

TO: Deputy Chief Administrator
Civilian Office of Police Accountability

FROM: Investigator 1, #XXX
Investigator 2, #XXX

SUBJECT: Log #1079743
U #16-04

REFERENCE: RD #XX-XXXXXX, Battery-Aggravated PO: Handgun; Robbery-Armed:
Handgun

DATE/TIME: 21 March 2016, 0221 hours

LOCATION: XXXXXX S. Green Street, Chicago, IL (Street)

INVOLVED OFFICER: Officer A; Chicago Police Officer, Star #XXXXXX; Unit XXX; black male; Employee #XXXX; DOB: 24 February 19XX; DOA: 10 October 2000; Off-duty; Casual dressed.

OFFICER'S WEAPON: Beretta model 8000; 9mm semi-automatic pistol; Serial #XXXXXXX; City Registration #XXXXXX; FOID #XXXXXXX; Winchester 9mm Luger +P ammunition; 1 live round recovered from magazine, 1 live round recovered from the chamber; listed weapon capacity of 15+1 rounds; Fired fourteen (14) times¹

OFFICER'S INJURIES: Gunshot wound to left buttock, exiting right hip.

SUBJECT: Subject 1; black male; DOB: 07 September 19XX; IR #XXXXXXXXX; XXXX S. May Street, Chicago, IL.

SUBJECT'S: Firearm²

SUBJECT'S INJURIES: Gunshot wound to upper left arm.

SUBJECT: Subject 2; black male; DOB: 07 September 19XX; IR #XXXXXX; XXXX S. Sangamon Street, Chicago, IL.

SUBJECT'S

¹ The Tactical Response Report (TRR) completed by Sergeant A on behalf of Officer A indicates that nine shots were fired.

² The firearm that Subject 1 reportedly fired at Officer A has not been recovered as of the date of this report.

WEAPON: Firearm³

**SUBJECT'S
INJURIES:** None

IPRA

NOTIFICATIONS: IPRA Chief Administrator
IPRA Deputy Chief Administrator
IPRA Director of Community Outreach and Engagement
IPRA Supervising Investigator
IPRA Investigator 1

**TIME OF IPRA
NOTIFICATION:** 0258⁴ hours

**TIME IPRA
RESPONSE:** 0500 hours

INTRODUCTION:

Sometime after 0200 hours on 21 March 2016, Officer A arrived home in his personal vehicle and parked on the street. A black male, now known as Subject 2, approached and pointed a gun at Officer A. Subject 2 entered Officer A's vehicle, placed his gun against Officer A's temple, and took Officer A's wallet, keys, and cell phone. Officer A subsequently observed a second black male, now known as Subject 1, standing outside of Officer A's vehicle and pointing a gun at Officer A. Officer A was ordered to exit his vehicle at which time Subject 1 forced Officer A to the ground, struck him on the head, and directed him not to move. Subject 1 also placed the muzzle of his gun to Officer A's head, and Subject 2 repeatedly directed Subject 1 to shoot Officer A. Eventually, while both Subject 1 and Subject 2 were standing approximately six feet away from Officer A, Subject 1 started to raise his weapon to Officer A's head. Officer A moved to the left, and Subject 1 shot Officer A in the right leg. Officer A retrieved his firearm from his waistband and fired multiple shots at Subject 1 and Subject 2 as they fled through a gangway.

APPLICABLE RULES:

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

Illinois State Statute 720 ILCS 5/7-1; Use of Force in Defense of Person

INVESTIGATION:

³ The firearm that Subject 2 reportedly had on his person has not been recovered as of the date of this report.

⁴ Although the time of notification was 0258 hours, it was not confirmed that Officer A's gunfire struck anyone until Subject 1 arrived at Little Company of Mary Hospital with a gunshot wound to his arm. This information was confirmed at 0358 hours. Officer A later identified Subject 1 in a photo array as one of the subjects involved.

In a statement to IPRA on 27 October 2016, **Officer A, #XXXXXX**, stated that sometime after 2 a.m. on 12 March 2016, he parked his personal vehicle in front of his residence. He was prepared to grab his reading material from the front passenger seat and exit the car. As Officer A reached to grab his reading materials, he observed a black male walking northbound on the sidewalk between Officer A's car and home. Officer A added that he did not have a good feeling, and put the key in the ignition so that he could drive away. Before he could do so the black male, now known as Subject 2, approached the passenger side of Officer A's vehicle, pointing a semi-automatic pistol in Officer A's direction.

