

INDEPENDENT POLICE REVIEW AUTHORITY
Log# 1007189/ U# 07-20

INVESTIGATION

NUMBER: Log# 1007189/U# 07-20

OFFICERS

INVOLVED: “Officer A” (Chicago Police Officer); Male/Hispanic; 35 years old;
On-Duty; In uniform; Year of Appointment – 2003

“Officer B” (Chicago Police Officer); Male/White; 24 years old;
On-Duty; In uniform; Year of Appointment – 2006

OFFICERS’

INJURIES: None reported

SUBJECT: “Subject 1”; Male/Hispanic; 76 years old

SUBJECT

INJURIES: One gunshot wound to abdomen; bullet lodged in right buttock;
Non-fatal.

INITIAL

INCIDENT: Department members responded to a call of shots fired.

DATE/TIME: 02 July 2007, at 1620 hours

LOCATION: 8900 Block of S. Baltimore – inside
Beat 424

SUMMARY OF INCIDENT:

On 02 July 2007, at approximately 1620 hours, Officer A and Officer B responded to a call of shots fired at an address on the 8900 Block of S. Baltimore. When they arrived, they noted that the address on S. Baltimore was a vacant lot. The officers were then approached by Witness 1 who stated that the shots were coming from across the street at a second address on the 8900 Block of S. Baltimore. Witness 1 led the officers to the first floor apartment. After observing that the door to the residence was open, Officer A and Officer B announced their Office and walked in. Officer A stopped inside the dining room, right outside of the kitchen, and Officer B stopped a short distance behind him, in the living room. Officer A observed two males sitting at the kitchen table with one holding a handgun (Subject 1) to the other's head (Witness 2). Officer A announced his Office and ordered Subject 1 to put down his weapon to which Subject 1 replied, "I'm going to kill him." Officer A told Subject 1 to drop the weapon several times. Subject 1 pointed his weapon at Officer A and Officer B and stated, "I'm going to kill you too."

In fear of his life, Officer A fired one shot at Subject 1. Subject 1 fell to the floor but still held the weapon in his hand. Subject 1 pointed his weapon at Officer A a second time, and Officer B fired three shots at Subject 1. Officer A then kicked Subject 1's weapon out of his hand. Subject 1 was placed into custody and transported by a CFD ambulance to Northwestern Hospital in serious condition.

INVESTIGATION:

Witness 2, a masseuse, related to the **Roundtable panel** that he arrived at Subject 1's residence at approximately 0830 hours to give Subject 1 a massage. Witness 2 stated that after the massage, he and Subject 1 began drinking Tequila until approximately 1430 hours. Witness 2 stated that when he told Subject 1 he had to leave, Subject 1 became irate and told him he could not leave. Subject 1 accused Witness 2 of attempting to steal money from him. Witness 2 stated that Subject 1, who had a gun on his person, threatened him and fired two shots into the ceiling. Witness 2 stated that several minutes later officers entered the apartment and told Subject 1 to drop the gun. Witness 2 stated that Subject 1 said he was going to kill everyone. Witness 2 stated that he then heard four to five shots fired but did not see who fired because he went down to the floor. (Att. 5)

In an **interview with the Independent Police Review Authority (IPRA) on 13 October 2009**, **Witness 2** stated that he is a masseuse and has provided services to Subject 1 on several occasions. On the date of this incident, Witness 2 arrived at Subject 1's residence between 0800 and 0900 hours to give him a massage. Witness 2 finished the massage at approximately 1100 hours. When he attempted to leave, Subject 1 asked Witness 2 to stay and have a drink with him. Witness 2 had one drink with him, after which Subject 1 poured Witness 2 another drink and threatened to take out his gun if Witness 2 left. Witness 2 pleaded with Subject 1 to let him go because he had to pick up his wife and take his medication. Witness 2 stated that Subject 1 repeatedly threatened to

