

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	March 3, 2017
Time of Incident:	7:52 p.m.
Location of Incident:	XXXX S. Dearborn Street
Date of COPA Notification:	March 3, 2017
Time of COPA Notification:	9:19 p.m.

On March 3, 2017, Officers A and B were on routine patrol when they observed two men fighting in the street near XXXX S. Dearborn Street. The officers exited their vehicle and attempted to de-escalate the situation. One of the subjects involved in the fight left the area, but the other subject, Subject, refused to leave. Several female family members accompanied Subject and tried to persuade him to leave the area with them. Subject appeared extremely agitated.

While Officers A and B were preoccupied with monitoring Subject, they did not respond to their radios. As a result, about five other officers were dispatched to their location. Subject approached the group of officers and spoke to them using an aggressive tone. Officer A directed Subject to leave. Subject finally left the vicinity, but returned less than a minute later.

Upon his return, Subject walked towards Officer A, who was surrounded by about four assisting officers. Subject appeared upset with Officer A and expressed his frustration to him. When the officers asked Subject if he was threatening them, he responded that he was not, but that he felt threatened. Officer A then directed Subject to step back. Subject appeared to be taking a step back when Officer A immediately deployed his Taser at him.

Later that day, the Independent Police Review Authority (IPRA) received a Taser Discharge notification from the Chicago Police Department (CPD). On July 25, 2017, IPRA converted the notification from Log# 1084297 into a full investigation under Log# 1086048. Based on its review of the evidence, the Civilian Office of Police Accountability (COPA) brought an allegation of unjustified Taser use against Officer A. After conducting a thorough investigation, COPA determined that the evidence supports a finding of Sustained.

II. INVOLVED PARTIES

¹ 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. Therefore, 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.

Involved Officer #1:	A, Star# XXXXX, Employee ID# XXXXX, DOA: X/X/XXXX, Officer, Unit XXX, DOB: XX/XX/XXXX, Male, Black
Subject #1:	Subject, DOB: X/X/XXXX, Male, Black

III. ALLEGATIONS

Officer	Allegation	Finding
Officer A	1. It is alleged that on March 3, 2017, at approximately 7:52 p.m., in the vicinity of XXXX S. Dearborn Street, Officer A discharged his Taser at Subject without justification.	Sustained

IV. APPLICABLE RULES AND LAWS

Rules
<p>Rule 2: Any action or conduct which impedes the Department’s efforts to achieve its policy and goals or brings discredit upon the Department.</p> <p>Rule 6: Prohibits disobedience of an order or directive, whether written or oral.</p> <p>Rule 8: Disrespect to or maltreatment of any person, while on or off duty.</p>
General Orders
<p>General Order G03-02-01: The Use of Force Model</p> <p>General Order G03-02-02: Force Options</p>
Special Orders
Uniform and Property U04-02-04: Taser Devices
State Laws
<p>720 ILCS 5/12-5-A: Reckless Conduct</p> <p>720 ILCS 5/12-1-A: Assault</p>

V. INVESTIGATION²

a. Interviews

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

COPA interviewed Witness Officer B³ on January 9, 2018, after he reviewed relevant footage from his Body Worn Camera (BWC). Officer B stated that on March 3, 2017, he was on-duty and assigned to Beat XXXX. He was working with his partner, Officer A, as a tactical officer in plain clothes. While patrolling in an unmarked vehicle with Officer A, Officer B observed a crowd of about ten people in the street near a multifamily residential building at XXXX S. Dearborn Street. Upon driving closer to investigate, Officer B saw “two individuals rustling around on the street.”⁴ Officer B then exited his vehicle along with Officer A, hoping to disperse the crowd using officer presence. One of the individuals that had been rustling in the street, now known as Subject, was in a “highly agitated state” and refused to leave.⁵ Hearing the verbal argument that Subject was having with the other individual, Officer B concluded that they had been fighting.

Officer B said that he did not place Subject under arrest when he was fighting with the other individual because there were no signed complaints which would have authorized him to do so. Officer B said that he and his partner tried to use as little force as possible to disperse the crowd and that they waited so that Subject’s friends could try to remove him from the area before intervening. Officer B was not aware if anyone was injured during the fight.

