



18 October 2017

**FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOLLOWING THE
INQUEST INTO THE DEATH OF MI'CHANCE DUNLAP-GITTENS**

I. INTRODUCTION

Mi'Chance Dunlap-Gittens died of gunshot wounds on January 27, 2017, as a result of being shot by law enforcement officers. This memorandum summarizes the testimony at the inquest into the death of Mr. Dunlap-Gittens, which was conducted before King County District Court Judge 1 from October 9, 2017, through October 13, 2017. During the inquest, Attorney 1 represented King County; Attorney 2 and associate Attorney 3 represented the family of Mr. Dunlap-Gittens; Attorney 4 represented King County Sheriff's Office Involved Officer 1, Involved Officer 2, and Involved Officer 3, and Deputy Prosecuting Attorney 1 assisted court. A six-member jury answered 36 interrogatories. In addition to summarizing the testimony, this memorandum outlines the decision of the King County Prosecuting Attorney not to file criminal charges against Involved Officer 1, Involved Officer 2, and Involved Officer 3.

II. INQUEST TESTIMONY

In January 2017, a homicide occurred in Sammamish at the Beaver Lake Park. During the investigation into that homicide, King County Sheriff's Office Major Crimes detectives discovered a person of interest, Civilian 1. The detectives developed probable cause to arrest Civilian 1 for property crimes and wanted to question him for the homicide. On January 27, 2017, law enforcement officers undertook an undercover operation to draw out Civilian 1 onto the street to affect his arrest. The operation was a ruse to purchase alcohol from Civilian 1, who was advertising the sale of it on Facebook. King County Sheriff's Office Detective 1 and Detective 2 were acting in an undercover capacity to purchase the alcohol from Civilian 1.

At around 10:30 p.m., Detective's 1 and 2 drove an unmarked minivan to the area where the officers arranged to meet Civilian 1. The general area was 216th Street and 29th Avenue South, in Des Moines, Washington. Neither undercover officer wore tactical vests nor had markings that indicated they were officers. In the back of the minivan was one of three arrest teams. The officers in the back of the minivan were Involved Officer 1, Involved Officer 2, and Involved Officer 3. The two other arrest teams were located south and north of the area where the undercover officers were to meet Civilian 1. The arrest team in the back of the minivan all wore tactical vests with King County Sheriff's Office insignia. Involved Officer 3's "Sheriff" insignia was only on the back of his tactical vest. There was a visible sheriff's star on the front of his vest.

While the minivan traveled north on 29th Avenue South, the officers noticed two black males approach the minivan. Some officers observed alcohol bottles in the hands of the males. When the males got closer to the minivan, one of the officers recognized Civilian 1 from the earlier briefing, where a picture of Civilian 1 had been shown. Involved Officer 1 opened the van door and several of the officers in the rear of the van gave commands to the effect of “Sheriff’s Office,” “Police,” and “Get on the ground.”

Involved Officer 1, Involved Officer 2, and Involved Officer 3, saw the individual later identified as Mi’Chance Dunlap-Gittens, raise what appeared to be a firearm out of his front pocket/pants area. Whilst the view of Involved Officers 2 and 3 was obstructed by Involved Officer 1's body as he exited the van, those former officers saw a muzzle flash and believed that Involved Officer 1 had been shot. Involved Officer 1 shot at Mr. Dunlap-Gittens whilst exiting as he viewed Mr. Dunlap-Gittens’ firearm arching up towards him and the other occupants of the van. Some of the testimony supported that it was possible Mr. Dunlap-Gittens shot at the officers. Several witnesses heard two shots in quick succession, a pause, and then the other shots. Mr. Dunlap-Gittens had a fully operational gun with no bullet in the chamber, suggesting one could have been shot. However, no shell casings were located from Mr., Dunlap-Gittens firearm and ultimately the jurors found unanimously in interrogatory #19, that Mr. Dunlap-Gittens did not shoot at the officers.

