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June 10, 2016

Mr. Bruce Kelley, Sr.
924 South Avenue,
Wilkinsburg, PA 15221

Also, via Hand-delivery to:
Mr. Bruce Kelley, Sr., DOC # 9308
c/o Allegheny County Jail
950 2nd Avenue
Pittsburgh, PA 15219

In RE: Bruce Kelley, Jr.
Date of Death 1/31/16

Summary of the Evidence

On January 31, 2016 at approximately 3:30 P.M., Officer Emily Hampy ("Hampy") and Officer Thomas Adams ("Adams") of the Allegheny County Port Authority Police were on routine patrol on the east busway in the area of the Swissvale station. At this point they observed two males on the "Linear Trail," a pedestrian path that parallels the busway. As a part of their duties Port Authority officers routinely patrol this pedestrian pathway by parking and walking portions of the trail. The purpose is to deter or detect criminal activity. The patrol has experienced crimes ranging from loitering and graffiti to robbery. As the two officers approached an area known as the "Linear Park" at Wood Street and Franklin Streets in the Borough of Wilkinsburg, they observed two individuals later identified as Bruce Kelley, Sr. ("Kelley, Sr") and Bruce Kelley, Jr. (Kelley, Jr"). Linear Park is an area that contains benches and a gazebo for use by the



public. It is connected to the linear trail by a set of steps. The area was 'created' when the busway was developed; and sits at the end of Franklin Street.

The officers observed Kelley, Jr and Kelley, Sr. sitting at the gazebo in the park with beer cans. The two appeared to be drinking. Kelley, Jr. rose and walked to a garbage can throwing something away. The officers asked what the two were doing at which point Kelley, Jr. said "Fuck this! I'm not going, I'm not going!" The officers believed Kelley, Jr. thought he was going to be arrested at this point. Kelley, Jr. then began to walk away. Adams ordered Kelley, Jr. to stop and Kelley, Jr. turned and charged at him. Adams was physically engaged by Kelley, Jr. Adams immediately began to give him commands and attempted to control him. Kelley, Jr. disengaged from Adams and made his way to a pole that supports the gazebo and grabbed it in a 'bear hug' fashion. The two officers continually attempted to break Kelley, Jr.'s grip while continuing to give him verbal commands. Pepper spray was deployed at this point in an attempt to gain control of Kelley, Jr. but it had no effect. Kelley, Jr. was yelling "come get these mother fuckers off of me!" to Kelley, Sr. in an attempt to gain his assistance. It was at this point that Kelley, Sr. engaged Hampy and threw a punch that grazed the left side of her head. She then gave Kelley, Sr. orders to back away as he continued to fight with her. He knocked her two-way radio from her vest as well as her nametag during this struggle. Hampy deployed pepper spray on Kelley, Sr. in an attempt to gain compliance and it was effective. She then went back to assisting Adams as he struggled with Kelley, Jr. at which point she was attacked again by Kelley, Sr. and again deployed pepper spray which was again effective. She again went back to assisting Adams with Kelley, Jr. Adams appeared to be gaining control of Kelley, Jr. when Hampy saw Kelley, Jr. move

his hand to his midsection and raise his arm with a knife in it. Adams then yelled “knife” to make his partner aware of the threat and aware that she should get distance from Kelley, Jr. Kelley, Jr. began walking to the steps that lead to the trail. He was once more sprayed with pepper spray that again had no effect.

Officer Granger of the Wilkinsburg Police Department arrived on scene in response to radio requests for assistance and observed Hampy and Adams repeatedly giving verbal commands to drop the knife to Kelley, Jr. as he ascended the steps to the Linear Trail. Kelley, Jr. began walking outbound on the trail toward Swissvale and was followed. The entire time he had the knife out and in his hand. At this point, Officer Granger gave the actor a command to stop and drop the knife or a taser would be deployed. Kelley, Jr. ignored this command and a taser was deployed with no effect. The actor went off of the trail and began to cut through back yards in Wilkinsburg via a ‘cut’ in the fence along the Linear Trail. Hampy and Adams were aware that a group of officers were responding walking inbound on the trail and that this created a risk of crossfire; this group of initial officers backed off and “loosely” followed the foot pursuit.

