



STATE OF MISSOURI
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September 14, 2020

Honorable Jeff Mittelhauser
Associate Circuit Court
415 S. Ohio Street
Sedalia, MO 65301

Re: Special Prosecutor Case Pettis County Sheriff's Dept OIS/Hannah Fizer

Dear Judge Mittelhauser;

I have now completed my review of the investigation file of the Missouri Highway Patrol DDCC, into the death of Hannah Fizer which occurred on June 13, 2020. On August 4th, I was appointed by you as Special Prosecutor to review the matter and determine whether any charges were appropriate. I have now reviewed the investigation file, consisting of reports from DDCC investigators, statements from various witnesses, statements from the officer involved and the other responding officers, the autopsy report which included the results of the deceased's toxicology report, and video from the surveillance system at the business adjoining the parking lot where the incident occurred and Dispatch audio recordings of traffic at or around the time of the incident.

There are aspects of the case that lead me to believe that an alternative

approach might have avoided the confrontation that led to the officer having to discharge his weapon, but that is not relevant to a determination of whether criminal liability would attach. That determination is made somewhat more difficult by the absence of a body-worn camera with audio, as the video from the adjacent security system, although of good quality for such a system especially at night, is not totally clear. There is no audio recorded with the video, which has required investigators to try to coordinate the time between the dispatch audio (what there is of it) with the video to provide a more complete information package.

All the information received is internally consistent, and leads to the conclusion that the shooting, albeit possibly avoidable, was justifiable under current Missouri criminal law. The evidence indicates that the deceased, who had been stopped for multiple traffic violations and who had refused to provide any information to the officer, had advised him that she was recording him, and then shortly thereafter, that she had a gun and was going to shoot him. At the time the officer discharged his weapon, she had reached down into the floorboard of the car and raised up towards him. Based on the information and circumstances available to the officer during the event, it cannot be said that the officer did not have a reasonable belief that he was in danger of serious physical injury or death from the actions of the deceased at the time he fired.

In Missouri, where an officer is in a position of using deadly force in self-defense, the standard requires a reasonable belief that he (the officer) is in imminent danger of serious physical injury or death, as a result of the actions of the suspect. The reasonableness of the officer's belief must be evaluated based on how circumstances reasonably appeared to the officer at the time, not based on how those circumstances may have later been discovered actually to have been. See, for example, *State v. Chambers*, 681 S.W.2d 781(Mo banc 1984), and MAI-Cr 4th 406.06.

Under *Tennessee v. Garner*, the US Supreme Court case that established the standard for an officer's use of deadly force in making an arrest, the standard is similar; whether, at the time of the encounter, the officer believed that the fleeing suspect presented a substantial risk of serious physical injury or death to the public or the officer or other officers.


In the surveillance video footage, the deceased can be seen moving around the vehicle vigorously and bending down. She can be heard during the officer's radio dispatch yelling at him, and he repeats her threat that she had a gun and is going to shoot him to Dispatch prior to him discharging his weapon. Just prior to the time the officer fired his weapon, the deceased appears to be raising up from a bent over position. The deputy advised that she was still reaching down, and he can be seen trying to force open the driver's door, then takes a couple of steps towards the front of the vehicle, assuming a defensive stance just forward of the driver's door. At the time of discharge, the deceased cannot be seen, due to the officer's position. All of this would support the officer's claim that he was in fear for his safety.

After a thorough review of the available information, I believe it would be difficult to find from this evidence that the officer did not have a reasonable apprehension of immediate serious physical injury or death from the acts of the suspect. As a result, it is my conclusion that there is sufficient evidence from which a jury would be likely to find that the officer was justified in his use of deadly force. I believe, based on the current state of the law, and the provisions of the National Prosecution Standards which hold that a Prosecutor must have a reasonable basis to believe that a conviction (beyond a reasonable doubt) is reasonably likely, that he or she is ethically obligated not to file charges, that there would not be a reasonable likelihood of being able to prove the elements of the offense beyond a reasonable doubt, that no charges are warranted.

Whenever any kind of encounter between law enforcement and citizens ends in a loss of life, it is highly regrettable. When that loss of life is avoidable, it becomes more so. But where the legal standard for justification on the use of force is met, criminal prosecution is not an available remedy to address it. More training on de-escalation techniques, and sometimes just more experience may be what is needed. The recent spate of these types of avoidable deaths would certainly suggest that a reexamination of training techniques is in order.

I am providing a copy of this report to Pettis County Sheriff, to the Highway Patrol, and will make it available to the media. If there is anything further needed from me to close this file, please advise.

Very truly yours,



Stephen P. Sokoloff
Special Prosecutor