

TO: Chief Administrator
Independent Police Review Authority

FROM: IPRA Investigator

SUBJECT: Log #1076216
U #15-012

REFERENCE: RD #HY-XXXXXX, Aggravated Battery/Use of a Deadly Weapon

DATE/TIME: 20 July 2015, 0445 hours

INVOLVED OFFICER: Officer A; Chicago Police Officer; Star #XXXXXX; Unit 630; white male; Employee #XXXXXX DOB: XX; DOA: XX; On duty; Uniformed, Beat XXXXX.

OFFICER WEAPON: Smith and Wesson model 5943; 9 mm semi-automatic pistol; Serial #VEE2733; City Registration #615899; FOID #XXXXXXXXXX; Winchester 9mm Luger + P ammunition; 13 live rounds recovered from firearm; weapon capacity of 15 rounds; Fired two (2) times.

OFFICER INJURIES: None reported.

WITNESS OFFICER: Officer B; Chicago Police Officer; Star #XXXXX; Unit XXX; Black female; Employee #XXXXXX; DOB: XX; DOA: XX; On duty; Uniformed; Beat XXXXX.

OFFICER INJURIES: None reported.

SUBJECT: Subject A; Middle Eastern male; DOB: XX, XXXX N. Hoyne Avenue, Unit 2, Chicago, IL; IR # XXXXXXXX; CB #XXXXXXXXXX

SUBJECT'S INJURIES: One gunshot wound to the right forearm, one gun shot wound to the right shoulder; non-fatal.

SUBJECT'S WEAPON: Baseball Bat

LOCATION: XXXX N. Clybourn Avenue (Street)

TIME OF IPRA NOTIFICATION: 0445 hours

TIME OF IPRA**RESPONSE:** 0520 hours**IPRA ON SCENE:** Chief of Staff
Supervising Investigator
Investigator**IPRA****NOTIFICATIONS:** IPRA Chief Administrator
IPRA 1st Deputy Chief Administrator
Director of Public Affairs**INTRODUCTION:**

Officer A encountered Subject A while he was beating Civilian 1 with a baseball bat. Subject A refused to comply with multiple commands to cease his attack upon Civilian 1. Officer A then shot Subject A in order to stop him from further injuring Civilian 1.

APPLICABLE RULES

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

SUMMARY OF INCIDENT

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

On 20 July 2015, at approximately 0401 hours, Officer A #XXXXXX and Officer B #XXXXXX, were working beat number "XXXXXX." Officers A and B were sitting in the plaza between the North and Clybourn Red Line station and the XX Store. Officers A and B were notified by a citizen that a large fight was occurring nearby. Officer A walked to the northwest corner of Halsted Street and Clybourn Avenue and observed approximately ten people fighting in the street. A call for assistance was placed with OEMC. Officer B entered their squad car and drove southeast on Clybourn Avenue. Officer A walked out onto Clybourn Avenue heading southeast and crossed Halsted Street where he observed the subject, now known to be Subject A, beating an individual, now known to be Civilian 1, with a baseball bat. Officer A repeatedly ordered Subject A to stop, but he refused all commands. Officer A then discharged his weapon two (2) times. Subject A ran onto the sidewalk and proceeded to run southeast for a short distance, where he collapsed in the middle of the street, in front of the driveway entrance to a shopping plaza. Additional units and medical attention were requested by the officers. Subject A was transported to XX Hospital via ambulance for multiple gunshot wounds.

INVESTIGATION:

Attempts to interview Civilian 2¹ were made. On 08 September 2015, the R/I attempted to contact Civilian 2 via telephone, (XXX) XXX-XXXX. The telephone number was inaccurate. The R/I later sent Civilian 2 a certified letter requesting his cooperation with the investigation. On 04 December 2015, at approximately 1145 hours, the R/I and Inv. B conducted a personal visit to Civilian 2's residence at XXXX N. Kilpatrick Avenue. The R/I made contact with the home-owner, Civilian 3, who related she moved into the residence in August 2015 and that Civilian 2 no longer resides there. As of the date of this summary, Civilian 2 has not contacted IPRA.

Though he did not cooperate with the IPRA investigation, Civilian 2 did provide a video recorded statement to the CPD Reporting Detectives on the same evening that this incident occurred. In his interview, Civilian 2 stated that he was driving his black in color Acura TL, with Civilian 1 as the front seat passenger and Civilian 4 in the rear passenger seat, when a black in color Mercedes pulled alongside his vehicle while at a traffic light. Civilian 2 stated that the occupants of the Mercedes began yelling at them, then exited their vehicle and began punching Civilian 1 and Civilian 4 through the open windows of his vehicle.