take out his gun, so Witness 2 consumed three to four drinks with Subject 1. After Subject 1 consumed another two or three alcoholic beverages, Subject 1 punched Witness 2 about the face and chest. Witness 2 blocked the punches. Subject 1 began to kick Witness 2 on the legs. Subject 1 then grabbed a glass that shattered in Subject 1's hands causing them to bleed. Between 1300 and 1400 hours, Subject 1 pulled out a gun. Subject 1 then walked to the porch and discharged his gun three times. Around the same time, Witness 2 heard the police yell out, "Police." Upon seeing the police, Subject 1 stated in Spanish that everyone is going to die. Witness 2 stated that Subject 1 pointed the gun at Witness 2, the officers, and then at himself while repeating that everyone was going to die. The officers yelled at Subject 1 to put the gun down. Witness 2 could only recall hearing one shot after which he observed that Subject 1 was still standing with his arms at his sides. Witness 2 was not sure whether Subject 1 was still holding the gun at that time. (Att. 69)

The **Detective Supplementary Report** indicates that Witness 2 provided detectives a similar account of the incident as indicated in his statements to the Roundtable panel and IPRA. Additionally, the report indicates that when Witness 2 related that when he attempted to leave Subject 1's residence, Subject 1 pointed the gun upward and fired two rounds. (Att. 21)

Witness 3 related to the **Roundtable panel** that she lives in the second floor apartment upstairs from Subject 1. Witness 3 stated that Witness 2 arrived to give Subject 1 a massage and the two started drinking. Sometime later, Witness 2 came up to her apartment and asked her to go downstairs because Subject 1 was not well. Witness 3 stated that upon entering Subject 1's apartment, she observed him holding a gun and Subject 1 asked Witness 2 if he was trying to rob him. Witness 3 stated that she was frightened and went back upstairs to her apartment. Witness 3 stated that a short time later she heard three gunshots and saw police vehicles outside of the house. (Att. 5)

In an **interview with the IPRA on 28 May 2010**, **Witness 3** stated that she was in her apartment when Witness 2, her neighbor Subject 1's masseuse, came to her apartment with blood on his clothes. Witness 2 asked Witness 3 to accompany him downstairs because Subject 1 was not feeling well and was acting strangely. As Witness 2 and Witness 3 proceeded downstairs, they heard one gunshot. They continued downstairs and observed Subject 1 on the first floor landing holding a gun and screaming, "This guy is trying to rob me!" Witness 2 and Subject 1 then went inside Subject 1's apartment and sat in the kitchen. On the way back to her apartment, Witness 3 stopped to converse with a neighbor, Witness 1. Moments later, Witness 3 observed the police entering Subject 1's apartment. Witness 3 heard the officers ask "what happened" as they entered the residence, but she did not hear the officers make any reference to a gun. As Witness 3 proceeded upstairs to her apartment, she heard a gunshot. Witness 3 stated that she did not witness the shooting, but believed that Subject 1 had been shot. (Att. 78)

Witness 1 related to the **Roundtable panel** that he was in his kitchen preparing dinner when he heard what sounded like fireworks and thought someone was throwing them at his dog in the backyard. Witness 1 stated that his daughter, Witness 4, went

outside to check and told him that Subject 1 had a gun in one hand and blood on his shirt. Witness 1 stated that he attempted to talk with Subject 1 and saw one of the tenants from the first floor who told him that Subject 1 had stated that he was going to shoot someone who tried to rob him. Witness 1 stated that officers arrived and he walked them to Subject 1's apartment. Witness 1 stated that he stayed in the hallway and heard one of the officers yell, "Drop the gun!" Witness 1 stated that he then heard gunshots and ran back outside. (Att. 5)

In an **interview with the IPRA on 01 June 2010**, **Witness 1** stated that he was in the kitchen of his residence when he heard what sounded like fireworks. Witness 1 went to the backyard, and saw his next door neighbor, Witness 5. Witness 5 told Witness 1 that their neighbor, Subject 1, was walking around the backyard with a gun in his hand and had fired the gun. Witness 1 then called the police and waited for them in front of his house. Two officers arrived and entered Subject 1's residence through the opened front door. Witness 1 entered behind the officers. When the officers stepped into the living room, one of the officers said in Spanish, "Drop the gun. Put the gun down." Witness 1 stated that he could not see Subject 1 from his vantage point, but he heard Subject 1 state words to the effect of, "Fuck you." Witness 1 then heard a gunshot and ran out the front door. He then heard two or three more shots. An ambulance arrived and transported Subject 1 to the hospital. (Att. 85)