Kelley, Jr. made his way from the cut in the fence to the Hamnett Street Park and Ride lot where he is captured on video. Sgt. Dippipa deployed a taser two times with negative results and a similar result was obtained with the deployment of pepper spray in this area. Officer Sanders attempted to use a collapsible ASP baton to knock the knife from Kelley, Jr.’s hand. As Sanders moved toward Kelley, Jr, he abruptly turned, raising his hand with the knife in it toward Sanders which caused him to back up. Officer Granger reported losing sight of Kelley, Jr. briefly after he cut off of the trail and reacquiring sight in the area of the rear of 711 and 713 Whitney Street. He deployed his

taser a 2nd time at this point with no effect. Kelley, Jr. said "Is that all you got" and continued walking. This appears to be the taser deployment in the tail end of the Hamnett Street Video.

Canine Sergeant O'Malley and his partner Aren responded to the area of the foot pursuit in response to the various radio transmissions and requests for assistance. As the officers emerged in the area of Whitney Street he heard Kelley, Jr. say "Go ahead, fucking shoot me, go ahead shoot me." Sergeant O'Malley was aware by previous radio communication that multiple deployments of pepper spray and tasers were unsuccessful. It was at this point that he retrieved his Canine partner Aren and unleashed him, holding him by the collar. Kelley, Jr. was stopped and surrounded by officers in front of 710 Whitney Street. The physical layout of this particular area made it such that Officers were able to temporarily prevent Kelley, Jr.'s continued flight.

Officers repeatedly gave commands for Kelley, Jr. to drop the weapon and get down on the ground. Sergeant O'Malley gave the verbal command to the dog "watch him." This command is meant for target acquisition so that Aren can differentiate between the suspect and officers. He then gave the warning "Police K-9, stop and drop the knife," warning Kelley, Jr. that Aren would be released. Kelley, Jr. yelled "I'll kill that fucking dog." Sergeant O'Malley then gave the bite command and released the dog. At the time, Kelley, Jr. had the knife in his right hand. Aren latched on to Kelley, Jr.'s left arm and Kelley, Jr. began to slash the dog with the knife. Aren was originally on his hind legs when he latched on but fell to all fours upon being stabbed. Kelley, Jr. lunged at Aren again and slashed him at least two more times. According to Officer Dominic Rivotti, Kelley, Jr. also was moving in the direction of Sergeant O'Malley. Sergeant

O'Malley drew his weapon and fired his weapon as did Officer Rivotti. It was determined that Rivotti fired two times and O'Malley fired nine times.¹ Kelley, Jr. was struck seven (7) times. Kelley, Jr. fell to the ground with the knife still in his right hand. Officer Rivotti kept cover and approached, kicking the knife away from Kelley, Jr. Kelley, Jr. also had a pair of brass knuckles on his left hand as well.

O'Malley yelled the command "Platz" to Aren, a term meaning "place" in German. This command is traditionally used to make Aren stay put and in this particular instance Sergeant O'Malley used it so that Aren did not bite any responding officers. He kept a cover position until the weapon was secured and then went to the aid of Aren while Detective Atkins recovered a medical bag and began tending to Kelley, Jr. Kelley, Jr. was treated at the scene but died of his injuries prior to the arrival of medical personnel. Aren was transported in O'Malley's vehicle for treatment and died of his injuries.

Civilian witness Danielle Smith confirmed that at the scene of the shooting the police gave repeated commands to drop the knife and get on the ground, as well as several taser deployments. She was at 714 Whitney Avenue visiting a cousin at the time of the incident. She described Kelley, Jr. as looking "crazy and angry". She stated that she felt compelled to yell at Kelley, Jr. "you better get down or you'll get killed." She indicated that police immediately rendered aid to Kelley, Jr. and that they "didn't do anything wrong."

¹ See. Report at 16LAB00926 wherein item 1A Smith and Wesson 9mm pistol serial number HPS2701 matched to MCU items "B" and "C", two spent 9mm shell casings. Item 2A Smith and Wesson 9mm pistol serial number HBE1892 matched to MCU items "D", "N", "O", "P", and "W" through "AA". Combined with report of Detective Patrick Miller 1/31/16 noting the recovery and transfer to the crime lab of Officer Dominic Rivotti's firearm to be serial number HPS2701. Also, Detective Kevin McCue's report dated 1/31/16 detailing the recovery of Sergeant Brian O'Malley's firearm to be serial number HBE1892 and its transfer to the crime lab.

