

TO: Chief Administrator
FROM: Investigator
DATE: May 4, 2017
REFERENCE: Log #1078622, U #15-28 - RD# HY-XXXXXX

INCIDENT

DATE/TIME: December 26, 2015 at approximately 1:30 p.m.

LOCATION: XXXX W. 103rd Place (Sidewalk), Chicago, Illinois 60634

INVOLVED

OFFICER #1: Officer A; Star #XXXXXX Employee #XXXXXX; Unit XXX; Hispanic male; On duty; Beat XXXXX; CPD Start Date: XX XXX XXXX

WEAPON: Glock model 30; .45 caliber, semi-automatic pistol; Serial #LHP466; City Registration #XXXXXXXXXX; FOID #XXXXXXXX; Winchester .45 caliber ammunition; 0 live rounds recovered from magazine; listed weapon capacity of 10 plus I

INJURIES: None reported

INVOLVED

OFFICER #2: Officer B; Star #XXXXXX; Employee #XXXXXX; Unit XXX; White male; On duty; Beat XXXXX; CPD Start Date: XX XX XXXX

WEAPON: Did not fire

INJURIES: None reported

INVOLVED

CIVILIAN: Subject 1; Black male; DOB XX XXX XXXX; XXXX W. 103rd Place, Chicago, IL; IR #XXXXXXXX

WEAPON: Taurus PT111 Pro; 9mm semi-automatic pistol; 3" Blue Steel, Black; Serial #TZCO1212; seventeen (17) live rounds recovered from extended magazine; one (1) live apparently misfired round recovered from the chamber

INJURIES: Non-fatal with multiple gunshot wounds to chest, abdomen, hand, forearm, and back

SUMMARY OF INCIDENT

On December 26, 2015 at approximately 1:30 p.m., Officers A and B were on routine patrol when they responded to a call regarding an assault-in-progress at XXXX W. 103rd Place. According to the officers, while they drove westbound on 103rd Place, near Morgan Street, they stopped their police vehicle and spoke with an unknown black female, who was in her vehicle, to inquire about the disturbance in the area. The unknown female directed the officers to continue west on 103rd Place. As the officers continued driving west on 103rd Place, they observed an individual, now known as Subject 1, standing in the middle of the street a short distance ahead of them firing a pistol in the direction of a residence, now known to be XXXX W. 103rd Place. The officers responded by stopping and exiting their vehicle at approximately XXXX W. 103rd Place. Both officers reported that Officer A walked towards Subject 1 and announced, "Police" and ordered Subject 1 to drop his pistol. The officers alleged that Subject 1 turned and pointed his pistol in the direction of Officer A. Officer A reported that he responded to the threat by firing his weapon eleven times at Subject 1. Subject 1 sustained three non-fatal gunshot wounds.

INVESTIGATION

IPRA obtained relevant documentary and forensic evidence associated with this incident. Additionally, IPRA interviewed multiple civilians who reported witnessing various aspects of the incident as well as what took place prior to this encounter. IPRA interviewed the following persons: Witness 1, Witness 2, Witness 3, minor-aged Witness 4, Witness 5, and Witness 6. The involved officers, B and A, provided statements to IPRA. Summaries of these interviews and statements follow.

In an **interview with IPRA** on December 26, 2015, **Witness 1**, the brother of Subject 1, stated that he and Subject 1 reside at XXXX W. 103rd Place. Subject 1 resides in the first-floor apartment with his friend, Witness 2. Witness 1 resides on the second floor with his girlfriend, Witness 6, and Witness 1's two young children.

Witness 1 arrived home from a nightclub in the early morning hours of December 26, 2015. Witness 1 estimated that he arrived home at approximately 4:00 or 5:00 a.m. Subject 1 did not accompany Witness 1 to the nightclub. Witness 1 assumed that Subject 1 stayed home with others.

Shortly after arriving home and falling asleep, Witness 6 woke Witness 1 to inform him that Subject 1 was "tripping," which Witness 1 further described as "being belligerent, disrespectful, basically just tweaking altogether." Witness 1 noted that he got dressed and approached Subject 1, who was outside on the front porch of their home. When Witness 1 walked onto the front porch, where he saw blood "everywhere"¹ and broken glass. Witness 1 assumed that Subject 1 had punched his hand through the broken front window and cut his hand. Witness 1 observed that Subject 1 was visibly agitated and "ranting and raving." Subject 1 told Witness 1, "Fuck everybody. Y'all got me fucked up." Witness 1 attempted to calm Subject 1 verbally and eventually Witness 1 "bear hugged (Subject 1) and just picked (Subject 1) up and took him in the house." Subject 1 continued to act irrationally after Witness 1 got him in the house.

¹Witness 1 did not specify where he observed blood on the front porch.

Once in the house, Subject 1 started throwing things and "flipping furniture," so Witness 1 phoned their mother, Civilian 1,² and asked for her help. Civilian 1 arrived shortly thereafter, but left after 15 or 20 minutes because she was unable to get Subject 1 to calm down.³ Witness 1 continued efforts to calm Subject 1, but Witness 1 was unable to make any progress. Subject 1 then left the house.

Shortly thereafter, Subject 1 returned to the house. Witness 1 and Subject 1 had additional verbal exchanges, with Subject 1 walking away from the home at another point. Witness 1 recalled seeing Subject 1 walking through one of the neighbor's yards and back again through that same yard. Witness 1 did not recall seeing any gun when Subject 1 left to walk through the neighbor's yard, but when Subject 1 returned, Witness 1 saw Subject 1 holding a black gun by his side. Witness 1 recalled seeing Subject 1 with the gun as Subject 1 came back through the neighbor's yard and "got to the gate." Witness 1 continued by explaining that, when Subject 1 reached the front gate of their residence, he raised the gun in Witness 1's direction, then lowered the gun. At this point, Witness 1 had become aware that the police were approaching because he had seen the police cars.

