



**OFFICE OF THE STATE'S ATTORNEY  
COOK COUNTY, ILLINOIS**

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**POLICE INVOLVED DEATH DECISION MEMORANDUM**  
**DECEDENT: BRIAN HOWARD**

**I. OVERVIEW**

This matter involved the fatal shooting of Brian Howard by Buffalo Grove Police Officers Ross Valstyn and Jon Officer. During the course of the investigation, investigators interviewed civilian and law enforcement witnesses and reviewed radio communications, photographs of the scene, police reports, medical records, the Cook County Medical Examiner Post-Mortem Report, the results of forensic examinations, and video footage.

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 Buffalo Grove Police Officers Ross Valstyn and Jon Officer.

**II. STATEMENT OF FACTS**

The evidence presented at any criminal proceeding resulting from this incident would show as follows: On December 2, 2021 at approximately 12:28am, a male called 911 and reported that there was a man with two guns in the park, later determined to be Mill Creek Park

located at Radcliffe Road and Boxwood Lane in Buffalo Grove, Illinois. The caller further stated that the male had a 9 millimeter in his right hand and a 45 in his left and that he already “popped off two rounds.” During the 911 call, the caller, now known as Brian Howard, revealed that he was actually the male with the guns and that he “shot off a 9 millimeter and a 45.” He insisted that the officers come to the park “with lethal intentions.” Howard further stated that he did not injure anyone and it was not his intention to injure anyone. The dispatcher made numerous efforts to convince Howard to put the guns down, but Howard reiterated that he would not put the guns down and explained that he was a “bad dude” and wanted the police to “end this.” When Officer Jon Officer and Officer Ross Valstyn arrived at the park, Howard walked toward them with a firearm in each hand. The officers gave multiple commands to put the guns down. Howard did not comply and continued to walk toward them. He then discharged each gun one time and continued to walk toward the officers with the guns held up in his hands. The officers gave additional commands for Howard to stop and drop the guns, but he did not comply. Officer Jon Officer then fired his handgun seven times but did not strike Howard who continued to advance toward the officers. Officer Valstyn then fired his rifle three times, striking Howard one time in the chest. Howard fell to the ground and the two firearms fell on the ground next to him. The officers rendered aid, but Howard died from his injuries.

Neither officer was equipped with a body-worn camera, but the incident was captured on Officer Jon Officer’s in-car camera including audio and video. The dispatch and radio communications include the recorded 911 call and communications between dispatchers and the officers.

The two firearms recovered near Howard included a 9mm Smith and Wesson pistol and a 45 Smith and Wesson pistol. Two discharged cartridge casings were recovered on the ground near the park. The firearms and casings were submitted to the Illinois State Police Forensic Science Center where they were analyzed. The testing revealed that one casing was fired from the 9mm Smith and Wesson pistol and the other was fired from the 45 Smith and Wesson pistol. DNA testing was performed on swabs taken from both weapons which identified a DNA profile that matches the DNA profile of Brian Howard.

The Cook County Medical Examiner performed an autopsy and determined that the cause of death was a gunshot wound to the chest and the manner was homicide. A bullet was recovered during the autopsy which was found to have been fired by Officer Valstyn.

### **III. LEGAL STANDARD**

In making any charging decision, the Office of the Cook County State's Attorney is bound by the Illinois Criminal Code in effect at the time of the incident. The Illinois Use of Force in Defense of Person statute provided 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) (West 2018).

The statute regarding an officer's use of force provided 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, based on the totality of the circumstances, to be necessary to effect the arrest and of any force which he reasonably believes, based on the totality of the circumstances, 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: (i) he reasonably believes, based on the totality of the circumstances, that such force is necessary to prevent death or great bodily harm to himself or such other person, or (ii) when he reasonably believes, based on the totality of the circumstances, both that:

(1) Such force is necessary to prevent the arrest from being defeated by resistance or escape and the officer reasonably believes that the person to be arrested is likely to cause great bodily harm to another; 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.

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A peace officer is not justified in using force likely to cause death or great bodily harm when there is no longer an imminent threat of great bodily harm to the officer or another.

720 ILCS 5/7-5(a) (2021).

#### **IV. ANALYSIS AND CONCLUSION**

A criminal prosecution for either first- or second-degree murder would require proof beyond a reasonable doubt that the involved officers were not legally justified in using deadly force against Brian Howard. In other words, a judge or a jury would have to find that Officer Valstyn and Officer Jon Officer's belief that they or others were in imminent danger of great bodily harm or death -- was not reasonable. In this case, however, the evidence shows that Officer Valstyn and Officer Jon Officer each had a reasonable belief that Brian Howard put both officers in imminent danger of great bodily harm or death.

The analysis for making a charging decision must look at whether Officer Valstyn and Officer Jon Officer's decision to use deadly force was reasonable under the totality of the circumstances. A review of the evidence in this case reveals that the officers acted reasonably in self-defense after Howard failed to comply with numerous verbal commands to drop the weapons, discharged each of the weapons and continued to advance toward the officers with a gun in each hand. The in-car camera footage from Officer Jon Officer's vehicle, which includes video and audio, as well as the 911 call made by Howard support the self-defense issues. While Howard did not point the weapons at the officers when he discharged them, he continued to advance toward the officers with a gun in each hand even after the initial shots were fired by Officer Jon Officer. Additionally, the officers were provided information from the dispatcher that Howard advised he had two guns which he stated he already fired and refused to put the weapons down.

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 Ross Valstyn and Officer Jon Officer against Brian Howard was reasonable under the totality of the circumstances. Therefore, the Cook County State's Attorney's Office will not pursue 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 on June 6, 2023, 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 Buffalo Grove 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.