

TO: Deputy Chief Administrator
Civilian Office of Police Accountability

FROM: Investigator 1

SUBJECT: Log #1074736
U #15-06

REFERENCE: RD# XXXXX-XXX(Aggravated Battery: Handgun)
RD# XXXXX-XXX(Justifiable Homicide)

DATE/TIME: 17 April 2015, 2253 hours

INVOLVED

OFFICER #1: Officer A; Chicago Police Officer, Star #XXXX; Unit XXX; white male; employee #XXXXXX; DOB: 20 March 19XX; DOA: 05 October 2012; On duty; Uniformed; Beat XXXXX.

OFFICER #1's

WEAPON: Smith & Wesson, Model MP; 9mm semi-automatic pistol; Serial #XXXXXXXX; City Registration #XXXXXXXXXX; FOID #XXXXXXXXXX; Winchester 9mm Luger +P ammunition; 16 live rounds recovered from firearm; weapon capacity of 18 rounds; Fired two (2) times.

OFFICER #1's

INJURIES: None reported

INVOLVED

OFFICER #2: Officer B; Chicago Police Officer; Star #XXXXXX; Unit 003; white male; Employee #XXXXXX; DOB: 21 July 19XX; DOA: 01 August 2012; On duty; Uniformed; Beat XXXXX.

OFFICER #2's

WEAPON: Did not fire.

OFFICER #2's

INJURIES: None Reported.

SUBJECT: Subject 1; Black male; DOB: 12 September 19XX; XXXX S. Elizabeth Street, Chicago, IL; IR #XXXXXX.

SUBJECT'S**INJURIES:** One (1) gunshot wound to the right side of his back/flank.**SUBJECT'S****WEAPON:** Smith & Wesson, Model SW9VE; 9mm semi-automatic pistol; Serial #XXXXXXX; two-tone chrome over black**DATE/TIME:** 17 April 2015 / approximately 2253 hours.**LOCATION:** XXXX E. 74th Street (sidewalk)
Beat XXXX**SUMMARY OF INCIDENT:**

On 17 April 2015, Officer B and Officer A were traveling west on 71st Street in their marked Chicago Police SUV. Officer B was driving and Officer A was the passenger. After the officers crossed Paxton Avenue they heard several gunshots nearby. The officers made a U-turn and drove east on 71st Street. The officers crossed Paxton Avenue and heard several more gunshots. Officer B then made a three-point turn, positioning their vehicle to travel north on Paxton Avenue, at which time they heard more gunshots. Officer A saw muzzle flashes originating from an individual on the XXXXX block of south Paxton.

Immediately after seeing the muzzle flashes, the officers observed a mini-van driving south on Paxton Avenue at a high rate of speed. The mini-van drove past Officer B and Officer A, who were still in their SUV, on Paxton Avenue. The officers pursued the mini-van south on Paxton Avenue to 73rd Street, where the van proceeded west and then south in the first alley after Paxton Avenue. The officers continued their pursuit and near the mouth of the alley at 74th Street the van slowed down. The mini-van's sliding passenger-side door opened and Subject 1 exited the van holding a semi-automatic handgun, running west on the north sidewalk of 74th Street.

The officers drove out of the alley and continued to follow the van west on 74th Street. As they did, the officers also found themselves driving behind Subject 1, traveling in the same direction, as he fled down the sidewalk. The officers saw that Subject 1 was still holding a handgun in his right hand. As the officers drove closer, Officer A repeatedly ordered Subject 1 to stop and drop his gun. Subject 1 turned and pointed his handgun at the officers. Officer A, who was still seated in the passenger seat of the marked CPD vehicle, discharged his firearm twice at Subject 1. Subject 1 was struck and fell to the sidewalk. Officer B stopped their vehicle near the intersection of XXXX S. Merrill Avenue, at which time Officer A exited and ran back to where Subject 1 had fell as Officer B continued west on 74th Street in pursuit of the van. Officer A found that Subject 1 had crawled away

from the sidewalk onto the street, where he then stopped. Officer A also observed Subject 1's handgun, which was lying on the sidewalk where he initially fell. Moments later, Officer B returned to assist Officer A. The occupants of the mini-van escaped.

Two expended cartridge casings were observed near the north side of 74th Street, west of the alley between Paxton and Merrill Avenues. The chrome and black, semi-automatic handgun that Subject 1 had in his possession was recovered from the sidewalk at approximately XXXX E. 74th Street. OCIC 1 reported that none of the responding officers touched or handled Subject 1's handgun, and that it would be recovered from the sidewalk where Subject 1 dropped it. Officers were assigned to stand guard over the pistol until forensics could arrive and process the scene. Subject 1 was observed to be wearing one black glove on his right hand.