According to Witness 1, he did not react when Subject 1 raised the gun in his direction because he did not think Subject 1 would shoot him. Witness 1 recalled replying to Subject 1's action of raising the gun by stating, "What are you doing? You still tweaking? Like seriously?" Witness 1 then observed an unmarked, copper-colored police vehicle driving eastbound in their direction; neither their lights nor sirens were activated. Witness 1 saw the police car stop approximately two houses from XXXX W. 103rd Place, and two officers exited the vehicle. Witness 1 does not believe Subject 1 knew that the officers were there, though he recalled telling Subject 1, "Now you're really going to go to jail." Witness 1 explained to IPRA, "Like —and I guess in the midst of me telling him that," that is when the gunshots started. Witness 1 stated, "So a shot went off. I hit the ground. After the one shot, numerous of shots. I mean, I don't know where they came from. I was on the ground." Witness 1 stated, "I didn't see anybody shoot," and explained, "When the shot came out my instinct was immediately to hit the ground."

Witness 1 heard, "Police, don't move. Toss the gun," but was unsure whether the officers made those statements before or after the gunshots. In response to attempts to clarify whether Witness 1 was certain about the timing of those police commands, Witness 1 stated, "I'm not sure. I don't think they would tell him to drop it after. I know it was said." Witness 1 noted that, "everything happened so quick." Witness 1 was not sure what time the police arrived, but he agreed that the incident occurred sometime around 1:30 p.m.

Witness 1 was still on the floor of the porch after the gunshots ended. He looked up and observed one officer handcuffing Subject 1 and another officer kicking Subject 1's gun away. Subject 1 was handcuffed behind his back and Witness 1 observed that he was bleeding from his stomach area. (Atts. 5, 7)

² IPRA spoke to Civilian 1 via telephone on February 3, 2016, and she refused to provide a statement to IPRA.

³ Witness 1 called 911 at some point after Civilian 1 left the house, and he told the operator, "I need my brother to be escorted out of the house." Witness 1 thinks he just hung up with 911 after making that request and did not provide any specifics. He was also unclear about the exact timing of that call. Witness 1 thinks that he may have called when Subject 1 was outside "yelling at the top of his lungs," and, that his neighbor, Civilian 2, was outside at that point and probably witnessed some of Subject 1's unusual behavior. Witness 1 identified his neighbors: Civilian 2, Civilian 3, and a male by the name of "T.J." as potential witnesses to the incident. Witness 1 had no knowledge of these neighbors' full names or addresses, and IPRA was unable to locate them for interviews.

In an interview with IPRA on December 26, 2015, Witness 2 stated that he is a cousin of Subject 1 and resides with Subject 1 on the first floor of the residence at XXXX W. 103rd Place. The night prior to the incident, Witness 2 was at his residence and fell asleep around 7:00 p.m. Witness 2 stated, "they woke me up at about 4:00 in the morning basically saying that they bought some liquor and everything and to wake up." Subject 1, Witness 1 and two friends by the name of "Keith" and "Laro" woke Witness 2.⁴ The same four were drinking at the residence when Witness 2 had gone to sleep the night before. From Witness 2's observations after waking up at 4:00 a.m., Subject 1 and Witness 1 were both intoxicated.

Witness 1's girlfriend, Witness 6, arrived at the residence at approximately 5:00 a.m. At approximately 7:00 a.m., Subject 1, Witness 1, Witness 6, Keith and Laro left to get breakfast at the International House of Pancakes (IHOP). Witness 2 did not know which IHOP they visited. He did not go for breakfast because he was on house arrest.⁵ The group returned approximately an hour later, 8:00 a.m. Subject 1 was still intoxicated after they returned, and Witness 1 estimated that the drinking continued until approximately 9:00 a.m., when there was no more liquor. Witness 2 recalled that Keith left shortly after the group returned from IHOP.

At some point, Subject 1, Witness 1 and Witness 6 walked down the street to the home of Witness 6's relatives, who lived at the corner of 103rd Place and Aberdeen.⁶ Shortly thereafter, Witness 1 returned and told Witness 2 that Subject 1 was "out of control." Witness 1 told Witness 2 that Subject 1 became upset because Witness 6 insulted Subject 1 and Witness 1's deceased grandmother.

Witness 1 left the residence a second time and returned with Subject 1. Sometime after Subject 1 returned, he broke one of the front windows with his right hand. Witness 2 also observed Subject 1 throwing bottles and flipping furniture. It was apparent to Witness 2 that Subject 1 was still intoxicated. Witness 2 retreated to the second-floor apartment to avoid Subject 1. Witness 2 stated that he was upstairs with Laro, who was asleep. Witness 1 later came up to the second floor and complained about Subject 1's behavior and told Witness 2 that Witness 1 was tired of having to "babysit" Subject 1. Shortly thereafter, Witness 2 heard Subject 1 yelling from the first floor for Witness 1 to return his money. Witness 2 explained that Witness 1 took Subject 1's money because he did not want anyone stealing it from Subject 1 while he was intoxicated. Witness 1 returned to the first floor and eventually yelled for Witness 2 to come assist with Subject 1. Witness 2 then walked to the front porch where he observed Subject 1 walking down the middle of the street yelling. Subject 1 continued to walk down the block, towards Morgan Street. Witness 1 followed him. As they were standing a few houses west of Morgan Street, Subject 1's mother, Civilian 1, and her boyfriend, whose name Witness 2 was unable to recall, pulled up in their vehicle. Witness 2 remained standing on the front porch. Witness 2 then observed Subject 1 and Witness 1 begin to fist-fight. Witness 2 went back up to the second-floor apartment.

