



September 22, 2017

## **FACTUAL FINDINGS AND LEGAL CONCLUSIONS FOLLOWING THE INQUEST INTO THE DEATH OF WILLIAM STOKES**

### **A. INTRODUCTION**

The purpose of the memorandum is to provide a summary of the testimony presented at the Inquest into the Death of William Stokes and a legal analysis of the potential criminal liability and statutory defenses on the part of Kent Police Involved Officer 1. The inquest was conducted from September 11 to September 13, 2017, before King County District Court Judge 1. Involved Officer 1 was represented by Attorney 1. Senior Deputy Prosecuting Attorney, DPA 1, assisted the court. Mr. Stokes had one surviving relative, a daughter, who lives in Louisiana. She did not attend the inquest, nor did she choose to retain an attorney. A six-member jury answered 27 interrogatories. This memo outlines the recommendation of the King County Prosecuting Attorney regarding whether to file criminal charges against Kent Police Involved Officer 1.

### **B. SUMMARY OF INQUEST TESTIMONY**

On March 22, 2017, at about 2158 hours, Des Moines Police responded to a 911 call from Civilian 1. Civilian 1 lived at a house at 1723 S 234<sup>th</sup> Street, in Des Moines, WA. He had invited his childhood friend, William Stokes, to come up from Louisiana to stay with him as things had not been going very well for Stokes in Louisiana. Stokes had been staying with Civilian 1 for about a month on March 22. On this day, Stokes had been drinking and returned to Civilian 1's house, but Civilian 1 would not let Stokes in the house due to his intoxication. Stokes became angry and was honking the horn on his car, parked in the driveway, repeatedly, and was yelling at Civilian 1 to let him in. Civilian 1 called 911 to report an "unwanted subject." Civilian 1 explained the relationship and the situation to 911, and said that he had to work in the morning, and just wanted Stokes to go away or be quiet. He did not want Stokes to know that it was he, Civilian 1, who was calling 911. A neighbor also called 911 to report the noise and requested police respond as well.

Des Moines Police Detective Officer 1 and Officer 2 responded to the call, separately, in their patrol cars. Officer 1 arrived first and contacted Stokes, who was in the driveway. There was a Mustang, later determined to belong to Stokes, parked in the driveway. Stokes had a large screwdriver in his hands and was looking at something in the trunk of the Mustang. Officer 1 asked Stokes to put down the screwdriver. Stokes complied and Officer 1 approached on foot. He could tell that Stokes was intoxicated, due to his manner of speaking, that he was unsteady on his feet and smelled of intoxicants. Officer 1 and Stokes conversed and Officer 1 was able to get Stokes to calm down. Officer 2 went inside

the house to contact Civilian 1. The officers were able get Stokes and Civilian 1 to agree that Stokes could come inside the house, but he needed to go to bed and not cause any additional disturbance. Officer 1 and Officer 2 left the house at about 2214 hours.

Shortly before mid-night, Officer 1 was contacted by dispatch that Civilian 1 wanted to speak to him. Officer 1 and Civilian 1 spoke on Officer 1's department cell phone. Civilian 1 reported that Stokes had not gone to bed. He said Stokes was up, walking around inside the house, and that Stokes was agitated. Officer 1 said that it didn't sound like a crime was occurring, but if Stokes' behavior escalated, and Civilian 1 felt unsafe, to call 911 again.

At about 12:35 am, on March 23, 2017, Civilian 1 called 911 again, and reported that Stokes had armed himself with a knife and would not let him out of his room. After this initial report to the 911 operator, he said almost nothing more, but the line was open until after the shooting occurred. During the course of the call, Civilian 1 can be heard telling Stokes to let him out of his room, and after police arrived, telling Stokes to go open the door for the police. Stokes can also be heard in the background, yelling at Civilian 1 and at the police for the duration of the call. The recording of this call was admitted during the inquest.

Des Moines PD Officer 1, Officer 2, Officer 3 and Officer 4 all responded, in their separate patrol cars to 1723 S 234<sup>th</sup> Street, arriving at approximately 12:42 am on March 23, 2017. They were all in uniform. Officer 1 is a firearms specialist and brought his patrol rifle with him when he got out of his car. The Des Moines officers met and approached the house on foot. Officer 2 and Officer 1 informed the others, and dispatch, that this was the second time they had been to this house that night. The house was dark and quiet when they approached. No one answered the door.

