

**REPORT OF THE DISTRICT ATTORNEY
GENERAL
REGARDING THE DEATH OF JOCQUES
CLEMMONS**

Pursuant to recently established protocols, this report will discuss the facts and law related to this incident, an analysis of the facts and law, questions presented by this case, and the decision and reasoning of the District Attorney. Concrete actions announced today by the District Attorney and a proposal for certain next steps for Metro Nashville conclude the report.

PROCEDURAL HISTORY

Metro Police Officer Joshua Lippert shot and killed Jocques Clemmons on February 10, 2017. The Metro Nashville Police Department immediately began an investigation. On February 16, 2017, the District Attorney requested the TBI to take over the investigation. The TBI provided their case file to the District Attorney on April 7, 2017. The MNPD presented their case file to the District Attorney on April 13, 2017. Follow up investigation continued

by the TBI at the direction of the DA's office until May 5, 2017.

FACTS

The following facts were determined by both MDHA video and eyewitness accounts.

- On February 10, 2017, Officer Joshua Lippert was assigned to the East Precinct Flex Unit working in the James Cayce Homes.
- At 12:55 p.m., Jocques Clemmons was driving an SUV and failed to stop at a stop sign at South 6th Street and Summer Place. See EXHIBIT A.
- After Mr. Clemmons parked in a handicapped parking space, he exited his vehicle. Officer Lippert approached in his unmarked police vehicle with blue lights activated. Mr. Clemmons exited his vehicle and then reached back into his vehicle before turning around as Officer Lippert, in full uniform, started to step out of his police vehicle. See EXHIBIT B.

- Mr. Clemmons first attempted to evade Officer Lippert by running past him, but was cut off by Officer Lippert, Officer Lippert's police vehicle, and a chain link fence. See EXHIBIT C.
- Mr. Clemmons then changed direction and ran across the parking lot. Officer Lippert followed Mr. Clemmons, engaging in a foot pursuit while issuing verbal commands to stop. See EXHIBIT D.
- After approximately 40 yards, Officer Lippert put his hand on Mr. Clemmons' back and pushed him to the ground. This was observed by Person 1, an independent witness, who was a resident of James Cayce Homes and present in the parking lot. See EXHIBIT E.
- As Mr. Clemmons got off the ground, Officer Lippert pulled out his Taser. See EXHIBIT F.
- Mr. Clemmons then ran back in the direction of the initial encounter. Officer Lippert continued to pursue Mr. Clemmons. See EXHIBIT G.

- A handgun fell from Mr. Clemmons' clothing. Officer Lippert re-holstered his Taser and attempted to kick the weapon away from Mr. Clemmons. Officer Lippert commanded Mr. Clemmons not to pick up the weapon. Mr. Clemmons picked the weapon up from the ground, at which time Officer Lippert drew his service weapon. Mr. Clemmons then fell again in the parking lot. As Mr. Clemmons stood up, he turned clockwise so that at one point the weapon was pointed in the direction of Officer Lippert. See EXHIBIT H.

- Officer Lippert fired his service weapon three (3) times. Three (3) shots struck Mr. Clemmons. The Medical Examiner's Report describes the wounds as follows:
 - A. Gunshot wound of the back (superior):
The wound path is directed back to front, slightly left to right and upward. The bullet went through Mr. Clemmons' right lung, broke a rib and lodged in the muscle on the right side of the chest.
 - B. Gunshot wound of the back (inferior):

The wound path is directed back to front and upward. The bullet fractured a vertebra, went through the renal vein and lodged in his liver.

C. Perforating gunshot wound of the left hip:

The wound path is back to front, left to right and slightly downward. The bullet travelled through the soft tissue of the upper left thigh and lower abdomen without entering the abdominal cavity. The bullet exited the left side of the abdomen.

See EXHIBIT I.

- The medical examiner cannot determine the order in which the shots were fired and video evidence is inconclusive.
- After the shooting, Officer Lippert reports Mr. Clemmons dropped the handgun. Officer Lippert then picked up the handgun and put it in his pocket. Officer Lippert stated he did this for safety and preservation of evidence. See EXHIBIT H.

- An ambulance arrived at 1:04 p.m. and transported Mr. Clemmons to Vanderbilt Hospital where he died as a result of the gunshot wounds.

OBSERVATIONS AND CONCERNS REGARDING POTENTIAL AND PERCEIVED BIAS IN THE MNPd REPORT

Historically in Metro Nashville, MNPd alone has conducted the investigation when a police officer's use of force resulted in death. In this case, Jocques Clemmons was shot and killed by Officer Joshua Lippert on February 10, 2017 and MNPd began this

investigation. In order to provide the public a transparent and independent investigation, District Attorney Glenn Funk asked the TBI to take over this investigation on February 16, 2017.

The District Attorney, TBI and MNPd signed a Memorandum of Understanding (MOU) on April 7, 2017, which provides that in all future instances where an MNPd police officer's use of force results in death, the TBI alone will conduct a complete and independent criminal investigation. The following observations and concerns demonstrate the importance of adhering to the MOU in that many may perceive a bias in the MNPd investigation in this case due to the wording of the MNPd reports.

1. Many of the offense descriptions and wording of the MNPd reports project potential bias.

When many of the investigative reports were completed, the investigation was in its early stages. Because many of the reports require a description, it causes the writer to draw a conclusion about the facts of the investigation before the facts are known. This causes an

appearance of bias that should be reviewed and considered by MNPD.

Officer Lippert fatally shot Jocques Clemmons at 12:55 p.m. on February 10, 2017. At 6:06 p.m. on that same date an MNPD Incident Report was prepared that listed the offense description as “justifiable homicide” and the status of the investigation “completed.”

As of 6:06 p.m. when the report was written, the investigation had barely begun. All of the surveillance video had not been collected or studied and independent witness Person 1 had not been discovered, identified, located or interviewed. A canvass of the neighborhood had yet to be completed to identify other witnesses.

MNPD and TBI continued to investigate this incident for several weeks following this particular report that suggested a conclusion and claimed to be complete. Because of this, it will be difficult for many to perceive MNPD’s investigation as fair.

2. Some of MNPD's reports refer to the parties in the investigation in a way that projects potential bias.

At least twenty-nine (29) MNPD investigative reports regarding this matter refer to Jocques Clemmons as "suspect," Joshua Lippert as "victim," and / or the crime investigated as "Aggravated Assault."

Because Mr. Clemmons was deceased at the time that all of the reports were prepared, the only potential charges to be investigated involved Officer Lippert's actions. Identifying the officer as the victim and Mr. Clemmons as the suspect sends a message that could be perceived as biased, and seems insensitive because no charges could be brought against Mr. Clemmons. To label the parties in this manner, particularly in the beginning stages of the investigation, could create an appearance to the public that the investigation was biased.

3. When an investigative agency investigates itself, witnesses may distrust the process and

witnesses may be reluctant to come forward or disclose all facts.

In this case, witness Person 2 came upon the scene seconds after the shooting. He has been interviewed by both TBI and MNPD. Significant differences exist between the interviews. Those differences and the investigative follow up will become public if and when the Davidson County Chancery Court allows publication of the TBI report.

Had MNPD not been investigating itself, any perception that these differences could be attributed to bias would not exist.

4. MNPD's Office of Professional Accountability (OPA) Recommended Officer Lippert be Exonerated before the investigation was complete.

The MNPD report provided to the District Attorney included the recommendation by OPA that Officer Lippert be exonerated from violating departmental policy.

OPA could have waited to benefit from the facts included in the TBI report but did not. Because the OPA conclusion pre-dated the TBI report and was made a part of the report provided to the District Attorney, the perception follows that OPA was not concerned with additional information developed by TBI.

While OPA and the District Attorney are charged with making different decisions about the case, both decisions are made after considering the same facts. To publish a report before all information is available may be seen as an attempt to influence the prosecutorial decision.

APPLICABLE LAW

Under Tennessee law, Second Degree Murder is defined as an unlawful killing of another where the defendant acted knowingly.

Self-defense is an absolute defense to a charge of Second Degree Murder. The Tennessee Pattern Jury charge on self-defense in pertinent part is as follows:

If a defendant was not engaged in unlawful activity and was in a place where he or she had a right to be, he would have no duty to retreat before using force against the deceased when and to the degree the defendant reasonably believed the force was immediately necessary to protect against the alleged victim's use or attempted use of unlawful force.

If a defendant was not engaged in unlawful activity and was in a place where he had a right to be, he would also have no duty to retreat before threatening or using force intended or likely to cause death or serious bodily injury if the defendant had a reasonable belief that there was an imminent danger of death or serious bodily injury was real, or honestly believed to be real at the time, and the belief of danger was founded upon reasonable grounds.

In determining whether the defendant's use of force in defending himself was reasonable, you may

consider not only his use of force but also all the facts and circumstances surrounding and leading up to it. Factors to consider in deciding whether there were reasonable grounds for the defendant to fear death or serious bodily injury from the deceased include but are not limited to any previous threats of the deceased made known to the defendant; the character of the deceased for violence, when known to the defendant; the animosity of the deceased for the defendant, as revealed to the defendant by previous acts and words of the deceased; and the manner in which the parties were armed and their relative strengths and sizes.

The use of force against the deceased would not have been justified if the defendant provoked the deceased's use of unlawful force, unless the defendant abandoned the encounter or clearly communicated to the deceased the intent to do so, and the deceased nevertheless continued or attempted to use unlawful force against the defendant.

To convict the defendant, the state must prove beyond a reasonable doubt that the defendant did not

act in self-defense. If from all the facts and circumstances you find the defendant acted in self-defense, or if you have a reasonable doubt as to whether the defendant acted in self-defense, you must find him not guilty.

ANALYSIS

Jocques Clemmons never verbally threatened Officer Lippert, never struck Officer Lippert and never stopped and directly aimed his handgun at the officer.

Mr. Clemmons did not comply with the authority of Officer Lippert's blue lights, the officer's uniformed presence and did not comply with Officer Lippert's verbal commands to stop. Mr. Clemmons instead fled from the scene of the stop. Even after being pushed to the ground, Mr. Clemmons continued to flee. Mr. Clemmons did not respond to Officer Lippert pointing his Taser at him. Once Mr. Clemmons dropped his handgun and was disarmed, Mr. Clemmons did not comply with Officer Lippert's commands not to pick up the weapon, and

prevented Officer Lippert from kicking the handgun away from him. Mr. Clemmons stopped and armed himself in the middle of the altercation with Officer Lippert by picking up the handgun.

After picking up the weapon, Mr. Clemmons once again fell to the ground. As he stood up, he turned to run again and at one point his weapon was directed toward Officer Lippert. Officer Lippert fired three times, striking Mr. Clemmons once in the hip and twice in the back. Officer Lippert asserts he fired his service weapon at Mr. Clemmons in self-defense.

Independent witness Person 1 was in the parking lot when these events occurred. She was a short distance from the incident. She observed Mr. Clemmons with a handgun. Person 1 observed Mr. Clemmons arm himself by picking the handgun off the ground during the altercation with Officer Lippert. The statements of Person 1 and Officer Lippert corroborate each other, and both of their statements are sufficiently corroborated by MDHA video.

Based on the facts of this incident, and the application of the law of self-defense in the State of Tennessee, Officer Lippert has a legally sufficient claim of self-defense. Therefore, the State will not pursue criminal charges against Officer Lippert.

COMMUNITY QUESTIONS REGARDING POLICE POLICIES

This case provides an opportunity for discussions regarding policing in this city. Questions have been raised in a variety of forums since this incident. Among the questions are the following:

1. When should police engage in a pursuit of a suspect who is fleeing on foot? Should there be a policy regarding foot pursuits to eliminate potential bias?
2. How do we balance the safety of police with the sanctity of life of those who present a danger to the police or place themselves in a dangerous situation?

While these questions are important for us to discuss as a community, concerns regarding current police policy do not impact the legal analysis for these facts and this case.

The District Attorney's Office welcomes any opportunity to participate in a dialogue with law enforcement and the citizens of Davidson County.

ADDENDUM

Some in Metro Nashville perceive that police practices are unfair. The Driving While Black report which used statistical analysis to demonstrate disparity in traffic stops and searches documented that these perceptions may have a valid basis in fact. For Nashville to move forward, all law enforcement, including my office, must take steps to enhance fairness and confidence in the criminal justice system.

Today, I am announcing two major initiatives which will be implemented by this office designed to make the justice system more fair and equitable.

I. Pretrial Incarceration on Misdemeanors

The following written policy will now apply for bond considerations in misdemeanor cases:

It is the policy of this Office that pre-trial incarceration is never to be used as a punitive measure. This is especially true when a person is charged with a non-violent misdemeanor offense. In an effort to prevent pre-trial incarceration this Office will recommend to the Court that appropriate defendants be Released on Recognizance (ROR), be placed on Pre-Trial Release, or receive bond reduction(s) at their initial appearance on the Misdemeanor Jail Review dockets.

This policy will apply to, but is not limited to the following:

- DUI cases: Recommend Pre-Trial with SCRAM and DUI monitoring for 1st offenses.
- DUI 2nd or 3rd will be evaluated on a case-by case basis. Any bond reduction or Pre-Trial Release recommendation must include either ignition interlock, SCRAM and alcohol/drug testing as a condition of bond.

Recommend ROR or Pre-Trial Release for all:

- Criminal Trespass
- License related offenses
- Possession/Casual Exchange (see exceptions below)
- Possession of Drug Paraphernalia
- Class B and C misdemeanors that do not involve victims and any other case where, in the judgment of the Assistant District Attorney, release is appropriate.

Recommendations for ROR or Pre-Trial Release are generally inappropriate for:

- A defendant with a history of conduct indicating he/she may not appear in Court (i.e. multiple FTA's) where victims and/or private witnesses are involved (includes Leaving the Scene of an Accident).
- Heroin and Methamphetamine charges
- Crimes against individuals and domestic violence related charges

All defendants should be treated fairly and consistently in accordance with these Best Practices Guidelines. Any departure from the guidelines should be documented and/or approved by a supervising Team Leader.

II. Conviction Review Unit

In order to make certain that no one suffers from a wrongful conviction, a Conviction Review Unit has been established. The protocols for this unit are attached.

PROPOSALS

In addition to these immediate concrete programs, I am suggesting the following list of topics to discuss with Mayor Barry and the MNPD.

1. A joint study to review the potential issues presented in the Driving While Black report.
2. Whether or not MNPD should formally review incidents involving officers drawing weapons, whether the weapon was discharged or not.
3. Policies to further encourage intentional, deliberate recruitment of minority personnel.
4. Funding for the Restorative Justice Program. The Office of the District Attorney General is committed to partnering with Juvenile Court to establish a Restorative Justice Program this year wherein victims can be fully supported while juvenile offenders have the opportunity to avoid detention for some specific, agreed upon charges.

