

TO: Chief Administrator
FROM: Investigator
DATE: May 11, 2017
REFERENCE: Log #1083127, U #16-23, RD# HZ-XXXXXX

INCIDENT

DATE/TIME: November 25, 2016 at approximately 12:25 a.m.

INITIAL

INCIDENT: Officers observed shots fired

LOCATION: XXXX W. Harrison Street, Chicago, Illinois XXXXX — vicinity of the XX Bar

INVOLVED

OFFICER #1: Officer A; Star #XXXXXX; Employee #XXXXXX; Unit XXX; Black Male; On-Duty - Plainclothes; Beat XXXXX; CPD Start Date: XX XXX XXXX

WEAPON: Glock model 17; 9mm semi-automatic pistol; Serial #TXV844; City Registration # XXXXXXXX; FOID #XXXXXXX four (4) times.

INJURIES: None reported

INVOLVED

OFFICER #2: Officer B; Star #XXXX; Employee #XXXXXX; Unit 011; White Male; On-Duty - Plainclothes; Beat XXXXX; CPD Start Date: XX XXX XXXX

WEAPON: Did not fire

INJURIES: None reported

INVOLVED

CIVILIAN: Subject 1; B/M; DOB: XX XXX XXXX; Address: XXXX S. California BLVD, Chicago, IL; IR#XXXXXXX

WEAPON: Keltec; .32 caliber semi-automatic pistol; 2 1/2 barrel length; gun magazine was empty and the capacity could not be determined

INJURIES: Gunshot wound to left cheek, through-and-through, with an exit to the neck, and a gunshot wound to the left side of chest - Fatal.

The gun magazine has a capacity of seventeen (17) rounds plus one in the chamber.

**CIVILIAN
VICTIMS**

Shot by Involved Civilian Subject 1

VICTIM #1: Civilian 2 Black Male; DOB: XX XXX XXXX; XXX Salem Square, Bolingbrook,
IR #XXXXXXX**INJURIES:** Gunshot wound to left leg, through-and-through, with an exit to the left leg, and a
gunshot wound to the left side of chest and and left buttocks - Fatal**VICTIM #2:** Civilian 2; Black Male; DOB: XX XXX XXXX; XXXX Truman, Hanover Park,
IR#XXXXXXX**INJURIES:** Gunshot wound to left forearm, through-and-through; Transported to XX Hospital
for medical treatment - Non-Fatal**SUMMARY OF INCIDENT**

On November 25, 2016 at approximately 12:25 a.m., CPD Officers B (driver) and A (passenger) were on routine patrol in an unmarked police vehicle when they observed the subject, Subject 1, fire a handgun at least two times at the victim, Civilian 1, near the XX Bar located at XXXX W. Harrison Street, and observed Civilian 1 collapse. After Officer A stopped the vehicle, Officers B and A exited and ordered Subject 1 to drop his gun. After Subject 1 reportedly ignored their orders, Officer A discharged his firearm several times, striking Subject 1.

Civilian 1 and Subject 1 died at the scene.

INVESTIGATION

IPRA obtained relevant video, forensic, and documentary evidence associated with this incident. Additionally, IPRA interviewed civilians who witnessed various aspects of this incident as well as what took place prior to this encounter and the two involved police officers. IPRA interviewed the following persons: civilian witnesses Civilian 3 and Civilian 2, and involved officers A and B.

The following are summaries of the relevant evidence obtained in this investigation:

Civilian Interviews

In an **interview with IPRA** on November 25, 2016, **Witness Civilian 3**, stated that she went to the XX, a bar located at XXXX W. Harrison Street, with her brother, Civilian 1, and Civilian 3's friend, Ken to celebrate Thanksgiving. Approximately 30 minutes after they arrived, Civilian 1 went outside to get a music CD from his car that he planned to give to his friend and that they hoped would be played in the bar that evening. While Civilian 1 was still outside, Civilian 3 heard Civilian 1 yelling at an unknown black male, now identified as Subject 1. At that point, Civilian 3 went outside to see what was going on. As she exited the front door of the bar, she observed Civilian 1 and Subject 1 arguing and pushing each other on the sidewalk near the front door entrance. Civilian 3 did not know or hear what they were arguing about, but she recalled attempting to get between them in an attempt to break-up the argument. As she did so, she heard Subject 1 say, "I kill niggers like this." Civilian 3 responded by saying, "Wait, wait, stop. Just stop." She then recalled seeing two bar security

