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FACTS

On April 8, 2024, at approximately 6:30 PM, Holland Police began to investigate a stolen Land Rover in their city which had been connected to a number of car thefts in the city and surrounding areas. On this particular occasion, the Land Rover was in the parking lot of a gym, and soon left with a black sedan that police believed to have been stolen from the gym at that time. Multiple Holland Police cruisers saw the Land Rover and sedan at the intersection of 14th Avenue and Waverly and attempted to stop the two vehicles. Instead of stopping for the police, both vehicles fled, and led Holland Police and Ottawa County Sheriff's deputies on a lengthy chase through Ottawa County. In fact, Holland Police only terminated the pursuit when the two vehicles crossed over into Kent County on I-96 just before Rivertown Parkway.

At approximately 6:57 PM that same evening, Kent County Sheriff's Deputy Josiah McMains was on southbound US 131 and exited at 44th Street. Kent County authorities were aware of a white Range Rover (his description) that had been involved in a number of incidents in Kent County and the surrounding area, and had been known to flee police when they had attempted to stop the vehicle. Through a contact in the Holland Department, Deputy McMains was aware that Holland Police were in pursuit of the vehicle. He began to monitor the Holland Police frequency and knew the pursuit had gone into Kent County and Holland had stopped pursuit in Grandville. Using the FLOCK camera system, the plate for the white Range/Land Rover had "hit" on eastbound 44th Street near Carol Ave SW. As a result, Deputy McMains drove towards 44th Street to see if he could find the vehicle.

As he exited US 131 at 44th Street, Deputy McMains observed the white Range/Land Rover behind another vehicle at the stoplight on the overpass to 131. Deputy McMains pulled his fully marked Kent County Sheriff's cruiser next to the first car in line in an attempt to box the white Rover in so it could not flee. Instead, when he did this, the Rover immediately accelerated and went between two civilian cars also stopped at the light, striking both, and fled down 44th Street. Deputy McMains then turned his cruiser around and pursued the Rover as it fled.

The chase lasted approximately four-and-a-half minutes, involving not only the deputy but Wyoming Police cruisers as well. During the pursuit, speeds exceeded 80 miles per hour, and the Rover traveled in the wrong lanes down some roads, ran stoplights, and almost struck other vehicles traveling on the road. Eventually, the Rover turned northbound on to Division Avenue from 32nd Street, just after making this turn, two occupants of the Rover jumped out of the vehicle while it was still moving. The Rover continued to roll, striking cars parked in a lot just off Division Avenue, while the two subjects fled into the parking lot.

Deputy McMains saw the two individuals jump out of the Rover, called this fact out on his radio, then drove over the curb behind the two as they went ran the lot. One individual, who turned out to be the driver, broke to the left and ran between a row of cars in the lot. The victim in this case, Riley

Doggett, ran to the right in a more open area of the lot where the cruiser could travel. As Riley ran, he had a hood up over his head, and there appeared to be a black object in his right hand. There had been information provided to officers that individuals involved with this Land Rover in the last week had broken into cars where guns were stolen, and had been in area where shots were fired. Clearly, the individuals in the Rover were trying to evade police; this Rover just fled from police in Holland, then fled from Deputy McMains, and the occupants had been identified as being involved in a number of criminal incidents in West Michigan. Given that there were still a number of people outside at this time of day, along with Deputy McMains's belief that person running may be armed, he made the decision to try and stop the person from running by turning his cruiser in front of him to block his path. He indicated, "My intention in doing this was to slow his spring and place myself and my cruiser in front of his path." As the cruiser passed Riley, he began to turn and Riley was struck by the side of the cruiser and immediately and violently fell on the concrete. From the in-car video, the speed of the cruiser at the time of contact was 22 miles per hour. The cruiser is equipped with an event data recorder, which would provide exact data, however that device was not sensitive enough to capture what occurred.

