

## CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

Log #1084730

### SUMMARY OF INCIDENT

On April 4, 2017, at approximately 10:45 AM, Officers A (“Officer A”) and B (“Officer B”) were dispatched to XXX W. Maple Street, Chicago, IL 60610, an apartment building where Subject 1 (“Subject 1”), Civilian 1 (“Civilian 1”), and Civilian 2 (“Civilian 2”) were located. OEMC dispatched Officers A and B because Civilian 1, who is a security guard at the apartment building, called 911 requesting officer assistance because Subject 1 threatened her. Upon arriving there, officers were told by Civilian 1 that Subject 1 threatened her and Civilian 2 during a verbal altercation. Officers A and B went upstairs to Subject 1's unit and entered upon his consent, placed him under arrest for assault and transported him to the 18<sup>th</sup> District. Subject 1 alleges that the officers arrested him for no reason and used excessive force.

### ALLEGATIONS

It is alleged that on April 4, 2017 at 10:45 AM, at XXX W. Maple Street, the accused, **Officer B #XXXXX**:

1. Arrested Subject 1 without justification.

It is alleged that on April 4, 2017 at 10:45 AM, at XXX W. Maple Street, the accused, **Officer A #XXXXX**<sup>1</sup>:

1. Arrested Subject 1 without justification; and
2. Handcuffed Subject 1 too tightly causing injury.

It is alleged that on April 4, 2017 at approximately 12 PM, at XXX W. Maple Street, the accused, **Unknown Officer 1**:

1. Handcuffed Subject 1 too tightly causing injury and refused to loosen the handcuffs upon request; and
2. Failed to allow Subject 1 to make a phone call while in custody upon request.

### APPLICABLE RULES AND LAWS

**Rule 2:** Any action or conduct which impedes the Department's efforts to achieve its policy and goals or brings discredit upon the Department

**Rule 8:** Disrespect to or maltreatment of any person, while on or off duty

**G02-02:** The First Amendment and Police Actions

**G06-01-04:** Arrestee and In-Custody Communication

**S06-01:** Processing Persons Under Department Control

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<sup>1</sup> Per Officer A's Personnel Action Report, Officer A retired from the Department as of June 27, 2017. (Att. 29) Accordingly, COPA will not discuss any allegations against Officer A.

**The Fourth Amendment of the United States Constitution**

**INVESTIGATION**

In **Subject 1's audio statement** to IPRA conducted on April 21, 2017, Subject 1 stated that when he entered his apartment building, the security desk personnel called him an "asshole" to which Subject 1 responded with similar profanity. The exchange of profanity escalated into a verbal altercation. CPD officers were called to the building, and consequently, Subject 1 was arrested. Subject 1 indicated that he did not resist. While Subject 1 was led to the police vehicle, Subject 1 stated that he told the officers that the handcuffs were tight, but the officer did not loosen the handcuffs. Subject 1 stated that he did not recall the officer's response.

While at the 18<sup>th</sup> District lockup, Subject 1 stated that an African American officer "yanked" off his handcuffs. Subject 1 did not recall what time his handcuffs were initially removed when he arrived at the lockup. Later, the same African American officer handcuffed Subject 1 to a bench. This time Subject 1 stated to another officer that the handcuffs were too tight and asked the officer to loosen or take off the handcuffs. When the officer took the handcuffs off, Subject 1 stated that the handcuffs scraped Subject 1's right hand causing his hand to bleed. Subject 1 described this officer as Hispanic. Furthermore, Subject 1 stated he was handcuffed too tightly to a second bench by a Hispanic officer. Subject 1 stated that he told this officer that the handcuffs were too tight, but the officer refused to loosen the handcuffs.

