

## CIVILIAN OFFICE OF POLICE ACCOUNTABILITY

Log #1069595

### INTRODUCTION

On June 3, 2014 at approximately 11:00 PM, in the vicinity of XXXX S. Damen Avenue, Chicago, Illinois, Officers A #XXXX and B #XXXX, attempted to effectuate a traffic stop involving civilian Subject 1 (“Subject 1”). During the stop, force was used against Subject 1 which caused injuries and hospitalization. Subject 1 alleges that the force used was excessive. The Civilian Office of Police Accountability<sup>1</sup> (“COPA”) examines this complaint.

### ALLEGATIONS

It is alleged that on June 3, 2014, at the location of XXXX S. Damen, at approximately 11:00 PM, **Officer A #XXXX:**

1. Threw Subject 1 to the ground, causing injury.
2. Placed a knee on Subject 1’s back while placing him in handcuffs.

### 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 3:** Any failure to promote the Department’s efforts to implement its policy or accomplish its goals
- Rule 5:** Failure to perform any duty
- Rule 8:** Disrespect to or maltreatment of any person, while on or off duty
- Rule 9:** Engaging in any unjustified verbal or physical altercation with any person, while on or off duty

### INVESTIGATION

COPA reviewed relevant documentary evidence and interviews associated with this incident. A summary of the evidence is as follows:

On June 4, 2014, at approximately 10:20 PM, investigators from the Independent Police Review Authority (“IPRA”) interviewed **Subject 1** at Hospital. Subject 1 stated that on June 3, 2014, he was pulling up to the rear of the home of Civilian 1 (“Civilian 1”), a friend he was visiting. He stated that before he got to Civilian 1’s home, he made a left turn, made a right turn, and pulled into the alley and parked in Civilian 1’s garage. Subject 1 further indicated that prior to parking, he drove by a marked Chicago Police Department (“CPD”) SUV.

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<sup>1</sup> 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.

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Once parked, Subject 1 stated, he and a friend (now known to be Civilian 1) got out of Subject 1's vehicle and began talking. Subject 1 stated that approximately thirty seconds after they got out of his vehicle, the officers that were in the SUV pulled up and approached him. Subject 1 stated that the officers told him to "come here." Subject 1 described that he asked the officers why he needed to come to them. Subject 1 related that the officers told him that he did not use a turn signal and that he ran a stop sign. Subject 1 further stated that the officers requested his license, a request to which he complied. Once Subject 1 presented his license, he stated, that one officer returned to the squad car while the other officer stayed and started talking to his friend, Civilian 1.

Subject 1 stated that Civilian 1 began to have back and forth banter with the officer that remained with them. Subject 1 further stated that because of Civilian 1's conversation with the officer, the officer threatened to write Subject 1 four or five tickets. Subject 1 related that he instructed Civilian 1 to "just let 'em do what he gotta do so he can go 'bout his business." At some point after this, Subject 1 stated, one of the officers saw an unopened six-pack of beer in the back seat of Subject 1's car and removed it from the vehicle. Subject 1 stated that the officer said that he had the right to search Subject 1's vehicle and then instructed Subject 1 to place his hands behind his back. Subject 1 said that he retorted, "Why? I'm not drivin' this vehicle. No keys in the ignition." Again, according to Subject 1's statement, the officer told him to put his hands behind his back, to which Subject 1 responded, "No."

Subject 1 further stated that then the officer's partner (now known to be Officer B), came over to him and the two officers attempted to put his hands behind his back, and began "tusslin'" with him. He stated that one of the officers pulled his hoodie off of him and then both officers threw him to the ground. Subject 1 stated that he never ran from the officers, and only pulled his hands away from them. Subject 1 further stated that one of the officers had a knee in his back, and also an officer hit him in the ribs. According to Subject 1, the officers then threw him into the squad vehicle and took him to the police station.

