

November 15, 2017

Press Release

A REVIEW OF THE DEATH OF JOHNNY McKEEVER

INVOLVED PARTIES

Johnny McKeever, deceased

Ryan Black, accused

Amy McKeever, wife of Johnny

Brett Stevenson, friend of Ryan, guest at his house that night.

WHAT WE KNOW

Johnny McKeever was shot with a .44 Magnum pistol from 2 to 3 feet away, the bullet entering the left side of his head along the jaw bone line and exiting on the right side, below and slightly behind his right ear. His body ended up with his torso on the ground in front of a porch with his legs lying on the porch. The bullet travelled through the victim and impacted a house across the street, but did not penetrate to a depth that was sufficient to get an accurate line back to where the shot was fired.

Johnny has been reported as being a friendly and nice guy by his relatives and friends, but his wife has alleged physical abuse by him in the past even though she never called it in. We also know that Johnny had been following Amy for some time since her involvement with Ryan, even to the point of having to be ejected from a local bar for causing a scene when he saw Amy and Ryan together.

Ryan is a recovering paraplegic who uses braces to get around in general, but he did not have them on at the time of the incident. Johnny had been out drinking the night of the incident and had a blood alcohol twice the legal limit to drive.

The first call to 911 came in at 4:25 a.m. and law enforcement arrived at the scene approximately six minutes later. There is significant damage to the door frame of the house where the shooting occurred

even to the point of breaking the striker plate from the door frame.

WITNESS STATEMENTS

Ryan and Amy claim that they had been in Missoula at different bars earlier in the evening. Amy was with friends who rode with her. She dropped them off at their home before she went to Ryan's house. Ryan had been with his friend Brett and returned in a different vehicle. By the time that Amy arrived, Brett had already gone to bed. After Amy had been at Ryan's house for approximately 20 minutes, they heard banging on the door, and Amy surmised it was Johnny, because he had been following her lately.

Johnny returned and began banging on the door again, hard enough to wake Brett up. At that point, Amy came into Brett's bedroom in order to hide from Johnny and Ryan went to talk to Johnny.

Shortly after, both Amy and Brett heard what sounded like a shot, and Ryan came back in the house with blood on his chest, and told Brett to call the police. Brett noticed the pistol was on the dryer where Ryan had left it, and Brett moved the pistol to the back porch. Brett did notice a red mark on Ryan's face that was not there earlier that evening.

Ryan went back out to the front of the house to wait for law enforcement to arrive.

APPLICABLE LAW

DELIBERATE HOMICIDE

45-5-102. Deliberate homicide. (1) A person commits the offense of deliberate homicide if:

(a) the person purposely or knowingly causes the death of another human being;

MITIGATED DELIBERATE HOMICIDE

45-5-103. Mitigated deliberate homicide. (1) A person commits the offense of mitigated deliberate homicide when the person purposely or knowingly causes the death of another human being or purposely or knowingly causes the death of a fetus of another with knowledge that the woman is pregnant but does so under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of the explanation or excuse must be determined from the viewpoint of a reasonable person in the actor's situation.

(2) Mitigated deliberate homicide is a lesser included offense of deliberate homicide as defined in 45-5-102(1)(a), but is not a lesser included offense of deliberate homicide as defined in 45-5-102(1)(b).

NEGLIGENT HOMICIDE

45-5-104. Negligent homicide. (1) A person commits the offense of negligent homicide if the person negligently causes the death of another human being.

(2) Negligent homicide is not an included offense of deliberate homicide as defined in 45-5-102(1)(b).

JUSTIFIABLE USE OF FORCE

45-3-101. Definitions. (1) "Force likely to cause death or serious bodily harm" within the meaning of this chapter includes but is not limited to:

(a) the firing of a firearm in the direction of a person, even though no purpose exists to kill or inflict serious bodily harm; and

(b) the firing of a firearm at a vehicle in which a person is riding.

(2) "Forcible felony" means any felony which involves the use or threat of physical force or violence against any individual.

Openly carrying weapon -- display -- exemption.

45-3-111 (1) Any person who is not otherwise prohibited from doing so by federal or state law may openly carry a weapon and may communicate to another person the fact that the person has a weapon.

(2) If a person reasonably believes that the person or another person is threatened with bodily harm, the person may warn or threaten the use of force, including deadly force, against the aggressor, including drawing or presenting a weapon.

USE OF FORCE IN DEFENSE OF OCCUPIED STRUCTURE

45-3-103. Use of force in defense of occupied structure. (1) A person is justified in the use of force or threat to use force against another when and to the extent that the person reasonably believes that the use of force is necessary to prevent or terminate the other person's unlawful entry into or attack upon an occupied structure.

(2) A person justified in the use of force pursuant to subsection (1) is justified in the use of force likely to cause death or serious bodily harm only if:

(a) the entry is made or attempted and the person reasonably believes that the force is necessary to prevent an assault upon the person or another then in the occupied structure; or

(b) the person reasonably believes that the force is necessary to prevent the commission of a forcible felony in the occupied structure.

NO DUTY TO SUMMON HELP OR FLEE

45-3-110. No duty to summon help or flee. Except as provided in 45-3-105, a person who is lawfully in a place or location and who is threatened with bodily injury or loss of life has no duty to retreat from a threat or summon law enforcement assistance prior to using force. The provisions of this section apply to a person offering evidence of justifiable use of force under 45-3-102, 45-3-103, or 45-3-104.

