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COOK COUNTY, ILLINOIS

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**POLICE INVOLVED DEATH DECISION MEMORANDUM**  
**DECEDENT: DEREK LOVE**

**I. OVERVIEW**

On July 21, 2016, Derek Love was shot and killed by Chicago Police Officers Alfonso Herrera, David Benitez and Juan Rivera after Love discharged a firearm at the officers and struck Officer Benitez in the leg. The Independent Police Review Authority (IPRA) / Civilian Office of Police Accountability (COPA) and Chicago Police Department (CPD) conducted an investigation into Love's death. During the course of the investigation, investigators interviewed numerous law enforcement witnesses and civilian witnesses and reviewed OEMC transmissions, photographs of the scene, police reports, medical records and the results of forensic examinations. On June 5, 2018, COPA provided the Office of the Cook County State's Attorney its final report of investigation, pursuant to the Police and Community Relations Improvement Act, concluding that the officers' use of deadly force was justified under Chicago Police Department policy, Illinois law, and Supreme Court legal precedent.

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 officers.

**II. STATEMENT OF FACTS**

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

On July 21, 2016, at approximately 8:10 p.m., Chicago Police Officers Alfonso Herrera, David Benitez, and Juan Rivera were in uniform and assigned to the bike detail for a concert at Northerly Island. When the concert was cancelled due to expected inclement weather, the officers began to ride

their bicycles back to the First District police station. As they travelled westbound on 18<sup>th</sup> Street towards Indiana, they were stopped by two women. The women told the officers that there was a man, now identified as the decedent, Derek Love, who acted strangely in The Battle of Fort Dearborn Park, located at 1801 South Calumet Avenue. The women provided the officers with descriptions of the decedent's appearance and erratic behavior.

At about 8:15 p.m., the officers arrived at the park and observed Love holding a cell phone sitting on a bench. The officers formed a semi-circle in front of Love and commanded him to keep his hands in front of him. Love then switched his cell phone from his right hand to his left hand and stood up from the bench. Love reached into his rear waistband with his right hand and pulled out a handgun and began to wave it back and forth. The officers continued to give verbal commands, including for Love to drop the weapon. Love did not comply with the officers' commands. Instead, Love fired his weapon at Officer Benitez striking the officer in the left leg.

All three officers returned fire, discharging their weapons multiple times. Love then ran a short distance, jumped over a wrought iron fence, fell on the other side of the fence, and remained on the ground. Officers recovered Love's weapon and found it had a live round in the chamber and noted an indentation in the primer of the cartridge, consistent with a firing pin striking it. Ballistics evidence reflects that officers fired approximately twenty-two total rounds. Investigators recovered fifteen fired cartridge cases while on scene and three additional rounds the following day. Investigators also recovered fired bullet fragments and fired bullet jacket fragments. While all of the recovered items were submitted to the Illinois State Police Crime Laboratory for analysis, identifying marks could not be determined on some of the recovered fragments.

Officer Benitez was transported to Northwestern Hospital where he was treated for the gunshot wound to his left leg and later released. Love was transported to Northwestern Hospital by ambulance where he was pronounced deceased at approximately 8:49 p.m.

A postmortem examination by the Cook County Medical Examiner's Office of Derek Love identified gunshot wounds to Love's back, left thigh, right and left arms, and abdomen. A report of blood toxicology revealed the presence of alcohol in Love's blood.

The evidence at any trial would include evidence indicating that the officers reasonably believed that Love was trying to kill, or cause great bodily harm, to Officer Benitez when he aimed a firearm and discharged it at Officer Benitez, striking him in the leg.

### **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 Officers Herrera, Benitez and Rivera were not legally justified in using deadly force against Love. In other words, a judge or jury would need to conclude that each of the officers did not reasonably believe that he or others were in imminent danger of great bodily harm from Love. The uncontroverted evidence established that the officers' use of deadly force was objectively reasonable. The weight of the evidence shows that Love confronted the officers with deadly force. Love pointed his firearm at the officers and shot Officer Benitez in the leg. Officer Benitez, Officer Herrera, and Officer Rivera returned fire striking Love multiple times. 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 officers' use of deadly force against Love was reasonable under the totality of the circumstances. Accordingly, the Office is not filing criminal charges in this case.

Pursuant to policies and legislation enacted at the urging of State's Attorney Foxx, after making its declination determination, the State's Attorney's Office referred the review of the case to the Office of the Illinois State's Attorneys Appellate Prosecutor (ILSAAP) for an additional review. ILSAAP has reviewed the case and has concurred that no criminal charges are appropriate.

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.