

Fatality Investigation of
Juan Salamanca Acosta

Valley Investigations Team
Kent Police Department #2019-15797



King County Prosecuting Attorney
Public Integrity Team

July 9, 2024



DECLINE MEMORANDUM

Fatality Investigation of Juan Salamanca Acosta

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I. INTRODUCTION

1. Purpose of the Memorandum

The King County Prosecuting Attorney's Office (KCPAO) is mandated by law to analyze certain incidents regarding police use of force and to determine if the action was justified or if there was a criminal action such that criminal charges should be filed.¹ The KCPAO may also analyze incidents that fall outside the required mandate to determine whether a crime occurred.

Additionally, the 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 in accordance with the King County Charter.² 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.³

¹ Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard and satisfied other applicable laws and policies. RCW 10.114.011. Similarly, if the Office of Independent Investigation is the lead investigation agency, the prosecutorial entity must review the investigation. RCW 43.102.020. 2021 c 318 § 101.

² Executive Order PHL 7-1-5 EO.

³ Id.

2. Scope of the Memorandum

The KCPAO's determination if the police action was justified or if there was a criminal action such that criminal charges should be filed is based entirely on the investigation 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, an administrative action by the involved agency or any other civil action. The KCPAO expresses no opinion regarding the propriety or likely outcome of any such actions.

3. Status of the Independent Investigation

After a thorough review of the independent investigation and applicable laws, the Special Operations Unit Public Integrity Team (the Team) has determined the investigation into this matter is complete.

II. OVERVIEW

On October 27, 2019, Des Moines Police Department officers were dispatched to investigate an allegation of sexual assault by Juan Salamanca Acosta. As the officers arrived, Acosta fled the scene in a stolen vehicle. The officers pursued Acosta who attempted to elude the officers and failed to properly negotiate a curve in the road. Acosta's vehicle left the roadway and stopped near an embankment. Acosta was no longer in the vehicle and officers believed he fled into the embankment area. When officers searched the embankment, with the assistance of a police K9, they found Acosta lying in a creek, unresponsive, and that he appeared to have drowned. Officers administered lifesaving efforts, but medics pronounced Acosta deceased.

III. INVESTIGATION AND EVIDENCE

1. Independent Investigation Team Reports
2. Police Reports – Des Moines Police Department 2019-2971
3. Police Reports – King County Sheriff's Office C19-040759

4. Police Reports – King County Sheriff’s Office C19-041124
5. Police Reports – Kent Police Department 2019-15797
6. Civilian Statements
7. CAD
8. Crime Scene Investigation
9. Autopsy and Toxicology
10. 911 Call and Radio
11. Body Worn Video
12. In-Car Video
13. Photos

IV. **INVESTIGATION SUMMARY**⁴

1. **Information Occurring Prior to Death Investigation**

The following information is based upon witness observations, the Des Moines Police Department (DMPD) computer aided dispatch report, recorded police radio, 911 recordings, body worn video (BWV) cameras, and in-car video (ICV) cameras from October 27, 2019.

At approximately 5:59 am, Civilian Witness 1 called 911 to report that her brother-in-law, later identified as Juan Salamanca Acosta (Acosta) sexually assaulted her approximately three minutes ago and he was currently sitting inside a silver Nissan in her driveway. Several DMPD officers, including Witness Officer 1 and Witness Officer 2, were dispatched to Civilian Witness 1’s home to investigate.

At approximately 6:06 am, Witness Officer 2 arrived, and he observed the Nissan backing out of Civilian Witness 1’s driveway. The license plate on the Nissan returned stolen

⁴ The Investigation Summary is based upon the investigation and evidence outlined in Section III. When necessary, the Team will identify the source of the information. It is common for witnesses, including law enforcement officers, to provide multiple statements about the events witnessed. Similarly, it is common for multiple witnesses to provide information about the same event. If a witness provides multiple statements and the statement contains material and substantial differences that could affect the investigation or analysis, the Team will identify information that is materially and substantially different. However, if the information has a de minimis effect on the investigation or analysis, the differences may not be identified. Similarly, although some events may be observed by more than one witness, the Team may not summarize each witnesses’ statement unless it has a material and substantial effect on the investigation and analysis.

from King County. Witness Officer 2 activated his emergency lights and sirens and continued after the Nissan. Witness Officer 2 quickly caught up to the Nissan and observed the driver accelerate, likely in response to Witness Officer 2's lights and sirens. Witness Officer 1 also arrived and took the primary pursuit position while Witness Officer 2 updated other officers via his radio. During the pursuit, Witness Officer 2 noted that the pursuit continued for approximately three miles and reached speeds up to 70 mph.