guards trying to separate Civilian 1 and Subject 1. At that point, Civilian 3 recalled seeing, out of the corner of her eye, an unknown man wearing a gray coat hand Subject 1 a black gun. Civilian 3 was unable to describe the man in the gray coat because all she recalled seeing was his gray coat sleeve as he handed the gun to Subject 1. After Subject 1 had the gun in his hand, Civilian 3 observed him moving it forward in the direction of Civilian 1 and firing a shot. Civilian 3 believes that Subject 1's first shot struck the ground just outside XX bar. Civilian 3 then observed Civilian 1 begin to run away as Subject 1 chased after him, continuing to shoot. Civilian 3 ran after them and yelled, "Stop! Stop!" Civilian 3 recalled seeing Civilian 1 fall to the ground after Subject 1 fired his second shot. She then recalled Subject 1 shooting her brother, Civilian 1, once or twice more as he stood over Civilian 1.

Civilian 3 ran over to Civilian 1, lay on top of him, and started screaming. Civilian 3 did not pay attention to what Subject 1 was doing at that point. Civilian 3 then heard four more gunshots, but she did not know where the gunshots came from. Shortly thereafter, someone pulled Civilian 3 away from Civilian 1's body. She then recalled seeing police everywhere and Subject 1 lying on the ground. (Atts. 27, 76)

In an **interview with IPRA** on December 8, 2016, **Witness Civilian 2** stated that he arrived at XX bar between 9:00 or 10:00 p.m. on November 24, 2016 with his son, Civilian 4, his nephew, Civilian 5, and some other friends. Civilian 2 stepped outside the bar at one point and observed a security guard tell an unknown male, now identified as Civilian 1, that he could not bring alcohol (a bottle of Patron Tequila) into the bar because the bar sells alcohol. Shortly afterwards, a male that Civilian 2 knew by the nickname "CJ," now identified as Subject 1, exited the bar and told Civilian 1 also that he could not bring alcohol into the bar. Civilian 2 believes that Subject 1 may have been part of XX bar's security team. Civilian 2 then heard Civilian 1 say to Subject 1, "fuck you and fuck the police." Civilian 2 then heard Civilian 1 threaten Subject 1 by stating, "Man, I'll kill you nigger. You don't know who you fuckin' with." Civilian 1 then pushed Subject 1 in the face.

Civilian 2 attempted to get between Civilian 1 and Subject 1 and "begged" them to stop arguing. Civilian 2 recalled that other unknown individuals attempted to intervene in the argument as well. At some point, Civilian 2 noticed that Subject 1 had a gun. Civilian 2 does not know how Subject 1 received the gun, but believes that it had to be from someone who was outside at the time. Right after Civilian 2 saw the gun, Subject 1 raised the gun and started firing before he completely got the gun out. Subject 1 shot Civilian 2 in his left forearm. Civilian 2 believes that Subject 1 shot Civilian 2 by accident. Civilian 2 saw Civilian 1 take off running across the street with Subject 1 in pursuit. At that point, the police arrived and the officers observed Subject 1 shoot Civilian 1.

Civilian 2 does not specifically recall when or whether he heard the police instruct Subject 1 to drop the gun prior to them shooting Subject 1, and he does not know if Subject 1 dropped the gun before they shot. Civilian 2 explained that he was, "so stunned" as a result of being shot. Civilian 2 recalled "hearing somebody yellin' and stuff," and "eventually all I heard was shots." Civilian 2 also stated that he was under the influence the night of the incident, which played a role in his ability to clearly recall what happened. (Atts. 31, 77)

Police Officer Interviews

In an **interview with IPRA** on December 13, 2016, **Involved Shooting Officer A, #XXXXX**, stated that he and Officer B were on routine patrol in an unmarked police vehicle at the time of the officer-involved shooting incident on November 25, 2016. As they approached the intersection of Central Park Avenue and Congress Parkway, they heard approximately four to five gunshots fired in rapid succession.

