

## SUMMARY OF INCIDENT

On 12 August 2016, Chicago Police Department notified the Independent Police Review Authority that Officer A deployed his Taser at Subject after responding to a domestic disturbance. Officer A also reported on his Tactical Response Report that he used his ASP telescopic baton (baton) on Subject during this incident. Officer A's interaction with Subject, including the Taser deployment and baton strikes, took place in a gangway area located immediately outside the back door of the apartment where the domestic incident allegedly occurred.

Officer A was equipped with a body worn camera (BWC) that was turned on and recorded the event. Other responding officers were also equipped with BWCs.

## ALLEGATIONS

After reviewing the BWC recordings of Officer A and other responding officers, IPRA registered a complaint that on 12 August 2016 at approximately 1050 hours at XXXX South Cottage Grove Avenue, during the arrest of Subject, **Officer A, #XXXXXX**, Unit XXX:

1. discharged his Taser at Subject, striking him, while he was in handcuffs, without justification, in violation of Rules 8 & 9 and General Order G03-02-02 Force Options; and
2. struck Subject multiple times on his legs with his ASP baton while Subject was in handcuffs, without justification, in violation of Rules 8 & 9 and General Order G03-02-02 Force Options.

It is further alleged by IPRA that on 12 August 2016 at 1050 hours at XXXX South Cottage Grove Avenue while responding to a domestic disturbance as an assisting unit, **Officer B, #XXXXXX**, Unit XXX:

1. failed to activate her body worn camera as required, in violation of Special Order S03-14 Body Worn Cameras.

## APPLICABLE RULES AND LAW

**Rule 8:** Disrespect to or maltreatment of any person, while on or off duty.

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

### **General Order G03-02 Use of Force Guidelines – III Department Policy**

B. Department members will use an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or other from injury.

**General Order G03-02-02 Force Options – IV**

**B - 2. Active Resister:** a person whose actions attempt to create distance between that person and the member's reach with the intent to avoid physical control and/or defeat the arrest. This type of resistance includes gestures ranging from evasive movement of the arm, through flailing arms, to full flight by running. In addition to the response options in Items IV-A and IVB-1, the following response options are appropriate when dealing with an active resister:

**f. Taser**

(1) The Taser is a device used to control and subdue a subject through the application of electrical impulses that override the central nervous system and cause uncontrollable muscle contractions. Two darts attached by thin wires are fired from a cartridge attached to the hand-held device. When both darts attach to the subject, a timed electrical impulse is applied to the subject at the control of the operator, the electrical impulse immobilizes the subject long enough for restraints to be applied.

**C. Assailant** a subject who is using or threatening the imminent use of force against himself/herself or another person. The Use of Force Model categorizes assailants into three categories.

**1. Actions are aggressively offensive without weapons.** This type of assailant is one who places a member in fear of a battery and includes advancing on the member in a threatening manner or closing the distance between the assailant and the member, thereby reducing the member's reaction time. In addition to the response options in Items IV-A and IV-B, the following response options are appropriate when dealing with this type of assailant:

**b. Impact Weapons**

The baton is the member's primary impact weapon, which is used for striking. Impact weapons are designed to establish control by means of applying mechanical impact to a subject in order to disable elements of his or her skeletal structure. Members will avoid the use of flashlights, radios, or any item not specifically designed as a defensive weapon if the baton is reasonably available.

**Special Order S03-14 Body Worn Cameras****V. RECORDING GUIDELINES**

E. Department members assigned a BWC:

1. will activate the system to event mode to record the entire incident for all:
  - a. routine calls for service;

**VI. OPERATIONAL PROCEDURES**

2. during the tour of duty:
  - a. record events consistent with this directive.
  - b. engage their BWC while responding to incidents *as an assist unit* and:

**INVESTIGATION**

The **Body Worn Camera video** from **Officer A** showed Officer A and his partner, Officer C, responding to the location of incident. At approximately 2:45 minutes into the video, the video captures the voice of a woman, now known as Civilian 1, from inside the apartment, saying “let go of me” and “he’s trying to run out the back.” Officer A can then be heard saying, “he’s trying to run out the back” after which the video shows Officer A running to the front of the building on Cottage Grove Avenue where a locked gate prevented his entry to the rear gangway. Officer A returned to the front public entrance door to the section of the apartment complex where Civilian 1’s apartment was located. Shortly thereafter, Civilian 1 let Officer A inside her apartment and showed Officer A where Subject had exited. When Officer A was inside Civilian 1’s apartment, she told Officer A that Subject left out the back door as she walked Officer A through her apartment and to that door. After exiting the back door, Officer A encountered Subject. Officer A immediately ordered Subject to the ground and pointed his Taser in Subject’s direction. At one point, the video captured Officer A pointing the Taser toward Subject’s head as Subject asked Officer A questions about Civilian 1 and stated that he wanted to get his money back from her. Shortly thereafter, and in an apparent response to Office A’s commands, Subject complied by going to his knees and placing his hands behind his back. After completing those actions, Subject stated, “I’m on the ground. Arrest me, dude.” Officer A then handcuffed Subject without incident or resistance.

After Subject was in handcuffs, Civilian 1 is seen entering the gangway through her back door to retrieve a toddler who wandered through her open back door and into the gangway. While Civilian 1 was in the gangway, she and Subject are seen and heard engaging in a verbal exchange. Officer A responded by instructing her to get back inside the apartment. At approximately 6:40 minutes, Officer A is heard saying over the police radio that he is going out the front. He then appeared to begin to escort Subject toward the back door of Civilian 1’s apartment, while holding Subject’s left arm. Officer A right hand is seen still holding his Taser. At approximately 6:57 minutes, Subject appeared to step away from the back door and said that he was not going into the apartment. Officer A is then heard stating, “Dude, I’m going to Tase you.” Subject responded by asking, “What do you mean?” Officer A then told Subject that he better follow his instruction. That verbal exchange between Officer A and Subject were accompanied by movements that were difficult to see, but suggestive of some level of either resistance by Subject, attempted physical direction of Subject by Officer A, or possibly some combination of those two actions. Almost immediately after that verbal exchange and movement, Officer A discharged his Taser at Subject while appearing to continue to hold Subject’s left arm.

At approximately 7:30 minutes, Subject appeared to be standing still against the brick wall of the apartment building, when Officer A placed his Taser on the ground, retrieved his baton from his uniform, began striking Subject with his baton, and then ordered Subject to get on the ground. Officer A is seen striking the back of Subject’s legs just behind his knees with his baton. Officer A hit him in that general area approximately fifteen times before Subject went to the ground. At approximately 7:50 minutes, Subject is heard stating, “Oh, you cannot hit me like this.” At 7:58 minutes, Subject looked up at Officer A from the ground and said, “for real bro, for real bro.” While Subject was still on the ground, Officer A is heard ordering Subject to the ground again. As other officers finally arrived in the gangway, Subject is heard expressing anger about Officer A’s

actions toward him. At approximately 9:45 minutes, Officer A states, "I did not want to hurt you. You have handcuffs on. You could have hit your face on the ground." (Att. 45)

The **Body Worn Camera video** from **Officer C** showed Officer C and his partner, Officer A, responding to the domestic disturbance. The beginning portion of Officer C's video captured similar information as detailed above in Officer A's video. At approximately 3:33 minutes, shortly after it appeared to capture Officer A running toward Cottage Grove Avenue, Civilian 1 opened the front public entrance door of the apartment complex and stated that Subject was trying to run out of the back of the apartment and that he had her money. Officer C relocated to the rear of the building where a tall, locked gate prevented his entry to the rear gangway. At approximately 5:00 minutes, Subject was visible and Officer C was heard providing a description of Subject over the police radio, and stating that the male suspect was in the gangway and possibly trying to climb over the fence where the kids were. At that point, Subject is visible in the video near the fence separating the apartment building from a neighboring daycare to the south.

At approximately 7:50 minutes, Officer A is visible and seen placing Subject in handcuffs in the gangway. Officer C then ran to the fence along Cottage Grove Avenue. At approximately 7:55 minutes, some of the interaction between Subject and Officer A is visible. The sound of the deployment of Officer A's Taser can be heard. Subject's feet appeared to be on the ground and stationary when Officer A's Taser was deployed. After approximately 7:56 minutes, Officers B and D are seen at the fence along Cottage Grove Avenue. Officer A and Subject are also visible at that point. Subject can be heard saying, "It doesn't hurt," "Stop," and "Leave me alone." Subject is also heard asking Officer A, why Officer A was "fighting him." At approximately 8:15 minutes, Subject appeared to be standing still against the brick wall of the apartment building.

