



**OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS**

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POLICE INVOLVED DEATH DECISION MEMORANDUM
DECEDENT: JASON NIGHTENGALE

I. OVERVIEW

This matter involved the fatal shooting of Jason O. Nightengale by Evanston Police Officers Justin Conley, Adam Nawotka, and Karl Witt. During the course of the investigation, investigators interviewed civilian and law enforcement witnesses and reviewed OEMC transmissions, photographs of the scene, police reports, medical records, the Cook County Medical Examiner Post-Mortem Report, the results of forensic examinations, video surveillance, and Body-Worn Camera (BWC) footage.

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 Chicago Police Officers Justin Conley, Adam Nawotka, or Karl Witt.

II. STATEMENT OF FACTS

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

On January 9, 2021, Jason O. Nightengale committed a series of homicides and violent crimes within the city of Chicago. He then drove a hijacked vehicle to the CVS on Asbury in Evanston where he attempted to commit a robbery and discharged a firearm in the store. Officers

were dispatched to the CVS and then were notified that Nightengale had gone across the street to the IHOP restaurant. At the IHOP, Nightengale shot a woman in the face and then took an IHOP employee hostage to a vehicle in the parking lot. Evanston Police officers, including Officers Witt and Nawotka, arrived at the IHOP. Nightengale exited the vehicle and began to walk eastbound toward Howard St.

As Nightengale began to walk away, an employee from inside the IHOP walked outside and identified Nightengale to officers as the individual from inside the IHOP. Officers Witt and Nawotka observed Nightengale, matching descriptions of the shooter from dispatch, and began a foot pursuit. Nightengale ran away from the officers on the north sidewalk of Howard St. At the same time, Officer Conley was driving westbound on Howard St. toward the IHOP. He saw Nightengale, whom he observed to match the dispatch descriptions, running from police officers. Officer Conley pulled his vehicle onto the sidewalk to block Nightengale's path, and Nightengale turned to run into Howard St. Nightengale drew a handgun and discharged it. Each of the officers, seeing Nightengale with a handgun and hearing gunshots, believed Nightengale had discharged his weapon. These events occurred at approximately 5:40 p.m., and several vehicles with passengers were stopped on Howard St. where Nightengale was fleeing. Officers Witt, Nawotka, and Conley each discharged their weapons multiple times in the direction of Nightengale, who was struck and fell to the ground in front of the Dollar General in Chicago. Nightengale was transported to the hospital where he was declared dead on arrival. A firearm was recovered from the sidewalk next to Jason Nightengale's body which was later found to have fired a discharged shell casing recovered on scene.

The officer involved shooting of Nightengale was captured on Body Worn Camera, In Car Camera, POD Video, and third-party surveillance video from nearby businesses.

A Cook County Medical Examiner performed an autopsy on Nightengale and determined the cause of death to be multiple gunshot wounds and the manner of death to be a homicide.

III. LEGAL STANDARD

In making any charging decision, the Office of the Cook County State's Attorney is bound by the Illinois Criminal Code in effect at the time of the incident. The Illinois Use of Force in Defense of Person statute provided 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) (West 2018).

The statute regarding an officer's use of force provided 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(a) (West 2018).

IV. ANALYSIS AND CONCLUSION

A criminal prosecution for either first- or second-degree murder would require proof beyond a reasonable doubt that the involved officers were not legally justified in using deadly force against Jason Nightengale. In other words, a judge or a jury would have to find that Officers Conley, Nawotka, and Witt did not hold a reasonable belief that they themselves or any others were in imminent danger of great bodily harm or death. In this case, however, the evidence shows that Officers Conley, Nawotka, and Witt each had a reasonable belief that Jason Nightengale put the Officers and others in imminent danger of bodily harm or death.

The analysis for making a charging decision must look at whether the decision by Officers Conley, Nawotka, and Witt to use deadly force was reasonable under the totality of the circumstances. The evidence in this case establishes that Officers Conley, Nawotka, and Witt

were dispatched to CVS for reports of an active shooter and then were informed the shooter had gone to IHOP, across the street. Nightengale partially matched multiple provided descriptions of the shooter. When Officer Witt arrived at the IHOP, a witness identified Nightengale to Officer Witt as the individual from inside the store. Officer Nawotka also observed Nightengale to match the provided descriptions. When the Officers began to pursue Nightengale, he fled. All of these facts indicated to Officers Witt and Nawotka that Nightengale was the shooter from inside the CVS, fleeing after committing a violent felony.

Officer Witt commanded Nightengale to get on the ground multiple times as he pursued him on foot, but Nightengale continued to flee. Officer Witt and Officer Nawotka both witnessed Nightengale holding a handgun while running on Howard St. Multiple cars were stopped on the street with passengers, and this occurred at approximately 5:40 p.m. in the area of several open businesses. Officer Conley also observed Nightengale holding a gun and pointing it in his direction when he arrived on scene in his vehicle. When the officers heard gunshots, they each believed that Nightengale had discharged his weapon. According to the officers' statements, they believed Nightengale fired his weapon before they returned fire. This is corroborated by the statement of a witness who observed Nightengale fire a handgun and then heard multiple additional gunshots. Audio recordings of this incident portray a single shot followed by multiple gunshots. This is also corroborated by the discharged shell casing found on the northside of Howard St. that was found to have been discharged from Nightengale's weapon.

Based on the evidence reviewed in this matter and the applicable legal standards, the evidence is insufficient to support the filing of criminal charges because the use of deadly force against Jason Nightengale by Officers Conley, Nawotka, and Witt was reasonable under the totality of the circumstances. Therefore, the Cook County State's Attorney's Office will not pursue 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 on April 20, 2023, 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 Evanston 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.