Throughout the incident Officer B and Officer A made notifications of hearing gunshots; the vehicle pursuit; the shots fired by Officer A; and requested an ambulance for Subject 1. During the pursuit, the officers radioed OEMC the mini-van's license plate and were informed that it was reported stolen.

APPLICABLE RULES:

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

INVESTIGATION:

General Offense Case Report (RD# XXXXXXXXXX/ Aggravated Battery: Handgun) stated that Officers Officer A and Officer B were on patrol in the area of XXXX S. Paxton Avenue. The officers were traveling west on 71st Street when they heard loud gunshots in their immediate vicinity. The officers, in full uniform and in a marked police vehicle, performed a U-turn on 71st Street and drove east toward Paxton Avenue. The officers then heard five more gunshots and saw muzzle flashes and commotion from a silver mini-van stopped on the XXXX block of South Paxton Avenue.¹ The mini-van subsequently fled south on Paxton Avenue, crossing 71st Street directly in front of Officers Officer A and Officer B, who pursued the vehicle. Officers Officer A and Officer B followed the mini-van first south on Paxton Avenue, then west on 73rd Street, then then south through the alley west of Paxton Avenue. Midway through the alley the officers noticed the mini-van's rear passenger sliding door open. When the mini-van reached XXXX S. Merrill, a male² holding a handgun in his right hand exited the mini-van from the sliding door. Subject 1 then ran west on the sidewalk on the north side of 74th Street. The mini-van exited the alley and drove west on 74th Street followed by Officers Officer A and Officer B. Officer A, seated in the front passenger seat of the police vehicle, announced his office and ordered Subject 1 to stop and drop his handgun. Subject 1 turned toward Officers Officer A and Officer B and raised his firearm at them. From his seated position Officer A discharged his firearm twice at Subject 1, striking him on his chin and on

¹ It should be noted that around that time, an individual by the name of Civilian 1 had been shot at XXXX S. Paxton, sustaining a gunshot wound to his left shoulder.

² Now known to be Subject 1.

the right side of his back. Subject 1 fell to the ground at XXXX E. 74th Street. Officer A exited the police vehicle once it reached Merrill Avenue to apprehend Subject 1 while Officer B continued the pursuit of the mini-van. Officer A found Subject 1 lying in the street. Subject 1 was handcuffed and his firearm was found on the ground at XXXX E. 74th Street. Officer B stopped following the mini-van at Jeffery Avenue and went back to assist Officer A. Subject 1 succumbed to his wounds and was pronounced on the scene by Medical Examiner Investigator 1 on 17 April 2015, at 0140 hours. (Att. 6)

The Detective's Supplemental Report (**RD# XXXXXX-XXX/ Justifiable Homicide**) documents that Civilian 1 told detectives he was sitting in the front yard at XXXX S. Paxton Avenue with his brother, Civilian 2, his friend, Civilian 3, and two other unknown male subjects. Civilian 1 stated that a silver van pulled up and the passenger side sliding door opened. A male black subject emerged from the van and stated, "What's that shit now." The male black subject then repeatedly fired a handgun at Civilian 1 and his companions. Civilian 1 immediately felt pain in his left shoulder. Civilian 1 ran to the rear of a neighbor's home. Civilian 1 knocked on Civilian 4's door and told him he had been shot. Civilian 4 called an ambulance for Civilian 1, who was subsequently transported to Jackson Park Hospital.

The Detective's Supplemental Report (**RD# XXXXXX-XXX/ Justifiable Homicide**) documents that Officer A told detectives that he and his partner, Officer B, were assigned to a violence suppression mission. Officer A was the passenger in the vehicle driven by Officer B. The officers were traveling west on 71st Street, near Paxton Avenue, when Officer A heard three gunshots that seemed to come from nearby. Officer B performed a U-turn across the railroad tracks on 71st Street and Merrill Avenue. As the officers drove east across Paxton Avenue, Officer A heard several more gunshots and realized that the gunshots were coming from Paxton Avenue. Officer B performed another U-Turn and when Officer A looked north on Paxton Avenue he saw frantic movement near a silver mini-van. Officer A then heard several more gunshots and saw muzzle flashes at the side of the silver mini-van. The mini-van then drove south on Paxton Avenue and across 71st Street, passing directly in front of the officers' vehicle. Officer B and Officer A pursued the mini-van south on Paxton Avenue from 71st Street. Officer A radioed the van's license plate number and direction of flight. The mini-van turned west on 73rd Street and then south in the alley between Paxton and Merrill Avenues, followed by Officer B and Officer A. Officer A saw the van's sliding side door open and saw the van briefly stop near the mouth of the alley near 74th Street.

