

Special Prosecutor's Report on the Fatal Shooting of Malcolm Johnson in Jackson County, MO

March 13, 2023

Outlined below are the investigative and prosecution team's findings and recommendation concerning the March 25, 2021, fatal shooting of Malcolm Johnson in Jackson County, Missouri.

Factual Context and Investigative Process

On March 25, 2021, at 6:56 p.m., the Kansas City Police Department tried to take Malcolm Johnson into custody. During the attempted arrest, two people were shot: Mr. Johnson (who was killed) and one police officer (who was shot in the leg). The Kansas City Police Department asked the Missouri State Highway Patrol (MSHP) to take over and handle the matter as an independent law enforcement investigation. The MSHP handled interviews and took possession of all evidence. The police officers, store personnel and store patrons were interviewed by the MSHP at or near the time of the shootings. All MSHP interviews of witnesses were recorded. The MSHP collected physical evidence and had some laboratory examinations of the evidence performed.

The MSHP turned over their reports and investigation for review to the Jackson County Prosecuting Attorney's Office in August 2021. Subsequently, the Jackson County prosecuting attorney asked that the court remove her from the case because of a legal conflict. The court granted her motion and appointed the St. Louis County Prosecuting Attorney's Office as the special prosecutor for further investigation and charging determinations.

The St. Louis County prosecuting attorney assigned two attorneys and an investigator to review the matter (dubbed the "team," hereinafter). The team reviewed all available reports. The team requested DNA, fingerprint, firearms, ballistics, and physical evidence examinations. The team interviewed multiple witnesses, including witnesses not previously interviewed by the MSHP. Most, but not all, of the witnesses cooperated with the team. The team's review of all physical, electronic, and testimonial evidence showed a set of facts.

On March 25, 2021, Malcolm Johnson arrived at a local gas station and convenience mart. According to store employees, Mr. Johnson was a regular customer. He was driving a black Dodge Journey.

Police were looking for Mr. Johnson in connection to an unrelated shooting incident that occurred a few days prior.¹ Police officers surveilled Mr. Johnson on the scene for a period before entering the store. The officers immediately tried to take Mr. Johnson into custody as he stood by the checkout counter.

During the attempted arrest, a struggle ensued. The struggle lasted two to three minutes. Mr. Johnson struggled against multiple officers – at one point, he almost made it out of the store. Officers kept him inside the store. Mr. Johnson then fell to the ground and rose again, struggling against the officers. Mr. Johnson and multiple officers eventually landed on the ground near an exterior wall, window and

¹ All parties' states of mind are relevant factors in assessing any shooting incident. This uncharged incident is relevant here only to the extent that it may supply evidence as to Mr. Johnson's state of mind. Mr. Johnson was a suspect in a March 15, 2021 shooting incident involving an ex-girlfriend, her brother, her mother and her father. Multiple witnesses named him as the suspected shooter. Mr. Johnson was aware that he was wanted by law enforcement in connection to this situation. The Dodge Journey driven by Mr. Johnson was flagged for law enforcement as well. According to recorded statements by witnesses to that previous shooting, Mr. Johnson allegedly said he intended to kill his ex-girlfriend and then himself.

cooler. During the ongoing struggle, shouts of “he has a gun!” or “gun!” can be heard on various recordings reviewed by the team. These shouts can be heard on both the store’s surveillance video and a cell phone video recorded at the scene. Shortly after the shouting about a gun, an officer standing by the side of Mr. Johnson was shot in the leg. The injured officer was standing on the window side of Mr. Johnson and in front of the cooler. After the officer was shot, he pulled his gun. Mr. Johnson was shot twice in the head and killed. Officers called for Emergency Medical Services (EMS) and restrained Mr. Johnson. The surveillance video does not show any officer searching Mr. Johnson or significantly moving him.

Paramedics arrived and began treatment of Mr. Johnson. They reported finding a .45 caliber Glock 37 under Mr. Johnson’s body as they examined him at the scene. Police officers recovered the Glock 37 after EMS moved Mr. Johnson to provide aid more easily. The Glock 37 was seized and provided to the MSHP. Full .45 ammunition boxes were recovered from Mr. Johnson’s Dodge Journey. Mr. Johnson’s fingerprints were recovered from an ammunition box.

MSHP staff interviewed the store personnel who were present during the shootings. Store personnel and one bystander gave varying statements. All indicated that they did not see a weapon on Mr. Johnson at the time of the shootings. Each acknowledged that Mr. Johnson was on the ground when the shootings occurred. Surveillance video show Mr. Johnson on the ground with his arms and hands under his body.