In addition, Subject 1 specified that he continuously requested to make a phone call, however, he was denied. Subject 1 knocked on the holding room door, but his request was denied. Subject 1 stated he was in custody from 10:45 am until 7 pm. The next day, Subject 1 went to Northwestern Memorial Hospital. Subject 1 stated his right hand had abrasions and was swollen. Subject 1 did not have any other injuries. (Atts. 15-16)

In **Civilian 1's audio statement** to IPRA conducted on August 11, 2017, Civilian 1 stated while she was at her security desk talking to Civilian 2, Subject 1 entered the building. Subject 1 stood in front of the desk, and started "hollering" at Civilian 1 and Civilian 2. Civilian 1 and Civilian 2 did not respond, so Subject 1 yelled louder. Civilian 1 asked Subject 1 to remove himself from in front of Civilian 1's desk. Subject 1 moved to the area adjacent to the security desk/entrance area. Civilian 1 stated that Subject 1 began directing profanities and threatening Civilian 1 and Civilian 2. Subject 1 continued to threaten and direct profanity towards Civilian 2. Accordingly, Civilian 2 spoke with the property manager, Civilian 3. Civilian 3 requested Subject 1 to either exit the building or go into his unit. Civilian 1 stated that Subject 1 responded to Civilian 3 with "shove it where the sun don't shine" and refused to leave the area. Immediately, Civilian 3 told Civilian 1 to call the police. Civilian 1 complied.

During the 911 call, Civilian 1 related that there was a disturbed resident, by the name of Subject 1, who was swearing and threatening Civilian 1. Civilian 1 stated that Subject 1 continued to direct profanities and threaten Civilian 1 and Civilian 2. After calling 911, Civilian 1 stated that Subject 1 "jumped in" Civilian 2's face prior to entering the elevator. Civilian 1 described Subject 1 as intoxicated because Civilian 1 smelled alcohol on Subject 1 and Subject 1 slurred his words.

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Civilian 1 explained that Officer B and A arrived at the building. Both officers, Civilian 1, and a building employee, Civilian 4, went upstairs to Subject 1's unit. Civilian 1 indicated that she was standing outside Subject 1's unit about two units away. Civilian 1 related that when the officers knocked on Subject 1's door, Subject 1 responded with "get the fuck away from my door...you think I'm stupid." She also stated that Subject 1 swung at Officer B. Subsequently, the officers arrested Subject 1. Civilian 1 stated that the officers did not enter Subject 1's unit. Civilian 1 stated as the officers escorted Subject 1 downstairs to exit the building and as Civilian 2 was standing to the left of the security desk, Subject 1 "attempted to lunge" at Civilian 2 and Officer B pulled Subject 1 back.

Civilian 1 further stated that after the officers placed Subject 1 into the police vehicle, Officer B reentered the building to ask whether Civilian 1 and Civilian 2 wanted to file a report. Civilian 1 stated that she and Civilian 2 provided their information to Officer B, as well as, told Officer B that Subject 1 threatened Civilian 1 and Civilian 2. In addition, Civilian 1 stated that when Officer A reentered the building, Officer A provided Civilian 1 with a police report titled "Victim Information Notice." Lastly, Civilian 1 stated that surveillance retention period is about one (1) week. Any recording from April 4, 2017 has been erased. (Atts. 45-46)

In order to schedule a statement, IPRA contacted witness **Civilian 2** numerous times; however, the attempts were met with negative results. (Att. 58)

In **Detention Aide Detention Aide 1's ("DA 1") audio statement** to IPRA conducted on August 10, 2017, DA 1 stated he was off-duty at the time the officers transported Subject 1 to the 18<sup>th</sup> District. On April 4, 2017, DA 1 worked from 9:30 PM to 5 AM. Although Subject 1's arrest report indicates DA 1 as one of the lockup keepers on April 4, 2017 at 5:41 PM, DA 1 stated that he may have been logged onto the system. DA 1 discussed that he logged onto the computer as the lockup keeper during his watch, but he did not log off at the end of his watch. Therefore, his information remained on the computer until he or another logged DA 1 off. DA 1 did not log off, thus, his information stayed on the computer, and Subject 1's arrest report generated DA 1 as one of the lockup keepers. (Att. 37)

In **Detention Aide Detention Aide 2's ("DA 2") audio statement** to IPRA conducted on August 24, 2017, DA 2 stated that on the date of the incident he was off-duty on medical. IPRA confirmed that DA 2 was off-duty on April 4, 2017 according to the Attendance and Assignment Record. (Atts. 18, 49, 50)

In **Detention Aide 3's ("DA 3") audio statement** to IPRA conducted on August 24, 2017, DA 3 did not recall anything about April 4, 2017. IPRA provided identifying information regarding the incident; however, DA 3 did not recall anything related to Subject 1. (Att. 51)