Officer A stated that he saw Subject 1 exit the van through the opened sliding door, while holding a handgun in his right hand. Subject 1 ran west on the north sidewalk of 74th Street while the van drove west on 74th Street. Officer B and Officer A continued to follow the van west on 74th Street after exiting the alley. Officer A stated that he loudly and repeatedly ordered Subject 1, "Stop! Police! Drop the gun!" Officer A explained that Subject 1 was approximately 30 feet to the northwest of the officers' vehicle. Officer A stated that Subject 1 turned back over his right shoulder and pointed his gun in the officers' direction. Officer A stated that he fired his firearm twice at Subject 1, who fell in the grass at approximately XXXX E. 74th Street. Officer A exited the police vehicle near XXXX S. Merrill Avenue and ran to where Subject 1 fell, while Officer B continued to

pursue the van west on 74th Street. Officer A found Subject 1 lying in the middle of the street. Officer A radioed that shots had been fired by police and requested EMS for Subject 1. Beat XXXXX arrived shortly after and assisted in handcuffing Subject 1. Officer A observed Subject 1's handgun on the sidewalk at XXXX E. 74th Street, which was the same location where Subject 1 pointed his gun at the officers when Officer A fired at him.

The Detective's Supplemental Report (**RD# XXXXXX-XXX/ Justifiable Homicide**) reported that Officer B related essentially the same information to detectives as Officer A. Officer B stated that after hearing the gunshots and performing a U-turn on 71st Street, Officer A told him that he saw muzzle flashes near a mini-van in the middle of the XXXXX block of south Paxton Avenue. Officer B stated that the mini-van drove south on Paxton Avenue at a high rate of speed. Officer B related that he saw at least three occupants in the mini-van as they pursued it south on Paxton Avenue. Officer B followed the van south on Paxton Avenue, then west on 73rd Street, and then south in the alley between Paxton and Merrill Avenues. Officer B observed that the sliding door on the van's passenger side was opened, causing him to believe that the occupants were preparing to flee on foot. Officer B also added that dispatcher relayed to them that the van was reported stolen.

Officer B told the detectives that the van slowed down as it neared the alley's exit at 74th Street. Officer B saw Subject 1 exit the van through the opened sliding door and run west on the north sidewalk of 74th Street. Officer B saw Subject 1 holding a handgun in his right hand after he exited the van. As Officer B followed the van out of the alley and west on 74th Street, he intermittently focused his attention on the van and on Subject 1, who was running on the sidewalk. Officer B heard Officer A state words to the effect, "stop, Chicago police, drop the weapon." Officer B stated that he saw Subject 1 point his handgun in their direction, and that Officer A discharged his firearm at Subject 1 from the front passenger seat of the still-moving police vehicle. Officer B stated that Officer A fired twice at Subject 1, who immediately fell to the ground. Officer B stated that he stopped the vehicle near XXXX S. Merrill Avenue and Officer A exited the police vehicle to apprehend Subject 1. Officer B then continued to pursue the van. Officer B stated that once he reached Jeffery Avenue he decided to stop pursuing the van and to return to assist Officer A. Officer B stated that when he reached Officer A, he observed that Subject 1 was handcuffed in the street. Subject 1's handgun was lying on the sidewalk at approximately XXXX E. 74th Street. Other police units were also on-scene.

The Detective's Supplemental Report (**RD# XXXXXX-XXX/ Justifiable Homicide**) reported that Officer C informed detectives that he and his partner, Officer D, responded to the police chase in the vicinity of XXXX S. Merrill Avenue. Officer C stated that when they arrived he saw Subject 1 lying face down in the street at approximately XXXX E. 74th Street. Officer C assisted Officer A with handcuffing Subject 1. Afterwards, Officers C and D were assigned to guard Subject 1's weapon that was still on the sidewalk. Officers D and C did not witness the shooting involving Officer A and Subject 1.