At approximately 6:08 am, Witness Officer 1 saw that the vehicle failed to properly negotiate a curve, continued straight, drove over the curb, and came to rest several feet from the road at the edge of a steep, heavily wooded down-sloping embankment.



Figure 1 - Screenshot of Witness Officer 1's ICV showing the Nissan leaving the roadway.

Witness Officer 1 and Witness Officer 2 stopped and looked inside the Nissan, but there were no occupants inside. Witness Officer 1 and Witness Officer 2 heard brush, branches, and leaves cracking in the distance, near the bottom of the embankment. As other officers arrived, the officers called out to Acosta, but they received no response. Given the lack of light and steep terrain, a K9 officer was requested to assist with the search while the other officers formed a perimeter around the embankment.



Figure 2 - Screenshot from Witness Officer 1's ICV showing the lighting conditions moments after the Nissan came to rest.

Kent Police Department Witness Officer 3 arrived with his K9 partner. Upon his arrival, he learned that the DMPD officers developed probable cause to arrest Acosta for attempting to elude a pursuing police vehicle and possession of a stolen vehicle, but the details of the sexual assault were not clear at this time.

Witness Officer 3 announced his presence and gave a warning that a police K9 was being used to look for Acosta, but he received no response. Witness Officer 3 gave his K9 partner a “seek” command and tracked down the steep ravine with other officers. During the search, Witness Officer 3 noted that the ravine was heavily wooded, sloped downward and, given the darkness and the thick terrain, it was difficult to see without a flashlight. Another officer noted that descending to the creek was “. . . treacherous, and almost impossible. There was [sic] thick blackberries, uneven ground, extremely steep grades, hidden holes, sticks, large trees and small ones that were intertwined and all that combined with darkness. I had a flashlight and almost could not make the descent . . .”



Figure 3 - Screenshot of Witness Officer 3's BWV showing the lighting conditions at 13:28 Zulu Time Zone, which is 6:28 am PDT.



Figure 4 - Screenshot of Witness Officer 3's BWV showing the lighting conditions. His K9 (lower left) is visible only with the assistance of a flashlight.



Figure 5 - Screenshot of Witness Officer 3's BWV showing the brush blocking access to the creek where Acosta was found.

The K9 searched the area and brought the officers into the creek, which Witness Officer 3 estimated was two feet deep. After approximately thirty minutes of searching, Witness Officer 3 observed the K9 jump into the water and saw the K9 appeared to contact a human body.

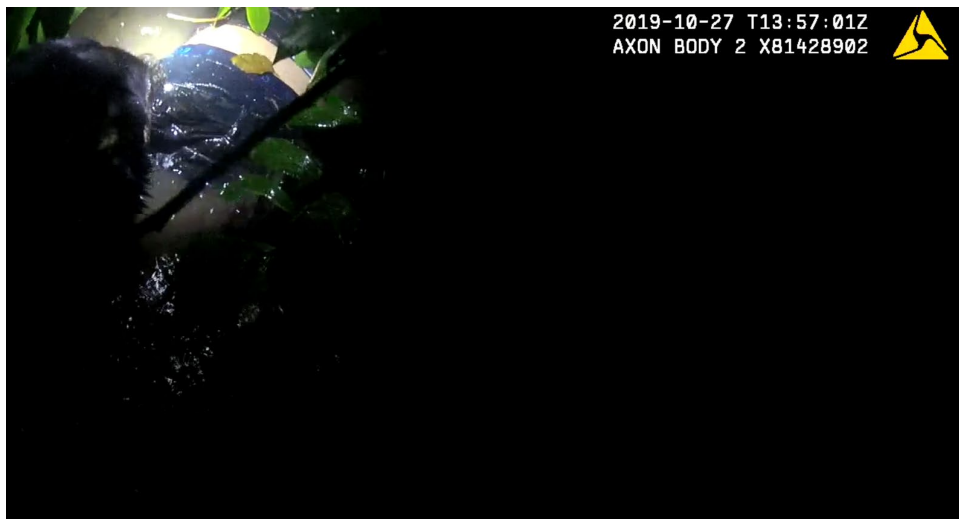


Figure 6 - Screenshot from Witness Officer 3's BWV showing the location Acosta was found.

