

I. INTRODUCTION

On January 7, 2017, at approximately 2:55 p.m., the Office of Emergency Management and Communications ("OEMC") dispatched members of the 12th District of the Chicago Police Department ("CPD") to XXXX W. Erie Street, Chicago, Illinois XXXX, based on a 911 call of a suspicious person, later identified as Subject 1. Responding police officers ("POs") were told that an unknown male walked into the 911 caller's garage yelling and screaming and refusing to leave.¹ Ambulance 45 of the Chicago Fire Department ("CFD") was also later dispatched at the request of on scene POs to transport Subject 1 to Hospital. No arrest was conducted and the incident was closed as a "Non-Criminal, Mental Health Transport", coded 5079.

On May 4, 2017, Subject 1 registered a complaint with the Independent Police Review Authority ("IPRA")² alleging that several unidentified uniformed "officers carried him and placed him in a police vehicle against his will and that one officer deployed a Taser (drive stun) on him without reporting the deployment."

II. ALLEGATIONS A.

Officer A

It is alleged that on January 7, 2017, at approximately 3:05 p.m., near XXXX W. Erie Street, Chicago, Illinois XXXX, accused Officer A, star #XXXX, employee #XXXXXX, unit XXX, while on duty:

1. Used excessive force in placing Subject 1 into a police vehicle.

III. APPLICABLE RULES AND LAWS

CPD Rules and Regulations - Article V: Rules of Conduct—Rules 2, 3, & 8 to 10

General Orders: G03-02; G03-02-02; G03-02-05

Special Orders: SO4-20; SO4-20-01

CPD Resources: CPD-63.451; CPD-11.406

IV. INVESTIGATION

IPRA and COPA gathered relevant physical and documentary evidence associated with this incident. Additionally, IPRA and COPA obtained statements from Subject 1 and accused Officer A. Material evidence is summarized here.

¹ POs received a description of the person. Subject 1 roughly matched that description.

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.

A. CPD Original Case Incident Report

The Original Case Incident Report, RD #XXXXXX listed Subject 1 as a victim, reporting that he was transported to Hospital via ambulance for psychiatric evaluation. Per the narrative, reporting officer ("R/O") Officer B,³ observed Beat XXXX⁴ responding to a suspicious call. In speaking with Subject 1, R/O's wrote that he began screaming "I have to go to the hospital, I have to get out of here they are coming to get me." Per the narrative, R/O placed Subject 1 into a squad vehicle due to the frigid temperatures.¹

B. Interview of Subject 1

On August 25, 2017, IPRA interviewed Subject 1. In summary, Subject 1 stated that on the incident date, he left his then residence of XXXX W. Ancona St. to walk outside after starting to feel sick. After a block, he started having trouble breathing. Thinking he should try to get a ride home or "somewhere," he snuck into a garage as an unidentified man drove his vehicle in. Subject 1 told the man he was not feeling well to which the man responded, "buzz off." The same man also said no to taking Subject 1 home or to the hospital. Subject 1 then left the garage and residence and began walking back towards his home. On his way, he leaned up against a second vehicle as he felt that he was not taking in any oxygen. Wanting to get warm, he decided to enter the car, but before he could do so, the owner, per his statement, came out and dragged him to the front end of the car.⁶ Subject 1 indicated that POs arrived "probably ten seconds later."

Upon the POs arrival, Subject 1 stated that they instructed him to get into the back of a police car. Subject 1 responded that he was not feeling well and could not breathe. He stated he also asked the responding POs for an ambulance. The responding POs repeated the command to get into the police vehicle to which Subject 1 responded, "I rather not, I rather sit here, where is the ambulance at, are they coming to get me?" Subject 1 asserted that the POs then "physically picked him up and threw him in the back of the police car." Subject 1 said at least three POs carried him into the police vehicle and that he was not trying to resist, only that he asked repeatedly for their names and badge numbers.

According to Subject 1, maybe three minutes after being put into the police car, an unidentified PO, not Officer A, opened the vehicle door and "jams a Taser in [him]," specifically his left upper thigh.⁷ Subject 1 stated he then passed out and his recollection becomes really "grey and shadowy." Subject 1 next recalled being in an emergency room where he was restrained by

³ As of April 15, 2017, Officer B is no longer a member of CPD.

COPA identified the following POs from the Original Case Incident Report: Officer C star #XXXXX (Beat XXXXB), Officer D star #XXXXX (Beat XXXXB), Officer A star #XXXX (Beat XXXX), Officer E star #XXXXX (Beat XXXX) and Officer B (Beat 1288F). COPA further identified the following additional POs from the OEMC Event Query Report: Officer F star #XXXX (Beat XXXX), Officer G star #XXXXX (Beat XXXX), Officer H star #XXXX (Beat 1271) and Officer I star #XXXXX (Beat 1271). (Attachments 6 & 7)

⁵ An online search of the temperature on January 7, 2017 revealed a high of nineteen degrees and a low of two degrees. (*Source*: AccuWeather). (Attachment 48)

⁶ The identity of the "owner" in this interaction was not obtained or revealed in COPA's investigation.