Officer C then ran back to the front public entrance door and entered Civilian 1's apartment. He then made his way into the gangway through the back door of the apartment. At approximately 11:00 minutes, Officer C and Officer D are seen escorting Subject to a police car. As they escorted him, Subject stated, "He could have talked to me instead of Tasing me." At approximately 13:05 minutes, Subject complained about an injury to his arm that Subject claimed happened as a result of Officer A trying to "throw" Subject around and then stated Officer A was also recording, in an apparent reference to Officer A's BWC, when Officer A "beat my ass back there" when Subject was "in cuffs." (Att. 46)

The **Body Worn Camera video** from **Officer D** showed Officer D climbing the rear apartment building gate, entering the rear gangway, and running toward Officer A and Subject. By the time he reached them, the incident between Officer A and Subject was over and Subject was on the ground near the fence.

Officer D was subsequently seen escorting Subject with Officer C through Civilian 1's apartment and to a squad car. Officer D's video also captured Subject questioning his encounter with Officer A as identified above in the summary of Officer C's BWC video. At approximately 4:35 minutes, Subject is heard complaining about an injury to his arm that Subject claimed happened as a result of Officer A trying to "throw" Subject around. At approximately 4:40 minutes, Subject stated, Officer A was also recording, again in an apparent reference to Officer A's BWC, when Officer A "beat my ass back there" when Subject was "in cuffs." (Att. 47)

The **Body Worn Camera video** from **Officer B** captured her making a formal statement that she forgot to turn on her body worn camera when she responded to a domestic disturbance at XXXX South Cottage Grove Avenue. (Att. 44)

The **Body Worn Camera video** from **Sergeant A** captured Subject, at approximately 8:45 minutes, stating Officer A was recording too when “he beat my ass” when Subject was “in cuffs.” (Att. 48)

In an **interview with IPRA** on 09 November 2016, **Officer C** initially stated that he did not see Officer A deploy his Taser. However, after reviewing his BWC video, he remembered seeing Officer A use his Taser and baton. He further reported that while he was aware that Officer A used his baton during incident, he may not have actually witnessed it. Officer C stated that Subject resisted when he flailed his arms and pulled away from Officer A. Officer C believes that Officer A used his baton because both prongs of the Taser did not connect. (Att. 28, 29, 43)

In an **interview with IPRA** on 10 November 2016, **Officer A** stated that, because the gates to the gangway were locked, he found himself alone with Subject without the assistance of other officers, and for this reason, Officer A did not want to have to fight with Subject. Officer A stated that Subject stiffened, pulled away, and refused his verbal commands. According to Officer A, he used his Taser, leg sweeps, and baton on Subject because Subject was resisting. Officer A believed that it is within Department policy to use a baton on a “resister.” Officer A wanted Subject on his knees so he would have control. Officer A acknowledged that while Subject was not an “assailant,” things could quickly turn from him being a “resister” to an “assailant.” Officer A added that Subject may have had a weapon, and that a knife was found later in the Civilian 1’s apartment. Officer A initially stated he believed that Civilian 1 told him that Subject had threatened her with a knife before he encountered Subject in the gangway. He later stated he may not have known this information until after his encounter with Subject. (Att. 32, 44)

In an **interview with IPRA** on 10 November 2016, **Officer D** initially stated that he did not recall witnessing Officer A deploy his Taser or use his baton. After viewing his own BWC video during his interview, he remembered seeing the actions displayed on Officer D’s video. Officer D stated that he saw Officer A with his Taser in his hand ordering Subject to stay down. (Att. 30, 41)

In an **interview with IPRA** on 10 November 2016, **Officer B** stated that she saw Subject swinging his arms, going to the ground, but then getting up again. Officer B could not enter the gangway area to assist Officer A because the entrance gate was locked and topped with barbed wire.

