



STATE OF MISSOURI  
**OFFICE OF PROSECUTION SERVICES**

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**STEPHEN P. SOKOLOFF**  
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February 21, 2020

Honorable Carol England  
Associate Circuit Court  
10 E. 5<sup>th</sup> Street  
Fulton, MO 65251

Re: Special Prosecutor Case CSF#190752363, Fulton PD OIS

Dear Judge England;

I have now completed my review of the investigation file of the Missouri Highway Patrol DDCC, into the death of Cody McCaulou which occurred on December 30, 2019. On January 2<sup>nd</sup>, 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 McCaulou's girlfriend and his mother (who were passengers in his vehicle at the time of the shooting), statements from the officer involved and the other responding officers, the autopsy report, lab reports from the MSHP Lab, and video from the surveillance system at the school where the incident occurred and from the dashcam of the second responding officer.

All of the information contained there is internally consistent, and leads to the conclusion that the shooting was justified under current Missouri law. The evidence indicates that the deceased was accelerating his automobile directly towards the officer at a distance of less than 6 feet at the time the officer discharged his weapon and that based on the information and circumstances available to the officer at the time, the officer had 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.

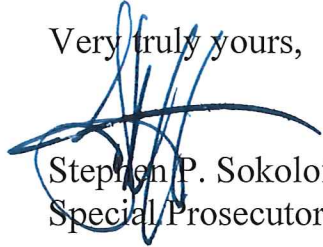
In Missouri, where an officer is in a position of using deadly force in self-defense, the standard requires a reasonable belief that he (the officer) is in imminent danger of serious physical injury or death, as a result of the actions of the suspect. See, for example, *State v. Chambers*, 681 S.W.2d 781(Mo banc 1984), and MAI-Cr 4<sup>th</sup> 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 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 school surveillance video footage, the vehicle may be seen accelerating directly at the officer, who was walking towards the vehicle, and who would have been clearly visible to the driver prior to the vehicle being placed into drive and moving forward (Frame 141 of the video at 10:01:45 am). At the time the officer fired his weapon, (frame 145 of the school surveillance video at 10:01:46 am) the vehicle was no more than 6 feet from him and accelerating rapidly toward him. From the skid mark evidence at the scene, the suspect vehicle traveled to a point within 2 feet of the right side of the rear of the officer's patrol vehicle. As soon as the vehicle started towards him, the officer was retreating, but from his position, he reasonably believed he would not be able to get to a position of safety. Further, it should be noted that a total of only 3 seconds elapsed from the time the vehicle started forward until it struck the building after the driver was shot. (I would also offer a very small caveat; the surveillance "video" is not truly a traditional video, as it only records at 3 frames per second, as opposed to the standard for actual full-motion video which is in the 30 fps range. This results in jumps, but the sequencing is clear enough to be easily discernable.)

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 the officer was justified in his use of deadly force, and that I believe that no charges are warranted.

I am providing a copy of this report to Fulton PD, 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

SPS:ss

Enclosure: video stills