



OFFICE OF THE STATE'S ATTORNEY  
COOK COUNTY, ILLINOIS

KIMBERLY M. FOXX  
STATE'S ATTORNEY

LAW ENFORCEMENT ACCOUNTABILITY DIVISION  
2650 SOUTH CALIFORNIA AVENUE  
CHICAGO, ILLINOIS 60608

## **POLICE INVOLVED DEATH DECISION MEMORANDUM DECEDENT: JUAN FLORES**

### **I. OVERVIEW**

This matter involves the fatal shooting of Juan Flores by Chicago Police Officer Jesse Oeinck after Flores struck Officer Oeinck with his vehicle and pinned the officer between Flores' vehicle and the officer's vehicle. The Independent Police Review Authority (IPRA)/Civilian Office of Police Accountability (COPA) conducted an investigation into Flores' death. During the course of the investigation, investigators reviewed witness interviews, Illinois State Police Crime Lab analysis and reports, the Cook County Medical Examiner Post-Mortem Report, and Chicago Police Department reports including Crime Scene Processing reports, the witness officers' statements to detectives, civilian witness statements, body worn camera and in-car video footage. On November 21, 2018, COPA 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 Oeinck.

## **II. STATEMENT OF FACTS**

The evidence presented at any criminal proceeding resulting from this incident would show as follows: On September 10, 2017, at approximately 12:56 am, 25<sup>th</sup> District Chicago Police Officers Jesse Oeinck # 12561 and Richard Vitellaro #17430 were on patrol when they observed a Honda Pilot, driven by 19 year-old Juan Flores, travelling eastbound on Grand Avenue at Armitage Avenue without its headlights on. The officers made a U-turn and pursued the vehicle into a neighborhood. After briefly losing sight of the vehicle, they then observed Flores driving toward them. Officer Oeinck wagged the squad car's spotlight toward Flores in an effort to stop him. Flores ignored the warning, turned into an alley and fled from the officers. Flores then exited the alley onto N. Laramie Avenue and pulled into a residential driveway next to his home located at 2110 N. Laramie Avenue. The officers stopped in the street and positioned their squad car at a 45 degree angle to the driveway. Officer Oeinck exited from the passenger side of the squad car and began to approach Flores' vehicle. Flores then reversed his vehicle at a high rate of speed and turned toward Officer Oeinck. Flores' vehicle struck the squad car, pinned Officer Oeinck between the squad car and Flores' vehicle and spun. Flores continued to reverse the vehicle despite being ordered to stop by Officer Oeinck. Officer Oeinck then transferred his duty weapon to his left hand and fired four shots toward Flores. Officer Vitellaro, who had jumped to the side to avoid being struck by Flores' vehicle, re-entered the squad car and slowly reversed away from Flores' vehicle, freeing Officer Oeinck. Flores' vehicle then slowly rolled away from the squad car. Responding officers removed Flores from his vehicle, handcuffed him and determined that he had sustained multiple gunshot wounds. Chicago Fire Department Paramedics responded and Flores was pronounced dead at the scene. Officer Oeinck was transported to Advocate Illinois Masonic Medical Center where he was treated for injuries to his legs, chest and forearm.

A post-mortem examination performed by the Cook County Medical Examiner's Office revealed that Flores had sustained four gunshot wounds, including one gunshot wound to the right back, one to the right arm that penetrated into the chest, one to the right forearm and one to the left arm. Two projectiles were recovered from Flores' body. One projectile was recovered from Flores' left back and the other projectile was recovered from the anterior mediastinum (between the lungs). The projectiles were sent to the Illinois State Police Crime Lab for analysis where they were determined to be 9mm/38 class caliber however they could not be identified or eliminated as having been fired from the same firearm. A toxicology screen of Flores' blood determined that he had a BAC of .165. The cause of

death was multiple gunshot wounds.

The in-car camera in Officers Vitellaro and Oeinck's vehicle recorded their initial contact with Flores on Grand Avenue and continued recording as Flores fled down the alley and pulled into the driveway of his residence. The camera continued to record as Flores reversed his vehicle, struck Officer Oeinck and Officer Oeinck fired several shots into Flores' vehicle. The video footage does not contain audio since the officers did not activate the squad car's emergency lights.

A civilian witness who observed the incident described hearing the screeching of tires, as well as Officer Oeinck's cries of pain and yelling for Flores to stop. When Flores did not stop, the witness observed Officer Oeinck fire what the witness believed was four shots into the truck.

### **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 Oeinck was not legally justified in using deadly force against Flores. In other words, a judge or jury would need to conclude that Officer Oeinck did not reasonably believe that he or others were in imminent danger of great bodily harm from Flores. The uncontroverted evidence shows that Officer Oeinck was justified in his use of deadly force to defend himself and his fellow officer against the deadly threat posed by Flores as his vehicle struck Officer Oeinck and Flores attempted to flee. Officer Oeinck's in-car camera recorded the entire incident. The video footage clearly depicted Flores reversing his vehicle into the squad car and pinning Officer Oeinck between the vehicles. Flores then ignored Officer Oeinck's orders to stop and continued to reverse his vehicle. Officer Oeinck then fired several shots into Flores' vehicle in an attempt to stop Flores from further injuring Officer Oeinck and fleeing the scene of the aggravated battery to a police officer. The video further depicted Officer Oeinck unable to move as he banged his hand on the hood of the squad car seeking assistance from his partner to move the squad car to free him. Although the in-car camera footage has no audio, an eye witness described hearing the screeching of tires, Officer Oeinck's cries of pain, and Officer Oeinck yelling for Flores to stop. When Flores did not stop, the witness observed Officer Oeinck fire what the witness believed was four shots into the truck.

The evidence in this case demonstrates that the intent of Officer Oeinck was to defend himself and his partner officer against Flores who had just struck Officer Oeinck with his car and was attempting to flee. Flores' actions were such that Officer Oeinck reasonably believed that the force used was necessary to prevent death or great bodily harm to himself and other officers.

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 the use of deadly force by Officer Oeinck against Flores 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 Chicago 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.