



December 15, 2017

**FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOLLOWING THE
INQUEST INTO THE DEATH OF GIOVONN JOSEPH-MCDADE**

I. INTRODUCTION

This memorandum is intended to provide a summary of the testimony presented at the inquest into the death of Giovonn Joseph-McDade, who died of gunshot wounds fired by Kent Police Involved Officer 1 on June 24, 2017. The inquest was conducted December 11 through 13th, 2017, before King County District Court Judge 1. The family of Joseph-McDade was not represented during the inquest hearing. Attorney 1 and Attorney 2 filed a limited notice of appearance on behalf of the family on Wednesday, December 6th. However, Judge 1 denied a continuance request and they withdrew from the case. The City of Kent and Involved Officer 1 were represented by Attorney 3. Deputy Prosecuting Attorney DPA 1 assisted the court. A six-member jury answered 23 interrogatories. This memo also outlines the decision of the King County Prosecuting Attorney not to file criminal charges against Involved Officer 1 who fired his weapon on the morning of June 24, 2017.

II. JURY

A jury was selected on Monday, December 11th from a panel of seventeen. Juror #12 was excused by Judge 1 as he indicated he was familiar with the case, had been to events planned by community organizations where the family of Mr. Joseph-McDade spoke, and he didn't feel he could be fair and impartial. There was one challenge by Attorney 3 to juror #8, and juror #1, #6, and #12 were excused. Juror #4 was not brought into the courtroom with the panel as she was a longtime clerk from Burien and Judge 1 had worked closely with her. Jurors #2, #3, #5, #7, #10, #11, and #13 were seated. On the third day of testimony, juror #11 was not present by 9:00 am, when testimony was set to begin. The court waited until 9:30 and then proceeded with testimony. Juror #11 appeared after 9:45, and was excused by the court.

III. INQUEST TESTIMONY

Joseph-McDade was shot and killed by a Kent Police Officer on the morning of June 24, 2017 after eluding a pursuing police vehicle and driving in the direction of Involved Officer 1.

Nine witnesses were called to give testimony about the events leading up to, and the circumstances surrounding, the shooting death of Mr. Joseph-McDade. These witnesses were:

1. *Des Moines Police Lead Detective 1*
2. *Kent Police Involved Officer 1*
3. *Kent Police Officer 1 – Officer on the scene*

4. *Kent Police Sergeant Officer 2* – Officer on the scene
5. *Kent Police Recruit Officer 3* – Recruit on the scene
6. *King County Medical Examiner 1*
7. *Renton Traffic Detective Officer 4* – Collision Reconstruction
8. *Civilian 1* – Resident who witnessed incident
9. *Civilian 2* – Resident who witnessed incident

Summary of Facts

On June 24, 2017, a few minutes after midnight, Kent Officer 1 observed a late model tan Honda at the Arco AM/PM, located at 10402 SE 256th Street. He ran the plates to see if the car was stolen (given the model and age) and it came back with canceled registration. Observing the car for several minutes, he saw an individual get in the back seat and then quickly exit. He also observed the driver go into the store at the gas station a few times. Officer 1 followed the Honda, now occupied only by a driver and a front passenger, as it left the gas station and parked at the Applebee's. At this time, he activated his lights and attempted to make a traffic stop. When Officer 1 had pulled behind the tan Honda, the driver, Joseph-McDade exited the vehicle and attempted to approach Officer 1. Officer 1 ordered Joseph-McDade back into his vehicle and radioed for another unit to respond as Mr. Joseph-McDade's response had caused him concern. The Honda then quickly left its parking spot and turned onto 104th Ave. SE. Involved Officer 1 was close by, heard the call from Officer 1 requesting a second unit, and joined Officer 1 in the pursuit of the Honda.

The Honda turned westbound onto SE 244th Street, with speeds up to 60 miles per hour, while being pursued by two fully marked Kent Police SUV's with activated lights and sirens. At about the 9900 block, SE 244th becomes a cul-de-sac. The Honda drove to the north side, followed closely by Officer 1. Officer 1 attempted a PIT maneuver, and while a collision occurred, it did not disable the Honda, which proceeded around the cul-de-sac. Involved Officer 1 drove to the west to cut off the Honda and box it in. The Honda pulled close to Involved Officer 1 and stopped when it could no longer drive forward. At that time, Involved Officer 1 exited his vehicle. He was wearing his police issued jumpsuit and he drew his weapon, tapped on the driver's window, and ordered him to get out of the car. Joseph-McDade struggled with the gear shift, causing the Honda's engine to rev. Then, he quickly reversed and oriented his vehicle so that it was now facing Involved Officer 1. Involved Officer 1 stood at the rear of his vehicle, in the path of the Honda's headlights. Officer 1 was in fear for Involved Officer 1's life, and when he heard the Hondas engine rev again and accelerate towards Involved Officer 1, he attempted to make contact with the Honda, with his intent being to stop the Honda or force it to change direction. Involved Officer 1 was focused on the Honda and was not aware of where Officer 1 was. He was standing to the rear of his vehicle and when the Honda drove at him he fired two shots through the windshield. There was a collision between the Honda and Officer 1, prior to shots being fired, but it did not change the direction of the vehicle.

