



OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS

KIMBERLY M. FOXX
STATE'S ATTORNEY

2650 SOUTH CALIFORNIA AVENUE
CHICAGO, ILLINOIS 60608

POLICE INVOLVED DEATH DECISION MEMORANDUM
DECEDENT: CLEOTHA MITCHELL

I. OVERVIEW

On November 25, 2016, Cleotha Mitchell was shot and killed by Chicago Police Officer Ricky Page after Mitchell fired a gun outside of Sky Box Bar, killing Jeffrey Banks and injuring Jerry Buckner. The Independent Police Review Authority (IPRA) / Civilian Office of Police Accountability (COPA) and Chicago Police Department (CPD) conducted an investigation into Mitchell's death. During the course of the investigation, investigators interviewed numerous civilian and law enforcement witnesses, and reviewed video, photographs of the scene, police reports, medical records and the results of forensic examinations. On May 11, 2017, COPA provided the Office of the Cook County State's Attorney COPA's final report of investigation, pursuant to the Police and Community Relations Improvement Act.

The Office of the Cook County State's Attorney, as the agency responsible for making criminal charging decisions under Illinois law for incidents that occur in Cook County, reviewed the evidence collected during the investigation to determine whether there was a good-faith basis for filing criminal charges. After a thorough review, the Office has concluded that the evidence is insufficient to support criminal charges against the officer.

II. STATEMENT OF FACTS

The evidence presented at any criminal proceeding resulting from this incident would show as follows:

On November 25, 2016, in the early morning hours, Jeffrey Banks was at Sky Box Bar located at 3601 W. Harrison Street, Chicago, Illinois with his sister, Joy Brown. Cleotha Mitchell and Jerry Buckner were also separately at the bar. At approximately 12:25 a.m., Banks went outside of the bar and entered into a verbal argument with Mitchell. The verbal argument turned physical as the two men

began to push each other. Brown, Buckner, and others attempted to break up the fight. Mitchell then fired a gun several times. The gunfire struck Buckner in the left arm. Banks ran eastbound on Harrison as Mitchell pursued him.

Chicago Police Officers Ricky Page and Eric James were on duty in the area, in plain clothes and assigned an unmarked police vehicle. Officer James was driving and Officer Page was the front passenger. The officers were driving southbound on Central Park Avenue near Congress Parkway. As the officers drove over the I-290 overpass, they heard three to four gunshots. Officer James continued to drive into the intersection of Central Park and Harrison. Several people were gathered outside of Sky Box Bar.

Just east of the intersection at Central Park and Harrison, Mitchell fired his gun twice at Banks. Banks was struck by the bullets and fell to the ground. Simultaneously, Officers James and Page drove through the intersection making a left-turn and exiting their vehicle. The officers ordered Mitchell to drop his gun but Mitchell ignored the verbal commands. Officer Page fired his gun four times at Mitchell. Mitchell took two more steps before falling to the ground.

Mitchell and Banks were pronounced deceased on the scene. Buckner was transported to Mt. Sinai Hospital by ambulance where he was treated for a gunshot wound to his left forearm.

Officers recovered a Keltec .32 caliber semi-automatic handgun with an empty magazine near Mitchell's body. Five fired .32 caliber cartridge cases were recovered from the sidewalk in front of Sky Box Bar. Two .32 caliber cartridge cases were recovered from the street pavement at 3559 West Harrison Street. An ISP analyst examined the ballistics evidence and concluded that all seven fired .32 caliber cartridge cases matched the weapon recovered from Mitchell.

Four fired 9mm cartridge cases were recovered from the street pavement at 3559 West Harrison Street. All four 9mm cartridge cases were fired from Officer Page's service weapon.

The Cook County Medical Examiner's Office conducted an autopsy and examined Jeffrey Banks and identified a gunshot wound to Bank's chest, left buttock, and left calf. The cause of death was multiple gunshot wounds.

The Cook County Medical Examiner's Office conducted an autopsy and examined Cleotha Mitchell and identified a gunshot wound to Mitchell's chest and left side of the face. The cause of death was multiple gunshot wounds.

The incident was captured on video. Video footage outside of Sky Box Bar captured the argument between Mitchell and Banks. Buckner can be seen attempting to break up the fight. Banks

walked out of view of the camera but Mitchell can be seen falling backwards and firing a handgun multiple times with muzzle flashes visible. Mitchell can be seen getting up and heading east on Harrison. Video footage outside of Roscoe Uniform Company captured Mitchell pursuing Banks east down Harrison. Officers Page and James' vehicle can be seen entering the camera angle. A flash from the muzzle of Mitchell's firearm can be seen just prior to Banks falling to the ground in the street. The officers can be seen exiting their vehicle and approaching Mitchell. Mitchell can be seen falling to the ground. A POD camera at 700 North Central Park Avenue captured a group of people running eastbound on Harrison as the officers approached in their vehicle. Officer Page can be seen exiting the passenger side of the vehicle. Movement is visible in front of the police vehicle but the area of the shooting is obstructed.

The evidence at any trial would include evidence indicating that the officer reasonably believed that Mitchell was trying to kill, and did kill, a civilian and presented a threat of further death or great bodily harm to both civilians and officers when they heard and observed Mitchell fire his gun in front of Sky Box Bar striking Buckner in the arm, chasing Banks down the street firing his gun two more times, fatally striking Banks, and then disobeying verbal commands from the officers to drop the gun.

III. LEGAL STANDARD

In making any charging decision, the Office of the Cook County State's Attorney is bound by the Illinois Criminal Code. The Illinois Use of Force in Defense of Person statute provides in pertinent part:

A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

720 ILCS 5/7-1 (a).

The statute regarding an officer's use of force provides in pertinent part:

A peace officer . . . need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to affect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, or when he reasonably believes both that: (1) such force is necessary to prevent the arrest from being defeated by resistance or escape; and (2) the person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened

infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.”

720 ILCS 5/7-5.

IV. ANALYSIS AND CONCLUSION

A criminal prosecution for either first- or second-degree murder would require proof beyond a reasonable doubt that Officer Page was not legally justified in using deadly force against Mitchell. In other words, a judge or jury would need to conclude that the officer did not reasonably believe that he or others were in imminent danger of great bodily harm from Mitchell. The uncontroverted evidence established that the officer’s use of deadly force was objectively reasonable. The weight of the evidence shows that Mitchell caused great bodily harm to Buckner, death to Banks, and confronted Officer Page with the threat of deadly force. Civilian witnesses observed Mitchell fire his gun and strike Buckner outside of Sky Box Bar. The officers heard this gunfire. Then, in front of both the officers and civilian witnesses, Mitchell fatally shot Banks. The weapon recovered next to Mitchell matched the bullet casings found on the sidewalk and street where Buckner and Banks were shot. Further, Mitchell failed to drop the gun despite commands from the officers. Officer Page responded to this deadly force by firing four times and striking Mitchell twice in the chest and face. Accordingly, based on the evidence reviewed in this matter and the applicable legal standards, the evidence is insufficient to support the filing of criminal charges as the officer’s use of deadly force against Mitchell was reasonable under the totality of the circumstances. Accordingly, the Office is not filing criminal charges in this case.

This conclusion is based entirely on the relevant criminal laws and standards of proof in Illinois and does not limit administrative action by the Chicago Police Department or civil actions where less-stringent laws, rules, and legal standards of proof apply. The Office expresses no opinion regarding the propriety or likelihood of success of any such actions.