Regarding the reason her BWC was not turned on during this incident, Officer B stated she was under the impression that she turned it on, but may have pressed the activation button one too many times, which caused it to remain off. Officer B noted that, at the time of the incident, she had just recently started wearing the BWC device. (Att. 31, 42)

According to the **Chicago Police Original Incident Case Report** dated 12 August 2016, which was authored by Accused Officer A, it was reported that the reporting officers responded to a call of a person calling for help. Upon arrival at XXXX South Cottage Grove Avenue, it was further reported that they could hear a woman screaming and a loud commotion on the first floor. The report continued by noting that Officer A was met at the front door by Civilian 1 who told the

responding officers that Subject (subject) *was trying to attack her with a knife and trying to take her money*. Civilian 1 then told Officer A that Subject had attempted to flee out the back door after Subject heard the officers knocking on the windows. The report further states that Officer A made entry into the apartment and observed Subject hiding at the back door. Officer A placed Subject into custody in the rear and as he was trying to escort Subject to the police vehicle, Subject became uncooperative by refusing verbal commands and pulling away from Officer A. Officer A unsuccessfully deployed his Taser at Subject. When Subject continued to resist, Officer A “used leg sweeping tactics and eventually pulled out ASP and began to strike offender about the lower body and upper arms.” The report concluded this part of the interaction by noting that the subject subsequently “was on ground and under control.” (Att. 8)

The **Arrest Report** of **Subject** indicated that he was arrested on 12 August 2016 for aggravated assault and resisting arrest. The report noted that Subject complained of a leg injury and was taken to Hospital A. The section entitled Visual Check of Arrestee indicated Subject had obvious pain or injury. (Att. 7)

**Officer A’s Tactical Response Report** documented that the reasons for his use of force were because Subject was a “passive resister,” an “active resister” who “pulled away,” and an “assailant: assault” whose actions presented “an imminent threat of battery.” In addition, the report notes under subject information that Subject used: “verbal threat (assault),” “mouth (spit, bite, etc.),” and “feet.” The report further documented that in response Officer A performed “take down/emergency handcuffing,” deployed his “Taser,” and used an “impact weapon” described as an “Asp.” (Att. 9)

**Officer A’s Officer Battery Report** documented that the type of weapon/method Subject used was “feet,” “mouth (spit, bite, etc.),” and “verbal threat (assault)” and that Officer A was with an assailant and his partner and other assist units were locked out of the location. (Att. 20)

The **Taser Download Form** indicated Officer A’s Taser [Serial #XXXXXXXXXX] was deployed on 12 August 2016 at 10:51:57 for approximately five seconds. (Att. 11)

According to **Office of Emergency Management and Communications (OEMC) Event Queries and Transmissions** registered under Event #'s XXXXXXXXXXXX, XXXXXXXXXXXX, and ZONE X for the time of incident, Beat XXX, Officers A and C, were dispatched to XXXX South Cottage Grove Avenue after a caller reported a man and a woman arguing in the apartment below. Officers A and C arrived on the scene and notified the dispatcher that the subject was attempting to flee through the rear and requested additional officers. The dispatcher was notified of a Taser deployment and that the subject was in custody.

The OEMC reports were collected and made part of this case file. An analysis of the call log, 911 transmissions, and radio transmissions shows that:

- At 10:40:44 hours, the upstairs neighbor called 911 to report an argument taking place on the first floor of the caller’s residential building. The caller then apparently hung up the phone.

- At 10:41:29 hours, the police operator called the neighbor back and the neighbor reported a man and woman arguing in the apartment below her.
- At 10:44:00 hours, Beat XXX was dispatched to a call of someone fighting on the first floor of XXXX South Cottage Grove Avenue.
- At approximately 10:45:00 hours, Beat XXX reported having arrived on the scene and soon after requested an assisting unit.
- At approximately 10:50:00 hours, Officer A deployed his Taser.
- At approximately 10:57:00 hours, Sergeant A announced the Taser deployment and requested an ambulance. (Atts. 12, 17, 18, 19)

**Medical records** from **Hospital A** indicate that Subject was diagnosed with a left knee contusion, a right shoulder abrasion, and a left wrist contusion. Subject notified the hospital staff that he was hit behind his left knee and on his left wrist with a baton. (Att. 21)

A form entitled **Refusal to Talk with Independent Police Review Authority** and a **To/From Memorandum** document that Subject did not wish to discuss this incident with IPRA. (Atts. 23, 34)

## CONCLUSION

IPRA recommends a finding of **Sustained** against **Officer A #XXXXXX**, on **Allegation #1** that he discharged his Taser at Subject, striking him, while he was in handcuffs, without justification, in violation of Rules 8 & 9 and General Order G03-02-02 Force Options.