Officer A went over the police radio and reported "shots fired." Officer A remained focused on trying to locate where the gunfire was coming from when he observed people running westbound on Harrison Street and southbound on Central Park Avenue. Officer A then observed a male who appeared to have been shot, now identified as Civilian 1, on the ground. He also observed another male, now identified as Subject 1, standing over Civilian 1 with a black gun in his right hand pointed downward at Civilian 1, who appeared motionless on the ground.

After Officer A stopped the police vehicle, Officer A exited with his weapon drawn and announced his office. Officer A instructed Subject 1 to drop his weapon twice. Officer A estimated that he was approximately five feet from Subject 1 at that point. Subject 1 did not comply with Officer A's instruction to drop the weapon. Instead, Subject 1 turned and started moving in the "opposite direction." Not knowing whether Subject 1 was going to fire at him or Officer A, Officer A discharged his firearm once,² and then three to four more times³ in rapid succession. Officer A did not see Subject 1 point his weapon at him or Officer A prior to discharging his weapon at Subject 1. Officer A explained that he considered Subject 1 a threat because Subject 1 still had the gun in his hand, and he "refused to drop his weapon." Officer A did not know whether Subject 1 was going to turn on him or his partner. Officer A estimated that Subject 1 was approximately 15 feet away from him when he fired his first shot at Subject 1. As Officer A discharged his firearm, Subject 1 took a few more steps and fell to the ground. Subject 1's gun fell out of his hands a few feet away from his body. Officer A approached Subject 1 and observed blood coming out of his mouth. (Atts. 38, 68)

In an **interview with IPRA** on December 13, 2016, **Involved Non-Shooting Officer B, #XXXX**, stated that on November 25, 2016, he and his partner, Officer A, were in plainclothes and traveling in an unmarked police vehicle when Officer A heard three to four gunshots. The shots were fired in rapid succession and came from the direction of the XX Bar, on the corner of Central Park Avenue and Harrison Street. Officer A announced, "shots fired" over the police radio. As Officer A drove in the direction of the gunshots, he observed approximately ten individuals running in different directions.

As Officer A scanned the area looking for someone with a gun, he observed a black male, now identified as Subject 1, point a black semi-automatic handgun at another black male, now identified as Civilian 1, and fire the weapon two to three times. Civilian 1 appeared to be moving away from Subject 1 as both individuals walked eastbound on Harrison Street. Officer A then saw Civilian 1 fall to the ground. Officer A turned left on Harrison Street and parked the vehicle in the middle of the street, approximately ten to fifteen feet away from Subject 1. Officer A, who was closer to Subject 1, exited the vehicle first. Officer A unholstered his firearm and exited the vehicle. Officer A then observed Subject 1 turn in Officer A's direction with the gun in one of his hands. Officer A noted that Subject 1 had just shot Civilian 1 and Officer A assumed that when Subject 1 turned he was going to run away. All that Officer A recalled having enough time to say was, "Police, drop the gun" before Officer A opened fire. Officer A explained that he was "kinda actively makin' a decision to shoot or not shoot" when that happened. Officer A was making sure it was safe to shoot from the position he was in. Officer A recalled that Officer A came to the front left side of their vehicle and, from Officer B's peripheral vision, he could see Officer A extend his arm. Officer A then heard three to four gunshots. Subject 1 dropped his gun, took approximately two steps, and fell face first to the ground. Officer A then announced "10-1" over the police radio and informed dispatch that both the shooter and the victim were down and they needed an ambulance. (Atts. 36, 67)

² Officer A explained that he slightly hesitated after he discharged his firearm once. Officer A stated there was no reason as to why he hesitated, and stated it was a very, very short pause between his first and second shot.

³ A Tactical Response Report (TRR) documents that Officer A fired his weapon four times.