THE LAW

Based on the facts of what occurred here, there were several possible charges to consider. The first, and most serious, is the charge of involuntary manslaughter. Involuntary manslaughter is the unintentional killing of a person with "gross negligence." To prove gross negligence a prosecutor must show that the person charged had (1) knowledge of a situation requiring the exercise of ordinary care and diligence to avert injury to another, (2) ability to avoid the resulting harm by ordinary care and diligence in the use of means at hand, and (3) the omission to use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another. *People v Fredell*, 340 Mich. App. 221 (2023) (citations omitted). Put another way, gross negligence means "wantonness and disregard of the consequences that may ensue, i.e, which exists when "the defendant is aware of the risks but indifferent to the results, it constitutes a higher degree of culpability than recklessness." *Id.*

The next possible charge would be reckless driving causing death. The elements of reckless driving causing death are, (1) the defendant operated a vehicle upon a highway, (2) in willful or wanton disregard for the safety or persons or property, (3) causing the death of another person. *People v Jones*, 497 Mich. 155 (2014) Willful and wanton disregard is more than ordinary negligence, but less than gross negligence, and means "knowingly disregarding the possible risks to the safety of people or property, *People v Carl*, 322 Mich. App. 690 (2018) or "conduct that results in a 'plain and strong likelihood' that death or bodily harm will result." *People v Otto, _Mich App_;* (2023) (Slip Op. at 6), quoting *People v Goecke*, 457 Mich 442(1998).

There is also the possibility of a count of first-degree fleeing and eluding. The elements of this offense are: (1) The person was the driver of a motor vehicle to whom was given a visual or audible signal to stop, (2) by an officer who was in uniform and the officer's vehicle was identified as an official police vehicle, (3) that the officer was acting in the lawful performance of his duties directing to bring the motor vehicle to a stop, (4) that the person did willfully fail to obey such direction by attempting to flee or elude the officer, and (5) the violation resulted in the death of another person. MCL 257.602a₂

Finally, there is the charge of moving violation causing death. The elements of this offense are quite simple, (1) The defendant committed a civil infraction moving violation, (2) this violation of a civil infraction caused the death of another person. MCL 257.601d

ANALYSIS

Based on my review of this incident, there will be charges filed against the driver of the Land Rover who fled from the police. First, I have charged this juvenile with one count of first-degree fleeing and eluding. This is a felony charge punishable by 15 years in prison, and/or \$10,000 and a revocation of the persons driver's license. In addition, he has been charged one count of conducting a criminal enterprise. This too is a felony, punishable by 20 years and/or \$100,000. The elements of this offense are; (1) The defendant was associated with an enterprise. An enterprise may be an individual, a sole proprietorship, a partnership, a corporation, a trust, a union, or any other association of persons, (2) the defendant knowingly conducted, or participated in, the affairs of the enterprise, directly or indirectly, through a pattern of racketeering. An act of racketeering is committing, attempting to commit, or conspiring to commit a listed offense for financial gain, or aiding and abetting, soliciting, coercing, or intimidating another to commit a listed offense for financial gain. Specifically, the alleged offenses committed for financial gain are stealing cars and breaking into cars for financial transaction devices. Finally, I will be seeking a traditional waiver to charge this juvenile as an adult. Under Michigan law, these two charges are not ones for which I am able to *automatically* charge a juvenile as an adult. Under these circumstances I must seek judicial approval to charge this person as an adult, and we have started that process. However, the case remains in the juvenile system, so I am unable to disclose the name of the charged individual at this time. It is important to state that these are merely charges, this individual is presumed innocent until proven guilty beyond a reasonable doubt in a court of law.