⁴ Witness 2 did not know the last name of Keith or Laro, but provided Keith's phone number to IPRA. IPRA contacted Keith on February 3, 2016. He stated that he was not a witness to the incident and did not see anything. IPRA never received contact information for Laro. Witness 2 indicated that Laro was not present at the time of the incident.

⁵ Search of records determined that at the time of the incident, Witness 2 was on house arrest for aggravated unlawful use of a weapon.

⁶ The names and address of Witness 6's relatives was not known. IPRA conducted two canvasses of the entire block but did not find this information.

Witness 2 then went to the second floor rear porch to smoke a cigarette, where he heard Subject 1 enter the residence on the first floor and yell for Witness 1 to come downstairs, which he did. Witness 2 heard Subject 1 and Witness 1 begin to argue again. Shortly thereafter, Witness 2 heard six (6) to seven (7) gunshots coming from the front of the residence. Witness 2 recalled hearing an initial shot followed by a short pause and then the other shots in succession. Witness 2 heard the gunshots and then "freeze," "get back," and "police." Witness 2 did not hear the police say anything prior to firing.

Upon hearing the gunshots, Witness 2 walked downstairs to the front porch. Once there, Witness 2 observed Subject 1 on the ground. Witness 2 observed what appeared to be blood coming from Subject 1's chest area. Witness 2 observed a Hispanic male officer and a white male officer both in uniform standing near Subject 1 and instructing a crowd that began to gather to "move back." There was an unmarked, maroon police vehicle parked slightly in front of XXXX W. 103rd Place, facing westbound. Witness 2 further observed Witness 1 yelling at the two male officers, asking them why they shot Subject 1. Assisting police units began to arrive. Witness 2 went back inside of the residence and remained there until police officers entered the residence to speak to him. Witness 2 did not recall seeing any witnesses outside, after the shooting. (Atts. 9, 11)

In an **interview with IPRA on December 26, 2015, Witness 3** stated that she was coming home from 103rd and Morgan Street when she observed Subject 1 and Witness 1 outside fighting. Witness 3 got between them and told them to, "just drop it." Subject 1 responded by walking away and then through a gangway at XXXX W. 103rd Place, which is an abandoned building. Witness 3 did not know where Subject 1 went when he walked away. After Subject 1 left, Witness 1 talked to Witness 1 for a couple of minutes and then Witness 1 walked back toward his home at XXXX W. 103rd Place. Prior to getting to his house, Witness 1 stopped to talk to his mother, Civilian 1, who was sitting nearby in her parked car.

Witness 3 walked into her home, put down her purse, and went back outside to make sure everything was okay between the brothers. As Witness 3 walked back outside, she observed one black SUV and one burgundy SUV "detective" car arrive on the scene. Witness 3 then observed a male, uniformed officer with glasses and approximately 5'6 tall, jump out of one of the vehicles and stand by a bush near XXXX W. 103rd Place. After he exited his vehicle, Witness 3 heard the officer say, "Lower your weapon." Witness 3 observed that Subject 1 was holding "a small, smaller gun, maybe a .22" in his right hand. Witness 3 recalled seeing Subject 1 with his gun pointed at the home where Subject 1 and Witness 1 live. Subject 1 was not facing the officer, but rather he stood in profile to the officer. According to Witness 3, after the officer directed Subject 1 to lower his weapon, she saw Subject 1 raise both his hands in the air above his head. The gun remained in Subject 1's right hand. Witness 3 never saw Subject 1 point his gun at the officer.

Subject 1 then "just twisted a little" to Subject 1's left, which meant he was moving in the direction of where the officer was positioned, but Witness 3 noted that Subject 1's hands remained in the air above his head. At that point, Witness 3 observed the officer shoot approximately five times in quick succession. Witness 3 never saw Subject 1 fire his gun at the house or anywhere else. Witness 3 stated, "The gun wasn't between his fingers. It wasn't in any type of shooting position. It wasn't in any, any type of harmful or threatening way. He didn't, didn't lunge at the officer. He didn't say anything to the officer. He didn't even point the gun at the officer."

Witness 3 thinks that Witness 1 was inside of his residence and came outside after the first shot. Witness 3 recalled Witness 1 saying, "That's my little brother, Could y'all get some help? Could you get some help?"

She then recalled hearing an officer telling Witness 1, "Get the fuck back before you go to jail."

Witness 3 recalled seeing many people in the neighborhood begin to crowd around the scene and some began to yell at the officers. Witness 3 declined to provide the names of anyone who she saw outside following the incident. Witness 3 stated that an ambulance arrived on the scene approximately ten minutes after the shooting. (Atts. 13, 15)

In an **interview with IPRA** on December 26, 2015, **Minor-Aged Witness 4**, who is ten years old and the son of Witness 3,⁷ stated that he was inside his residence, at XXXX W. 103rd Place when he heard Witness 1 and Subject 1⁸ arguing outside. In response to what he heard, Witness 4 looked out of the front window of his residence and observed the brothers standing outside, near XXXX W. 103rd Place, punching each other. Subject 1 yelled, "I'll bury you," and Witness 1 responded, "Do it then." Witness 4 left the window where he was watching and went back to playing a game. Witness 4 stated, "Then when my mom came back and we heard gunshots and I looked out the window and seen a man with a (indecipherable) here and then I just looked away." Witness 4 was uncertain, but he estimated that he heard five or six gunshots. He noted that he was "shaking" in response to what was taking place. Witness 4 explained that he observed a police officer, who was partially bald, holding a gun, but he did not see the officer shoot. Witness 4 could see that Subject 1 had been shot because they wheeled him past Witness 4's house on their way to taking Subject 1 to the ambulance. (Atts. 18, 20)

In an **interview with IPRA** on February 5, 2016, **Witness 5** stated that on the date of the incident, she was sitting outside of her residence, at XXXX W. 103rd Place, when she observed Witness 1 and Subject 1 arguing near the end of the block, east of Aberdeen Street. Witness 5 looked away for a moment, and shortly thereafter she observed Witness 1 walk toward his house. Witness 1 had blood on his shirt. He entered his home at XXXX W. 103rd Place. She was not able to see where Subject 1 went after the argument.

