

SUMMARY OF INCIDENT

On 22 November 2012 at approximately 4:00 p.m., Chicago Police Officer A, Star #XXXXXX, was working as an Evidence Technician and traveling in his marked police vehicle on California Avenue when he observed a Chicago Fire Department (CFD) truck with its lights on at approximately 63rd and California. He was then flagged down by a citizen who said that there was a man, now known as Subject 1, on a bus attacking people. Officer A proceeded to drive just past 63rd and California, parking diagonally and in front of a stopped Chicago Transit Authority (CTA) bus, less than 10 feet from the bus. He observed Subject 1 standing over a “distraught” CTA bus driver. Officer A believed Subject 1 was beating the driver.

Officer A requested backup over the radio. Subject 1 approached Officer A’s car with his muscles flexed and hands balled into fists, turned around and walked away, and then approached Officer A’s car again before again turning and walking away. Officer A then exited his car, and Subject 1 rushed toward him. Officer A told Subject 1 to stop and back up; however, Subject 1 did not respond to Officer A’s verbal commands. Officer A made a call to radio dispatch to report his situation was a “10-1” and emergency. Subject 1 charged at Officer A as Officer A continued backing away. When Subject 1 reached within approximately two feet of Officer A, Officer A shot Subject 1 twice, causing him to stumble and fall down to the ground.

Officer B and Officer C responded to a radio call about a disturbance on a bus and a bus alarm. They arrived on scene as Subject 1 was lunging toward Officer A, shortly before shots were fired, and attempted to place Subject 1 into custody after Officer A fired his weapon; However, Subject 1 was combative, and Officer B and Officer C were only able to secure one handcuff to Subject 1’s hand. Officer C called out for “somebody with” a Taser as he and Officer B were losing their grip on Subject 1. Officer D approached and discharged his Taser at Subject 1. Officer D subsequently discharged his Taser two more times while on scene. Subject 1 was placed into an ambulance where he again became combative. Inside the ambulance, Officer D discharged his Taser three additional times over a little more than a one-minute period. Subject 1 was ultimately taken to Christ Hospital with gunshot and Taser wounds.¹

INVESTIGATION

¹ In a letter to the U.S. Department of Justice, dated December 12, 2015 Civilian 1 alleged that a lieutenant kicked her son while he lay bleeding on the ground. This allegation was addressed in Log #1080584.

The IPRA² Preliminary Report and the Major Incident Notification Report essentially related the same information as reported in the Summary Incident Report of this report. (Atts. 4, 117)

IPRA made attempts to interview Subject 1. A certified letter was sent to Subject 1 at the Cook County Jail requesting his cooperation with this investigation. IPRA investigators also conducted a visit to the Stateville Correctional Center in Joliet, IL in an attempt to meet with Subject 1. However, Subject 1 refused to speak with IPRA at that time and as of the date of this summary, Subject 1 has not contacted IPRA. (Atts. 79, 99, 100)

Video footage from four cameras operated by the CTA was obtained and found to depict the officer involved shooting that occurred on 22 November 2012, from bus number 6641, documenting the following time period: 15:13:32 – 16:18:25 hours.

The video showed Subject 1 entering the bus at 15:48:26 hours. Shortly thereafter, Subject 1 initiated physical fights with passengers on the bus as well as citizens on the street. The footage also captured Subject 1 pacing inside and outside of the bus without a shirt on and appearing agitated.

At 16:02:12 hours, Officer A arrived on the scene and Subject 1 lunged at Officer A. Officer A stepped back and drew his weapon. Subject 1 lunged at Officer A again, and Officer A shot Subject 1 as other officers arrive. (Att. 31)

Video Recordings were obtained from the Currency Exchange located at 63rd and California Avenue. Security cameras captured from the time period of approximately 1330 - 1430 hours.³ A total of five video clips were obtained. The video clips show the following:

A CTA bus arrives at 63rd and California Avenue. As the doors open to the CTA bus, two people enter and several people can then be seen on the sidewalk. Other people can be seen walking away from the bus, looking back toward the front of the bus as they do so. A male in a grey jacket enters the bus and can then be seen on the floor of the bus, with the back of his head toward the front of the bus. He then backs off of the bus. He appears to reenter the bus and can then be seen falling backwards out of the bus. He then appears to reenter the bus a third time before coming off again. He appears to have an injury to his mouth, as he places his hand over his face and pulls it away, as if he is checking

² On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Thus, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

³ The minute marks in the Currency Exchange and CTA videos are consistent; however, the timestamp on the Currency Exchange footage seems to be behind by two hours. For example, Officer A can be seen arriving at approximately 16:02:12 hours in the CTA video, and at approximately 14:02:12 hours in the Currency Exchange footage.

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to see if he is bleeding. The male eventually enters the Currency Exchange and can be seen wiping his face and the front of his shirt with a towel or napkin.

While the male is inside the Currency Exchange, Subject 1 appears to grab an unknown girl, who is walking down the street with an older woman, and pull her onto the CTA bus. The male inside the Currency Exchange exits the Currency Exchange and runs toward Subject 1, the older woman, and the young girl. The young girl and older woman eventually exit the bus and continue walking down the sidewalk. The male who was inside the Currency Exchange re-enters the Currency Exchange and can again be seen wiping his head and clothing with a paper towel. Subject 1 exits the CTA bus and paces back and forth, up and down the sidewalk.

One of the video clips (hereinafter referred to as "Clip 1") shows the bus stop and surrounding sidewalk. The bus cannot be seen in Clip 1, as it is behind the view of the camera. At approximately 14:00:44, a police car can be seen arriving on the scene. At approximately 14:01:10, the car stops. At approximately 14:01:39, Subject 1 walks in front of the car, with his muscles flexed, before turning and walking off screen, behind the camera's view. At approximately 14:01:51, Subject 1 again stands in front of the police car. He waves his arms in an aggressive manner towards the police car and appears to throw something at the car. At approximately 14:02:12, a police officer, now known as Officer A, can be seen outside his vehicle with his weapon drawn. At this point, Subject 1 is behind the view of camera such that he cannot be seen. Officer A is facing the camera and backing away with his gun drawn. Subject 1 can then be seen charging once at Officer A. Officer A fires shots at Subject 1 at approximately 14:02:18.

