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COOK COUNTY, ILLINOIS

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## **POLICE INVOLVED DEATH DECISION MEMORANDUM**

### **DECEDENT: MICHAEL D. JOHNSON**

#### **I. OVERVIEW**

On May 9, 2016, Michael D. Johnson was shot and killed by Chicago Police Officer John Clark after Johnson pointed a firearm at Officer Clark. The Independent Police Review Authority (IPRA) / Civilian Office of Police Accountability (COPA) and Chicago Police Department (CPD) conducted an investigation into Johnson's death. During the course of the investigation, investigators interviewed numerous civilian and law enforcement witnesses and reviewed OEMC transmissions, photographs of the scene, police reports, medical records, the results of forensic examinations and video surveillance footage. On October 2, 2017, 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.

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 May 9, 2016, at approximately 11:00 a.m., Michael D. Johnson (age 26) committed an armed robbery of the Byline Bank located at 4970 South Archer Avenue, Chicago, Illinois. As Johnson fled the bank he was pursued by bank employees. Chicago Police Officer Patrick Keating observed the foot chase and joined in the pursuit. After a brief chase, Officer Keating confronted Johnson at 50<sup>th</sup> and Karlov Avenue. Johnson then pointed a handgun at Officer Keating and stated, "shoot me now bitch" as

he continued to flee. Officer Keating sent out a flash message providing a description of Johnson, his direction of flight and that Johnson was armed with a handgun. The responding officers then established a perimeter. As responding Officer John Clark climbed a wooden fence and began to scan the rear yard of 4949 South Karlov Avenue, he encountered Johnson lying on the ground. Johnson pointed a blue steel handgun at Officer Clark and stated, “do something.” Officer Clark ordered Johnson to drop the gun several times, but Johnson did not comply. Officer Clark then discharged his weapon several times in the direction of Johnson. Johnson sustained multiple gunshot wounds. Johnson held a loaded .380 caliber semi-auto pistol on his chest as he lay on his back. The pistol was recovered along with Johnson’s backpack that contained the proceeds from the Byline Bank armed robbery. Johnson was pronounced dead at Mt. Sinai Hospital.

A postmortem examination performed by the Cook County Medical Examiner’s Office revealed that Johnson had sustained numerous gunshot wounds to his chest, abdomen, and back as well as graze wounds to the right forearm and left thigh.

Video surveillance camera footage from Byline Bank depicts Johnson entering the bank, displaying a handgun, and fleeing with United States Currency. OEMC records reflect 911 calls and police radio traffic confirming that Johnson was armed and pointed the gun at Officer Keating during the chase.

### **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 Clark was not legally justified in using deadly force against Johnson. 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 Johnson. All available evidence reflects that Officer Clark was justified in his use of deadly force to defend himself and his fellow officers against Johnson who was fleeing after committing a forcible felony. Byline Bank employees observed Johnson holding a handgun, as he demanded money from a teller. After placing the tendered money into his backpack, Johnson, who was still armed with a handgun, fled from the bank and was pursued by bank employees. Both civilian witnesses and police officers observed Johnson in possession of a handgun as he fled through an adjacent neighborhood. When Johnson was confronted by Officer Keating, the civilian witnesses observed Johnson point the handgun at Officer Keating and threaten him. Officer Keating then broadcast the threat to his fellow officers, including Officer Clark. When Officer Clark confronted Johnson, Johnson pointed a gun at Officer Clark and refused all orders to drop the gun prior to Officer Clark discharging his weapon. Johnson’s .380 handgun and backpack containing the proceeds from the armed robbery were recovered at the scene. 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 Officer Clark’s use of deadly force against Johnson 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.