Witness 5 remained outside smoking a cigarette, and after approximately two minutes she looked eastbound and observed Subject 1 walking down the middle of the street with a gun in his right hand, hanging along his side. Witness 5 was able to see the gun, specifically the "clip," and described the gun as silver. Witness 5 noted that she is familiar with guns because she has a military background. Witness 5 observed a second unknown black male⁹ walking approximately three feet behind Subject 1 as he walked down the middle of the street. When Subject 1 approached the sidewalk in front of his home, the unknown male was no longer there. Witness 5 stated that she was not wearing her eyeglasses, but she was able to clearly identify Subject 1.

Witness 5 asked Subject 1 as he walked down the street with the gun in his hand, "What is wrong with you? Why are you going to do that? He's your brother." Subject 1 responded with words to the effect of, "I ain't no punk." Witness 5 told Subject 1 that she was going to call the police. Witness 5 then observed Subject 1 walk onto the sidewalk, in front of his home, and believes that he then began to raise the gun. At that point, Witness 5 went inside her home, left her front door open and called the police.

⁷Witness 4 was interviewed in the presence and with the permission of his mother Witness 3. ⁸ Identified in the interview by Witness 4 as Darwin (Witness 1) and Mekel (Subject 1) ⁹ There are no other witnesses that corroborate this information.

While on the phone with the police, Witness 5 heard two (2) gunshots and screamed. She remained on the phone and after a short pause she heard approximately four (4) or five (5) additional gunshots that sounded as if they came from a different gun.¹⁰ Witness 5 never looked outside while she was on the phone with the police, and did not hear the officer's car approach with a siren. Witness 5 did not hear the officer say anything to Subject 1 prior to hearing shots fired. After the gunshots ceased, Witness 5's husband looked outside through their front window and told her that Subject 1 was on the ground. Witness 5 ended her phone call with the police and walked outside. Witness 5 then observed a white male uniformed police officer kneeling over Subject 1. Subject 1 was on the ground, near the sidewalk where she last saw him. Witness 5 estimated that Subject 1 was approximately 25 feet from her front door. Witness 5 recalled seeing Subject 1 bleeding. (Atts. 71, 74)

IPRA Investigators conducted two **canvasses**, in an attempt to locate additional witnesses. On December 26, 2015, residents at XXXX W. 103rd Place, XXXX W. 103rd Place stated that they did not witness the shooting incident, but did hear shots fired. **Civilian 4**, at XXXX W. 103rd Place, the husband of Witness 5, stated that he did not witness the incident but heard approximately six (6) to seven (7) gunshots.

On January 06, 2016, IPRA spoke with **Civilian 5** and **Civilian 6**, at XXXX W. 103rd Place, who did not witness the incident but heard gunshots. A female resident at XXXX/XXXX W. 103rd Place refused to identify herself or provide any information. Residents at XXXX W. 103rd Place refused to provide any information. **Civilian 7** at XXXX W. 103rd Place stated that he did not witness the incident but heard gunshots and when he stepped outside he observed Subject 1 on the ground. An unknown male at XXXX W. 103rd Place stated that he was not at home during the time of the incident. **Civilian 8** at XXXX W. 103rd Place refused to provide any information. **Civilian 9** at XXXX W. 103rd Place stated that she did not witness the incident but heard five (5) consecutive shots fired. Business cards were left at residences, but no further information was discovered. (Atts. 48, 51)

During a **telephone conversation** with **Witness 6**, she stated that, at the time of incident, she was at her friend's house¹² across the street from where the incident occurred but did not witness the incident. Witness 6 did hear shots fired. She then went outside and observed police. According to Witness 6, she was intoxicated, making it difficult for her to recall any details. Witness 6 stated that, during the morning hours, she saw Subject 1, and that he was "not acting himself." Witness 6 stated that she was unaware of whether or not Subject 1 was under the influence, and had no knowledge of Subject 1 being in possession of a gun.¹³ (Att. 100)

¹⁰ This information is consistent with Witness 5's reaction during her 911 call, but these exact statements were not made. I Civilian 9 did not wish to provide her first name.

¹² Witness 6 refused to provide the name or any contact information for her friend.

¹³ According to Detective Supplementary Report dated April 19, 2016, Witness 6 stated that on December 26, 2015 during the early morning hours, she along with Witness 1, Subject 1 and Witness 2, went to IHOP restaurant for breakfast. They had all been drinking since the day before. Upon returning home from the restaurant, Witness 1 went to the 2nd floor and fell asleep. During that time, Subject 1 began to act "strange," he became argumentative, and broke the front windows of the residence along with other objects. As a result, Subject 1 began to bleed. Shortly thereafter, Witness 6 yelled for Witness 1 to come down as Subject 1 was acting "crazy." Witness 1 attempted to gain control of Subject 1. Witness 6 then took her son across the street to a neighbor's home. Witness 6 then walked to a nearby gas station to purchase cigarettes. As she was exiting the gas station, she heard three gunshots, a short pause, and then three more gunshots. Witness 6 returned to the location of incident at which time she observed Subject 1 on the ground, and officers standing around him. Witness 6 did not witness the incident.

