

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI  
AT KANSAS CITY

STATE OF MISSOURI, )  
)  
Plaintiff, )  
)  
v. )  
)  
ERIC J. DEVALKENAERE, )  
)  
Defendant. )

Case No. 2016-CR02823

**MOTION TO DISMISS INDICTMENT**

Defendant Eric J. DeValkenaere, by his attorneys, moves to dismiss the indictment against him. In support of his motion, DeValkenaere states as follows:

**I. FACTS OF THE CASE**

1. With nearly 20 years of police experience, DeValkenaere was a detective in the Violent Offender Squad of the Kansas City Police Department in December 2019.
2. As the squad worked the streets on December 3, 2019, Adam Hill, another detective, noticed a red truck chasing a purple Mustang through residential streets at 60 to 90 miles per hour, putting everyone on the road and in the area at risk for serious injury.
3. Police later determined that Cameron Lamb was driving the truck—and that he had stolen the ride about a week earlier.

4. The potentially life-threatening chase alarmed Hill so much that he broadcast the details over the police radio to his squad members who were scattered throughout the area in separate locations.
5. From his position, DeValkenaere noted the truck's license plate numbers as Mr. Lamb cut through a parking lot to avoid a busy intersection. Police ultimately discovered the plate did not match the truck.
6. From above, a police helicopter spotted Mr. Lamb—by then, he was no longer chasing the Mustang—and tracked his movements.
7. The chopper's crew watched as Mr. Lamb darted into a residential driveway at 4154 College Avenue and drove to the back area using a side driveway. The crew shared this over the radio.
8. DeValkenaere and Troy Schwalm, a third detective, immediately responded to the home—both wearing bullet proof vests marked “POLICE” on the front and back in large letters.
9. Schwalm got there first and went to the home's back area.
10. DeValkenaere arrived just after and talked with a woman—later identified as Roberta Merritt—who was sitting on the front porch. Ms. Merritt said she did not know the driver of the truck—even though she had known Mr. Lamb for years. But DeValkenaere believed her and thus presumed Mr. Lamb did not belong there.
11. Based on the information from the other detectives, the police helicopter crew, and Ms. Merritt, DeValkenaere went behind the house, where he immediately

saw Mr. Lamb reversing the stolen truck into an under-the-house garage. DeValkenaere was near the corner of the garage, on the truck's passenger side, with an unobstructed view. He could see Mr. Lamb, who was alone, first through the passenger window and later through the front windshield after the truck entered the garage.

12. As Mr. Lamb backed the truck into the garage, both detectives yelled commands like "Show Your Hands!, Stop the Car!, Put the Car in Park!, Turn It Off!, and Get Out of the Truck!"
13. Mr. Lamb showed both of his hands at first. But as the truck came to rest inside the garage, Mr. Lamb reached toward his waistband with his left hand, shifted his weight, pulled a black handgun, and pointed it toward Schwalm.
14. At that moment, Schwalm was standing near the front of the truck without anything to hide behind.
15. Near the top of his lungs, DeValkenaere screamed, "HE'S GOT A GUN TROY, HE'S GOT A GUN, HE'S GOT A GUN!!!" and fired his gun while both detectives hurried for cover.
16. The gunshots were fatal.
17. Afterward, Mr. Lamb's left arm and hand extended outside the open driver's window. Just below his hand, laying on the garage floor, was a black handgun—stolen, as it later turned out.
18. The Homicide Unit investigated and provided its findings to the Jackson County Prosecutor's Office for review.

19. During its review, the Prosecutor's Office worked in tandem with the civil attorneys for Mr. Lamb's family, who were preparing to sue DeValkenaere and the Police Department for money.
20. An investigator for the Prosecutor's Office, related to the Lamb family, acted as the link between the prosecution and the civil attorneys by reaching out to potential witnesses.
21. In June 2020, a Grand Jury indicted DeValkenaere for Involuntary Manslaughter and Armed Criminal Action.

## II. ARGUMENT AND AUTHORITIES

### 1. DeValkenaere did not act recklessly, and, therefore, the charge of Involuntary Manslaughter should be dismissed.

To meet its burden of proof, the state must prove that DeValkenaere recklessly caused the death of Mr. Lamb. 565.024(1)(1) RSMo. 2013. Recklessness is defined as creating "a substantial and unjustifiable risk that the actor will cause death and consciously disregarding the risk where such disregard is a gross deviation from what a reasonable person would do under the circumstances." *State v. Skinner*, 734 S.W.2d 877 (Mo. App. 1987). "In the context of involuntary manslaughter, [r]ecklessness involves conscious risk creation and resembles knowingly in that a state of awareness is involved, but the awareness is of risk, that is, of a probability less than a substantial certainty." *State v. Miller*, 981 S.W.2d 623, 630 (Mo. App. W.D. 1998) (internal quotations omitted). Here, there is no evidence of reckless behavior by DeValkenare.

To begin, it was Mr. Lamb—not DeValkenaere—who created the risks leading to his own passing. Earlier that day, he slapped his girlfriend in a fight. Enraged by his girlfriend’s threat to move out, he chased her as she drove from Mr. Lamb in the purple Mustang. Mr. Lamb drove through residential streets at dangerously high rates of speed, darted through traffic, and ignored clearly marked traffic signals in his attempt to catch his girlfriend. When the detectives cornered him, he grabbed a gun rather than surrender and took aim at Schwalm. In these ways, Mr. Lamb created his own risks.

At the same time, DeValkenaere acted like a reasonable police officer. He responded to Mr. Lamb’s location, discovered that Mr. Lamb did not live there, found Mr. Lamb, gave verbal commands, and fired his weapon only after Mr. Lamb pulled a gun and raised it toward Schwalm. All these actions were proper.

While the events are tragic, this shows that DeValkenaere did not create— or disregard—the risks leading to Mr. Lamb’s passing. For this reason, he did not act recklessly and therefore, the charge of Involuntary Manslaughter should be dismissed.

2. **The charge of Armed Criminal Action should also be dismissed.**

Since the Armed Criminal Action charge depends on the Involuntary Manslaughter charge, it should also be dismissed.

### **III. CONCLUSION**

For these reasons, the Court should dismiss the entire indictment.

Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT**

**CERTIFICATE OF SERVICE**

The undersigned certifies that on March 3, 2021 the foregoing was electronically filed and served on all parties.

/s/ Sean P. McCauley  
Sean P. McCauley