After the fight ended, the crowd, including Subject, relocated to the parking lot behind XXXX S. Dearborn Street. Officers B and A followed to make sure that the fighting had stopped and that the crowd dispersed. Officer B said that Officer A ordered the crowd to leave. Although most of the crowd left, Subject refused to leave. Subject then directed his anger towards Officer A. Officer A warned Subject about being tased. Eventually Subject returned to the street in front of XXXX S. Dearborn. Officers B and A followed Subject to the street to make sure that he left, which he did without incident.

Officer B said that as Subject was leaving, more officers arrived on scene. Officer B clarified that he never called for assistance but that officers responded because he and his partner had not been answering their radios. Officer B believes that their Zone dispatcher was trying to check on their status but, because of the commotion, neither officer heard the dispatcher. Although Officer B was unsure of how many officers arrived, he believes that there were two squad cars with a total of about four additional officers.

Shortly after Subject left, he returned to the vicinity and began arguing with Officer A. Officer B said that he was about 15-feet away from Officer A and Subject, so he could not hear what Subject was saying, but said that “it sounded like threats.”⁶ Officer B and Officer A then asked Subject if he was making threats, to which Subject did not respond, but continued engaging with Officer A. When asked to clarify what kind of threats Subject was making, Officer B said that he could not hear Subject, but that he seemed to be speaking in a threatening manner while walking towards his partner. Officer B said that at one point during the interaction, Subject took a “bladed stance.”⁷ Officer B described a bladed stance as when a subject is close and has an angled stance, rather than being flat-footed, which is usually perceived to be in preparation to fight.

³ Att. 49

⁴ See Audio Recorded Statement of Officer B (Att. 49) at 18:50.

⁵ *Id.* at 04:58.

⁶ See Audio Recorded Statement of Officer B (Att. 49) at 06:44.

⁷ *Id.* at 10:50.

Officer B said that after Subject took a bladed stance, he walked away, and then came back and walked towards Officer A.

After Subject returned, Officer A deployed his Taser at him. Officer B said that the Taser deployment occurred after about five minutes after their arrival and about thirty seconds to one minute after Subject began making threats. After the Taser deployment, which was ineffective, all the officers who had previously been in a semi-circle around Subject and Officer A, swarmed Subject and placed him into custody. Officer B said that after they arrested Subject, they called EMS to remove the Taser prong that had penetrated Subject's skin.

Officer B stated that he had his Taser on him during this incident, but did not have it out. He was not sure why he did not have it out, but assumed that it was because he was fifteen feet away from the subject and his partner would have been in the way. Officer B recalled seeing in his BWC footage that other officers on scene had their Tasers out. Officer B said that right before Officer A deployed his Taser and during the Taser deployment, Subject was walking towards Officer A. Officer B said that just prior to the Taser deployment, he did not feel threatened because he was fifteen feet from Subject, but that at other moments during the incident he felt "ready" to act.⁸ Officer B described Subject as being a "combative subject."⁹ He could not remember the exact phrase, but believed that immediately prior to the Taser deployment, Subject was one level above an active resistor due to his threatening demeanor.

COPA interviewed Witness Officer C¹⁰ on January 10, 2018. Officer C stated that on March 3, 2017, he was working alone, in uniform, and assigned to Beat XXXX in a marked car. Officer C said that he was in the vicinity of XXXX S. Dearborn Street on March 3, 2017, at approximately 7:50 p.m. Officer C could not recall what had brought him to that location. He said that he was either dispatched there, went there because he heard something about it over the radio and was nearby, or that he was patrolling in the area and noticed police outside.

Officer C remembers exiting his vehicle and seeing an agitated subject, now known as Subject. Officer C said that Subject was not physically combative, but was verbally combative towards Officer A. Subject "kept saying what he would do to somebody."¹¹ Officer C could not elaborate on what exactly he heard, but said that it seemed like Subject "was making some kind of threats . . . like he could assault someone or something to that effect."¹² Officer C recalled Officer A providing Subject an opportunity to leave, but that Subject did not leave. Subject made a few threats, which led to Subject getting tased. Officer C was a couple of feet away from both Officer A and Subject when Officer A deployed his Taser.

Officer C said he did not feel threatened by Subject because Subject was not talking to him. Rather, Subject was directing his attention towards Officer A. Officer C said that if Subject was directing his anger towards him personally, then he would have felt threatened. Officer C did not recall having a conversation with Subject. Officer C was not surprised that Officer A deployed his

⁸ *Id.* at 15:14.

⁹ *Id.* at 17:03.

¹⁰ Att. 51

¹¹ See Audio Recorded Statement of Officer C (Att. 51) at 05:30.