Video & Audio Evidence

Video Surveillance Footage from XX Bar⁴ captures activity outside of the bar of the apparent argument between Subject 1 and Civilian 1 as well as Subject 1 firing a handgun multiple times. It also shows Subject 1 getting up from the ground and walking or running east down Harrison in the direction of Civilian 1 after he initially fired the weapon. The video does not show Civilian 1 or Civilian 2 being struck by Subject 1's gunfire, but it does show Civilian 2 running in front of the building shortly after Subject 1 fired the weapon and headed east down Harrison. Drops of blood are seen coming from Civilian 2's left arm area and onto the front sidewalk area as he passes under the video camera. (Att. 42)

Video Surveillance Footage from XX Store located at 3535 W. Harrison Street shows Subject 1 and Civilian 1 on foot walking or running east on Harrison Street. Subject 1 follows behind Civilian 1. An apparent flash from a muzzle is seen just prior to Civilian 1 falling to the ground. Officers B and A's vehicle comes into view just as Subject 1 follows Civilian 1, and it comes to a stop just after the muzzle flash and Civilian 1 falls to the ground. After Civilian 1 falls to the ground, Subject 1 is seen walking past him to the south as the officers exit their vehicle. Subject 1 then turns to his left and walks on a diagonal to the southeast as the officers move on foot in his direction. Subject 1 is then seen falling to the ground. (Att. 41)

Police Observation Device (POD) #7110's video shows a group of people running eastbound on Harrison Street. The unmarked police vehicle of Officers B and A is seen approaching the intersection of Central Avenue and Harrison Street as the group fled eastbound, and then it quickly turns east in direction of the group of people. Officer A is seen immediately exiting the passenger side of the vehicle after it comes to a stop and a level of activity takes place just east and south of that point, which is not clearly visible in the video. (Atts. 34, 40)

None of the in-car cameras from responding vehicles **captures** any **video** of either shooting. The responding officers were not equipped with body worn cameras. (Atts. 63-65, 87-98)

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

- **12:24:59 a.m.**, an individual called 911 to report that, while at home, the caller heard approximately five (5) gunshots, two different times, near the club located at the intersection of Central Park and Harrison. The caller reported seeing people running and shooting. As the caller was on the phone with 911, the caller reported that the police had arrived because the caller saw their lights.
- **12:25: 26 a.m.**, an individual called 911 to report that there was shooting inside the club at the XX Bar. The caller informed the 911 operator that the caller did not witness the shooting and that people (including the caller) were inside the bathroom of the club.
- **12:27:16 a.m.**, an individual called 911 but did not communicate directly with the operator. The operator brought CFD on the line and while on the line with the unknown caller the operator told CFD that it sounded as if the person said someone was shot. CFD informed the operator that they were on their way to Harrison and Central park.

⁴ The video is approximately 1 hour ahead of the actual time of day. Camera 415 captures what is summarized in this report.

⁵ The video is approximately 14 hours ahead of the actual time of day.

Police Radio transmissions document that on November 25, 2016, at approximately 12:24 a.m., BeatXXXXX reports, "Emergency, we have a shots fired at" before it cuts off and there is a pause. The dispatch asks XXXXX "Where ya at?" The next communication from XXXXX comes approximately 14 seconds after the initial call of shots fired. During this communication XXXXX reports, "10-1, Harrison and um Harrison and Central Park, we got a guy, 10-1 Emergency Now." After the dispatch operator announced the 10-1, XXXXX comes back on the radio approximately 25 seconds after ending his last call to announce, "You can slow it down. I believe we have one shooter and one victim, and me and my partner are fine though." Subsequently, three ambulances were requested to respond to the scene. (Atts. 23, 39)

Forensic Evidence

CPD Crime Scene Processing Reports 321282, 321285 and 321287 completed on November 25, 2016 document the evidence identified, collected, and inventoried in connection with this incident. A summary of that information is as follows:

The gun used by Subject 1 was a Keltec model P32, .32 caliber semi-automatic, 2 ½ inch barrel length, Inventory #13809152, was recovered on the pavement at 3558 W. Harrison Street. The gun magazine was empty and there was no bullet in the chamber. The evidence technicians did not make a determination on the magazine's capacity.