INVESTIGATION OF ALLEGED OFFENSE INVOLVING CLAIM OF JUSTIFIABLE USE OF FORCE

45-3-112. Investigation of alleged offense involving claim of justifiable use of force. When an investigation is conducted by a peace officer of an incident that appears to have or is alleged to have involved justifiable use of force, the investigation must be conducted so as to disclose all evidence, including testimony concerning the alleged offense and that might support the apparent or alleged justifiable use of force.

BURDEN OF PROOF

46-16-131. Justifiable use of force — burden of proof. In a criminal trial, when the defendant has offered evidence of justifiable use of force, the state has the burden of proving beyond a reasonable doubt that the defendant's actions were not justified.

ANALYSIS

Reviewing all of the evidence as a whole, it is clear that Mr. McKeever came to Mr. Black's house sometime after four a.m. in order to confront his estranged wife, who Mr. McKeever knew was in an extramarital relationship with Mr. Black. Mr. McKeever began banging on the door hard enough to crack the frame of the door and dislodge the striker plate. At that time, Mr. Black came to the door with a .44 Magnum pistol and closed the door behind himself to confront Mr. McKeever. Mr. McKeever struck Mr. Black in his right eye with his fist causing significant bruising, but otherwise had no weapons. Mr. Black's assertion to law enforcement is that as he fell backwards the gun went off striking Mr. McKeever. Mr. Black then says that he went around the house to the back door and left the gun on the dryer and told his friend to call the police. Mr. Black then went back out to await the police, while Mr. McKeever's wife attempted a form of CPR on him. It is highly unlikely that Mr. McKeever was even alive when his wife came to him based on the wound he suffered.

After law enforcement arrived, the scene was secured and the witnesses were separated and protected. Mr. Stevenson is the one who was the least involved, and it appears the least likely to relay anything but what he knows. He tells us that he heard the banging on the door which woke him up, and that Amy came into his room to hide from Mr. McKeever. They heard what seemed to them to be a muffled shot, and then Mr. Black returned without the gun in his hand and told them to call the police.

FACTORS IN FAVOR OF A PROSECUTION

While Mr. Black has freely made a statement to the police when he was arrested, it is not always consistent with the observed facts. Mr. Black states that he did not think that Mr. McKeever was hitting the door hard enough to do damage. However, the physical evidence shows that the door frame is cracked, and the striker plate knocked completely off. Mr. Black also states that he went around the house to the back to get back in and when there, placed the gun on the dryer. However, both Amy and Mr. Stevenson said that Mr. Black did not have the gun with him, and if he did come in through the back door, he would have been observed by them. More than likely, Mr. Black returned to the house through the front door and left the gun on the dryer. Also, Mr. Black claims that the gun fired when he was falling back after being struck. That is possible if he raised his arms while falling back, but his statement is that the gun was at waist level, which would have to mean that Mr. McKeever was ducking and turning when the gun went off. Much of these inconsistencies can be explained by the emotional state he was probably

in, having just shot someone. The fact that they are inconsistent is not proof of a lie, or dissembling. Law enforcement best practices state that after a justified shooting by a police officer, any interrogation should be held only after two days have passed in order to allow the shooter to fully comprehend what he has done. Finally, Mr. Black has not asserted self-defense to date.

FACTORS IN FAVOR OF NOT PROSECUTING

First and foremost, is that Mr. McKeever came to the residence around four in the morning after drinking, to confront his wife. Mr. Black had been confronted in the past by Mr. McKeever, and Amy had told him that Mr. McKeever had been violent in the past. Mr. McKeever struck Mr. Black, even though Mr. Black was holding a weapon at the time. The defense can raise the defense of justifiable use of force at any time up to the omnibus hearing in a case. At that time, if any evidence is presented to warrant the defense, and the State believes there is enough to do so, the burden shifts to the State to prove that Mr. Black acted unreasonably. Montana's castle doctrine statutes relating to justifiable use of force would apply in this case and a Jury would have to find beyond a reasonable doubt, that Mr. Black's actions were unjustified. That may not be possible, based on the evidence that is at hand at the moment.

Finally, while an attempt could be made to prosecute Mr. Black for Negligent Homicide, which is the most likely charge and the one requested by law enforcement, if acquitted based on justifiable use of force and new information is derived, Mr. Black would not be able to be retried based on Double Jeopardy. The purpose of prosecution is not to simply throw a case at a jury to decide whether or not reasonable doubt exists. It is to present the best case they can to support that proof beyond a reasonable doubt has been met to prove the case.

CONCLUSION

I do not believe at this time that The State can prove beyond a reasonable doubt that the killing of Johnny McKeever was unjustified. The Standard of proof under the laws applicable in this instance create a high barrier to criminal prosecution. The County Attorney has an ethical obligation not to file charges that he does not believe are supported by probable cause or have a reasonable likelihood of resulting in a conviction. This incident is a tragedy and we regret the loss of life and sympathize with the family of the deceased. The current charges against Mr. Black are being dismissed without prejudice and may be revisited if new evidence would change this opinion.

Sincerely,

Steven N. Eschenbacher
Lake County Attorney