



PROSECUTING ATTORNEY

STATE OF ARKANSAS | SIXTH JUDICIAL DISTRICT

LARRY JEGLEY

September 16, 2022

Sheriff Eric Higgins
Pulaski County Sheriff's Office
2900 South Woodrow Street
Little Rock, AR 72204

Dear Sheriff Higgins,

This office has been in receipt of the Pulaski County Sheriff Department's investigation into the death of Terrance Caffey for some time. The amount of time that has passed since your department's investigation into this matter and the conclusion of this office's review was due to the complex nature of this tragic event. This office's review encompassed the actions of all participants/organizations that had contact with Mr. Caffey on the night of his death and the extremely unique circumstances that culminated in Mr. Caffey's death. As part of our review, we scrutinized the actions of the responding officers for the Pulaski County Sheriff's Department, the Little Rock Police Department, Arkansas State Police and the various first responders who reported to The Tavern the night of Mr. Caffey's death, as well as the civilian employees of The Tavern who had contact with Mr. Caffey on the night of his death. Finally, we had to become informed about an inherited medical condition of Mr. Caffey about which new information is emerging--Sickle Cell Trait-Related Sickling Crisis during Exertion, Struggle and Restraint culminating in death-- and learn about how that trait played a role in Mr. Caffey's death. Multiple consultations were had with different medical experts to help us with our conclusions.

The Chief Medical Examiner of the Arkansas State Crime Laboratory found that the cause of Mr. Caffey's death was Sickle Cell Trait-Related Sickling Crisis during Exertion, Struggle and Restraint and classified his death as a homicide while observing that said classification does not imply criminal liability. Based on the facts and circumstances that culminated in Mr. Caffey's death and the severe

medical condition that actually caused Mr. Caffey's death, this office engaged in a two part analysis: First, did anyone use unlawful force against Mr. Caffey, and second, was law enforcement or the various first responders negligent in their treatment of Mr. Caffey, or lack thereof, once Mr. Caffey was in custody and under their care.

I. Use of force imposed on Mr. Caffey

A. The Tavern employees

As part of our review, this office first considered the actions of the employees who fought with Mr. Caffey to determine if they had violated any criminal statutes. All participants and witnesses to what transpired were interviewed. The altercation that arose between Mr. Caffey and the employees was also caught on camera. (All times referred to in this memorandum are based on the time stamps from the relevant camera.) Our analysis included a review of those statements and of the videos.

Mr. Caffey and his companion are seen on The Tavern's security camera system entering the establishment at 9:37:43 and going into the actual theater at 9:44:18. Shortly thereafter, at 9:50:20, Mr. Caffey is seen leaving his theater by himself. According to witness interviews and camera footage, Mr. Caffey was attempting to order food and was having trouble with the app or his cell phone. Mr. Caffey then returned to his theater but did not go in.

At 9:55:05, Mr. Caffey is seen coming up behind an employee and grabbing him. According to witness interviews, Mr. Caffey asked the employee if he had a gun. At 9:55:40, Mr. Caffey sits down on the floor in the hallway of the establishment and begins to empty his pockets, throwing the contents out on the floor of the hallway.

Suddenly, at 9:57:39, Mr. Caffey gets up off the floor and attacks an employee causing multiple employees to try to assist the coworker that was attacked and restrain Mr. Caffey. According to witness statements, Mr. Caffey was strangling one of the employees and the video clearly shows Mr. Caffey being struck by the employees. This struggle continues for a brief period of time, though it is apparent that there was extreme exertion by all parties. Slightly less than a minute passes during this initial phase until Sgt. Mark Swagerty appears and tries to take Mr. Caffey into custody at 9:58:37. At this point, the struggle between Mr. Caffey and the employees is over.