Officer A's gun, a Glock model 17, 9mm semi-automatic pistol, 4 ½ barrel, Inventory #13809184, was collected and inspected. There was a streamlight flashlight attached to the firearm. The gun magazine in the Glock had a seventeen (17) shot capacity and there were thirteen (13) WIN 9mm Luger + P caliber unfired cartridge cases removed from the magazine and one (1) WIN 9mm Luger + P caliber unfired cartridge case recovered from the chamber of the Glock.

Five (5) Remington 32 auto fired cartridge cases, Inventory #13809136, were recovered from the sidewalk at 3601-03 W. Harrison Street. Two (2) Remington 32 auto fired cartridge cases, Inventory #13809140, were recovered from the street pavement at 3559 W. Harrison Street. Four (4) WIN 9mm Luger + P fired cartridge cases, Inventory #13809141, were recovered from the street pavement at 3559 W. Harrison Street.

CPD evidence technicians administered gunshot residue (GSR) to the hands of Civilian 1 and Subject 1.⁶ (Att. 18, 20, 21)

Illinois State Police (ISP) Forensic Science Laboratory Reports dated February 9, 22 and March 8, 2017, document that the gun used by Subject 1 was a Keltec model P32, .32 caliber semi-automatic pistol, serial #120490, was operable. ISP also determined that the Remington 32 auto-fired cartridge cases, Inventory #13809136 and #13809140, and the two-fired bullets, previously recovered from inside Civilian 1's body, Inventory #13809187, were fired from that weapon. ISP did not find any latent impressions (fingerprints) suitable for comparison on the gun or magazine used by Subject 1. ISP entered the information related to the Remington 32 Auto fired cartridge cases into the Integrated Ballistics Identification System database but did not find any additional information through that search.

⁶ At the time of this report, the results for the gunshot residue kits have not been received. However, there is sufficient evidence based on the witnesses' accounts of the incident and video footage that shows Subject 1 did discharge several gunshots at Civilian 1.

ISP also examined Officer A's gun, a Glock model 17, 9mm semi-automatic pistol, serial #TXV844, and a gun magazine, and found that it was operable. They also determined that the four (4) Winchester 9mm Luger + P fired cartridge cases, Inventory #13809141, were fired from that weapon. The two metal projectiles,⁷ Inventory #13809160, previously extracted from Subject 1's body, could not be identified or eliminated as having been fired from the same firearm or Officer A's firearm. (Att. 80, 81, 83)

Evidence Technician Photographs and Video depict the scene and recovered evidence. (Atts. 50-58)

Alcohol, Tobacco, Firearms and Explosives National Tracing Center Report, Trace # T20160353521, documents that the handgun Subject 1 used was originally purchased in Arkansas in 2004 by Stella L. Wallace. No other information is known about the gun. (Att. 35)

Medical Reports

The **Office of the Medical Examiner (M.E.) Report of Postmortem Examination** for Subject 1, M.E. Case #2016 — 05653, by Medical Examiner 1, documents that Subject 1 had an entrance gunshot wound to his left cheek with an exit gunshot wound on the right side of his neck. A copper-colored jacketed, gray metal bullet fragment was recovered from the right side of his jaw. An examination of the skin surrounding the wound revealed no evidence of close-range firing.

A second entrance gunshot wound was noted on the left side of Subject 1's chest with no associated exit wound. A copper-colored jacketed, deformed, medium-caliber bullet was recovered. An examination of the skin surrounding the wound revealed no evidence of close-range firing. The report also noted superficial red abrasions of his anterior right knee and left side of his chest. The toxicology report documented that Subject 1 tested positive for ethanol (alcohol). The cause of death was multiple gunshot wounds and the manner of death was homicide. (Att. 79)

