In-Custody Death Investigation
Joshua Carstens

Seattle Police Department
Force Investigation Team, #2018FIT-0018



King County Prosecuting Attorney
Public Integrity Team

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DECLINE MEMORANDUM

In-Custody Death of **Joshua Carstens**

WARNING – This memorandum contains images and descriptions of violence that may be offensive and disturbing to some readers. The images and descriptions are included to provide the reader with the most accurate information regarding the topic of this memorandum.

I. PURPOSE AND SCOPE OF MEMORANDUM

The King County Prosecuting Attorney's Office (KCPAO) shall inform the King County Executive whenever the investigation into a death involving a member of any law enforcement agency in King County is complete and also advise whether an inquest should be initiated.[1] There shall be an inquest into the manner, facts, and circumstances of any death of an individual where an action, decision, or possible failure to offer the appropriate care by a member of any law enforcement agency might have contributed to an individual's death unless the County Executive determines, based on a review of the investigation, that the role of law enforcement was *de minimis* and did not contribute in any discernable way to a person's death.[2]

The Special Operations Unit Public Integrity Team (the Team) has determined that the investigation into this matter is complete. The determination whether to file charges is based entirely on the materials provided to the KCPAO, relevant criminal laws, rules of evidence governing criminal proceedings, the applicable burden of proof, and the KCPAO's Filing and Disposition Standards. This determination is not intended to address matters outside the scope of this memorandum including, but not limited to, administrative action by the involved agency or any other civil action. The Team expresses no opinion regarding the propriety or likely outcome of any such actions.

II. OVERVIEW

In the early morning hours of August 17, 2018, Washington State Patrol (WSP) Involved Officer 1 was on patrol near the "west high rise" of the eastbound SR-520 bridge. He pulled over the driver of an SUV, Subject Joshua Carstens (Subject) who was speeding. Upon contacting Mr. Carstens, Involved Officer 1 developed reason to believe that Mr. Carstens was driving under the influence of alcohol or narcotics. After Mr. Carstens voluntarily performed a series of standard field sobriety tests, Involved Officer 1 determined that there was probable cause to believe that Mr. Carstens was driving under the influence of alcohol. Involved Officer 1 arrested and

[1] Executive Order PHL 7-1-5 EO.

[2] Id.

handcuffed Mr. Carstens. Involved Officer 1 then led Mr. Carstens to the rear passenger side of his patrol car, which was only a few feet away from the bridge's barrier to Lake Washington. At the door of the patrol car, Mr. Carstens pivoted in the opposite direction of the trooper, ran towards the barrier, and jumped into Lake Washington while still handcuffed. Mr. Carstens tried to swim to shore which was approximately 50 yards away but ultimately drowned. Involved Officer 1 attempted to rescue Mr. Carstens but he had no access to the shoreline and was not equipped with the necessary equipment for a rescue. By the time the Seattle PD Harbor patrol boat arrived, Mr. Carstens had drowned. An investigation later revealed that Mr. Carstens was previously suicidal, and had told his girlfriend after a recent arrest, that he would rather die than go back into custody.

III. INVESTIGATION AND EVIDENCE

KCPAO reviewed the following evidence while reviewing this investigation: photographs, reports from SPD's Force Investigations Team, WSP reports from backing officers, SPD reports from backing officers, involved officers training records, the involved officer's compelled statement, firefight interviews, statements from subject's girlfriend, in-car video from responding officers, body-worn video from responding officers, search warrant for subject's vehicle, dispatch recordings, CADs, police reports from subject's prior arrest, subject's medical records, photographs, autopsy report, and toxicology report.

IV. INVESTIGATION SUMMARY

1. SCENE

Washington State Police requested Seattle Police Department's assistance with this in-custody death investigation. Then Chief Best approved the request and assigned the investigation to the Seattle Police Department's Force Investigation Team (FIT). Officer 3 was assigned the investigation. The weather at the time of the incident was clear and the road deck was dry with temperatures in the mid 50's.

2. DISPATCH RECORDING

00:00 [3] Involved Officer 1 Calls in license plate of Subject's car.

00:58 Involved Officer 1 calls in Subject Joshua Carstens' name.

01:10 Carsten's driver's license returns revoked. Dispatch states that Carsten's has two prior DUI related convictions.

01:48 Involved Officer 1 calls in that he's placed the suspect in custody for DUI.

01:57 Involved Officer 1 tells dispatch, "My subject just jumped off of the 520 Bridge. He's down below. He's swimming."

03:01 Panting, Involved Officer 1 states, "We're at the uh… The east 520 or west high rise of eastbound 520. He jumped off the bridge. He's in the water below. He's handcuffed. He's drowning. We need someone in the water if there's a boat or anything quickly."