Another video clip (hereinafter referred to as "Clip 2") shows the CTA bus and sidewalk around it. This clip captures some of Subject 1's actions while he is behind the view of the camera in Clip 1. Subject 1 can be seen pacing up and down the sidewalk with his arms flexed. At approximately 14:01:47, Subject 1 walks toward the camera and then goes off screen. At approximately 14:01:56 through 14:01:59, Subject 1 can be seen on camera again before he again walks forward and off screen. At approximately 14:02, Subject 1 can again be seen in the video clip. He walks toward the middle of the bus before making a circle and proceeding back toward the camera, his fists clenched, and then moving off screen. Two officers who have pulled up behind the CTA bus, now known as Officer B and Officer C, can then be seen running a short distance behind Subject 1. A clip from inside the Currency Exchange likewise shows that between approximately 14:01:42 and 14:02:02, Subject 1 walks toward the back of the bus, turns, and walks toward the front of the bus and off-screen twice. At approximately 14:02:07, Subject 1 can be seen walking toward the back of the bus again before turning around and moving off screen.

Clip 1 shows that Subject 1 falls down to the ground and rolls in the street after Officer A fires his weapon. Officer B and Officer C then appear in Clip 1, approaching Subject 1. Subject 1 comes up on his hands and knees, facing one of the officers, who appears to have his handgun drawn. Subject 1 can then be seen rolling in the street. A person with a CFD jacket can also be seen. Officer B and Officer C appear to attempt to handcuff Subject 1. Subject 1 is laying on his stomach. He then breaks away from the

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officers and rolls from his stomach onto his back before coming up on his hands and knees. Officer B and Officer C back away from Subject 1. Subject 1 then kneels forward and eventually lays back down on the street. At the same moment that Subject 1 can be seen laying back down in the street, additional officers are surrounding him. The officers' backs are to the camera, and the officers are between Subject 1 and the camera, such that part of Subject 1 is blocked from view. Subject 1 appears to be bleeding on the street. Eventually, as Subject 1 is laying in the street near the sidewalk, a backboard is brought out and several officers and other individuals appear to be placing Subject 1 on the backboard. These officers and individuals are between Subject 1 and the camera, many with their backs toward the camera, obstructing the view of Subject 1. Subject 1 is ultimately placed on a stretcher and taken away. The tasing of Subject 1 cannot be seen on the video. (Att. 118)

According to **Chicago Police Department Reports**, Subject 1 was arrested on 22 November 2012, at approximately 4:00 pm, at 6253 S. California Avenue, and charged with Aggravated Battery causing great bodily harm, Aggravated Battery of a transit employee, and Aggravated Battery of a victim over the age of 60 years old. The arresting officers were Officer C, #XXXX, and Officer B, #XXXX. It was reported that Subject 1 was arrested after striking a bus driver and a bus passenger.

Numerous witnesses reported that Subject 1 behaved aggressively and harmed citizens inside and outside of the bus. Civilian 2 flagged down Officer A to seek assistance. It was reported that, in fear for his safety and the safety of the surrounding civilians, Officer A discharged his firearm, incapacitating Subject 1.

According to Chicago Police Department Reports, Subject 1 initially denied any active involvement in the incident. When told that there were witness reports and video footage, he "acknowledged that he had caused a disturbance on the bus, and that he had beaten 'some people.'" Subject 1 said he did not remember who, or how many people he struck. Subject 1 stated, "I lost it. I went mad and lost it." When asked specifically, Subject 1 then acknowledged having attacked a police officer. Subject 1 said he "went after" the police officer who shot him because he knew he was going to be arrested and sent back to the penitentiary. When he was off of the bus, he observed police officers approach him from the rear of the bus and the officer who shot him standing at the front of the bus. He then realized that he had "fucked up," and stated that he knew that if he was unable to get past the police officers, he would be sent back to the penitentiary.

Because he did not want to be arrested and return to the penitentiary, Subject 1 "went after" the police officer at the front of the bus. Subject 1 explained that by "went after" the officer, he meant that he was going to "take him down" and "do what [he] had to, to get past him." Subject 1 said that he did not think the officer was going to shoot him because he "moved on him before that and he didn't shoot me." When asked, Subject 1 initially denied ever having said anything to the officer who shot him. After being informed that witnesses heard him yelling at the officer, Subject 1 then acknowledged that he told the officer, "I'm gonna kill you." Subject 1 said he did so only because he thought that

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would cause the officer to step back and let him get by. Subject 1 stated that although he told the officer he would kill him, he had no actual intention of doing so.⁴

According to the Original Case Incident Report⁵ authored by Detective A, Detective B spoke with Officer D and Officer E and Officer F, who also rode in the ambulance with Subject 1. Detective A's report stated that while en route to the hospital, Subject 1 repeatedly attempted to escape the ambulance and fight with paramedics. Officer D subsequently tasered Subject 1 three times so paramedics could strap Subject 1 to a medical board. Paramedics then contacted Christ Medical Center to ensure that Hospital security would be awaiting their arrival due to Subject 1's violent nature. The report indicated that Subject 1 was five feet, six inches tall, and weighed 200 pounds. The report also indicated that Officer A was flagged down at approximately 6253 South California, which was the location of the crime scene.

A Detective Case Supplementary Report⁶ indicates that Officer D said he approached Subject 1 and gave him Taser warnings and verbal commands to stop. However, Subject 1 refused to follow the verbal commands and continued resisting. Officer D then discharged his Taser. However, Subject 1 still refused to stop resisting and follow verbal commands. Officer D then discharged his Taser again. Subject 1 was transported to Christ Hospital. During the transport, Subject 1 continued yelling and attempting to get off the gurney as the paramedics tried to render aid. (Atts. 13, 21, 104, 105)

According to the **Tactical Response Report (TRR)** completed by Officer A, Subject 1 did not follow verbal direction, threatened battery, attacked without a weapon, and aggressively charged in a threatening manner while stating, "I'll kill you!" Officer A responded with member presence, verbal commands, and the discharge of his firearm. (Att. 6)

According to his **Officer's Battery Report (OBR)**, Officer A reported that on the date, time and location of the incident, he was in uniform working alone and responded to the disturbance. Subject 1 attempted to strike Officer A with his hands/fists and verbally threatened him. Officer A did not sustain any injuries. (Att. 7)

According to the **Tactical Response Report (TRR)** completed by Officer D, Subject 1 did not follow verbal commands, stiffened (dead weight), pulled away, and clenched his fists. Officer D responded with member presence, verbal commands, and discharging his Taser. (Att. 8)

The **Taser Deployment Data Sheet** indicates that Officer D deployed his Taser six times. He first deployed his Taser at 4:12:09 p.m. He then deployed it a second time at 4:12:25 p.m.; a third time at 4:12:47 p.m.; a fourth time at 4:16:54 p.m.; a fifth time at 4:17:14 p.m.; and a sixth time at 4:18:07 p.m. (Att. 9)

⁴ Case Supplementary Report page 18 (attachment 105).

⁵ Attachment 13.