Once at the station, Subject 1 stated that he reported having breathing problems. After reporting to several different CPD personnel that he was having trouble breathing, Subject 1 stated that an officer took him to the Hospital. Subject 1 stated that he was sore and suffering from a broken clavicle, broken ribs and a punctured lung. He also stated that he had scratches and bruising. Subject 1 stated that no officer read him his Miranda rights, nor was he allowed to make a phone call until after he received an I-Bond. (Attachments 7, 8)

On May 20, 2015, at approximately 1:20 PM, IPRA interviewed accused officer, **Officer A, Star XXXX**. Officer A stated that on June 3, 2014 at approximately 11:00 PM, he was working with Officer B. He stated that they were traveling westbound on XX<sup>nd</sup> Street when he observed a vehicle which failed to stop at a stop sign (now known to be the car that Subject 1 was in). Upon seeing this, Officer A stated that he and Officer B executed a u-turn in an attempt to conduct a

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traffic stop. Officer A then stated that the vehicle committed another traffic violation in that it failed to use a turn signal before it parked in the alley of XXXX [S.] Damen.

Officer A stated that at that point, Subject 1 exited his vehicle before the officers could get to him. Officer A further stated that he saw empty beer bottles in the backseat of the vehicle as he approached Subject 1's vehicle. According to Officer A, as Officer B attempted to speak to Subject 1 and conduct a field interview, Subject 1 started to back away and was not complying with verbal direction. Officer A stated that Officer B tried to get Subject 1 back towards the police vehicle, but Subject 1 "kinda...ran away from him." Officer A stated that at this point, he was able to grab Subject 1. Officer A indicated that Subject 1 then "stiffened his body, clenched his fists, still tryin' to get away." Officer A said that he grabbed Subject 1 in a bear hug and further stated, "tryin' to get him to the ground, we both fell and he was placed into custody." Officer A denied placing his knee in Subject 1's back. When questioned as to why Subject 1 was under arrest, Officer A responded, "resisting." When further asked about what led to the resisting, Officer A stated, "well committing the minor traffic violations and then the open, open beer in the back seat." Officer A stated that Subject 1 later complained of upper extremity pain later at the station, and he notified a sergeant of Subject 1's complaint. (Attachments 34, 36)

On May 20, 2015, at approximately 1:45 PM, IPRA interviewed witness officer, **Officer B, Star XXXXX**. Officer B stated on the evening of June 3, 2014, he was working with Officer A in the vicinity of XX<sup>nd</sup> and Damen. He stated that he saw a Crown Victoria commit traffic violations, and then quickly go into an alley. Officer B further stated that as the officers activated their emergency lights to conduct a traffic stop, Subject 1 exited the vehicle and began to walk away from the vehicle. Officer B stated that he exited the squad car and walked towards Subject 1. He stated that when he walked by Subject 1's vehicle, he saw open alcohol inside of the car.

In Officer B's statement, he said that he then went over to Subject 1 to bring him back and continue with the traffic stop. Officer B said that he used verbal commands, but eventually had to put his arm on Subject 1 to "guide" him back towards his vehicle. Officer B stated that Subject 1 then walked away from him at a "brisk pace" and towards Officer A. Officer B further stated that at this time, Subject 1 had clenched fists and stiffened his body. Officer A recalled that he saw Officer A "bear hug" Subject 1, and heard Officer A giving Subject 1 verbal commands to stop resisting. According to Officer A, Subject 1 "broke free" and then Officer A "bear hugged" him again, brought Subject 1 to the ground, and placed him into custody by handcuffing him.

Officer B stated that Subject 1 complained that he needed to see a doctor, once he was at the station. He further stated that Subject 1 was transported to the hospital by another car from the District. (Attachment 30)

**Arrest Report** CB XXXXXXXXX, details that Subject 1 was arrested on June 3, 2014 at approximately 11:08 PM in the alley at XXXX S. Damen Avenue. Subject 1 was charged with two counts of Resisting/Obstructing a Police Officer and three minor traffic violations. According

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to the narrative of the Arrest Report, POs A and B observed Subject 1 commit a minor traffic violation in that he did not come to a complete stop at a stop sign. It further states, the officers then completed a u-turn and observed Subject 1 commit another traffic violation in that he failed to use his turn signal. The narrative also states that the officers then saw Subject 1 park his vehicle and exit his car. According to the narrative, the officers exited their squad car and approached Subject 1 for a field interview, at which point Subject 1 tried to flee despite multiple verbal commands. The report states that Subject 1 clenched his fists, held his hands against his chest, continued to try to flee from Officer A. The Arrest Report also documents that Officer A performed an emergency takedown and cuffing procedure and Subject 1 was taken into custody and transported to the 7<sup>th</sup> District.