Officer 3 moved his car closer to the home, and turned on his blue and red lights so that whoever was inside would know that it was the police who were outside. Officer 2 and Officer 1, took a walk around the back side of the house, but saw no one. Once back at the front door, they noticed Civilian 1 in a second story window. The house, a split level, had a driveway and garage under the area of the bedrooms. Civilian 1 could not exit the house via the window due to the height of the window from the driveway. Officers got Civilian 1 to open the window and they began conversing with Civilian 1. He told them Stokes was armed with a knife and would not let him out of his room. Civilian 1 was afraid to try to leave the room and open the front door. Civilian 1 told the police how to open the glass storm doors to the house (the house had double doors on the front entry, like French doors, but they were solid wood, with glass storm doors on the outer side).

Officers propped open the storm doors, and suddenly heard loud thudding, like someone running or coming down the stairs fast. Suddenly the door flew open and Stokes took a step or two out the front door. He was described as about 6 feet tall and 180 lbs. He was described as angry, agitated and shouting. He had a long machete in his hand. This machete was later measured to be slightly over 2 feet in length. Stokes yelled to police that they were going to have to shoot him and that it was a good night to die.

The officers, who were all in the front yard area, near the door, all retreated. They drew their service weapons, and ordered Stokes to drop the "knife," and to get on the ground. He did not comply, went back in the house, and slammed the door. Officer 1 testified that he could hear the sounds of Stokes continuing to shout and yell from inside, talking about getting shot. He could

hear the sound of metal on metal, as if the machete was being hit against something inside the house.

Officer 4 called for backup and asked for a firetruck to bring a ladder so they might be able to get Civilian 1 out his bedroom window for his safety. A call for Valley SWAT was also made. The Des Moines officers discussed the possible use of lethal force if Stokes continued to threaten the officers. Stokes made a 911 call about this time. He told the dispatcher that he "had a hostage situation goin' on." When asked if he was armed, he said, emphatically, "yes!" When asked if he had a gun or a knife, he replied, "All!" He then told them that it was a "good night to die." And then he hung up. 911 attempted to call Stokes back but the calls all went to voice mail. This call was also admitted during the inquest.

Stokes made a second appearance at the front door, swinging the machete around and still shouting down the officers, demanding that they shoot him. Again officers drew their weapons, yelled to Stokes that they did not want to shoot him, to put down the machete, and get on the ground. Officer 3 and Officer 4 deployed their tasers, but they did not connect and Stokes went back inside, slamming the door behind him. By now, Tukwila PD Officer 5 and Officer 6 arrived on scene and were sent to cover the back door. Officer 5's car video captured the rest of the incident (although it is a very dark, grainy quality video). The in car video was admitted during the inquest.

Meanwhile, Kent Police Officer, and Valley SWAT team leader, Involved Officer 1 was on duty in Kent, in uniform and in a patrol car, when he heard the call for SWAT to respond to the scene. He got the call just before 1 am, and arrived at 1:06 am. Renton Police Officer, and also a SWAT team leader, Officer 7 heard the call while he was on patrol and responded, but did not arrive until approximately 1:10 am.

After the call for SWAT, but before he arrived, Involved Officer 1 listened to the details of the call via the radio and on the CAD. He learned of the hostage, Civilian 1, and that Stokes was armed. He thought that the situation must be grave if police were considering using a fire department ladder to extract Civilian 1 from a second story window. In all of his years as a police/SWAT officer, he hadn't heard of anyone taking this kind of action to rescue a hostage.

When he arrived, he stopped his car in the street, between two Tukwila PD cars. He put on his SWAT vest and helmet and got his rifle from the car and walked up to the driveway area of the house. He noticed Civilian 1 in the second story window and described him as someone who looked urgently to the officers to help him, like someone who was waiting to be rescued as if the house were on fire. Involved Officer 1 could see that there were multiple officers in the yard area of the house. He approached Officer 4 and verified with her that other officers were covering the back door, in case Stokes should try to exit via the back door and escape or attack unsuspecting officers in the front yard. He was just about to ask for a briefing from Officer 4, when Stokes yanked the front door open again.

Involved Officer 1 aimed his rifle at the door area. Stokes again yelled and screamed at the officers to shoot him, he swung the machete around and made stabbing motions with it towards the officers. The officers, again with weapons drawn, all yelled for him to put down the machete and to get on the ground, but again he refused and turned to go back inside the house. Involved Officer 1 testified that he was highly concerned for the safety of the hostage, who was in a room

right next to the top of the stairs. Civilian 1, barricaded in his room was only about 15 feet from where Stokes was when Stokes was standing at the front door. Given the proximity of the front door to the bedroom, and the bedroom window, he also knew it was far too dangerous to try to get Civilian 1 out of a second story window via a ladder. Involved Officer 1, after considering the danger Stokes presented to Civilian 1 and the officers at the scene, fired seven shots in quick succession at the door as Stokes was trying to close it after returning to the house. He could see that Stokes had gone down in the entry way, but the door was only open a few inches, and no one could see any more than that.