Witness 4 related to the **Roundtable panel** that she was visiting her father, Witness 1, who lives on the 8900 Block of S. Baltimore, when she heard gunshots. Witness 4 thought someone was trying to harm her dog in the backyard, so she went outside and observed her grandfather, Subject 1, holding a gun in his left hand and standing on his porch. Witness 4 stated that she asked Subject 1 if he was okay and he responded that someone was trying to rob him. Witness 4 went back inside and told her father that Subject 1 had a gun. Witness 4 stated that her father then went outside to talk with Subject 1. (Att. 5)

Attempts to obtain a formal statement from Witness 4 met with negative results. (Att. 71, 93, 102)

In an **interview with the IPRA on 28 May 2010**, **Witness 6** stated her mother, Witness 3, was going down the back porch stairs at their residence when Witness 3 was met by "Juan" (Witness 2). Witness 2 uttered something to Witness 3. Witness 3 then went to their neighbor's residence, Witness 1. Witness 6 followed her. Witness 3 told Witness 1 that their neighbor, Subject 1, had a gun. Witness 1 told Witness 3 that he heard a gunshot and had called the police. Witness 6 stated that as she stood on the front porch of her residence, she observed the police enter Subject 1's residence. As Witness 6 stood outside, she heard the police tell someone twice to put the gun down. Witness 6 could not see Subject 1 from where she was standing. Witness 6 then heard three gunshots, after which she ran upstairs to her apartment. (Att. 81)

Officer A, related to the **Roundtable panel** that he and his partner, Officer B, responded to a call of shots fired at an address on the 8900 Block of S. Baltimore.

Officer A was approached by Witness 1 who told him that the shooting was coming from across the street. Officer A stated that he entered the apartment and went into the dining area. Officer A observed Subject 1 seated at a kitchen table and saw that Subject 1 was pointing a gun at Witness 2. Officer A stated that he ordered Subject 1 to drop the weapon. Subject 1 turned and pointed the gun toward Officer A and stated, "I'll kill you too." Officer A stated that he fired once at Subject 1 then moved out of Subject 1's view. Officer A stated that Subject 1 fell to the floor and again pointed the gun toward Officer A. Officer B then fired three shots at Subject 1. Officer A then kicked the gun out of Subject 1's reach. (Att. 5)

In an interview with IPRA on 06 October 2009, Officer A stated that he and Officer B were dispatched to a call of shots fired at an address on the 8900 Block of S. Baltimore. Upon the officers' arrival to the location, a citizen approached them and pointed them in the direction of the residence and told them that the door was open. Officer A stated that he entered the residence first, followed by Officer B. The residence was dark; however, there was a light on in the kitchen. Subject 1 was standing in the kitchen and pointing a gun at Witness 2, who was sitting on a chair and bleeding from the head and face. Officer A asked Subject 1 to drop the gun, at which time Subject 1 pointed the gun in Officer A's direction and stated, "I will kill you." Officer A stated that he discharged his weapon and then jumped to the side because Subject 1's hand was still on the trigger. Officer B then fired his weapon three times. Subject 1 fell to the ground, still holding the gun. Officer A stated that he then kicked the gun away from Subject 1 and radioed for assistance and medical attention. (Att. 59)

Officer B, related to the **Roundtable panel** that he and Officer A were approached by Witness 1 who stated that shots were fired and that someone had possibly been shot. Officer B stated that he observed Subject 1 holding Witness 2 at gunpoint and saw Subject 1 turn in Officer A's direction and state, "I'm going to kill you." Officer B stated that Officer A discharged his gun once at Subject 1. Officer B added that he then discharged his weapon three times at Subject 1 because Subject 1 was still holding his weapon after Officer A fired. (Att. 5)

