

INDEPENDENT POLICE REVIEW AUTHORITY
LOG #1044989/U# 11-19

INVESTIGATION

NUMBER: U# 11-19, Log# 1044989

OFFICER

INVOLVED #1: “Officer A” (Chicago Police Officer); Male/Black; 43 years old;
Off- Duty; Civilian Dress; Year of Appointment – 2006

OFFICER’S

INJURIES: None

SUBJECT: “Subject 1”; Male/Black; 18 years old

SUBJECT’S

INJURIES: Gunshot wound to the spine and right hip; Non-Fatal; Treated at
Mt. Sinai Hospital

INITIAL

INCIDENT: Robbery

DATE/TIME

OF INCIDENT: 27 April 2011, 0929 hours.

LOCATION:

XXXX S. Komensky Avenue
Beat 1012

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SUMMARY OF INCIDENT:

On 27 April 2011, at approximately 0931 hours, Police Officer A was at home waiting for contractors to come by his house to give him an estimate on his garage. Two contractors, Witness 1 and Witness 2, arrived and Officer A took them to the garage to discuss estimates for repair of the garage. As Witness 1 and Witness 2 were about to take Officer A to their truck parked in the alley, Officer A observed a black male subject, now known as Subject 1, brandishing a black handgun. Witness 1 ran back towards Officer A's house while Subject 1 pointed his gun at Officer A and Witness 2 and demanded money. Officer A then ran back to his home and retrieved his weapon. While Officer A was inside his home, he told his roommate, Witness 3, to call the police. Officer A then went back outside to his backyard and observed Subject 1 going through Witness 2's pocket while pointing a gun at his head.

At that time, Officer A fired his weapon several times at Subject 1. Subject 1 ran out the backyard as Officer A fired his weapon. Officer A then ran to the second floor of his back porch. When Officer A reached the second floor of his back porch, he observed Subject 1 turning around looking at him and running. Officer A then fired several more shots at Subject 1. Subject 1 stopped running and started to stumble. Subject 1 then stated, "I'm sorry, I'm sorry." The police arrived on the scene and placed Subject 1 into custody. Subject 1 was subsequently transported to Mt. Sinai Hospital.

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In a statement to IPRA on 27 April 2011, Witness 1 stated that on the date of the incident he and his friend, Gilbert Cuevas, arrived at the location of incident to meet a black male, Officer A, to do some repair work on a garage door. All three of the men were inside the garage area discussing the repair work. Witness 1 then walked out to his truck that was parked in the alley to get the tools necessary for the repair while Officer A and Witness 2 remained in the garage. While Witness 1 was in the alley, he was approached by a black male, Subject 1. Subject 1 pointed a gun at Witness 1 and demanded money. Witness 1 retreated through a gangway and ran past Officer A and Witness 2. Witness 1 stated that as he ran Subject 1 followed him.

Witness 1 continued to run through Officer A's backyard and into his building. Witness 1 stated that he believed that Officer A followed him to take cover. When Witness 1 ran into Officer A's residence, he observed a black female, Witness 3, and told her to call the police. At that time, Witness 1 heard three gunshots followed by about five more gunshots in rapid succession a few seconds later. Witness 1 remained inside the residence with Witness 3. Witness 1 stated that he did not see Officer A or Witness 2 until after the police arrived on the scene.

In a statement to IPRA on 27 April 2011, Witness 2 stated that on the date of the incident he and his friend, Witness 1, arrived at the location of incident to meet with "(First Name)," Officer A, to discuss doing some repair work on his garage. All three men were in the garage discussing the repair work and pricing when Witness 1 walked to his vehicle parked in the alley to get some tools. Witness 2 then observed Witness 1 running back from the alley through the gangway passing him. A moment later, a black male subject, Subject 1, appeared in the gangway with a gun pointed at Witness 1. Subject 1 then pointed the gun at Witness 2 and demanded money. Subject 1 was advancing toward Witness 2 with his gun pointed. Witness 2 stated that Witness 1 ran to the porch of the building for cover and believes that Officer A retreated to the porch as well.

