

TO: Scott McNamara, District Attorney
FR: Kurt Hameline, ADA
Stacey Paolozzi, ADA
Joshua Bauer, ADA
RE: Investigation into the death of Jessie L. Rose

Purpose

This committee was convened by District Attorney Scott McNamara to review the police-involved shooting incident occurring on July 14, 2013 in the playground area of Addison Miller Park, located in Utica, New York, which resulted in the death of Jessie L. Rose [DOB: 10/01/93]. The committee's express purpose was to conduct an independent review of all information and evidence to determine whether there exists any indicia of either criminal liability or official misconduct on the part of the responding police officer and to determine whether a grand jury should be convened to consider these issues.

Documents reviewed:

All supporting depositions

Preliminary and final autopsy report, including toxicology screen

Certified medical records of Jessie L. Rose from St. Elizabeth's Medical Center

Narrative reports and supporting depositions of Utica Police Officers

Prior Domestic Incident Reports involving defendant and members of the Utica Police Department

Forensic report from the Wallie Howard, Jr. Center for Forensic Sciences regarding the attempts to raise the serial numbers on the gun recovered at the scene

Reports of Utica Fire Department first responders

Evidence reviewed:

All photographs taken at the scene and St. Elizabeth's Medical Center

Video of the scene

Forensic mapping of the scene as generated by UPD forensic unit

Photographs of contents of defendant's backpack

Photographs of the post-mortem examination

Audio recording of 911 call

Audio recording of police radio transmissions

Map of area off Google earth

The investigation of this matter took a significant period of time to complete in full. On January 31, 2014, the final autopsy report was completed by the Onondaga County Medical Examiner's Office and was provided to the District Attorney's Office on February 3, 2014.

As the documents and reports were received, they were reviewed and it was then the task of the committee to speak personally to the eyewitnesses and police officers involved in this case. Due to the fact that this was an investigation, the committee did not possess subpoena power to compel the personal appearance of either police officers or lay citizens at the District Attorney's Office. Rather, the committee had to request people to voluntarily come and speak with us about their observations and actions on July 14, 2013. The committee met with multiple civilian witnesses including the girlfriend of Jessie L. Rose [hereinafter the "decedent"].

Several witnesses did not respond to multiple telephone calls and letters requesting their presence. After numerous telephone messages were left, on November 4, 2013, ADA Paolozzi sent a letter to an eyewitness who had been present in the park with his children at the time of this incident. The witness declined to respond to either the phone messages or the letter and never met with the members of this committee. The committee reviewed and considered the prior sworn written statement of that witness.

The Committee provided the family of the decedent with the opportunity to meet and present any information they deemed relevant for the committee's review. ADA Hameline left several messages and had several telephone conversations with the decedent's mother, Kristine Almas, in which she indicated her reluctance to meet with the District Attorney's Office, but she indicated that she would consider our request. She also stated that she would discuss our request with her own attorney. On January 14, 2014, she finally indicated to ADA Hameline that she would not be coming to the office to discuss the matter because she felt the District Attorney's Office would be covering up for the Utica Police Department and that the decedent's father expressed the same opinion. On January 16, 2014, ADA Hameline received a call from attorney Woodruff Carroll, Esq. of Syracuse, New York, who indicated that he represented the decedent's family. He stated that, contrary to prior indications, they would be willing to meet with this committee if he could be present.

On January 17, 2014, ADA Hameline and attorney Carroll spoke again and set up a meeting for 1/29/14 at 2pm at the District Attorney's Office. On 1/29/14, attorney Carroll contacted ADA Hameline

and indicated that he was engaged in a matter in Syracuse and that they would not make it to the previously scheduled meeting with the committee. A meeting was scheduled for a subsequent time.