In an interview with IPRA on 02 October 2009, Officer B stated that he and Officer A responded to a call of shots fired, with a person possibly shot, at an address on the 8900 Block of S. Baltimore. Officer B and Officer A were met by a male who pointed them in the direction of a multiple level building. The middle level door was open, so Officer A entered the door first followed by Officer B. Officer B stated that he and Officer A saw Subject 1 in the kitchen, standing over Witness 2, who was seated. Subject 1 was pointing a gun at Witness 2. Officer B and Officer A announced their Office and told Subject 1 to put the gun down. Subject 1 then pointed the gun toward Officer B and Officer A and stated, "I will kill you too." Officer B said that he then discharged his firearm three times, striking Subject 1. Subject 1 fell to the floor and Officer A kicked the weapon out of Subject 1's hand. (Att. 62)

Detective A, related to the **Roundtable panel** that he responded to Northwestern Hospital and learned that Subject 1 was in surgery until 2115 hours. Detective A spoke

to Dr. "S" and Dr. "G" and both stated that a bullet entered Subject 1's abdomen and lodged in Subject 1's right buttock. The bullet was removed and inventoried. Detective A added that Subject 1 was in critical but stable condition. (Att. 5)

Subject 1 failed to cooperate with the investigation, but during an **attempt to interview Subject 1 on 12 July 2007**, he stated that he consumed four shots of tequila and was involved in a verbal altercation with a friend, Witness 2. Subject 1 stated that he does not remember if Witness 2 pointed a gun at him, or if he pointed a gun at Witness 2; however, the police came and fired at him (Subject 1). (Att. 13)

The **Arrest and Case Reports** indicate that Subject 1 was charged with two counts of Aggravated Assault to a Police Officer, Reckless Discharge of a Firearm, and Aggravated Unlawful Restraint. The reports contain accounts of the incident consistent with the summary of the incident. (Att. 6, 7, 21)

Subject 1's weapon, a .38 chrome revolver, was inventoried. (Att. 26)

The **Event Queries from the Office of Emergency Management and Communications** indicate that OEMC was immediately notified of the officers' weapon discharge. (Att. 51)

The **Evidence Technician photographs** depict the scene of the shooting from various angles and photographs of Subject 1 with what appears to be blood on his shirt. (Att. 27-50, 55)

Subject 1's medical records indicate that he was treated for a gunshot wound to his abdomen and buttocks. (Att. 19)

The **Crime Scene Processing Report (CSPR)** indicates that two expended shells, fired from Subject 1's weapon, were inventoried. (Att. 26)

The **CSPR** indicates that one fired bullet was recovered on the kitchen floor under the table; one fired bullet was recovered from the north side of an archway wall between the living room and dining room; and one bullet was removed from Subject 1 during surgery. (Att. 25-26)

A **report from the Illinois State Police Forensic Science Center (ISPFSC) dated 31 July 2007** indicates that Officer A's 9 mm Sig Sauer was test fired and found to be in firing condition. One fired casing recovered from Subject 1's residence was fired from Officer A's weapon. (Att. 87)

A **report from the ISPFSC dated 31 July 2007** indicates that Officer B's 9 mm Sig Sauer was test fired and found to be in firing condition. Three fired casings recovered from Subject 1's residence were fired from Officer B's weapon. (Att. 87)

A **report from the ISPFSC dated 12 October 2007** states that a Gun Shot Residue (GSR) kit recovered from Subject 1 indicates that he discharged a firearm, contacted a PGSR related item, or had his right hand in the environment of a discharged firearm. (Att. 89)

A **report from the ISPFSC dated 07 February 2008** indicates that Subject 1's weapon was test fired and found to be in firing condition. Two fired casings recovered from Subject 1's residence were fired from Subject 1's weapon. (Att. 90)

CONCLUSION AND FINDING:

This investigation found that Officer A and Officer B's use of deadly force was in compliance with Chicago Police Department policy. According to the Chicago Police Department's General Order 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 involved 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."

Officer A and Officer B's actions were in accordance with the conditions of CPD's deadly force policy. Officer A shot Subject 1 after he disregarded Officer A's verbal commands to drop his weapon and instead aimed it at Officer A and Officer B and stated, "I'm going to kill you too." Officer B shot Subject 1 after Officer A fired once and Subject 1 continued to point his weapon at Officer A and Officer B, placing them in imminent fear of great bodily harm or death.