At that time, Witness 2 walked backwards as Subject 1 continued advancing toward him stating words to the effect, "Give me your fucking money or I'll kill you." When they reached the backyard, Subject 1 started patting Witness 2 in search for a wallet or money. Witness 2 raised his hands in the air as Subject 1 frisked him. Witness 2 then reached into his pocket with one of his hands and removed his wallet to give to Subject 1. Subject 1 opened the wallet and removed \$6 U.S.C. from the wallet and demanded more money. Subject 1 then pointed a gun directly at Witness 2's head. Witness 2 reached into his pocket and gave Subject 1 all of the change. Subject 1 then slapped the change out of Witness 2's hand and stated, "Fuck that change."

At that point, Witness 2 heard two gunshots. Witness 2 believed that Subject 1 was struck by a bullet because Subject 1 began retreating and stumbling away while shouting profanities. Witness 2 did not see Officer A and had no idea where the gunfire

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was coming from. Witness 2 then ran onto the back porch to take cover. Subject 1 ran through the gangway and Witness 2 could no longer see him. A moment later, Witness 2 heard six to eight more gunshots. Witness 2 then observed Officer A running down the stairs from the second floor with a gun in his hand. Subsequently, several police cars and an ambulance arrive on the scene.

In a statement to IPRA on 27 April 2011, Witness 3 stated that on the date of the incident she was at home with her friend and landlord, Officer A. Witness 3 and Officer A met with two Hispanic males, Witness 1 and Witness 2, to obtain an estimate for repairing the garage. At some point, Witness 3 returned to her residence and left Officer A outside with Witness 1 and Witness 2. Shortly afterwards, Officer A came inside her apartment and told Witness 3 to call the police because someone was trying to rob him and the two Hispanic males.

Witness 3 called 911 while Officer A ran back outside. As Witness 3 was on the phone with 911, she heard five gunshots and an unknown individual scream. Witness 3 informed the 911 dispatcher that Officer A was an off-duty officer and provided the dispatcher with the address and a description of Officer A. Witness 3 then observed Officer A on the back staircase between the first and second floor apartments. She then heard five more gunshots. According to Witness 3, it appeared that Officer A was discharging his firearm in an eastward direction, but she did not observe him actually firing his weapon. After the shots stopped, Witness 3 went on the back porch and observed Witness 1 and Witness 2. The police then arrived on the scene.

In a statement to IPRA on 28 April 2011, Subject 1 stated on the date of the incident he had intentions of robbing someone. Subject 1 saw a Hispanic male, now identified as Witness 1, in the alley of 18th and Pulaski Road, so he decided to rob him with his BB gun. When Subject 1 approached Witness 1 with his BB gun, Witness 1 ran towards a building. As Witness 1 ran, Subject 1 observed a white male, now identified as Officer A, and another Hispanic male, now identified as Witness 2. Officer A then ran towards the same building as Witness 1. Subject 1 then proceeded to rob Witness 2. Subject 1 explained that he pointed his weapon at Witness 2 as he robbed him. Subject 1 took \$6 U.S.C. from Witness 2 and started to walk away. While Subject 1 was walking away, he heard a gunshot and realized that he had been shot. Subject 1 then observed that Officer A was shooting at him.

At that time, Subject 1 dropped his weapon and started to “hop away” from the scene as Officer A shot at him. Subject 1 stated that Officer A fired his weapon eight or nine times. When Subject 1 got close to Pulaski Road, Officer A shot at him again. Subject 1 stated that Officer A was standing on the second floor back porch the second time he shot at him (Subject 1). Subject 1 fell to the ground in a vacant lot and Officer A continued shooting. Subject 1 stated that Officer A fired his weapon three or four times the second time. Officer A stopped shooting, but then started to shoot again. After Officer A stopped shooting, the police arrived on the scene and an ambulance transported Subject 1 to Mt. Sinai Hospital. Subject 1 stated that he sustained a gunshot wound to his hip and spine.

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In a statement to IPRA on 27 April 2011, Witness 4, stated that he was driving northbound on Pulaski Road between 19th and 18th street when he heard several gunshots in rapid succession. Witness 4 then observed a black male subject, Subject 1, running west in a vacant lot. Subject 1 fell to the ground and attempted to get back up. Witness 4 then heard three more gunshots. At that time, Witness 4 observed Subject 1 stumbling through the vacant lot. Witness 4 then heard three more gunshots and drove away from the scene.