In **Detention Aide 4's ("DA 4") audio statement** to IPRA conducted on August 30, 2017, DA 4 did not recall anything about April 4, 2017. After reading the arrest report containing his name and reviewing Subject 1's photograph, DA 4 did not recall Subject 1 arriving or staying at the district. DA 4 did not recall with whom he worked on the date in question. In addition, DA 4 stated that a subject's handcuffs are taken off once the subject arrives at the district. Unless the subject is "uncooperative or combative," the handcuffs remain off. Even if the subject is "talking

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back”, belligerent, or intoxicated, the handcuffs remain off. DA 4 stated if the subject is “fighting,” then the detention aide handcuffs the subject. Moreover, DA 4 stated there is no reason to deny a subject a request to make a phone call. DA 4 stated he does not recall anything about April 4, 2017 because he interacts with many individuals on a daily basis. (Att. 57)

**Officer B’s (“Officer B”) audio statement** to IPRA was conducted on August 28, 2017. Prior to the statement, Officer B and his counsel viewed his BWC footage. Officer B stated that OEMC dispatched Officer B to assist Officer A at the incident location. OEMC communicated that an assault was in progress and it was a priority. Once arriving at the location, Officer B spoke to Civilian 1, Civilian 2, and an additional female civilian. Officer B stated that Civilian 1, Civilian 2, and the female civilian informed Officer B that Subject 1 assaulted them. Civilian 1, Civilian 2, and the female civilian also informed Officer B that they were in fear of receiving a battery. Officer B stated that he went upstairs to Subject 1’s unit with Officer A. Upon Subject 1’s consent, the officers entered the unit. Officer B smelled alcohol on Subject 1 and observed Subject 1’s movements. Based on these factors and experience with intoxicated individuals, Officer B concluded that Subject 1 was intoxicated. Officer B believed that Subject 1 committed an assault.

Officer B stated that once the officers entered Subject 1’s unit, Officer A told Subject 1 that someone called informing them that Subject 1 committed an assault. Officer A handcuffed Subject 1 and the officers conducted a pat down. Even though the officers told Subject 1 the reason of Subject 1’s arrest, Officer B stated that Subject 1 did not understand due to Subject 1’s intoxicated state. During this time, Subject 1 did not complain or request anything. After Officer A placed Subject 1 into Officer A’s vehicle, Officer B went back inside the building to have Civilian 1 sign the complaint. Officer B asked Civilian 1 and Civilian 2 what occurred. Civilian 1 and Civilian 2 stated they were in fear of receiving a battery and that Subject 1 threatened Civilian 1 and Civilian 2.

Once Officer B arrived at the district, he searched Subject 1 once again and completed paper work for a misdemeanor arrest. Officer B stated that Subject 1 said he was falsely arrested. Officer B described Subject 1 as upset. Subject 1 asked many questions to which Officer B answered as many as he could. Specifically, Officer B answered that Subject 1 would be given a court date and it would be resolved in court. Officer B does not recall whether he spoke to any detention aides or lockup keepers. Officer B stated if he did not document any injuries related to Subject 1 in his reports, then he did not see any injuries on Subject 1. Officer B stated that he did not attend Subject 1’s court date because Officer B was not the complainant or victim. Lastly, Officer B does not recall whether Subject 1 complained about the handcuffs being too tight. (Att. 56)

**Subject 1’s arrest report, CB# XXXXXXXXX**, indicates that he was charged with aggravated assault of a peace officer/volunteer under Section 720 ILCS 5/12-2(b)(4) of the Illinois Criminal Code. The arrest report lists Civilian 1 as the victim. Civilian 1 works as a security guard at Subject 1’s apartment building. The narrative discussed that Subject 1 was arrested on signed complaints for assault after Civilian 1 related that Subject 1 threatened Civilian 1. Civilian 1 was in fear of receiving a battery. (Att. 10)

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The **Original Case Incident Report, RD# XXXXXXXXX**, and **Case Supplementary Report** list Civilian 1 as a victim, Civilian 2 as a witness, and Subject 1 as a suspect/offender. (Atts. 11-12)

The **OEMC Event Query** reports that Civilian 1 called for officer assistance around 10:30 AM. The remarks section notes “60yro m/b hat brown jckt grn jeans intoxicated threatening people in lobby no weapon seen nfi [sic].” (Att. 24)