Witness Officer 3 saw that the body was not moving, not making noise, and was lying face down in the water. Concerned that the person had drowned, Witness Officer 3 requested assistance from the other officers. The officers pulled the person, later identified as Acosta, from

the water and began providing medical assistance. The officers continued to provide medical assistance as they moved Acosta out of the wooded area so that he could be treated by medics, however, the medics pronounced Acosta deceased at approximately 7:37 am.

2. Independent Investigation Conducted by the Valley Investigation Team

As other officers arrived, the police secured the incident scene. The Valley Investigation Team was requested to respond to the scene and to conduct an independent investigation. Kent Police Department Investigator 1 was assigned as the lead investigator. The investigation team divided assignments between themselves and began to process the incident scene.

3. Civilian Witnesses

a. Civilian Witness 1

Civilian Witness 1 provided a statement to Investigator 1. She reported she was asleep in her bed when she awoke to someone grabbing her breast. She initially thought it was her husband, Civilian Witness 3, so she slapped his hand away. However, when she realized it was not Civilian Witness 3, she chased the man out of the house. As he ran out of the house, Civilian Witness 1 observed the man was her brother-in-law, Acosta, and he entered a Nissan parked in her driveway. Civilian Witness 1 called her husband who advised her to call 911. Civilian Witness 3 also informed Civilian Witness 1 that Acosta recently stole another family member's Nissan. Civilian Witness 1 called 911 and saw the police arrive a few minutes later. As the police arrived, Acosta left the driveway in the Nissan and the police followed him.

b. Civilian Witness 2

Civilian Witness 2 provided a statement to investigators. He reported he and Civilian Witness 3 are twin brothers and Acosta is their brother. Civilian Witness 2 and Civilian Witness 3 work in construction together and arrived at Civilian Witness 2's home at 11:00 pm the night prior. At approximately 12:00 am, Acosta came to Civilian Witness 2's home. As Acosta left, Civilian Witness 2 observed Acosta drive away in Civilian Witness 2's mother-in-law's Nissan. Civilian Witness 2 reported the theft to the police.

c. Civilian Witness 3

Civilian Witness 3 provided a statement to investigators. After providing similar information as Civilian Witness 2 regarding the night prior, he reported that Civilian Witness 1 called him at approximately 6:00 am to report that Acosta came into her bedroom and touched her breasts. As he was on the phone with Civilian Witness 1, she reported that Acosta was in the vehicle that Acosta took from Civilian Witness 2's home. Civilian Witness 3 also reported to police that he passed the area where police were looking for Acosta and he heard two gunshots.

d. Civilian Witness 4

While canvassing the area for potential witnesses or video cameras, investigators spoke with Civilian Witness 4. Civilian Witness 4 reported that he saw the end of the car chase. He was initially sleeping but woke up to the sounds of engines racing and sirens. He walked to his apartment balcony and saw the Nissan stopped near the top of the embankment and he noted the driver's door was open, so he assumed the driver ran from the car. He watched as the police K9 arrived and they searched for the driver. When asked if he heard any other loud noises, such as crashes or sounds, Civilian Witness 4 said that he did not hear anything and he spontaneously stated, "not even gunshots."

e. Civilian Witness 5

Civilian Witness 5 reported to investigators that she lives in the area near the embankment. She reported that she did not hear gunshots, nor does she have any cameras that are aimed at the embankment area.

4. Crime Scene Investigation

An investigator conducted a collision reconstruction analysis and determined that at the time of the incident, approximately 7:14 am, the roadway was dry, there was no rain, and the temperature was approximately 40.0°F. The investigator noted long skid marks on the roadway leading up to the location the Nissan stopped. Based on his observations, it appeared that the Nissan skidded on the road, struck the curb, climbed the curb onto the sidewalk, and skidded

across the grass to its final resting place. The posted speed limit in this location is 30 mph. Based upon data recorded by the Nissan's event data recorder and other measurements taken, the investigator determined that the Nissan was travelling at a minimum of 57mph at the start of the skid marks and that the maximum speed for this portion of the roadway was 49mph. Based on these calculations, a vehicle traveling faster than 49mph at this portion in the roadway would likely leave the roadway. The investigator also opined that it appeared the seatbelt was left in a position consistent with recent use and that it appeared the steering wheel was not damaged, which indicated it was unlikely the driver impacted the wheel during the collision.