The **Office of the Medical Examiner (M.E.) Report of Postmortem Examination** for Civilian 1, M.E. Case #2016 — 05652, by Medical Examiner 2, documents that Civilian 1 sustained two penetrating gunshot wounds to the left side of his chest and to his left buttock with no exit wounds. Two (2) fired jacketed, gray metal projectiles were recovered from the wounds. Civilian 1 also sustained a perforating gunshot wound on the posterior of his left leg with an exit wound on his lateral left leg. The toxicology report documented that Civilian 1 tested positive for ethanol (alcohol). The cause of death was multiple gunshot wounds and the manner of death was homicide. (Att. 82)

A **Chicago Fire Department Ambulance Reports** document that Ambulance 95 arrived at the scene at 00:31:45, Ambulance 33 at 00:35:53, and Ambulance 64 at 00:37:07. The reported actions taken on scene were to provide patient care and investigate. They reported three individuals shot with two dead at the scene. Ambulances 95 and 64 remained at the scene to handle the two deceased individuals. Paramedics from Ambulance 33 treated the victim, who sustained a single gunshot wound to the left forearm. The victim was transported to XX Hospital. (Atts. 86)

Medical Records from XX Hospital document that on November 25, 2016, Civilian 2 received treatment for a gunshot wound to his left forearm. (Att.78)

⁷ The ISP Forensic Science Laboratory Report documented that one of the projectiles was a fired bullet jacket fragment and the other projectile was a fired bullet.

Other Documentary Evidence

CPD Detectives Supplementary Report, Progress-Line Up, documents that victim Civilian 2 viewed a photo lineup and identified Subject 1 as the person who shot him. (Att. 84)

An **Original Case Incident Report**, RD# XXXXXX, completed by Officer C, #XXXXXX, for Homicide — First Degree Murder, Battery — Aggravated: Handgun, and Assault — Aggravated: Handgun, documents that the offender, Subject 1, fired a handgun at the victim, Civilian 1, on the street causing a fatal injury to Civilian 1. (Att. 10)

A **Tactical Response Report (TRR)** completed by **Officer A** documents that Subject 1 did not follow verbal direction, presented an imminent threat of battery, and used force likely to cause death or great bodily harm by walking in the direction of the officers with a gun in his hand "immediately after murdering a victim," now identified as Civilian 1. Officer A responded with member's presence, verbal commands, and the discharge of his firearm. Officer A discharged his firearm four (4) times. (Att. 11)

A **Tactical Response Report (TRR)** completed by **Officer A** documents that Subject 1 did not follow verbal direction, presented an imminent threat of battery, and used force likely to cause death or great bodily harm. Officer A responded with member's presence and verbal commands. Officer A did not discharge his firearm. (Att. 13)

The **Officer's Battery Report (OBR)** completed by Officer A documents that he was responding to a man with a gun on 25 November 2016, at approximately 0025 hours, in the vicinity of XXXX W. Harrison Street. The subject, Subject 1, walked toward Officer A's partner with a gun in hand, immediately after murdering a victim, Civilian 1. Officer A did not sustain any injuries. (Att. 12)

The **Officer's Battery Report (OBR)** completed by Officer A documents he was responding to a man with a gun on 25 November 2016, at approximately 0025 hours, in the vicinity of XXXX W. Harrison Street. The subject, Subject 1, walked in the direction of Officer A with a gun in hand after shooting the victim, Civilian 1. Officer A did not sustain any injuries. (Att. 14)

CPD's Bureau of Internal Affairs conducted an **alcohol and drug test** of involved Officer A on November 25, 2016 beginning at 0450 hours. The collective bargaining agreement and policy of CPD requires those involved in a firearms discharge incident to under testing for the presence of alcohol and drugs. The tests came back negative. (Att. 25)

IPRA Preliminary Report and the **CPD's Major Incident Notification (MIN) Report** contains information identified and obtained in the preliminary stages of the investigation. (Atts. 4, 59)

CONCLUSION AND FINDING

Based on the totality of the circumstances, Officer A's use of deadly force against Subject 1 was objectively reasonable, and therefore, Within Department Policy. A preponderance of evidence demonstrates that Subject 1 presented an imminent threat of death or great bodily harm to Officer A and his partner Officer A because Subject 1 had just shot Civilian 1, declined to drop his gun when ordered by Officers A and B, and then turned in the direction that put him closer to Officer A just before he was shot by Officer A. As such, 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 bane*) (omitting emphasis)).