03:27 Involved Officer 1 states, "Seven three seven Seattle [Mason's call number]. He's gone under."

03:41 Dispatcher: How close are they to the shoreline?

03:49 Involved Officer 1 states, "We're probably about, I mean 50 yards from any kind of shoreline that you could climb out of easily."

04:55 Officer 1 states, "We believe we see him under the water. He's right under us. They should contact right here."

[3] The time stamp refers to the length of the recording not the actual time.

3. INTERVIEWS

a. Involved Officer 1

Under penalty of discipline, up to termination, Involved Officer 1 was order by his agency to provide a statement about the incident.[4] He sat for an interview with SPD right after the incident occurred. The interview was audio recorded and Involved Officer 1 was audibly saddened about what occurred to Mr. Carstens. According to Involved Officer 1, his radar clocked Subject Carstens driving 76 mph across the bridge, which in that area had a post speed limit of 50 mph. Carstens' vehicle was also swerving within its own lane. The trooper decided to pull over the vehicle. Upon making contact with Carstens, the trooper smelled the odor of alcohol and saw syringes in the center console. Involved Officer 1 asked Carstens to step out of the car to perform standard field sobriety tests, which he did, including a field breath test. After the breath test Involved Officer 1 told the detective:

> I just told, said, you're under arrest for DUI, turn around and put your hands behind your back, which he did, I didn't have to spin him around or anything like that and, so he turns clockwise, puts his hands behind his back, I put the handcuffs on, I double-lock them, he didn't tense up or resist in any way um, and uh, and then I said, we have to walk back to my car now, and we, I kind of had my hand on his back, my left hand on his back and I'm walking him back to my, uh back to my car and um, he, along the way he said, "You know? Please, shit. Is there any way I can just walk off? Um, please don't fuck my life. Please don't fuck up my life. Please." He's just saying, "I just, just let me walk off. Just let me go. Please don't do this." And I said, "I can't. I can't do that knowing what I know right now um, I can't let you go."
>
> …

[4] The investigation into this incident occurred prior to the implementation of RCW 10.114.011 and WAC 139-12-030, which established the requirements for an Independent Investigative Team to conduct independent investigations into police use of force cases. As was often the practice of the involved agencies, the investigative material supplied in this case included the involved officer's compelled statements. Such compelled statements are inadmissible against an officer in a subsequent criminal trial. Police and prosecutors are also barred from making "indirect evidentiary use" of the officer's compelled statement, which includes investigative efforts or testimony that has been shaped, altered, or affected, directly or indirectly, by the officer's compelled statement. While the compelled statement and information derived from such a statement cannot be used to support criminal charges against an officer, a credible compelled statement provides insight into the potential testimony of an involved officer. Therefore, it may be useful to the Team in analyzing the current incident and may be used in support of a finding of no criminal liability for the officer's actions.

I said, "Now okay. I need you to step into the car right now." And uh he, he didn't say anything, he had his head down, he was just standing there and I was standing to his uh right, just at the tip of the door which was fully opened and he was facing in the car, at a slight angle, um just outside kind of the swing path of the door, if that makes any sense um, and he didn't move. I waited about two or three seconds and then I said uh, "Okay I need you to step in the car now," and I put my hand on his back uh and kind of began to escort him into the car and he looked up, with like no expression on his face, uh he just kind of, like, almost like an idea came to him suddenly, he just, he was looking down and then he looks up, pivots quickly to his left and you know before I can even register what's going on he's throwing himself at the barrier, which was about, three and a half feet tall or so, so he smacks into the barrier, I remember the sound of his body just kind of hitting the barrier and that kind of like, "snaps," kicked me in gear a little bit and um, he kind of folded, folded over it at the waist and his legs were still on uh, on the, the roads, uh, the roadside of, of the um barrier and I kind of lunged at him and I grabbed his legs um, I had his left leg and I um, I got a handful of his jeans but I didn't get ahold of his actual leg, and uh, and then he you know, folded over the, over the wall and um, I just remember the sound of fabric scraping against the, the concrete and then it was just silent you know as he, he broke away from that and I'm watching him fall, handcuffed and uh it just felt like he fell forever and it was like dead silent, and um, uh and so he, he falls for what seems like forever and hits the, hits the water and with a loud slap…