Kelley, Sr. was interviewed and relayed that he had borrowed money from his mother that day and purchased a 24 pack of Hurricane Malt Liquor and that he and his son, Kelley, Jr., were drinking it in the gazebo at the park when the police encountered them. He said that the police tried to arrest his son and he tried to intervene but was pepper sprayed. He indicated that he kept coming at the officers because he was trying to help his son. He admitted to hearing the officers repeatedly tell his son to stop and then Kelley, Jr. left by going up the steps to the Linear Trail and the officers followed behind him. He stated that his son is “bipolar and drinks like a fish”² and that lately he had an “I don’t give a fuck attitude.”

Scene

The ‘scene’ in this case consists of three primary locations; the gazebo located at Wood Street and Franklin Street in the Borough of Wilkinsburg, the Hamnett Street Park and Ride parking lot and 710 Whitney Avenue where Kelley, Jr. was shot, although some pieces of evidence were recovered along the path that Kelley, Jr. traveled as well. A distance study of Kelley, Jr.’s route was conducted by Detectives Grill and Caruso of the Allegheny County police. The total distance (including some backtracking by Kelley, Jr.) was approximately .5 miles.

All item indicators are listed in the form used by the Mobile Crime Unit unless otherwise specified. At the primary scene of 710 Whitney Avenue, a dog leash was located in the street. The item was marked Item “A” with a scene marker, it was

² *Note:* an attempt was made to develop a mental health history for Kelley, Jr. by inquiry to the Allegheny County Jail, The Washington County Court Probation Department, Mercy Behavioral Health, and search warrants to UPMC with negative results.

photographed, and turned over to Detective Atkins of the Port Authority and not given an MCU number. Items "B", "C", and "D" were spent 9 mm shell casings. Item "B" was recovered on a side walk in front of 710 Whitney Avenue. Item "C" was recovered in a grassy area adjacent to the sidewalk in front of 710 Whitney Avenue. Item "D" was located west of Kelley, Jr.'s body. To the south of Item "D" were spots of suspected blood located on some leaves, they were marked "E", photographed, and a sample taken, additionally a control sample was taken of the area next to "E" and marked "F."

The knife reported to have been carried by Kelley, Jr. was recovered as Item "G," it is described as being a 'MTECH ballistic" manual folding knife with a blue and black handle. It is noted as being to the southwest of Item "E."³ It was found in the open position with suspected blood on the blade. In addition to the knife Kelley, Jr. was found to have a black pair of brass knuckles on his left hand. They were photographed as placard "R."⁴

Two spots of suspected blood in the street are recovered at item "H" and "J" with their control samples at "I" and "K", respectively. Additionally an axe is recovered at item "L" and a pitchfork at item "M."⁵

Three additional 9mm spent shell casings are found in a leaf pile adjacent to a tree in the front yard of 710 Whitney Avenue. They are marked "N," "O," and "P," respectively and photographed.

³ See statement of Port Authority Police Officer Rivotti 2/2/16 wherein he explains that after the shooting he approached Kelley, Jr. with his weapon drawn and kicked the knife from his hand.

⁴ See MCU photo ME_3417.

⁵ See statement of Edgewood Police Officer Daniel White and Swissvale Police Officer Joel Burell 1/31/16 wherein both officers indicate that during their foot pursuit of Kelley, Jr., they came upon these implements in one of the backyards and grabbed them with the idea and intention to either trip or disarm Kelley, Jr.

A secondary daylight search of the scene located at 710 Whitney Avenue was conducted on 2/1/16. Item "V," one taser probe as well as item's "W," "X," "Y," "Z," and "AA", all 9mm spent luger shell casings were recovered. Three bullet strikes were noted in the concrete steps of 710 Whitney Avenue as well as a possible bullet hole in the exterior front wall. It should be noted that 710 Whitney Avenue was found to be a vacant building on the canvas of the neighborhood.