IPRA reviewed an **Electronic Recorded Interview (ERI)** of **Civilian 10**, which depicted Civilian 10 being interviewed by Assistant States Attorney (ASA) 1 and Detective A. The interview did not reveal any pertinent information, and Civilian 10 did not witness the incident. (Att. 106)

In an **interview with IPRA**, on January 7, 2016, **Police Officer B, #XXXXX**, stated that, on the December 26, 2015, he and his partner, Police Officer A, #XXXXX, were on routine patrol in the XX District. Officer B stated that he was working with Officer A because his regular partner was on furlough. Officer A was driving a brown unmarked Ford Explorer. The officers were in the vicinity of 104th and Wallace Street or Union Avenue when they heard a "battery in progress" call at XXXX W. 119th Place; response was assigned to another car. Officer A used the radio to announce that they would also respond and then drove to the vicinity of the incident.

Shortly before arriving on the scene, the officers encountered an unknown female sitting in a parked car on 103rd Place. The officers asked if she saw anything and the woman rolled down her window and said, "Up the street."

Officer B looked out of the vehicle windows for XXXX W. 103rd Place when he heard at least one (1) gunshot. Officer B looked towards the front of their vehicle and observed a black male, now identified as Subject 1, standing in the middle of the street about four to five houses away from them. Subject 1 was facing southbound towards a house and was yelling at someone. Officer B observed Subject 1 holding a black handgun and pointing it at the house he was facing. Subject 1 fired the weapon two (2) or three (3) more times. To his partner, Officer B uttered words to the effect of, "I can't believe that he's shooting right in front of us." Officer A stopped the vehicle.

Officer B exited the vehicle and moved to the north side of the street before realizing that there was no cover in that direction. Officer B moved back south towards the front of their police vehicle and sought cover by positioning himself in between parked cars. Officer B could no longer see Officer A. Subject 1 approached the house on the south side of the street. As he walked up to the fence of the residence, Officer B heard an unknown voice yell something and then heard the word, "Police." Subject 1 turned his body left to face east down the sidewalk. Officer B could only see Subject 1 from the chest up because vehicles were partially obstructing his view. Officer B could not see Subject 1's hands, and could no longer see Subject 1's firearm. According to Officer B, at no time after this did Subject 1 raise his hands or his arms above his head.

Within two seconds of hearing Officer A announce "police," Officer B heard several more gunshots and believed that Subject 1 was shooting. He then observed Officer A standing on the same sidewalk as Subject 1 and approximately three to four houses east of him. Officer A was in a shooting stance and discharging his weapon towards Subject 1. Officer B continued moving southbound, while taking cover, and making his way towards Officer A who was to his left and slightly in front of him. Subject 1 stayed standing in the same position when Officer A fired his weapon. After Officer A stopped shooting, Subject 1 took one step then fell to the ground along the fence where he had been standing.

Officer A handcuffed Subject 1 and Officer B secured Subject 1's weapon, a black handgun with an extended clip. Officer A then called for backup and an ambulance. Officer B stated that Officer A was near Subject 1 and kept telling him to "stay with us," and Subject 1 responded with "I'm trying." Subject 1's brother exited the residence and was apologizing to his brother. Officer B stated that someone inside the house kicked the glass out of a window in the front of the house after Subject 1's brother exited. After the incident, Officer B

stated that his lieutenant told him to wait in a car and he did so until detectives spoke with him. Officer B stated that he did not fire his weapon because he did not have a clear view and clear shot at Subject 1. (Atts. 64, 65)

In an **interview with IPRA** on January 26, 2016, **Officer A #XXXXX** stated that he and his partner, Officer B #XXXXX, were assigned to Beat XXXXX on December 26, 2015. Officer A was driving their police vehicle, an unmarked brown Ford Explorer. They were on routine patrol, near 104th Street and Wallace Street, when they heard a dispatch call of an assault or a disturbance in progress, with two subjects in the street and a vehicle blocking the street near the 1000 block of 103rd Place. Officer B informed dispatch that they would assist.

Officer A activated the vehicles emergency lights and began to drive towards the area. As they approached 103rd Place and Morgan Street, Officer A deactivated the emergency lights. They continued driving westbound on 103rd Place and encountered an unknown black female sitting in her vehicle. Officer A and Officer B asked the female about a possible disturbance in the area. She directed the officers to go further west on 103rd Place. Officer A stopped at a second vehicle, with an unknown elderly couple, who had no knowledge of the incident.

Officer A continued to drive westbound on 103rd Place when he observed an unknown black male, now known as Subject 1, approximately six to seven houses in distance from their vehicle. Subject 1 was observed walking towards the middle of the street, holding a black firearm, with an extended clip, in his right hand. Officer A observed Subject 1 stop in front of a house, now known to be XXXX W. 103rd Place, and turn his body towards the house facing southbound. Subject 1 stopped on the south sidewalk, raised the firearm towards the house and discharged his weapon one (1) to two (2) times.

Officer A continued to drive westbound past one or two more houses. He then stopped their vehicle, in the middle of the street, west of Subject 1. Officer A maintained observation of Subject 1 as he exited the driver's side, with his weapon drawn and walked towards the south sidewalk. Subject 1 did not see the officers at this time. Officer B exited the front passenger side of their vehicle.¹⁴ As Officer A stepped onto the sidewalk, he was approximately three houses east of where Subject 1 was standing.