Civilian 2 stated that he drove away, but was followed by the Mercedes. Once at the intersection of Clybourn Avenue and Division Street, Civilian 4 exited the Acura and became involved in a second physical altercation with the occupants of the Mercedes, who had also exited their vehicle. Civilian 2 stated that Civilian 1 ran to the aid of Civilian 4 and tried to diffuse the situation. Civilian 2 stated that one of the attackers from the Mercedes was armed with a pair of nun chucks, while another was armed with a baseball bat. Civilian 2 armed himself with a fishing pole he retrieved from his trunk, and then moved towards where the fight was continuing in the middle of the street.

Civilian 2 stated that three people were kicking Civilian 1 as he lay on the ground, while two others were assaulting Civilian 4 as he too lay on the ground. Civilian 2 observed that one of the attackers was armed with a baseball bat, and was now striking Civilian 1 with the bat. Civilian 2 stated that he began to strike the Mercedes with his fishing pole, in an effort to detract the subjects from further attacking his friends. Civilian 2 stated that his tactic drew several of the attackers towards him, but that the subject with the baseball continued to strike Civilian 1 as he lay on the ground.

Civilian 2 stated that a uniformed police officer appeared in the middle of the street and yelled, "Stop hitting him!" Civilian 2 stated that he looked towards Civilian 1 and saw that the subject was still continuing to strike him with the baseball bat. Civilian 2 stated that he heard the officer again yell at the subject, stating, "Stop! Put the weapon down!" Civilian 2 stated that the subject also ignored this second command, and was continuing to strike Civilian 1.

Civilian 2 stated that he ran from the scene at that time, and did not see the shooting nor did he recall hearing gunshots. (Att. #68, 75-77)

In a statement to IPRA on 20 July 2015, Witness Civilian 4 stated he and his friend, Civilian 1 were involved in a physical altercation with several individuals at Halsted Street and Clybourn Avenue. During the altercation, Civilian 4 observed Subject A hitting Civilian 1 with a

¹ Through the investigation it was found that Civilian 2 was the driver of the vehicle Civilian 4 and Civilian 1 were in at the time of the incident.

baseball bat. Civilian 4 tried to come to Civilian 1's aid, but he was knocked down to the pavement by an unknown individual. Civilian 4 was lying on the pavement, next to Civilian 1, while Subject A was standing over them with the baseball bat in his hands. A uniformed officer² appeared and stated, "Police," and ordered Subject A to stop his actions. Civilian 4 related that the officer was standing six feet away from Subject A and observed the officer point his firearm in the direction of Subject A and instructed him to drop the bat and place his hands up. Subject A refused and the officer fired his weapon "two or three times." Civilian 4 related that this all happened "so quick."³ Civilian 4 observed Subject A collapse to the ground and place his hands up. (Att. #34-35)

In a statement to IPRA on 20 July 2015, Witness Civilian 1 stated that, earlier in the evening, he was at XX nightclub with Civilian 2 and Civilian 4. Civilian 1 related he was intoxicated and left the club with Civilian 2 and Civilian 4, in Civilian 2's black Acura. Civilian 1 related they were near the location of North Avenue and Clybourn Avenue when a vehicle pulled up next to them and several unknown individuals inside the car started harassing them. The unknown individuals then approached the vehicle on foot and punched Civilian 4 in the face while he was seated in the vehicle. The unknown individuals tried to punch Civilian 1 and Civilian 2, but Civilian 2 drove off. At the next intersection, Civilian 4 exited the vehicle and Civilian 1 followed him in an effort to retrieve Civilian 4 and get him back inside the car. Civilian 4 started fighting with the same several individuals and Civilian 1 started fighting with an unknown individual. During the altercation, Civilian 1's watch fell to the pavement and he bent down to retrieve it. The unknown individual took advantage of Civilian 1's position and pushed him to the ground and started punching and kicking him. Civilian 1 related that he was being assaulted by two males who appeared to be of Middle Eastern decent. Civilian 1 was then hit by an object, recalling the hits became harder across his back and head. Civilian 4 came to Civilian 1's aid and pushed one of the unknown males off of him, at which time Civilian 1 stood up and made his way to a nearby sidewalk. Civilian 1 related that when he made it to the sidewalk he observed police officers on the scene and placed his hands in the air. Civilian 1 related he was "pretty dazed" and did not hear an officer order anyone to stop their actions nor did he hear any gun-shots or observe an officer fire his weapon. Civilian 1 did not observe any officer assist him in any way before he walked to the sidewalk. Civilian 1 received numerous bruising to his body, but no fractured or broken bones. Civilian 1 did not observe anyone using a baseball bat during the altercation. (Att. #38-39)