The fire department arrived with the ladder, and Renton Officer 7 arrived at about this time. Involved Officer 1 and other Des Moines officers took the ladder to the window, while Officer 7 covered the front door with his SWAT rifle. Civilian 1 was reluctant to go out the window and down the ladder (he is about 50 years old), but eventually did so and was taken to a waiting police car to stay warm.

Officer 2, Officer 7, Officer 8, and Officer 3, used the ladder to try to push the door open a little further so they could see if Stokes was injured, deceased, or lying in wait for them. They did enter the house, and Stokes was down in the front entry way, the machete near his hand and a large folding knife in his pocket. The house was cleared. Officer 7 testified that the door to the bedroom Civilian 1 had been in was locked. He kicked in the door, which broke the wood, but the door would still not open because there was so much furniture piled in front of it. Civilian 1 had told officers that he had barricaded his door to protect himself from Stokes. The door had multiple punctures in it, which appeared consistent with the size and shape of machete blade.

Medics were called in as soon as the house was cleared and it was determined to be safe for them to enter. The defendant was determined to be deceased at the scene. The medical examiner, Medical Examiner 1, arrived later in the morning and removed the body. Medical Examiner 1 opined that death was within seconds of the shooting.

Lead Detective 1 with the Federal Way Police Department was assigned as the lead investigator. He collected the video from Tukwila Police Officer 5's car, all of the 911 calls, and the radio traffic. He also supervised a total station diagramming of the scene, photos of the scene, and the processing of Involved Officer 1. Lead Detective 1 and his team also collected evidence at the scene and interviewed Civilian 1, and several of Stokes' friends from Louisiana and his daughter (an adult). Lead Detective 1 also examined Stokes' phone and Civilian 1's phone. Stokes sent a text to Civilian 1 during this altercation, in which he threatened to kill Civilian 1. The shell casings from Involved Officer 1's rifle were recovered from the driveway area, which is consistent with his testimony, and others, as to where he was standing when he fired the rifle. There were seven casings recovered, seven bullet holes in the door and his rounds were down by seven bullets. A machete, measuring over 2 feet in total length, was recovered near Stokes' body. The sheath to this machete was recovered from the bedroom Stokes had been using at Civilian 1's house. Stokes also had a large folding knife in his pocket. There were taser probes imbedded in the door and on the stairs inside the house. Lead Detective 1 opined that these had become imbedded in the stair carpet when they missed hitting Stokes as he re-entered the house after the attempt to tase him failed. There was an empty rum bottle in the driveway. And the screen to the second story window that Civilian 1 was in during this incident, was in the driveway.

Medical Examiner 1 testified that he performed an autopsy on Stokes on March 24, 2017. He testified that Stokes had seven obvious rifle wounds (actually eight, but one bullet entered and passed through Stokes' upper arm, and then entered his chest cavity). Medical Examiner 1 told the jury that wounds one through four entered the chest cavity, and that any one of these wounds would have been almost instantly fatal. These first four wounds caused extensive damage to the heart and lungs. He could not opine as to what order the wounds were made, but numbered them from the upper most on the body to the lower most. The energy from the bullet from a rifle causes much more tissue damage than a bullet fired from a hand gun and these wounds had crossing paths so they are hard to separate. He said that the stippling pattern on the body was consistent with the bullets passing through the wooden door before they struck Stokes. Wounds five through seven were lower in the abdomen and injured the lungs, liver and stomach. As noted above, Stokes died almost instantly. The path of the wounds does seem to indicate a front to back pattern, as if he were beginning to rotate, and turn as he closed the door. A WSP Crime Lab Toxicologist analyzed the blood taken during the autopsy. Stokes had a blood alcohol level of .16 g/100mL and a THC level of 1.4 ng/100mL.

Stokes' daughter and his friends reported that he had suffered with depression and had attempted suicide in the past. None of the family or friends testified at the inquest.