There will be no charges filed against Deputy McMains for what occurred here. First, there is not a sufficient basis to find he acted in a "grossly negligent" manner to charge involuntary manslaughter. As stated above, one of the key elements is that we must show he failed to "use such care and diligence to avert the threatened danger when to the ordinary mind it must be apparent that the result is likely to prove disastrous to another." Considering this charge, most importantly, we must examine what Deputy McMains was doing at the time Riley was struck. He was traveling at a speed of 22 miles per hour. Michigan State Police also did an accident re-construction report, there are no skid marks on the pavement to indicate an abrupt stop, and from the video the cruiser was able to stop almost immediately. He did not run him over; Riley was clearly struck by the side of car, and from the evidence it appears the front right tire of the car caught him in the calf, pulling off his shoe, and then he violently fell to the ground. The Deputy was passing him, and by the Deputy's own statement he wished to cut in front of him to slow him down enough to possibly have the ability to engage in a foot chase. There is nothing in these facts that indicate he was engaging in behavior the *likely* result of which was to prove disastrous to another, which is necessary to establish gross negligence.

Recklessness is a lower standard than gross negligence. Once again to prove this it must be shown that there is "conduct that results in a plain and strong likelihood that death or bodily harm will result." The facts cited above are just as applicable here. The deputy was not driving at an excessive speed and he was not aiming at or attempting to run over Riley. He did drive over the curb at the end of the pursuit, in an attempt to apprehend the two fleeing on foot; however, that was before the incident occurred and in no way contributed to what happened. He felt this was necessary since the two had a

head start, he needed to close the distance, he hoped to apprehend them before they got into a neighborhood. Looking at his behavior during the entire pursuit, nowhere was he acting or driving in a reckless manner. He was calm calling out what was occurring on the radio, he sought permission to continue the pursuit, he slowed down at lights and he never put anyone else at risk for the four plus minutes the chase occurred. Given the totality of the circumstances, in an attempt to apprehend individuals who had fled over two counties, the deputy's attempt to stop an individual who he believed to be armed and dangerous to the public is not in itself reckless behavior. This was not a short or minimal police chase; as stated this SUV had been chased from Ottawa County, leading police there on an extensive chase before reaching Kent, the deputy has just engaged in a lengthy chase as well, there was a documented history of this vehicle not obeying police, and further, he had information the individuals fleeing may be armed. In his statement he notes that he saw a black object in the hand of the individual was running from him, and thought it was a gun. His statement is supported by the in-car video. There is a basis for his belief he needed to apprehend them. While this all happened in the parking lot of a business, just behind that business is a neighborhood with numerous homes. Trying to prevent someone under these circumstances from getting into an area of homes and civilians is imperative, and Deputy McMains attempted to block Riley's path with his vehicle to prevent this. Although he ultimately struck Riley with his cruiser in doing so, as Riley continued running away, at that speed and considering the totality of the circumstances with the standard of recklessness, I cannot prove beyond a reasonable doubt that the conduct of the deputy was of the kind that would result in a "plain and strong likelihood that death or great bodily harm would result."

Finally, there is the charge of moving violation causing death. At issue with this charge is the leeway Michigan law under the motor vehicle code grants to law enforcement officers engaged in a pursuit. Under MCL 257.603 the driver of an emergency vehicle, "when responding to an emergency call...or when pursuing or apprehending a person who has violated or is violating the law, or is charged with or suspected of violating the law" may engage in conduct other drivers may not. Specifically, under this statute, the driver of an authorized emergency vehicle may do any of the following: "(a) park or stand, irrespective of this act. (b) proceed past a red or stop signal, or stop sign, but only after slowing down as may be necessary for safe operation. (c) exceed the prima facie speed limit so long as he or she does not endanger life or property. (d) disregard regulations governing direction of movement or turning in a specified direction." In short, under this statute, officers are given leeway to engage in behavior during a pursuit, that may otherwise be a civil infraction moving violation. In any police pursuit there is activity which would otherwise be a violation of the law, but for the fact it is a police pursuit. Given the inherent dangers involved in police pursuits and the fact that this statute allows authorized emergency vehicles to engage in certain driving behaviors that others may not, Deputy McMains did not commit a moving violation as necessary for proof of this charge.