⁶ Attachment 105

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According to the **Tactical Response Reports (TRRs)** completed by Officer B and Officer C, Subject 1 did not follow verbal commands, stiffened (dead weight), pulled away, and flailed his arms while officers were attempting to place him into custody. Both Officer B and Officer C responded with member presence, verbal commands, and a take down emergency handcuffing. (Atts. 10, 11)

The **Evidence Technician Photographs** depict the scene of the shooting and the evidence found at the scene. Two photographs were taken of Subject 1 lying in a hospital bed after he had been admitted to the Intensive Care Unit at Christ Hospital in critical condition. (Atts. 101-103)

The **OEMC and PCAD reports** were collected and made a part of this case file. (Atts. 14-20, 70) According to an OEMC event query, a wireless caller reported that two males were fighting on the bus. The caller did not see a weapon. (Att. 15) Another caller reported a male fighting on a CTA bus. (Att. 16) A third caller reported that a group of people were fighting on the corner, and that more people were coming. It was unknown whether weapons were involved. (Att. 17) Badge XXXXX, Run 77, reported that people were still fighting on Bus 6641 and were still waiting for police. (Att. 19)

IPRA Investigators conducted a canvass, in an attempt to locate additional witnesses and/or further evidence. Additional information was gathered from witnesses relating to this event. It should be noted that there is no physical or testimonial evidence that refutes the statements provided by the involved officers. (Atts. 32, 46, 71)

The **Chicago Fire Department Ambulance Report** documented that Subject 1 was located on the street bleeding from his chest area. The Report described Subject 1 as lunging at the officers, even after CFD arrived on the scene. Before the arrival of CFD, a "10-1"⁷ had just been called. CFD personnel were instructed by CPD to stay back until the situation was under control. A CPD officer discharged a Taser at Subject 1. CPD then instructed CFD personnel that they could access Subject 1; however, Subject 1 became combative again upon being placed on the backboard and a CPD officer again discharged a Taser at Subject 1. Eventually, CFD personnel placed Subject 1 in an ambulance. Once inside of the ambulance, paramedics were initially unable to provide care because Subject 1 was "very combative" and "just kept trying to lunge" at them. Subject 1 was tasered approximately two more times while on the way to the hospital. Once Subject 1 calmed down, paramedics were able to establish an IV, but they were unable to obtain Subject 1's blood pressure because he continued to move his arms back and forth. Hospital personnel were notified of the situation. (Att. 25)

⁷ A "10-1" is a radio call that is considered a priority call for all police and fire units for emergency assistance. This type of call involves any life threatening circumstances which have the potential to compromise the safety and well-being of police, EMS, or fire units and it involves an imminent threat to life, bodily injury, or major property damage/loss.

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Medical Records from Christ Hospital indicate that Subject 1 sustained one gunshot wound under his left arm/chest area and a laceration on his right foot. Subject 1 arrived at the hospital with several police officers and Taser nodes still attached to his body. Reports further note that Subject 1 was initially combative but ultimately became cooperative with the medical and nursing staff. The Patient/Family Education Record of Subject 1 revealed that he has a history of psychiatric problems. Toxicology reports indicate that Subject 1 had levels of marijuana and heroin in his body. (Att. 116)

Illinois State Police Forensic Science Laboratory Reports document the examination of the recovered ballistic evidence in comparison to the firearm belonging to Officer A. The firearm tested was found to be in proper firing condition. Based on the analysis of the ISP Reports and Forensic Reports, it was determined that Officer A fired two times. The cartridge casings and bullet fragments were compared to his firearm and were found to match. (Atts. 86 - 87)

According to the **Illinois Department of Corrections website** and a docket report printed from **Mainframe**, a jury found Subject 1 guilty of two counts of aggravated battery of a transit employee, and one count of aggravated battery to a victim over 60 years of age. Subject 1 was sentenced to nine years in prison. At the time of this report, his appeal was pending. (Atts. 133 – 134)

In her statement made to IPRA on 23 November 2012, witness Civilian 10 stated that she was outside of her home when she saw a police officer hold up a gun to someone. Civilian 10 stated that when she went inside of her house she heard a gunshot. Civilian 10 then came back outside of her house and observed Subject 1 bleeding on the ground and attempting to get up with an officer discharging a Taser at him. (Atts. 35, 37)

In her statement made to IPRA on 23 November 2012, witness Civilian 3 stated that she was in her house when she heard sirens and looked outside and observed a CTA bus, a police car, and a fire truck. Civilian 3 stated that when she turned away from the window, she heard two gunshots. When she looked outside again, she observed a fireman and a female police officer running, and a police officer pointing his gun. Civilian 3 stated that the person at whom the officer was pointing the gun must have been lying on the ground, because the officer was pointing his gun down. She also saw paramedics and an ambulance appear on the scene. (Atts. 40, 43)

In his statement made to IPRA on 23 November 2012, witness Civilian 4 stated that he was riding as a passenger in a car with his brother, Civilian 5, and his friend, Civilian 6, when he observed a male, now identified as Civilian 7, bleeding from his mouth. Civilian 4 further observed a shirtless black male, now identified as Subject 1, holding onto an unknown young woman's hair while on a Chicago Transit Authority (CTA) bus. Civilian 4 stated that his brother pulled his car over and asked if anyone needed any help. Other passengers on the bus pulled the young woman away from Subject 1, and the young woman and other woman continued walking and left the area into an alley.

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Civilian 4 stated that Civilian 7 went into the Currency Exchange to get some napkins. Civilian 4 observed Subject 1 pacing back and forth and on and off of the CTA bus. Civilian 4 believed that Subject 1 might have been on drugs or suffering from a mental illness because of the way he was acting. An unknown black male walked past the bus and Subject 1 swung at the male; however, the male ducked and “hit the floor before he got hit” by Subject 1. Subject 1 then looked in Civilian 4 and his friends’ direction as if he was going to attack them and attempted to charge at Civilian 4 and his friends. Civilian 4 observed the police officer, now identified as Officer A, arrive and exit his vehicle. Officer A screamed at Subject 1 and Subject 1 walked towards Officer A, at which time Officer A pointed his firearm at Subject 1 and told him to stop. Subject 1 walked faster towards Officer A, as if he was charging at the officer, and raised his right arm in order to punch him. Civilian 4 stated that when Subject 1 came within about four to five feet of the officer, Officer A took three steps backwards and discharged his firearm three times at Subject 1, striking Subject 1 twice. Subject 1 fell to the ground and looked at Officer A and said, “really?”