According to Officer A, as he first approached the sidewalk he was looking for a tactical advantage to approach Subject 1 as Subject 1 had a firearm in his hand that the officer just witnessed him fire. The officer was unsuccessful in finding any cover. He then began to approach Subject 1. Officer A described that Subject 1 had his chest out towards the house and away from him and continued to hold out his firearm at waist level.

Officer A stated that he announced "Police" as he approached Subject 1. At that time, Subject 1 turned his body left, towards Officer A, who was still approximately three houses east of where Subject 1 was standing. As Subject 1 turned towards Officer A, Subject 1 continued to hold his firearm, at approximately waist level. According to Officer A, when Subject 1 turned in his direction, the weapon then appeared to be pointed in the direction of the officer.¹⁵ Officer A stated that he feared for his life, and discharged his firearm towards

¹⁴Officer A did not maintain observation of Officer A but believed he was north of him during the time of the incident.

¹⁵ Refer to page 21, lines 17-21 of Attachment #67.

Subject 1 eleven (11) times.¹⁶ Subject 1 remained standing in the same position as the officer discharged his weapon. It was not until after Officer A stopped discharging his weapon that Subject 1 then turned his body, dropped his firearm and then fell to the ground. Officer A confirmed that no more than a second passed between when he announced his presence and when he began to shoot.

Subject 1 was lying face down, against the front gate of XXXX W. 103rd Place, with his feet facing eastbound. Subject 1's firearm was on the ground approximately two to three feet from where Subject 1's feet laid. The firearm was secured by Officer B as Officer A handcuffed Subject 1. Officer A turned Subject 1 on his right side and attempted to keep him conscious by asking Subject 1 to speak to him and state his name. Civilians then began to approach the scene and Officer B drew his attention towards the crowd, and instructed them to keep their distance. Officer A then stood over the gun. Shortly thereafter, additional units and an ambulance arrived. Officer A stated that he did not have any other option to eliminate the threat that he faced by Subject 1, other than to discharge his weapon, because Subject 1 had a weapon and they were a short distance apart. (Atts. 66, 67)

The **Office of Emergency Management and Communication (OEMC) Event Queries and Radio Transmissions** were collected and made part of this case file. The following is a summary of the relevant audio recording entries:

- At 1331 hours, a female called 911 and requested police assistance and reported a man with a gun across from XXXXW. 103rd Place. A short time into the call, the caller screamed and the dispatcher confirmed the address as XXXX W. 103rd Place¹⁷ and asked for a description of the man with the gun. The caller screamed again and said, "Oh my god." The dispatcher asked the caller if someone had a gun and the caller repeatedly said yes. The dispatcher asked for a description of the man with the gun but the caller stated he "just ran."
- At 1334 hours, a female at XXXX W. 103rd was transferred to a Fire Department dispatcher and stated that there was a boy who had been shot and he was lying on the ground. The Fire Department dispatcher told the female that an ambulance was already on the scene.
- At 1333 hours, a female caller requested police assistance. The caller then stated "here they are, they're shooting, here they are, here they are, oh my lord." The caller abruptly ended the call.
- At 1336 hours, a male caller, who identified himself as Civilian 11, reported shots fired at 103rd and Aberdeen. The dispatcher asked how many shots Witness 11 heard and he answered "11 or 12."¹¹
- At 1336 hours, a female caller said, "Call an ambulance, please, listen, the police shot the guy [inaudible] is just laying here, someone just call the ambulance so he doesn't die in the street, please." The dispatcher asked for the location and the caller replied, "XXXX West 103rd Place."
- At 1337 hours, a male caller provided an address of XXXX W. 103rd Place. The caller stated that the police had just shot someone and added, "Another black guy." The dispatcher stated that the police and the fire department were on the scene already.

¹⁶ Officer A stated that he had ten (10) rounds in his magazine and (1) in the chamber. Upon discharging his firearm, he cleared his magazine. His firearm went into slide lock and he then released the magazine.

¹⁷Throughout the course of the investigation it was learned this caller was witness, Witness 5.

- At 1333 hours, a female caller reported that someone was shot at 103rd Place, but that she did not know who shot the victim.

Police Radio transmissions relevant to this incident begin with Beat XXXX being assigned to respond to a report of two men arguing at XXXX W. 103rd Place.¹⁸ Beat XXXXX stated that they would respond to the scene to assist instead. At approximately two minutes and seven seconds into the transmission, a male officer announced "shots fired by the police," identified himself as Beat XXXXX, and repeated "shots fired by the police." The dispatcher asked the officer for his location. The officer requested an ambulance and notified the dispatcher that a crowd was gathering. The officer requested an ambulance and repeatedly requested for additional units to respond. The dispatcher announced a "10-1"¹⁹ at 1019 W. 103rd Place and requested that the first unit to arrive on the scene advise the zone of that fact. The remaining radio transmissions did not include relevant information. (Atts. 55, 56)

According to the **Crime Scene Processing Report**, there were eleven (11) expended shell casings, described as "Winchester .45 auto fired cartridge cases" recovered from the parkway at XXXX W. 103rd Place from Officer A's weapon, a Glock model 30, .45 caliber. A loaded 9mm semi-automatic pistol, described as a Taurus, model PT111, serial #TZCO1212, with a black finish, and an extended magazine was recovered from the sidewalk in front of XXXX W. 103rd Place. This firearm was reported to belong to Subject 1. A bullet, described as a "Blazer 9m Luger" was jammed in the chamber entrance of the recovered Taurus. It was reported that seventeen (17) bullets, consisting of different ammunition, were recovered from the extended magazine belonging to the Taurus One (1) Blazer 9mm fired cartridge and one (1) R-P²⁰ 9mm unfired cartridge was recovered from the scene in front of 1041 W. 103rd Place. (Att. 41)

