

INDEPENDENT POLICE REVIEW AUTHORITY

U# 07-19, Log #1007060

INVESTIGATION

NUMBER: U# 07-19, Log #1007060

OFFICER

INVOLVED: “Officer A” (Chicago Police Officer); Male/White; 42 years old;
On Duty; Civilian Dress; Year of Appointment – 2003

OFFICER’S

INJURIES: None reported

SUBJECT:

“Subject 1”; Male/Black; 29 years old

SUBJECT’S

INJURIES: Two gunshot wounds to right torso (lodged); pronounced dead
on scene by Chicago Fire Department Ambulance 60 personnel.

INITIAL

INCIDENT: Officers conducted a traffic stop of a vehicle not related to the
subject

DATE/TIME

OF INCIDENT: 28 June 2007, at approximately 2349 hours

LOCATION:

1XXXX S. Stewart (in alley)
Beat 522

INDEPENDENT POLICE REVIEW AUTHORITY

U# 07-19, Log #1007060

SUMMARY OF INCIDENT:

On 28 Jun 07, at approximately 2349 hours, Officers A, B, and C were in civilian dress and working Beat 42T72B. The officers stopped an Oldsmobile Aurora at approximately 11426 S. Stewart and had two male occupants from the Aurora exit the vehicle. Two males were inside a van parked on the east side of Stewart, across from the Aurora. The van was parked at a fire hydrant. For officer safety, Officer B alerted Officer C about the males in the van. Officer B approached the driver's side of the van and observed that the males were drinking beer. Officer C approached the passenger side of the van. The officers told the occupants to exit. Officer B escorted the van's driver, now known as Subject 1, to the rear of the van. Subject 1 broke away from Officer B and ran south. Subject 1 climbed over a fence on Stewart and ran east between 1XXXX and 1XXXX S. Stewart. Officer B returned to the van to secure the van's passenger, now known as Subject 2.

Officer A ran east through the driveway south of 1XXXX S. Stewart while Officer C ran east between 1XXXX and 1XXXX S. Stewart. The officers heard a gunshot. Officers A and C saw Subject 1 attempting to climb over the rear fence of 1XXXX S. Stewart, and Officer A announced his office. Officer A observed a handgun in Subject 1's right hand. Subject 1 turned toward Officer A with the weapon. Officer A fired his .45-cal. semi-automatic pistol twice at Subject 1, who threw the handgun across the alley into the back yard of 11434 S. Harvard. Subject 1 fell into the rear yard of 1XXXX S. Stewart. Subject 1 sustained two gunshot wounds on the right torso, with the bullets lodged. He was pronounced dead on the scene. When Subject 1's .40-cal. weapon was recovered, the magazine was missing, and there was a fired casing in the chamber. There also was grass embedded in part of the weapon. A magazine containing .40-cal. cartridges was recovered near Subject 1's body.

INDEPENDENT POLICE REVIEW AUTHORITY

U# 07-19, Log #1007060

INVESTIGATION:

Witness 1 related to the Roundtable panel that he was in bed in his third-floor bedroom at 1XXXX S. Stewart. He heard a person run through the gangway north of his building and a second person run in his driveway south of his building. Witness 1's girlfriend had been taking a shower and yelled out to him if he heard someone run through the gangway. Witness 1 heard someone climb over his north fence and land in garbage in the yard next door. Witness 1 heard a total of three gunshots at the rear of his house, and then someone yelled, "I'm hit!" Witness 1 heard another voice say, "Give me the motherfucker out your hands." Someone else said, "I found it. Don't touch it." Witness 1 stated that he did not hear anyone yell, "Police!" Witness 1 did not see an officer fire his weapon. Witness 1 called 911.

Subject 2 refused to speak at the Roundtable panel.