It appeared that Subject 1 had been struck on the left side of his torso area and his leg. Subject 1 attempted to stand up but fell back to the ground. Officers attempted to handcuff Subject 1 but he resisted the officers. Another officer discharged a taser at Subject 1 to gain control of him, but Subject 1 was still kicking his feet. Eventually, Subject 1 was placed in handcuffs. (Atts. 48, 51)

In his statement made to IPRA on 23 November 2012, witness Civilian 7 stated that he was waiting for the bus at 63rd and California. When the bus arrived, Civilian 7 entered and was immediately punched in the face by an unknown black male, later identified as Subject 1. Civilian 7 described Subject 1 as an angry man, who had no shirt on and was very muscular. Civilian 7 stated that he started to bleed from hitting his head on the door or a piece of metal. He exited the bus and headed to the nearby Currency Exchange to grab towels to clean himself up. Civilian 7 received staples to his head and stitches in his lip.

Civilian 7 stated that from inside the Currency Exchange, he could see Subject 1 attacking other people and yelling at the bus driver. Subject 1 grabbed two girls that were walking past the bus and pulled them on the bus. Civilian 7 returned to the bus to help the girls and Subject 1 again punched Civilian 7 in the face. The girls “scattered” and got off the bus, and Civilian 7 stated that he returned to the Currency Exchange. From inside the Currency Exchange, he was able to observe a police officer, now identified as Officer A, arrive on the scene. Civilian 7 explained that Subject 1 ran towards Officer A with his fists raised and Officer A shot at him twice. Civilian 7 stated that he saw police officers discharge a Taser at Subject 1 and that the police struggled to hold Subject 1 down. (Atts. 60, 62)

In his statement made to IPRA on 6 December 2012, witness Civilian 8 stated that he was working at the Marathon Gas Station when he heard two gunshots. He did not witness any of the shooting. Civilian 8 stated that he went outside to see what was going on and he observed an unknown black male on the ground, now identified as Subject 1, shirtless and without socks or shoes. A male and a female officer were standing near

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Subject 1. Civilian 8 took some video footage of what he observed after the shooting on his cell phone. An unknown detective captured the footage and IPRA later viewed it. (Atts. 76, 78)

In his statement made to IPRA on 29 January 2013, witness Civilian 6 stated that he was riding in a car with his friends, Civilian 5 and Civilian 4. As they pulled up alongside of a bus at a bus stop, they observed an unknown black male, now identified as Subject 1, inside the bus, hitting and pulling the hair of a woman on the bus. Civilian 6 and his friends parked the car in a nearby parking lot and offered to help those on the bus. Civilian 6 stated that Subject 1 was pacing inside and outside of the bus, and that he tried to punch an African American person walking by. Subject 1 approached the car in which Civilian 6 was sitting and tried to hit the front of the car. A police officer then arrived on the scene, and Subject 1 turned toward the officer. Subject 1 did not respond to the officers' verbal commands and instead charged at the officer and tried to punch him. Civilian 6 stated that when Subject 1 was within two feet of the officer, the officer shot at Subject 1 three times, missing him with the first shot, and Subject 1 fell to the ground. Subject 1 then got back up and a different police officer discharged a Taser at him and placed him in handcuffs. (Atts. 82, 85)

In her statement made to IPRA on 3 March 2013, witness Paramedic 1 stated that she was working when she and Paramedic 2 received a call about an incident on a CTA bus. As Paramedic 1 and Paramedic 2 arrived on the scene, Paramedic 1 recalled that she observed a black male, now identified as Subject 1, on the curb. Police cars, a CTA bus, and a fire truck were also on the scene. She observed Subject 1 getting up from the street and lunging at the police officers a number of times until an officer discharged a Taser at Subject 1. Paramedic 1 further stated that Subject 1 was secured on a stretcher but he continued to be combative by swinging his fists and spitting. He was placed in the ambulance, where he continued to be combative. At that point, he was Tasered again. Paramedic 1 confirmed that she transported Subject 1 to Christ Hospital for treatment. (Att. 95)

In his statement made to IPRA on 14 March 2013, witness Paramedic 2 stated that he and Paramedic 1 received a call about an incident on a CTA bus. On their way to the location of the incident, Paramedic 2 stated that he heard Fire Truck #88 call a "10-1," but was unaware of why the "10-1" was called. Paramedic 2 explained that upon arrival to scene, he learned that a man, now identified as Subject 1, had been shot. He observed Subject 1 lying on the ground, attempting to get up and lunge at the officers and paramedics. Paramedic 2 further stated that with the help of firefighters, he was able to get Subject 1 into the ambulance while Subject 1 was still swinging his arms. According to Paramedic 2, while in the ambulance, Subject 1 continued to be combative and a police officer discharged a Taser at Subject 1. Paramedic 2 was unable to treat Subject 1 as they were on their way to the hospital because Subject 1 was combative and uncooperative and continued to flail his arms. (Att. 97)

In his statement made to IPRA on 7 March 2013, witness Firefighter 1 stated that he received a call for a battery victim on a bus. Firefighter 1 further stated that he was

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driving the fire truck and when he pulled up to the CTA bus, he saw that an unknown male, described as wearing no shirt and having very defined muscles, was pacing back and forth on the curb, acting erratic. Firefighter 1 also observed an officer, now identified as Officer A, telling the unknown male, now identified as Subject 1, to “get back” or “back up” three times. Firefighter 1 explained that Subject 1 continued to get closer to the officer and clutched his fists like he wanted to hit something. Firefighter 1 described Subject 1’s demeanor as “threatening” because he was “hunched forward” with his fists clenched. Firefighter 1 stated as follows: “I haven’t been scared on the fire department a lot, but I’ll tell you what, I was concerned about [Subject 1].” He said there was something “out of the ordinary” about Subject 1 and that Subject 1 was “definitely threatening.”

Firefighter 1 went to the rear of the fire truck to gather medical equipment because he did not know the location or identity of the patient that the CFD had been called to treat. While he was in the rear of the fire truck, Firefighter 1 heard two gunshots. When he returned to the front of the truck, he observed Subject 1 lying on the ground.

Additional officers arrived on the scene and ran up to handcuff Subject 1, who broke free of the officers’ grasp and fought with the officers. An officer discharged a taser at Subject 1 and then took him into custody. According to Firefighter 1, he assisted with moving Subject 1 to the ambulance on a stretcher, at which point Subject 1 continued to fight and struggle with all parties. Firefighter 1 stated that he went to treat the bus driver, Civilian 9, and the original patient, Civilian 7, who had been punched in the face. Civilian 9 was hypertensive and had an elevated blood pressure. Civilian 7 was already in a separate ambulance and was being taken to Holy Cross Hospital when Firefighter 1 had a chance to treat him. (Atts. 92, 94)

In his statement made to IPRA on 19 November 2015, witness Civilian 9 stated that, on Thanksgiving Day of 2012, he had an afternoon route on California Avenue. As he started out on 71st Street and proceeded north, he picked up a black male passenger at Holy Cross Hospital. The male began to cause trouble as soon as he stepped onto the bus. According to Civilian 9, the male, now identified as Subject 1, was having words with passengers on the bus. He described Subject 1 as a black male, approximately 5’7”, with a muscular build. Once Civilian 9 stopped at the bus stop at approximately 65th Street, Subject 1 began physically fighting with an unknown black male passenger that entered from the rear of the bus. Civilian 9 explained that he screamed and yelled at Subject 1 to stop.