Detectives and the Mobile Crime Unit processed various points along Kelley Jr.'s route recovering the following. A taser wire and several Anti Felon Identification (AFID) tags are recovered at 711 Whitney Avenue. These tags are a type of confetti packed into the taser cartridges to identify the serial number of the taser from which it was discharged. A taser wire was recovered at the Hamnett Street Park and Ride lot. The gazebo at Franklin and Wood Streets was processed and a police name tag for Emily Hampy⁶ as well as a cell phone was recovered. The path and ramp that leads from Whitney Avenue to the walking path were processed and a black hat, black backpack that contained 14 full cans of hurricane beer in a white plastic bag were recovered. Center Street at Woodworth Street was processed and the doors from a taser as well as an AFID were recovered (this is the far end of the Hamnett Street Park and Ride lot).

Evidence From Medical Examiner's Office

An autopsy was performed by Dr. Todd Luckasevic on February 1, 2016 at 16COR00901 and the cause of death was listed as multiple gunshot wounds to the trunk, with the manner of death being homicide. Dr. Luckasevic made the following anatomic diagnosis:

⁶ See statement of Officer Emily Hampy 1/31/16 wherein she indicates that during the initial fight with Kelley, Sr., he knocks her police radio and nametag off.

- I. Penetrating gunshot wound of the trunk
 - a. Entrance location: right anterior lateral neck
- II. Penetrating gunshot wound of the trunk
 - a. Entrance location: Right upper back
- III. Perforating gunshot wound of the trunk
 - a. Entrance location: Left upper lateral chest
 - b. Exit Location: Right lateral chest
- IV. Penetrating Gunshot wound of the Trunk
 - a. Entrance location: Midline anterior chest
- V. Penetrating Gunshot wound of the trunk
 - a. Entrance location: Left Lateral Flank
- VI. Penetrating Gunshot wound of the trunk
 - a. Entrance location: Right Mid back
- VII. Perforating Superficial Gunshot wound of the upper extremity
 - b. Entrance location: Right anterior medial forearm

Post mortem toxicology revealed Bruce Kelley, Jr. to have a BAC of .113% in his urine, .079% in his femoral blood, .073% in his eye fluid.

Applicable Law

Now turning to the legal considerations in this case, Pennsylvania's statute provides two ways an officer is justified in using deadly force. 18 Pa.C.S § 508. The first justification in the use of deadly force is when the officer believes that the force is necessary in effecting the arrest because the officer's life and/or another person's life is in danger or they will suffer serious bodily injury. *Id.* Serious bodily injury occurs when there is a substantial risk of death or serious injury that causes permanent disfigurement or protracted loss or impairment of the function of any bodily member or organ. 18 Pa.C.S § 2301.

The second justification in the use of deadly force is when the officer believes *two* things. First, the officer must believe that the force is necessary to prevent the arrest from being defeated by resistance or escape. 18 Pa.C.S. § 508 .⁷ Second, the officer must also

⁷ See Com v. French, 531 Pa 42 (1992) Footnote 9 defining believe as reasonably believes according to the definitions section of chapter 5.

believe the perpetrator to be arrested has committed or attempted to commit a forcible felony *or* is attempting to escape *and* possesses a deadly weapon, *or* otherwise indicates that he will endanger human life or inflict serious bodily injury unless arrested without delay. *Id.*

Discussion

I will discuss the second possible justification first because it appears to be the most appropriate starting point for reasons stated below. Officer Rivotti indicates in his statement that he believed after Kelley, Jr. stabbed canine Aren that he was making movement toward Sergeant O'Malley with the knife at the time he shot. A position that was not contradicted by the evidence generally, and specifically from a civilian witness, Danielle Smith, who had an unrestricted position from which to observe the final interaction between the police and Kelly Jr.⁸ That would be sufficient to justify the first possible justification.

Here, with regard to the first prong of the analysis under the second type of justification, it is clear that Officer Rivotti and Sergeant O'Malley believed the force was necessary to prevent the arrest from being defeated by resistance or escape. Kelley, Jr. had, at that point, been escaping from police and resisting their attempts to take him into custody for a period of approximately 20 minutes and spanning a distance of approximately one half mile. During the course of the that escape, Kelley, Jr. resisted and failed to comply with multiple levels of non-lethal force to include officer presence (here the presence of many officers), repeated verbal commands, multiple deployments of OC spray, multiple taser deployments, attempted deployment of an ASP baton and

⁸ The use of a K-9, as well as alternatives to the use of a K-9, in the Use of Force Continuum is a matter which is before the Allegheny County Chiefs of Police Association.

ultimately the deployment of a police canine. Quite simply, non-lethal options had been deployed at length and to no avail.