Use of physical force in defense of a person-Arkansas Code Annotated 5-2-606

“A person is justified in using physical force upon another person to defend himself or herself or a third person from what the person reasonably believes to be the use of unlawful physical force by that other person, and the person may use a degree of physical force that he or she reasonably believes to be necessary.” Further, *“a person is not justified in using physical force on another if the person is the initial aggressor.”*

It is clear from the video that Mr. Caffey was the initial aggressor with regard to his struggle with The Tavern employees and that he was unjustified in initiating the use of physical force. While the video has no audio, there appears to be no provocation that would give rise to Mr. Caffey having a reasonable belief that someone was about to use physical force on him and/or that he was defending himself. It is true that once the fight started the employees outnumbered Mr. Caffey, but the force used by the employees in defending themselves or another person from Mr. Caffey was never more than physical force and was not unreasonable given the circumstances. The subsequent autopsy performed on Mr. Caffey does reveal that he had multiple abrasions to his head, back, and lower extremities. However, these injuries are superficial, non-life threatening injuries consistent with a physical altercation.

The Tavern employees did not engage with Mr. Caffey until he employed physical force on one of the employees and therefore were justified in their use of force against Mr. Caffey in self-defense or in defense of others. There never appears to be a time when Mr. Caffey “withdrew from the encounter and/or effectively communicated to the employees his purpose to withdraw from the encounter.” The struggle continued between Mr. Caffey and the employees for less than a minute until Sgt. Swagerty, the off-duty security officer for The Tavern, arrived on scene in response to a distress call from The Tavern. In light of the facts and law involving The Tavern employees and Mr. Caffey, this office finds no violation of the Arkansas Criminal Code by the employees of The Tavern.

B. Use of Force by Sgt. Mark Swagerty

We then examined the actions of Sgt. Mark Swagerty of the Pulaski County Sheriff’s Department to determine whether he was justified in taking Mr. Caffey into custody and whether he used unlawful force in doing so.

Rule 4.1 Authority to arrest without a warrant

A law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed any violation of law in the officer's presence.

Sgt. Swagerty was employed by The Tavern, off duty, to provide security. When the altercation between Mr. Caffey and The Tavern employees began, he had left the premises and had to be called back. When he got to the area of the establishment where the fight was occurring, Mr. Caffey was still struggling with the employees. At 9:58:37, Sgt. Swagerty intervened and attempted to gain control over Mr. Caffey. Sgt. Swagerty pushed Mr. Caffey causing Mr. Caffey to lose his balance and then flee a short distance to another part of the theater with Sgt Swagerty immediately behind him. At this point, Sgt. Swagerty took Mr. Caffey to the ground and physically restrained him, at times by using his body weight on Mr. Caffey's torso. According to the video and body worn camera audio, Mr. Caffey continues to resist to the point that at 9:58:08, a Tavern employee felt the need to help restrain Mr. Caffey. At 10:06:22, a LRPD officer runs in and handcuffs Mr. Caffey and at 10:06:50 Sgt. Swagerty ends his physical contact with Mr. Caffey. Based on the information given to Sgt. Swagerty and what he witnessed when he arrived back at The Tavern, Sgt. Swagerty had authority to effect an arrest on Mr. Caffey.

Use of physical force by law enforcement officers-Arkansas Code Annotated 5-2-610

A law enforcement officer is justified in using nondeadly physical force or threatening to use deadly force upon another person if the law enforcement officer reasonably believes the use of nondeadly force or the threat of deadly force is necessary to effect an arrest...or defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect an arrest.

When Sgt. Swagerty appeared on scene, he was aware that a citizen was causing a disturbance at The Tavern and had attacked employees of The Tavern which is consistent with what he saw when he arrived. In his attempt to take Mr. Caffey into custody, Sgt. Swagerty tried to grab Mr. Caffey, but Mr. Caffey was able to get away until he stumbled, allowing Sgt. Swagerty to take him to the ground. Sgt. Swagerty restrained Mr. Caffey for approximately 7 minutes during which time Mr. Caffey can be seen struggling with Sgt. Swagerty. Mr. Caffey can be heard

saying "Get him off me. Please. Y'all help me, please." At another time Mr. Caffey can be heard saying, "I can't breathe."