As Civilian 9 arrived at the next bus stop, Subject 1 came to the front of the bus and inquired as to why Civilian 9 was stopping the bus. Civilian 9 explained to Subject 1 that it was a bus stop. Upon opening the door of the bus, a Spanish male, now identified as Civilian 7, stepped onto the bus and Subject 1 immediately struck Civilian 7, who then struck his head against the bar on the front of the bus and fell down. Civilian 7 got up from the floor and stepped off of the bus. Subject 1 went to the rear of the bus and began fighting with another unknown male passenger. The male was able to pull himself away from Subject 1 and exit the bus from the rear doors.

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According to Civilian 9, Subject 1 took his coat and shirt off and stated, "This is my motherfuckerin' [sic] bus" and, "Get this bus going." Civilian 9 said that he told Subject 1 that the bus had broken down. Civilian 9 called the police and hit his panic button. Meanwhile, a 14 or 15-year-old girl and her mother were walking past the bus. Subject 1 exited the bus, grabbed the young girl, and pulled her onto the bus. The mother of the unknown girl and Civilian 7 jumped onto the bus and pulled the girl from Subject 1's grasp. Afterward, Subject 1 grabbed Civilian 9 and tried to pull him out of his seat. Civilian 9 said that he told Subject 1, "I'm just an old man, you don't wanna fight with me."

The Fire Department arrived and a police car arrived on the scene shortly thereafter. The fire truck pulled across in front of the bus and the police car pulled in between the fire truck and bus. Subject 1 appeared aggravated and aggressive. He had his fists balled up as he exited the bus and confronted the police officer, now identified as Officer A. Officer A exited his vehicle with his gun drawn and told Subject 1 to sit down and calm down and that they would "straighten this out." Civilian 9 explained that in the interim of Subject 1 exiting the bus, Civilian 9 closed the doors to the bus. Subject 1 approached the closed bus door and started beating on the doors. He then "confronted" Officer A again, and Officer A repeated himself to Subject 1.

As described by Civilian 9, Subject 1 was initially 4-5 feet away from Officer A. Officer A had his weapon drawn but at his waist level. Subject 1 rushed at Officer A and when Subject 1 came within 1.5 feet of Officer A, Officer A fired two shots at Subject 1. Subject 1 fell to the ground and Civilian 9 observed blood on the ground. An additional officer who had arrived attempted to handcuff Subject 1, but Subject 1 refused, and another police officer used a stun gun on Subject 1. Civilian 9 said that he observed the wires on Subject 1.

According to Civilian 9, the fire department personnel came on the bus to treat him. Civilian 9 had his blood pressure taken and fire department personnel instructed him to "calm down" or he was going to stroke out, because he had a blood pressure of 200 and something. Civilian 9 was placed in an ambulance with Civilian 7 and taken to Holy Cross Hospital for treatment. (Atts. 129, 131)

In his statement made to IPRA on 22 November 2012, Officer B stated that he was with his partner, Officer C, when they heard a call about a disturbance on a bus and a bus alarm. Officer C and Officer B parked behind the CTA bus. Officer B stated that, once at the scene, he saw Subject 1, who seemed out of control. According to Officer B, after he got out of the car, Officer C told him to draw his weapon. Officer B explained that he observed Subject 1 "pursuing" Officer A or "lunging toward him in a really aggressive manner" and observed Officer A giving Subject 1 verbal commands to stop and backing away from Subject 1. Officer B further explained that Officer A shot at Subject 1 twice when Subject 1 lunged at him again. According to Officer B, he and his partner Officer C went over to handcuff Subject 1. Officer B managed to get the right handcuff on Subject 1; however, Subject 1 started moving again and was "getting agitated" and swinging his arms. Officer B stated that his partner was yelling for somebody with a Taser. Officer B

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looked around and observed that Officer D had a Taser. Officer D discharged a Taser at Subject 1. Officer B believed the Taser was deployed twice before Subject 1 was in the second handcuff. He described Subject 1 as continuing to fight as he was being strapped to a backboard and placed in the ambulance. (Atts. 66, 72)

In his statement made to IPRA on 22 November 2012, Officer C stated that he was with his partner, Officer B, when they received a radio call about service on a bus and an alarm. Officer C stated that, upon arrival to the scene, he saw a bus, a police car in front of the bus, and a fire truck. He further stated that he then observed Officer A with his weapon drawn. Officer C explained that he and his partner, Officer B, drew their weapons and approached Officer A. Officer C stated that he saw a man, now identified as Subject 1, going on and off the bus and then lunging at Officer A as Officer A backed up. Officer C stated that when Subject 1 lunged at Officer A for the third time, Officer A shot Subject 1 twice. Officer C stated that Subject 1 fell down, tried to get up again, and told Officer C, “shoot me, shoot me, go ‘head shoot me.” Subject 1 refused Officer C’s commands and started coming toward Officer C, and Officer C backed away. Eventually, Subject 1 went back to the ground again on his knees. Officer C and Officer B tried to place handcuffs on Subject 1. After Officer B placed the first handcuff on Subject 1, Officer C tried to grab Subject 1’s other hand but Subject 1 continued to act combative. Officer C started to lose grip of Subject 1’s wrist, and Subject 1 began to get up and was almost lifting Officer C up. Officer C released Subject 1 and stepped backwards. Officer C called for another officer for a Taser. Officer D approached and discharged his Taser at Subject 1. Afterward, Subject 1 became combative again. Officer C did not recall how many times Subject 1 was tasered. Eventually, two to four officers were able to grab Subject 1’s other hand and handcuff him from the front. According to Officer C, Subject 1 was still combative as the paramedics came over and Subject 1 was being loaded into the ambulance. Subject 1 was wheeled away, escorted by Officer D and two other officers. At that point, the taser prong was still on Subject 1. (Atts. 57-58)

In his statement made to IPRA on 23 November 2012, Officer A stated that he is an Evidence Technician (ET) assigned to process crime scenes and that he has been with the Department since 1999. On the date in question, Officer A related that he was working alone, in full duty status. He was dressed in his full ET uniform, which bore his embroidered star on the upper left chest and his embroidered name tag on the upper right chest. Officer A was driving in a marked Crown Victoria vehicle, with his handcuffs, duty weapon and OC Spray. Officer A further stated that he was working Unit 4 and had a Beat of XXXX, coming from an assignment on 44th and Fairfield. Officer A explained that he was familiar with the area because he worked in the 8th District for 5 years after he had completed his probationary police training at the Chicago Police Training Academy.