The Chicago Police Department's General Order G03-02-02 details what force options are available to department members and when such force should be used based on the various types of subjects department members encounter. The General Order establishes the type of force that is permissible based on the level of threat posed by the subject and categorizes subjects as either a:

- **Cooperative Subject:** a person who is compliant without the need for physical force;
- **Passive Resister:** a person who fails to comply (non-movement) with verbal or other direction;
- **Active Resister:** a person whose actions attempt to create distance between that person and the member's reach with the intent to avoid physical control and/or defeat the arrest; or
- **Assailant:** a subject who is using or threatening the imminent use of force against himself/herself or another person.

In this case, the BWC shows that Subject is appropriately classified as a passive resister. The BWC video and officer statements make clear that Subject was non-compliant with Officer A's direction. In reviewing Officer A's body worn camera, it is clear that Subject was a passive resister and not an active resister, which is supported by the fact that Officer A had a continuous hold on Subject's arm prior to and during the deployment of his Taser.

However, the following actions/sounds were captured by Officer A’s BWC video and serve as key evidentiary points showing that Subject was a passive resister, not an active resister:

~Time on BWC Video	Actions/Sounds
5:45	Officer A in close proximity and holding onto Subject’s left arm. Subject is seen already crouching down with his right knee on the ground.
5:51	Officer A is heard warning Subject to “Listen, I will Tase you.”
5:56	Subject asks: “Are you trying to Tase me?” Officer A responded by telling Subject, “I will Tase you.”
6:00	Subject is seen independently going to his knees. Subject is also seen positioning his hands behind his back on his own without being ordered to do so and is heard saying, “I’m on the ground. Arrest me.”
6:00 - 6:20	Subject is kneeling on the ground with his arms behind his back waiting to be handcuffed.
6:20	Officer A handcuffed Subject without incident or resistance.
6:20 - 6:57	Subject is seen walking slowly Civilian 1 and the two continue to argue with one another. At this time, Subject is already handcuffed and is being gripped by his left arm by Officer A. Subject is not running. Rather, he is moving in some manner while Officer A maintains his grip on Subject’s left arm.
6:57	Officer A is heard saying: “I’m going to Tase you.” Subject responds: “What do you mean?” Officer A is heard responding: “You’re not going to follow what I say?”
7:02	Subject is heard saying “No” while Officer A deploys the Taser.

An officer threatening and/or using the Taser on someone for simply not following a direction is inconsistent with CPD policy on the use of a Taser and the use of force. Officer A’s BWC video and his statement support that Subject was upset and exhibiting movements (e.g. moving in some manner after being handcuffed, walking towards Civilian 1, and turning his head to talk to Officer A while kneeling ). Yet, the evidence does not support that Subject fits the description of being an “active resister” whose behavior and actions warranted the use of a Taser. Subject was not seen running nor was he seen specifically avoiding or making physical contact with Officer A. As noted previously, Subject told Officer A to arrest him, and independently placed his arm behind his back. By the time Officer A employed his Taser, it was unreasonable for him to believe that Subject was an “active resister” who needed to be subdued or that Subject was not within his control. In his own statement to IPRA, Officer A acknowledged that he retained a hold of Subject, and that Subject was already handcuffed and under arrest.

Furthermore, the general order on the use of force says that Department members will “use an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or other from injury.” It was unreasonable for Officer A to believe that the use of the Taser was proper on a subject who was already in handcuffs and not exhibiting behaviors of an active resister. Generally, since the goal is to place a subject into restraints when force is necessary, to use force when a subject is already in restraints necessitates clear evidence of behaviors to support the requirement to use force.

IPRA recommends a finding of **Sustained** against **Officer A** on **Allegation #2** that he struck Subject multiple times on his legs with his ASP baton while Subject was in handcuffs, without justification, in violation of Rules 8 & 9 and General Order G03-02-02 Force Options.

