



Rod Underhill, District Attorney

1021 SW Fourth Avenue, Room 600
Portland, OR 97204-1193
Phone: 503-988-3162 Fax: 503-988-3643
www.mcda.us

M E M O R A N D U M

To: File
From: Sr. DDA Adam Gibbs
Date: November 15, 2018
Subject: Evaluation of criminal prosecution relating to the September 26, 2018 death of Joseph Magnuson. DA Case 2389497.

Summary

On September 26, 2018 Timothy Warren, who was an on duty FedEx delivery driver, had an altercation with Joseph Magnuson near the intersection of NE Hoyt and NE 29th in Portland, Oregon. Due to the combination of an injury sustained in the altercation and his pre-existing medical conditions, Mr. Magnuson died that evening. After review of all the evidence in this case, as detailed below, I believe that the use of force in this case by Mr. Warren was justified in self-defense under ORS 161.209 and am declining to pursue prosecution of this matter.

Discussion

In the aftermath of this incident, Detective Scott Broughton of the Portland Police Homicide Division identified and interviewed six witnesses who perceived some or all of the events that led to Mr. Magnuson's death. Of these six, three, Mr. Tittle, Ms. Pechia, and Ms. Musser, are the only ones who had a view of the entire episode (apart, of course, from Mr. Warren himself). Both Mr. Warren and Mr. Magnuson were unknown to these three prior to this incident, which removes from the analysis any concerns about partiality. Based on the interviews of these three witnesses the facts the state could establish at a grand jury or trial would substantially be as follows:

On September 26, 2018 at about 2:08 pm, a FedEx delivery truck driven by Mr. Warren turned east from NE 29th onto NE Hoyt. His truck was moving slowly, though its engine was loud. The witnesses estimate its speed as anywhere from 5-20 MPH, but all agree it was not going too fast for the location. They report that Mr. Magnuson then "very aggressively" began yelling at Mr. Warren to slow down. Mr. Warren stopped his truck while Mr. Magnuson continued to berate him. The witnesses agree that Mr. Magnuson called Mr. Warren a "fucking nigger" in combination with other aggressive and abusive phrases "over and over again." Mr. Warren attempted to discuss the matter with Mr. Magnuson and is described as "exhausted" and "just wanting to do his job."

Mr. Warren got out of his truck as Mr. Magnuson continued to escalate; both men were yelling at each other by this point. All agree that Mr. Magnuson threw a drink at Mr.

Warren, striking him. Mr. Tittle believes that prior to this Mr. Warren knocked a bag of food out of Mr. Magnuson's hand, but the other two, Ms. Pechia and Ms. Musser, believe that Mr. Magnuson threw that bag of food at Mr. Warren as well. All believe, with varying degrees of certainty, that Mr. Magnuson then attempted to strike Mr. Warren with his fist.

- “I want to say that maybe the yelling man tried to swing at him, but I don't, all that I definitely remember was seeing the bags being thrown—the bag, and the drink exploding.” (Pechia)
- “I can't recall like in completely clarity, but I do feel like I saw him [Magnuson] like throw a punch.” (Musser)
- “[Magnuson] threw a feeble punch with his right hand” prior to Mr. Warren striking him. (Tittle)

Mr. Warren then punched Mr. Magnuson a single time above the left eye, which caused Mr. Magnuson to fall to the ground and briefly lose consciousness.

In addition to the factual observations she relayed, Ms. Musser, unprompted, characterized Mr. Warren's conduct as defensive.

Of the three other witnesses who were interviewed by Det. Broughton, two of them (Mr. Bayle and Mr. Favarro) did not observe anything until after Mr. Magnuson was already on the ground and the other, Ms. Ladd, saw only the tail end of the incident, but did not observe what led up to Mr. Warren striking Mr. Magnuson. Mr. Warren did not continue to strike Mr. Magnuson once he was down and he remained at the scene and fully cooperated with Det. Broughton's investigation. The voluntary statement he gave to detectives is consistent with the narrative provided by the three independent witnesses in all relevant respects and elaborates in more detail on the verbal exchange with Mr. Magnuson. Mr. Warren has no criminal record.

Dr. Millius, who performed the post-mortem examination in this case, did ultimately conclude that this case was a “homicide” in that the proximate cause of death was the act of another person. However, she also found Mr. Magnuson to have been in extremely poor health and that those pre-existing conditions were a substantial contributing factor to his death. The wound to Mr. Magnuson's head inflicted by Mr. Warren's punch was superficial and not fatal. The ensuing fall to the ground aggravated Mr. Magnuson's pre-existing conditions and resulted in his death.

As of the time of this writing post-mortem toxicology results were not available. Based on the evidence described above, the results of this testing are not of significance to the legal analysis.

Legal Conclusions

The context of Mr. Warren's actions belie any intent to kill, which is a necessary element of the crime of murder. Lesser degrees of criminal homicide than murder can still apply in the absence of an intent to kill. However, given the extreme verbal aggressiveness of Mr. Magnuson and that Mr. Magnuson was the first one to throw a punch, Mr. Warren's response of a single blow was a reasonable use of force in defense of his person. See, ORS 161.209.

Mr. Magnuson's friend, Mr. Bayle, stated that both Mr. Warren and Mr. Magnuson were acting “hot headed” and that, had Mr. Warren not stopped and just driven on, none of this would

have happened.¹ I agree with Mr. Bayle's observation that the death might have been avoided had Mr. Warren not stopped his truck and verbally engaged with Mr. Magnuson. However, the decision by Mr. Warren, who is black, to not let the racist vitriol to which he was being subjected go unanswered is not of legal significance. Oregon law contains no "duty to retreat" and Mr. Warren was within his right to exit his vehicle and verbally challenge the manner in which Mr. Magnuson was addressing him. Mr. Magnuson was the initial verbal aggressor; Mr. Warren responded in kind. Mr. Magnuson then escalated and became the initial physical aggressor; Mr. Warren again responded in kind.

Mr. Magnuson's actions, as reported by all three witnesses and Mr. Warren, gave rise to a reasonable belief on Mr. Warren's part that a limited use of force was necessary to prevent injury to himself. This is sufficient under Oregon law to constitute a complete defense to any criminal charge that could arise out of this incident. I have consulted with Det. Broughton, who investigated this matter, and he concurs in my assessment of the case.

Accordingly, prosecution of this matter is declined.

¹ It is unclear what, exactly, Mr. Bayle's characterization of Mr. Warren as "hot headed" derives from since he acknowledges that he did not observe any portion of the altercation and states he did not hear anything after Mr. Magnuson started yelling for Mr. Warren to "slow down."