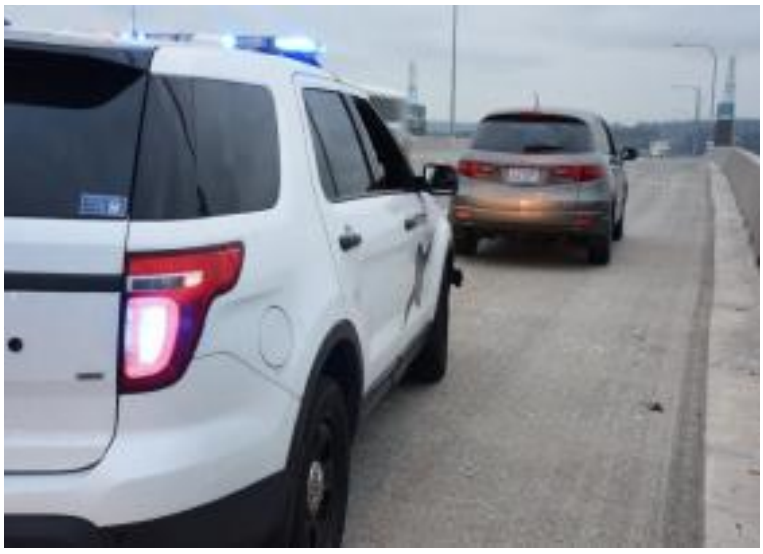


Figure 1: WSP photo taken by Officer 2. Views of Subject's and Involved Officer 1's vehicles positioning during traffic stop.

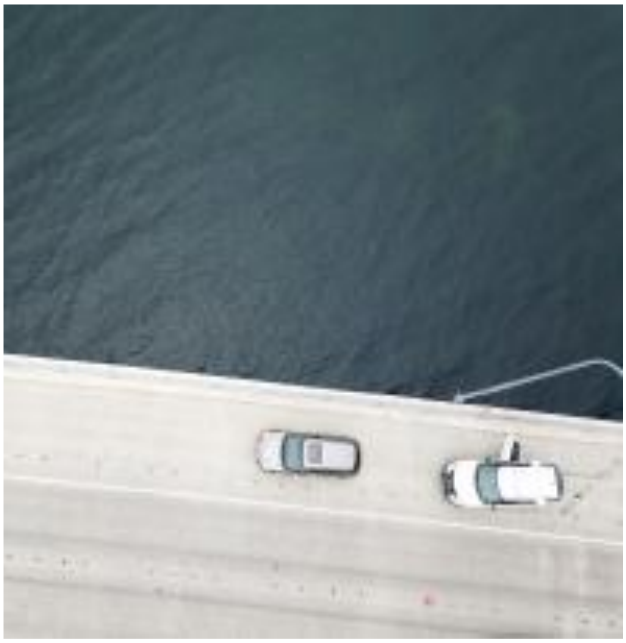


Figure 2: WSP photos taken by Officer 2. Views of Subject's and Involved Officer 1's vehicles positioning during traffic stop.



Figure 3: Patrol car door Carstens was to enter. "C" represents where Mr. Carstens stood while Involved Officer 1 attempted to place him in the patrol car. "D" represents where Involved Officer 1 stood. "E" represents where the trooper was when Carstens jumped over the railing. "F" represents where Carstens went over the railing.

Involved Officer 1 reported to dispatch that Carstens had jumped and that a boat was required to rescue Carstens. He said that he began to scream at Mr. Carstens to swim back toward a pillar in the water, which Involved Officer 1 shined his flashlight on, but Mr. Carstens

kept swimming slowly in the opposite direction. Involved Officer 1 wanted to save Mr. Carstens but knew he could not jump from that height, which was over 50 feet high. He did not know the depth of the water either. He ran to the column hoping to find a ladder that he could use to rescue Carstens, but he was unable to find a place to climb down to the water. He ran back to his earlier position on the bridge and heard Carstens choking on water and gasping for breath. He directed him to float on his back, which Mr. Carstens did not respond to. Mr. Carstens then went under the water entirely which Involved Officer 1 recalled reporting to dispatch. He estimated that SPD's marine team arrived roughly 12-15 minutes after Carstens went under water.

b. Civilian 1

Civilian 1 was interviewed on August 20, 2018. She was Mr. Carstens' girlfriend. She told police that the couple went out to dinner and drinks that evening and then went home. She stated that Mr. Carstens abuses alcohol and narcotics. She believed that Mr. Carstens continued to drink alcohol after she went to bed because she found an empty bottle of hard alcohol in the house when she woke the next morning. She stated the couple had some rocky patches but were doing well. He told her that night that he loved her and this was the happiest he has ever been. She also said that Carstens has been suicidal since she met him two years ago, and that he is very impulsive. She also stated that he fled from the police when he was last arrested. She stated, "…so I'm just thinking he just kind of panicked in that moment and it's just, it's just kind of a tragedy."

In a subsequent voicemail left by Civilian 1 for Officer 3 on August 21, 2018, she told Officer 3 that Mr. Carstens told her a month prior that he would rather die than go back to jail.

