



OFFICE OF THE STATE'S ATTORNEY
COOK COUNTY, ILLINOIS

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POLICE INVOLVED DEATH DECISION MEMORANDUM
DECEDENT: MARCO GOMEZ

I. OVERVIEW

On February 2, 2017, Marco Gomez was shot and killed by Forest Park Police Officer Dan Miller after Gomez drove a stolen Volkswagen Jetta directly at Officer Miller while trying to flee. The Illinois State Police Public Integrity Task Force (PITF) conducted an investigation into Gomez's death. During the course of the investigation, investigators reviewed audio recordings of police radio traffic, 911 calls, dash camera video and video surveillance footage from a nearby business. PITF investigators also interviewed numerous law enforcement witnesses and civilian witnesses and reviewed photographs of the scene, police reports, medical records and the results of forensic examinations. On November 16, 2017, PITF provided the Office of the Cook County State's Attorney its final report of investigation, pursuant to the Police and Community Relations Improvement Act.

The Office of the Cook County State's Attorney, as the agency responsible for making criminal charging decisions under Illinois law for incidents that occur in Cook County, reviewed the evidence collected during the investigation to determine whether there was a good-faith basis for filing criminal charges. After a thorough review, the Office has concluded that the evidence is insufficient to support criminal charges against Officer Miller.

II. STATEMENT OF FACTS

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

On February 3, 2017, Officer Miller was dressed in full uniform, driving a marked squad car. Officer Miller monitored police radio traffic and heard that a stolen VW Jetta had fled from an attempted stop by the Chicago Police Department and was heading west toward Forest Park and Oak Park. Officer Miller was stopped at a red light on Jackson Boulevard at Harlem Avenue when he

observed a silver Volkswagen Jetta (VW) directly behind him. The VW matched the description of the car that had been reported as stolen from Glendale Heights and the subject of the radio traffic he heard. Officer Miller exited his squad car and approached on the driver's side of the VW to investigate. Marco Gomez, the driver and sole occupant of the VW, made eye contact with Officer Miller and then placed the VW in reverse and accelerated. Officer Miller ordered Gomez to stop, but Gomez continued to accelerate backwards. Officer Miller then ran towards the VW, at which point Gomez placed the VW in drive and sped towards Officer Miller. Officer Miller then fired at least four shots from his .45 caliber semiautomatic pistol at Gomez. One of the bullets struck Gomez in the left side of his chest. The VW came to rest when its front end struck another vehicle that was stopped in traffic.

Officer Miller approached the VW, pulled Gomez from the car, and immediately began performing chest compressions on Gomez who was not breathing. Officer Miller continued with his life-saving efforts until Forest Park Fire Department paramedics arrived and took over the medical treatment of Gomez. The paramedics transported Gomez to Loyola Medical Center where he was pronounced dead about thirty minutes after the shooting.

A postmortem examination by the Cook County Medical Examiner's Office of Marco Gomez identified one gunshot wound of entrance to the left chest. A report of blood toxicology revealed the presence of cocaine, codeine, morphine and fentanyl in Gomez's blood.

The evidence at any trial would include evidence indicating that Officer Miller reasonably believed that Gomez was trying to strike Officer Miller as Gomez drove the stolen VW directly toward Officer Miller while attempting to flee. The evidence would include video recorded evidence which depicts Gomez driving the VW as he stopped momentarily and then moved forward toward Officer Miller who stood to the front and on the driver's side of the VW.

III. LEGAL STANDARD

In making any charging decision, the Office of the Cook County State's Attorney is bound by the Illinois Criminal Code. The Illinois Use of Force in Defense of Person statute provides in pertinent part:

A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

720 ILCS 5/7-1 (a).

The statute regarding an officer's use of force provides in pertinent part:

A peace officer . . . need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to affect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person, or when he reasonably believes both that: (1) such force is necessary to prevent the arrest from being defeated by resistance or escape; and (2) the person to be arrested has committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.”

720 ILCS 5/7-5.

IV. ANALYSIS AND CONCLUSION

A criminal prosecution for either first- or second-degree murder would require proof beyond a reasonable doubt that Officer Miller was not legally justified in using deadly force against Gomez. In other words, a judge or jury would need to conclude that Officer Miller did not reasonably believe that he or others were in imminent danger of great bodily harm from Gomez. The uncontroverted evidence established that Officer Miller fired multiple times at Gomez as Gomez drove a stolen VW toward Officer Miller at a high rate of speed as Officer Miller was on foot and walking toward the VW. Under Illinois law, it is well settled that a vehicle can be used as a deadly weapon. *People v. Schmidt*, 392 Ill App. 3d 689, 704 (1st Dist 2009). Accordingly, 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 Officer Miller's use of deadly force against Gomez was reasonable under the totality of the circumstances. Accordingly, the Office is not filing 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 has 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 Forest Park 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.