According to Officer A, Subject 2 stated words to the effect of, "You know what this is?" and "Open the fucking door," and "Give me your shit." Officer A unlocked the door electronically, and Subject 2 opened the door and entered Officer A's vehicle. Subject 2 placed his knees on the front passenger seat, put the muzzle of the weapon on Officer A's right temple, forced Officer A's head against the window, and threatened to kill him. Officer A stated that at some point, Subject 2 pulled the muzzle of the weapon back away from his head and directed Officer A to give him his wallet, keys and cell phone. Officer A complied.

Subject 2 attempted to search Officer A's waist area and Officer A put his hands up. Officer A was careful to guard his gun, which was holstered on his right hip. Subject 2 did not discover Officer A's weapon during the search. Subject 2 exited Officer A's vehicle and directed Officer A to stay inside the vehicle. Subject 2 walked onto Officer A's front porch and tried to gain entry to Officer A's residence with Officer A's keys. Officer A started to exit the vehicle on the passenger's side. After opening the door, Officer A then heard knocking on the driver side window. Officer A turned around and observed a second black male, now known as Subject 1, pointing a pistol in his direction.

Officer A exited his vehicle and closed the door as Subject 1 continued pointing a gun at him. Subject 1 did not instruct Officer A to exit the vehicle. Subject 1 proceeded to search Officer A's waist. Officer A stepped back away from Subject 1. Officer A looked over his shoulder and observed Subject 2 step down off the porch and walk around to the side of the house. Subject 1 directed Officer A to get down onto the ground. Subject 1 then used his gun to strike Officer A's head and Officer A fell down onto the ground near his vehicle.

Subject 1 directed Officer A to place his hands onto his vehicle. Officer A came up on his knees and placed his hands along the side of his vehicle over the left front tire. Subject 2 entered Officer A's vehicle a second time and searched his vehicle. Subject 1 attempted to search Officer A again. Subject 1 then kicked and punched Officer A, causing Officer A to fall down onto the ground again. Subject 1 proceeded to search Officer A again, starting at his ankles and up to his hips. Officer A complained of his head wound and rolled over onto his right side in a fetal position, in an attempt to guard his weapon. Officer A stated that his weapon was on his right side.

Subject 1 told Officer A to get up. Officer A got up onto his knees and placed his hands on the frame of his vehicle. Subject 1 placed the muzzle of his weapon against Officer A's right temple and told Officer A to close his eyes. At this point, Subject 2 was still searching Officer A's car. Officer A stated that Subject 1 stepped back approximately 6 feet and stood to the right of him while pointing his weapon in Officer A's direction. Officer A looked at Subject 1 and Subject 1

told Officer A to stop looking at him. Officer A informed Subject 1 that he was married with children and asked Subject 1 to just take his belongings and let him go.

While still searching the inside of Officer A's vehicle, Subject 2 told Subject 1 to shoot Officer A if he moved again. Although not married and without children, Officer A continued to speak about his wife and children. Subject 2 exited Officer A's vehicle and stated words to the effect of, "Shoot that motherfucker." Officer A stated that Subject 2 walked around the car and told Subject 1 several times to shoot Officer A. At some point, Subject 1 (still approximately 6 feet away) began to raise his weapon to Officer A's head. Officer A could see, out of the corner of his eye, Subject 1 raising his weapon. Right before Subject 1 stopped his motion of raising the weapon, Officer A stood up, with his back toward Subject 2 and Subject 1, and pushed away from the vehicle and launched his body to the left to avoid getting shot. As he did so, Officer A turned to face Subject 2 and Subject 1. Subject 1 shot Officer A. Officer A saw Subject 1's muzzle flash and "had an inkling" that he had been shot, because he felt the impact, but he "thought it was a graze wound."

Within seconds of Subject 1 firing his weapon, Officer A removed his own weapon from his right side while simultaneously announcing his office. As Officer A was pulling out his weapon, both Subject 2 and Subject 1 had their weapons pointed at Officer A.