¹² *Id.* at 08:22.

Taser because Subject was not calm or cooperative. Officer C said that Subject “was a resister.”¹³ Officer C said that Subject was not an active resister because the interaction was purely verbal. He never pulled away from an officer because no officer touched him. Officer C said that the officers directed Subject to leave but he refused to comply. (Att. 51)

COPA interviewed Accused Officer A¹⁴ on January 16, 2018, after Officer A reviewed the relevant footage from his BWC. Officer A stated that on March 3, 2017, he was in plain clothes and driving an unmarked car with his partner, Officer B. Officer A said that while conducting a routine patrol in the 002nd District, he turned down S. Dearborn Street. As he was driving, he saw two men wrestling on the west side of Dearborn Street, in the vicinity of XXXX S. Dearborn Street. At first Officer A thought the two men were playing around, but when he drove closer he concluded it was a fight based on the shouting and profanity that he heard.

Officer A exited his vehicle and saw one of the men holding down the other man, now known to be Subject. Officer A interpreted the subject’s actions as an attempt to prevent Subject from fighting. Officer A told the subject to let Subject go and he complied. Officer A directed the subject to leave, thinking that he could de-escalate the situation by separating the two men. He assumed that Subject would calm down once the other subject left. The subject then walked through a walkway on the side of XXXX S. Dearborn, which led to a back-parking lot. Subject and other female family members followed the subject to the parking lot. Officer A said that the subject walked off into the parking lot and appeared to have left the area.

Despite the subject’s departure, Subject continued to act enraged. Officer A observed him pushing his female family members in the parking lot area and in the walkway as the group walked back to the front of the building. Officer A followed Subject back to Dearborn Street where his police vehicle was located.

Subject then turned his aggression towards Officer A while they were walking back to the front of the building. Officer A said that Subject “walked up on me several times, with his hand pointed towards my face, and I kinda ignored all that...”¹⁵ Officer A also described Subject as threatening him about what he was going to do, clenching his fists, and squaring off towards him. Officer A said that he drew his Taser several times and warned Subject when he thought that Subject had gotten too close or was going to strike him. Officer A explained that he stayed calm and ignored Subject’s actions because Subject’s family members told him that a family member had just passed away [presumably affecting Subject’s mental state]. Officer A hoped that Subject’s family would be able to convince him to leave the area. Officer A said that he had seen families get angry and emotional after funerals, so he wanted to give this family the benefit of the doubt that they could get Subject under control.

Officer A said that he gave Subject verbal direction to leave the area several times, but Subject did not comply. Officer A said that other officers had responded to the area but he did not notice when they arrived because he was focused on Subject. Subject finally appeared to be leaving

¹³ *Id.* at 25:55.

¹⁴ Att. 55

¹⁵ See Audio Recorded Statement of Officer A (Att. 55) at 08:54.

the area with a female family member, who had her car parked nearby. Officer A stayed in the area to make sure that the situation had defused and that the other man was not still in the vicinity.

Subject then returned to where Officer A was standing. Officer A said that, although he had previously ignored Subject's threatening behavior, when "he came back, it was clear to me, in my mind, that he wanted to fight me or strike me."¹⁶ Officer A said that, at that point, he "was in fear that [he] was about to receive a battery."¹⁷ Thus, Officer A perceived Subject as an assailant. Officer A said that he deployed his Taser at Subject by pulling the trigger once when he was about five feet away. The Taser prongs struck Subject's chest area, but the Taser was not effective. Officer A denied discharging his Taser without justification. After deploying the Taser, Officer A placed Subject in custody and called for an ambulance. Subject's only apparent injury was the one prong stuck in his chest.

b. Digital Evidence

COPA obtained the **Body Worn Camera Videos**¹⁸ relative to this incident from Officers A, B, D, E, F, and G. The relevant videos depict Subject and an unknown individual arguing outside of a multifamily residential building, located at XXXX S. Dearborn Street. After approximately one minute, a few unknown individuals are seen trying to break up the argument. Officers A and B follow Subject and others through a gangway to a parking lot. The man that Subject was arguing with is no longer visible. Two unknown females try to persuade Subject to leave the area, but he refuses. Officer A then warns Subject that he will be tased.

