

IN THE CIRCUIT COURT OF COOK COUNTY  
COUNTY DEPARTMENT, CRIMINAL DIVISION

**FILED**

JUN 07 2018

Judge Domenica Stephenson-1967

PEOPLE OF THE STATE OF ILLINOIS, )

v. )

DAVID MARCH, )  
JOSEPH WALSH, )  
THOMAS GAFFNEY, )

Defendants. )

No. CR-09700-01

No. CR-09700-02

No. CR-09700-03

Hon. Domenica A. Stephenson

PEOPLE OF THE STATE OF ILLINOIS'  
PROFFER ON COCONSPIRATOR STATEMENTS  
IN RESPONSE TO DEFENDANTS' REQUESTS

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The People of the State of Illinois, by and through their attorney, Special Prosecutor Patricia Brown Holmes, submit this proffer on coconspirator statements as requested by defendants David March, Joseph Walsh, and Thomas Gaffney.

### **Introduction**

This proffer begins with an overview of the conspiracy that has been charged in the indictment and that will be established at trial. It then discusses the law on the admissibility of coconspirator statements under Illinois Rule of Evidence 801(d)(2)(E), as well as other Illinois Rules of Evidence and caselaw. Next, it summarizes the facts and circumstances supporting the admissibility of coconspirator statements. In this way, the State both satisfies the defendants' requests for a proffer and highlights for the Court that sufficient evidence will exist to admit coconspirator statements at trial.

### **Overview of the Charged Conspiracy**

The Special Grand Jury voted a true bill on an 11-page indictment on June 26, 2017, charging defendants David March, Joseph Walsh, and Thomas Gaffney with conspiracy, official misconduct, and obstructing justice. On June 27, 2017, the State returned and filed the bill of indictment with the Circuit Court of Cook County.

The indictment included more than eight pages of detailed information about the alleged conduct—along with the names of the offenses, the statutory provisions violated, the nature and elements of the offenses, the date and county of the offenses, and the names of the accused. None of the defendants has moved to dismiss any charge in the indictment since



their arraignment on July 10, 2017, and the defendants have all requested a bench trial on July 10, 2018.

The indictment charges that the defendants, Officer Individual A, and others conspired to conceal the true facts of the events surrounding the killing of Laquan McDonald by Officer Individual A in order to shield their fellow police officer from criminal investigation and prosecution.<sup>1</sup> As fellow members of the Chicago Police Department, the coconspirators created official police reports in the critical early hours and days after the killing of Laquan McDonald that contained important false information in an attempt to prevent or shape any criminal investigation and prosecution. The defendants submitted virtually identical false information—including that Laquan McDonald had battered, assaulted, and attacked Officer Individual A, defendant Walsh, and defendant Gaffney. The defendants, in their official capacity as sworn members of the Chicago Police Department, also failed to correct this false information in official police reports.

#### **Law on Coconspirator Statements**

Illinois Rule of Evidence 801(d)(2)(E) provides that a “statement” is not hearsay if it “is offered against a party” and is “a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.” The admission of a coconspirator statement is proper where the State shows a “conspiracy or joint venture” between the declarant and defendant by a preponderance of evidence at trial. *People v. Leak*, 398 Ill. App. 3d 798, 826 (1st Dist. 2010)

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<sup>1</sup> In the indictment and this proffer, the State refers to uncharged individuals by labels instead of their identities, which have been disclosed in discovery.

(citing *People v. Batrez*, 334 Ill. App. 3d 772, 784 (1st Dist. 2002)).<sup>2</sup> This evidentiary standard requires showing that: (1) two or more persons intended to commit a crime; (2) they engaged in a common plan to accomplish the criminal goal; and (3) an act or acts were done by one or more of them in furtherance of the conspiracy or joint venture. *Id.* (citing *Batrez*, 334 Ill. App. 3d at 784).

The decision to admit a coconspirator statement is within the sound discretion of the trial court and is reviewed only for an abuse of that discretion. *Leak*, 398 Ill. App. 3d at 824 (citation omitted). “An abuse of discretion occurs only where the court’s ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court.” *Id.* (citation omitted). As the factfinder in a bench trial, the trial court may also disregard a coconspirator statement introduced by the State if the non-hearsay evidence at trial does not meet this evidentiary standard. *People v. Melgoza*, 231 Ill. App. 3d 510, 521 (1st Dist. 1992).

#### **I. An Evidentiary Proffer Is Not Required**

With this standard in mind, the trial court decides the admissibility of a coconspirator statement under Illinois Rule of Evidence 104. Unlike the federal practice cited by the defendants, see *United States v. Santiago*, 582 F.2d 1128 (7th Cir. 1978), Illinois law does not

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<sup>2</sup> In this proffer, the State refers to a joint venture in conspiracy terms. The State also notes for the Court that no Sixth Amendment confrontation issues are posed by using coconspirator statements, offered for their truth against defendants at trial, because the statements are nontestimonial and thus are not subject to the Confrontation Clause. See *People v. Leach*, 2012 IL 111534, ¶ 80 n.2.

require the State to proffer evidence supporting a conspiracy or joint venture before trial. *Batrez*, 334 Ill. App. 3d at 784 (citing *People v. Goodman*, 81 Ill. 2d 278, 284 (1980)). The State may introduce coconspirator statements at trial and satisfy the evidentiary standard either before or after the statement is offered. *Id.*; *People v. Pintos*, 172 Ill. App. 3d 1096, 1105 (1st Dist. 1988) (same); see also *id.* at 1107 (holding “there is no longer any need for an independent showing of reliability for a statement to be admissible under the coconspirator exception”).

In making its determination, the trial court reviews all facts and circumstances introduced by the State and “is not bound by the rules of evidence except those with respect to privileges.” Ill. R. Evid. 104(a). The trial court also affords the State all possible inferences from all surrounding facts and circumstances, including the conduct of the accused. *Batrez*, 334 Ill. App. 3d at 784.

Moreover, “because of the clandestine nature of conspiracy, and the difficulty of establishing conspiratorial intent and agreement by direct evidence, the courts have permitted broad inferences to be drawn from the circumstances, acts, and conduct of the parties.” *People v. Testa*, 261 Ill. App. 3d 1025, 1028 (2d Dist. 1994); *Leak*, 398 Ill. App. 3d at 826 (same); *Batrez*, 334 Ill. App. 3d at 784 (same).

## **II. The Evidentiary Standard and Criminal Burden Are Distinct**

As noted above, Illinois Rule of Evidence 801(d)(2)(E) is an evidentiary standard that extends beyond the crime of conspiracy. The standard originates with agency law, and it reflects the “theory that the declarant is the agent of the other, and the admissions of one are admissible against both.” *People v. Davis*, 46 Ill. 2d 554, 558 (1970) (quoting *Lutwak v. United*

*States*, 344 U.S. 604, 617 (1952)); accord *United States v. Gil*, 604 F.2d 546, 549-550 (7th Cir. 1979) (“Its rationale is the common sense appreciation that a person who has authorized another to speak or to act to some joint end will be held responsible for what is later said or done by his agent, whether in his presence or not.”).