Officer A stated that he fired two volleys of shots during the incident. He did not know how much time passed between the two volleys. When Officer A started shooting, Subject 2 and Subject 1 were approximately six feet away. They increased their distance by running northwest. As they were running, Subject 1 and Subject 2 continued to point their weapons at Officer A. Officer A described Subject 1 and Subject 2 as holding their guns to their right sides. He said that at some point Subject 2 extended his arm behind his body to continue pointing his firearm at Officer A.

Officer A did not recall how many shots he fired during the first volley of shots. He stopped firing the first volley of shots because he was in pain and because he was missing his target. He knew that he had not hit Subject 1 or Subject 2 because neither man fell or responded to gunshot wounds, and both men continued to point their weapons at Officer A. Officer A continued to yell "Police" several times as Subject 1 and Subject 2 were running.

At some point, Officer A observed Subject 1 and Subject 2 stop and change their course of direction. Officer A did not know why they abruptly stopped or how many feet away they were when they stopped. When Subject 1 and Subject 2 stopped, Officer A started discharging a second volley of shots. Officer A could not give an approximation of distance during the second volley of shots.

Officer A said he fired a total of 15 shots during the incident. He stated that the TRR relating to this incident, which was completed by Sergeant A and indicated that Officer A fired 9 shots, was incorrect. Officer A recalled speaking to Sergeant A about the incident but described the conversation as "kind of hazy" because Officer A had already received medication at that point. Officer A learned that he had fired 15 shots when he reached his porch steps and ejected his magazine.

Officer A believed that one of the bullets in the second volley struck Subject 1 because he saw Subject 1's body "jerk" in an apparent reaction to be shot. Officer A observed Subject 2 and Subject 1 jump over a fence at XXXXX S. Green. After Officer A lost sight of Subject 1 and Subject 2, he checked his weapon and observed that he only had one bullet left inside his weapon. Concerned about his wound and that Subject 2 and Subject 1 would return, Officer A began to yell out for help for an unknown amount of time. Officer A's calls for help were not answered so he began walking to his residence. Officer A believed that he was shot in his right leg because his leg was in extreme pain. Officer A believed that he was losing a substantial amount of blood because he felt faint.

Once Officer A walked up the stairs to his residence, he knocked on the door and yelled out for his brother to help him. He informed his brother, Civilian 1, that he was shot. Officer A recalled stepping up into his residence with his left leg, but could not recall actually walking into his residence. Officer A recalled lying on his back on the living room floor. Officer A remembered his brother elevating his leg and tying something around it.

Officer A stated that Civilian 1 called 911; the paramedics arrived and transported Officer A to Christ Hospital. Officer A stated that he sustained an injury to his left leg, a gunshot wound to his right leg and bruising to his head as a result of this incident.

Officer A stated that he discharged his weapon in defense of his life. He explained that he had already been shot, that he believed that Subject 1 and Subject 2 had no reservations or hesitations about killing him, and that Subject 1 had in fact been instructed to kill him. (Atts. 74, 80)

In a statement to IPRA on 27 October 2016, **Witness Civilian 1** stated that he is Officer A's brother. Civilian 1 stated that on the date and time of the incident he was sitting inside his residence at XXXXXX S. Green Street. While sitting in his bedroom, Civilian 1 heard several gunshots. After the first series of gunshots, Civilian 1 heard silence and then another series of gunshots. Civilian 1 stated that after the shooting stopped, he walked to the living room and heard yelling and banging. Civilian 1 soon realized the person yelling was his brother, Officer A.

Civilian 1 opened the front door and observed Officer A leaning against the door. Officer A informed Civilian 1 that he was shot. Civilian 1 left Officer A at the door and walked approximately 30 feet away to put on a pair of pants. Civilian 1 stated that he returned to the doorway where he observed Officer A had collapsed on the floor. Civilian 1 observed blood on the step where Officer A had fallen. Civilian 1 pulled Officer A further inside the residence and proceeded to feel under Officer A's legs.

Civilian 1 stated that after feeling under Officer A's legs, he observed blood on his hands. Civilian 1 stated that he created a tourniquet with his belt to stop the bleeding and called 911 for assistance. Civilian 1 stated that paramedics arrived and took Officer A to the hospital. Several police officers arrived and questioned Civilian 1 about the incident.