On May 3, 2017, IPRA requested **911 calls** related to RD# XXXXXXXXX. The first **911 call** relative to this incident was received at 10:32 AM from Civilian 1 stating that Subject 1 was belligerent and intoxicated. The second **911 call** was received at 10:33 AM from Subject 1 stating he was having a problem with the building management. Subject 1 requested an officer to the building. The third **911 call** was received 10:41 AM from Subject 1 stating that Civilian 1 and Civilian 2 were giving Subject 1 a “hard time,” and he requested “a police officer right now.” The fourth **911 call** was received at 10:49 AM from Subject 1 requesting “an officer right away.” The final **911 call** was received at 10:50 AM. However, the audio heard was ringing and then Subject 1’s voicemail greeting. (Att. 22)

**Officer A’s Body-Worn Camera (“BWC”)** depicts Officers A and B conversing with individuals in front of the security officer’s desk. They are discussing Subject 1’s behavior and their interaction with Subject 1. At some point, the officers can be seen entering Subject 1’s unit. Officer A handcuffs Subject 1 and escorts Subject 1 to Officer A’s vehicle. The BWC displays Subject 1 making noises as he sits into Officer A’s vehicle. Officer A enters the apartment building again, and discusses Subject 1’s court date with Civilian 1 and Civilian 2. Later, Subject 1 is heard stating that the handcuffs are “very tight.” Officer A responds that they are less than five minutes away from the district. While Subject 1 is in the holding area at the 18<sup>th</sup> District, Officer A takes off Subject 1’s handcuffs. The BWC shows Subject 1 talking to Officer A with his arms waving in the air. He is also seen throwing his shoes on the floor. (Att. 19)

**Officer B’s BWC** depicts Officers B and A entering the apartment building. It shows the officers discussing the altercation with Civilian 1, Civilian 2, and Subject 1. Civilian 1 states that Subject 1 threatened her and Civilian 2 while Subject 1 was intoxicated. Other individuals standing near the security desk can be heard stating that Subject 1 attempted to “hit” Civilian 2. The officers are seen entering Subject 1’s unit. Subject 1 stated he drank alcohol and Civilian 1 directed profanities towards him. The BWC shows Officer A performing a pat down on Subject 1 and handcuffing Subject 1. At this time, Officer B is heard stating, “do not stiffen up the arm” to Subject 1. The officers escort Subject 1 downstairs. As they were talking out the door, Subject 1 is seen turning his body towards Civilian 1, but Officer B tells Subject 1 to continue to walk towards the door. Later, Officer B is seen entering the apartment building again. Officer B discusses the altercation with Civilian 1 and Civilian 2 in order for them to sign a complaint. Civilian 1 and Civilian 2 are heard stating that they were in fear of receiving a battery. Civilian 2 is telling Officer B that at some point after the initial interaction with Subject 1, Subject 1 came back downstairs, put his phone in her face, called her a “bitch,” and threatened her. (Att. 19)

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On July 11, 2017, IPRA requested **video footage** from the 18<sup>th</sup> District's lockup area and holding cell for April 4, 2017. However, the requested video footage has a thirty day retention period and was no longer available at the date of request. (Att. 28)

IPRA requested **Crime Scene/Evidence photographs**; however, CPD Forensic Services' Photographic Team stated that no photographs related to the case are on file. (Att. 36)

The **medical records** from Northwestern Medical Group states that Subject 1 visited urgent care due to swelling and pain in his right hand. Subject 1 informed urgent care that he was in an altercation and was handcuffed. Subject 1 further stated that when the handcuffs were taken off, Subject 1 had abrasions, and later, swelling, redness, and pain. Subject 1 was primarily diagnosed with cellulitis and having superficial abrasions on his right hand. (Att. 48)

Civilian 1 provided the apartment building's **Incident/Safety Report** related to Subject 1's interaction on April 4, 2017. Civilian 1 authored the incident/safety report dated April 4, 2017 at 11:21 AM. Civilian 1 describes Subject 1's actions as Civilian 1 stated in her statement to IPRA. The report notes that Subject 1 continued to threaten, assault, and disrespect Civilian 1. Further, it notes that Subject 1 returned downstairs, and attempted to "hit" and threatened Civilian 2. (Att. 47)

### ANALYSIS/CONCLUSION

IPRA's burden of proof is the preponderance of the evidence standard. IPRA recommends a finding of Exonerated for Allegation #1 against Officer B as it is more likely than not that there was probable cause to arrest Subject 1.

