



Tory Sanders Case Review Report

The Office of Missouri Attorney General Eric Schmitt was asked by interested third parties to have the office conduct another review of the May 5, 2017 death of Tory Sanders, who died in the care of the Mississippi County Sheriff's Office. After careful consideration, we agreed to review the case again. The role of the Missouri Attorney General's Office (AGO) in conducting such a review is to determine if a criminal violation of Missouri law has occurred and whether such a violation can be proven beyond a reasonable doubt in a court of law. Additionally, the findings of the AGO bear no weight on potential disciplinary or civil litigation in these matters. From the onset, we took this assignment with great humility and determination to ensure that any evidence, new or existing, was thoroughly reviewed. We assigned two of the office's most experienced prosecutors to the case. Between the two attorneys, they have 60 years of experience and have handled hundreds of complex homicide cases, including capital cases and officer-involved deaths.

The AGO had previously been appointed as the conflict prosecutor to review this investigation in 2017. The AGO was appointed on other unrelated criminal investigations regarding then-Sheriff Cory Hutcheson, filed a quo warranto action to remove Mr. Hutcheson from office, and cooperated with federal authorities in their investigation of Mr. Hutcheson, which ultimately resulted in the prosecution and sentencing of Mr. Hutcheson on other charges. Our understanding is that the United States Department of Justice's Civil Rights Division also reviewed this case, but did not file any charges. Prior to the 2020 review, neither assigned attorney had been involved in the investigations or reviews of any of the matters involving Mr. Hutcheson.

Both attorneys independently reviewed all evidence they were able to obtain before discussing their findings with each other. This evidence included a file containing all investigative reports of the Missouri State Highway Patrol (MSHP) Division of Drug and Crime Control (almost 600 pages), investigative reports completed by the Federal Bureau of Investigation, recordings of interviews, video from the jail, video from one body cam, video from a cell phone, photographs, and evidence seized during the investigation. The multimedia in this case contains approximately 50 interviews, including up to three interviews each of some of the persons present in the jail cell when Mr. Sanders died. It also includes hours of video from the hallway of the Mississippi County jail during the relevant timeframe. Unfortunately, there is no video from inside the cell.

The file also includes the autopsy reports and photos by, and toxicology report provided to, Dr. Russell Deidiker, who conducted the initial autopsy on May 6, 2017 in his capacity as an independent forensic pathologist and at the request of the Mississippi County Coroner. Our office also met with Dr. Deidiker in his office in October 2020 to ask additional questions. The file also includes the May 11, 2017 autopsy report of Dr. Thomas Deering, who served as the Deputy Chief Medical Examiner for Davidson County, Tennessee and was retained by the Sanders family to conduct a second autopsy following Dr. Deidiker's autopsy.

In addition to the file, in June 2020, we called Jessica Agnelly, who was counsel for the Sanders family at the time in a pending civil lawsuit, to discuss what additional statements or reports were available that Ms. Agnelly could provide to our office to review. Ms. Agnelly provided 19 depositions that had been taken in the civil lawsuit. She informed our office that the Sanders family had retained Dr. Jane Turner of Virchow Consulting to review the autopsy findings of Dr. Deidiker and Dr. Deering. Ms. Agnelly provided our office with a copy of Dr. Turner's report at the end of July 2020. Additionally, late in the review process, the attorney for the Sanders family informed us of potential additional evidence. We worked with the family's attorney to obtain that evidence, which we then reviewed closely. We believe that this potential evidence does not provide information that would impact our ability to file a criminal case.

Finally, we attempted to conduct original interviews with jailers, sheriff deputies, and local police officers who were present at the time of the incident. However, because of the pending civil lawsuit, those requests were denied by their attorneys.

