



**OFFICE OF THE COMMONWEALTH'S ATTORNEY
COMMONWEALTH OF KENTUCKY
30th JUDICIAL CIRCUIT**

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A statement from Commonwealth's Attorney Tom Wine regarding the review of the investigation into the death of David McAtee:

Following the death of David McAtee on June 1, 2020, the Kentucky State Police Critical Incident Response Team and the Louisville Metro Police Department Public Integrity Unit, conducted an exhaustive collaborative investigation. Their preliminary report was provided to the Office of Commonwealth's Attorney on August 10, 2020. Additional reports and information were provided to our office over the next few months. I commend the thoroughness and promptness of the Kentucky State Police, the Louisville Metro Police Department and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) in compiling this information and preparing these reports.

I will begin by offering my condolences to the McAtee family. By all accounts David McAtee was well liked by the community, his patrons, and members of the Louisville Metro Police Department. Prior to the release of this statement, I informed the attorney for the McAtee family of the results of this review.

On Saturday, May 30, 2020, following two days where our city experienced both constitutionally protected protests and criminal destruction of property and other unlawful conduct, Mayor Greg Fischer issued Executive Order 2020-006 decreeing a curfew for Louisville Metro from 9:00 pm on May 30, 2020 until 6:30 am on June 1, 2020. On the same day, Governor Andy Beshear also activated the Kentucky National Guard pursuant to Executive Orders 2019-459 and 2019-462, ordering units of the Kentucky National Guard into Jefferson County.

Around midnight of May 31/ June 1, LMPD command staff directed a contingent of LMPD officers and Kentucky National Guard soldiers to the intersection of 26th and

Broadway. Their primary goal was to clear a crowd from the parking lot at Dino's Food Market. After the officers and soldiers arrived, they began clearing the parking lot and the surrounding streets. Most civilians in the crowd were compliant and began to exit the area, either by walking away or driving off in their personal vehicles. There was no evidence that the crowd was engaged in any type of protest or destructive behavior.

Some members of the crowd began to walk over to YaYa's BBQ at 677 26th Street, an eating establishment operated by Mr. David McAtee. The business was still open and McAtee was moving between the premises' outdoor grilling area and the interior of the building.

McAtee was aware of the 9 PM curfew. Lt. Aaron Crowell, LMPD, spoke with McAtee and the management of Dino's, the night before, to confirm that they knew the curfew was in effect. They were advised they would be in violation of the curfew if they were serving people after 9 PM.

Following her arrival on the scene LMPD Officer Katie Crews (Crews) fired at least one pepper ball into the street outside Dino's to disperse the crowd. Crews then proceeded to fire several more pepper ball shots toward YaYa's where Machel McAtee was standing under a blue canopy near the side door to the building. As a result Ms. McAtee and others sought shelter inside the building.

In a recorded statement to investigators Marvin McAtee, David McAtee's nephew, stated that he told his uncle that marshals, or "whoever" were outside.

Nevertheless, following the hurried entry of Ms. McAtee and others into YaYa's through the side door, Mr. McAtee pointed a gun out that door and fired one shot. He then stepped back inside before reemerging to fire a second shot. Surveillance video from inside YaYa's captured these events.

In response to McAtee's shots, LMPD officers and National Guard soldiers moved for cover. Some described having seen an arm appear, a muzzle flash, and after a short pause, an arm appear again, and another muzzle flash. After McAtee's first shot, members of LMPD switched from non-lethal weapons such as pepper ball guns to service weapons and the National Guard soldiers armed their M-4 rifles. After McAtee's second shot, Crews, LMPD officer Austin Allen, National Guard soldiers Andrew Kroszkewicz and Staff Sergeant Matthew Roark all returned fire. Allen fired once, Crews fired eight times, Kroszkewicz fired four times and Roark fired six times. No other member of the National Guard or LMPD fired their service weapons.

Neither of the LMPD officers had activated their body cameras and the National Guard soldiers were not equipped with body cameras.

In the return fire Mr. McAtee was struck one time in the chest.

Persons inside the building attempted to render first aid to Mr. McAtee. Paramedics arrived within approximately 5 minutes of the shooting, but found that McAtee was already deceased.

Several officers and soldiers believed that someone was setting off firecrackers near the area of YaYa's BBQ. Marvin McAtee, in his 911 call, reported that someone had set off firecrackers. This seemingly harmless prank heightened the sense of threat. Additionally, officers and soldiers reported hearing gunfire from several locations in the immediate area.

As described consistently, Mr. McAtee fired twice. The Jimenez Arms 9mm handgun found near his body had his DNA on it. The magazine found on his person contained ammunition that matched that used by the Jimenez Arms 9mm. And the two spent shell casings found immediately outside the door were determined to have been fired by that same Jimenez Arms 9mm. Finally, Machel McAtee stated that the Jimenez Arms 9mm she saw on the floor next to his body, was similar to the one she had seen him possess previously.

Mr. McAtee's autopsy report revealed that he died from a single gunshot wound to the left chest, upper sternal, involving the left lung and aortic arch. His ribs, clavicles, and manubrium had been fractured. An accompanying toxicology report showed Mr. McAtee had not ingested any drugs or alcohol.

Four fragments of a projectile were recovered from the body of Mr. McAtee. The KSP crime lab determined only two fragments displayed marks of value indicating they could have been fired from either of the Kentucky National Guard's Colt rifles. Green paint found on one of these fragments was similar to the green paint on the cartridges used by the Kentucky National Guard. However, the fragments were too damaged to be identified with a specific weapon. It was definitively found that these two fragments had not been fired from the weapons used by the LMPD officers.

The LMPD officers in conformance with LMPD Standard Operating Procedure Number 9.1.13 and the Kentucky National Guard soldiers by virtue of the National Guard's use of force policy were authorized to discharge their firearms in defense of human life, including their own, when they reasonably believed, based on the facts and circumstances, that Mr. McAtee posed an immediate threat of death or serious injury to them or to another person. The actions of the LMPD officers and Kentucky National Guard soldiers were further justified by KRS 503.040 to use physical force, and KRS 503.050 (2) and KRS 503.070 (2) to use deadly physical force in response to the deadly physical force used by Mr. McAtee against them.

I provided a twenty-four page review to the investigating agencies detailing our office's factual findings, legal analysis, and the conclusion that that this investigation will not be presented to a Jefferson County Grand Jury for further review or potential charges against any of the LMPD officers or National Guard soldiers who fired their weapons. Because there is an ongoing investigation by federal authorities, it would not be appropriate for me to comment further on this matter at this time.