Under this standard, the State need only show a “conspiracy or joint venture” between the declarant and defendant. *Batrez*, 334 Ill. App. 3d at 784. The State need not prove all elements of criminal conspiracy. *Id.* Nor must the State overcome a reasonable doubt standard. *Id.* In fact, a coconspirator statement is properly admitted under Rule 801(d)(2)(E), even where a conspiracy is not charged at all or a defendant is found not guilty of conspiracy, as long as the standard is met by a preponderance of evidence. *Id.*; *People v. Spencer*, 2016 IL App (1st) 151254, ¶ 35; see also *Gil*, 604 F.2d at 550 (“[I]t makes no difference whether the declarant or any other ‘partner in crime’ could actually be tried, convicted and punished for the crime of conspiracy.”).

### **III. Broad Inferences Are Required**

#### **A. Existence of Conspiracy or Joint Venture**

To establish a conspiracy or joint venture, the State may rely on broad inferences from all surrounding facts and circumstances. *Leak*, 398 Ill. App. 3d at 826 (citing *Batrez*, 334 Ill. App. 3d at 784). Direct evidence is unnecessary because a conspiracy is, by its nature, clandestine. *Leak*, 398 Ill. App. 3d at 826 (quoting *Batrez*, 334 Ill. App. 3d at 784); *People v. Parmly*, 117 Ill. 2d 386, 397 (1987) (“Since criminal conspiracies are, by their very nature, secretive endeavors, the great utility of the co-conspirator exception is that it aids the



prosecution of cases in which proof of the crime 'would otherwise be very difficult and the evidence largely circumstantial.'" (Clark, J. concurring) (citations omitted)).

Indeed, Illinois law holds that "the suspicious nature of the activities of alleged co-conspirators can be sufficient to prove a joint venture." *Leak*, 398 Ill. App. 3d at 826 (quoting *Batrez*, 334 Ill. App. 3d at 783-84); *People v. Cook*, 352 Ill. App. 3d 108, 125 (1st Dist. 2004) (same). In *Leak*, for example, the Appellate Court upheld the admission of coconspirator statements against a Chicago police officer who was convicted by a jury of first degree murder and solicitation of murder for hire. 398 Ill. App. 3d at 825-26. At trial, the State relied on circumstantial evidence of cell phone activity to admit coconspirator statements against the Chicago police officer. *Id.* In affirming the trial court's decision, the Appellate Court explained that "a conspiracy need not be proven by direct evidence and instead may be inferred from all of the surrounding facts and circumstances." *Id.*<sup>3</sup>

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<sup>3</sup> Like the Appellate Court in *Leak*, other courts have admitted conspirator statements against Chicago police officers, who despite being sworn to uphold the law, conduct their activities in a suspicious nature to infer a conspiracy or joint venture. *E.g.*, *United States v. Patterson*, 171 F. Supp. 2d 804, 810 (N.D. Ill. 2001) (admitting coconspirator statement against Chicago police officer whose participation in theft, "without discussion and with another sworn police officer, is sufficient circumstantial evidence of his membership in a conspiracy"), *aff'd*, 348 F.3d 218 (7th Cir. 2003); *United States v. Haynes*, 582 F.3d 686, 695, 705-06 (7th Cir. 2009) (admitting coconspirator statement against Chicago police officers whose "ripoffs of drug dealers and use of corrupt police officers to make the ripoffs appear to be legitimate police work"); *United States v. Wesson*, 33 F.3d 788 (7th Cir. 1994) (admitting coconspirator statement against Chicago police officer whose "providing confidential information about police patrols").

**B. Furtherance of Conspiracy or Joint Venture**

In addition to showing a conspiracy or joint venture, the State must establish for the Court that the statements were made during the course and in furtherance of the conspiracy or joint venture. Ill. R. Evid. 801(d)(2)(E). There are a wide range of statements that fall within this standard:

- statements advising, encouraging, aiding, or abetting its perpetration, *People v. Kliner*, 185 Ill. 2d 81, 141 (1998);
- statements relating to attempts at concealment, *id.*;
- statements explaining other acts of a plan or common design, *People v. Daniels*, 92 Ill. App. 2d 207, 213 (1st Dist. 1968);
- statements showing a course of conduct, *People v. Trigg*, 97 Ill. App. 2d 261, 274 (1st Dist. 1968);
- statements identifying other members and their roles, *id.*

Illinois law also makes clear that any statement made by a coconspirator during and in furtherance of a conspiracy is admitted against all coconspirators. *Kliner*, 185 Ill. 2d at 141 (citing *Goodman*, 81 Ill. 2d at 283). The State need not prove the coconspirator knew every detail of the conspiracy or played more than a minor role in the conspiracy. *People v. Vettese*, 61 Ill. App. 3d 279, 282 (1st Dist. 1978). A coconspirator is "criminally liable for any wrongdoings committed by other members of the group in furtherance of the common purpose, or as a natural or probable consequence thereof, even though he did not actively participate in the overt act itself." *Id.* (quoting *People v. Tate*, 63 Ill. 2d 105, 110 (1976); *accord id.* at 282 ("An act in furtherance of the conspiracy committed by any one of the co-conspirators is sufficient to bind all of the co-conspirators.")).

### Alternative Bases for Admissibility of Statements

As shown in this proffer, the State believes the statements should be admitted at trial as non-hearsay coconspirator statements. Ill. R. Evid. 801(d)(2)(E). There are alternative bases, however, for the Court to admit the statements in evidence, which may then be used as non-hearsay to introduce coconspirator statements. *See Batrez*, 334 Ill. App. 3d at 784; *Pintos*, 172 Ill. App. 3d at 1105 (a conspiracy or joint venture may be “established by a preponderance of non-hearsay evidence, independent of the statement itself” (citation omitted)); *United States v. Loscalzo*, 18 F.3d 374, 383 (7th Cir. 1994) (“[W]hile only the defendant’s acts or statements could be used to prove that defendant’s membership in a conspiracy, evidence of that defendant’s acts or statements may be provided by the statements of co-conspirators.”).

#### **I. Non-Hearsay Statements**

Some statements in this proffer are not hearsay. Under Illinois Rule of Evidence 801(c), “hearsay” is only a statement “offered in evidence to prove the truth of the matter asserted.” When the statement is not offered to prove the truth of the matter asserted, it does not constitute hearsay. For example, out-of-court statements are admissible when they are offered for their falsity. *Anderson v. United States*, 417 U.S. 211, 220 (1974) (“the point of the prosecutor’s introducing those statements was simply to prove that the statements were made so as to establish a foundation for later showing, through other admissible evidence, that they were false”).