The police officers were interviewed as well. They said that they attempted to detain Mr. Johnson in connection to a previous incident and he resisted. They said that during the struggle, some officers observed a gun under Mr. Johnson and yelled out that there was a gun. Shortly thereafter, one officer was shot. The bullet passed through his leg and landed in the nearby cooler. After the officer was shot, he pulled his firearm and shot Mr. Johnson twice.

Brief, limited portions of recordings of some of the events resulting in the fatal shooting of Mr. Johnson were released to the public. The footage available to the public does not depict the entire events leading up to Mr. Johnson’s death.

Evidentiary Analysis

Physical Evidence

- An autopsy revealed that Mr. Johnson was shot twice in the head. The medical examiner found that there were two entrance and two exit wounds in his head. There were no other wounds anywhere else in his body.
- The 9 mm ballistics evidence from the scene was reviewed by the MSHP Laboratory and was considered matched to the firearm used by the officer who shot Mr. Johnson.
- EMS personnel reported finding a .45 caliber Glock 37 under the midsection of Mr. Johnson’s body on the floor of the gas station.²
- Firearms examination of the Glock 37 revealed that its chamber held one spent casing while additional cartridges were loaded in the magazine.

² The EMS personnel had not been interviewed prior to interviews by the special prosecutor’s team.

- Firearms examination of the spent casing in the Glock revealed that it had been fired from the same firearm.
- A hole consistent with bullet damage was found in the cooler – the defect’s location was on the east side of the cooler’s wall (the side facing Mr. Johnson on the floor). The hole is in line with the location where the injured officer was standing.
- An expended bullet was extracted from the cooler.
- Firearms analysis showed that the bullet from the cooler could have been fired from the Glock 37 but that the bullet was too damaged to make a positive determination.
- Ballistic classification characteristics of the bullet extracted from the cooler are consistent with ammunition that can be fired from the Glock 37. These are different ballistics classifications from the ammunition that can be fired from the 9 mm firearm used to shoot Mr. Johnson and carried by all police officers on the scene.
- Fingerprint analysis found two fingerprints of Mr. Johnson on the .45 caliber ammunition box located in the Dodge Journey that Mr. Johnson was driving.³
- Mr. Johnson was wearing a puffy coat with front and internal pockets. An examination of Mr. Johnson’s coat revealed holes consistent with bullet damage. This damage is consistent with what appears to be a track of entrance and exit holes. The track runs from the inside pocket area of Mr. Johnson’s coat through the pocket itself, through the lining and exits on the coat’s exterior side. The exit hole is located near the midsection, exterior pocket area of the coat.⁴
- DNA examinations performed on the .45 caliber Glock 37 and its components did not yield any profiles suitable for testing, so no comparison could be performed.⁵
- Mr. Johnson’s autopsy revealed that he was shot with 9 mm bullets.

Audio Review

- Recordings from 12 camera angles captured on the store’s surveillance system were analyzed.
- Three angles show the beginning, middle and end of Mr. Johnson’s arrest and shooting.
 - All show Mr. Johnson was down on the ground at the times he and the officer were shot.
 - None of the recordings show Mr. Johnson’s hands once he was on the ground.
 - All show that the officer who was shot was standing between Mr. Johnson and the windows and cooler.
- A review of footage from an outside surveillance camera on the front of the store (located above the window near to where the struggle between Mr. Johnson and the police occurred) revealed an attached microphone. The surveillance camera’s microphone captured the sounds of the struggle and shootings. The sounds included:
 - officers attempting to stop Mr. Johnson’s resistance.
 - an officer or officers yelling “gun!” or “he has a gun!”
 - a single shot followed shortly by a yell.
 - a pause of three seconds.

³ Fingerprint analysis of these items was done at the request of the special prosecutor’s team.

⁴ The examination of Mr. Johnson’s clothing and puffy jacket was done at the request of the special prosecutor’s team. The location of the bullet damage to his coat was the result of this search. Formal ballistic trajectory analysis was not conducted due to the length of time since the shooting.

⁵ DNA testing was done at the request of the special prosecutor’s team.