The **Crime Scene Photographs** depict the scene of the shooting from various angles. The photographs depict multiple pictures of the location of the incident and marked evidence to include but not limited to: a black semi-automatic pistol with an extended clip on the sidewalk in front of XXXX W. 103rd Place, multiple shell casings, the interior of XXXX W. 103rd Place; which showed broken glass and various drops of blood. (Att. 45)

The **Evidence Technician Video** of the scene of the incident was ten minutes in length and depicted several officers standing within and around the location of incident. The video depicted a view of the area of the incident. The video depicted evidence that was consistent with Crime Scene photographs. (Atts. 88, 89)

Illinois State Police (ISP) Forensic Science Laboratory Reports, Case # C16-XXXXXX, document the examination and results of DNA, and Latent and Ballistic evidence as tested and compared to submitted evidence.

Laboratory results dated March 31, 2016 document that the firearms tested were found to be in proper firing condition. It was documented that a total of eleven (11) fired cartridges, Exhibit #16, and one (1) fired bullet, Exhibit #14, were determined to be fired from Officer A's weapon.

¹⁸ This information is corroborated by PCAD event queries, attachment #29, which documents a female caller reporting two males arguing outside who appeared as if they were going to fight and there was a vehicle blocking the street.

¹⁹ Officer needs assistance.

²⁰ R-P is an abbreviation used in the Crime Scene Processing Report for ammunition manufacturer, Remington-Peters.

It was documented that one fired cartridge, described as a Blazer 9mm Luger under Exhibit #4, was determined to be fired from the Taurus PT11 1, serial #TZCO1212 which was recovered at the scene.

Laboratory results dated January 21, 2016, document that Exhibits #4, one (1) discharged cartridge case; Exhibit #6 - one (1) pistol and extended magazine, Exhibit #7 - one (1) live cartridge; Exhibit #8 — eight (8) live cartridges, Exhibit #9 — two (2) live cartridges, Exhibit #10 — one (1) live cartridge, Exhibit #11 — one (1) live cartridge, Exhibit #12 — five (5) live cartridges and, Exhibit #15 - one (1) live cartridge, revealed no latent impressions suitable for comparison.

Laboratory results dated January 05, 2017, document that blood swabs taken from the grip of the Taurus PT111, Exhibit #1, resulted in a finding of "blood indicated." However, the source of the sample was unknown and could not be determined without additional samples from the victim and suspect. (Atts. 103, 113)

The **Property Inventory Reports** document the evidence recovered relative to this incident. This includes Inventory Reports #13598377, #13598354, #13598165, #13598123, #13598115, #13598091, #13598090, #13598082, #13598045, #13598012, #13598010, #13598006, #13598004, #13598201, and #13598138. (Att. 27)

According to the **Arrest Report**, Subject 1 was arrested on December 26, 2015, at 1330 hours, at XXXX W. 103rd Place, and charged with one count each of Aggravated Assault- Firearm/Peace Officer, one count of Aggravated Discharge of a Firearm-Occupied Building, and one count of Unlawful Use of a Weapon (UW)-Possess/Carry/Conceal Weapon. (Att. 21)

According to the **Tactical Response Report (TRR)** completed by Officer A, Subject 1 did not follow verbal directions, was an imminent threat of battery, and used force with a weapon likely to cause death or great bodily harm. Officer A responded with member presence, verbal commands, and discharged his firearm. (Att. 24)

According to the **Officer's Battery Report (OBR)**, on the date, time, and location of the incident, Officer A was in uniform, in an unmarked vehicle, with one partner and responding to a call of a man with a gun. Subject 1 discharged his weapon into a residence and then pointed his weapon in the direction of Officer A. Officer A did not sustain any injuries. (Att. 25)

The **Chicago Fire Department Ambulance Report** documents that Subject 1 was found lying on his back and on the sidewalk. Subject 1 was verbally responsive to questions. The narrative further documented that Subject 1 appeared to have multiple gunshot wounds to his chest, left arm and right hand. Subject 1 denied any head or back pain. Subject 1 was transported to XX Hospital and escorted by CPD Beat XXXXX. (Att. 38)

Medical Records from XX Hospital indicate that Subject 1 was admitted on December 26, 2015 and discharged on January 20, 2016. Subject 1 was admitted with multiple gunshot wounds to chest, abdomen, hand, forearm, and back. Subject 1 had a blood alcohol level of 198 mg/dL at the time of admission. (Att. #58)

CPD Detective Supplementary Reports document field investigation progress reports, a canvass report, and a Cleared Closed (by Arrest and Prosecution of Subject 1) report.

The Detective Supplementary report titled, Cleared Closed (report date not shown), documents that Area South detectives attempted to interview Subject 1 on March 2, 2016, and that he refused to speak with detectives citing the advice of counsel. (Atts. 23, 102, 108-112)

CONCLUSION AND FINDING

Based on the totality of the circumstances, Officer A used reasonable force. It is more likely than not that Subject 1 presented an imminent threat of death or bodily harm to Officer A and his partner Officer B because Subject 1 had just committed an aggravated felony and then turned in the direction of Officer A with a loaded firearm in his hand. The use of deadly force by Officer A against Subject 1 was objectively reasonable and, therefore, within Department Policy as outlined by the Chicago Police Department's General Order 03-02-03, III; and the Illinois State statute. Officer A's use of force also complied with applicable constitutional standards.

Legal Standard

The applicable Chicago Police Department's General Order is 03-02-03, III, which states that a sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

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.