Subject and an unknown female walk back through the gangway towards the front of the building to XXXX S. Dearborn Street, followed by Officer A. While walking towards the front of the building, Subject asks Officer A about his Taser warning. Officer A tells Subject that he will end up in the hospital and jail if he messes with him. About four other officers arrive to assist Officers A and B. The assisting officers explain that they were dispatched because Officers A and B were not responding to their radios. Subject approaches the group of police officers and speaks to them. Subject says to the officers, what sounds like, "Mind your business, man... News flash to CPD. You get out your body, this shit gonna happen to you." He then walks away, but returns after less than a minute.

Upon Subject's return, he approaches the group of officers again and speaks to them. He seems to be directing most of his attention towards Officer A. Subject says something to the effect of how he will respond if the officers hit him. Officer A and another officer ask Subject if he is threatening them. Subject responds, "Nah, put your body camera on. This ain't no threat. I'm telling you what it is because I feel like my life threatened." Officer A then directs Subject to step back. Subject seems to be taking a step back when Officer A immediately deploys his Taser at him. The Taser does not appear to work properly as it does not have any effect on Subject.

Following the Taser deployment, a few officers rush to handcuff Subject. One of the officers explains to Subject that he was threatening people. Subject responds by saying that he was

¹⁶ *Id.* at 11:48.

¹⁷ *Id.* at 26:35.

¹⁸ Atts. 24 & 31

just asking the officer not to threaten him. He then complains about the Taser prong stuck in him. Subject is subsequently placed into the back of a police vehicle.

It should be noted that the video shows an obvious size disparity between Subject and Officer A, with Officer A appearing larger.

c. Physical Evidence

Medical Records¹⁹ from Hospital show that the hospital admitted Subject on March 3, 2017, at 8:17 p.m. He was treated for a puncture wound from a Taser and discharged to CPD twenty-three minutes later.

d. Documentary Evidence

An **Arrest Report**²⁰ for RD# XXXXXXXXX, authored by Officer A, documents that arresting officers viewed a disturbance at XXXX S. Dearborn Street on March 3, 2017. Officers exited their vehicle to de-escalate the situation. Subject attempted to continue the verbal and physical altercation with another subject. Once that subject left the area, Subject “became enraged” at Officer A. Subject told Officer A that he would hit him fifteen times. Subject also walked towards Officer A and refused orders to leave. Officer A deployed his Taser because he was in fear of receiving a battery. The Taser was not effective. Subject was subsequently placed into custody and transported to Hospital where he was treated for one Taser prong stuck in his chest.

A **Tactical Response Report**²¹ authored by Officer A on March 3, 2017, indicates he deployed his Taser, serial number XXXXXXXXXX, via probe discharge at Subject. The report states that Subject did not follow verbal direction, he threatened to fight the arresting officer, and he advanced in a threatening manner.

An **Officer’s Battery Report**²² authored by Officer A documents that Subject made a verbal threat to Officer A. Officer A describes the type of injury to officer as a minor injury.

The **Mainframe Court Docket**²³ for Criminal Case XXXXXXXXXXXX shows that Subject was charged with one misdemeanor count of Reckless Conduct and one misdemeanor count of Assault on March 7, 2017. Ultimately, he pleaded guilty to Reckless Conduct and was sentenced to one month of supervision.

¹⁹ Att. 27

²⁰ Att. 6

²¹ Att. 9

²² Att. 10

²³ Att. 56

e. Additional Evidence

COPA made **multiple attempts to interview Subject**²⁴. Subject missed his scheduled appointment on September 28, 2017. A COPA investigator called Subject on three separate occasions to reschedule his interview. Subject never rescheduled the interview. On October 12, 2017, COPA sent a letter to Subject regarding his missed appointment, which was returned as unclaimed.

COPA conducted two **Canvasses**²⁵ in the vicinity of XXXX S. Dearborn Street in an attempt to contact Subject and other civilian witnesses. COPA conducted the first canvass on September 29, 2017, and the second canvass on November 22, 2017. COPA was unable to locate any witnesses during either of these canvasses.

VI. ANALYSIS

Based on the evidence and relevant directives, COPA determined that Officer A discharged his Taser at Subject without justification. Both Officers A and B described seeing Subject engaged in a physical fight with an unknown individual. Both officers claimed that they were unable to arrest Subject at that point because they did not have signed complaints. Instead, they chose to use officer presence and verbal direction to de-escalate the situation. Officer A directed Subject to leave the area and told COPA that he wanted to give Subject's family a chance to help him comply with the order to leave. Officer A described seeing Subject push female family members who were trying to assist him in leaving. Officer A did not take any steps to physically intervene or arrest Subject. It was only when Subject began directing his attention towards Officer A that Officer A warned Subject that he would end up in the hospital and jail if he tried to mess with him. Subject reacted by addressing the group of officers in an aggressive tone. After these actions, Officer A still felt comfortable in letting Subject leave the area.