An arrest is constitutional if there is probable cause. *Dunaway v. New York*, 442 US 200 (1979). Probable cause exists where the police have knowledge of facts, which would lead a reasonable person to believe that a crime has occurred and that the defendant has committed it. *People v. Myrick*, 274 Ill. App. 3d 983 (1<sup>st</sup> Dist. 1995). Probable cause must come from specific facts and circumstances, rather than simply from the officer's hunch or suspicion. An arrest based on probable cause does not violate the Fourth Amendment. In *People v. Tisler*, 103 Ill. 2d 226, 237 (1984), the court discussed that "[i]n determining whether the officer had probable cause, the officer's factual knowledge, based on his prior law-enforcement experience, is relevant." Furthermore, "[a] police officer need not have observed personally the facts that he presents to a magistrate making a probable-cause determination. The officer's statements may be based on hearsay..." *Id.*

At the time of Subject 1's arrest, Officer B possessed knowledge and specific facts that would lead a reasonable person to believe a crime had occurred and that Subject 1 committed it. Officer B believed Subject 1 committed an assault. Officer B's body-worn camera depicts that once Officer B arrived, Civilian 1 stated that Subject 1 threatened her and Civilian 2, and that Subject 1 was intoxicated. In addition, other present civilians, not shown on the body-worn camera, stated that Subject 1 assaulted Civilian 2. OEMC informed Officer B that an assault was in progress. In Officer B's statement, he stated that Civilian 1, Civilian 2, and another female civilian stated that they were in fear of receiving a battery. Moreover, Officer B stated that based on his

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experience and Subject 1's intoxicated state, it was likely that Subject 1 assaulted Civilian 1 and Civilian 2. Along with Officer B's factual knowledge, this experience is relevant because the officer's prior law-enforcement experience is a factor when determining probable cause.

Officer B had probable cause to arrest Subject 1. There is a preponderance of the evidence that Officer B arrested Subject 1 with justification. Officer B did not violate Subject 1's Fourth Amendment right. Therefore, IPRA recommends a finding of Exonerated for Allegation #1 against Officer B.

IPRA recommends a finding of Not Sustained for the allegations against Unknown Officer 1. Based off the evidence, there is insufficient evidence to prove or disprove the following allegations: (1) handcuffed Subject 1 too tightly causing injury and refused to loosen the handcuffs upon request, and (2) failed to allow Subject 1 to make a phone call while in custody upon request.

While Officer A transported Subject 1 to the district, Subject 1 informed Officer A that the handcuffs are "very tight." Officer A responded that they were less than five minutes away from the district. Once arriving at the district, Officer A took off Subject 1's handcuffs. When another officer took the handcuffs off after Subject 1 was cuffed to a bench at the district, the handcuffs allegedly scraped Subject 1's right hand causing his hand to bleed. Subject 1 was intoxicated and flailing his arms, which likely contributed to the resultant injury. There is insufficient evidence to meet the preponderance standard that the injury was a direct result of the officer's actions.

Next, according to G06-01-04, "[a]rrestees will be permitted to make a reasonable number of telephone calls to communicate with their attorney, family, or friends within a reasonable period of time after their arrival at the first place of custody." Furthermore, "[m]embers will enter the telephone number and time of the arrestee's telephone call in the box provided on the Arrest Report. Additional telephone calls will be documented in the appropriate portion of the Arrest Report."

Subject 1 specified that he continuously requested to make a phone call, however, he was denied. The arrest report does not specify whether any telephone calls were requested or made by Subject 1. Also, the on-duty detention aides do not recall whether Subject 1 requested a phone call. Although DA 4 searched, fingerprinted, and processed Subject 1, DA 4 does not recall Subject 1 being at the district. Moreover, DA 4 discussed that he would have noted on the arrest report: (1) if he observed any injuries on a subject, (2) whether a subject complained about anything, or (3) whether a subject requested anything. As such, there is insufficient evidence to meet the preponderance standard.

With respect to the allegations against Unknown Officer 1, there is no other available information to corroborate or refute the allegations. There is insufficient evidence to attribute the allegations to CPD members or to the actions of Subject 1 himself. Therefore, IPRA recommends a finding of Not Sustained for Allegations #1 and #2 against unknown CPD members.