Civilian 1 was in the King County Jail, on a DV Felony Violation of an NCO and had been placed in administrative segregation at the time of our trial and after consulting with the DV unit, and counsel for Involved Officer 1, the decision was made not to call him to testify. He wrote a number of letters to DPA 1, DPA 2 and DPA 3, saying he couldn't and wouldn't testify because it was too upsetting. These have been saved in a case management system. Stokes daughter, Civilian 2, lives in Louisiana. Lead Detective 1 and DPA 1 both spoke with her a number of times. She came here shortly after the shooting and took Stokes' car and his personal property back to Louisiana. DPA 1 gave her notice, in writing of the dates of the pre-inquest hearing, and the inquest, but she did not attend.

### **C. INTERROGATORIES**

The Jurors answered 27 interrogatories at the conclusion of the case. The jury's answers to all the interrogatories were unanimous.

### **D. LEGAL ANALYSIS**

Under the filing 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 William Stokes 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, a 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." Involved Officer 1 was called, in his capacity as a SWAT team leader, to the scene of a hostage being held in second story room of a private home. He had learned via the radio as he traveled to the scene, that the suspect was armed with a machete and was holding the hostage, Civilian 1, in a bedroom of a home they shared.

Shortly after Involved Officer 1 arrived, he saw Civilian 1 in the second story window. Civilian 1 appeared anxious and eager to exit the home. Then Stokes opened the front door of the home, and was wielding a machete, just over two feet in length. Involved Officer 1 could see that there were several other police officers in the front yard area, closer to the front door. It was reasonable and obvious to conclude that Stokes was committing a felony, in that he had unlawfully imprisoned Civilian 1. Further, he was advancing towards other officers while swinging a machete at them, which is also a felony assault in the third degree, or assault in the second degree.

Second, the statute requires that "the peace officer must have probably 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 had probable cause to believe that Stokes, if not apprehended, could have seriously injured the police officers in the front yard area of the house. Further, he had threatened to kill his hostage, Civilian 1. Civilian 1 had barricaded himself in his room using his bedroom furniture. Officer 7 testified that even after kicking in the door to defeat the lock, the door was still blocked with furniture. There were stab marks, or perforations, in the door to this room, which were consistent with the size and shape of the machete. Stokes had even called 911 to report that he had taken a hostage and said, ominously, that it was "a good night to die." Involved Officer 1, as well as the

Des Moines Police Officers, felt that the officers in the front yard area of the house were in danger of being gravely injured. And it was clear that Civilian 1 was in danger as well. The Jury answered "yes", unanimously, the interrogatory, #21, "At the time that Involved Officer 1 fired his rifle, did Involved Officer 1 believe that Mr. Stokes presented a threat of death or serious bodily injury to Civilian 1, Involved Officer 1, and/or others?"

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.16.040(1). The testimony in this case was that police had been to the home shared by Stokes and Civilian 1 twice the night of this shooting. The first time, Officer 1 and Officer 2 had been able to calm Stokes and obtain an agreement between Stokes and Civilian 1, that allowed Stokes to return to the home if he went to bed quietly. When that did not happen, hours later, Civilian 1 called 911 again to report that he was now a hostage, being held in his room under threat of death and that Stokes was using a knife to threaten him. Involved Officer 1 testified that while he had never been in this particular house, he was very familiar with the layout of these 1970s, split level homes. He could also see from his vantage point that once Stokes was at the top of the half flight of stairs up from the entry way of the home, he was just a few feet from Civilian 1's door. He could also tell, once on the scene that it was not at all safe to try to use a ladder, which would have been very near the front door, to try to get Civilian 1 out a second story window. He made the decision, in a short period of time, to take action to protect the life of Civilian 1, and the officers who were standing near the front door, and himself.

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." The jurors answered "yes" to interrogatories# 17, 18 and 19, which ask if Stokes came to the door of the house with a machete in his hands while officers were standing near the front door, he was ordered to put it down, and he refused to comply. And, as noted above, the jury also answered in the affirmative that Involved Officer 1 was concerned about the safety of Civilian 1 and the officers at the scene, based on Stokes' behavior and refusal to follow orders. There is no evidence to suggest Involved Officer 1 acted with malice or in bad faith.

## **E. 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 that would overcome this defense. The evidence in this inquest indicates that Stokes had numerous opportunities to put down the machete and comply with the officer's commands. Instead, Stokes repeatedly threatened the officers and demanded that they shoot him. His actions were dangerous to the officers and his hostage, and Involved Officer 1 believed that Stokes would kill or injure his hostage or the officers near the front door. Under these circumstances we should decline to file criminal charges in this incident.