In a telephone conversation dated 09 May 2011, Witness 5 stated that she called “911” regarding the shooting. Witness 5 stated that she observed a black male subject, Subject 1, crawling on his stomach in a vacant parking lot on Pulaski Road. While Subject 1 was crawling, Witness 5 heard gunshots. Subject 1 stopped and yelled “something.” Subject 1 then raised his hands and the shooting stopped. Witness 5 stated that she did not see who was shooting at Subject 1 because she witnessed the incident from her back window inside her residence at XXXX S. Komensky. Witness 5 stated that she did not want to be involved any further with the investigation.

In a telephone conversation dated 10 May 2011, Witness 6 stated that he is the Coordinator for the ? located at XXXX S. Pulaski Road. On the date of the incident, Witness 6 was working inside his office when he heard several gunshots. Witness 6 stood by the lobby desk, looked through the windows located in the lobby area, and observed a black male subject, Subject 1, on the ground. Witness 6 stated that Subject 1 was across the street from his office in a vacant lot. Subject 1 was on his back and pushing himself forward towards the sidewalk on Pulaski Road. Subject 1 was trying to stand up, but he was unable to stand. While Subject 1 was on his back pushing himself forward. Witness 6 continued to hear gunshots. Witness 6 stated that he heard between fifteen and twenty-five gunshots. Witness 6 stated that he did not see who was shooting and that he did not know where the gunshots were coming from. Witness 6 ultimately called 911 and reported the incident.

The related Department Reports, which include the Arrest Report and Original Case Incident Report, included an account of the incident that is consistent with the Summary of Incident. Subject 1 was arrested and charged with Aggravated Robbery and two counts of Attempt Aggravated Robbery.

The Tactical Response Report (TRR) completed by Officer A documents that Subject 1 was an “assailant” who “posed an imminent threat of battery, attacked with a weapon, and used force likely to cause death or great bodily harm.” Officer A used member presence and his firearm to subdue Subject 1. Officer A fired a total of sixteen shots from his firearm, a Sig Sauer 9mm, Model P229.

An Officer’s Battery Report (OBR) indicates that Officer A did not sustain any apparent injuries or no injuries.

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The Crime Scene Processing Report listed that Officer A's weapon, a Sig Sauer, Model P229, 9mm, Semi-automatic, was inventoried under number 12301406. There were eight (8) Win 9mm + P bullets recovered from Officer A's weapon. The weapon belonging to Subject 1, a Sig Sauer BB gun, was inventoried under number 12301383.

Evidence Technician Photographs and Videotape depict what appear to be the location of incident and the recovered evidence.

An ISP Report, dated 23 June 2011, documented that Officer A's weapon, a Sig Sauer, Model P229, was test fired, examined, and found to be in firing condition. In addition, an ISP Report, dated 25 October 2011, documents that Subject 1's weapon, a Sig Sauer BB gun, inventoried under number 12301383, did not reveal any latent impressions suitable for comparison.

A **POD** search of the vicinity of the location of incident was met with negative results because there are no PODS in the area.

A **canvass** of the vicinity of the location of incident did not produce any other witnesses.

The Chicago Fire Department (CFD) EMS Incident Report documents that paramedics responded to the scene and observed Subject 1 in handcuffs. Subject 1 had injuries to his lower torso and complained about abdominal pain and multiple gunshot wounds to his legs and buttocks. Subject 1 was placed in an ambulance and paramedics removed some of his clothing. The paramedics noted that they observed gunshot wounds to both of Subject 1's thighs and buttocks. Subject 1 also had a palpable bullet under his skin on the right side of his pelvis. Subject 1 was transported to Mt. Sinai Hospital for medical treatment.

Medical Records from Mt. Sinai Hospital for Subject 1 documents that he was diagnosed with multiple gunshot wounds, a fractured right hip, and leg paralysis.

Attempts to contact Officer A's tenants, Tenant 1, Tenant 2, and Tenant 3, who reside at the location of incident, were unsuccessful. Tenant 4 stated that she did not witness the incident.