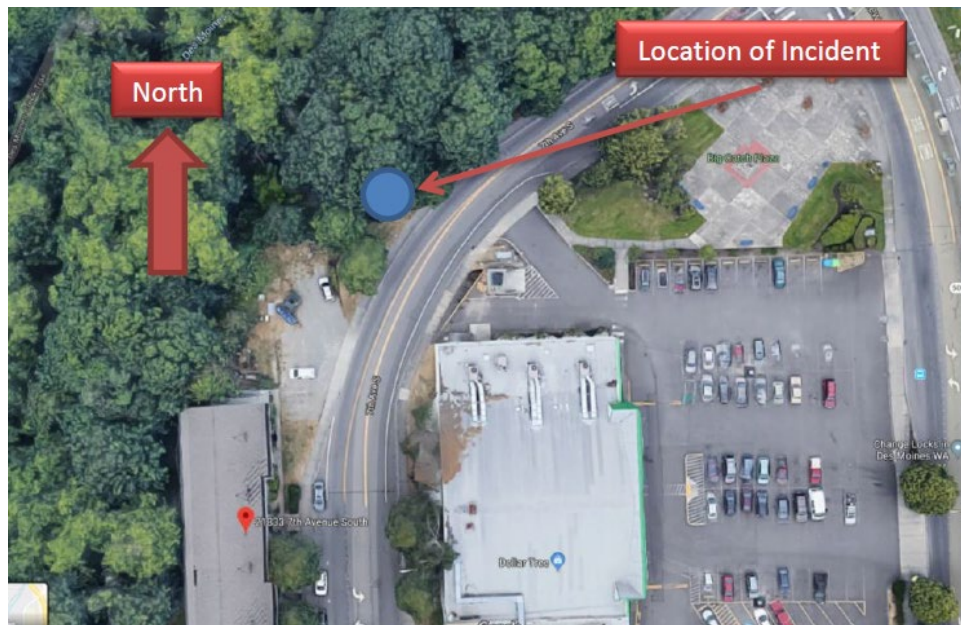


Figure 7 - Aerial image of the collision scene.



Figure 8 - Image depicting tire skid marks and the Nissan's final resting place.

Approximately three weeks after the incident, investigators measured the water level of the creek. At 4:46 pm on November 8, 2019, the center of the creek measured approximately

six inches deep and the area where Acosta was found measured approximately three and a half inches deep. However, tide charts indicated that the water level of the tide could change over five feet in the morning hours of October 27, 2019.

5. Medical

An investigator with the King County Medical Examiner's Officer who responded to the incident noted that the temperature was 44°F and "The steep terrain of the hillside that the decedent traversed indicates a high probably fall/slid [sic] of 10-15 feet to base of the hill and approximately 10 yards from the creek." The Medical Examiner's Office performed an autopsy of Acosta, which opined the cause of death is asphyxia due to drowning, blunt force injury of the head is contributory, and the manner of death is accident. There was no evidence of any gunshot injury.

The Washington State Patrol Toxicology Laboratory performed a drug analysis of Acosta's blood. The results showed that Acosta's blood tested positive for methamphetamine (.87 mg/L) and amphetamine (.053 mg/L).

V. LEGAL STANDARD AND CONCLUSION

1. Burden of Proof

The State must prove each element of a criminal charge by competent evidence beyond a reasonable doubt.⁵ The KCPAO 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 factfinder.⁶

2. Applicable Law

The investigation and the Team's analysis show that there is insufficient evidence to prove that Witness Officer 1 or any other officer committed a crime during the pursuit of Acosta. The investigation, including the King County Medical Examiner's autopsy examination, tends to show that Acosta's death was caused by asphyxia due to drowning. Given the circumstances, this

⁵ RCW 9A.04.100; WPIC 4.01.

⁶ KCPAO Filing and Disposition Standards.

would have occurred when Acosta fled the Nissan and entered the embankment area to run away from the officers. The officers did not pursue Acosta into the embankment given the limited visibility and lighting conditions. Even assuming the officers did pursue Acosta after he fled, they possessed probable cause to arrest him for possession of a stolen vehicle and attempting to elude a pursuing police vehicle, which would have justified their foot pursuit. Therefore, because the officers' actions were not the cause of Acosta's death, there is insufficient evidence to bring forth criminal charges.