The Watch Commander Comments in the Arrest Report document that Subject 1 was taken to Hospital and admitted for a broken collarbone, and an ET (Evidence Technician) was ordered. (Attachment 11)

**Original Case Incident Report** XXXXXXXXX describes the incident involving Officer A, Officer B and Subject 1. The narrative section mirrors verbatim that of the narrative section of the Arrest Report of Subject 1. (Attachments 11 and 14)

This matter was prosecuted under XX-XXXXXXXXXX. Subject 1 was charged with resisting, transportation or possession of alcoholic liquor in a motor vehicle, failure to stop at stop sign, and failure to use a turn signal. All charges were stricken.

A **Tactical Response Report (“TRR”)** completed by Officer A with respect to the arrest of Subject 1 indicates that Subject 1 was initially a passive resister in that he did not follow verbal commands and stiffened his body. In response, the TRR details that Officer A used member presence and verbal commands. Officer A documents that Subject 1 elevated to an active resister when he fled and pulled away, which Officer A met with a takedown and emergency handcuffing. In his TRR, Officer A further states that Subject 1 was an assault assailant in that Subject 1 clenched his fists. There was no interview of Subject 1, as he was being treated at Hospital. (Attachment 12)

A **Tactical Response Report (“TRR”)** completed by Officer B with respect to the arrest of Subject 1 indicates that Subject 1 was initially a passive resister in that he did not follow verbal commands and stiffened his body. In response, the TRR details that Officer B used member presence and verbal commands. Officer B documents that Subject 1 elevated to an active resister when he fled and pulled away, and became an assault assailant when he flailed his arms. Officer B’s TRR does not document any use of force. There was no interview of Subject 1, as he was being treated at Hospital. (Attachment 13)

Chicago Police Department **Event Query** XXXXXXXXX indicates that on June 3, 2014, at approximately 23:07:50, Beat XXX was in the alley west of Damen. Beat XXX ran the name

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of Subject 1 at approximately 23:10:06 and RD XXXXXXXXX was generated at 23:54:27. (Attachment 15)

On June 5, 2014, IPRA investigators conducted a **canvass** of the area around XXXX S. Damen Avenue. IPRA was unable to find any witnesses to this incident. (Attachment 18)

No **in-camera video** from Beat XXX exists for this incident. (Attachment 19)

**Medical Records from Hospital** indicate that Subject 1 was admitted on June 4, 2014 with a clavicle fracture, fractured left ribs and a small pneumothorax. There are also notes referencing a left shoulder abrasion and left arm abrasion with redness and swelling. The chief complaint was listed as “altercation with police.” (Attachment 21)

**Evidence Technician (“ET”)** photos were taken at Hospital and show various photos of Subject 1 in a hospital bed. (Attachment 24)

### ANALYSIS

#### *The Traffic Stop of Subject 1*

Not every encounter between the police and a private citizen is a seizure. *People v. Luedemann*, 222 Ill.2d 530, 544 (2006). Courts have divided police-citizen encounters into three tiers: (1) arrests, which must be supported by probable cause; (2) brief investigative detentions, or ‘*Terry Stops*’ which must be supported by a reasonable, articulable suspicion of criminal activity; and (3) [consensual] encounters that involve no coercion or detention and thus do not implicate fourth amendment interests." *People v. Fields*, 2014 IL App (1st) 130209 (2014) quoting *People v. Luedemann*, 222 Ill.2d at 544.

A traffic stop is more analogous to a *Terry stop* than a formal arrest and, as a result, is generally analyzed under *Terry* principles. *People v. Daniel*, 2013 IL App (1st) 111876 (2013). A *Terry* analysis involves two steps: first, whether the officer's action was justified at its inception and, second, whether it was reasonably related in scope to the circumstances that justified the interference in the first place. An officer may initiate a traffic stop based on the observation of minor traffic infractions. The seizure for the traffic violation justifies a police investigation into the observed violation. *Rodriguez v. United States*, 135 S.Ct. 1609, 1614 (2015). Without more, the stop can only last as long as it is reasonably necessary to complete the purpose of the stop. A traffic stop is not a consensual encounter and the individual must remain until the stop is concluded.