The Detective's Supplemental Report (**RD# XXXXXX-XXX/ Justifiable Homicide**) reported that Officer E told detectives that he and his partner, Officer F, were flagged down by

Civilian 5, who told them that a van crashed near his property and that the van's engine was still running. Officers E and F found the mini-van in the rear of XXXX S. Jeffery Avenue. A check of the van's license plate confirmed it was the same van involved in the shooting on Paxton Avenue that Officer B and Officer A had pursued.

The Detective's Supplemental Report (**RD# XXXXXX-XXX/ Justifiable Homicide**) reported that Civilian 5 identified himself as Subject 1's stepfather. Civilian 5 stated that he learned from his daughter, Civilian 6, that Subject 1 had been shot by the police. A person named "XXXX" had told Civilian 6 that Subject 1 had been shot.

The Detective's Supplemental Report (**RD# XXXXXX-XXX/ Justifiable Homicide**) reported that Civilian 6 informed detectives that she received a telephone call from a man named "XXXX" who told her that the police shot Subject 1. Civilian 6 provided the detectives with "XXXX's" cell phone number. (Att. 100)

Civilian 1 refused to cooperate with this investigation. (Att. 38)

Attempts to contact "XXXX" in furtherance of this investigation were unsuccessful. (Att. 101)

Although numerous citizens telephoned 911 regarding hearing gunshots, none of the **911 Callers** witnessed the incident and were unable provide any additional information relative to this investigation. (Atts. 25, 39, 40)

Officer A's **Tactical Response Report (TRR)** classified Subject 1 as an Assailant using force likely to cause death or great bodily harm with a weapon. The report indicates that Officer A discharged his firearm twice at Subject 1 after Subject 1 pointed a handgun at him. (Att. 8)

Officer B's **Tactical Response Report (TRR)** classified Subject 1 as an Assailant using force likely to cause death or great bodily harm with a weapon. The report indicates that Subject 1 pointed a handgun at Officer B. (Att. 10)

A search revealed that no **Police Observation Devices (POD's)** were in the immediate area and therefore no device captured this incident. (Att. 16)

The vehicle assigned to Officer Band Officer A was equipped with an **in-car camera**, but it was not functional and did not record this incident. The CPD's Record Division Services Report indicated that no video was located based on the information provided. (Atts. 4, 95)

The **Chicago Fire Department's Ambulance Report** documents that on 17 April 2015, at 2254 hours, Ambulance #55 was dispatched to XXXX S. Paxton Avenue regarding a gunshot victim. Ambulance #55 arrived at the aforementioned location at 2301 hours and found Civilian 2 suffering from a gunshot wound to his left shoulder. There was an entrance wound and no exit wound.

Civilian 1 told CFD Personnel that he had been sitting on the front porch when an unknown person drove by and started shooting. Civilian 1 told EMS he heard 6-7 gunshots. At 2306 hours Ambulance #55 departed the scene and transported Civilian 1 to Jackson Park Hospital. (Att. 24)

During a **Canvass on 18 April 2015**, IPRA Investigators spoke with Civilian 7³, who stated that she was reading in bed when she heard the sound of squealing tires. A moment later, she heard an unidentified person repeatedly yelling, "Get your hands up!" Civilian 7 then heard three gunshots in quick succession. Civilian 7 first checked on her infant daughter and then looked out her window and saw a person lying on the north side of the street, near the alley between Merrill and Paxton Avenues. Numerous police officers began to arrive on the scene. (Att. 18)

A **Canvass on 19 April 2015** did not produce any eyewitnesses or relevant information. (Atts. 19, 20)

A **Canvass on 23 April 2015** did not produce any eyewitnesses or relevant information. (Att. 33)

An Illinois State Police Division of Forensic Services report, dated 28 May 2015, indicates that the examination of Subject 1's handgun, the magazine, and the live cartridges, recovered from the sidewalk at XXXX W. 74th Street, did not reveal any latent prints suitable for comparison⁴. (Att. 41)

An Illinois State Police Division of Forensic Services report, dated 14 May 2015, indicates that Officer A's handgun was examined and determined to be functioning properly. One fired bullet, which had been recovered by the Medical Examiner during Subject 1's Post Mortem Examination, and two of the recovered cartridge casings were examined and determined to have been fired from Officer A's weapon.