Officer B related to the Roundtable panel that he and his partners felt threatened by the two males who were drinking inside the van because Officer C had his back toward the van. Officer B went to the van and told the driver (Subject 1) to exit so he could be patted down. Subject 1 exited and Officer B started walking him south toward the squad car. Subject 1 pulled away and fled. Officer B grabbed Subject 1's jacket, which came off. Subject 1 fled south on Stewart and his gym shoes fell off. Officer B chased Subject 1 on foot. Subject 1 ran near a black car parked on the east side of Stewart. Officer B observed Officers A and C also in foot pursuit of Subject 1, so Officer B returned to the Aurora and the van to secure Subject 2 and the occupants of the Aurora. Officer B heard one gunshot, followed by two more gunshots. He radioed an "emergency" and asked for more squad cars. Officer B entered the gangway between 11427 and 1XXXX S. Stewart and asked Officer C if everything was okay. Officer C gave him a thumbs-up sign and Officer B returned to the van, where he handcuffed Subject 2 and held him.

Officer C related to the Roundtable panel that he and Officer B went to the van to pat down its two occupants. Officer B had the driver (Subject 1) exit and he began walking Subject 1 toward the rear of the van. Subject 1 fled and came out of his jacket as Officer B pulled on it. Subject 1's gym shoes fell off. The three officers chased Subject 1. Officer B broke off the chase and returned to secure Subject 2. Officer C chased Subject 1 to the rear of the black car, which Subject 1 climbed over. Subject 1 then climbed over a fence on the east side of Stewart. Officer C climbed over the same fence. Subject 1 ran east in the gangway between 1XXXX and 1XXXX S. Stewart and climbed over a fence to enter the rear yard of 1XXXX S. Stewart. Officer C ran through the gangway between 1XXXX and 1XXXX S. Stewart to parallel Subject 1. Officer C heard a gunshot, but did not know who fired. Officer C drew his weapon and continued running east. Officer C observed Subject 1 trying to climb the back fence behind 1XXXX S. Stewart. Subject 1's left hand and right leg were on the fence. Officer C saw Subject 1 holding a weapon in his right hand. Officer C heard Officer A yelling, but did not know what he said. Officer C observed Subject 1 point his weapon toward the south as he climbed the fence. Officer C heard two gunshots but did not see Officer A fire his weapon or know where Officer A

INDEPENDENT POLICE REVIEW AUTHORITY

U# 07-19, Log #1007060

was when he fired. After Officer C heard the two gunshots, Subject 1 threw his weapon toward the east, across the alley and over a fence. Officer C, who had his weapon out, ran up to Subject 1, who was now on the ground. Officer C saw Officer A in the alley, approaching from the south. Officer C patted down Subject 1 for weapons. More officers arrived and Subject 1's weapon was recovered.

Officer A related to the Roundtable panel that he was riding in the back seat of the unmarked squad car, behind the driver. The officers had the squad car's emergency lights on for the traffic stop of the Aurora. Officer A exited the squad car as his partners approached the van. The two occupants of the van exited that vehicle and Officer B escorted Subject 1 towards the rear of the van. Subject 1 broke away. Officer B pulled at Subject 1's jacket, which came off Subject 1. Officer A chased Subject 1 south on Stewart. Subject 1 climbed over a fence on Stewart and ran east in the gangway between 1XXXX and 1XXXX S. Stewart. Officer A paralleled Subject 1 by running east in the driveway of 1XXXX S. Stewart. Officer A heard one gunshot from the north but did not know who fired. Officer A drew his weapon and ran to the alley. He went north in the alley and observed Subject 1 near an opening at the corner of a fence behind 1XXXX S. Stewart. Subject 1 was trying to get over the fence and had his right leg and left hand on the fence. Subject 1 held a black semi-automatic pistol in his right hand. Officer A yelled, "Police! Police!" Subject 1 turned and pointed his weapon in Officer A's direction. Officer A fired twice at Subject 1. Subject 1 threw his weapon across the alley and into the back yard of 11434 S. Harvard. Subject 1 fell backward onto the ground. Officer A radioed for an ambulance. Officers located Subject 1's weapon. Officer A estimated that he was approximately 15 feet from Subject 1 when he fired at him.