- two shots in quick succession following the pause.
- Cell phone video with a clerk speaking over the sounds of the struggle was reviewed.⁶
 - Observations include:
 - The clerk's clips do not capture the beginning of the struggle or events before Mr. Johnson's attempted arrest.
 - The recording begins at some point after Mr. Johnson was on the ground and ends shortly after Mr. Johnson was shot and does not capture the entirety of the shootings.
 - The recording vantage point does not show Mr. Johnson's hands or the front of his body.
 - The clips reviewed are not complete in comparison to the surveillance video.
- Additional footage was viewed.

Witness Statements

A patron and one clerk said that they saw the police officers attempt to arrest Mr. Johnson, but he was able to resist the force applied by multiple officers. Both witnesses said that Mr. Johnson was nearly able to get out of the store before being pulled back inside. Both said that Mr. Johnson fell to the ground but got up despite the effort of multiple officers to restrain him. Both said that the officers shoved Mr. Johnson to the ground and Mr. Johnson then struggled but was held down by multiple officers. Both heard police yell "gun!" or "he's got a gun!" Neither witness could see Mr. Johnson fully due to their respective vantage points. One witness said they heard three shots in rapid succession. Both individuals suggested that one police officer shot the other officer by mistake. Both said that they did not see a police officer shoot another police officer but speculated about how the officer was shot.

The clerk was interviewed by MSHP and the team separately. The clerk said that they saw the police officers try to arrest Mr. Johnson, whom they knew as a regular customer. They said that the police officers came in the store, immediately grabbed Mr. Johnson and then a struggle ensued. They said that they did not see a gun in connection to Mr. Johnson until after Mr. Johnson was moved by EMS. The clerk did see that the officer had been shot but was unable to tell who shot the officer. The clerk began recording the incident sometime after the struggle began but before the shootings. Initially, the clerk did not supply all of their recordings to the MSHP though did provide one to community leaders.

The team interviewed the clerk. The clerk's statement to the team differed from their previous statements. For example, the clerk, when interviewed by the team, claimed to have an additional cell phone recording showing that a gun fell from Mr. Johnson's waist band when Mr. Johnson was placed on the EMS stretcher. This allegation of an additional recording was new. The clerk had no explanation for why this recording had not been mentioned before or produced to anyone. The clerk said they would supply such footage to the team that night but did not. Repeated efforts were made to ascertain whether such a recording ever existed or could be provided. The clerk never produced such a recording. They then moved from their prior residence, stopped returning calls from the team, and their telephone number previously provided was taken out of service. In order to explore whether the clerk's claim that a gun fell from Mr. Johnson's waist band when he was placed on the EMS stretcher was accurate, several EMS staff were located. The team's interviews with EMS and other personnel directly conflict

⁶ See discussion of the clerk's statement under witness statements.

with the clerk's claim. Some EMS personnel said that the gun was found under Mr. Johnson when they rolled him over to better administer aid.

Legal Analysis

Under Missouri law, when reviewing charges and an individual's claim of self-defense or defense of others, prosecutors are ethically required to consider those defenses in their decision making.

Consideration of charges. The crimes of Murder 1st Degree, Murder 2nd Degree, Voluntary Manslaughter and Involuntary Manslaughter 1st Degree were reviewed. No other charges were applicable for review. Missouri does not have applicable laws associated with depriving an individual of their civil rights to consider.

Analysis of Self-Defense and Defense of Others. The officers involved in the incident claim that their actions were necessary to defend themselves or other officers from Mr. Johnson. Mr. Johnson's shooting of one police officer, or the belief that he had done so, could corroborate the claim of self-defense or defense of others by the involved officers. To justify charging an officer claiming such defenses with the shooting of Mr. Johnson, the state must prove beyond a reasonable doubt that the officer did not act in lawful self-defense or defense of others. The physical evidence is clear that one officer was shot with a bullet that could not have been fired from a police officer's gun, but it could have been fired from Mr. Johnson's gun. This evidence is consistent with Mr. Johnson having a firearm and using that gun to shoot one police officer. The physical evidence does not corroborate a theory that one officer mistakenly shot the second officer. The state could not overcome the self-defense or defense of others claims.

Findings and Recommendation

The physical evidence, the audio evidence and the statements of evidence do not support filing charges against the officers involved with the arrest or the fatal shooting of Malcolm Johnson. Given the review of all the evidence, there is insufficient evidence to prove beyond a reasonable doubt that the officer who shot Malcolm Johnson was not acting in lawful self-defense or defense of others under Missouri law. Further, there is insufficient evidence to prove beyond a reasonable doubt that officers involved in the arrest of Malcolm Johnson acted unlawfully under Missouri law. The recommendation is that no charges be filed.