## II. Statements Against Party-Opponent

Additionally, some statements in this proffer are admissible as statements against a defendant as a party-opponent. Illinois Rule of Evidence 801(d)(2) provides that a "statement" is not hearsay when it is offered against a party and meets certain requirements. There is no requirement, however, for the statement to be an admission, inculpatory, or against interest when made or when offered. Ill. R. Evid. 801(d)(2) ("~~Admission~~ Statement by Party-Opponent"); *People v. Aguilar*, 265 Ill. App. 3d 105, 110 (3d Dist. 1994).

The statements in this proffer fall in several categories. First, a defendant's own statements are admissible against him. Ill. R. Evid. 801(d)(2)(A). Second, adoptive statements are admissible when a defendant "has manifested an adoption or belief in its truth." Ill. R. Evid. 801(d)(2)(B). The defendant's silence may also constitute an adoptive statement if he fails to deny a statement made within his hearing under circumstances that would normally call for a response. *In re Estate of DeMarzo*, 2015 IL App (1st) 141766, ¶ 25; *People v. Donegan*, 2012 IL App (1st) 102325, ¶¶ 67, 68.

Third, statements by a person jointly interested with a defendant are admissible against him. Ill. R. Evid. 801(d)(2)(F). This ensures that a statement is binding against a party who shares a joint interest in the subject. *See id.*; *Flewellen v. Atkins*, 99 Ill. App. 2d 409, 415 (2d Dist. 1968) (admitting statement "as the defendant shared a joint interest in the outcome of the litigation" (citations omitted)); *Lowe v. Huckins*, 356 Ill. 360, 364 (1934) (admitting statement as "the admission by one of several interested in the subject-matter, when it is related to that subject, is admissible against the others.").



### **III. Hearsay Statements Within Exceptions**

Some statements in this proffer are admissible under hearsay exceptions. Ill. R. Evid. 803, 804. These exceptions include business records or public records, even when the declarant is available as a witness. Ill. R. Evid. 803(6) & 803(8). Additionally, when a declarant is unavailable, his or her statements may be admissible as statements against interest, Ill. R. Evid. 804(3), including a witness who asserts a proper fifth amendment right not to testify or other privilege at trial, *People v. Wright*, 2017 IL 119561, ¶ 81.

#### **Proffer of Evidence on Coconspirator Statements**

At trial, the State's evidence will show that the object of the conspiracy was to conceal the true facts of the events surrounding the killing of Laquan McDonald by Officer Individual A in order to shield their fellow police officer from criminal investigation and prosecution. The evidence will establish that the defendants, Officer Individual A, and others created official police reports in the critical early hours and days after the killing of Laquan McDonald that contained important false information in an attempt to prevent or shape any criminal investigation and prosecution.

And more specifically, the evidence will show that the defendants submitted virtually identical false information—including that Laquan McDonald had battered, assaulted, and attacked Officer Individual A, defendant Walsh, and defendant Gaffney. The defendants, in their official capacity as sworn members of the Chicago Police Department, also failed to correct this false information in official police reports.

As explained in this proffer, the State believes the evidence at trial will meet the preponderance of evidence standard for the Court to admit coconspirator statements under Illinois Rule of Evidence 801(d)(2)(E). In addition to statements by the defendants, Officer Individual A, and other coconspirators, this proffer cites the expected evidence of video recordings, audio recordings, witness testimony, written records, meetings, emails, and other conduct by the coconspirators.<sup>4</sup>

**I. The Killing of Laquan McDonald**

On Monday, October 20, 2014, at 9:57 p.m., Officer Individual A killed Laquan McDonald, a seventeen-year-old, shooting him sixteen times while McDonald walked along South Pulaski Road near 41st Street in Chicago, Illinois. The facts surrounding this killing will be proved by audio recordings, video recordings, witness testimony, and written records.

**A. OEMC Chicago Police Radio Recording**

The critical facts begin at 9:47 p.m., ten minutes before the shooting, when defendant Gaffney and his partner, Officer Individual H, on Chicago Police Department Beat 815R receive an assignment over police radio. The assignment involved a report of “a man holding

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<sup>4</sup> The State is not detailing all of its expected evidence that would go to show the existence of the conspiracy. Rather, this proffer highlights for the Court some of the State’s evidence to show, by a preponderance of evidence, the foundation for admissibility of coconspirator statements. Thus, this proffer neither lists all of the State’s witnesses nor provides all of the evidence that will be presented.

citizen. 4100 Kildare by the United Rental. A male who he caught breaking into trucks and stealing radios. He's holding him."

At 9:53 p.m., six minutes after the assignment, defendant Gaffney announces over the radio that "[inaudible] Taser [inaudible] We're at 40th and Keeler. This guy's, uh, kind a walking away from [inaudible]. He's got a knife in his hand." Dispatcher A then asks, "Alright, anybody have a taser? Help out four-o and Keeler for 815-Robert, looking for a taser. Armed offender."

Five seconds later, Chicago Police Department Beat 812 responds over the radio, "812, we'll go over. We're coming from Archer and, uh, Mulligan." Dispatcher A acknowledges and asks, "Alright, I got 812 coming. Anyone else closer? Four-o and Keeler with a taser." Thirty seconds later Dispatcher A repeats, "And again, I got four-o and Keeler" and "[inaudible] Yes, four-zero and Keeler. Four-zero and Keeler."

At 9:54 p.m., defendant Gaffney provides an update over the radio that, "He's walking eastbound towards Pulaski [inaudible] down 40th." Dispatcher A responds, "I heard going eastbound. What else?" Defendant Gaffney answers back, "Towards Pulaski. Coming off of Pulaski, right by the Burger King on 40th. Come off that way." Dispatcher A announces, "Alright, walking toward Pulaski from Keeler, eastbound on 40th street. And again, armed with knife."

At 9:55 p.m., two minutes before the shooting, Dispatcher A asks over the radio, "Anybody with 815-Robert yet?" Then fifteen seconds later Dispatcher A asks again, "Anybody close yet? Four-o and Keeler." Dispatcher A repeats herself, "And again, I'm

holding the air till I get help with 815-Robert, asking for a taser for armed offender with a knife.”

At 9:56 p.m., one minute before the shooting, defendant Gaffney states over the radio, “[inaudible] He popped our tire on our car squad.” Dispatcher A asks, “Popped? 10-4. Anybody close? Four-o, they’re more by Karlov.” A few seconds later, Chicago Police Department Beat 845R (Officer Individual A and defendant Walsh) responds that “[inaudible] 45-Robert. We’re about two blocks away.”

At 9:57 p.m., Dispatcher A asks over the radio, “45-Robert. 10-4. Again, first unit with them, let me know. 15-Robert, Karlov good, or are you guys more by Pulaski now?” Defendant Gaffney answers back, “We’re going thru the Burger King.” Dispatcher A announces, “Headed to the Burger King. 45-Robert, I see you pulling up.” Chicago Police Department Beat 813R states that “we are here,” and Chicago Police Department Beats 821R and 841R also notify Dispatcher A that they are responding.

Six seconds before the shooting, Dispatcher A asks over the radio, “Let me know when he’s in custody guys.” The next statements shouted over the radio are, “Shots fired by the police. Shots fired by the police.”