Civilian 1 stated that he did not have any independent knowledge of the circumstances surrounding the incident. Immediately after the incident, Civilian 1 did not ask Officer A any details about what had occurred. Civilian 1 also did not witness the incident. Civilian 1 stated that when he opened the door for Officer A, he did not observe any individuals outside. Officer A later informed Civilian 1 that two African American males, armed with handguns, attempted to rob him. (Att. 76, 81)

The **IPRA Preliminary Report, Synoptic Report and Major Incident Notification Report** essentially state the same information as reported in the Introduction of this report (with fewer details). Tests performed by hospital personnel indicated Officer A's blood contained no presence of alcohol. Police Deputy Chief recommended that the Chicago Police Department's required drug test not be performed because Officer A had received narcotics for pain during his hospitalization. (Atts. 4, 39, 42)

According to the **Chicago Police Department Arrest Report** of Subject 1, Officer B, #XXXX, and Officer C, #XXXXX, arrested Subject 1 on 21 March 2016, at 0430 hours at XXXX W. 95th Street (Little Company of Mary Hospital). Subject 1 was arrested after Officer A identified him during a photo array. Subject 1 was charged with Armed Robbery – Discharge of a Firearm, and Aggravated Battery – Discharge of a Firearm – to an Off-Duty Peace Officer. A warrant was also executed for violation of parole. Subject 1 sustained a gunshot wound to his upper left arm and was treated at Little Company of Mary Hospital prior to being released into police custody. Subject 1 was transported to Area South (Unit 620) for further investigation. At the time of this report, Subject 1's criminal case, XX XX XXXXXX, was still pending. (Atts. 5)

According to the **Chicago Police Department Arrest Report** of Subject 2, Officer D, #XXXXX, and Officer E, #XXXXX, arrested Subject 2 on 04 May 2016, at 1216 hours at 727 E. 111th Street (005th Police District). Subject 2 was charged with Armed Robbery – Discharge of a Firearm, Unlawful Vehicular Invasion, and Attempted First Degree Murder. Subject 2 was also charged with armed robbery for an unrelated incident, and a warrant was executed. Officer A identified Subject 2 as the person who robbed and shot him with a handgun.⁵ The Arrest Report indicates that Subject 2 did not have any visible pain or injuries. At the time of this report, Subject 2' criminal case, XX XX XXXXXX, was still pending. (Atts. 66)

According to **Chicago Police Department Reports**, a detective spoke with Subject 1 at Little Company of Mary Hospital regarding his injury. Afterward, detectives compiled a photo array and Officer A identified Subject 1 and another individual named Civilian 2.⁶ Subject 1 was transported to Area South for further investigation. Once there, detectives spoke with Subject 1 and informed him that he had been identified in a photo array by Officer A. Subject 1 admitted to being present and stated that he accidentally shot Officer A when Officer A moved. Subject 1 stated that an individual named "Turtle," (no further information) planned the robbery and provided the weapons. Subject 1 informed the detectives that he is acquainted with "Turtle" on Facebook. Subject 1 signed onto his Facebook account and showed the detectives "Turtle's"

⁵ Via a photo array.

⁶ Civilian 2 was not involved in this incident.

Facebook page. Further investigation revealed “Turtle’s” identity as being Subject 2. Officer A subsequently identified Subject 2 in a photo array.

On 15 April 2016, Subject 2 was arrested in Lansing, Michigan during a traffic stop. After a preliminary investigation, Subject 2 was extradited back to Illinois on 04 May 2016 and transported to Chicago Police Department Area South. (Atts. 7, 51 – 53, 65)

Sergeant A, #XXXX, completed a **Tactical Response Report (TRR)** on behalf of Officer A because Officer A was hospitalized. The TRR indicates that Subject 1 posed an imminent threat of battery to Officer A when he threatened to shoot Officer A. The TRR further indicates that Subject 1 attacked and struck Officer A on his head with a weapon. The TRR states that Subject 1 used force likely to cause death or great bodily harm against Officer A when he fired a gunshot, which struck Officer A in his right thigh. Officer A responded to Subject 1’s actions by discharging his firearm. The TRR indicates Officer A fired a total of nine shots. (Att. 8)

According to the **Officer’s Battery Report (OBR)** completed by Officer A, on the date and time of the incident Officer A was off duty and in civilian dress. Subject 1 and Subject 2 ambushed Officer A and Subject 1 subsequently shot Officer A. Officer A sustained a non-fatal gunshot wound as a result of this incident. (Att. 9)