Office of Emergency Management and Communications Records (OEMC) documents that on the date of the incident, at approximately 0931 hours, Witness 3 called 911 and reported that someone was in the back of her house at XXXX S. Komensky Avenue trying to rob someone. While on the phone with the 911 dispatcher, approximately 6 or 7 gunshots can be heard in the background. Witness 3 stated that she was in the house, but her "guy," Officer A, whom she lived with, was outside on the back porch. Witness 3 then identified her "guy" as an off-duty police officer. Shortly afterwards, while Witness 3 was still on the phone with the 911 dispatcher, Officer A got on the phone. Officer A identified himself and gave his star, #. Officer A stated that a guy

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(Subject 1) attempted to rob him by displaying a gun. Officer A stated that he was able to run in the house. When he came back outside, Subject 1 was pulling out money from another guy's (Witness 2) pocket and he (Officer A) shot Subject 1. As Officer A was on the phone with the 911 dispatcher, the police arrived on the scene and the call was eventually terminated. Several other callers called 911 and reported hearing the gunshots, but they were all unable to see who was shooting. One caller stated that the "man" (Subject 1) would not lie down and that maybe if he laid down then the shooting would stop. Another caller stated that the "man" (Subject 1) was trying to crawl, but the shooter (Officer A) was still shooting.

In a statement to IPRA on 27 April 2011, Involved Officer A stated that, on the date of the incident, he got off of work from the 18th District at 0600 hours. After Officer A ended his tour of duty, he went to his home located at XXXX S. Komensky. Officer A described his residence as a three flat building with four units. Officer A resides on the first floor of his building. Officer A stated that he was expecting some contractors to come to his home to give him an estimate on fixing his garage. Shortly before 0900 hours, the contractors, now known as Witness 2 and Witness 1, arrived at Officer A's residence and they went to the garage. In the garage, they started to discuss the estimate. According to Officer A, one of the contractors, Witness 1, did not speak English, so Witness 2 had to translate for him. Witness 1 and Witness 2 wanted to show Officer A some locking devices, so they all proceeded to walk to the alley towards Witness 2's and Witness 1's work truck. As the group proceeded to walk to the alley, Witness 1, who was ahead of Officer A and Witness 2, ran back the opposite way. Witness 1 ran past Officer A and Witness 2 towards Officer A's residence.

At that time, Officer A observed a black male subject, now known to be Subject 1, brandishing a black handgun in his right hand and stating, "Give me the money. Give me the money." Officer A stated that Subject 1 had the tip of the gun in his pants as he displayed the gun. Officer A told Subject 1 that he did not have any money, put up his hands, and ran inside of his apartment. By the time Officer A reached his apartment, he observed Witness 1 in the apartment with his roommate, Witness 3. Officer A told Witness 3 to call the police as he proceeded to get his gun from his bedroom.

Less than a minute later, Officer A went back outside and observed Subject 1 knocking change out of Witness 2's hands. Witness 2 was lying back on the bottom of the stairs with Subject 1 over him pointing a gun at his head. At that time, Officer A fired his gun at Subject 1 several times to eliminate the threat. Officer A stated that he was about five feet away from Subject 1 and standing on the first floor back porch when he fired his weapon. Subject 1 started to run away from the scene eastbound towards Pulaski Road. As Subject 1 fled, Officer A ran to the second floor back porch to get better coverage and to figure out where Subject 1 was located. When Officer A got to the second floor, he observed Subject 1 turning around looking at him (Officer A) and still fleeing towards Pulaski Road. Officer A then fired his gun several more times again from the second floor back porch. Officer A stated that he fired his weapon again because he believed that Subject 1 still had his gun and was a threat to him and he feared for the public's safety.