During this recording, none of the Chicago police officers reports over the radio that Laquan McDonald batters, assaults, or attacks three Chicago police officers—including Officer Individual A, defendant Gaffney, or defendant Walsh—as the events occur and under the directives or orders of the Chicago Police Department.



**B. Greater Chicago Food Depository Surveillance Videos**

Consistent with the audio recording, videos show an objective view of the facts leading to the shooting of Laquan McDonald. Two surveillance videos from the Greater Chicago Food Depository show Laquan McDonald walking away from Officer Individual H and defendant Gaffney on 40th Street between Keeler Avenue and Karlov Avenue. One video captures an eastbound view, and the other captures a westbound view.

At the 9:53 p.m. timestamp, Laquan McDonald and Officer Individual H slowly walk east on the sidewalk. They are separated at some distance with Officer Individual H following Laquan McDonald on foot, while defendant Gaffney drives alongside in the car. The light from the car's spotlight and Officer Individual H's flashlight shines on Laquan McDonald, as he continues to walk east on the sidewalk. At the 9:54:49 p.m. timestamp, the light from the car appears to turn south on Karlov Avenue from 40th Street.

For two minutes of video, Laquan McDonald and Officer Individual H keep a steady, walking pace and a stable, even distance. Defendant Gaffney remains inside the car, driving alongside his partner. In both videos, Laquan McDonald does not batter, assault, or attack three Chicago police officers, including either Officer Individual H, who is walking some distance behind Laquan McDonald, or defendant Gaffney who is driving inside the car behind Laquan McDonald.

**C. Chicago Police Department Dashcam Videos**

Several dash camera videos from the Chicago Police Department show an objective view of the facts surrounding the shooting of Laquan McDonald. The dash camera of Unit

813R captures the events leading to the shooting and the shooting itself.<sup>5</sup> At the 9:57:22 p.m. timestamp, the dash camera faces south on Pulaski Road at 41st Street, as Unit 845R faces south and Unit 822 faces north. No police officers are out of their cars, and Laquan McDonald walks south on Pulaski Road passed 41st Street.

At the 9:57:25 p.m. timestamp, defendant Walsh drives Unit 845R north and around Unit 822. Unit 822 remains stopped in the middle of the street between Laquan McDonald and Unit 845R. At the 9:57:28 p.m. timestamp, Laquan McDonald raises his right arm, crosses the double-yellow line of the median, and walks into the southbound lane away from Unit 822 and Unit 845R. During this time, Unit 822 is still stopped in the middle of the street between Laquan McDonald and Unit 845R.

By the 9:57:30 p.m. timestamp, defendant Walsh parks on the median and Officer Individual A gets out of the passenger side of Unit 845R with his gun drawn. Laquan McDonald continues to walk south in the middle of the southbound lane away from Officer Individual A and defendant Walsh. As Laquan McDonald walks passed Unit 822, it pulls away and drives north.

At the 9:57:33 p.m. timestamp, defendant Walsh moves behind Officer Individual A who is standing on the double-yellow line of the median. Laquan McDonald is about one foot

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<sup>5</sup> No audio was recovered from Chicago Police Department Unit 813R, where the microphones were found in the glovebox with the batteries upside down. Though several other Chicago Police Department vehicles had dash cameras at the time of the shooting, due to their positioning and other issues, they did not capture the shooting itself, nor do they contain audio recordings of the shooting.

from the white-lane divider in the southbound lane, and he continues to move away from both defendant Walsh and Officer Individual A. By the 9:57:36 p.m. timestamp, Laquan McDonald crosses over the white-lane divider, away from both Officer Individual A and defendant Walsh, and Officer Individual A takes at least one more step in the direction of Laquan McDonald.

As Officer Individual A fires his initial shots, Laquan McDonald's body and arms spin and he begins to fall to the ground. At that moment, defendant Walsh's head and his arms flinch down. Officer Individual A continues to stand about ten feet away from Laquan McDonald, and defendant Walsh is still behind Officer Individual A. While Laquan McDonald falls to the ground, Officer Individual A takes at least one more step in the direction of Laquan McDonald. The angle of the dash camera changes, and Officer Individual A and defendant Walsh move out of the frame.

By the 9:57:38 timestamp, Laquan McDonald is lying in the street on his right side, and two puffs rise from his body as two more bullets hit him. At the 9:57:51 timestamp, Laquan McDonald is still lying in the street, and the last visible shot hits him. In the 13 seconds while Laquan McDonald is lying on the ground, his body and arms move as bullets hit him on the ground. At the 9:57:54 timestamp, defendant Walsh approaches Laquan McDonald and kicks near his hand.

For 14 to 15 seconds on the video, Officer Individual A shoots Laquan McDonald including at least 13 seconds while Laquan McDonald is lying on the ground and not moving toward Officer Individual A or defendant Walsh. On the video, Laquan McDonald does not



batter, assault, or attack three Chicago police officers. Rather, Officer Individual A starts more than ten feet away from Laquan McDonald and moves in the direction toward him, and defendant Walsh moves behind Officer Individual A and walks in the direction of Laquan McDonald.

**D. Dunkin' Donuts Surveillance Videos**

Additionally, videos from Pulaski 4100 Donuts (d/b/a Dunkin' Donuts) capture an objective view of the shooting of Laquan McDonald. At the 9:57:10 p.m. timestamp, Unit 845R is stopped facing south on the median of Pulaski Road in front of the Dunkin' Donuts driveway. Defendant Walsh opens the driver door of the car and immediately goes north up the street. At the 9:57:13 p.m. timestamp, Officer Individual A also gets out of the car and moves north with his arms raised.

At the 9:57:16 p.m. timestamp, Officer Individual A stops on the median and stands in a firm, upright position. As defendant Walsh moves behind Officer Individual A on the median, Laquan McDonald walks south in the southbound lane until his image becomes covered in the video behind Defendant Walsh, Officer Individual A, and their movement.

At the 9:57:19 timestamp, Officer Individual A breaks his stance and takes several steps toward the west side of the street. By that time, Laquan McDonald is on the ground. Officer Individual A then takes several more steps in the direction of Laquan McDonald, who remains on the ground. Officer Individual A pauses and stands in-place for several seconds near the car.



In the video, Laquan McDonald does not batter, attack, or assault three Chicago police officers. Instead, Officer Individual A begins some distance away from Laquan McDonald and moves in the direction toward him, while defendant Walsh also begins some distance away from Laquan McDonald and moves behind Officer Individual A.

**E. Defendant Gaffney's Sworn Admissions**

In addition to video and radio recordings, several witnesses will establish the facts leading to the shooting and the shooting itself. Defendant Gaffney gave sworn testimony before a federal grand jury and made the following admissions relevant to this proffer.

