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COOK COUNTY, ILLINOIS

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POLICE INVOLVED DEATH DECISION MEMORANDUM

DECEDENT: MARK HARVEY

I. OVERVIEW

On August 13, 2018, Mark Harvey was shot by four officers including Park Forest Police Officer David Habecker, Park Forest Police Officer Charles Karl, Park Forest Police Sergeant Detective Julius Moore and Richton Park Police Officer Ryan Dahlberg after Harvey pointed at handgun at the officers. Harvey was struck three times and died from his injuries. The Illinois State Police Public Integrity Task Force (PITF) conducted an investigation into Harvey's death. During the course of the investigation, investigators interviewed numerous law enforcement witnesses and civilian witnesses, and reviewed radio transmissions, video, photographs of the scene, police reports, medical records and the results of forensic examinations. On April 10, 2019, PITF provided the Office of the Cook County State's Attorney its final report of investigation, pursuant to the Police and Community Relations Improvement Act (PCRIA).

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 August 13, 2018, at approximately 2:00p.m., Park Forest Police Officers were investigating a report of a man shot in the head outside a residence located in Park Forest, Illinois. The victim provided the nickname of the offender who shot him as well as the offender's direction of travel. The officers

related this information which was broadcast by the dispatch operator as well as the fact that the victim had a significant amount of blood on him. A few minutes later, Park Forest Police Sergeant Julius Moore encountered Mark Harvey near the intersection of Jackson Avenue and Millard Avenue and noticed that Harvey matched the description of the possible offender. Harvey refused to stop or identify himself to Sergeant Moore. Richton Park Police Officer Ryan Dahlberg arrived on the scene and joined Sergeant Moore by following Harvey. Park Forest Police Officer David Habecker arrived on scene and pulled his police vehicle in front of Harvey blocking Harvey's path. Harvey walked toward the rear of the squad car, spun towards Sergeant Moore, reached into his front waistband and pulled out a small black handgun. Harvey pointed the handgun at Sergeant Moore and shouted, "Come on with it." Sergeant Moore pulled his weapon out and fired four times at Harvey who fled on foot westbound down Jackson. Harvey then ran south into a grass alley with Sergeant Moore and other officers in pursuit. As Sergeant Moore, Officer Dahlberg and Officer Habecker pursued Harvey down the grass alley, additional shots were fired towards Harvey. Harvey then entered the back yard of a residence located at 22507 Richton Square Road and ran through the backyard to the side of the house. Sergeant Moore, Officer Habecker, Officer Karl and Officer Dahlberg converged at the fence leading to the back yard of the residence. As Harvey appeared from behind the corner of the house and repeatedly ducked back and forth, the officers fired multiple times at Harvey. Harvey then ran and fell to the ground. When officers rolled Harvey over to render aid, they recovered a small black handgun on the ground underneath Harvey. The handgun had a live round in the chamber. Officers rendered medical aid to Harvey until an ambulance arrived and transported him to St. James Hospital where he was pronounced deceased at approximately 2:52 PM.

The handgun which officers recovered from under Harvey, a Walther TP semiautomatic pistol, was sent to the Illinois State Police for forensic examination. The pistol had one live round in the chamber. The analysis included a comparison of firing pin impressions found on that recovered cartridge as well as test fired cartridges. The results were consistent with someone attempting to fire the weapon. The weapon had a total capacity of seven rounds and contained five rounds at the time it was recovered. Two Winchester 25 Auto fired cartridge cases were recovered from the earlier shooting but they could not be identified or eliminated as having been fired by Harvey's gun. Ballistic testing on Harvey's gun determined it was the handgun that fired the projectiles that struck the initial victim in the head shortly before this incident.

The Cook County Medical Examiner's Office conducted an autopsy and examined Mark Harvey and identified three gunshot wounds including a graze wound on his abdomen, an entrance wound on his left chest with a corresponding exit on his left back, and an entrance wound on the left side of Harvey's neck with a corresponding projectile which was lodged in Harvey's right lower sinus cavity. The cause of death was multiple gunshot wounds.

The evidence at any trial would include evidence indicating that Officer Habecker, Officer Karl, Sergeant Moore and Officer Dahlberg reasonably believed that Harvey was fleeing from a forcible felony and trying to kill, or cause great bodily harm, to the officers. The evidence would establish Harvey initially shot twice at the original victim and then pointed a gun at the officers while fleeing from the officers and disobeying verbal commands to show his hands.

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 Habecker, Officer Karl, Sergeant Moore, and Officer Dahlberg were not legally justified in using deadly force against Harvey. 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 Harvey. The uncontroverted evidence established that the officers' use of deadly force was objectively reasonable. The weight of the evidence shows that Harvey was armed with a gun, which had been involved in the use of a forcible felony, and was attempting to escape from that forcible felony when he confronted the officers with the threat of deadly force. Civilian witnesses indicated Harvey had been involved in a previous shooting shortly before this incident and lab testing confirmed that ballistic evidence recovered from the scene of that earlier shooting was fired from the weapon recovered from Harvey. Further, Harvey pointed his gun at the officers and disobeyed verbal commands to stop and show the officers his hands. Ballistic evidence indicated that Harvey attempted to discharge his weapon at the officers but failed. The officers responded to the threats of deadly force by firing multiple times, and striking Harvey three 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 Harvey 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 Park Forest and Richton Park Police Departments 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.