Summary of Incident

At the time of his death, Mr. Sanders was being held in protective custody awaiting transfer to a mental health facility. Mr. Sanders was brought to the Mississippi County Sheriff's Office by law enforcement after an overnight incident at a local truck stop. At about 10 am the morning of May 5, 2017, Mr. Sanders was taken to the Sheriff's Office jail. He was first evaluated by a counselor at about noon. Mr. Sanders was given lunch just prior to the evaluation. The counselor initially determined that Mr. Sanders was not a danger to himself or to others and left. Within a couple of hours and upon being told he was going to be released, Mr. Sanders' behavior began to decline. While

jailers and officers talked to him, Mr. Sanders was yelling and kicking the door. The counselor was contacted and asked for a second evaluation. Officers allowed Mr. Sanders to talk with his mother on the phone in an attempt to calm him down. His mother provided information on Mr. Sanders' mental health history to the staff. Mr. Sanders continued to be agitated and continued yelling. The counselor returned. After very briefly talking to Mr. Sanders and then the jailers, the counselor concluded that, because of the increased agitation and deterioration of his mental status, Mr. Sanders should be sent for a 96-hour hold. Despite reports that the commitment request was placed onto the fax machine for transmission to the judge, the judge never received it.

Within the next hour and a half, Mr. Sanders' behavior continued to deteriorate and the jailers' response to him no longer appeared to be casual. It appears from the video our office reviewed that the officers deployed tasers at Mr. Sanders and attempted to enter the cell to check on him. Mr. Sanders closed the door on the jailers during these attempts. At about 6 pm, a nurse arrived at the jail and began recording the situation with her cell phone. There are over 20 minutes of this recording before the cell phone died. In the video, Mr. Sanders was yelling repeatedly. He yelled that he was going to be raped and killed, that the Mexicans were trying to kill him. Later, he said that it was Cinco de Mayo, they were trying to kill him, to please help him, the nurse was trying to kill him, and unclear things about other inmates. The jailers again attempted to talk with Mr. Sanders.

It was then determined that they should enter the cell in an effort to restrain Mr. Sanders. Four jailers and a deputy attempted to enter the cell but Mr. Sanders forced the door closed. They then requested OC ("pepper") spray from another agency. A jailer opened the chuckhole door and Mr. Sanders immediately grabbed the key ring and pulled it into his cell. The same five people tried to enter the jail cell again. They were able to get the door open a little more than the first time. When one jailer started to get his body through the door, Mr. Sanders hit him in the face. They backed away from the door, and Mr. Sanders pulled the door closed.

An officer arrived with the pepper spray, which was sprayed through the viewing port of the cell door. Staff backed away from the door and waited for Mr. Sanders to compose himself. Over the next 45 minutes, the jail administrator arrived and they decided that they needed to make another effort to enter the cell to retrieve the keys. All of the people who were in the

hall when the pepper spray was sprayed made their way outside to get fresh air. A short time after 7 pm, Mr. Hutcheson arrived at the jail.

At approximately 7:18 pm, Mr. Hutcheson and nine others entered the cell. When they entered, Mr. Sanders had stepped away from the door. As the jailers attempted to restrain Mr. Sanders, he came toward them. Items were thrown from the cell. Mr. Sanders had stripped down to his underwear and was sweating profusely. Following the initial altercation in the cell, they were able to get him on to the cement bench with multiple people on top of him and put on one handcuff. At that point, exhibiting extreme strength, Mr. Sanders was able to throw off the people who were on him and stand up. Mr. Sanders began to bite one of the men's thumbs, and two others began punching Mr. Sanders to get him to release the thumb. When he released it, they stopped striking him. As Mr. Sanders moved toward one of the jailers, he was kned in the upper torso and fell to the ground. All witnesses reported that Mr. Hutcheson and the jail administrator were near Mr. Sanders' head and neck. The jail administrator applied pressure to Mr. Sanders' brachial plexus as Mr. Sanders was reaching toward another jailer's crotch. Mr. Sanders went limp after he fell. There are varying reports of who felt for a pulse and whether one was discovered. At some point, the nurse was called in to check for a pulse but was sent away because she was told Mr. Sanders was violent. She returned approximately three minutes later when the jail administrator yelled for help. The nurse, Mr. Hutcheson, and another deputy did chest compressions until the EMTs arrived.

