



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

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**POLICE INVOLVED DEATH DECISION MEMORANDUM
DECEDENT: TONY SMITH**

I. OVERVIEW

This matter involved the fatal shooting of Tony Smith by Forest Park Police Officer Lauren Battistoni #257 and Sergeant Daniel Pater #122. 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, 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 Forest Park Police Officer Lauren Battistoni and Sergeant Daniel Pater.

II. STATEMENT OF FACTS

The evidence presented at any criminal proceeding resulting from this incident would show as follows: The following is a summary based on a review of the Illinois State Police (ISP) Public Integrity Task Force (PITF) reports, officer and witness interviews, Illinois State Police Crime Lab analysis and reports, recorded video footage from body worn cameras and in-car police cameras, and medical records.

On March 24, 2021, between approximately 6:30pm and 7:00 pm, Tony Smith entered a Bar located at 350 Circle Drive, Forest Park, Illinois. Smith ordered one beer, drank half of the beer and prepared to settle his bill. While searching for his wallet, Smith placed a plastic bag

containing a gun on the countertop of the bar. It was later discovered that Smith's weapon was a blank pistol loaded with blank rounds but incapable of firing projectiles. Smith was asked to leave the bar and told that it was illegal to have a gun and not to bring it into the bar. Smith paid for his drink and left. Smith then walked next door to a restaurant. While waiting for his food at the counter, Smith dropped his gun and quickly picked it up. A short time later, Smith dropped his gun again. As he was picking up the gun, Smith stated to himself, "Don't make me do this. Don't make me do this to him." Smith then removed the loaded magazine from the gun and put the gun in the inside pocket of his overcoat. Smith was then handed his sandwich for free, and he left the store. Employees of the restaurant called the police and reported the incident.

Forest Park police units were dispatched, and Officer Mohammad Awad #274 arrived at the scene within minutes. Officer Lauren Battistoni arrived at the scene a short time later and observed that Officer Awad had already arrived and was outside of his vehicle speaking to witnesses. Officer Battistoni exited her police car and was informed by Officer Awad that Tony Smith was lying on the ground on the north side of the building. Officer Battistoni was only able to see Smith's feet and lower legs as he lay on the ground. Officer Battistoni and Officer Awad walked onto the sidewalk and approached Smith who was observed lying in a fetal position. Meanwhile, Sergeant Pater arrived on the scene. Officer Battistoni reached out to shake Smith's upper left arm as he remained lying on the ground. Smith turned and sat up with a gun in his hand, pointed directly at Officer Battistoni's face. Officer Battistoni took a step back and fired one time at Smith. Smith still had his gun pointed at Officer Battistoni and Officer Awad after the first gunshot. Sergeant Pater, who was approximately 10 feet away from Smith, then fired his rifle two times at Smith.

Officer Battistoni observed a black firearm with brown grips to the right of Smith near his hand. Officer Awad handcuffed Smith and rolled him onto his back. During Officer Awad's search of Smith, he located two knives and a loaded magazine. Smith was pronounced dead at the scene.

A Cook County Medical Examiner performed an autopsy on Smith and determined the cause of death to be multiple gunshot wounds and the manner to be a homicide. Smith's toxicology report indicated a BAC (blood alcohol concentration) of 0.362 and the presence of THC (marijuana).

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 officers were not legally justified in using deadly force against Tony Smith. In other words, a judge or a jury would have to find Officer Lauren Battistoni #257 and Sergeant Daniel Pater #122 did not reasonably believe that they were in imminent danger of great bodily harm or death. In this case, however, the evidence shows that Officer Lauren Battistoni #257 and Sergeant Daniel Pater #122 reasonably used deadly force in defense of themselves and others.

Under the current case law, the trier of fact could reasonably conclude that the evidence demonstrates that Officer Lauren Battistoni and Sergeant Daniel Pater were reasonably justified in their use of deadly force to protect themselves and others from Tony Smith as he had a gun in his possession which was pointed at Officer Battistoni at the time of the incident. The gun was seen at the bar and inside the restaurant just moments before the officers arrived. A witness also heard Smith stating, "Don't make me do this. Don't make me do this to him." While Officers Battistoni and Awad approached Smith with their guns drawn, Officer Battistoni's initial intentions were to check on Smith. This was evident from Officer Battistoni shaking Smith's upper leg upon her approaching Smith. It was only after Smith suddenly sat up and pointed his

gun in Officer Battistoni's face that Officer Battistoni and Sergeant Pater shot Smith. Officer Battistoni was in fear of losing her life and fired her weapon at Smith. Sergeant Pater observed Smith's gun pointed at Officer Battistoni and, after hearing the single gunshot fired by Officer Battistoni, which Sergeant Pater believed was fired by Smith, Sergeant Pater fired his rifle twice striking Smith to prevent the death or additional great bodily harm of Officer Battistoni and Officer Awad. Sergeant Pater stopped firing his weapon once he observed the gun fall from Smith's hand. While it is now clear from the evidence that Smith was not capable of firing his weapon since it was a blank pistol, not capable of firing a projectile, Smith's weapon had the appearance of a real gun, which created a reasonable fear within the officers that death or great bodily harm was imminent.

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 Lauren Battistoni and Sergeant Daniel Pater was reasonable under the totality of the circumstances.

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 reviewed the case and on April 20, 2023 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.