It was also determined that four of the cartridge casings recovered from the street in front of XXXX S. Paxton were fired from an unknown firearm. (Att. 43)

An Illinois State Police Division of Forensic Services report, dated 27 May 2015, indicates that seven of the cartridge casings recovered from the street at approximately XXXX S. Paxton Avenue were fired from Subject 1's handgun. Subject 1's handgun was found to contain four unfired cartridges in the magazine and one unfired cartridge in the chamber. (Att. 45)

An Illinois State Police Division of Forensic Services report, dated 17 May 2015, indicates that both of Subject 1's hands were examined for the presence of primer gunshot residue (PGSR) particles. The results of that examination show that Subject 1 may not have discharged a firearm with either hand; or, if he did discharge a firearm, then the particles were not deposited, were

3 Civilian 7's address: XXXX S. Merrill Avenue.

4 ET Photos taken at the scene show that Subject 1 was wearing a black glove on his right hand and his left hand was gloveless.

removed by subsequent activity, or were not detected by the procedure. Subject 1's glove, which was removed from his right hand at the Medical Examiner's Office, was also examined for PGSR, and the results of that examination indicated that the glove did have contact with an item bearing PGSR or had been in the environment of a discharged firearm. (Att. 96)

An Illinois State Police Division of Forensic Services report, dated 18 June 2015, indicates that none of the suitable latent print impressions recovered from the Dodge van revealed a comparison to Subject 1. (Att. 55)

The **Office of the Medical Examiner's Postmortem Examination** of Subject 1 shows that he had been shot one time, with an entrance wound to the right side of his mid-back. The path of the gunshot wound was oriented from back to front, right to left, and upward. There was no exit wound. The fired bullet was recovered from the skeletal muscle of the midline of the anterior chest. Soot, unburned gunpowder particles, or gunpowder stippling were not seen on the skin surrounding the wound or on the clothing near the entrance wound. Subject 1 also suffered an abrasion to the left side of his face, his left arm and hand, and his right knee; as well as lacerations to his chin and left hand⁵. It was the opinion of the Medical Examiner that the gunshot wound to Subject 1's back caused his death. The results of Subject 1's toxicology examination indicated that his blood was positive for ethanol (30 mg/dl) and marijuana (20.4 ng/ml). (Att. 93)

In a statement to IPRA on 20 April 2016, **Officer A** stated that on the night of the incident he was working with his regular partner, Officer B. Officer A stated that they were both in uniform and assigned a marked police vehicle. Officer A stated that just prior to this incident he and Officer B were traveling west on 71st Street approaching Paxton Avenue. Officer A stated that he heard three gunshots nearby. Officer B radioed dispatch that he heard gunshots, and told Officer A that he saw someone to the south of them. Officer B drove west across Paxton Avenue, performed a U-turn, and drove east on 71st Street intending to investigate the person he had seen.

As they approached Paxton Avenue again, Officer A heard several more gunshots and saw muzzle flashes coming from the XXXXX block of South Paxton Avenue. Officer A stated that Officer B radioed the location of the gunshots. Officer A stated that he saw commotion near a mini-van, located about a third of the way down the block, and then saw the mini-van driving at a high rate of speed south on Paxton Avenue. The mini-van drove south across 71st Street directly in front of the officers. With their vehicle's emergency equipment activated, Officers Officer A and Officer B pursued the minivan south on Paxton Avenue, then west on 73rd Street, and then south in the first alley west of Paxton Avenue.

Officer A stated that as they drove south in the alley, the mini-van slowed down and the sliding door on the mini-van's passenger side opened. Officer A believed that one of the occupants was about to exit the mini-van and flee on foot. Just before the mini-van reached 74th Street, Subject 1, exited through the open sliding door. Officer A stated that he saw Subject 1 holding a semi-

⁵ All consistent with his falling after being shot.

automatic handgun in his right hand. Subject 1 proceeded to run west on the sidewalk on the north side of 74th Street. Officer A and Officer B followed the mini-van as it exited the alley and drove west on 74th Street. Officer A stated that he yelled from the police vehicle at Subject 1 to stop and to drop his handgun.

Officer A explained that as Subject 1 continued to move west on the sidewalk he turned his upper body in a clockwise direction and pointed his handgun at the officers. Officer A stated that at that point he felt that his life and that of his partner were in danger and he, while still seated inside the moving police vehicle, discharged his firearm twice at Subject 1.⁶ Officer A stated that after he discharged his weapon, Subject 1 immediately fell to the ground.