After a brief departure from the area, Subject returned to the officers and directed his attention towards Officer A. He told Officer A how he was going to respond if an officer hit him. Officer A then asked if Subject was threatening him, to which he responded: "Nah, put your body camera on. This ain't no threat. I'm telling you what it is because I feel like my life threatened." It was after that response that Officer A felt it necessary to increase his level of force from officer presence and verbal direction to Taser deployment.

In determining whether Officer A was justified in his Taser use, COPA analyzed the facts using several directives from the Chicago Police Department, which were in effect at the time of the incident.²⁶ A Taser can be used when an officer "is confronted by an offender classified as an assailant or active resister."²⁷ Additionally, members will modify their level of force in relation to the amount of resistance offered by the subject.²⁸ "As the subject offers less resistance, the member

²⁴ Atts. 33, 37, & 60

²⁵ Atts. 30 & 36

²⁶ See Atts. 25 (Force Options, G03-02-02), 58 (Taser Devices, U04-02-04) & 59 (Use of Force Model, G03-02-01)

²⁷ Taser Devices: U04-02-04 (II) (C)(4)(a)

²⁸ Use of Force Model: G03-02-01(II)(C)(2) – effective 5/16/12 - 10/15/17.

will lower the amount or type of force used.”²⁹ However, when “the subject increases resistance, the member may increase the amount or type of force used.”³⁰ Further, members will continually assess the situation to determine if any force is necessary, the appropriate level of force based on the totality of the circumstances, and if the level of force should be modified based upon the subject’s actions or other changes in the circumstances.³¹ Specifically, “[t]he level of force shall be de-escalated immediately as resistance decreases, while staying in control and as safety permits...”³²

Subject was clearly acting in an antagonistic manner towards the officers throughout the encounter. However, his antagonistic acts were only verbal -- he made no overt physically threatening acts towards the officers. Additionally, none of the officers interviewed voiced concerns that Subject may have been armed. While Subject was acting as an assailant at times, like when he was fighting and pushing other civilians, Subject’s actions just prior to being tased did not classify him as an assailant or an active resistor. In fact, Officer C, who was the same distance from Subject as Officer A, did not believe that Subject’s actions rose to the level of active resistor.

Subject was disruptive and his actions endangered other civilians, but Officer A did not arrest him after observing this behavior. Officer A claimed that he did not have the authority to arrest Subject for his involvement in the initial altercation because he did not have signed complaints. COPA finds this claim without merit since Officer A witnessed Subject’s reckless conduct and was capable of generating a signed complaint. It is significant that Officer A found it necessary to use his Taser on Subject after Subject verbally antagonized him, but limited his use of force to officer presence and verbal commands when he witnessed Subject behaving both verbally *and physically* aggressive towards other citizens.

Ultimately, Officer A chose to increase his level of force by deploying his Taser, even though Subject did not offer an increased level of resistance during their final interaction. Officer A never attempted to arrest Subject prior to his Taser deployment. Significantly, even though the Taser was ineffective, Subject still became compliant and did not physically resist his subsequent arrest. Based on the totality of the circumstances, including the number of officers on scene, Subject’s smaller physical size in comparison to Officer A’s physical size, and Subject’s actions at the time of the Taser deployment, Officer A’s use of his Taser was an inappropriate level of force. For the aforementioned reasons, COPA found that Officer A discharged his Taser at Subject without justification.

²⁹ *Id.*

³⁰ *Id.*

³¹ Force Options: G03-02-02(II)(F) – effective 1/1/16 - 10/15/17.

³² *Id.*

VII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer A	1. It is alleged that on March 3, 2017, at approximately 7:52 p.m., in the vicinity of XXXX S. Dearborn Street, Officer A discharged his Taser at Subject without justification.	Sustained

Approved:

 COPA Deputy Chief Investigator
Deputy Chief Administrator – Chief Investigator

 Date

 COPA Interim Chief Administrator
Interim Chief Administrator

 Date

Appendix A

Assigned Investigative Staff

Squad#:	XX
Investigator:	COPA Investigator
Supervising Investigator:	COPA Supervising Investigator
Deputy Chief Administrator:	COPA Deputy Chief Investigator