The Office of Emergency Management and Communications (**OEMC**) and Police Computer Aided Dispatch (**PCAD**) **Reports** were collected and made part of this investigation. The information contained in these documents is consistent with the facts as related by the witness and involved officer. (Atts. 10 – 25)

The **Chicago Fire Department Ambulance Report** documents that an Emergency Medical Services (EMS) crew was dispatched to XXXXXX S. Green Street at approximately 0223 hours, regarding a gunshot victim. The victim, Officer A, was lying on the ground in the doorway of a residence in care of E93. According to the report, Officer A stated that he was inside his vehicle when two men robbed him and one of the offenders shot him. Officer A reported that he believed that he only heard one shot, although he was not certain. Officer A sustained one gunshot wound to his right upper thigh, which was bleeding moderately. Officer A was transported to Advocate Christ Hospital for additional medical treatment. (Att. 26)

The **medical records** obtained from Advocate Christ Hospital document that Officer A was admitted on 21 March 2016 via ambulance. Officer A was diagnosed and treated for a gunshot wound to his right thigh and left buttock. Officer A was discharged on 25 March 2016. (Att. 49)

The **medical records** obtained from Little Company of Mary Hospital document that Subject 1 was admitted on 21 March 2016. The records state that Subject 1 walked into the emergency room with a gunshot wound to his upper left extremity. The injury consisted of two wounds, one in the anterior aspect of the humerus and the other to the distal aspect of the posterior humerus. Subject 1 also had superficial abrasions to the bilateral area of his hands.

Subject 1 informed hospital personnel that he was on 92nd Street when he was shot. Subject 1 stated that he did not know the identity of the individual who shot him. He also informed hospital

personnel that he did not know how he sustained the superficial abrasions to his hands. Hospital personnel called 911 to report Subject 1's injury. Once Subject 1 was treated, he was discharged into police custody for additional investigation. (Att. 47)

A **canvass** of the area was conducted in an attempt to locate additional witnesses and/or evidence. None of the witnesses located during the canvass saw the incident, nor were they able to provide relevant information. Several individuals reported that they heard gunshots and a voice yelling for help. Several witnesses called 911 to report the incident. Of these witnesses, none were able to provide a first-hand account of the actual shooting. (Atts. 33, 36, & 79)

The **Evidence Technician (ET) Photographs** depict the scene of the shooting from various angles. The photographs include images of Officer A's residence, Officer A's vehicle, Officer A's handgun, Officer A's clothing, Subject 1, Subject 1's clothing, Subject 1's shoes, Subject 1's fingerprint cards, a gangway, and bullet damage to several residences and several vehicles, including Subject 1's vehicle.⁷ (Atts. 28, 29,40)

The **video surveillance footage** from Advocate Christ Hospital depicts what appears to be Mr. Subject 1 exiting a dark-colored vehicle and walking into the entrance of the emergency room. (Atts. #91, 92)

According to the **Inventory Sheets**, Officer A's handgun and clothing, Subject 1's clothing and fingerprint cards, and recovered bullets and expended shells were inventoried. (Atts. 30, 31)

Attempts to interview **Subject 1** were met with negative results. On 22 March 2016, Subject 1 informed Investigator 3 that he did not want to give a statement to IPRA and refused to sign any documents regarding the incident. On 22 November 2016, Assistant Public Defender A instructed an IPRA investigator not to interview Subject 1 regarding the incident. Assistant Public Defender A stated that an assistant public defender would speak with Subject 1 to determine whether he wished to be interviewed and that Assistant Public Defender A would update IPRA when a decision had been made. As of the date of this report, IPRA has not received an update regarding Subject 1's decision to speak to IPRA. (Atts. 34, 35, - 54, 89)

According to the **Illinois State Police Report**, the bullet recovered from the left sleeve of Subject 1's shirt was fired from Officer A's handgun. A fired bullet, which was recovered from the interior base of a couch sectional by a window in XXXXX S. Green Street, and 14 cartridge cases, which were recovered from the scene, were also fired from Officer A's handgun. One Geco 9mm Luger caliber fired cartridge case that was recovered at the scene was not fired from Officer A's handgun. No further information regarding the Geco 9mm luger caliber fired cartridge case was available. (Atts. 55 – 62)