4. MEDICAL RECORDS, AUTOPSY REPORT & TOXICOLOGY

Mr. Carstens was taken by a SPD harbor police boat to Madison dock where he was given lifesaving care by firefighters. He was transported to Harborview Medical Center to receive additional lifesaving treatment. Upon admission to the Emergency Department, Mr. Carstens was administered 12 minutes of Advanced Cardiovascular Life Support, including rewarming his body. Mr. Carstens did not respond to treatment. Emergency Department Doctor 1 pronounced Mr. Carstens deceased at 3:26 AM.

The Medical Examiner subsequently performed an autopsy on Mr. Carstens and concluded, "This 31-year-old male, with a past medical history of heroin use, was witnessed to jump off a bridge into Lake Washington while handcuffed after being apprehended by police. He was recovered from the water after a prolonged extrication. Autopsy and investigation determined the cause of death to be asphyxia due to drowning. The manner of death is classified accident."

Washington State Patrol Forensic Scientists examined a blood sample from the Subject and concluded that it contained 0.10 g/100mL of alcohol and 0.34 mg/L of methamphetamine.

5. BODY-WORN & IN-CAR VIDEO

WSP did not provide body-worn video cameras to its troopers so there is no body-worn video of the arrest. According to Officer 1, the in-car video on his vehicle had recently malfunctioned and was being repaired, so there is no video footage of the arrest. Below is a still photograph from the first trooper to respond after Carsten jumped. Involved Officer 1 can be seen on the right peering over the cement barrier into the water.



Figure 4: Still photo of Involved Officer 1 from Officer 1's ICV.

V. LEGAL STANDARD

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.[5] In addition, the State must disprove the existence of a defense that negates an element of the crime.[6] The State will file charges if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defenses that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder.[7]

Additionally, prosecution should not be declined because of an affirmative defense unless the affirmative defense is of such nature that, if established, would result in complete freedom for the accused and there is no substantial evidence to refuse the affirmative defense.[8]

Second degree manslaughter by criminal negligence has two elements: (1) the defendant engaged in conduct amounting to criminal negligence; and (2) the decedent died as a result of the defendant's negligent acts.[9] Criminal negligence for manslaughter involves the defendant's failure to be aware of a substantial risk that a death may occur and this failure constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation.[10]

VI. ANALYIS AND CONCLUSION

In this instance, neither element of criminally negligent second degree manslaughter are met. First, there was no substantial risk of death to which Involved Officer 1 should have been aware. To Involved Officer 1, this encounter likely appeared like a routine arrest for DUI. Involved Officer 1 could not have predicted that Mr. Carstens would jump into Lake Washington. Specially it is not unusual for an arrestee to plead with an officer not to be arrested. Additionally, although Involved Officer 1's patrol car was parked on the right shoulder of the road close to the side of the bridge, Involved Officer 1 was not aware of Mr. Carstens' impulsiveness that his girlfriend later described to investigators. He was also unaware of the

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[5] RCW 9A.04.100; WPIC 4.01.
[6] WPIC 14.00.
[7] KCPAO Filing and Disposition Standards.
[8] Id.
[9] RCW 9A.32.070.
[10] Washington Pattern Jury Instructions—Criminal ("WPIC")10.04 and WPIC 28.06 analyzing State v. Gamble (2005) 154 Wn.2d 457, 467–68.

statement Mr. Carstens made that he would much rather die than be incarcerated again. Similarly, he could not have known of Mr. Carstens past suicide attempts.

Additionally, the evidence suggests that Involved Officer 1's conduct was within the standard of care one would expect a reasonable police officer to use. The trooper held onto Mr. Carstens while walking to the back of his patrol car. While attempting to place Carstens in the police car, he put his hand on Carstens' back and began to guide him toward the car when Carstens unexpectedly pivoted the other direction and jumped over the barrier into the lake. Involved Officer 1 then grabbed onto the leg of Carstens' paints in an attempt to prevent him from going over the bridge into the water. Involved Officer 1 immediately informed dispatch of the events and requested marine assistance. There was no readily accessible point of access to the water that would have allowed the trooper to rescue Carstens. He could not be expected to risk his life by jumping over 50 feet down into the cold water of Lake Washington with no life preserver and with a real risk that Mr. Carstens could accidentally drown him in the process.

Thus, Involved Officer 1 did not ignore a substantial risk of death, and he acted in accordance with what a reasonable officer would do if confronted with this unfortunate and deeply saddening situation. As a result, no criminal charges against Involved Officer 1 are warranted.

VII. RECOMMENDATION FOR INQUEST

An inquest is mandatory to determine the manner, facts, and circumstances of Mr. Carstens' death, unless the Executive determines the role of law was *de minimis* and did not contribute in any discernable way to a person's death. Executive Order PHL 7-1-5 EO. Given the facts outlined in the investigation, it is the Team's belief that an inquest is required under the current Executive Order.