 19 October 2016 for Felony Possession/Use of Firearm and, Aggravated Assault/Peace Officer. Subject 1 was found guilty for both counts and was sentenced to serve 10 years at the Illinois Department of Corrections. It is imperative to note that if Subject 1 pleaded guilty, then he did so under oath which carries significant value, more so than his statement to IPRA²².

Most importantly, there are independent witnesses from the neighborhood, namely, Witness 1, Witness 2 and Witness 5, who separately reported seeing two males in the area, one of which was holding a gun. Witness 1 and Witness 2 specifically

²⁰ The disposition for the UW and Attempted First Degree Murder charges on 14 November 2004 were Nolle Prosequi.

²¹ The dispositions of all charges for the arrest on 19 August 2001 were Nolle Prosequi.

²² The dispositions were obtained via the Clerk of the Circuit Court of Cook County mainframe access that document Subject 1 plead guilty.

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recalled seeing the males handling a gun matching the description of the gun that was recovered at the scene.

2. The evidence supports that Subject 1 pointed a loaded 9mm pistol at Officers A and D.

According to Officer A, he and Officer B arrived at XXXX S. Hamlin Avenue in response to the “man with a gun” 911 calls. When they arrived, they encountered a female neighbor who confirmed that she had seen two males drinking in the backyard, one of which was holding a firearm. They were soon joined by Officers D and C who had also responded to the area. Based on the nature of the call and the information they had been given, the responding officers proceeded to “clear the area” with their firearms at the ready.

Officer A observed Subject 2 at the northeast corner of XX Street and Avers Avenue yelling and displaying gang signs. Then, Officer A observed Subject 1 standing several feet north of the corner. Officer A observed that Subject 1 was pointing a firearm in his direction. Officer A’s account is corroborated by Officer D, who overheard Officer A giving verbal commands to Subject 1, and then saw Subject 1 with a firearm pointed in the officers’ direction.

At that time, Officer A discharged his weapon seven (7) times. Subject 1 turned, ran a short distance and collapsed to the ground – dropping the silver and black 9mm pistol as he fell.

The officers detained both Subject 2 and Subject 1, secured the scene, and called for medical attention for Subject 1. Medical records ultimately document that at the time of incident, Subject 1 was intoxicated. Furthermore, medical records document that Subject 1 sustained a gunshot wound to the right of his chest, exiting to the right of his back, and one gunshot wound to his lateral thigh. This information is consistent with the account provided by Officer A, wherein he articulated that Subject 1 was facing him while pointing a gun in his direction. In his statement to IPRA, Officer B stated that he heard Officer A yell “police,” and heard approximately 5 to 6 shots fired. Officer B stated that he observed Subject 1 run northbound, toss his weapon, and then fall to the ground.

In a statement to IPRA, Officer C stated that he heard Officer A yell verbal commands followed by the sound of gunshots. Officer C ran through the gangway where he observed Subject 1 collapse in front of him.

When analyzing the reasonableness of an officer’s conduct and actions, it must provide “allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving.” *Graham v. Connor*, 490 U.S. 386, 397 (1989).

Based on the totality of the circumstances, it is reasonable to believe Subject 1 pointed a handgun in the direction of Officer A. Officer A had no time to explore other

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tactical options and it was reasonable under the circumstances for him to use deadly force to defend himself, as Subject 1 had the opportunity and ability to place Officer A in jeopardy.

In fear for his life, Officers A discharged his weapon, striking Subject 1 in the chest and leg. The handgun held by Subject 1 was recovered. Officer A believed that his life was in imminent danger when Subject 1 pointed the firearm in his direction.

IPRA finds that an officer with similar training and experience as Officer A would reasonably believe that Subject 1 posed an immediate threat. IPRA finds that the use of deadly force by Officer A is therefore objectively reasonable and Within Policy as outlined by the Use of Force Model; the Illinois State statute; and the Chicago Police Department's General Order 03-02-03, III.