Analysis and Conclusion

The AGO makes no comment upon the pending civil litigation, and must evaluate the available evidence for criminal charges with the burden of proof in mind. As mentioned above, in addition to a complete and independent review of the evidence the AGO previously reviewed in 2017 and 2018, the office reviewed deposition testimony from the civil case and the additional review done by Dr. Turner.

Given the years that have passed since the incident and the statutes of limitations, the only charges that could be brought now are first or second degree murder. In order to prove murder in the first degree, the State must prove that a defendant knowingly caused the death of another after deliberation upon the matter.¹ For murder in the second degree, the State must

¹ See RSMo 565.020 and MAI-CR4th 414.02.

prove all of those elements, except that the murder was committed after deliberation.² Or the State must prove that the murder was during the commission of or flight from a felony.³

The State's burden of proof in a criminal case is proof beyond a reasonable doubt for each and every element in a charge. This is, and always has been, the highest burden in our courts. In contrast, in a pending civil litigation, the burden of proof is only to prove each element by a preponderance of the evidence. As stated above, the findings of the AGO bear no weight on any civil litigation in these matters.

Our office reviewed all available evidence against the elements for first or second degree murder. Autopsies are important evidence when evaluating any murder charge. In this case, Dr. Deidiker concluded that Mr. Sanders' cause of death was probable excited delirium. Similarly, Dr. Deering concluded that Mr. Sanders' best cause of death was Excited Delirium Syndrome (EDS). The toxicology report from Dr. Deidiker's autopsy showed both methamphetamine and cocaine in Mr. Sanders' system. Both pathologists discuss the presence of those drugs as contributing to their conclusions. Both pathologists observed and documented injuries on Mr. Sanders' body consistent with the physical altercations between him and the jailers and law enforcement officers. However, both pathologists specifically commented on the fact that none of those injuries would have contributed to or caused Mr. Sanders' death. Neither pathologist found any injuries or hemorrhages to the neck structures. While there is no report authored by Dr. Mary Case, the U.S. Attorney's Office consulted with her on the autopsies and she concurred with the conclusions reached by Drs. Deidiker and Deering.

In an effort to better understand EDS and to look for answers to questions developed while reviewing the autopsies, our office conducted additional research on EDS. The characteristic symptoms of EDS include bizarre and aggressive behavior, shouting, paranoia, panic, violence toward others, unexpected physical strength, and hyperthermia. It presents with a sudden onset. *See, e.g.,* Excited Delirium, Asia Takeuchi, MD, Terence L. Ahern, BA, and Sean O. Henderson, MD, April 2010. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3088378/>

² See RSMo 565.021 and MAI-CR4th 414.04.

³ See RSMo 565.021 and MAI-CR4th 414.06.

Medical professionals have identified that if an individual has a history of mental illness combined with cocaine and methamphetamine use, EDS becomes a potentially fatal event. This potential is increased when someone is fighting restraint and continues to fight until cardiac arrest occurs. Even with resuscitation attempts, cardiac arrest from EDS is almost always fatal. One of our assigned attorneys has been involved in several civil cases related to EDS deaths, including cases where Drs. Case and Turner were involved as experts, along with other nationally-recognized experts in pathology, including Dr. Michael Baden, the former chief pathologist for New York City.

Dr. Turner outlined everything she reviewed prior to writing her report. In addition to Drs. Deidiker and Deering's reports, she reviewed autopsy slides and photographs, toxicology results, medical records from Missouri Delta Medical Center, investigative reports of MSHP, video recordings from the jail, and this office's initial report. Dr. Turner reached a different conclusion than Drs. Deidiker and Deering, though she agrees that Mr. Sanders displayed symptoms of EDS. Dr. Turner cited to limited statements contained in the almost 600 pages of MSHP reports. She opined based upon the MSHP interviews and MSHP autopsy photographs that Mr. Sanders died from asphyxiation due to compression of his neck during forcible restraint by law enforcement.