At no time did Sgt. Swagerty tase, pepper spray, or strike Mr. Caffey, neither did Sgt. Swagerty use or threaten to use deadly force. When LRPD arrived to help place handcuffs on Mr. Caffey and Sgt. Swagerty disengaged with Mr. Caffey, Mr. Caffey was breathing and attempting to communicate with the officers. It is the opinion of this office that Sgt. Swagerty was justified in his use of physical force to arrest Mr. Caffey and take him into custody.

C. Use of force by other responding law enforcement officers

After Sgt Swagerty disengages from Mr. Caffey, Mr. Caffey lays on the floor with his hands cuffed behind his back for less than two minutes after which he is pulled upright by officers to sit with his back against the wall at 10:08:08. At 10:09:45 Mr. Caffey slumps back over on the floor. Officers help him back to an upright position. At 10:10:30, Mr. Caffey slumps back over again. Shortly thereafter, Sgt Swagerty requests via the radio that MEMS be called out. The decision is made to take Mr. Caffey to the front of The Tavern and officers begin escorting Mr. Caffey out of the building. Mr. Caffey was having trouble walking so he is lifted under his arms and legs by officers and carried outside at 10:11:15. As officers are carrying Mr. Caffey out of the building it sounds as if Mr. Caffey is having a hard time breathing and can be heard saying, "I can't breathe. I'm dead." However, the only place the officers are holding Mr. Caffey at this point is under his arms and his legs.

Once Mr. Caffey is outside, the officers carrying him put him on the sidewalk. At that time multiple officers are holding Mr. Caffey in place. During this time the First Responders appear on scene and are made aware of who Mr. Caffey is. After observing but not treating Mr. Caffey, the First Responders go into the theater to treat employees who were the victims of Mr. Caffey's attack. Then the decision is made to put Mr. Caffey in the back seat of a Pulaski County Sheriff's Office patrol car.

The same laws and rules apply to the officers who carried Mr. Caffey out of the building and restrained him until he was placed in the patrol car. While the video is not as definitive at this point of the incident, comments by the officers and civilian witnesses indicate that it was believed that Mr. Caffey continued to resist for a period of time before he was placed in the back of the patrol car.

Nevertheless, at no time did any officer use more than physical force to restrain Mr. Caffey than which is authorized by law.

II. Were those who had Mr. Caffey in custody criminally negligent in their treatment of him

As stated above, Mr. Caffey was the initial aggressor on this night and the employees of The Tavern and responding officers were justified in their use of force against him and in the use of force when effecting his arrest. However, once Mr. Caffey was taken into custody, the level of care he received is disturbing in light of the tragic outcome. During the struggle with Sgt. Swagerty, Mr. Caffey was complaining of not being able to breathe. Once Mr. Caffey was cuffed and seated against the wall he fell over sideways, twice. When Sgt. Swagerty, who believed Mr. Caffey was under the influence of drugs, asked Mr. Caffey what he was on, Mr. Caffey's answer was largely unintelligible other than appearing to say he was on weed. When Mr. Caffey was being escorted out of the building, he was unable to walk, though this is clearly viewed by the officers as Mr. Caffey being uncooperative or under the influence of drugs. As he is being carried out Mr. Caffey continues to complain of being unable to breathe and his breathing is audibly labored throughout the video.

Law enforcement does call for medical treatment for Mr. Caffey at 10:10:30 and the Little Rock Fire Department arrived on scene at 10:15:50. However, the First Responder walked up to Mr. Caffey where he was being restrained on the sidewalk, took a look at him and was then redirected inside the theater to treat the injuries of The Tavern employees.

When Mr. Caffey was lifted off the pavement to be placed in the patrol car at 10:19:40, he was exerting no control over his head or legs. At 10:22:20 a Sheriff's Deputy looked in the patrol car and determined that Mr. Caffey was unconscious. At 10:24 LRFD stated that it was believed that Mr. Caffey was not breathing and at that point Mr. Caffey was extracted from the patrol car and CPR was initiated.