On February 3, 2014, attorney Carroll, together with the decedent's father, met with the committee at the District Attorney's Office. The mother failed to attend. At that time, evidence was disclosed and witness statements were discussed. In addition, photographs and maps were reviewed. The recording of the 911 call was played in full. The decedent's father had some questions about the type of gunshot wounds sustained by his son. At his request, he viewed the autopsy photographs of the decedent which depicted all injuries sustained by the decedent. This included photographs which depicted the gunshot wound in the decedent's abdomen. The decedent's father also recognized and identified several items of property in the photographs as belonging to his son, the decedent. Furthermore, he recognized and identified the decedent's handwriting on some notes. During that meeting, the committee inquired of the decedent's father whether he knew if the decedent had battled depression or had any thoughts of suicide. He indicated that he was unaware of any issues with depression or suicidal ideation. The committee also asked whether the decedent's father had any information as to why the decedent was in the park that day. He indicated that he did not. Neither the decedent's father nor his attorney provided any other pertinent information that they wished the committee to review.

On March 3, 2014, the committee met with Utica Police Officer Anthony Ellis [hereinafter the "officer"]. He voluntarily appeared at the District Attorney's Office with his attorney, Natalie Carraway, Esq. At that time, he recounted numerous times his version of events of the day of July 14, 2013. This was done with the aid of the forensic mapping as well as the Google Earth maps of the area.

Background

During the course of this investigation, the committee met with and interviewed the decedent's girlfriend. She indicated that she had maintained an intimate relationship with the decedent for the seventeen month period preceding his death. Based on her observations and interaction with the decedent, it was her belief that the decedent struggled regularly with depression during the course of their relationship and, on occasion, he had made statements to her indicative of suicidal ideation. She specifically recounted that, shortly before his death, the decedent said to her, "I am a dead man walking." During her meeting with the committee, she explained that her relationship with the decedent was somewhat tempestuous and that some of the more recent discord required intervention by the Utica Police Department. Indeed, she shared that her last interaction with the decedent occurred on the night preceding his death. At that time, the interaction devolved into an argument between them about her developing relationship with a male friend. Before concluding the interview, the girlfriend was afforded an opportunity to view various photographs of the crime scene at Addison-Miller Park and other photographs of certain property found on the decedent's person at the time of his death. In viewing the crime-scene photographs, she identified a location in the wooded perimeter of Addison-Miller Park, a location very close to the site of the decedent's death, and explained that this location was especially significant to her and the decedent insofar as it constituted their regular meeting spot. Finally, as to the photographs of the property found on the decedent's person, she noted that one such

photograph depicted a piece of cardboard bearing the date "02/14/12," and explained that this date was significant to her and the decedent because it represented their "anniversary" date. She also identified her own handwriting in a love note located on the decedent's person.

This committee also researched any prior contact between the Utica Police Department and the decedent. It should be noted that the decedent had multiple interactions with members of the Utica Police Department dating back to the year 2011. It appears that a majority of those interactions stemmed from domestic incidents occurring between the decedent and his girlfriend. It was reported that on one prior occasion, the decedent expressed to a member of the Utica Police Department that he had thought about killing himself. In all of his prior interactions with the Utica Police Department, the committee was unable to locate any time where the decedent had any prior interaction or contact with the officer. Furthermore, the decedent's father indicated to the committee that he was unaware of any prior contact between the decedent and the officer.

Factual Findings:

On July 14, 2013, at approximately 12:12 PM, the 911 call center received a call indicating the presence of a white male in the Addison Miller playground and that said individual possessed a long barreled weapon and was firing shots in the park. The male caller indicated that he was on Flagg Avenue when he heard a bunch of shots coming from the park. He described, "a guy with a black shirt with a shotgun firing off shots in the park next to the basketball courts." He stated that he had heard three (3) shots. During the call, the caller lost sight of him but described him as a Caucasian male wearing a black shirt and a black baseball hat. Said individual was requesting police assistance. The caller stayed on the phone and described the individuals' movements until the police arrived. During the call, shots can be heard in the background.