During an **Electronic Recorded Interview (ERI)** at the Ingham County Sheriff's Office on 15 April 2016 with Detective A and Detective B, Subject 2 denied having any involvement in

⁷ This investigation has shown that as Officer A was exchanging gunfire with Subject 1 and Subject 2, they were moving towards their Mercury Sable which was parked near the alley. When the vehicle was later recovered, apparent bullet damage was observed to the front passenger quarter panel.

the incident regarding Officer A and claimed to have been in Michigan since December 2015. Subject 2 did admit that he is friends with Subject 1.(Atts. #93, 94)

In a statement to IPRA on 31 January 2017, **Witness Subject 2** stated that on the date and time of the incident he was in Lansing, Michigan, visiting his godfather. Subject 2 stated that he could not recall his godfather's name. Subject 2 initially stated that he did not have a phone number for his godfather. He then stated that he could not get in touch with his godfather and provided IPRA with a phone number for his godfather that he had been trying to call. (Att: 88, pg. 17) Subject 2 added that his godfather resides at XXX South McCuller Street, Lansing, Michigan. Subject 2 stated that he met his godfather through his mother, Civilian 3, and that his mother was friends with his godfather for many years. Subject 2 stated that he called his godfather, "grandpa."

Subject 2 denied being at the location of the incident on the date and time in question. Subject 2 stated that he and Subject 1 had been friends for approximately six to seven years. Subject 2 denied having any knowledge of the incident and denied being with Subject 1 on the date of the incident. (Atts. 86, 88)

CONCLUSION

Legal Standard

The applicable Chicago Police Department order is General Order 03-02-03, II, which states as follows:

“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 deadly weapon or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.”

A police officer’s use of deadly force while making an arrest is codified under section 7-5 of the Illinois Criminal Code (Code) (720 ILCS 5/7-5 (West 2016)). That statute provides that a police officer “need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest.” 720 ILCS 5/7-5(a) (West 2016). It then outlines the amount of force an officer is justified using in certain situations.

Here, however, Officer A was off-duty and used force while defending himself during a robbery, not while making an arrest. Accordingly, his actions are more properly considered under section 7-1 of the Code, which governs citizens’ use of force in defense of person. See 720 ILCS 5/7-1 (West 2016). Section 7-1 of the Code provides as follows:

“[a] person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other’s imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.” 720 ILCS 5/7-1 (West 2016).

Finally, an officer’s use of deadly force is a seizure within the meaning of the Fourth Amendment and, therefore, must be reasonable. *Muhammed v. City of Chicago*, 316 F.3d 680, 683 (7th Cir. 2002).⁸ “The ‘reasonableness’ inquiry in an excessive force case is an objective one:

⁸ Notably, the Fourth Amendment’s protections apply solely to governmental action; these protections are “wholly inapplicable” to a seizure effectuated by a private individual who is not acting as an agent of the government or with a government official’s participation or knowledge. *United States v. Jacobsen*, 466 U.S. 109, 113 (1984). Here, Officer A was off-duty, out of uniform, and sitting in his personal vehicle when Subject 1 and Subject 2 approached.

the question is whether the officers' 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 also Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The 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*, 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*, 316 F.3d at 683 (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir.1988) (en banc) and omitting emphasis).

Analysis

Based on the totality of the circumstances, Officer A's use of deadly force was objectively reasonable and therefore WITHIN POLICY as defined by General Order 03-02-03, II; the relevant Illinois state statute; and the Fourth Amendment. The evidence establishes that Officer A believed that Subject 2 and Subject 1 posed a threat to his life, and that Officer A's belief was objectively reasonable under the circumstances.

1. The evidence establishes that Subject 2 and Subject 1 each pointed a handgun at Officer A and threatened to shoot him; Subject 1 shot Officer A; and Subject 1 and Subject 2 continued pointing their weapons at Officer A as they fled

On the night of the shooting, Officer A arrived home sometime after 0200 hours. Subject 2 approached the passenger side of Officer A's vehicle, pointed a semi-automatic pistol in Officer A's direction, and stated words to the effect of "[y]ou know what time it is," "open the fucking door," and "give me your shit." After entering the car, Subject 2 placed the muzzle of his weapon on Officer A's right temple, forced Officer A's head against the window, and threatened to kill him. Later, Officer A observed Subject 1 standing outside of his vehicle, pointing a pistol in Officer A's direction. During Officer A's interaction with Subject 1, Subject 1 also placed his gun's muzzle against Officer A's head. Further, Subject 2 repeatedly directed Subject 1 to shoot Officer A.