According to Officer A, he was driving to an assignment by way of California Avenue when he noticed a Chicago Fire Department truck with its lights on at approximately 63rd Street and California Avenue. He also noticed a female citizen flailing her arms in an attempt to get Officer A’s attention. Officer A stopped to speak with the unknown female, who informed him that someone on a bus was “beating everybody.”

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Officer A parked his car just past 63rd Street and California Avenue, in a slanted direction in front of and less than 10 feet from the bus. Officer A looked over and observed a shirtless, heavysset, muscular man, now identified as Subject 1. Subject 1 was standing on the bus and leaning over the bus driver, who has now been identified as Civilian 9. At this time, Officer A did not know if Subject 1 was beating Civilian 9 or not. However, he explained that he had “that information from” the civilian “that people were getting beat up on the bus.” He later stated he believed Subject 1 was beating Civilian 9, and that Civilian 9 appeared “distraught.”

Before exiting his vehicle, Officer A provided his location over his radio, requesting backup. He then proceeded to exit his vehicle; however, when he did so, Subject 1 rushed toward him. Officer A directed Subject 1 to “back off” and made a call to radio dispatch to report his situation was a “10-1” and emergency. Officer A at this point, Officer A knew there was something wrong with Subject 1 because he kept grunting and yelling, “I’ll kill you,” flexing his muscles like he was the “Hulk,” and taking his fists in and out of his pockets.

Officer A explained that Subject 1 charged at Officer A three times despite Officer A’s repeated directives to Subject 1 to back off. On the third time that Subject 1 charged towards him, Officer A fired two rapid fire shots at Subject 1. Officer A stated that he “was in fear of [his] life at the time” and thought Subject 1 would disarm him. According to Officer A, he was standing approximately one to two feet away from Subject 1 at the time he shot. Officer A stated that after he fired the second shot, he observed blood splatter from Subject 1’s chest and Subject 1 stumbled forward and fell to the ground.

Officer A said that after he called for a “10-1,” he saw a squad car near the back of the bus. Officer A pointed to Subject 1 to signal to the officer that Subject 1 was the subject. Officer A did not recall what the officer did. He said that after he shot Subject 1, Subject 1 was still aggressive and fighting. Officer A believed “[t]here were probably two officers” who attempted to subdue Subject 1. The officers tried to turn Subject 1 on his belly, but he would not allow the officers to do so. Officer A said that more officers arrived on the scene and that, while Subject 1 was still on the ground, an officer discharged a Taser at Subject 1 because he was still fighting. A Taser was discharged at Subject 1 more than once. Eventually, officers were able to secure Subject 1 with handcuffs. Fire Department personnel and paramedics who were on the scene placed Subject 1 into an ambulance to be transported to the hospital.

Officer A said that he had no other option but to shoot his gun because if he had not fired his weapon, Subject 1 would have overpowered him, disarmed him, and put everyone on the scene at risk. (Atts. 64, 73)

In his statement made to IPRA on 12 May 2017, Officer D stated that he arrived to the scene after Officer A had already fired his weapon. When he arrived, Officer D observed numerous officers waving him over to Subject 1, who was lying on the ground. The officers were attempting to detain Subject 1 as Subject 1 flailed his arms and refused to be handcuffed. Officer D described Subject 1 as “very muscular.” Officer D, who was

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a certified Taser officer on the date of the incident, assisted in detaining Subject 1 by deploying a Taser in Subject 1's direction. Before doing so, he gave verbal commands to Subject 1. To the best of his knowledge, Officer D recalled telling Subject 1 to stop resisting. When asked whether he gave Subject 1 verbal direction each time he used his Taser against Subject 1, Officer D stated that he gives verbal direction every time he deploys a Taser.

Officer D stated he would have to see a video to recall what Subject 1 was doing before he first deployed his Taser. Officer D stated that after he deployed the Taser in Subject 1's direction, Subject 1 remained combative, forcing Officer D to deploy the Taser a second time. Officer D did not recall how many times he discharged his Taser. He was shown the Taser download report and asked if he could tell how many times he discharged his Taser. Officer D explained that he did not create the report, he was not trained in how to interpret the report, and it would be speculation for him to state how many times he discharged the Taser. However, after reviewing the Taser download report further, Officer D said he believed the Taser was fired six times. To the best of his knowledge, he agreed that was accurate. He believed Subject 1 appeared to be under the influence of something based on the way that Subject 1 was acting. He noted that Subject 1 was not saying anything or responding to commands. He described it as being "difficult" to get Subject 1 under control.

Officer D stated that he had to use his Taser in the ambulance with Subject 1, although he could not recall how many times he discharged his Taser in the ambulance. He stated that for three officers to ride in an ambulance with a subject would mean the subject was "very, very combative." To the best of his knowledge, he believed Subject 1 was trying to break out of his handcuffs and lunge at paramedics while in the ambulance.

Officer D was shown the Currency Exchange video. At 14:03:57, Officer D could see himself on the scene. He did not recall whether, at that point, he had deployed his Taser yet. When asked whether the video depicted when he deployed his Taser, Officer D said it was "in that moment, somewhere," though he could not state with a degree of accuracy in what moment he deployed his Taser. Based on the angle of the camera, Officer D could not see himself in the video actually deploying his Taser at any point. (Att. 135).

In her statement to IPRA on 12 May 2017, Officer G stated that she recalled Subject 1 was heavy-set and difficult to handcuff. She recalled Officer D using his Taser, although she did not know why he used his Taser or how many times he did so. She said Subject 1 was not being cooperative. She could not recall whether verbal commands were being given to Subject 1. Officer G did not ride in the ambulance on the way to the hospital. (Att. 136).

During the administrative investigation, two **civil lawsuits** were found online for Subject 1. In these suits filed in 2014 and 2015, Subject 1 (plaintiff) sought punitive damages from the Chicago Police Department (defendant) for several allegations including excessive force and misconduct. Both cases were terminated, neither in favor the plaintiff. (Att. 137)

CONCLUSION

I. OFFICER A'S USE OF DEADLY FORCE

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.”

In addition, the use of deadly force is codified under section 7-5 of the Criminal Code of 2012 (720 ILCS 5/7-5 (West 2012)). The pertinent part of that statute states that:

“[a] peace officer *** 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.” 720 ILCS 5/7-5 (West 2012).