Analysis

There is a 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 shot both Civilian 1 and Civilian 2 in view of Officers A and B and other witnesses who were at or near the XX Bar when the incident occurred. Second, after Officers A and B witnessed Subject 1's actions, they immediately exited their vehicle and ordered Subject 1 to drop the gun, which he failed to do. Third, Officer A described seeing Subject 1 subsequently turn in a direction that left Officers Page and James in a potential position of being shot by Subject 1,⁸ which is also supported by the video footage of Subject 1 after Subject 1 shoots Civilian 1. Accordingly, Officer A's use of force was reasonable, and therefore, Within Department Policy.

1. Subject 1 was armed and shot another individual multiple times in front of CPD Officers and other witnesses:

Eyewitness accounts, video footage, medical reports, and forensic evidence all support that Subject 1 shot Civilian 1 multiple times, which resulted in Civilian 1's death and injury to Civilian 2. Subject 1 did so without regard to anyone who happened to be in his line of fire when he started shooting, which is evident by the gunshot wound sustained at the hands of Subject 1 when Civilian 2 attempted to intervene in the verbal argument between Subject 1 and Civilian 1. In addition, after Subject 1 initially fired at Civilian 1 and hit Civilian 2 instead, Subject 1 pursued Civilian 1 on foot and shot him multiple times before Civilian 1 fell to the ground.

The fact that Subject 1 displayed this violent behavior in the presence of others, including Officers A and B, in the moments preceding his being shot by the police, is probative as to whether Officer A was reasonable in his belief that Subject 1 was a threat.

2. Subject 1 failed to drop his gun after being ordered to do so by Officers A and B:

Officers A and B reported ordering Subject 1 to drop his gun after the exited their vehicle following Subject 1's shooting of Civilian 1. Officer A specifically recalled announcing his office and then directing Subject 1 to drop the gun twice. In addition to the officers reporting having made their verbal orders to Subject 1, Civilian 2 recalled hearing the officer tell Subject 1 to drop the gun before they shot him. Moreover, when viewing the video from XX Store, it is clear that Subject 1 is still standing and walking for a period of time after the officers exit their vehicle. Subject 1's continued movement supports that Officer A waited prior to discharging his weapon at Subject 1 after Subject 1 is seen changing directions and walking closer to where Officer A was positioned. The period after the

(See e.g. *Montoute v. Carr*, 114 F.3d 181, 185 (11th Cir.1997) (holding that at least where orders to drop the weapon have gone unheeded, an officer is not required to wait until an armed and dangerous felon has drawn a bead on the officer or others before using deadly force.); *Leong v. City of Detroit*, 151 F.Supp.2d 858 (E.D.Mich.2001) (holding that regardless of whether the suspect actually pointed his gun at the officers, or instead remained with his back turned, he was quite capable of leveling this weapon at an officer or bystander and inflicting severe injury or death in an instant and therefore the use of deadly force was permitted; *Anderson v. Russell*, 247 F.3d 125 (4th Cir.2001) (holding that an officer does not have to wait until a gun is pointed at the officer before the officer is entitled to take action.)

officers exit their vehicle and before Officer A discharges his weapon at Subject 1 is most likely the period when the officers ordered Subject 1 to drop his weapon and he failed to comply.

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

Regardless of whether Subject 1 was intent on turning the gun on Officers A or B when he failed to drop his weapon and moved in a direction that put him closer to Officer A, it is reasonable to believe that Officer A perceived that Subject 1's movements presented an immediate threat when he discharged his weapon at Subject 1.

Because Officer A reasonably believed that Subject 1 presented an imminent threat to himself, Officer A and others, Officer A was entitled to use deadly force against Subject 1. The evidence clearly shows that an officer with similar training and experience would reasonably believe that Subject 1 posed an immediate threat of death or serious bodily harm to the officers and the public. Accordingly, Officer A's use of deadly force was objectively reasonable 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 the Fourth Amendment.