Mr. Caffey's medical records reflect that when emergency medical services (MEMS) arrived, Mr. Caffey was in Vfib (an irregular heart beat) and that they shocked him 3 times, administered epinephrine and amiodarone, in addition to narcan to no effect. Upon arrival at Baptist Hospital, CPR was continued and many of the same medications were re-administered. After an hour of CPR Mr. Caffey's death was pronounced.

The Chief Medical Examiner at the Arkansas State Crime Laboratory diagnosed Mr. Caffey with Sickle Cell Trait after ordering a postmortem hemoglobin electrophoresis test. This is a test that he orders when an African American dies in circumstances that include exertion, struggle, and or restraint in the absence of any other superseding cause of death. The results of the postmortem hemoglobin electrophoresis were confirmed microscopically by readily identifiable sickled red blood cells in tissue sections. In fact, the readily identifiable sickled red blood cells were widespread and involved Mr. Caffey's major organs.

The fact Mr. Caffey was the initial aggressor who started the fight with The Tavern employees who, in turn, were justified in defending themselves, and Sgt. Swagerty was lawfully attempting to place Mr. Caffey under arrest and was justified in using physical force to effect that arrest (likewise the other officers), we then examined whether there was criminally negligent behavior on the part of those who arrested him and took him into custody.

A. Civil negligence vs. criminal negligence.

“The standard for criminal culpability differs from the standard for civil liability. In a civil case, negligence is defined as the failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do, under circumstances similar to those shown by the evidence... *Something more than a failure to exercise reasonable care is required for criminal negligence. In cases of criminally negligent conduct, something more is that the negligence be a gross deviation from the standard of care that a reasonable person would observe in the actor's situation.*” Gill v. State, 2015 Ark. 421.

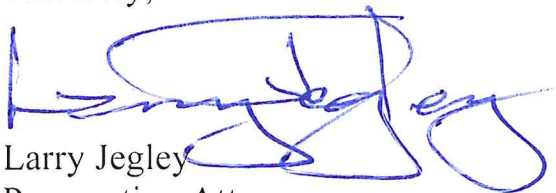
When determining whether there was a gross deviation from the standard of care it is important to consider the rarity of Mr. Caffey's cause of death. The Prosecuting Attorney's Office does not dispute the Medical Examiner's findings. We do point out that the finding of Sickle Cell Trait-Related Sickling Crisis during Exertion, Struggle and Restraint as a cause of death is a cutting edge, if not somewhat controversial, finding-so much so that the American Society of Hematology published a position paper on May 21, 2021, wherein it stated: “It is medically inaccurate to claim sickle cell crisis as the cause of death based solely on the presence of sickled cells at autopsy. Sudden death is an extraordinarily rare

occurrence in sickle cell trait and the finding of sickle cell trait is unlikely to supersede other inflicted traumas as the cause or major factor in death.” However, contrary to the opinion expressed by the American Society of Hematology, the medical examiner did not base his diagnosis on merely the presence of sickled cells at autopsy. Rather, it was the entirety of the medicolegal death investigation, including the circumstances, scene investigation, autopsy findings, and ancillary studies that informed the medical examiner’s opinion of the cause and manner of death.

Mr. Caffey suffered no other trauma that would have resulted in his death.

Therefore, given the rarity of Mr. Caffey’s cause of death, it cannot be said that the failure to diagnose and appropriately treat Mr. Caffey was a gross deviation from the standard of care that a reasonable person would observe in law enforcement’s situation. More compassion on the part of the involved parties might have provided Mr. Caffey with some measure of comfort in his final moments, but palliative care would not have reversed or treated his fatal medical crisis. It is the finding of this office that the treatment rendered to Mr. Caffey in light of their failure to correctly diagnose his medical crisis does not rise to the level of criminal negligence.

Sincerely,



Larry Jegley
Prosecuting Attorney
Sixth Judicial District