Dr. Deidiker disagrees with some of Dr. Turner's conclusions and disagrees that there is evidence in the photographs to show evidence of pressure on the neck that would cause death. With regard to EDS and the jailers entering the cell to restrain Mr. Sanders, Dr. Deidiker stated that there is no way to tell whether Sanders would have died had he been left alone in the cell.

With this information in hand, prosecutors again reviewed the videos of the scene at the jail prior to, and during, the final attempt to subdue Mr. Sanders by the jailers. The purpose was to see if the videos indicated that Mr. Hutcheson, or any of the other law enforcement employees, expressed or demonstrated anything suggesting animus towards Mr. Sanders leading up to his death. In the opinion of this office, the video does not reveal any such animus. While animus is not, in itself, an element of either first or second degree murder, it can provide some evidence relevant to a defendant's mental state.

As part of the MSHP investigation, several cell phones were seized and had extractions completed. Review of those extractions indicates communication between several of the people who were in the jail cell, but do not reveal indication of criminal activity.

Once our attorneys separately completed their reviews of all of the evidence and information available, they met in December to compare and discuss opinions and conclusions about whether criminal charges were appropriate, supported by the evidence, and whether this office properly could pursue murder charges and prove them beyond a reasonable doubt.

At the conclusion of the review, both prosecutors reached the same firm decision independently, and determined that criminal charges could not be filed following the death of Tory Sanders. In addition, they considered the new evidence provided by the family attorney and came to the same conclusion. As previously mentioned, at the time of this review, the only charges that could be brought under the statutes of limitations are first or second degree murder.

As mentioned above, in addition to a complete and independent review of the evidence the AGO previously reviewed in 2017 and 2018, the office reviewed deposition testimony from the civil case and the additional review done by Dr. Turner.

With regard to the specific elements of first and second degree murder, the State did not have evidence that any of the officers involved in this incident knowingly caused the death of Mr. Sanders, with or without deliberation. We do not believe the facts or circumstances could establish deliberation on the part of any of the individuals involved. There was nothing said during the event, or during the subsequent interviews, to suggest any of the individuals knew, or should have known, that Mr. Sanders' death was likely as a result of their efforts to restrain him.

In addition, there is not sufficient evidence to establish causation. Based on the conclusions of the medical examiners, these facts support the inference that Mr. Sanders began experiencing a lethal excited delirium well before the forced entry into the cell. Mr. Sanders' conduct once the officers and jailers entered the cell reinforces the medical examiners' finding that he was already in a state of excited delirium, at which point the medical chain of causes leading to Mr. Sanders' death was already well advanced. When law enforcement notice a person is not breathing and in cardiac arrest, they typically attempt resuscitation, which is usually unsuccessful in these

circumstances. Cardiac arrest from excited delirium is almost always fatal. Very sadly, for Mr. Sanders and his family, that is what happened in this case.

In commenting on the effects of use of force by the Mississippi County Sheriff, jail staff and others, Dr. Deering, the expert retained by Mr. Sanders' family, specifically noted that while there were numerous superficial blunt trauma injuries on the body, none of these superficial injuries was the cause of death. Dr. Deering determined that, based on Mr. Sanders' conduct during the mental disturbance, combined with the toxicology from Mr. Sanders' liver showing recent methamphetamine and cocaine use, excited delirium was the cause of death. Dr. Deering further indicated that neither the use of Tasers nor any physical force applied to Mr. Sanders during the altercation after the forced entry changed the cause of death.

For these reasons, while it is a tragedy that Mr. Sanders died while in the custody of the Mississippi County Sheriff, this office cannot initiate any murder charges for the death of Tory Sanders.