Utica Police Department Patrolman Anthony Ellis, a five year, nine month veteran of the Utica Police Department, was dispatched to the scene. He was approximately 2 blocks away at the time of the dispatch. The officer, who was riding alone, was nearby on O'Brien Street. He was driving a marked Utica Police Department Unit and was in full uniform. He then turned left onto York Street and continued in a southerly direction where he eventually met up with the 911 caller in the vicinity of York and Sophia Streets. The 911 caller approached his vehicle and pointed out the individual in the park that he had observed with the shotgun. As of that time, the shooting in the park had ceased. The officer turned his vehicle around and travelled in a northerly direction on York Street and parked in front of the gated entrance near the playground area. He exited his vehicle and entered the gated area through the northernmost gate, at the break in the fence. This gate led into the playground area. He indicated that as of that time he had not yet seen the individual in question; however, the individual who had been seen firing shots was pointed out as being present in the jungle gym of the playground area in the park. He soon observed the individual sitting on or crouching by the tube slide on the opposite side of the playground. The playground equipment was between the officer and the decedent, and the officer indicated that at that point he did not see a weapon. The officer issued verbal commands to the

decedent demanding for him to show his hands. The decedent ignored all the officer's verbal commands. The officer then saw a long barreled gun. He proceeded to unholster his police issued .45 caliber Smith and Wesson M&P semi-automatic pistol, and he continued his approach toward the decedent. He brought his weapon to a "high ready" position while he simultaneously issued loud verbal commands to the decedent to drop the gun. The issuance of these verbal commands was confirmed by civilian witnesses who reported that they heard these commands. The decedent ignored those verbal commands as well.

The decedent then stood up while simultaneously turning clockwise while racking the action of the shotgun. He discharged a single round from the shotgun, at which time the officer immediately discharged his service weapon two times in the direction of the decedent. The decedent fell to the ground, and no further shots were fired. The officer approached the decedent and placed him in handcuffs, as other UPD officers arrived. The decedent appeared to have injuries to his torso and his left hand. Emergency personnel arrived shortly thereafter. Medical attention was promptly administered to the decedent, and he was transported via ambulance to St. Elizabeth's Medical Center. While at St. Elizabeth's Medical Center he received medical attention, which was unsuccessful as he succumbed to his injuries and was pronounced deceased at 5:09 PM. His body was secured and turned over to the Onondaga County Medical Examiner's office pursuant to Oneida County Standard Protocol.

Findings of the Onondaga County Medical Examiner

Evidence of Gunshot Injury:

1. A single perforating shotgun entrance wound to the abdomen, with an exit wound on the left back approximately 2 ½ inches lower than the entrance. The range of fire was described as intermediate with stippling found around the wound within a 4 centimeter radius, consistent with a Sabot or slug type load. No projectiles were found in the body, however, shotgun wadding was recovered by surgeons during surgical intervention at St. Elizabeth's Medical Center. This wadding was consistent with shotgun wadding located at and secured from the scene.
2. Gunshot wound to the left hand. This gunshot wound entered the dorsal hand through the left fifth metacarpal bone and exited through the palm. No stippling or soot was found around the wound, and its cause was determined to be consistent with the type of police ammunition issued to the officer. No projectile was located in the hand. The medical examiner concluded that this wound was not the cause of death and did not contribute to the decedent's death in any way.

Cause and manner of death

The cause of death was determined to be shotgun wound to the abdomen, and the manner of death was determined to be suicide.

Forensics

Several items of evidence were collected at the scene and secured by the Utica Police Department Forensic Identification Unit.

