



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

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POLICE INVOLVED DEATH DECISION MEMORANDUM
DECEDENT: TIMOTHY HARDY

II. OVERVIEW

This matter involved the fatal shooting of Timothy Hardy which occurred in the early morning hours of April 21, 2023 by Lt. Daniel Johnson and Officer Timothy Gist of the Dolton Police Department. The Illinois State Police Public Integrity Task Force (PITF) conducted an investigation, interviewed civilian and law enforcement witnesses, and examined photographs of the scene, police reports, medical records, the results of forensic examinations, the Cook County Medical Examiner Post-Mortem Report and Body-Worn Camera 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 either Lt. Johnson or Officer Gist.

II. STATEMENT OF FACTS

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

On April 21, 2023, around 4:50 a.m. a resident in the 600 block of East 144th Place in Dolton, Illinois was at home with her three children when Mr. Timothy Hardy – the father of one of her children – arrived. The resident contacted 911 for police assistance in removing Mr.

Hardy, but Mr. Hardy left before Officers from the Dolton Police Department arrived on scene. Officer Gist spoke to the resident about her situation and relationship with Mr. Hardy.

Approximately 20 minutes later, around 5:11 a.m., the resident again called 911 and reported that she observed Mr. Hardy's vehicle was once again at her residence, this time parked behind her own vehicle, blocking it in. Members of the Dolton Police Department, including Officer Gist, once again responded to the residence in the 600 block of East 144th Place.

Upon arrival, Officer Gist approached Mr. Hardy's vehicle. Mr. Hardy's vehicle was on, and he appeared to be asleep in the front seat of his vehicle with a firearm in his lap. Officer Gist and the other Dolton Police Officers then backed away from the vehicle and called for a shift supervisor to come on scene. Officer Gist provided dispatch with the information about Mr. Hardy's possession of a firearm, which could be heard both on the body-worn cameras as well as on the radio. When Lt. Johnson arrived on scene, the officers implemented a plan to wake Mr. Hardy up. A police vehicle with its red and blue lights activated parked directly behind Mr. Hardy's vehicle, blocking Mr. Hardy's vehicle between the police vehicle and another civilian vehicle. Officer Gist took position at the front driver's side bumper, providing coverage as Lt. Johnson, carrying a ballistic shield with his left hand, and holding his firearm with his right hand, knocked on Mr. Hardy's window to wake him up.

As Mr. Hardy awakened, he received multiple commands to keep his hands up. During the course of the encounter, at different times Mr. Hardy placed his hands up in the air as well as on the steering wheel. Ultimately, he reached down and placed his right hand on the firearm on his lap. When he did so, Lt. Johnson fired at least three rounds at Mr. Hardy and Officer Gist fired at least six additional rounds. Officers then removed Mr. Hardy from his vehicle, placed him in handcuffs, and recovered the firearm from the grass next to Mr. Hardy. After paramedics arrived on scene, Mr. Hardy was transported to Ingalls Hospital where he was pronounced deceased. The Office of the Medical Examiner of Cook County ultimately ruled Mr. Hardy's cause of death was due to multiple gunshot wounds and the manner of death was homicide.

The incident leading up to the shooting and the shooting itself was captured on the body worn cameras of the six Dolton Police Officers who were on scene.

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, based on the totality of the circumstances, to be necessary to effect the arrest and of any force which he reasonably believes, based on the totality of the circumstances, 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: (i) he reasonably believes, based on the totality of the circumstances, that such force is necessary to prevent death or great bodily harm to himself or such other person, or (ii) when he reasonably believes, based on the totality of the circumstances, both that:

(1) Such force is necessary to prevent the arrest from being defeated by resistance or escape and the officer reasonably believes that the person to be arrested is likely to cause great bodily harm to another; 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.

* * *

A peace officer is not justified in using force likely to cause death or great bodily harm when there is no longer an imminent threat of great bodily harm to the officer or another.

720 ILCS 5/7-5(a) (2021).

IV. ANALYSIS AND CONCLUSION

A criminal prosecution for either first- or second-degree murder requires proof beyond a reasonable doubt that Lt. Johnson and Officer Gist were not legally justified in using deadly force against Mr. Hardy. In other words, a judge or a jury would have to find that Lt. Johnson or Officer Gist's belief that he or others were in imminent danger of great bodily harm or death was not reasonable. In this case, however, the evidence demonstrates that both officers were not unreasonable in their belief that Mr. Hardy's actions were putting Lt. Johnson, Officer Gist, and others in imminent danger of great bodily harm or death.

The analysis for making a charging decision must consider whether each of the officers' decision to use deadly force was reasonable under the totality of the circumstances. A review of the evidence in this case reveals that Lt. Johnson and Officer Gist were not unreasonable in believing that Mr. Hardy's actions placed Lt. Johnson, Officer Gist, and others in danger. In this case, officers from the Dolton Police Department responded to a call about Mr. Hardy harassing a civilian in the early morning hours of April 21, 2023. Upon arrival, officers initially did not find Mr. Hardy on scene, but after a second call they found Mr. Hardy in the front seat of his vehicle, asleep. When Officer Gist saw that Mr. Hardy had a firearm in his lap, the officers backed up, took a defensive position, and waited for Lt. Johnson to arrive.

After Lt. Johnson arrived, he and the other Dolton Police Officers executed a plan to wake Mr. Hardy up. The plan involved Lt. Johnson holding a ballistic shield with the words "Police" up against the driver's side window, Officer Gist providing lethal cover to Lt. Johnson, a police vehicle with lights on moving behind Mr. Hardy's vehicle to box it in, and Lt. Johnson taking the lead in waking Mr. Hardy up. At the initiation of the plan, Lt. Johnson told Mr. Hardy "Dolton Police" and to "keep your hands up." As Lt. Johnson's body-worn camera showed, during the course of Lt. Johnson giving Mr. Hardy commands, at different times Mr. Hardy placed his hands up in the air as well as on the steering wheel, before he ultimately reached down and placed his right hand on the firearm on his lap.

Lt. Johnson's body-worn camera showed that in the moments before Lt. Johnson started firing his weapon, Mr. Hardy raised his hands and placed them on the steering wheel in compliance with the officers' commands. However, the video showed that Mr. Hardy lowered at least one of his hands, then reached into his lap, grabbed his firearm, and started turning towards

Lt. Johnson. The critical moment when the shooting begins lasts only a few seconds. At that moment of time, when Mr. Hardy moved from holding his hands up to grabbing a firearm and moving, Lt. Johnson can clearly articulate a reasonable fear for his safety because Mr. Hardy was disobeying his command, was grabbing a firearm, and appeared to be turning towards Lt. Johnson's direction. In reaching for the firearm, Mr. Hardy disobeyed Lt. Johnson's command for Mr. Hardy to "Put those hands on the steering wheel" and created an apparent danger of loss of life or great bodily injury to Lt. Johnson, Officer Gist, and others. Officer Gist was covering Lt. Johnson, could hear what Lt. Johnson was saying, and could see Mr. Hardy through the vehicle's front windshield. Consequently, from his vantage point, Officer Gist was not unreasonable in believing that Mr. Hardy was taking actions which threatened great bodily harm or death to the officers.

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 use of deadly force by Lt. Johnson and Officer Gist against Mr. Hardy was not unreasonable 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 June 4, 2024, 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 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.