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As Officer A fired his weapon, he emptied his magazine. Officer A then ran back to his apartment, retrieved another magazine, and reloaded his weapon. Less than a minute later, Officer A went back outside to the second floor back porch. When Officer A got back to the second floor, he observed Subject 1 approximately ten feet away from Pulaski Road. Subject 1 was still looking back and trying to get away. Officer A stated that Subject 1 was on his belly trying to “scurry” away. Subject 1 attempted to get up but could not because he was stumbling. At that time, Officer A fired his weapon several more times. Officer A stated that he did not pursue Subject 1 because he still perceived him to be a threat because he still believed he had a gun and he did not know if Subject 1 had friends with him. While Officer A fired his weapon, he heard Subject 1 state, “I’m sorry. I’m sorry.” Officer A then observed both of Subject 1’s hands and stopped firing his gun. Shortly afterwards, the police arrived on the scene. Subject 1 was placed in custody and subsequently transported to a hospital via ambulance.

A Breathalyzer Test taken on 27 April 2011, at 1340 hours, revealed that Officer A’s BAC was .000. Officer A also submitted to a drug test on the same date, at 1355 hours, which revealed negative results.

The Case Supplementary Report included accounts of the incident that were consistent with the summary of the incident. In the Case Supplementary Report, Officer A provided essentially the same information he gave in his statement to IPRA. In addition, Witness 2 provided essentially the same account in his statement with IPRA. Witness 2 added that after Witness 1 ran past him and Officer A, he observed Subject 1 with a gun in his right hand. Subject 1 then pointed the gun at Witness 2 and stated, “Give me your fucking money.” At that time, Witness 2 was being pushed back towards the house while Subject 1 pointed a gun at his chest. Once they reached the rear of the house, Witness 2 took money out his wallet and gave it to Subject 1. Subject 1 demanded more money and then pointed the gun at Witness 2’s head. Witness 2 then took some loose change out of his pocket and Subject 1 slapped the change out of Witness 2’s hand. Witness 2 then heard two or three gunshots and Subject 1 ran towards the alley. After the incident, Witness 2 saw Subject 1’s gun lying in the grass in the backyard. Witness 2 stated that he thought Subject 1 still had the gun with him when he was arrested.

In the Case Supplementary Report, Witness 1 provided essentially the same account in his statement with IPRA. Witness 1 added that after he ran from Subject 1, he observed Subject 1 pointing his gun at Witness 2 and Officer A. Witness 1 continued to run into Officer A’s first floor apartment. In the apartment, Witness 1 told Witness 3 to call the police. Officer A then came into the apartment, went into a room, and then exited with a gun in his hand. Officer A went back outside and Witness 1 heard three gunshots.

In the Case Supplementary Report, Subject 1 provided essentially the same account in his statement with IPRA. Subject 1 added that after he robbed a “Mexican” guy (Witness 2) of \$6 U.S.C., he took the money and put it in his rear pants pocket. Witness 2 then took out some change and Subject 1 knocked the change out of his hand. At that time, the white guy (Officer A) came out of his house with a gun and Subject 1

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heard yelling and approximately eight gunshots. Subject 1 ran and felt pain to both of his legs and back. Subject 1 then fell in an empty lot on Pulaski and the police and ambulance responded a short time later.

In the Case Supplementary Report, Witness 3 provided essentially the same account in his statement with IPRA. Witness 3 added that when Officer A came back into the apartment and told her that someone was trying to rob them, she observed Officer A go back outside with his gun. Witness 3 then heard gunshots and called 911. While on the phone with 911, Witness 3 heard more gunshots. Shortly afterwards, Officer A came back inside the apartment and spoke with the 911 dispatcher.

Court Records document that Subject 1 pled guilty and was sentenced to probation for three years.

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FINDINGS:

The 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. 03-02-03, II:

- 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 admitted that he attempted to rob Officer A, Witness 2, and Witness 1. In fact, Subject 1 forcibly took \$6 U.S.C. from Witness 2 at gun point. While Subject 1 stated that his gun was actually a BB gun, he caused Officer A, Witness 2, and Witness 1 to be threatened with death or great bodily harm if they did not comply with his demands. Subject 1 committed a forcible felony, robbery, which resulted in Officer A taking a course of action. Officer A, in fear of his life, the lives of Witness 2 and Witness 1, and the public's safety, fired his gun several times at Subject 1. Therefore, based on the totality of the circumstances, Officer A was reasonably in fear of his life and fired his weapon at Subject 1 to defeat him from escaping and to prevent death or great bodily harm.