

# LAW OFFICE OF MARK S. MISHLER, P.C.

750 BROADWAY - ALBANY, NEW YORK 12207

August 21, 2017

Sent by e-mail to [jabelove@rensko.com](mailto:jabelove@rensko.com).

Joel Ablove, District Attorney  
Office of the Rensselaer County District Attorney  
County Courthouse  
Troy, NY 12180

Re: *Investigation into the use of deadly force by a Troy police officer against Dahmeek McDonald*

Dear Mr. Ablove:

I represent Dahmeek McDonald and his family regarding the incident on August 15, 2017, in which a Troy Police officer used deadly force against Mr. McDonald, firing multiple shots at Mr. McDonald, at least two of which struck Mr. McDonald.

I understand your office is currently investigating this matter.

I write, on behalf of Mr. McDonald and his family, to demand that you immediately recuse yourself and the Rensselaer County District Attorney's Office from this investigation.

It is impossible for you or your office to conduct a fair and impartial investigation of this matter. In addition, it is inconceivable that the public could have any confidence in the integrity of any investigation into this incident in which you or your office are involved.

First, you are currently under investigation by the NYS Attorney General's Office - pursuant to Executive Order No. 163 issued by Governor Andrew Cuomo on February 1, 2017 - due to allegations that you may have engaged in unlawful acts or omissions arising out of your conduct of the initial investigation into the killing by the Troy Police of Edson Thevenin in April 2016, including the grand jury presentation you made in that case. The Attorney General's Office has stated that you acted beyond your legal powers, that you presented the Thevenin case to a grand jury when you did not have the authority to do so, and that you engaged in a "rush to judgment" which challenged "the public's confidence and trust in our system of criminal justice."

In other words, you are under investigation by the Attorney General's Office - under a specific grant of authority by the Governor - for what has been alleged to have been an effort to undermine or interfere with the proper investigation of a fatal use of force by a Troy police officer.

Joel Abelove, District Attorney / August 21, 2017

Re: Investigation into the use of deadly force by a Troy police officer against Dahmeek McDonald

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Your involvement in a *new* case involving the use of deadly force by a Troy police officer (although, fortunately, in this case Mr. McDonald survived the use of deadly force) *while* you are under investigation for allegedly undermining a previous similar investigation, presents - at the least - a gross appearance of impropriety.

Second, even if the issues relating to your handling of the Thevenin case did not exist, we submit it is an improper conflict of interest for you and your office to conduct an investigation into the use of deadly force by a Troy police officer. There can be no dispute that your office and the Troy Police Department work together every day on a wide range of cases and investigations. You rely on each other. This is a small police department and a small District Attorney's office. You and the Troy PD are too inextricably and deeply intertwined with each other for you to conduct a proper investigation of the use of deadly force by a Troy police officer against a civilian. Certainly, the public cannot have any confidence in such an investigation.


The circumstances involved in the August 15<sup>th</sup> shooting of Mr. McDonald by a Troy police officer raise numerous questions as to the propriety of the officer's actions. The seriousness of this incident cannot be overstated. This is, as you are aware, another in a lengthy series of incidents in this country in which a young African-American man has been shot by a white police officer under circumstances strongly indicating that the use of deadly force was excessive, unnecessary, and unlawful. It is essential that there be a full, fair, impartial, independent, and professional investigation of this incident. You and your office cannot conduct such an investigation.

We ask that you take immediate steps to recuse yourself and your office from this investigation and that you initiate contact with the Governor's office to ask the Governor to issue an Executive Order pursuant to NY Executive Law section 63, subdivisions 2 and 8, granting authority to the NYS Attorney General's Office in this case. The special circumstances present here, as summarized in this letter, provide a compelling basis for you to make such a request and for the Governor to grant it. This matter involves public peace, public safety and public justice and requires an independent investigation.

By copy of this letter, we are also directly communicating our concerns and our demands to the Governor's Office and to the Office of the NYS Attorney General to ask them to take action to ensure that a proper investigation is conducted in this matter.

Thank you.

Very truly yours,



Mark S. Mishler

Attorney at Law

cc: Governor Andrew Cuomo (Attention: Alphonso David, Esq., Counsel to the Governor)  
NYS Attorney General Eric Schneiderman (Attention: Alvin Bragg, Esq., Executive  
Deputy Attorney General for Social Justice)  
D. McDonald