Among other items, the following noteworthy items of evidence were collected:

- A 12 gauge, sawed off shotgun with a sling was located in the grass on the east side of the playground equipment. This shotgun had one expended round still in the weapon.
- A baseball hat with the words “Native pride” was located on the sidewalk near where Rose had been.
- The evidence indicated that prior to the arrival of the officer, the shotgun was fired four (4) times prior. Shotgun wadding and casings were recovered at the scene:
 - 4 pieces of shotgun wadding and 4 spent shotgun shells were secured from different locations at the scene, east of the playground equipment, which seemingly created a path from the playground equipment toward the wooded area from which the decedent had emerged. Along that path, there was an area of ground, which appeared to have been disturbed by a shotgun blast. It was determined that the round entered the ground in a northeasterly direction.
 - 1 spent 12 gauge Remington shotgun shell was secured from the shotgun described above
- Smith & Wesson M&P .45 caliber semi-automatic pistol, which was the duty weapon of Officer Anthony Ellis secured from Officer Ellis
- The evidence indicates that the officer discharged his weapon two (2) times during this incident. Two (2) .45 caliber casings were located at the scene.
 - 2 spent .45 caliber Federal casings were secured from the area of the entrance where the officer entered the park and in the grass just northeast of that area.
 - A bullet strike was located on a metal support pole of the playground equipment, believed to be struck by a round fired by the officer. It was determined that the bullet strike was consistent with the direction the officer was firing. Measurements taken at the scene, as well as trajectory analysis tracked the line of fire back to the sidewalk area where Ellis had discharged his firearm.
- Projectiles
 - 3 deformed lead projectiles and cooper jacketing were secured from 3 different locations at the scene
- A backpack, identified as belonging to the decedent, was located in the woods, at the location identified by the decedent’s girlfriend as the place where they met on a regular basis. The contents of the backpack were documented, including the following items:
 - A note, identified as written in the decedent’s handwriting stating, “I’m so sorry. I love you all.”
 - A note to the decedent in the handwriting of his girlfriend.

- A paper or piece of cardboard with, "02/14/12 "written on it; noted by the decedent's girlfriend as the date they started dating.
- A note, identified as being in the decedent's handwriting, stating, "Into the sun. The sky takes my soul. Into this light. I am saved. – JLR"
- The total workstation was utilized to secure measurements of the scene and to plot the evidence secured from the scene.

Sawed off shotgun

The shotgun secured was identified as a Maverick Arms Model 88 Caliber 12 gauge pump-action shotgun. The stock of the weapon had been altered and the barrel had been shortened. The serial numbers on the shotgun had been obliterated. Once this item was secured, it was forwarded to the Wallie Howard, Jr. Center for Forensic Sciences in Syracuse, New York for analysis and an attempt to raise the serial numbers. A report dated October 14, 2013 indicated that said shotgun was operable. Said report also indicated that all attempts to restore the obliterated area in order to read any serial number inscriptions, were unsuccessful. Neither the ownership of the shotgun nor the manner in which the decedent came into possession of it could be established.

Evaluation and Conclusion

It is the finding of this committee that Officer Ellis was justified in using deadly physical force on July 14, 2013. It is further the conclusion of this committee, as supported by the evidence reviewed, that this use of deadly force did not cause or contribute in any way to the death of Jessie Rose. The decedent's death is solely attributed to a self-inflicted gunshot wound.

It is the recommendation of this committee that no grand jury be convened to review the officer's actions, as his actions appear to be both reasonable and justified. The officer appeared to have acted in a self-protective manner, pursuant to New York State Penal Law Section 35.15(2) in that the officer reasonably believed the decedent was "using or about to use deadly physical force," especially in light of the decedent's failure to respond to the officer's verbal commands and his racking and discharging of the shotgun as he rose and turned toward the officer. This committee feels that presentation to a grand jury would cast a cloud of suspicion upon the officer and his actions which is not warranted by the facts as determined by this committee. Although the District Attorney has a duty to investigate any potential criminal wrongdoing, whether committed by civilians or public servants, equally important, is the ethical responsibility of the District Attorney to not present a case to an empaneled grand jury if the evidence indicates that there is no indication of either official misconduct or criminal activity.

For all the reasons stated herein, this committee makes the recommendation to the District Attorney that neither criminal activity nor official misconduct are indicated in this instance. Therefore, the committee recommends against presenting the matter to the Oneida County Grand Jury and that the investigation be closed as the officer's actions were reasonable and justified.