CPD Assistant Deputy Superintendent A related to the Roundtable panel that when Subject 1's .40-cal. weapon was recovered in the backyard of 11434 S. Harvard between the house and garbage cans, the weapon's magazine was missing. A magazine containing .40-cal. cartridges was recovered in the vicinity of Subject 1's body. Subject 1's weapon had one fired casing in the chamber and grass was embedded in part of the weapon. At least one of the cartridges from the magazine came from the same manufacturer as did the fired casing that was in the chamber. CPD Assistant Deputy Superintendent A said the wounds were consistent with Subject 1 raising his right arm to point his gun and being shot by Officer A who was positioned to the right of Subject 1.

CPD Assistant Deputy Superintendent A's report indicates that there were six live cartridges in Officer A's magazine and one live cartridge in the chamber. Officer C's weapon was described as fully loaded with no evidence of recent firing. Officers from Beat 564A located Subject 1's weapon, which was recovered by members of Forensic Services.

After the Roundtable, Subject 2 stated that before he would give a statement to IPRA (OPS), he wanted assurances that he would be able to go home without being charged with drinking on the public way.

INDEPENDENT POLICE REVIEW AUTHORITY

U# 07-19, Log #1007060

Subject 2's Arrest Report indicates that he was charged with drinking alcohol (a Budweiser beer) on the public way.

The ambulance report indicates that paramedics found Subject 1 lying on his back with three gunshot wounds to the chest/back area. Subject 1 had no spontaneous respirations and was unresponsive.

The canvass produced no eyewitnesses to the shooting.

The Crime Scene Processing Report indicates that nine cartridges were recovered from the .40-cal. magazine found next to the fence at the rear of 1XXXX S. Stewart. One .45-cal. casing was recovered from under a front tire of an unmarked squad car in the alley, and another such casing was recovered in the back yard of 11434 S. Harvard, near a fence. The .40-cal. pistol was found to be "clear, not registered."

The Forensic Services photographs depict the scene on Stewart, the alley east of Stewart, Subject 1 and the recovered .40 cal. pistol and magazine.

Autopsy photographs depict Subject 1 and the two recovered bullets.

The autopsy report indicates that Subject 1 sustained entrance wounds to the right mid-chest and lower right back that caused hemorrhaging in the chest cavity. The wound course in the right mid-chest was from front to back, right to left and slightly upward. The wound course in the lower right back was from back to front, right to left, and upward. Neither wound revealed evidence of close-range firing. There were abrasions on other parts of the body. The toxicology tests were negative for drugs and alcohol. The gunshot wounds caused the death. The manner was homicide.

A Firearms Trace Summary report from the Bureau of Alcohol, Tobacco, Firearms and Explosives indicates that the .40-cal. Taurus pistol recovered from the back yard of 11434 S. Harvard had been purchased by "[Name Withheld]" of Indianapolis in 2005.

An ISP report dated 16 July 2008 indicates that the .40-cal. pistol was found to be in firing condition and test fired. The recovered .40-cal. casing had been fired in the pistol.

An ISP report dated 25 October 2007 includes the result of the gunshot residue test administered to Subject 1's hands, which indicates that he may not have discharged a firearm with either hand. If he did discharge a firearm, then the particles were removed by activity, were not deposited, or were not detected by the procedure.

An ISP report dated 01 July 2008 indicates that no latent impressions suitable for comparison were found on the .40-cal. pistol or on the .40-cal. discharged casing. A latent impression from the magazine did not reveal an identification when compared with

INDEPENDENT POLICE REVIEW AUTHORITY

U# 07-19, Log #1007060

a copy of Subject 1's fingerprint card, but fully recorded inked palmprint standards would have been required for a conclusive comparison.

An ISP report dated 01 July/23 June 2009 indicates that a DNA profile identified on swabs from the .40-cal. pistol matched Subject 1's DNA profile.

A report from the Illinois State Police ("ISP") Division of Forensic Services, dated 09 July 2007, indicates that Officer A's .45-cal pistol was found to be in firing condition and test fired. The bullets recovered from Subject 1 and the two recovered .45-cal. casings were found to have been fired from the weapon.

The summary of the transmissions from the disc provided by the Office of Emergency Management and Communications (OEMC) indicates that Officer A reported his weapon discharge immediately; that an ambulance was requested; that an officer reported that a gun was thrown; and that a gun was recovered at 11434 S. Harvard.