Officer A explained that Officer B stopped their vehicle once it reached Merrill Avenue, at which time he exited and ran back towards where Subject 1 had fallen. Officer A found that Subject 1 had moved from where he had originally fell, to the middle of the street. Officer A stated that Subject 1 was “layin’ there, but he’s still moving a lil bit.”⁷ Officer A added that Subject 1 was also, “Just kind of moaning.”⁸ Additional officers were arriving; one of the responding officers requested an ambulance for Subject 1. Officer A found Subject 1’s handgun on the ground near where he had initially fell. Officer A stated that a responding officer stood guard over the firearm until it could be properly processed and recovered by the Forensic Investigators. (Atts. 31, 32)

In a statement to IPRA on 20 April 2016, **Officer B** stated that on the night of the incident he was on duty working with his regular partner, Officer Brendan Officer A. Officer B added they were both uniformed and assigned a marked police vehicle. Officer B was the driver and Officer A was the passenger. Officer B stated they were traveling east on 71st Street, approaching Merrill Avenue, when he heard 3-5 gunshots. Officer B stated that they radioed that shots had been fired. Officer B stopped and saw an individual on the south side of the street running into the alley. Officer B performed a U-turn and drove west toward Paxton Avenue, at which time he heard 10-15 additional gunshots.

Officer A told Officer B that he saw muzzle flashes coming from north of their position, on Paxton Avenue. Officer B then saw a mini-van traveling south on Paxton Avenue. Officer B stated that the mini-van passed in front of their police vehicle. Officer B activated the vehicle’s emergency equipment and followed the mini-van south on Paxton Avenue. Officer B radioed that they were following the mini-van. Officer B stated that the mini-van traveled south on Paxton Avenue, and then west on 73rd Street. The mini-van then went south in the alley west of Paxton Avenue. As they followed the mini-van south through the alley Officer B saw the mini-van’s passenger sliding door open, leading him to believe one or more of the mini-van’s occupants intended to exit and flee on foot.

Officer B stated that when the mini-van reached 74th Street, he saw Subject 1 exit the van

6 Transcription of Officer A; P. 21, L. 20 - 22

7 *Id.*; P. 31, L. 2

8 *Id.*; P. 31, L. 6

from the sliding door and run west on the sidewalk on the north side of 74th Street. Officer B stated that he saw Subject 1 holding a black handgun, but could not recall which hand he held it in. The mini-van exited the south end of the alley and drove west on 74th Street. As Officer B followed the mini-van west on 74th Street, he heard Officer A yell, “Chicago police, drop the weapon, drop the weapon, drop the weapon.”⁹ Officer B turned his attention from the mini-van, to Subject 1, who was running on the sidewalk just ahead of their police vehicle. Officer B saw Subject 1 pointing a handgun at them as he continued to run west on the sidewalk.

Officer B stated that Officer A then discharged his firearm twice at Subject 1 from the passenger seat of their still-moving police vehicle. Officer B stated that after he heard the two gunshots he saw Subject 1 fall to the sidewalk. Officer B stopped their vehicle when they reached Merrill Avenue, at which time Officer A exited the police vehicle and approached Subject 1. Officer B continued to follow the mini-van until he reached Jeffery Boulevard, at which time he decided to stop pursuing the mini-van and turned around and went back to assist Officer A. Officer B stated that when he arrived he saw Subject 1 lying in the street. Officer B did not know how Subject 1 got into the middle of the street. Officer B recalled that Officer A was standing near Subject 1’s handgun, which was on the sidewalk where Subject 1 had originally fell. Officer B stated that he never touched Subject 1’s handgun, and he never saw Officer A touch it. (Atts. 28, 29)

CONCLUSION AND FINDING:

The Chicago Police Department’s General Order governing the Use of Deadly Force is outlined in G.O. 03-02-03, III:

A. “a sworn member is justified in using force likely to cause death or great bodily harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or;
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
 - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
 - b. is attempting to escape by use of a deadly weapon, or; otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.”

9 Transcription of Officer B; P. 22; L. 27

The officers in this incident were in the area when they heard multiple gunshots. Officer A then saw muzzle flashes coming from an area near a mini-van, further down the block, followed by the mini-van driving away at a high rate of speed. As the officers began to follow the mini-van in their marked Chicago Police vehicle with their emergency equipment activated, Subject 1 exited the moving vehicle and began to flee on foot, with a firearm visible in his hand. After Officer A announced his office and ordered Subject 1 to drop his weapon, Subject 1 partially turned his body and pointed his weapon at the officers. From inside the vehicle, Officer A fired two shots at Subject 1, and Subject 1 immediately fell to the ground. Subject 1 was later determined to have a fatal gunshot wound to his right mid-back area.