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). “The ‘reasonableness’ inquiry in an excessive force case is an objective one: 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

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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. A preponderance of the evidence establishes that Officer A reasonably believed the use of deadly force was necessary to protect Officer A and others from death or great bodily harm, and Officer A’s belief was objectively reasonable under the circumstances.

1. Subject 1 Charged at Officer A With Clenched Fists, Threatening to Kill Officer A, Despite Officer A’s Instructions to Stop.

The undisputed evidence in this case establishes that in the moments before Officer A fired his weapon, Subject 1 charged at Officer A with his fists clenched, threatening to kill Officer A and ignoring Officer A’s commands to desist.

Officer A described Subject 1 as rushing toward him and charging him three times, even though Officer A repeatedly directed Subject 1 to back away. Officer A further described Subject 1 as grunting, yelling “I’ll kill you,” flexing his muscles like he was the “Hulk,” and taking his fists in and out of his pockets.

Ample evidence corroborates Officer A’s description of Subject 1’s actions and Officer A’s response. Officer C and Officer B observed Subject 1 lunging toward Officer A. Witness Civilian 4 observed Subject 1 moving quickly toward Officer A, as if he was charging Officer A, and raising his arm in order to punch Officer A. He also heard Officer A screaming at Subject 1 to stop. Witness Civilian 7 observed Subject 1 run toward Officer A with his fists raised. Witness Civilian 6 observed Subject 1 charging at Officer A instead of responding to Officer A’s verbal commands. CTA bus driver Civilian 9 described Subject 1 as confronting Officer A, with his fists balled up, and rushing at Officer A. Civilian 9 said Subject 1 came within approximately 1.5 feet of Officer A. CFD firefighter Firefighter 1 observed Subject 1 continuing to move closer to Officer A, with his fists clutched like he wanted to hit something, despite Officer A’s instruction to Subject 1 to “get back” or “back up.”

The video recordings also corroborate Officer A’s version of events. Specifically, in Clip 1 of the Currency Exchange videos, Subject 1 can be seen charging at Officer A as

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Officer A backs away, and Officer A can be seen firing at Subject 1 as Subject 1 closes the distance between Officer A and Subject 1. Although Clip 1 only shows Subject 1 charging one time at Officer A, Subject 1 is off camera at the beginning of Clip 1. Clip 2, and a clip from inside the Currency Exchange, show Subject 1 approaching Officer A's direction and circling back twice before Subject 1's final lunge toward Officer A. Accordingly, the video clips lend support to Officer A's and the other witnesses' statements that Subject 1 lunged toward Officer A three times. Most notably, Clip 1 of the Currency Exchange footage clearly shows that Subject 1 was charging toward Officer A in the moments before Officer A fired his weapon.

In sum, the evidence clearly establishes that Subject 1 lunged toward Officer A with his fists clenched and threatened to kill Officer A, even though Officer A repeatedly instructed Subject 1 to stop doing so.

2. Officer A also believed that he saw Subject 1 beating Civilian 9, and Officer A knew, based on a citizen's report, that Subject 1 had been attacking people on the bus.

In addition to observing Subject 1 lunge toward him in a threatening manner, Officer A was also told by a citizen that Subject 1 was attacking people on the CTA bus, and his observations when he arrived on scene confirmed the information he received that Subject 1 was acting violently.

Officer A told IPRA that as he approached the scene, a female citizen approached Officer A, "flailing" her hands and telling Officer A that somebody on the bus was "beating everybody." When Officer A arrived on scene, the CTA bus was stopped by the bus stop, and Officer A saw Subject 1, shirtless, standing over the bus driver. The bus driver appeared "distracted," and Officer A believed Subject 1 was beating the bus driver. He explained that although he could not tell if Subject 1 was beating the bus driver or not, he had "that information" from the civilian that "people were getting beat up on the bus."

Thus, when Officer A arrived on scene, he possessed information that Subject 1 was beating people, and his observations of Subject 1's behavior toward Civilian 9 confirmed any suspicion he had that Subject 1 was acting violently toward citizens.

3. An objectively reasonable officer in Officer A's position would believe the use of deadly force was necessary to prevent death or great bodily harm to himself or others.

Based on the totality of the circumstances, a reasonable officer in Officer A's position would have believed the use of deadly force was necessary to prevent death or great bodily harm to himself or others. Officer A told IPRA he believed that if he did not fire his gun, Subject 1 would have overpowered him, disarmed him, and put everyone on the scene at risk. Based on Subject 1's actions of repeatedly lunging at Officer A and refusing to comply with Officer A's instructions, the proximity between Subject 1 and Officer A, Subject 1's size and demeanor, the information Officer A received that Subject 1 was beating people on the bus, and his observation of what appeared to be Subject 1

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attacking Civilian 9, it was objectively reasonable for Officer A to believe that Subject 1 would overpower him and use Officer A's weapon against Officer A or others on the scene.

Officer A was working alone when he was flagged down by a citizen who told him that a person on the bus was beating people up. Thus, Officer A arrived on the scene without a partner, equipped with information suggesting that Subject 1 was aggressive and was not afraid to hurt others. Further, he arrived to a chaotic scene, with a CTA bus pulled over and a CFD truck with its lights on. Officer A observed Subject 1 standing over Civilian 9, who looked "distraught." Officer A believed that Subject 1 was beating Civilian 9. As soon as Officer A exited his car, Subject 1 rushed toward him. Subject 1 then repeatedly refused to comply with Officer A's verbal commands, instead lunging at Officer A while threatening Officer A and clenching his fists. According to Officer A, when he ultimately fired, Subject 1 was within two feet. Civilian 9 said that Subject 1 was within one and a half feet of Officer A when Officer A shot. Bystanders were also nearby when Officer A shot Subject 1.

The video evidence and the officers' and witnesses' statements further establish that Subject 1 was a heavysset and muscular man and that he was acting erratically. Officer A described Subject 1 as flexing his muscles like he was "the Hulk." Notably, Firefighter 1, a CFD firefighter, said he had not been scared often while with the fire department, but he was concerned about Subject 1. He explained there was something "out of the ordinary" about Subject 1 and Subject 1 was "definitely threatening." The Original Case Incident Report indicated Subject 1 weighed 200 pounds.