The General Offense Case Report, includes a summary of the incident from Officers A, B, and C that is consistent with their Roundtable accounts.

The Case Supplementary Report regarding the Justifiable Homicide, includes accounts of the incident from Officers A, B, and C that are consistent with their Roundtable accounts.

Witness 1 initially told detectives that he had seen Officer A fire his weapon, but in a later interview, he said he could not see any subjects when he looked out his window because of bushes and trees blocking his view. Witness 1's other information was consistent with his Roundtable account. Subject 2 told detectives that he was drinking beer at 114th and Stewart when Subject 1 pulled up in a van and asked him if he wanted a drink. Subject 2 entered the van, in which they sat until officers pulled over a vehicle behind them. When officers approached Subject 1's van, Subject 2 exited and placed his beer on the curb, put his hands in the air and stood next to the van. Subject 2 saw Subject 1 running and the officers chasing him. Subject 2 was handcuffed and positioned by the van by the Hispanic officer. Subject 2 heard three gunshots but did not know who was shooting.

In a statement to IPRA on 31 October 2008, Officer B provided an account of the incident that was consistent with his Roundtable account. In addition, Officer B said that he was the driver of the squad car, and the officers curbed the Aurora for speeding. Officer B did not know the identities of the Aurora's occupants. No citations were issued to the Aurora's driver. Officer B did not pat down Subject 1 before he fled. Subject 1 did not indicate in any way that he might have been armed with a gun, and Officer B did not see a gun on Subject 1. After hearing the first gunshot, Officer B radioed in the "shots fired," and then he heard the two other shots. Officer B did not see anyone fire a weapon. The first shot Officer B heard came from the gangway that Subject 1 had entered. The two subsequent shots were in rapid succession and were not fired from the same weapon that fired the first

INDEPENDENT POLICE REVIEW AUTHORITY

U# 07-19, Log #1007060

shot. Officer B said that the three persons in custody on Stewart could not have seen Officer A fire the two shots. Officer B did not recall saying at the Roundtable that Officer C gave him a “thumbs-up” sign after Officer B entered the gangway.

In his deposition on 15 September 2009, Officer B provided an account that was consistent with his IPRA statement. In addition, Officer B related that before he approached Subject 1’s van, Subject 1 stared at the officers, which Officer B found “suspicious.” Subject 1’s van’s engine was off, and its radio was on. After the shots were fired, the two males from the Aurora asked to be let go, which they were.

In his statement to IPRA on 13 February 2009, Officer C provided an account of the incident that was generally consistent with his Roundtable account. In addition, Officer C stated that prior to Subject 1 running away, he was unable to determine if he was armed with a gun. After Officer C heard the first shot and proceeded to the back of the yard, he heard a voice that sounded like Officer A’s yell, “Stop, police!” After the second and third shots, Subject 1 was on top of the fence when he made a “wild” motion with his arm. The end of that motion made Subject 1 fall over the fence to the ground. Officer C stated that he was not sure if Subject 1 pointed the object he held in his hand because it was dark. Officer C did not see anything come from Subject 1’s hand. Officer C observed a gun magazine lying next to the fence that Subject 1 fell over. Officer C did not observe anyone move any firearm from a position in or near the alley following the shooting. He did not see anyone recover Subject 1’s weapon. Officer C said it was possible that he told detectives that he saw Subject 1 holding a handgun in his right hand while he was on top of the rear fence. He could not recall telling detectives that he saw Subject 1 throw the gun across the alley. Officer C did not see Officer A fire his weapon.

In his deposition on 16 September 2009, Officer C provided an account that was consistent with his IPRA statement. In addition, Officer C related that when Subject 2 exited the van, his cell phone fell to the ground. Subject 2 commented about the cell phone, and Officer C told him not to worry about it. Officer C felt Subject 2’s waistband and asked him if he had any weapons, to which Subject 2 replied no. Officer C did not see Officer B chase Subject 1. Officer C did not know that the object in Subject 1’s hand was a gun, but it was possible that he told that to detectives and to the Roundtable. It was also possible that he told detectives and the Roundtable that he saw Subject 1 throw a gun.