The officers later discovered that Subject 1 had just participated in a drive-by shooting that had resulted in one person being shot.

Subject 1's handgun was later recovered from the sidewalk where he had initially fallen. That handgun was forensically matched to seven cartridge casings recovered from the street in front of the scene of the drive-by shooting. The glove that Subject 1 had been wearing on his right hand tested positive for PGSR particles, indicating that it had been in contact with or in the environment of a discharged firearm.

1. Officer A's belief that Subject 1 presented a threat of death or great bodily harm to himself and his partner was objectively reasonable under the circumstances.

As outlined above, the evidence supports that Subject 1 was armed. The question remains whether Subject 1 presented an imminent threat of harm to Officers Officer A and Officer B as he fled, particularly in light of the fact that the medical examiner's report documents that Subject 1 was shot in the back. The facts here support Officer A's perception that Subject 1 was a potential threat to him and Officer B.

As outlined in the General Order, deadly force is permitted by an officer who reasonably believes it is necessary to prevent death or great bodily harm to the sworn member or to another person. Here, a reasonable officer with Officer A's training and experience would perceive that Subject 1 presented an imminent threat of death or great bodily harm. Subject 1 was armed and had demonstrated that he was committed to defeating an arrest.

Officer A issued multiple commands to Subject 1 to stop running and to drop his weapon, all of which Subject 1 ignored as he continued to flee in his effort to escape apprehension. Officer A had just witnessed shots fired in the area moments ago and saw Subject 1 jump out of the mini-van that Officer A believed to be involved in the shooting.

The law is clear and well-established regarding the use of deadly force by police officers. First, the analysis of the circumstances must be from a perspective of "a reasonable officer on the

scene, rather than with the 20/20 vision of hindsight . . . We thus allow 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.” *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2020, 188 L. Ed. 2d 1056 (2014), quoting *Tennessee v. Garner*, 471 U.S. 1, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985), internal quotation marks omitted. Also, such an analysis must take into account the totality of the circumstances confronting the officer, rather than just one or two factors. *Plumhoff*, 134 S. Ct. at 2020. See also *Scott v. Edinburg*, 346 F.3d 752, 756 (7th Cir. 2003). In this case, Officer A was confronted with a situation where: (1) he had just heard multiple gunshots coming from a mini-van further down the block; (2) he had seen the muzzle flashes coming from that same mini-van; (3) there was also a general commotion surrounding the mini-van; (4) the mini-van then sped past the marked Chicago Police vehicle; (5) that mini-van then continued attempting to evade the police vehicle with its emergency equipment activated; (6) Subject 1 then jumped out of the moving mini-van; (7) with a weapon visible in his hand; (8) and refused to comply with Officer A’s commands to stop and drop the weapon; (9) Subject 1 then turned and raised his weapon, pointing it at Officer A. In this case, the totality of the circumstances led Officer A to reasonably believe that the use of deadly force was appropriate.

It should be noted that although Officer A had no way to know for certain that Subject 1 was involved in the drive-by shooting of Civilian 1, his perception that he had been was reasonable. Based on the proximity, timing, and the manner in which Subject 1 was fleeing, it was reasonable for Officer A to surmise that Subject 1 may have been involved in the shooting that just occurred. To be sure, an officer is entitled to make judgments based on the knowledge he had at the time: “The objective reasonableness of a police officer's actions depends upon ‘the information [the officer] possessed immediately prior to and at the very moment [she] fired the fatal shot.’” *Jaffee v. Redmond*, 51 F.3d 1346, 1353 (7th Cir. 1995), *aff’d*, 518 U.S. 1, 116 S. Ct. 1923, 135 L. Ed. 2d 337 (1996), quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir.1988).

Both Illinois and Federal courts also support the notion that police officers are permitted to utilize deadly force when the 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.” *Scott v. Edinburg*, 346 F.3d 752, 758 (7th Cir. 2003), quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir.1988) (en banc) (internal quotation marks omitted). See also *Ford v. Childers*, 855 F.2d 1271, 1275 (7th Cir. 1988) (a reasonable belief that danger exists may be formed by reliance on appearances; a police officer was justified in using deadly force when responding to a bank’s silent alarm and based on the information he possessed and the circumstances, the officer reasonably but mistakenly concluded that the fleeing suspect had a weapon).

2. Officer A’s use of deadly force was reasonable notwithstanding the fact that Subject 1 appeared to have been walking or running away from the officers.