In this instance, Subject 1 stated that he parked and exited the vehicle before Officers B and A arrived. After about thirty seconds, the officers pulled into the alley and exited the vehicle. According to Subject 1, one of the officers “told me to come here.” When asked why, one of the

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officers told Subject 1 that he “didn’t use a turn signal” and either ran a stoplight or a stop sign.<sup>2</sup> Upon request, Subject 1 gave his license to Officer A who then returned to the squad car. According to Subject 1, the officer was “writing his information” while he remained by his vehicle. Subject 1 admitted to not using his turn signal.

According to Officer B, he and his partner observed Subject 1 fail to use a turn signal and stop at a stop sign. At that point, they followed the vehicle into the alley. Based on Officer B’s statement, it seems Subject 1 turned into the alley before he and his partner “initiated our emergency lights and equipment to conduct a traffic stop” and had already exited the vehicle. While Officer B was by the vehicle, he observed the alcohol in the car. Similarly, Officer A stated that he observed Subject 1 commit the traffic violations and when he and his partner “were tryin’ to conduct the traffic stop he [Subject 1] exited his vehicle before we were able to get to the car.”

It is clear from the evidence that Officers B and A initiated a traffic stop of Subject 1. When the officers approached, Subject 1 was told the specific reason for the stop and then was asked for his license. At this point, Subject 1 was seized for purposes of conducting the stop. Further, there is no dispute that the police officers’ initial stop of Subject 1 vehicle was lawful because the officers observed Subject 1 commit two traffic violations. *See People v. Gonzalez*, 184 Ill. 2d 402, 413 (1998) (finding that the stop of a vehicle was valid where the police officer observed a traffic violation).

### *The Arrest of Subject 1*

When an individual is restrained during a lawful traffic stop, it does not, without more, mean that the investigatory stop was transformed into a formal arrest. *People v. Bujdud*, 177 Ill.App.3d 396 (1st Dist. 1988). However, if an officer has the right to detain an individual pursuant to a traffic violation and the individual attempts to walk away from a traffic stop and does not comply with the officer’s requests, the officer has probable cause to arrest. *People v. Brannon* 2013 IL App (2d) 111084 (2013); *People v. Johnson*, 408 Ill.App.3d 107, 119-120 (1st Dist. 2010) (holding that if an individual is detained during a valid *Terry stop* and attempts to flee, police have probable cause to arrest for obstruction<sup>3</sup>).

It is unclear from the evidence when exactly Subject 1 began to walk away from Officers A and B. According to Subject 1, he “tried to run away” when one of the officers told him he was going to search the vehicle and either attempted to put Subject 1’s hands behind his back or told him to put his hands behind his back. At that point, Subject 1 stated that he pulled his hands away and moved away.

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<sup>2</sup> It is unclear, based on Subject 1’s statement, what officer informed him of the purpose of the stop.

<sup>3</sup> A person who knowingly resists or obstructs the performance by one known to the person to be a peace officer, firefighter, or correctional institution employee of any authorized act within his or her official capacity commits a Class A misdemeanor. 720 ILCS 5/31-1.

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However, Officer A and B both stated that Subject 1 was non-cooperative from the beginning of the stop. Officer B stated that he had to guide Subject 1 back to his car so he and his partner could continue with the traffic stop. Subject 1 again walked away from Officer B at which point Officer A attempted to “bear hug” Subject 1. Officer A stated that Subject 1 tried to back way and did not comply with direction during the stop. Officer A stated that Subject 1 “ran away” from Officer B. When Subject 1 ran away from Officer B, Officer A attempted to get a hold of Subject 1 by grabbing him. Subject 1 moved away from Officer A a second time which prompted Officer A to grab Subject 1 again.

As a preliminary matter, if the officers attempted to handcuff Subject 1 for the duration of the traffic stop it does mean the stop had turned into an arrest. Whether handcuffing Subject 1 during the stop was proper depended on the circumstances facing the officers. There are insufficient facts in the record to clarify whether the officers attempted to handcuff Subject 1 before proceeding with the traffic stop and if so, why the officers felt the totality of the circumstances justified handcuffing Subject 1.