Most notably, Officer A stated that in the moments before he started to shoot, Subject 1 raised his gun to Officer A's head, from a distance of approximately six feet, while Subject 2 encouraged Subject 1 to shoot Officer A. Subject 1 then fired his weapon at Officer A. Officer A's statement that he was shot is corroborated by the Chicago Fire Department Ambulance Report, the Advocate Christ Hospital medical records, Civilian 1's statement, and Subject 1's statement to detectives that he was present and accidentally shot Officer A.

Further, although Officer A yelled "police" while shooting, he said he fired his weapon in defense of himself, not because he was engaged in a police function such as attempting to make an arrest. Thus, Officer A may have been acting as a private individual and not as an agent of the government, making the Fourth Amendment inapplicable. However, we need not determine whether Officer A was acting as a private individual because, assuming the Fourth Amendment does apply to Officer A's actions, we find no Fourth Amendment violation.

We note Subject 2 denied to IPRA that he was involved in the incident. However, a preponderance of the evidence establishes that Subject 2 was involved. Officer A identified Subject 2 in a photo array, and Subject 1 told detectives that “Turtle,” later identified as Subject 2, planned the robbery and provided the weapons. Further, Subject 2’ denial of involvement, even if accepted, would suggest only that Officer A may have misidentified Subject 2 as one of the two individuals involved, not that Officer A otherwise provided an inaccurate description of the incident. In other words, there is no evidence to dispute Officer A’s statements that two men approached his vehicle, displaying guns; that both men placed their guns against Officer A’s head at various points; that one man used his gun to strike Officer A’s head and later kicked and punched Officer A; that one man threatened to shoot Officer A; that moments before Officer A’s first shot, one of the two men was raising his gun to Officer A’s head while the other man encouraged the first man to shoot; that one man did shoot; and that two men fled from the scene while continuing to point their guns at Officer A.

2. Officer A reasonably believed that Subject 2 and Subject 1 posed a threat of death or great bodily harm to Officer A

Having set forth the circumstances surrounding Officer A’s firing of his weapon, we turn to whether Officer A’s use of deadly force was justified.

In his statement to IPRA, Officer A said he discharged his weapon in defense of his life. He explained that he had already been shot, that Subject 1 and Subject 2 had no reservations or hesitations about killing him, and that Subject 1 was instructed to kill him.

Officer A’s belief that the use of deadly force was necessary to prevent death or great bodily harm was objectively reasonable under the circumstances. When Officer A started firing his initial volley of shots, Subject 1 and Subject 2 were at a distance of six feet away, and Subject 1 had just shot Officer A. A reasonable officer in Officer A’s position would certainly believe his first volley of shots was necessary to prevent death or great bodily harm.

A reasonable officer in Officer A’s position would also believe his second volley of shots was necessary to prevent death or great bodily harm. Officer A did not know how far away Subject 1 and Subject 2 were when Officer A started firing his second volley of shots, and he stated that Subject 1 and Subject 2 were fleeing at that point. However, as Subject 1 and Subject 2 were fleeing, they continued pointing their weapons at Officer A. See *Bell v. Crow*, 321 F. 3d 637, 639 (7th Cir. 2003) (if a suspect threatens an officer with a weapon, the risk of serious physical harm has been established such that the officer police may use deadly force). Further, Officer A had just been shot by Subject 1, at Subject 2’s direction, which would indicate to a reasonable officer in Officer A’s position that Subject 1 and Subject 2 were not afraid to use their weapons against Officer A. Under these circumstances, a reasonable officer in Officer A’s position would believe his second volley of shots was necessary to prevent death or great bodily harm.

In sum, based on the totality of the facts and circumstances, COPA finds that an officer with similar training and experience as Officer A would reasonably believe that Subject 1 and Subject 2 posed an immediate threat to his life. Thus, COPA finds that Officer A’s use of deadly

force was objectively reasonable and WITHIN POLICY as outlined by General Order 03-02-03, II; the Illinois statute; and the Fourth Amendment.