On October 20, 2014, defendant Gaffney was a patrol officer with his partner, Officer Individual H, on Chicago Police Department Beat 815R. That night, defendant Gaffney drove the marked Chevy Tahoe on 40th Street and was about 10, 15, 20 feet away from Laquan McDonald. Defendant Gaffney spoke over the police radio and called for a taser because Laquan McDonald "never came at us at any time. He always continued to walk, but he never stopped or anything like that." At Karlov Avenue and 40th Street, defendant Gaffney "pulled a little bit in front of him -- in front of the guy to try and maybe like stop him or get him to go down that street."

When he started hearing shots, defendant Gaffney was "to the back of the Burger King." Defendant Gaffney did not see "any of the shooting" and did not see "anything that happened on the street." Defendant Gaffney also did not see Laquan McDonald threaten death or bodily injury to any person in his presence. Defendant Gaffney never personally felt

at risk of death or serious bodily injury from Laquan McDonald "pretty much because I was still in the car" and "I had my vehicle to protect me."

**F. Officer Individual H's Expected Testimony**

Officer Individual H had multiple interviews and gave sworn testimony before a federal grand jury. Officer Individual H is expected to testify consistent with his prior statements and provide the following testimony relevant to this proffer.

On October 20, 2014, Officer Individual H was a patrol officer with his partner, defendant Gaffney, on Chicago Police Department Beat 815R. That night, Officer Individual H followed Laquan McDonald on 40th Street "keeping a safe distance" of 10, 15, 20 feet.

At Karlov Avenue and 40th Street, defendant Gaffney tried to cut off Laquan McDonald and "veered the car in his direction." At that moment, Laquan McDonald "stumbled or tripped" and popped the tire with the knife. Laquan McDonald stumbled because defendant Gaffney pulled the car in front of him, and Laquan McDonald walked in front of the car. Laquan McDonald "kind of tripped on the tire, turned around and punctured the tire." Defendant Gaffney then drove to cut off Laquan McDonald again in the intersection, and Laquan McDonald hit the window in a "half-assed" manner.

Laquan McDonald "didn't make any threats towards" Officer Individual H or defendant Gaffney. The closest that Officer Individual H ever got to Laquan McDonald was 10 feet. While Laquan McDonald damaged a car, Officer Individual H felt they had "control of the situation for the time that we were with him." Laquan McDonald "didn't like swing" the knife, "didn't come toward" Officer Individual H, and "just kept walking away from us

the whole time." Although Laquan McDonald hit the car, Officer Individual H "didn't feel that he was going to hurt me or my partner."

**G. Officer Individual C's Expected Testimony**

Officer Individual C had multiple interviews and gave sworn testimony before federal and state grand juries. Officer Individual C is expected to testify consistent with her prior statements and provide the following testimony relevant to this proffer.

On October 20, 2014, Officer Individual C was a patrol officer with her partner, Officer Individual G, on Chicago Police Department Beat 841R. Officer Individual C was the passenger in Unit 841R, which drove north on Pulaski Road and parked in front of Unit 845R on the median. Officer Individual C got out of the car and walked toward Laquan McDonald, as he was on the ground and was still being shot by Officer Individual A.

Officer Individual C saw Laquan McDonald walking south in the southbound lane of the street. Officer Individual C did not see Laquan McDonald raise his arm as if he were attempting to stab anyone, attack anyone, or make any aggressive moves as if he were about to attack anyone. Officer Individual C did not see Officer Individual A ever injured by Laquan McDonald. Officer Individual C did not see Laquan McDonald walk in the direction of where officers were, and she did not see Laquan McDonald within the reach of anyone.

**H. Witness A's Expected Testimony**

Witness A had multiple interviews and gave sworn testimony before federal and state grand juries. Witness A is expected to testify consistent with his prior statements and provide the following testimony relevant to this proffer.

On October 20, 2014, Witness A was in his van in the drive-thru of the Dunkin' Donuts facing Pulaski Road. Witness A saw Laquan McDonald walking south as a police car pulled up. Witness A saw a police officer pull out his gun, saw him point the gun at Laquan McDonald, heard about two or three shots, and saw Laquan McDonald fall to the ground. After Laquan McDonald fell to the ground, Witness A saw a police officer get closer to Laquan McDonald and shoot him more on the ground.

As Witness A watched the events, Laquan McDonald did not do anything threatening toward the police officers, did not lunge or move aggressively toward the police officers, did not wave his arm as if he were going to attack the officers, and did not make any kind of movement toward the police officers at all. Witness A was then waved from the scene and not identified or interviewed by Chicago police officers.

**I. Witness B's Expected Testimony**

Witness B had multiple interviews and gave sworn testimony before federal and state grand juries. Witness B is expected to testify consistent with his prior statements and provide the following testimony relevant to this proffer.

Witness B was a driver in a car facing north on Pulaski Road near 41st Street. Witness B saw Laquan McDonald walk south from the area near Burger King down the street. Witness B saw Laquan McDonald walk away from the police officers toward the west side of the street.

As Witness B watched the scene, Laquan McDonald did not lunge toward the police officers, did not wave his arm as if he were going to attack the officers, and did not make any



threatening motions or movements toward the police officers. Witness B saw a police officer shoot Laquan McDonald. At that time, Laquan McDonald fell to the ground. Laquan McDonald moved on the ground as shots came in and did not make any threatening motions or movements on the ground. Witness B was then waved from the scene and not identified or interviewed by Chicago police officers.

**J. Witness C's Expected Testimony**

Witness C had multiple interviews and gave sworn testimony before federal and state grand juries. Witness C is expected to testify consistent with his prior statements and provide the following testimony relevant to this proffer.

Witness C was a passenger in a car facing north on Pulaski Road near 41st Street. Witness C saw Laquan McDonald walk south from the area near Burger King down Pulaski Road. Witness C saw Laquan McDonald walk away from the police officers toward the west side of the street.

As Witness C watched the events, Laquan McDonald did not lunge toward the police officers, did not wave his arm as if he were going to attack the officers, and did not make any threatening motions or movements toward the police officers. Witness C saw a police officer shoot Laquan McDonald. At that time, Laquan McDonald spun around and fell to the ground. Laquan McDonald moved on the ground from getting shot and did not make any threatening motions or movements on the ground. Witness C was then waved from the scene and not identified or interviewed by Chicago police officers.

## **II. Efforts to Conceal the True Facts of the Killing**

As noted above, the State's evidence will show that the defendants, Officer Individual A, and others conspired to conceal these true facts of the events surrounding the killing of Laquan McDonald by Officer Individual A in order to shield their fellow police officer from criminal investigation and prosecution.

### **A. Consistently False Chicago Police Department Reports**

The evidence will show that the defendants, Officer Individual A, and others created official police reports in the critical early hours and days after the killing of Laquan McDonald that contained important false information in an attempt to prevent or shape any criminal investigation and prosecution. The defendants submitted virtually identical false information—including that Laquan McDonald had battered, assaulted, and attacked Officer Individual A, defendant Walsh, and defendant Gaffney. The defendants, in their official capacity as sworn members of the Chicago Police Department, also failed to correct this false information in official police reports.

#### **1. False Original Case Incident Report**

As part of the conspiracy, an official Chicago Police Department Original Case Incident Report with false information was submitted by Officer Individual C on October 21, 2014 at 04:32 and reviewed by defendant March on October 21, 2014 at 15:01. The false information includes that Officer Individual A was "injured by offender" and that Officer Individual A, defendant Walsh, and defendant Gaffney were "VICTIM[S]." Officer Individual C is expected to testify that defendant March told her to write this information.

## **2. False Tactical Response Reports**

As part of the conspiracy, three official Chicago Police Department Officer Tactical Response Reports with identical false information were submitted by Officer Individual A on October 21, 2014 at 04:41, by defendant Walsh on October 21, 2014 at 05:04, and by defendant Gaffney on October 21, 2014 at 05:15. On each of the three reports, the false information includes a reason for use of force: "ASSAILANT: ASSAULT IMMINENT THREAT OF BATTERY," "ASSAILANT: BATTERY ATTACK WITH WEAPON," and "ASSAILANT: DEADLY FORCE USES FORCE LIKELY TO CAUSE DEATH OR GREAT BODILY HARM."

This information is both false and contrary to the Chicago Police Department's directives, orders, and training. An involved member of the Chicago Police Department must complete a Tactical Response Report to document his or her own use of force.<sup>6</sup> But Officer Individual A, defendant Walsh, and defendant Gaffney completed Tactical Response Reports with identical false information in order to justify Officer Individual A's use of deadly force against Laquan McDonald. Moreover, defendant Walsh and defendant Gaffney had training on the use of force and Tactical Response Reports that shows the falsity of their reports.

## **3. False Officer's Battery Reports**

As part of the conspiracy, three official Chicago Police Department Officer's Battery Reports with identical false information were submitted with the Tactical Response Reports

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<sup>6</sup> If the member is incapacitated, a supervisor will complete the Tactical Response Report, which does not apply to the facts of this case.

by Officer Individual A, by defendant Walsh, and by defendant Gaffney on October 21, 2014. On each of the three reports, the false information includes "NO. OF OFFICERS BATTERED 3" and "MANNER OF ATTACK": "STABBED/CUT (INCLUDING ACTUAL ATTEMPT)."

This information is both false and contrary to the Chicago Police Department's directives, orders, and training. An involved member of the Chicago Police Department must submit an Officer's Battery Report when he or she is the victim of a murder, aggravated battery, battery, aggravated assault, or assault while performing a police function either on duty or off duty.<sup>7</sup> Officer Individual A, defendant Walsh, and defendant Gaffney were not all three battered and assaulted by Laquan McDonald. Moreover, defendant Walsh and defendant Gaffney had training that shows the falsity of their reports.

#### **4. False General Progress Reports**

As part of the conspiracy, official Chicago Police Department General Progress Reports with false information were completed by defendant March, reviewed by Sergeant Individual B, and dated October 20, 2014.

The false information includes that "AT 12-15 FT O SWUNG KNIFE AT POV IN AGGRESSIVE MANNER" and "VD CONTINUED FIRING AS O ... ATTEMPTING GET UP, STILL ARMED W/ KNIFE," which are statements attributed to defendant Walsh. The false information also includes that "O IGNORED, RAISED R ARM TOWARD VD AS IF ATTACKING VD" and "O WALKING SIDEWAYS, BODY FACING E, TOWARD JVD + JW,"

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<sup>7</sup> If the member is incapacitated, a supervisor will complete the Officer's Battery Report, which does not apply to the facts of this case.



which are statements attributed to Officer Individual C. Officer Individual C is expected to testify that she did not make those statements and that those statements are false.

**5. False Original Case Incident Report**

As part of the conspiracy, an official Chicago Police Department Original Case Incident Report with false information was submitted by defendant March on October 29, 2014 at 21:05 and approved by Sergeant Individual B on October 29, 2014 at 22:06. The false information includes that "MCDONALD committed aggravated assaults against the three officers" and that Officer Individual A, defendant Walsh, and defendant Gaffney were "ADDITIONAL VICTIMS."

**6. False Case Supplementary Report**

As part of the conspiracy, an official Case Supplementary Report was submitted by defendant March on March 15, 2015 at 18:23, submitted as the official report of defendant March, Sergeant Individual B, and Lieutenant Individual E, and approved by Lieutenant Individual E on March 16, 2015 at 00:03.

The false information includes that Officer Individual A, defendant Gaffney, defendant Walsh, and Officer Individual H were "VICTIM(S)." The false information also includes that Officer Individual A, defendant Gaffney, defendant Walsh, and Officer Individual H were "Victims" and that Laquan McDonald was the "Offender" associated with them under "0552 - Assault - Aggravated Po:Knife/Cut Instr."

The report also states falsely that "Laquan MCDONALD was shot and killed by Chicago Police Officer [Individual A] while MCDONALD was committing an aggravated

assault with a knife against [Officer Individual A] and his partner, Chicago Police Officer Joseph WALSH." The report contains additional false information that "MCDONALD also committed an aggravated assault with a knife against Chicago Police Officers Thomas GAFFNEY and [Officer Individual H], when MCDONALD stabbed the right front tire and windshield of their police vehicle."

**7. False Case Supplementary Report**

As part of the conspiracy, an official Case Supplementary Report was submitted by defendant March on March 15, 2015 at 18:26, submitted as the official report of defendant March, Sergeant Individual B, and Lieutenant Individual E, and approved by Lieutenant Individual E on March 16, 2015 at 00:03.

The false information includes that:

- Officer Individual A, defendant Gaffney, defendant Walsh, and Officer Individual H were "VICTIM(S)";
- Officer Individual A, defendant Gaffney, defendant Walsh, and Officer Individual H were "Victims" and Laquan McDonald was the "Offender" associated with them under "0552 - Assault - Aggravated Po:Knife/Cut Instr";
- "The recovered in-car camera video from Beats 845R and 813R was viewed and found to be consistent with the accounts of all of the witnesses";
- "MCDONALD ignored the verbal direction and instead, raised his right arm toward Officer [Individual A], as if attacking [Officer Individual A]," a statement attributed to Officer Individual C;

- “When MCDONALD got to within 12 to 15 feet of the officers he swung the knife toward the officers in an aggressive manner,” a statement attributed to defendant Walsh;
- “[Officer Individual A] continued firing his weapon at MCDONALD as MCDONALD continued moving on the ground, attempting to get up, while still armed with the knife,” a statement attributed to defendant Walsh;
- “Laquan MCDONALD was an active assailant who, while armed with a dangerous weapon, ... threatened the imminent use of force likely to cause death or serious injury when he incised the tire and stabbed the windshield of a Chicago Police Department vehicle occupied by Officer Thomas GAFFNEY; and initiated imminent use of force likely to cause death or serious injury when he initiated an attack on Officers [Individual A] and Joseph WALSH.”

#### **8. False Case Supplementary Report**

As part of the conspiracy, an official Case Supplementary Report was submitted by defendant March on September 11, 2015 at 21:40 and approved by Lieutenant Individual E on September 12, 2015 at 18:09. At that time, the detective investigation was closed and had been closed since March 15, 2015.

The false information on the supplementary report includes that “Officer Individual A, defendant Gaffney, defendant Walsh, and Officer Individual H were “VICTIM(S)” and that Laquan McDonald was the “Offender” associated with them under “0552 - Assault - Aggravated Po:Knife/Cut Instr.”



**B. Consistently False Information Reported to Other Agencies**

As part of the conspiracy, the evidence will show that defendant March reported consistently false information to other agencies in an attempt to conceal the true facts of the events surrounding the killing of Laquan McDonald.

**1. False Information Reported to Medical Examiner**

As part of the conspiracy, an official Cook County Medical Examiner Investigations Case Report was created with false information related by defendant March to Investigator A of the Medical Examiner's Office.

Investigator A has been interviewed and is expected to testify consistent with his prior statements. On October 20, 2014, Investigator A received a phone call at the Medical Examiner's Office from defendant March. During the phone call, defendant March stated that Laquan McDonald "lunged at the officers with the knife." Investigator A wrote that false information in the Cook County Medical Examiner Investigations Case Report based on defendant March's statement.

**2. False Information Reported to Illinois State Police**

As part of the conspiracy, an official Illinois State Police Evidence Submission Form for Chicago Police Department with false information was submitted by defendant March to the Illinois State Police. The false information includes that "offender, Lequan [sic] MCDONALD, assaulted three victim Chicago Police Officers with a knife" and that Officer Individual A, defendant Gaffney, and defendant Walsh were "Victims." The Illinois State Police repeated that false information on official reports.

**C. Consistently False Chicago Police Department Emails**

As part of the conspiracy, defendant March and others exchanged emails in an attempt to conceal the true facts of the events surrounding the killing of Laquan McDonald. These emails also used various means to misrepresent, conceal, and hide the activities of the conspiracy and to avoid detection.

**1. "We should be applauding him not second guessing him"**

Sergeant Individual B sent an email from his personal email address to his official Chicago Police Department email address and Lieutenant Individual E's Chicago Police Department email address on November 2, 2014.

As noted above, Sergeant Individual B and Lieutenant Individual E were members of the detective bureau who investigated the shooting of Laquan McDonald with defendant March. Sergeant Individual B was in the chain of command above defendant March, assigned defendant March to the investigation, approved the false Original Case Incident Report and General Progress Reports, and was reported on false Case Supplementary Reports. Lieutenant Individual E was in the chain of command above both Sergeant Individual B and defendant March, was reported on false Case Supplementary Reports, and approved false Case Supplementary Reports.

Sergeant Individual B's email states the following (with emphasis and false information bolded):

**[Officer Individual A] is aware** 911 caller has been attacked with a deadly weapon a knife, offender non-verbal only growling acting in a menacing manner.

**Responding officers have been attacked, tire flattened, windshield scraped.** offender continues to act unreasonably and is an armed assailant.

offender followed by initial responding officers from industrial area to commercial area. 3 blocks of verbal commands. offender refuses to stop, to drop knife and acting completely irrationally. **All of which is relayed to assisting units.**

offender approaches additional civilians with knife in hand including unknown m/b fixing car.

offender charges into a populated burger parking restaurant lot.

offender enters roadway becomes a danger to pedestrians, motorists, customers of dunkin donuts, and Burger King and responding officers alike. **Therefore, Shooting officer unfortunately can not wait for back up or for a taser he must attempt to stop or disarm the out of control threat.**

shooting officer Exits his marked police vehicle and announces police and orders the offender to drop his knife, offender takes aggressive stance, hikes pants, whips knife open, starts hopping. **Continues advancing toward officers, officers retreat slightly as depicted on dunkin donuts video, offender Turns toward officer, officer shoots offender in one continuous stream of fire (16 shots lasting 12 seconds) until threat is eliminated/neutralized and offender stops moving.** officer reloads and re-assess threat. No additional firing, shooting officer stays drawn on offender as partner kicks knife out of offenders clenched hand. offender still alive and CFD requested. offender not pronounced until arrival at hospital. **can't over kill a person who is still alive at the hospital.**

we are trained to shoot until the threat is eliminated defeated or neutralized. **officer did exactly what he was trained to do. We should be applauding him not second guessing him.** offender is still a threat on the ground because he still can get up and attack, he could throw deadly object/knife at the officer and still might be armed with an additional weapon. Threat must be defeated before approaching offender, who can then lunge at the officers. offender kept knife in hand entire time. offender Never chose to abide by officers commands. **offender chose his fate. Possibly suicide by police.**



2. **"Will help [Officer Individual A] immensely"**

As part of the conspiracy, Chicago Police Department member and Fraternal Order of Police representative Detective Individual I sent an email to Lieutenant Individual E and Sergeant Individual B on May 7, 2015. The detective investigation was closed at the time of this email and had been closed since March 15, 2015.

The email states that Detective Individual I had met with Law Enforcement Legal Defense Fund President A and that he "and his group are very excited about this case and I think they will help [Officer Individual A] immensely." Detective Individual I then asks Lieutenant Individual E and Sergeant Individual B to gather items from inside the Chicago Police Department for review by the Law Enforcement Legal Defense Fund.

Additionally, Sergeant Individual B forwards another email on March 31, 2015, related to the shooting from his work email address to his personal email address. This, too, is after the detective investigation is closed. The email contains information from Lieutenant Individual E and the Law Enforcement Legal Defense Fund President A, along with a written paper, "Police Officer Reaction Time to Start and Stop Shooting: The Influence of Decision-Making and Pattern Recognition."

3. **FBI Pretexting**

As part of the conspiracy, Sergeant Individual B forwarded emails from his work email address to his personal email address on and around March 31, 2015. The emails have information obtained from the FBI on the pretext that "We are recently investigating a police involved shooting that involves an offender that assaults [sic] a police officer with a knife.

The offender is shot and killed by the police officer." The detective investigation, however, was closed at the time of the emails and had been closed since March 15, 2015.

#### 4. A False Conclusion

As part of the conspiracy, Lieutenant Individual E sent an email to defendant March with an attachment "conclusion" on March 15, 2015. The attachment contains false information that:

The above to-date investigation determined that Jaquan [sic] McDONALD was an active assailant who, while armed with a dangerous weapon, ... threatened the imminent use of force likely to cause death or serious injury when he incised the tire and stabbed the windshield of a CPD vehicle occupied by Officer Thomas GAFFNEY; and initiated imminent use force likely to cause death or serious injury when he initiated an attack on Officers [Individual A] and Joseph WALSH.

This statement is virtually identical to the conclusion in the false Case Supplementary Report submitted by defendant March on March 15, 2015 at 18:26, submitted as the official report of defendant March, Sergeant Individual B, and Lieutenant Individual E, and approved by Lieutenant Individual E on March 16, 2015 at 00:03.