According to **Department Reports**, Subject A was arrested on 20 July 2015, at 0400 hours, at XXXX N. Clybourn Avenue, and charged with several counts of Aggravated Battery/Use of a Deadly Weapon. The arresting officers were Officers B, #XXXXXX and A, #XXXXXX. It was reported that Subject A was arrested after he was observed striking Civilian 1. and Civilian 4 numerous times with a baseball bat.

The reports state that witnesses Civilian 2, Civilian 1 and Civilian 4 all reported that they were being assaulted by several unknown individuals, including Subject A, who was using a baseball bat. Subject A swung the bat multiple times striking Civilian 1 and Civilian 4. Officer A approached the scene, announced his office, and ordered Subject A several times to stop and drop the bat. Subject A refused all of Officer A's orders. It was reported that, in fear for the

² Through the investigation it was determined that Officer A was the first officer on the scene and ordered Subject A to stop his actions.

³ Civilian 4, Attachment 35, Page 5, Line 25

victim's safety, Officer A discharged his duty weapon, incapacitating Subject A. A baseball bat was recovered at the scene. (Att. #6, 8-10, 73-74)

According to the **Tactical Response Report (TRR)**, completed by Officer A, Subject A "did not follow verbal direction," "was an imminent threat of battery," "attacked with a weapon," and "used force likely to cause death or great bodily harm with a weapon" in the direction of Civilian 1 and Civilian 4. Officer A responded with "member presence," "verbal commands," and the "discharge of his firearm." (Att. #7)

The **Evidence Technician Photographs** depict the scene of the shooting from various angles. Photographs were not taken of Subject A on the date and time of the incident as he had been admitted to Northwestern Hospital in critical condition. The photographs also depict multiple pictures of Officer A in full uniform and Civilian 1 on a hospital bed. (Att. #60-62)

In Car Camera was downloaded and obtained from Beat XXXXX. The video contained audio; a call was broadcast over the radio from Beat XXXX announcing that there was a fight on the corner of Clybourn Avenue and Halsted Street and additional units were needed at that location. Beat XXXXX responded with its emergency equipment activated and while in route, a call came over the radio of "Shots fired by the police." Beat XXXXX drove north on Clybourn Avenue towards Halsted Street and came to a stop several hundred feet south of Halsted Street. The camera captured Subject A kneeling on his left knee with his back facing the camera in the middle of the street. Officer A was standing to the right of Subject A and had his gun pointed at him. Officer B approached the right side of Mr. and appeared to kick a baseball bat that was on the pavement to a nearby curb. The camera then captured additional assisting units and medical personnel arriving to the scene. (Att. #23-24)

Security Video was obtained from **Business A** located at XXXX N. Clybourn Avenue. The video did not capture any of the police-involved shooting due to the camera having been positioned to videotape the interior of the bank. (Att. #47-48)

The **OEMC and PCAD reports** were collected and made part of this case file. An analysis of said documents shows that:

At 04:01:10 a 911 caller reported that there were "six males fighting with bats⁴."

At 04:02:28, Officer A reported "shots fired by the police."

At 04:02:46, the first additional units responded to the scene and an ambulance was requested. (Att. #11, 13, 26)

IPRA Investigators conducted a separate canvass, in an attempt to locate additional witnesses and/or evidence. Additional information was not discovered. (Att. #30)

The **Chicago Fire Department Ambulance Report** documents that Subject A was located in the street when the paramedics arrived to the scene. The narrative related that Subject A appeared to have gunshot wounds to his hip, right shoulder, and right forearm. Subject A was

⁴ It is noted that while there is only one baseball bat reported to have been used in this incident, there were at least six males involved in this altercation, and other items, to include a fishing pole and nun chucks, were reported to have been used.

transported to XX Hospital. (Att. #16)

The **Chicago Fire Department Ambulance Report** documents that Civilian 4 was located inside Beat XXXX squad car when paramedics arrived to the scene. The narrative related that Civilian 4 complained of facial pain, but refused all medical treatment. No visible injuries were documented in the report. (Att. #18)

The **Chicago Fire Department Ambulance Report** documents that Civilian 1 was located in the rear of a squad car when paramedics arrived to the scene. The narrative related that Civilian 1 appeared to be intoxicated and had swelling and pain to his bilateral forearms and abrasions to his forehead. Civilian 1 was transported to XX Hospital. (Att. #18)

Medical Records from **XX Hospital** document that Subject A sustained one gunshot wound to his upper arm, and one gun shot wound to his right forearm. It is also reported that Subject A sustained multiple humerus fractures and a radial fracture as a result of the gunshot wound to his arm. (Att. #67)

Medical Records from **XXX Hospital** document that Civilian 1 sustained an injury to his head and left wrist from blunt force trauma. A CT scan of Civilian 1's head and left wrist were conducted. The CT scan did not detect any internal bleeding or fractures to Civilian 1's head and left wrist. (Att. #64)

Illinois State Police Forensic Science Laboratory Reports document the examination of the recovered ballistic evidence, in comparison to the firearm belonging to Officer A. The firearm tested was found to be in proper firing condition. Based upon analysis of ISP Reports and Forensic Reports, it was determined that Officer A fired two (2) times. The shell casings recovered from the scene and the fired bullets tested at the Illinois State Police Forensic Center were compared to Officer A's firearm and found to match his weapon.

The reports indicate that the bat was tested for the presence of latent fingerprints and DNA. The results of the test found that a human DNA profile was identified on the baseball bat that matched the DNA profile of Subject A. (Atts. #69, 84)

Court Documents pertaining to the disposition of this case were obtained. Said documents reflect that Subject A pled Not Guilty to the charges against him in this incident. At the time of this report, the criminal trial in this matter is still pending. (Att. #78)

In his statement to IPRA on 27 August 2015, Officer A stated he and his partner, Officer B, were in the plaza between the North and Clybourn Red Line Station and the XX Store located at North Avenue and Clybourn Avenue. Officer A stated that two unknown individuals in a pickup truck pulled up and notified them that there was a fight at the corner of Halsted Street and Clybourn Avenue. Officer A walked out of the plaza and looked south, towards Clybourn Avenue and observed ten to twelve individuals "right in the middle of, or just south of, the intersection involved in a large fight."⁵ Officer A began walking towards the altercation while he switched his radio channel over to Zone 4 and called out his location, announcing that there was a fight and he needed assistance. As he was radioing for assistance, Officer A observed the

⁵ Statement of Officer A (Att. #72), Page 14, line 13 & 14

fight escalate, at which time he began to run towards the scene.

As Officer A approached the intersection of Halsted Street and Clybourn Avenue, he observed Subject A hitting Civilian 1 with a baseball bat. Officer A yelled out, "Stop, police, stop hitting 'em."⁶ Several people involved in the fight noticed Officer A and ran in opposite directions, away from the scene. Officer A stood in the street and repeatedly yelled at Subject A to stop hitting Civilian 1 with the bat. Officer A observed Civilian 1 on the ground on all fours trying to block the hits with his arm, but unable to defend himself. Officer A displayed his weapon and positioned himself in the line of sight of Subject A, about 10 to 15 feet away from him, so that Subject A could see that he was a police officer as he continued to tell him to stop and drop the bat.

Officer A stated that Subject A then stopped his actions, and briefly looked up at Officer A. Subject A then turned and continued to hit Civilian 1 with the bat, approximately five more times, before looking up at Officer A again. Officer A again ordered Subject A to stop. Subject A turned and began hitting Civilian 1 again. Officer A stated that, at that time, he realized that Subject A was disregarding his orders and that he was not going to stop hitting Civilian 1. Officer A believed that Civilian 1's life was in danger and he fired his weapon two (2) times in succession towards Subject A. After the second shot, Subject A stopped assaulting Civilian 1 with the baseball bat. Officer A then radioed shots fired by the police.

Officer A continued to order Subject A to drop the bat. Subject A backpedaled southbound down Clybourn Avenue and Officer A followed with his gun pointed towards Subject A. Subject A then dropped the bat and it rolled to the curb. Subject A slowly lowered himself to the ground and then sat down in the middle of the street. Assisting units then arrived on the scene. (Att. #71-72)

In her statement to IPRA on 21 July 2015, Officer B stated that she made her way to their squad car while Officer A walked to the location of where the fight was taking place. As she was about to enter the squad car, a black Mercedes pulled up and nearly stuck their squad car. Officer B related that the vehicle was driving slowly and as it passed by her, she could see three individuals inside the car, involved in a fight⁷. Officer B stated that one of the males yelled, "get em, get em, get em," at which time one of the males exited and ran down the street.