In his statement to IPRA on 04 February 2009, Officer A provided an account of the incident that is consistent with his Roundtable account. In addition, Officer A said that when he saw Subject 1 run from Officer B, he did not see a firearm on him or in his clothing, such as in his waistband. Officer A related that when he heard the gunshot, he believed it was Subject 1 shooting at Officer C. Officer A then heard Officer B calling for help on the radio, that shots were being fired at the police. Officer A drew his weapon and went to the rear of the house [along which he was paralleling Subject 1]. Once Officer A cleared the corner of the house, he could hear Subject 1 in the gangway between the two houses. Officer A then ran across the yard, entered the alley and waited for Subject 1 to appear again. Officer A saw Subject 1 run diagonally northbound across

INDEPENDENT POLICE REVIEW AUTHORITY

U# 07-19, Log #1007060

the yard and start to climb the 6-foot chain-link fence. Officer A saw the gun in Subject 1's right hand. Subject 1 climbed to the top of the fence and Officer A yelled, "Police!" Subject 1 then turned in the direction of Officer A with the weapon. Officer A fired his weapon, peeked over his sights and fired again. At that time, Officer A observed Subject 1 reach back and throw the gun across the alley into the yard east of his position. Subject 1 fell over the fence into the yard north of him. Officer A then ran toward Subject 1 and radioed that he had fired shots and an ambulance was needed in the alley.

In his deposition on 12 August 2009, Officer A related an account that was consistent with his IPRA statement. In addition, Officer A said that he handcuffed the two males from the Aurora and began to pat them down. The van's driver, Subject 1, looked back toward the officers. When Subject 1 climbed the fence at the rear of 1XXXX S. Stewart, he used both hands, with his right hand still holding the gun. When he heard parts of the OEMC recording, Officer A said the voice that stated that "he threw a gun" sounded like him.

In a wrongful death lawsuit, filed in Cook County Circuit Court, [Subject 1's Sister], the sister and administrator of Subject 1's estate, alleged that Subject 1 was shot without justification. The lawsuit is pending.

INDEPENDENT POLICE REVIEW AUTHORITY

U# 07-19, Log #1007060

CONCLUSION AND FINDING:

This investigation found that the use of deadly force by Officer A was in compliance with Chicago Police Department policy. According to the Chicago Police Department's General Order No. 02-08-03, III:

- A. "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 a deadly weapon or;
 - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay."

Subject 1 ran from the officers after he committed the minor offenses of drinking on the public way and parking near a hydrant. Although no officer saw a gun on Subject 1 when he fled south on Stewart, the preponderance of evidence indicates that Subject 1 was armed with the recovered .40-cal. pistol during the incident. Officers A, B, and C and Witness 1 heard a total of three gunshots. The first shot was fired as Subject 1 ran east in the gangway. Officer A said he fired the second and third shots. Officers A and C observed Subject 1 make a throwing motion after Officer A fired. The .40-cal. pistol was recovered in the yard east of Subject 1. A magazine for a .40-cal. pistol was recovered near Subject 1. DNA recovered from the pistol matched Subject 1's profile. One discharged casing was found in the .40-cal. pistol, and Officer A's weapon was found to have fired the two other recovered casings. Officer A was consistent in the accounts he provided about why he shot Subject 1. Officer A related that after he heard the first shot and Officer B "calling for help," he believed Subject 1 fired at Officer C. Officer A subsequently saw Subject 1 turn toward him with the weapon, which placed him in fear for his life.

INDEPENDENT POLICE REVIEW AUTHORITY

U# 07-19, Log #1007060

In his Roundtable account, witness Officer C said he saw Subject 1 point a weapon and then throw the weapon. However, in his IPRA statement, Officer C said he was not sure if Subject 1 pointed the object he held in his hand, and he did not see anything come from Subject 1's hand. Despite these inconsistencies and the results of the GSR test, the remaining physical evidence indicates that Subject 1 held the pistol.