Civilian 1 did testify at the inquest proceeding, after an Order to Compel was signed by the Court and Civilian 1 was assigned counsel. Civilian 1 testified that Mr. Dunlap-Gittens brought a gun to the encounter with the undercover officers. He also testified that he did not see Mr. Dunlap-Gittens shoot or point the gun at the officers. He was cross-examined on this issue at length, as he originally told interviewing detectives and some of his friends that Mr. Dunlap-Gittens pulled out his gun and shot at the officers one time, and then the officers returned fire. Civilian 1 testified that he only told interviewing detectives and friends that because at the time of those original statements he “believed” that Mr. Dunlap-Gittens shot at the officers. His testimony at the inquest was that he did not see whether Mr. Dunlap-Gittens shot at the officers, as he immediately turned to run away.

After Involved Officer 1 shot at Mr. Dunlap-Gittens, Mr. Dunlap-Gittens then turned and began running up a steep driveway. Involved Officer 1 gave commands for Mr. Dunlap-Gittens to “drop the gun.” Mr. Dunlap-Gittens continued to hold a firearm in his hand as he ran and looked back at the detectives. Mr. Dunlap-Gittens was running towards an elevated position, a tactically advantageous position, and near occupied residences.

Involved Officer 2 and Involved Officer 3 repeatedly shot at Mr. Dunlap-Gittens. Mr. Dunlap Gittens fell to the ground in the middle of the driveway and officers located his firearm- a 9 mm Hi Point pistol- near his feet. The firearm was fully functional.

Life-saving measures were made on Mr. Dunlap-Gittens and he was transported to Harborview Medical Center, where he was later pronounced dead. Medical Examiner 1 conducted an autopsy on the body of Mr. Dunlap-Gittens. In his medical opinion, the cause of death was by gunshot wounds. Mr. Dunlap-Gittens was found to have 8.8ng/mL of active THC in his body.

III. INTERROGATORIES

The jurors answered thirty six interrogatories at the conclusion of the case. The jury's answers to the interrogatories are attached to this memorandum.

IV. LEGAL ANALYSIS

The King County Prosecuting Attorney's Office filing standards state that cases will only be filed if:

Sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact-finder.

Whether the shooting of Mi'Chance Dunlap-Gittens was a criminal act turns on the applicability of the justifiable homicide statute. Justifiable homicide and/or the use of deadly force by a police officer is defined in RCW 9A.16.040:

(1) Homicide or the use of deadly force is justifiable in the following cases . . . :

(c) When necessarily used by a peace officer...

(i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony...

(2) In considering whether to use deadly force under subsection (1)(c) of this section to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others.

(3) A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

This statute sets out a three-part analysis to determine whether the use of deadly force by a police officer is justified.

First, the person against whom deadly force is used must be a "*person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony.*" At the time Involved Officer 1 shot at Mr. Dunlap-Gittens, he had a reasonable belief that Mr. Dunlap-Gittens was about to shoot Involved Officer 1 or the other officers because Mr. Dunlap-Gittens pulled out a firearm and was arching the gun in the officers' direction. It is unclear if Mr. Dunlap-Gittens fired a shot, but irrespective of whether he did, Involved Officer 1 had a reasonable belief that Mr. Dunlap-Gittens was about to do so because he pointed a gun at the officers. Involved Officers 2 and 3 had reasonable beliefs that

Mr. Dunlap-Gittens had just committed a felony or was going to as well. Both officers believed that Mr. Dunlap-Gittens just shot at Involved Officer 1. They also observed Mr. Dunlap-Gittens raising a firearm at them and observed Mr. Dunlap-Gittens turn to run to a tactically advantageous position while still armed. The officers commanded Mr. Dunlap-Gittens to “drop the gun,” but he did not comply. From all of these actions the three shooting officers could reasonably believe that Mr. Dunlap-Gittens had committed, was committing, and was attempting to commit a felony.