Officer B entered her squad car, made a U-turn and drove south down Clybourn Avenue. Officer B crossed Halsted Street and stopped her squad car on the south side of Clybourn Avenue in front of the Business A. Officer B observed Officer A standing on the sidewalk pointing his weapon at Subject A who was in the street and ordering him to "get down." Subject A was not complying and there was a baseball bat on the pavement near him. Officer B approached and kicked the bat away from Subject A's hands and it rolled to the curb. Assisting officers arrived and secured the scene. Officer B stated that she did not hear any gunfire and that she did not witness the police-involved shooting. (Att. #52-53)

⁶ Statement of Officer A (Att. #72), Page 15, line 16

⁷ Officer B recalls that the persons in the vehicle were fighting with each other. It is noted that this perception is likely not accurate as the persons in this vehicle would have been Civilian 2, Civilian 1, and Civilian 4 – and that she likely saw them as Civilian 4 was exiting the vehicle to engage the occupants of the Mercedes.

CONCLUSION AND FINDING:

Based on the totality of the facts and circumstances, an officer with similar training and experience as Officer A would reasonably believe that Subject A posed an immediate threat to Civilian 1. Therefore, the use of deadly force by **Officer A** was 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, 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;
 - c. otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay."

Officer A observed a large street fight occurring in the street at Halsted Street and Clybourn Avenue. As Officer A approached, he observed Subject A assaulting an individual with a baseball bat. Officer A repeatedly ordered Subject A to stop his actions and drop his weapon, but Subject A refused. Officer A believed that the victim's life was in danger and he fired his weapon twice hitting Subject A. Subject A stopped his actions, backpedaled down the street and then lowered himself to the ground where he was subsequently placed into custody.

Though not required to delay in his actions, Officer A first announced his office and issued multiple commands for Subject A to stop his attack. Subject A briefly stopped striking Civilian 1, looked towards and acknowledged Officer A, and then returned to attacking Civilian 1. Officer A, having only seconds to react, fired his weapon twice at Subject A in order to prevent him from causing great bodily harm, or death, to Civilian 1.

Officer A's account of the events in question is corroborated by the statements of two eyewitnesses to the shooting and the physical evidence. Although he does not recall witnessing the actual shooting, the victim of Subject A's bat attack, Civilian 1, recalls the attack and being hit by an object about the back and head. Civilian 1's medical records confirm that he sustained injuries to his head and left wrist from "blunt force trauma." Civilian 4, who was also a subject of Subject A's attack with the bat, saw Officer A approach, heard Officer A announce his office

and demand that Subject A stop the attack and drop the bat before he resorted to discharging his firearm. Although she did not witness the shooting, when she came upon the scene, Officer B saw the bat near Subject A and kicked it away. Forensic testing confirms that Subject A handled the bat, as his DNA was found to be present on it.

The two eyewitnesses, Civilian 4 and Civilian 2, both provided similar accounts of this incident. Civilian 4 specifically articulated that Civilian 1 was laying on the ground while Subject A was standing over him with the baseball bat in his hands. A uniformed officer⁸ appeared and stated, "Police," and ordered Subject A to stop his actions. Civilian 4 related that the officer was standing six feet away from Subject A and observed the officer point his firearm in the direction of Subject A and instructed him to drop the bat and place his hands up. Subject A refused and the officer fired his weapon "two or three times."

Civilian 2 specifically articulated that one of the attackers was armed with a baseball bat, and was striking Civilian 1 with the bat. Civilian 2 stated that a uniformed police officer appeared in the middle of the street and yelled, "Stop hitting him!" Civilian 2 stated that he looked towards Civilian 1 and saw that the subject was still continuing to strike him with the baseball bat. Civilian 2 stated that he heard the officer again yell at the subject, stating, "Stop! Put the weapon down!" Civilian 2 stated that the subject also ignored this second command, and was continuing to strike Civilian 1.

General Order 03-02-03, III, specifically states that a sworn member may use deadly force in order to "to prevent death or great bodily harm to...another person." In this particular instance, Subject A was actively assaulting Civilian 1 by striking him repeatedly with a baseball bat, which is, in fact, a deadly weapon. This attack could easily result in great bodily harm or death with a single blow from the bat, let alone multiple strikes. Officer A's use of deadly force here was WITHIN Department policy and consistent with the law.

⁸ Through the investigation it was determined that Officer A was the first officer on the scene and ordered Subject A to stop his actions.