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COOK COUNTY, ILLINOIS

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POLICE INVOLVED DEATH DECISION MEMORANDUM **DECEDENT: JOSEPH JESK**

I. OVERVIEW

This matter involves the fatal shooting of Joseph Jesk by Bridgeview Police Officer John Stein after Jesk pointed, what appeared to be a gun, at Officer Stein's head. The Illinois State Police (ISP) Public Integrity Task Force conducted an investigation into Jesk's death. During the course of the investigation, investigators interviewed civilian and law enforcement witnesses and reviewed OEMC transmissions, photographs of the scene, police reports, medical records, the Cook County Medical Examiner Post-Mortem Report, the results of forensic examinations, as well as video surveillance and in car camera footage. On March 6, 2020, ISP 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 Bridgeview Police Officer John Stein.

II. STATEMENT OF FACTS

The evidence presented at any criminal proceeding resulting from this incident would show as follows: On October 1, 2019, Joseph Jesk and a female associate ("SH") went to Walmart, located at 10260 S. Harlem Avenue, in Bridgeview, Illinois. SH committed a retail theft which was witnessed by

Walmart's loss prevention personnel. A loss prevention associate approached SH, accompanied her back inside the store to the loss prevention office and then contacted the Bridgeview Police Department.

Bridgeview Police Officers Corey Flagg #107 and John Stein #121 responded to Walmart and were briefed on the incident. SH admitted to taking the items and further informed that she and Jesk injected a \$10.00 bag of heroin and some methamphetamine into themselves earlier that day. While SH was in the loss prevention office, Jesk knocked on the door and was met by the loss prevention associate, Officer Stein and Officer Flagg, who instructed Jesk to wait outside. SH was placed under arrest and led outside of the Walmart store to Officer Stein's patrol car.

Shortly after leaving Walmart, Officer Stein and Officer Flagg were met by Jesk, who was upset that SH was being arrested after he claimed to have been told she would be released. Officer Stein placed SH in the rear of his marked patrol vehicle and drove south through the parking lot to exit onto 103rd Street. Prior to exiting the parking lot, Officer Stein was rear-ended by a white Ford cargo van, driven by Jesk. Officer Stein radioed that he was just involved in an accident and exited his patrol vehicle. Jesk exited the van with what appeared to be a handgun and pointed it towards Officer Stein's head. Officer Stein drew his weapon and fired two shots, striking Jesk, causing him to fall on the ground.

Bystanders ran across the street to the south parking lot exit/entrance location to render aide prior to the paramedics arriving on the scene. Officer Stein told the bystanders that Jesk rammed his squad car, got out of his van, and immediately pointed a handgun at the officer's head. Several officers, including Officer Flagg, immediately responded and observed Jesk lying on the ground next to Officer Stein's police vehicle and what appeared to be a semi-automatic handgun on the ground next to Jesk. The weapon was recovered and found to be an Airsoft pellet gun. Emergency medical technicians arrived and transported Jesk to Advocate Christ Medical Center where he underwent surgery, but later died from his injuries.

A post-mortem examination performed by the Cook County Medical Examiner's Office revealed that Jesk died from multiple gunshot wounds. Jesk was shot two times and two projectiles were recovered during the examination which revealed two entry wounds. There was a gunshot wound to Jesk's left upper arm which traveled the left arm and entered the left side of his abdomen and did not exit. The other projectile also entered the left side of Jesk's abdomen and did not exit. The manner of death was homicide.

There is no video footage which captured the actual shooting. There is video footage from surveillance cameras in the parking lot which depict Jesk's white cargo van traveling at a high rate of speed behind Officer Stein and then ramming the back of the police vehicle. There is movement depicted which is consistent with the driver's door of the van opening quickly and it appears the driver exited the van and moved toward the police vehicle. A passing vehicle then obstructs the camera view.

Several ballistic items were recovered and sent to the Illinois State Police Crime Lab for analysis. The black pellet gun recovered next to Jesk, an XBG pellet gun, was submitted to the lab for fingerprint analysis. The lab however found no latent impressions suitable for comparison. Two Winchester 9mm fired cartridge casings were recovered from the parking lot ground, and two copper jacketed projectiles that were recovered from Jesk during the autopsy were also submitted to the lab where an analyst confirmed that they were fired from Officer Stein's gun.

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.

III. ANALYSIS AND CONCLUSION

A criminal prosecution for either first- or second-degree murder would require proof beyond a reasonable doubt that the involved officer was not legally justified in using deadly force against Joseph Jesk. In other words, a judge or jury would need to conclude that the involved officer did not reasonably believe that he or others were in imminent danger of great bodily harm from Jesk. An analysis of the facts and evidence with applicable law shows that the involved officer was justified in his use of deadly force to defend himself against the perceived deadly threat posed by Jesk. Jesk pursued Officer Stein's police vehicle, which was transporting Jesk's arrested girlfriend, at a high rate of speed, struck Officer Stein's vehicle as Officer Stein was driving towards the parking lot exit, and then immediately approached Officer Stein and pointed what Officer Stein believed to be a firearm directly at Officer Stein's head. This action then prompted Officer Stein to draw his weapon and fire two shots at Jesk. Immediately following the shooting, additional officers and medical doctors arrived on scene and observed the weapon lying on the ground next to Jesk. The witnesses in this case also believed the weapon lying on the ground next to Jesk to be a firearm. Subsequent inspection of the recovered weapon revealed it to be a pellet gun.

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 the involved officer against Jesk was reasonable under the totality of the circumstances. Therefore, 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 Bridgeview 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.