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COOK COUNTY, ILLINOIS

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POLICE INVOLVED DEATH DECISION MEMORANDUM **DECEDENT: DONTE JOHNSON**

I. OVERVIEW

On June 26, 2016, Donte Johnson was shot and killed by Dolton Police Officers Philip Sheehan and Ryan Perez after Johnson committed an armed robbery of a customer, Ayrius Duncan, struck Duncan with a handgun, and pointed the handgun at Officer Sheehan at the Shell gas station at 1445 East Sibley Boulevard, Dolton, Illinois. The Illinois State Police Public Integrity Task Force (PITF) conducted an investigation into Johnson's death. During the course of the investigation, investigators interviewed civilian and law enforcement witnesses, and reviewed video surveillance, photographs of the scene, police reports, medical records and the results of forensic examinations. On May 17, 2017, PITF provided the Office of the Cook County State's Attorney its final report of investigation.

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 June 26, 2016, at approximately 5:02 a.m., Donte Johnson committed an armed robbery of a customer, Ayrius Duncan, at the Shell gas station at 1445 East Sibley Boulevard, Dolton, Illinois. Johnson was armed with a handgun and repeatedly struck Duncan in the head with the butt of the handgun. Johnson stole an ID card, cash, and a cell phone from Duncan and ordered Duncan to remove his shoes, watch and necklace and throw them in the back of Duncan's vehicle which was parked

nearby. Duncan complied. The gas station clerk called 911 and reported that Johnson was armed with a black handgun in his hand and was about to rob the gas station. The clerk gave a description of Johnson, locked herself in the bathroom, and called 911 a second time.

As Duncan lay on the ground, Johnson stood over him pointing the gun at him and striking him in the face with the butt of the handgun. Officer Sheehan was the first responding officer to arrive on scene and encountered Johnson standing over Duncan striking him with the handgun. Officer Sheehan exited his marked squad car and gave verbal commands for Johnson to drop the gun. Johnson turned and pointed the handgun at Officer Sheehan. Officer Ryan Perez arrived on scene as Johnson stood over Duncan and then turned and pointed his firearm at Officer Sheehan. Johnson began to move as Officer Sheehan yelled to inform Officer Perez of the weapon. Officer Sheehan fired two shots in the direction of Johnson.

Johnson turned and ran. Officer Sheehan fired two additional shots. Johnson still attempted to flee. Officer Perez exited his squad car and fired his weapon at Johnson. Johnson was struck by Officer Perez's gunfire and fell to the ground. Officers placed Johnson into handcuffs. Johnson was transported by ambulance to Ingalls Hospital where he was pronounced dead.

A postmortem examination by the Cook County Medical Examiner's Office of Donte Johnson identified gunshot wounds to Johnson's head, chest, and left arm. A report of blood toxicology revealed the presence of alcohol in Johnson's blood.

Evidence Technicians recovered Johnson's loaded handgun. The gun was reported stolen from a Chicago Police Officer in 2013. Proceeds of the armed robbery were also recovered from Johnson including Duncan's ID, cash, and cell phone.

Dolton 911 dispatch records corroborate that the gas station clerk called 911 twice to report an armed robbery by a man with a gun. In her first call to 911, she reported that a man wearing a hoodie and carrying a gun had approached the gas station to commit an armed robbery. During her second call to 911, she reported she was locked in a bathroom, hiding from the man with the gun. She repeated that Johnson was armed with a gun, and asked if the police had arrived. The clerk heard 4 to 5 gunshots while in the bathroom. She remained on the phone with dispatch until they informed her police were present and she could exit the bathroom.

Video surveillance footage from the Shell gas station captured portions of the incident. The video depicted Duncan at the gas station window, Johnson walking through the gas station pump area, and Johnson approaching Duncan with his arm outreached holding a gun. Johnson can be seen leaning over Duncan as Duncan lay on the ground. Officer Sheehan is depicted pointing his weapon at Johnson, who is off-camera. Johnson can be seen throwing items into Duncan's vehicle and running with a dark

object in his hand. Finally, Officer Perez is depicted arriving at the gas station, exiting his vehicle, and discharging his weapon at Johnson as Johnson ran out of view of the camera.

The evidence at any trial would include evidence indicating that the officers reasonably believed that Johnson was trying to kill, or cause great bodily harm, to Duncan and Officer Sheehan when he struck Duncan with the handgun and then turned and pointed the handgun at Officer Sheehan.

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 Sheehan and Perez were not legally justified in using deadly force against Johnson. In other words, a judge or jury would need to conclude that each of the officers did not reasonably believe that they or others were in imminent danger of great bodily harm from Johnson. The

uncontroverted evidence established that the officers' use of deadly force was objectively reasonable. The weight of the evidence shows that Johnson battered Duncan repeatedly by striking him in the head with his handgun while committing an armed robbery, failed to respond to verbal commands to drop the gun, turned and pointed his firearm at Officer Sheehan, and attempted to flee. Officer Sheehan and Officer Perez responded by firing at Johnson 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 Johnson was reasonable under the totality of the circumstances. Therefore, 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 Dolton 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.