It was objectively reasonable, given Subject 1's size, his threatening and erratic behavior, his lunge toward Officer A, his refusal to listen to Officer A's commands, and his violence towards multiple passengers on the CTA bus, for Officer A to believe that Subject 1 would overpower him, disarm him, and use his weapon against Officer A and others on the scene. We note that Officer A was not equipped with a Taser or baton that he could have used against Subject 1. But, even if he had been, Officer A said he feared that Subject 1 would overpower him, and he could have reasonably believed that a Taser or baton would not have been enough to prevent Subject 1 from overpowering him. Further, the Fourth Amendment does not require an officer to "use the least or even a less deadly alternative so long as the use of deadly force is reasonable under *Garner v. Tennessee* and *Graham v. Connor*." *Plakas v. Drinski*, 19 F.3d 1143, 1149 (1994). A reasonable officer in Officer A's position would have believed the use of deadly force was necessary to prevent Subject 1 from harming himself or others. Accordingly, Officer A's use of deadly force was WITHIN POLICY.

II. OFFICER D'S USE OF A TASER

Legal Standard

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Pursuant to CPD General Order 03-02, III, department members shall “use an amount of force reasonably necessary based on the totality of the circumstances to perform a lawful task, effect an arrest, overcome resistance, control a subject, or protect themselves or others from injury.” Similarly, CPD General Order 03-02, II, and section 7-5 of the Criminal Code of 2012 (720 ILCS 5/7-5 (West 2012)), provide that a police 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 an arrest.

The central inquiry in every use of force is whether the amount of force used by an officer is objectively reasonable in light of the particular circumstances faced by the officer. G.O. 03-02, III; *Graham*, 490 U.S. at 397. In assessing the reasonableness of a particular use of force, we consider such factors as the severity of the crime at issue, whether the subject poses an immediate threat to the safety of officers or others, and whether the subject is actively resisting arrest or attempting to evade arrest by flight. G.O. 03-02, III; *Graham*, 490 U.S. at 396. We judge the reasonableness of an officer’s use of force under the totality of the circumstances, viewed from the perspective of a reasonable officer on the scene. G.O. 03-02, III; *Graham*, 490 U.S. at 396.

CPD General Order 03-02-02 categorizes the force options that are available to a police officer based on the type of subject with whom the officer is interacting. One type of subject is an “active resister,” who is defined under General Order 03-02-02, III, as “a person whose actions attempt to create distance between that person and the member’s reach with the intent to avoid physical control and/or defeat the arrest. This type of resistance includes gestures ranging from evasive movement of the arm, through flailing arms, to full flight by running.” Under General Order 03-02-02, III, permissible use of force against an “active resister” includes the use of a Taser. Courts, too, have generally held “that the use of a taser against an actively resisting suspect either does not violate clearly established law or is constitutionally reasonable.” *Abbott v. Sangamon County*, 705 F.3d 706, 727 (2013).

ANALYSIS AND CONCLUSION

Based on the totality of the circumstances, Officer D’s use of a Taser in this case was objectively reasonable and within policy as defined by General Order 03-02, II through III; General Order 03-02-02, III; the relevant Illinois statute; and the Fourth Amendment.

The Taser deployment data sheet indicates that Officer D discharged his Taser six times. According to the data sheet, three Taser charges were administered within one minute of each other. Four minutes then passed before another Taser charge was administered. This gap in time between the first three Taser charges and the second three Taser charges suggests that Officer D administered the first three Taser discharges while on the scene and the second three Taser discharges while inside the ambulance.⁸ The

⁸ We note that the Taser deployment data sheet indicates the first Taser discharge occurred at 4:12:09 p.m., and the last discharge occurred at 4:18:07 p.m. However, the video evidence indicates that Officer B and

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Original Case Incident Report likewise indicates Officer D discharged his Taser three times during Subject 1's transport to Christ Hospital. Accordingly, a preponderance of the evidence establishes that Officer D administered three Taser discharges while on the scene and three Taser discharges while in the ambulance.

An abundance of evidence establishes that Subject 1 was avoiding physical control and resisting arrest while on scene. Numerous witnesses, including Officer A, Officer B, Officer C, Civilian 4, and Civilian 9, described Subject 1 as resisting Officer B's and Officer C's attempts to handcuff Subject 1.⁹ CFD firefighter Firefighter 1 stated that Subject 1 had broken free from the officers' attempts to handcuff him and was fighting with the officers before Officer D discharged his Taser. The CFD report indicated that Subject 1 lunged at the CPD officers before he was tasered and that he was "combative" before the second Taser discharge was administered. In sum, the evidence clearly shows Subject 1 was actively resisting physical control and arrest on scene when Officer D administered his initial Taser discharges. Accordingly, Subject 1 was an active resister, and Officer D use of a Taser while on the scene was WITHIN POLICY. See General Order 03-02-02, III; see also, *e.g.*, *Clarett v. Roberts*, 657 F.3d 664, 674 (2011) (affirming the jury's verdict in favor of the defense, despite the plaintiff's contention that the officer used excessive force when he deployed his Taser three times, where the officer testified the plaintiff was blocking a bedroom and kicking and flailing at the officer and continuing her behavior when the officer tried to arrest her, and other officers testified similarly).

Officer D administered the rest of his Taser discharges while inside of the ambulance with Subject 1. Again, the undisputed evidence establishes that Subject 1 was continuing to actively avoid physical control and/or resist arrest while he was inside the ambulance. The Original Case Incident Report indicated Subject 1 repeatedly attempted to escape the ambulance and fight with the paramedics, and Officer D tasered Subject 1 three times so that paramedics could strap Subject 1 to a medical board. The CFD Ambulance report indicated Subject 1 continued lunging at the paramedics as they attempted to initiate patient care. The report described Subject 1 as "very combative." In their statements to IPRA, Paramedic 1 and Paramedic 2 likewise described Subject 1 as combative. Paramedic 1 said that even though Subject 1 was secured on a stretcher, he continued to swing his fists. Paramedic 2 said that he was unable to treat Subject 1 because Subject 1 was uncooperative and flailed his arms. In fact, according to the Original Case Incident Report, Subject 1 was so combative that the paramedics contacted Christ Hospital to ensure that security personnel would be awaiting their arrival.

All of the foregoing evidence indicates that Subject 1 was actively avoiding physical control and/or resisting arrest while inside of the ambulance. There is no evidence to suggest that Officer D discharged his Taser at any point when Subject 1 was no longer resisting physical control. A preponderance of the evidence thus establishes that Subject

Officer C were attempting to place Subject 1 in handcuffs before 4:12:09 p.m., and numerous witnesses stated that Subject 1 was tasered at least once while Officer B and Officer C were attempting to place Subject 1 in handcuffs. Accordingly, the time stamps on the Taser deployment data sheet appear to be slightly inaccurate.

⁹ Civilian 9 described the Taser as a "stun gun."

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1 was an active resister and that Officer D use of his Taser was WITHIN POLICY. See General Order 03-02-02, III.

Approved:

COPA Deputy Chief Administrator

COPA Deputy Chief Administrator