



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

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**POLICE INVOLVED DEATH DECISION MEMORANDUM  
DECEDENT: MARC A. NEVAREZ**

**I. OVERVIEW**

This matter involved the fatal shooting of Marc A. Nevarez by Chicago Police Officer Roberto Gomez. 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, video surveillance, and Body-Worn Camera (BWC) 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 Chicago Police Officer Roberto Gomez.

**II. STATEMENT OF FACTS**

The evidence presented at any criminal proceeding resulting from this incident would show as follows: On October 23, 2020, at approximately 12:30pm, Chicago Police Officers Roberto Gomez and his partner, Casimir Janus, were on patrol near 24<sup>th</sup> and Lawndale when they heard gun shots. Officer Gomez performed a U-turn and drove south on Lawndale toward the

sound of the gun shots. As they traveled, the officers observed a gray/silver Ford Focus traveling eastbound on 25<sup>th</sup> Street, away from the area of the gun shots, at a high rate of speed. As the vehicle drove past, the officers observed the rear passenger wearing a hoodie with the hood pulled over his head sitting next to the open rear passenger side window. Officer Gomez activated the emergency lights and followed the vehicle. The Focus pulled to the left curb and stopped as Officer Gomez pulled along the passenger side. The officers observed three occupants in the vehicle including the driver, Marc Nevarez, a female front seat passenger, and a male rear passenger. The occupants acknowledged the officers and then sped off. The officers pursued the vehicle as it committed several traffic violations before turning southbound into an alley. The officers continued to pursue the vehicle down the alley at a high rate of speed toward 26<sup>th</sup> Street. As the vehicle exited the alley onto 26<sup>th</sup> Street, it struck a pick-up truck, continued across 26<sup>th</sup> Street and struck a pole in the mouth of the alley. As the officers came to a stop behind the vehicle, Nevarez exited from the driver's door, reached back into the vehicle and then began to flee down the sidewalk, holding a revolver in his right hand. The female exited from the front passenger's door and fled down the alley while the male remained seated in the back seat. Officer Gomez exited from the driver's door of the squad car, ran toward Nevarez and reached out with his left hand in an attempt to grab Nevarez. Nevarez continued to run down the sidewalk, with Officer Gomez in pursuit. As Nevarez ran, Officer Gomez ordered him to stop and observed Nevarez place his finger on the trigger of the revolver at least 2 to 3 times as his right arm swung back and pointed the revolver toward Officer Gomez. Upon observing this, Officer Gomez believed Nevarez was going to shoot him. Officer Gomez also observed at least one person standing on the sidewalk in the direction of Nevarez's flight. Officer Gomez then observed Nevarez stop swinging his arms and begin to hold the revolver with both hands in front of his body. Officer Gomez believed this change in movement indicated that Nevarez was going to shoot at him. Officer Gomez was also concerned for the safety of the person that was standing on the sidewalk. It was at this point, that Officer Gomez drew his weapon and fired three shots at Nevarez. Nevarez was struck in the right arm and left upper buttock. He then dropped the revolver as he fell into the street. The revolver was recovered, along with six live .357 cartridges that were scattered on the pavement. Officer Gomez secured Nevarez and administered aid until Chicago Fire Department personnel arrived. Nevarez was transported to Mt. Sinai Hospital where he was pronounced dead.

The officer involved shooting of Nevarez was captured on Officer Gomez's body worn camera and by private security cameras along 26<sup>th</sup> Street. A Ruger semi-auto handgun, in slide lock, was recovered from the floor behind the driver's seat of the Ford Focus.

A Cook County Medical Examiner performed an autopsy on Nevarez and determined the cause of death to be multiple gunshot wounds and the manner of death to be a homicide.

### **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 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(a) (West 2018).

#### **IV. 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 Marc Nevarez. In other words, a judge or a jury would have to find that Officer Gomez's belief that he or others were in imminent danger of great bodily harm or death -- was not reasonable. In this case, however, the evidence shows that Officer Gomez did have a reasonable belief that Marc Nevarez put Officer Gomez and others in imminent danger of great bodily harm or death.

The analysis for making a charging decision must look at whether Officer Gomez's decision to use deadly force was reasonable under the totality of the circumstances. Officer Gomez's description of the circumstances that led him to believe he and a civilian bystander faced imminent threat of death or great bodily harm is corroborated by video footage from both Officer Gomez's body worn camera and private security cameras. Before fleeing from the vehicle, Officer Gomez observed Nevarez exit and then reach back into the vehicle. After he started to run, Officer Gomez realized Nevarez had reached back to grab a revolver. Despite Officer Gomez being in uniform and ordering Nevarez to stop and drop the gun, Nevarez looked at Officer Gomez, ignored his verbal commands and continued to flee. As Nevarez ran, his right arm swung back causing the revolver, with his finger on the trigger, to be pointed toward Officer Gomez several times before Nevarez changed movements and held the revolver in front of him with two hands. Believing that Nevarez was about to shoot him, and with concern for the innocent bystander standing nearby, Officer Gomez was required to make a split-second decision to draw his duty weapon and fire. He fired three shots and stopped firing when Nevarez fell to the ground and the threat ceased to exist.

To overcome Officer Gomez's assertion that his decision to use deadly force was reasonable, the trier of fact would have to find that Officer Gomez's belief was incorrect or unreasonable based on the totality of the circumstances. Based on the video evidence, the State would be unable to prove that Officer Gomez's belief that he was in imminent harm of death or great bodily harm, was incorrect or unreasonable. The video footage played in real-time corroborates Officer Gomez's version of events and demonstrates how quickly these actions took place.

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 Gomez against Marc Nevarez 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 December 13, 2022, 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.