It is more likely than not that Subject 1 refused to cooperate with the traffic stop. It is entirely possible that Subject 1 did not understand the purpose of the stop, which may have been exacerbated by the officers attempts to handcuff him. Officer B’s statement indicated that Subject 1 was confused about why he was being stopped and stated that Subject 1 “felt maybe the traffic laws didn’t apply to him once he exits his vehicle.” Similarly, Subject 1 admitted that he refused to put his hands behind his back because he “wasn’t even in the vehicle.” However, because Subject 1 was legally stopped, any attempt to leave the scene or avoid the officers was appropriately characterized as resisting or obstructing and probable cause existed to arrest Subject 1.<sup>4</sup>

### *Use of Force Options*

At the time of this incident, the directive General Order 03-02-01 controlled the various level of force options and the appropriate level of force a Department member may use when interacting with a subject.<sup>5</sup> The directive outlined the level of force options appropriate based on whether the subject was cooperative, resistive, or an assailant. A resister is an individual who is uncooperative and is further divided into two categories: passive and active. A passive resister fails to comply with verbal commands or other directions but fails to comply by *non-movement*. An active resister is an individual whose physical actions are an attempt to avoid physical control or evade arrest. Examples of this type of resistance include evasive “movements of the arm” through “flailing arms, to fully flight by running.” When an individual is an active resister, a department

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<sup>4</sup> Officer B stated that he attempted to place Subject 1 under arrest for the traffic violations and the open alcohol container when Subject 1 began to resist. Per statute, the traffic violations and the open container offense are not jailable offenses. However, a warrantless arrest for a minor offense, one does not carry jail time, is not per se “unreasonable” under the Fourth Amendment. *Atwater v. Lago Vista*, 532 U.S. 318 (2001).

<sup>5</sup> General Order 03-02-02 was in effect from May 16, 2012 till March 11, 2015.

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member may use a variety of methods to bring an active resister under control, such as “stunning.”<sup>6</sup> This allows a department member to use diffused pressure striking or slapping in attempt to increase control over the individual by interfering with the individual’s ability to resist.

In this instance, it is appropriate to characterize Subject 1 as an active resister. By his own admission, Subject 1 attempted to walk or run away from the officers and attempted to pull his hands away from the officers. However, the record is inconsistent regarding the type of force used against Subject 1. According to Subject 1, he was thrown down to the ground and someone placed a knee in his back while handcuffing him. Subject 1 believed that both officers grabbed him and threw him to the ground while only one officer placed a knee in his back. Officer B stated that Officer A, to keep Subject 1 from leaving the scene, grabbed a hold of Subject 1 in a “bear hug,” which resulted in both men falling to the ground. Officer A stated that he had to grab Subject 1 twice and described Subject 1 as actively stiffening his body. When Officer A grabbed Subject 1 the second time, Officer A described Subject 1 as continuing to struggle and that they both fell on the ground. It is unclear from the record whether Officer A fell on top of Subject 1. In addition, both officers deny that either placed a knee into Subject 1’s back. According to Officer A, Subject 1 actively refused to be handcuffed after being brought to the ground.

Because Subject 1 was an active resister, it was appropriate for Officer A to attempt to gain control of him. While not specifically outlined in the general order, grabbing or “bear hugging” is more likely than not an appropriate use of force as contemplated by the general order, because the order allows for more intrusive means to gain control of an active resister.

## CONCLUSION

COPA recommends that **Allegation 1** against **Officer A #XXXX** for throwing Subject 1 to the ground, causing injury to be **Not Sustained**. Determining whether the force used to effect a particular seizure is “reasonable” requires balancing the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interest alleged to justify the intrusion. Such an analysis is inherently fact-dependent and requires consideration of multiple factors. The witness accounts are inconsistent regarding whether Subject 1 was thrown to the ground or if Subject 1 was brought to the ground during Officer A’s struggle to gain control of him. Further, Subject 1’s injuries could be consistent with Officer A’s account that he and Subject 1 fell to the ground after Officer A grabbed ahold of him. In this instance, there is not enough evidence in the record to prove or disprove this allegation.

COPA recommends that **Allegation 2** against **Officer A #XXXX** for placing a knee on Subject 1’s back while placing him in handcuffs to be **Not Sustained**. Officer A denied putting his knee into Subject 1’s back. In addition, Officer A described Subject 1 as an active resister even after Subject 1 was on the ground. As a result, additional force may have been reasonable to secure

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<sup>6</sup> The General Order also allows for other measures, such as OC spray or Taser deployment, which were not utilized in this instance.



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Subject 1. However, the record is unclear regarding how Officer A gained control of Subject 1 in order to place him in handcuffs. In this instance, there is not enough evidence in the record to prove or disprove this allegation.

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COPA Investigator

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COPA Supervising Investigator

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Deputy Chief Investigator