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COOK COUNTY, ILLINOIS

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POLICE INVOLVED DEATH DECISION MEMORANDUM
DECEDENT: PAUL O'NEAL

I. OVERVIEW

On July 28, 2016, Paul O'Neal was shot and killed by Chicago Police Officer Jose Diaz as Officer Diaz attempted to apprehend O'Neal after O'Neal fled from a stolen car he had crashed into Officer Diaz's vehicle after narrowly missing another officer. The Independent Police Review Authority (IPRA) conducted an investigation into O'Neal's death. During the course of the investigation, investigators reviewed dash camera and body camera videos that recorded the events immediately before and after the shooting as well as a residential surveillance video taken at the time of the shooting. IPRA investigators also interviewed numerous law enforcement witnesses and one identified lay witness, and reviewed photographs of the scene, police reports, medical records, and the results of forensic examinations. On September 13, 2017, IPRA 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 Officer Diaz or the other officers that discharged their weapons at O'Neal.

II. STATEMENT OF FACTS

The evidence presented at any criminal proceeding resulting from this incident would show as follows: On July 28, 2016, officers in the vicinity of the 7400 block of South Merrill Avenue received dispatches regarding a stolen Jaguar automobile in the area. Officers Jose Torres and Michael Coughlin, in a marked police vehicle, observed the Jaguar coming toward them driving northbound on Merrill Avenue. The officers parked their vehicle in the street to attempt to stop the stolen Jaguar and exited their vehicle. The Jaguar, driven by O'Neal, continued to drive toward the officers at a high rate of speed, narrowly missing Officer Torres, who was standing near the driver's side of the police car. Officers Torres and Coughlin fired their weapons at the Jaguar as it passed them and seconds later crashed head-on into another marked squad car containing Officers Mohammad Baker and Jose Diaz. None of the shots fired by Officer Torres or Officer Coughlin hit O'Neal. O'Neal exited the Jaguar and fled on foot, as

the officers ordered O'Neal to stop and show them his hands. O'Neal did not comply. Several police officers, including Officer Baker and Officer Diaz, pursued O'Neal on foot. Officer Diaz chased O'Neal through the backyards and over fences behind Merrill Avenue. Officer Diaz then reached over a fence behind 7344 S. Merrill Avenue and discharged his firearm five times at O'Neal as O'Neal continued to run northbound through the adjacent backyard. One of the bullets struck O'Neal in the lower right side of his back. Shortly thereafter, officers took O'Neal into custody near the back door of 7340 S. Merrill Avenue. O'Neal subsequently died of a single gunshot wound. Investigators did not recover a firearm from O'Neal, the stolen Jaguar or the immediate vicinity.

The evidence at any trial would include evidence indicating that Officer Diaz reasonably believed that O'Neal was shooting at him and Officer Baker from the Jaguar shortly before it crashed into their police vehicle. This evidence would include video recordings, diagrams and photographs showing that the shots fired by Officer Torres and Officer Coughlin came from the same direction as the Jaguar that crashed head-on into Officer Baker and Officer Diaz's vehicle almost immediately after the shots were fired. The evidence would also include audio and video recorded in the moments after the shooting during which the officers discussed their (mistaken) belief that O'Neal had fired at them.

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

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 Diaz was not legally justified in using deadly force against O'Neal. In other words, a judge or jury would need to conclude that Officer Diaz did not reasonably believe that he or the other officers on the scene were in imminent danger of great bodily harm from O'Neal. The uncontroverted evidence establishes that Officer Torres and Officer Coughlin fired multiple times at O'Neal as O'Neal drove the stolen Jaguar away from them and towards Officer Baker and Officer Diaz's police vehicle. Therefore, because both the Jaguar and the gunshots were coming at him from the same direction at the same time, it was not unreasonable for Officer Diaz to believe that the shots were fired by O'Neal as he fled from Officer Torres and Officer Coughlin in the Jaguar. Accordingly, based on the evidence reviewed in this matter and the applicable legal standard, the evidence is insufficient to support a finding beyond a reasonable doubt that Officer Diaz was not legally justified in using deadly force against O'Neal, as would be required to support murder charges.

The evidence also does not support a prosecution against Officer Torres or Officer Coughlin for the shots they fired at O'Neal while he drove the Jaguar. The law allows an officer to use deadly force when he reasonably believes that such force is necessary to prevent death or great bodily injury to himself or another. 720 ILCS 5/7-5. In this case, the video evidence shows that O'Neal drove the Jaguar toward the officers at a high rate of speed, narrowly missing Officer Torres before continuing down the street toward other officers. Under Illinois law, it is well settled that a vehicle can be used as a deadly weapon. *People v. Schmidt*, 392 Ill. App. 3d 689, 704 (1st Dist. 2009). Accordingly, the State could not prove that Officers Torres or Coughlin acted unreasonably when they used deadly force against O'Neal.

Based on the totality of the evidence in this matter and the applicable law, the Office does not believe that it could establish to a trier of fact, beyond a reasonable doubt, that Officer Diaz engaged in any criminal conduct when he discharged his weapon causing O'Neal's death. Nor could it prove beyond a reasonable doubt that Officer Torres or Officer Coughlin engaged in any criminal conduct when they discharged their weapons at the stolen vehicle driven by O'Neal. 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 IPRA or 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.