With regard to the second prong of the analysis, it is clear that the positing of the conditions there in an “or” fashion means that any one of the conditions will justify the use of deadly force. Here it is my belief that all three can be satisfied, though I will not discuss forcible felony as the law in Pennsylvania is not clearly defined. With regard to that condition, I will briefly state that the first incident that Kelley, Jr. fled from was an assault on a police officer, a felony involving force. A second felony involving the use of force is present when Kelley, Jr. raises the knife and moves at Officer Sanders. A third is arguably present when Kelley, Jr. stabs canine Aren (a crime that the legislature upgraded to a felony of the second degree in 2013 that by definition requires force).

Turning to the second condition under the second prong, Kelley, Jr. had been attempting to escape, as mentioned above for a period of 20 minutes. The entire time he visibly possessed a deadly weapon. This fact would have been known to the officers based on the initial radio transmission indicating the presence of the knife that both Officer Rivotti and Sergeant O’Malley acknowledge listening to, and their own visual contact with the defendant as he was brandishing the knife. Officer Rivotti indicates that he joined the foot pursuit just prior to the video in the Hamnett Street Park and Ride lot and observes multiple deployments of OC spray and tasers. Additionally he indicates that he saw Kelley, Jr. “slash” at Officer Sanders in response to his attempted deployment of an ASP baton. Sergeant O’Malley indicated continually listening to the radio transmissions in an attempt to join the foot pursuit. There is no indication that a radio transmission regarding Kelley, Jr. slashing at Officer Sanders was made, so Sergeant

O'Malley may not have been aware of that particular action on Kelley, Jr.'s part. The deployment of canine Aren was another attempt to take Kelley, Jr. into custody with the use of non-lethal force. Kelley, Jr.'s action of stabbing canine Aren manifests a continued intent to resist and escape on his part. The fact that Kelley, Jr. had been on the move for 20 minutes combined with the stabbing of canine Aren substantiates Officer Rivotti's and Sergeant O'Malley's belief that he would continue to escape with the knife.

With regard to the third condition of the second prong of analysis for justification of police use of deadly force, Kelley, Jr. fought with Adams and Hampy, brandished a weapon, and slashed at Officer Sanders. Several deployments of non-lethal measures were ineffective for various reasons, some of which are unknown, i.e. the resistance to OC spray. The pursuit of Kelley, Jr. was generally taking place between 3 p.m. and 4 p.m. on a Sunday. The bulk of the pursuit was through backyards of a residential area. It was daylight hours and the potential for Kelley, Jr. to come into contact with the public existed. In fact, Detective Carado of the Swissvale Police Department indicates in an interview with Detective Dolfi on 2/1/16 that during his participation in the pursuit of Kelley, Jr. he lost sight of Kelley, Jr. at one point but came into contact with several children playing in their backyard. Detective Carado yelled at the children to go into their houses for fear that Kelley, Jr. would harm them. I say this not to impute this knowledge to Officer Rivotti or O'Malley, because I have no indication one way or another whether they were aware of this fact, but to highlight that the potential danger was real. The fact that Kelley, Jr. used the deadly weapon he had in his possession to kill a police animal further bolsters the legitimate concern that he would otherwise endanger human life.

Conclusions

After reviewing the case materials relative to the shooting death of Bruce Kelley, Jr., it is my conclusion that both Sergeant O'Malley and Officer Rivotti were justified in the use of deadly force under all the attendant circumstances.

Sincerely,

A handwritten signature in black ink, appearing to read 'S. Zappala, Jr.', with a long horizontal flourish extending to the right.

Stephen A. Zappala, Jr.
Allegheny County District Attorney

Cc: Dennis Logan, Chief of Detectives
Matthew Porter, Chief of Allegheny County Port Authority Police
Coleman McDonough, Superintendent of Allegheny County Police
Kevin Chernosky, Assistant District Attorney