Assuming *arguendo* that the officers' actions could have contributed to Acosta's death, there is insufficient evidence to prove other elements of applicable criminal charges. For instance, a driver is guilty of vehicular homicide when the death of any person is proximately caused by the driver and the driver operated their vehicle in a reckless manner or with disregard for the safety of others.⁷ Regarding Acosta's death, the investigation and the Team's analysis show that there is insufficient evidence to prove that any officer involved in this incident proximately caused Acosta's death, that any officer drove in a reckless manner or that an officer drove with a disregard for the safety of others.

Proximate cause is a cause which, in a direct sequence, unbroken by any new independent cause, produced the death or substantial bodily harm, and without which the death or substantial bodily harm would not have happened.⁸ In the current incident, Witness Officer 1 and Witness Officer 2 drove with their lights and sirens activated while pursuing Acosta shortly after he sexually assaulted Civilian Witness 1 and stole a vehicle. Based on the officers' reports and ICV, Acosta drove in a manner showing he was attempting to elude law enforcement. As Acosta approached the curve in the road, he was driving more than the posted speed limit and was very likely driving more than the maximum speed to keep a vehicle on the roadway.

Although there may be more than one proximate cause, an action is not a proximate cause of an injury if it is interrupted by a separate intervening act.⁹ During the pursuit, the officers appeared to maintain a safe distance from Acosta, considering the roadway, lighting conditions,

⁷ RCW 46.61.520 and RCW 46.61.522.

⁸ WPIIC 90.07.

⁹ *Id.*

and lack of other vehicles on the roadway. While it could be stated that Acosta continued to drive at a high rate of speed because he was aware that officers were behind him, the evidence tends to show that the Nissan left the roadway due to Acosta's speeding, likely affected by his drug use, not the officers' presence.

To operate a motor vehicle in a reckless manner means to drive in a rash or heedless manner, indifferent to the consequences.¹⁰ Disregard for the safety of others means an aggravated kind of negligence or carelessness, falling short of recklessness but constituting a more serious dereliction than ordinary negligence.¹¹ Ordinary negligence is the failure to exercise ordinary care.¹² Ordinary negligence is the doing of some act which a reasonably careful person would not do under the same or similar circumstances or the failure to do something which a reasonably careful person would have done under the same or similar circumstances.¹³ Ordinary negligence in operating a motor vehicle does not render a person guilty of vehicular homicide or assault.¹⁴ The investigation and the Team's analysis show that there is insufficient evidence to prove that the officers drove in a reckless manner or with disregard for the safety of others. Police officers are permitted to exceed the maximum speed limit when in the pursuit of an actual or suspected violator of the law so long as they do not endanger life or property.¹⁵

The investigation and Team's analysis also shows that the officers' actions do not rise to a level of criminal negligence. For instance, a person is guilty of manslaughter in the second degree when, with criminal negligence, the person causes the death of another person.¹⁶ In order to prove criminal negligence, the State must prove beyond a reasonable doubt that an officer failed to be aware of a substantial risk that a wrongful act may occur and their failure to be aware of such substantial risk constitutes a gross deviation from the standard of care that a reasonable person would exercise in the same situation. As stated above, the officers were legally permitted

¹⁰ WPIC 90.05.

¹¹ Id.

¹² Id.

¹³ Id.

¹⁴ Id.

¹⁵ RCW 46.61.035.

¹⁶ RCW 9A.32.070.

to pursue Acosta given the information they possessed at the time of the pursuit, and they did not pursue him in a negligent manner.

VI. KCPAO RESPONSIBILITIES REGARDING INQUEST

As outlined in Executive Order PHL 7-1-5 EO, the 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 pursuant to the King County Charter.¹⁷ Pursuant to the King County Charter, “An inquest shall be held to investigate the causes and circumstances of any death 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.”¹⁸ Given the facts outlined in the investigation, it is the Team’s belief that the investigation is complete. However, given the circumstances, the Team has little information to determine whether a law enforcement action or decision contributed to Acosta’s death; the only person who would is the deceased, Acosta. “Might have contributed . . .” is a low standard. The Team is deferring to the County Executive who has discretion under the Executive Order to decide an inquest need not be initiated if the Executive determines that the role of law enforcement was de minimis and did not contribute in any discernible way to a person’s death.¹⁹

¹⁷ Executive Order PHL 7-1-5 EO.

¹⁸ King County Charter § 895.

¹⁹ Id.