Second, the statute requires that “*the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others.*” The inquest testimony supports a finding that all three shooting officers had probable cause to believe that Mr. Dunlap-Gittens, if not immediately stopped, would seriously harm or kill someone within close proximity to him. Although ordered to drop the gun, Mr. Dunlap-Gittens continued to keep his firearm in his hand. He retreated to a tactically advantageous area, and he retreated to a highly populated area, namely an apartment complex. Furthermore, he ignored commands to stop and drop the firearm. In fact, the inquest jury unanimously found that Involved Officer 1 and Involved Officer 2 believed that Mr. Dunlap-Gittens posed an imminent threat of serious bodily harm to the officer or others at the time the officer fired his weapon. (Interrogatories #21 and #30). Five out of six jurors found that Involved Officer 3 believed that Mr. Dunlap-Gittens posed an imminent threat of serious bodily harm to the officer or others at the time the officer fired his weapon; one juror indicated “unknown.” (Interrogatory #32). Although one juror indicated unknown as to Involved Officer 3, the jurors were unanimous that Involved Officer 3 saw Mr. Dunlap-Gittens pull out a firearm in the direction of the detectives, believed that Involved Officer 1 had been shot, and was concerned with the elevated position Mr. Dunlap-Gittens was running to. (Interrogatories #17, # 22, and #28).

Third, *the use of force must be “necessary.”* Necessary means that no reasonable effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to affect the lawful purpose intended. RCW 9A.16.010(1). The evidence elicited at the inquest showed the officers had no viable alternative but to fire their weapons at Mr. Dunlap-Gittens. Involved Officer 1, Involved Officer 2, and Involved Officer 3 were in charge of the safety and protection of each other and those in the surrounding area. Mr. Dunlap-Gittens pulled out a gun on the officers, who were wearing sheriff’s office insignia on their clothing. Mr. Dunlap-Gittens continued to hold on to his firearm, a deadly weapon, despite commands to drop it and he moved toward the top of the steep driveway and toward an apartment complex. Had the officers permitted Mr. Dunlap-Gittens to continue to run toward the nearby apartment complexes with a gun, the officers would have left other people in the way of possible harm. The apartment complex had four units and neighboring apartments which are in close proximity. Mr. Dunlap-Gittens was also moving towards a more tactically advantageous position that allowed him to shoot down upon the officers and the minivan, which had undercover officers in it with no body armor. The use of a taser or other apparatus would not have been reasonable considering how quickly the events unfolded and the amount of force the officers encountered. From when the minivan door opened to when Mr. Dunlap-Gittens fell to the ground was approximately three to four seconds. These events occurred very rapidly. The three officers were forced to make an immediate judgment call, based on their beliefs that they themselves or others were about to be injured or killed. Given the sequence of events and the rapidity with which they occurred, a jury would conclude that Involved Officer 1, Involved Officer 2, and Involved Officer 3 all had no alternative but to shoot.

In addition to the three-part test for justifiable homicide outlined above, the statute also provides a clear and complete defense to a criminal charge when police officers use deadly force in good faith. “A *public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.*” There is no evidence that Involved Officer 1, Involved Officer 2, and Involved Officer 3 acted in any way other than in the good faith performance of their duties.

V. CONCLUSION

In order to prosecute Involved Officer 1, Involved Officer 2, and Involved Officer 3 for any degree of homicide, the State would have to disprove justifiable homicide. There is no evidence to overcome this defense. The evidence elicited at this inquest demonstrated that Mi’Chance Dunlap-Gittens had armed himself with a firearm and would not obey commands to disarm. Involved Officer 1, Involved Officer 2, and Involved Officer 3 believed that Mr. Dunlap-Gittens would either kill or seriously injure them or others at the scene. Under these circumstances, the use of deadly force was justified. Consistent with the King County Prosecuting Attorney’s Office Filing Standards, no criminal charges should be filed as a result of this incident.