Furthermore, case law suggests that Officer A was justified in using deadly force at the moment he did, rather than waiting for Subject 1 to fire upon Officer A or anyone else in the area.

At the point Officer A saw Subject 1 attempting to escape with a handgun, after having just jumped out of a mini-van that may have been involved in a drive-by shooting, Officer A was entitled to use deadly force to prevent Subject 1's escape. Courts, in this jurisdiction and across the country, have repeatedly and broadly rejected second-guessing of the split second decisions officers are forced to make in confronting rapidly evolving situations. *Williams v. Indiana State Police Dep't*, 797 F.3d 468, 479 (7th Cir. 2015) See also *Montoute v. Carr*, 114 F.3d 181, 185 (11th Cir. 1997) (“... 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); see also *Blanford v. Sacramento County*, 406 F.3d 1110, 1116 (9th Cir. 2005) (concluding that officers did not use excessive force in shooting a suspect who was carrying a sword, had failed to comply with orders to drop the sword, and was attempting to enter a house that—as far as the officers knew—might or might not have been empty, even though the suspect was at all times walking away from the officers and did not actually threaten the officers—or anyone else—with the weapon); see also *Long v. Slaton*, 508 F.3d 576, 581 (11th Cir. 2007), (“Even if we accept that the threat posed by Long to Deputy Slaton was not immediate in that the cruiser was not moving toward Slaton when shots were fired, the law does not require officers in a tense and dangerous situation to wait until the moment a suspect uses a deadly weapon to act to stop the suspect.”)

Officer A articulated his observation that Subject 1 had turned and pointed the weapon at him, leading Officer A to fear that Subject 1 was preparing to fire the weapon at him. In his statement to IPRA, in discussing his decision to use deadly force, Officer A said that he felt that his life and that of his partner were in danger.

3. Officer A's use of force was also permissible to prevent an arrest from being defeated by the resistance or escape of a forcible felon.

The General Order also permits the use of deadly force by an officer who reasonably believes that such force is necessary to prevent an arrest from being defeated by resistance or escape and that the person to be arrested has committed or has attempted to commit a forcible felony. COPA finds that Officer A's use of deadly force was also justified on that basis. An officer with Officer A's training and experience would have been reasonable in believing that Subject 1 had committed a forcible felony, namely, attempted murder. Furthermore, Illinois statute 720 ILCS 5/7-5 states that “a peace officer . . . 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, or when he reasonably believes both that: (1) Such force is necessary to prevent the arrest from being defeated by resistance or escape; and (2) The person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.” 720 ILCS 5/7-5(a)

The CPD Deadly Force policy, reflecting the underlying constitutional safeguards, permits the use of deadly force to prevent the escape of a violent felon. See *Tennessee v. Garner*, 471 U.S. 1, 105 S. Ct. 1694, 85 L. Ed. 2d 1 (1985) (holding that, if an officer has probable cause to believe that a fleeing suspect has committed a crime involving the infliction or threatened infliction of serious bodily harm, deadly force may be used if necessary to prevent escape, and, if feasible, some warning has been given); see also *Ford v. Childers*, 855 F.2d 1271, 1275 (7th Cir. 1988) (en banc) (finding no Fourth Amendment violation when officer fired at a suspect because he reasonably believed that the suspect had committed a felony involving the threat of deadly force, was armed with a deadly weapon, and was likely to pose a danger of serious harm to others if not immediately apprehended). In the case at hand, Officer A reasonably believed that Subject 1 had just committed a forcible felony, in that he had just jumped out of a mini-van that was speeding away from the scene of a shooting, while holding a firearm in his hand. Subject 1 then ignored Officer A's commands and continued running in an attempt to escape. Because of Officer A's belief that Subject 1 had just committed a forcible felony, and the danger to himself and Officer B as well as potentially to any individuals in the area, Officer A was entitled to use deadly force against Subject 1 in order to prevent his arrest being defeated by resistance or escape.

In summary, Officer A had heard several gunshots in the area; saw muzzle flashes near a mini-van further down the block; saw that same mini-van speed away from the scene and attempt to evade the police vehicle; observed Subject 1 jump out of the mini-van with a firearm in his hand; and then saw Subject 1 turn and point his firearm toward Officer A . Based on the totality of circumstances, Officer A's use of deadly force was objectively reasonable on this basis as well. Therefore, Officer A's use of deadly force against Subject 1 was objectively reasonable, and therefore, **WITHIN** the policy of the Chicago Police Department and consistent with Illinois state law and federal case law.

Approved: