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**Office of
State's Attorney
Champaign County, Illinois**

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Officer Matt Rush review

At the request of community members, following the City of Champaign's entry into settlement agreements in civil lawsuits filed on behalf of William Brown, Benjamin Mann and Kissica Seets and an arbitrator's decision to overturn the Champaign Police Department's termination of Officer Matt Rush, the State's Attorney's Office has conducted a review of the reports and investigations surrounding these settlements to determine the appropriateness of criminal charges. In response to a subpoena, Champaign Police Department provided my office with documentation of Officer Rush's personnel file, including all complaints filed with the department involving him, all disciplinary actions, and accompanying police reports and videos, and we have carefully reviewed all those materials.

We have also reviewed relevant Illinois statutes and caselaw. 720 ILCS 5/7-5, provides that a peace officer is justified in the use of any force which he reasonably believes to be necessary to effect an arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. The courts have reviewed allegations of excessive use of force in criminal and civil proceedings. Generally, excessive force complaints have been sustained when an officer uses force on an individual who is in custody and not resisting, when an officer uses unreasonable force with a tool or weapon such as a bludgeon or a firearm, or when the injuries to the individual are severe. Excessive force complaints have not been sustained in cases involving individuals who were actively resisting the officer's efforts during the course of an arrest, and when the officer did not use a weapon and the individual did not sustain serious bodily injury.

Based on our review, we are declining to file criminal charges against Matt Rush with regard to his use of force in the arrests of William Brown, Benjamin Mann, Kissica Seets, and Precious Jackson. These matters were or are appropriately handled in internal discipline and in civil court proceedings. The evidence as outlined below does

not provide a reasonable likelihood that we would be able to meet the standard of proof of beyond a reasonable doubt as is required for the filing of criminal charges. Furthermore, particularly with regards to the Seets and Jackson incidents, although Officer Rush failed to deescalate the situations through his aggressive and unprofessional behavior, his actions in using force to subdue resistive subjects are defensible under Illinois law.

While we are declining to file criminal charges, the State's Attorney's Office affirmatively states that we will not rely on Officer Rush as a witness for the prosecution in criminal cases. Officer Rush's substantial history of internal discipline for untruthfulness and failure to document use of force call his credibility as a witness into question and will subject him to cross examination by defense counsel in every case. Moreover, our concerns about his judgement and decision-making with regards to his approach and contact with citizens in crisis, particularly those with mental health concerns, make us unable to vouch for his credibility and reliability as a witness in our cases, regardless of his role.

The following is an outline of the four relevant incidents:

William Brown: On June 2, 2013, Officer Rush was involved in the arrest of William Brown following a hit and run traffic crash. Brown fled from Officer Rush and Officer Coleman. Brown was resistive and Officer Rush punched Brown in the face in the course of taking him into custody. Brown admitted that he was intoxicated and that he ran from officers because he was driving under the influence of alcohol. There is no squad car video of the arrest. Brown did not make a formal complaint however he obtained a settlement from the City of Champaign after filing a civil suit. The settlement is not evidence of admission of liability and cannot be considered for criminal review purposes. No information other than the original police reports is available with regard to this incident. Officer Rush was not subject to internal discipline with regard to this case. There is no evidence to support criminal charges alleging excessive use of force under Illinois law.

Benjamin Mann: On March 16, 2014, Officer Rush and other officers were involved in the arrest of Benjamin Mann. Rush and Officer Marshall Henry responded to 1308 Garden Hills Drive at the request of Mann's former girlfriend, Ashanti Sturkey, who had called 911 requesting officer assistance because Mann was outside her residence, he had been drinking and was wanting his property. During the course of the incident Mann refused to remove his hand from his pocket and refused to comply with the officers' directives. The officers attempted to take Mann into custody, and he resisted their efforts. Officer Rush requested additional assistance, and 3 other officers arrived.

The event lasted 4 minutes, the first 3 of which involved Rush and Henry alone, the final minute involving all 5 officers attempting to get Mann in custody. Mann sustained injuries. Rush sustained injuries as well. Due to the lack of lighting and the distance, squad car video provided no visual documentation of the incident. Mann and Sturkey filed formal complaints against the officers. A formal review by the CPD command staff resulted in a finding that Mann's arrest was lawful. Additionally, certain allegations of excessive force were determined to be unfounded. Other allegations could not be sustained based upon the available evidence. No officers, including Rush, were subject to internal discipline. Mann later initiated civil proceedings and the City entered into a settlement of his claims. This settlement cannot be considered for criminal review purposes. Criminal charges are not appropriate against Officer Rush or the other officers involved in this incident because the use of force in subduing a resistive subject was appropriate under Illinois law. We agree with the internal review findings and conclusions. Those findings create a legal defense for Officer Rush with regard to potential criminal liability.

Kissica Seets: On April 11, 2014, Officer Rush and other officers were involved in the arrest of Kissica Seets. Officers were dispatched to 421 Fairview regarding a fight in progress. Thirteen officers responded to the call. Claudia Villegas, mother of Kissica and Lela Seets, reported that the two were fighting. Officers Schweska and Henry were the first to arrive. The scene was chaotic. In the presence of officers, Kissica struck Lela in the face with her fist and the two engaged in an active fist fight, resulting in the two of them being sprayed by Officer Schweska with OC spray. Lela also picked up a chair and threw it at Kissica, hitting her in the side. Other officers, including Officer Rush, arrived and detained the two. Officer Rush and Officer Haugen attempted to escort Kissica to a nearby squad car. Audio recording captured exchanges between Rush and Kissica which were later determined by command personnel to be inappropriate and unprofessional and demonstrated a failure by Officer Rush to deescalate the situation. In response to the exchanges Kissica spat directly in Officer Rush's face. Rush maintained control of her and took her to the squad car. In his report, Rush wrote "I escorted Kissica to Officer Canales squad car without further incident." However, review of squad car video and audio shows that Officer Rush uses his right leg to push Kissica into the vehicle, and then delivers a knee strike to Kissica. Officer Haugen then steps in and takes over. Officer Haugen reported during internal review of the matter that Kissica was kicking at the officers while they attempted to put her in the squad car. Kissica did not suffer injuries as a result of the knee strikes.

Kissica was charged with Aggravated Battery to a Peace Officer for spitting in Rush's face. She pleaded guilty to that offense and was sentenced to 12 months of

probation. The issue of excessive use of force was not raised by defense counsel in resolving her case.

Following internal review of the event, Officer Rush was suspended for 3 days due to his failure to document the use of force, his violation of rules with regards to unprofessional behavior, and his use of force with regards to the second knee strike. This suspension was reviewed in arbitration pursuant to the FOP contract. The Arbitrator sustained the 3 day suspension, agreeing with the Department's findings with regard to Officer Rush's use of profanity and lack of professionalism and his failure to document the use of force. However, the Arbitrator disagreed with the Department's conclusion that the second kick was inappropriate. The Arbitrator wrote "looking at the video of the incident it is hard to determine where the woman's legs were when the second kick occurred. The testimony was that she still was not completely in the car. The video is not clear enough to contradict that testimony." The Arbitrator recommended that Officer Rush receive additional training to show him how he might better handle confrontational situations, as "skills in deescalating a situation are critical to prevent force from having to be used."

Kissica Seets filed a civil suit and entered into a settlement agreement with the City. The settlement of this claim cannot be considered as evidence with regard to potential criminal charges. Criminal charges cannot be filed against Officer Rush with regards to the two knee strikes in that, although Officer Rush failed to deescalate the situation and failed to document the use of force, Kissica was actively resistant, spit in his face, and physically resisted being placed in the squad car, thus providing a legal defense that his use of force with regards to the knee strikes was reasonable and appropriate to effectuate an arrest of a resistive subject.

Precious Jackson: On May 26, 2014, Officer Rush arrested Precious Jackson for Aggravated Battery to a Peace Officer. Earlier in the day Champaign Fire Department and Champaign Police responded to a fire at Jackson's residence. Jackson was not present, but concern arose as to her condition in light of her history of mental health issues and reports that she had been drinking alcohol. As that was going on, officers were dispatched to Thornton's, 101 S. Mattis, regarding a criminal damage to property and disorderly subject. The clerk advised that a woman matching Jackson's description damaged merchandise and was screaming at customers. In response to that call Officer Rush located Jackson on University Avenue.

As documented by Officer Rush's squad car video, Officer Rush pulled up next to Jackson and yelled at her "come here!" In his written report he said he "instructed her to stop and come to me." Jackson yelled back at him and continued walking, then

began running. Officer Rush ran after her and she stopped and turned back towards him. Officer Rush reported that Jackson raised her left hand and grabbed him by the throat. He had scratch marks consistent with his account of the situation. In response to her grabbing him by the throat, Officer Rush took Jackson to the ground. In his report Rush described the struggle with Jackson, saying he used a knee strike and OC spray to get her under control. Review of the video shows he also made a motion consistent with punching or striking Jackson. Rush was able to get Jackson under control and placed her under arrest. She was transported to the Champaign County Correctional Center.

Jackson was charged formally with Aggravated Battery to a Police Officer. The Public Defender's Office was appointed and a preliminary hearing was held on June 13, 2014. Judge Kennedy found probable cause for the arrest. The Public Defender's Office filed a motion requested that Jackson be evaluated by a psychiatrist for fitness to stand trial. Dr. Larry Jeckel conducted the evaluation and concluded that she was unfit to stand trial based on her mental health status and alcohol use. Jackson was prescribed psychotropic medications. She remained in the Champaign County Correctional Center until July 27, 2014, following a review of fitness by the Department of Human Services. After being medicated, her condition was stabilized and she had regained fitness. The charges were dismissed in light of Officer Rush's termination on July 23, 2014. Although not part of the CPD review, it is important to note that Jackson was arrested again in April, 2015, which led to a second finding of unfitness and hospitalization. As a result of that situation, Jackson is currently on probation.

Jackson did not file a formal complaint against Officer Rush. CPD conducted a standard internal use of force review of the event, which raised concerns about Rush's confrontational and discourteous initial approach with Jackson and his failure to document the action that could have been a strike or a punch in his formal report. During further investigation, CPD located a witness who was in a nearby parked car. That individual, who lives in Colorado, reported by phone that he had just gotten in his car when he heard yelling. He saw Jackson walking eastbound. He heard the officer tell her to stop. He heard Jackson yell back using profanity. He saw her turn and run and saw Rush chase her. He said Jackson "turned on him and became aggressive towards him." He said she was "not being compliant." He described the knee strike and said he left after she went down to the ground. He said he did not see the officer strike Jackson with his hand or fist. As a result of the review, Champaign command staff recommended termination of Officer Rush's employment. Lt. Swenson noted numerous attempts at training opportunities to guide and counsel Rush and his continuous failure to conduct himself in a professional matter, control his temper, display sound

judgement and bring his job performance in line with city values. He recommended termination. Lt. Shaffer agreed. Deputy Chief Gallo reviewed the reviews, and noted that the camera angle does not show if the strike impacted Jackson, that she did not confirm or deny that she was struck, and that her booking photo does not show any visible signs of injury. He concluded that Rush did make “a striking motion” and did not adequately document it. He agreed with termination based on this pattern of failure to document use of force and disciplinary issues.

Lt. Paulus also reviewed the investigation and reviews. Lt. Paulus said the video is not clear as to the strike, it may have hit her or it may have missed her. Lt. Paulus said the conclusion that the strike was not necessary or reasonable does not take into account what Jackson was doing in her confrontation with Rush. He said “in the tense and uncertain time of an active struggle with a suspect who has allegedly attacked and scratched an officer, I find it concerning that such conclusions are made without the totality of the situation being articulated.” Lt. Paulus concurred with termination, noting that the strike was not documented in his report, a violation of policy. But, he said that fact “does not negate the fact that the strike may have been in response to what Jackson was doing at the time.”

Officer Rush’s termination was reviewed in arbitration pursuant to the FOP contract. The Arbitrator disagreed with the Department’s decision to terminate Rush’s employment, granted Rush’s grievance and set aside the termination in favor of a 30 day suspension. Specifically with regard to the punch or strike, the Arbitrator wrote “there is no evidence anything was done, even if it was a punch, out of malice or a loss of temper, but was instead done to subdue an uncooperative person. It must be viewed in that context.”

A lawsuit has been filed on Jackson’s behalf on February 20, 2016, in Federal Court. The suit contains allegations that Jackson suffered a miscarriage as a result of Rush’s actions. These allegations are inconsistent with information provided in Jackson’s booking records at the time of her arrest.

The State’s Attorney’s Office is declining to file criminal charges against Officer Rush with regard to his use of force in this incident. While we agree with the conclusions of the internal review, and while we believe that Officer Rush escalated the situation by his aggressive approach, his actions with regard to that initial approach are not a violation of criminal law. Officer Rush appropriately followed Jackson when she ran from him, and was not in violation of law or policy in taking Jackson to the ground after she grabbed him by the throat. Finally, with regards to the punch or strike, we decline to file criminal charges due to issues of proof. It is unclear in the video if Rush

actually struck Jackson, and neither Jackson nor the independent witness report a punch or strike. Moreover, the action, if it was a punch or a strike, was determined by the Arbitrator to be reasonable under the circumstances in order to subdue a resistive subject.

Although the State's Attorney's Office is declining to file criminal charges against Officer Matt Rush, in light of our review of Officer Rush's actions and behavior during these incidents and in light of the entirety of Officer Rush's history of internal discipline for failure to adequately document use of force and untruthfulness, we are unable to use Officer Matt Rush as a witness for the prosecution in criminal cases. Officer Rush's repeated discipline for failure to adequately document use of force and untruthfulness as outlined here and in other disciplinary actions reviewed in the course of this examination create a substantial issue with regards to his credibility as a witness, subject him to cross examination on these issues, and require the State's Attorney's Office to work around him in order to bring criminal cases to trial. Moreover, our review of these incidents cause us great concern about his judgement and decision making in crisis situations, particularly with regard to his response to the mentally ill. In light of these concerns, having given this matter serious consideration and taking into account his full disciplinary history, we have concluded that if Officer Rush were to return to active duty, we will not call Officer Rush as a witness for the prosecution in criminal proceedings.

Julia Rietz
Champaign County State's Attorney