#### D. Area Central Meetings

As part of the conspiracy, the defendants, Officer Individual A, and others met after the shooting at Area Central Headquarters in an attempt to conceal the true facts of the events surrounding the killing of Laquan McDonald.

Defendant Gaffney testified before the federal grand jury about meeting at Area Central Headquarters. Rather than separating the officers who were involved on scene, the officers met "all in the same room just talking what happened." The meeting was in the



detective's area and was "maybe 10, 15 minutes." Defendant Gaffney believes the detectives were in the meeting, and he was "not sure if they were actually doing like notes -- interview notes or whatever." Instead, defendant Gaffney believes they were just going over everything. Defendant Gaffney specifically talked to Officer Individual A about the shooting in this meeting in "the detective's area. Just when they were talking about it."

Defendant Gaffney also testified that, after meeting in the detective's area, the detectives interviewed the officers separately about the shooting. That is, the officers and detectives "talked about it at one point, and then we talked individually."

Officer Individual C is expected to testify that, after meeting in the detective's area, defendant March separately interviewed her about the shooting. In this interview, defendant March described to Officer Individual C what he said the dashcam video showed and got Officer Individual C to verify what he said the dashcam video showed.

Officer Individual H is expected to testify that people at Area Central Headquarters were watching the dashcam video together, including defendant Walsh and Officer Individual A. At Area Central Headquarters, Officer Individual H is expected to testify that he was not told to submit any report and was told he was not assaulted so "we won't put you down as a victim."

### **III. Failure to Conduct a Thorough and Accurate Investigation**

As part of the conspiracy, the evidence will show that the defendants and others failed to conduct a thorough and accurate investigation in an attempt to conceal the true facts of the events surrounding the killing of Laquan McDonald by Officer Individual A.

Specifically, the General and Special Orders of the Chicago Police Department require that “members conducting a preliminary investigation will conduct a thorough and accurate investigation,” “protect and preserve the crime scene for the collection and processing of evidence,” and “locate, identify, and interview the complainant/witness.” The defendants and others, however, failed to conduct these activities required by law. Among other things, videos and communications were not collected or preserved, and witnesses were not located, identified, and interviewed. Witnesses A, B, and C are expected to testify that they were waived from the scene. Additionally, Witness D is expected to testify that all relevant videos were not collected or preserved from the Dunkin’ Donuts.

#### **IV. Failure to Correct or Report False Information**

As part of the conspiracy, the evidence will show that the defendants, Officer Individual A, and others failed to report or correct false information in official police reports. These failures further concealed the true facts of the events surrounding the killing of Laquan McDonald.

Under the Municipal Code of Chicago, the Rules and Regulations of the Chicago Police Department are enforced as law and are binding on all members, *see* Municipal Code of Chicago § 2-84-290, and the Rules and Regulations incorporate the General and Special Orders of the Chicago Police Department, *see* Municipal Code of Chicago § 2-84-050.<sup>8</sup>

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<sup>8</sup> The Municipal Code authorizes by law the Police Board “to adopt rules and regulations for the governance of the police department of the city.” Municipal Code of Chicago § 2-84-030. The Municipal Code also authorizes by law the Police Superintendent to administer the affairs of the department. *Id.* at § 2-84-050. *See also Williams v. Jaglowski*, 269 F.3d 778, 784 (7th

The Municipal Code makes it a criminal offense for “any member of the police department [1] who shall neglect or refuse to perform any duty required of him by the provisions of this Code or the rules and regulations of the department of police, or [2] who shall in the discharge of his official duties be guilty of any fraud, extortion, oppression, favoritism or wilful wrong or injustice.” *Id.* at § 2-84-290.

Specifically, Chicago Police Department members are required by law to report information under the Municipal Code and the Rules and Regulations. Rule 21 requires members to “report any information concerning any crime or other unlawful action,” and the failure to report is expressly prohibited by law. Rule 22 also requires members to “report any violation of Rules and Regulations or any other improper conduct which is contrary to the policy, orders or directives of the Department,” and the failure to report is also expressly prohibited by law. *See* Municipal Code of Chicago §§ 2-84-290, 2-84-220.<sup>9</sup>

As detailed above, the defendants, Officer Individual A, and others knew of information concerning a crime, unlawful action, and violations of Rules and Regulations. Among other things, the defendants, Officer Individual A, and others knew of false

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Cir. 2001) (finding § 2-84-290 to be a state law and a criminal offense); *Br. City of Chicago, Edwards v. City of Chicago*, No. 07-0741, 2008 WL 8479211 (1st Dist. 2008) (stating the City’s position that, “under the Municipal Code, the Rules and Regulations of the CPD are binding on all police officers and enforced as law, and the Rules and Regulations incorporate the CPD’s General Orders.” (citation omitted)).

<sup>9</sup> There are several other rules relevant for this proffer. Rule 1 prohibits “violation of any law or ordinance.” Rule 14 prohibits “disobedience of an order or directive, whether written or oral.” Rule 14 prohibits “making a false report, written or oral.”



information in official police reports that they had made, submitted, reviewed, and approved. But the coconspirators failed to report or correct this information as required by law. *See* Municipal Code of Chicago §§ 2-84-290, 2-84-220.

**V. Statements During the Course of and in Furtherance the Conspiracy**

As outlined above, the State has evidence that the defendants, Officer Individual A, and others conspired to conceal the true facts of the events surrounding the killing of Laquan McDonald by Officer Individual A in order to shield their fellow police officer from criminal investigation and prosecution. This proffer also identifies declarants who participated in the conspiracy with the defendants and Officer Individual A.

The State will seek to admit statements, in part, under Ill. R. Evid. 801(d)(2)(E), as coconspirator statements made during and in furtherance of a conspiracy. Additionally, the State will seek to admit statements made by others, who are not coconspirators, to provide context for the statements made by the coconspirators. Illinois law makes clear that these statements are admissible because they are not offered for their truth but rather to place the coconspirator statements in context and make them intelligible for the factfinder. *E.g., People v. Sangster*, 2014 IL App (1st) 113457, ¶ 88 (affirming the admission of “statement for the purpose of providing context for the conversation”).

**Conclusion**

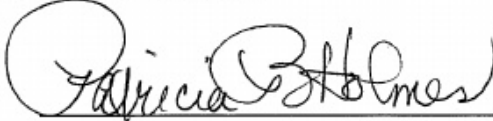
For these reasons, the People of the State of Illinois submit this proffer on coconspirator statements as requested by defendants David March, Joseph Walsh, and



Thomas Gaffney, and request that this Court find that coconspirator statements are admissible pending the introduction of evidence to support this proffer.

Dated: June 7, 2018

Respectfully submitted,

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

The undersigned attorney certifies that on June 7, 2018, these papers were served by hand delivery to the attorneys of record.

  
\_\_\_\_\_  
Brian O. Watson