Under General Order G03-02-02, the use of a baton (an impact weapon) is reserved for a person classified as an “assailant.” As outlined above, an assailant is described as a subject who is using or threatening the use of force against himself/herself or another person. Per General Order G03-02-02, a baton is an appropriate use of force when the subject is displaying actions that are aggressively offensive without weapons. The baton is appropriate to use on an assailant that places the officer in fear of a battery. The assailant’s actions are such that the risk is the reduction of an officer’s reaction time. The actions are described as: advancing on an officer in a threatening manner or closing the distance between the assailant and the officer.

Officer A’s decision to utilize his baton given the circumstances was unreasonable. The behaviors exhibited by Subject did not equate to those described in the General Order for an assailant. Prior to employing his baton, Officer A could not have reasonably been in fear of a battery considering that Subject was handcuffed. At no time did Subject advance on Officer A in a threatening matter. Prior to the baton use, Subject is heard stating to Officer A, “Stop it, bro. I just said, leave me alone. Stop it. Why are you fighting with me? I didn’t even restrict<sup>1</sup> you.” In addition and right before retrieving his baton and striking Subject, Officer A is seen on video bending down and placing his Taser on the ground, in direct contradiction to what would be possible if in fact he was facing an imminent threat. As Officer A repeatedly delivered strikes to Subject’s legs, Subject attempts to move his legs out of the way to avoid getting hit and vocally complains and questions in the moment what justification Officer A had for using his baton.

In his statement to IPRA, Officer A defended his action of using the baton by informing IPRA that he wanted Subject on the ground for control because his previous use of his Taser and leg sweeps failed. However and as previously established in this report, Subject did not exhibit the actions of an assailant that would justify that level of force. Furthermore, CPD’s Use of Force model provides that an officer’s decision to increase the level of force must be based on an increase in resistance of the subject/offender. Absent an increase in resistance by the subject, the mere fact that one control method did not work does not warrant the use of another tool/method or a tool/method specifically designated for an increased level of force. In addition, Officer A’s explanation in his statement to IPRA that a person could go from a resister to an assailant in a moment, does not justify him officially declaring Subject as an assailant when he never was one.

Lastly, Officer A’s use of the baton to strike Subject approximately fifteen times was clearly excessive, and therefore, unwarranted, unreasonable and a clear violation of CPD policy.

IPRA recommends a finding of **Sustained** for **Officer B #XXXXXX** on **Allegation #1**. Officer B acknowledged that she failed to activate her BWC, as required by CPD policy, when responding to this service call. Though the BWC equipment is relatively new, an officer’s ability to properly operate that equipment is important and had Officer B turned her BWC on according to

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<sup>1</sup> Subject is repeatedly heard on the BWC saying “restrict” in this context. It is possible he most likely meant to say “resist” not restrict.

CPD policy it could have served as another important piece of evidence regarding this incident as she was positioned with a relatively clear view of the gangway from behind the chain link fence.

## FINDINGS

**Accused #1:** **Officer A, #XXXXXX**

**Allegation #1:** **Sustained**

**Count #1 - Violation of Rule 8**, “Disrespect to or maltreatment of any person, while on or off duty” and **Violation of Rule 9**, “Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,” in that Officer A discharged his Taser at Subject, who was in handcuffs, without justification.

**Count #2 - Violation of General Order G03-02-02** “Force Options” in that Officer A discharged his Taser at Subject when Subject was not an active resister.

**Allegation #2** **Sustained**

**Count #1 - Violation of Rule 8**, “Disrespect to or maltreatment of any person, while on or off duty,” and **Violation of Rule 9**, “Engaging in any unjustified verbal or physical altercation with any person, while on or off duty,” in that Officer A repeatedly struck Subject with his baton, while Subject was in handcuffs, without justification.

**Count #2 - Violation of General Order G03-02-02** “Force Options” in that Officer A struck Subject with his baton when Subject was not an assailant.

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

**Allegation #1** **Sustained**

**Violation of Special Order S03-14** “Body Worn Cameras” in that Officer B failed to activate her body worn camera as required when responding to a call for service.