In addition, the use of deadly force is codified under 720 ILCS 5/7-5 (1986). The pertinent part of the statute states that:

...a peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person...

Finally, determinations regarding the potential use of excessive force in the course of an arrest, investigatory stop, or other seizure are properly analyzed under the Fourth Amendment's objective reasonableness standard. The question is whether the officer's actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. *Graham v. Connor*, 490 U.S. 386, 397 (1989); see *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The following factors are instructive in making the determination of whether an officer's use of force is reasonable: (1) "the severity of the crime at issue;" (2) "whether the suspect poses an immediate threat to the safety of the officers or others;" and (3) whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham*, 490 U.S. at 396 (citing *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985)). This reasonableness calculation 'must embody allowance for the fact that police officers are often forced to make split second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation." *Graham*, 490 U.S. at 396-97. Consequently, "when an officer believes that a suspect's actions

[place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force." *Muhammed v. City of Chicago*, 316 F.3d 380, 383 (7th Cir. 2002) (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir. 1988) (*en Banc*) (omitting emphasis)).

Analysis

There is preponderance of evidence showing that Officer A reasonably believed that deadly force was necessary to prevent Subject 1 from causing death or bodily harm to himself or others. First, it is uncontroverted that Subject 1 was armed and his demeanor leading up to the incident was agitated and violent. Second, Officer A observed Subject 1 fire his weapon at or into a residence, which is corroborated by the recovery of a spent shell casing linked to Subject 1's firearm. Third, Officer A described seeing Subject 1 turn toward him with the firearm in his hand, which is supported to some degree by other witnesses. Accordingly, Officer A's use of force was reasonable, and therefore, Within Department Policy.

1. Subject 1 was armed and his demeanor leading up to the incident was agitated and violent.

By all accounts, Subject 1's demeanor leading up to the incident ranged from merely agitated to violent. In summary, Subject 1's erratic behavior included, but was not limited to: his verbal and physical altercation with Witness 1, damaging property to the inside and outside of his home, and his aggressive and/or argumentative demeanor as described and witnessed by Witness 2, Witness 5, Witness 3 and Shatia Wilson. Subject 1's violent demeanor was clearly evident in that he retrieved, displayed, and discharged a firearm.

The fact that Subject 1 displayed violent behavior in the presence of others, including his own brother, in the moments preceding the shooting, is probative as to whether Officer A was reasonable in his belief that Subject 1 was a threat.

2. Subject 1 was armed, and the officer observed him discharge his weapon into a residence that was likely occupied.

Witness 1, Witness 5 and Witness 3 all observed Subject 1 handling a firearm in the front of his residence, at XXXX W. 103rd Place. Witness 1 stated that Subject 1 raised and pointed the firearm towards their residence while Witness 1 was standing on the front porch. It is corroborated by Witness 3's statement that Subject 1 pointed a firearm at the residence. In addition, Witness 5 stated that right before she entered her home to call the police, she observed Subject 1 in possession of a firearm in front of his residence.

Witness 1 stated that as he observed the police officers exiting their vehicle, he heard one gunshot, hit the ground and then heard several more gunshots. Although Witness 1 stated that he did not know who fired the first gunshot, he was clear that at the time of the first gunshot his focus was on the officers. Therefore, it is reasonable to believe that if it was an officer who shot first, Witness 1 would have observed the officer shoot his gun.

In addition, forensic evidence identified that one (1) fired cartridge was discharged from the Taurus PT111 pistol belonging to Subject 1. This evidence supports that it is more likely than not that Subject 1 discharged his firearm seconds before Officer A fired his weapon. Subject 1 was armed and threatened the life of Witness 1.

3. A reasonable officer under these circumstances would perceive Subject 1's turning toward the officer with a firearm in hand as a significant threat.

Regardless of whether it was the intent of Subject 1 to point a firearm towards the officer, it is reasonable to believe that when Subject 1 reacted to hearing Officer A announce his office, he turned to face the officer with the firearm in his hand. This is supported by Witness 3 and Officer A when they recalled Subject 1 moving in the direction of Officer A prior to him firing at Subject 1. The evidence does not indicate whether Subject 1 was actually pointing his firearm at Officer A,²¹ but it was reasonable for Officer A to believe that Subject 1 posed an immediate threat to him, his partner, and Witness 1, as Subject 1 turned in his direction with a loaded firearm. Officer A observed Subject 1 committing an aggravated felony by discharging his firearm towards a residence, which is corroborated by Officer A.

It is reasonable to believe that after Subject 1 pointed and discharged a handgun at his own home and towards his brother, Subject 1 was capable of pointing and discharging his gun towards Officer A. Subject 1 turned his body towards Officer A while holding his firearm. Officer A did not have time to explore other tactical options and it was reasonable under the circumstances for him to use deadly force. Subject 1's handgun was recovered.

Because Officer A's belief that Subject 1 presented an imminent threat to him, his partner, and other neighbors was objectively reasonable, Officer A was entitled to use deadly force against Subject 1. Additionally, IPRA finds that an officer with similar training and experience as Officer A would reasonably believe that Subject 1 posed an immediate threat of death or serious bodily harm. Accordingly, IPRA finds that the use of deadly force by Officer A was objectively reasonable as outlined by the Chicago Police Department's General Order 03-02-03, III; and the Illinois States statute. Officer A's use of force also complied with the Fourth Amendment.

²¹ Although Witness 3 stated that after Officer A commanded Subject 1 to lower his weapon, she observed Subject 1 raise his arms, there are no independent witnesses to support this information. In addition, Subject 1 refused to provide a statement.