The Honda drove through the gap between the two Kent Police Department SUVs, and came to rest down the street in a park. There was no contact between the tan Honda and Involved Officer 1's vehicle. The passenger in the vehicle, Civilian 3, could not be located to testify at the inquest hearing. A video re-enactment, conducted by Des Moines PD, indicates that Joseph-McDade slowly lost consciousness as the car drove down the street, which resulted in it

leaving the road and coming to rest in the grass. Involved Officer 1 and Officer 1 both notified dispatch of shots fired and got back into their vehicles to follow the Honda. Civilian 3 was secured, and later booked on outstanding warrants. Joseph-McDade was removed through the passenger side of the Honda, and life-saving efforts were made. Joseph-McDade had been shot twice and he was pronounced deceased at the scene.

The scene was secured and the Valley Investigation Team was called in to investigate, with Des Moines Police Department Lead Detective 1 acting as primary on the case. Statements were collected from several witnesses, photographs of the scene were taken, and physical evidence was collected. Lead Detective 1 also requested the help of Renton Police Department's Traffic Investigative Unit to map the scene and do a rendition of the collision. Officer 4 and Officer 5 worked with drone videos, drone photographs, as well as measurements of the cars involved in the accident, to create a video that simulated the time of the incident and the position of the vehicles.

An autopsy was conducted by Medical Examiner 1 on June 26th. It was confirmed that Joseph-McDade was shot twice, with one bullet perforating his heart. There was no way to determine in which order the injuries occurred. Medical Examiner 1 also requested a lab report, which showed that Joseph-McDade had Alprazolam, MDA, MDMA and THC in his system at the time of his death.

IV. INTERROGATORIES

The jurors answered 23 interrogatories at the conclusion of the case. All six jurors unanimously answered yes to all but one of the questions asked. The only question at issue was #10: *Did Involved Officer 1 activate his lights and siren and join the pursuit of the Honda?* In this case there was quite a bit of testimony as to the timing of lights and sirens, and the fact that when Involved Officer 1's and Officer 1's vehicles were placed in park, their sirens were automatically turned off. This question was not critical, and the discrepancy was simply a result of the fact that some jurors read that as 'simultaneous' while others read it more generally.

V. LEGAL ANALYSIS

Under the standards of the King County Prosecuting Attorney's Office, criminal prosecution is warranted whenever

“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 Joseph-McDade 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 the 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 fired at Joseph-McDade, he had a reasonable belief that Joseph-McDade was about to strike him with his vehicle. Testimony from Officer 1 and Involved Officer 1 established there were a number of different routes that Joseph-McDade could have taken to avoid Involved Officer 1. Rather than continue to reverse away from the police vehicle, he turned so that his vehicle was directly facing Involved Officer 1 and he put the car in drive. Joseph-McDade’s deliberate act of facing his vehicle in the direction of Involved Officer 1, putting his car in drive, revving the engine, and accelerating forward appeared to Involved Officer 1 to be intentional. Given his actions, it was reasonable for Involved Officer 1 to believe that Joseph-McDade had the intent to strike him with his vehicle. Also, it is important to note that prior to the shooting, Joseph-McDade had willfully ignored commands from two pursuing police vehicles for approximately a mile, both with active lights and sirens, committing the felony Attempt to Elude a Pursuing Police Vehicle. From these actions Involved Officer 1 could reasonably believe that Joseph-McDade had committed a felony with his attempt to flee, and was attempting to commit a felony when driving towards him with his vehicle.

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 Involved Officer 1 has probable cause to believe that Mr. Joseph-McDade, if not stopped, would seriously harm or kill someone within close proximity to him. Joseph-McDade had previously eluded the police, drove at a high rate of speed, and entered a residential neighborhood. He had several opportunities to stop and yield to the police, but when boxed in, turned his vehicle and faced the officer, driving in his direction. The six jurors found unanimously that Involved Officer 1 believed that Joseph-McDade posed a threat of death or serious bodily injury. (Interrogatory #21).

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. RCA 9A.16.010(1). The evidence elicited at the inquest showed that Involved Officer 1 had no viable alternative but to fire his weapons at Joseph-McDade. Joseph-McDade was in a vehicle and he had continuously ignored commands to pull over or stop. He paused for a matter of seconds before reversing and pointing his vehicle in the direction of Involved Officer 1 and driving towards him. Involved Officer 1 was forced to make a split second decision based on his belief that he would be struck by Joseph-McDade’s vehicle. Given the sequence of events, and the rapidity with which they occurred, a jury would most definitely conclude that Involved Officer 1 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 acted in any way other than in the good faith performance of his duties.

VI. CONCLUSION

In order to prosecute Kent Police Involved Officer 1 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 Mr. Joseph-McDade had attempted to elude a pursuing police vehicle, would not obey commands on several occasions, and attempted to drive his vehicle at Involved Officer 1. Involved Officer 1 believed that Joseph-McDade would either kill or seriously injure himself or another person at the scene. This fact is further supported by the testimony of Officer 1, present at the time of the shooting, who took measures to intervene in the situation because he was in fear for Involved Officer 1’s life. Under these circumstances, we conclude that the use of deadly force was justified. We therefore decline to file criminal charges as a result of this incident.