⁷ By email, Subject 1 provided two color photographs of what he identified as his upper left thigh. Both photographs are taken from a very close angle. Neither photograph is time-stamped or geotagged. Per Subject 1, the photographs were taken eight days after the incident. There is slight discoloration observed that may or may not be consistent with a bruise.

handcuffs and later sedated. Subject 1 stated the next day he woke up in the psychiatric ward of the hospital. (Attachment 14)

C. Interview of Accused Officer A

On November 9, 2017, COPA interviewed accused Officer A. In summary Officer A stated that on the incident date, he was in uniform working 3rd watch, Beat XXXX, in a marked vehicle with his partner Officer E. He remembered that day was "pretty cold," estimating the temperature at 20 degrees. Regarding the incident, Officer A recalled hearing over the radio a suspicious person call in which a man was trying to open doors in one or two buildings. Being close by and knowing that the answering PO to the call was in a "99" unit, explained as a unit in which one is working alone, he and his partner decided to assist.

Officer A stated that when he arrived he observed three or four POs with a man in handcuffs, identified as Subject 1. He described Subject 1 as acting irrational and screaming. When later asked to explain what he meant by irrational, Officer A stated, paraphrasing, that he was screaming, flailing his hands, screaming "get me out of here," "it's new year's", "hey woo woo" and other statements that did not make sense for that time. Officer A did not recall if Subject 1 was standing near any vehicles, but that the interaction took place in the street. "A little after [Officer A] arrived," Subject 1 was put into Officer A's vehicle due to his vehicle being the closest to Subject 1. Officer A did not recall who put Subject 1 in the vehicle or if he himself placed him in the car. Officer A also did not recall how Subject 1 entered or was put into the car.

Regarding why Subject 1 was put into the police car, Officer A cited the cold temperature and officer and public safety concerns. Officer A stated that his impression of Subject 1 was that he was in distress and either high on drugs or in need of mental evaluation. Once in the police car, Officer A described Subject 1 as screaming and thrashing about the vehicle. This led Officer A to open the vehicle door and tell Subject 1, paraphrasing, to calm down, you're going to get hurt, you're going to break something in the car. Officer A recalled Subject 1 asking for his name which he provided and closed the vehicle door. Officer A denied Subject 1's Taser allegations.

D. Medical Records

Subject 1 was admitted to the Emergency Department of Hospital at 3:45 p.m. on the incident date for psychiatric evaluation. Subject 1 was ultimately admitted to the hospital's psychiatry division where he remained until discharge seven days later, January 14, 2017. Details of Subject 1's condition on arrival to the hospital, medical history, and discharge diagnoses are omitted from this report out of sensitivity to Subject 1's privacy. There is no mention of injury or complaint of injury to the left thigh or from a Taser deployment within the medical records. (Attachment 38)

E. Taser Download Reports

COPA determined only Officer E, Officer B, Officer H and Officer I were equipped with a Taser on the incident date. Taser download reports were obtained for each assigned Taser serial number. Three Tasers revealed no activity on the incident date. The remaining Taser only listed

activity at 6:00 a.m., an Arc for three seconds, significantly outside of the incident time-frame. In other words, COPA determined conclusively that Subject 1 was not tasered on the date of this incident. (Attachments 22, 30 to 31, & 33)

COPA Investigator, Investigator

COPA Supervising Investigator, Supervising Investigator

V. ANALYSIS AND CONCLUSION

Subject 1 alleges that Officer A and two or three other unidentified POs carried him and placed him in a police vehicle against his will by physically picking him up and throwing him in the back of the vehicle. Detailed in the then controlling version of General Order G03-02, "Use of Force Guidelines," the central inquiry in all use of force incidents is whether the amount of force used by a PO was objectively reasonable considering the totality of the circumstances faced by the PO.⁸ In addition, the then controlling version of General Order G03-03-02, "Force Options," defines a "resister" as a person who is uncooperative. Resisters are sub-categorized as either passive or active resisters. A passive resister is a person who fails to comply (non-movement) with verbal or other direction. One of the permissible response options for a passive resister was "holding techniques," described as consisting of techniques such as a firm grip, grabbing an arm, wristlocks, and come-along holds (i.e., escort holds that are not elevated to pain compliance techniques), as well as any combination of the above.

COPA's investigation revealed that Subject 1 was not tasered. Additionally, Subject 1's own statement categorized him as a passive resister. Subject 1 admitted in his statement that he failed to comply with at least two verbal commands to get into the police vehicle. Accordingly, even if Subject 1 was placed in the vehicle exactly as he described, which COPA does not determine here, the POs would have been reasonable in their use of force under the totality of the circumstances. Additionally, COPA collected compelling evidence confirming that Subject 1 experienced a mental health crisis on the incident date, whereby Officer A and responding POs would have been required to contain him under Special Order SO4-20-01.⁹ In conclusion, at a minimum, Subject 1's stated inaction to get into the back of the police vehicle classified him as a passive resister, thus permitting POs to use force as outlined under G03-02-02, Section IV, B., inclusive of holding techniques. Accordingly, the allegations against Officer A and the allegations against unknown officers are **UNFOUNDED**. No further investigation is warranted.

COPA Deputy Chief Administrator, Deputy Chief A

Graham v. Connor, 490 U.S. 386 (1989).

⁹ Section II, Part B of Special Order, SO4-20-01, "Responding to Incidents Involving Persons in Need of Mental Health Treatment," states that if a person is in need of mental health treatment, and is not immediately dangerous, Department members will contain the subject until assistance arrives.