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**IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

STATE OF MISSOURI,

Respondent,

vs.

WD No. 85232

ERIC J. DeVALKENAERE,

Appellant.

**IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
SIXTEENTH JUDICIAL CIRCUIT, DIVISION 6
Honorable J. Dale Youngs, Judge**

STATE OF MISSOURI,

Plaintiff,

vs.

Case No. 2016-CR02823

ERIC J. DeVALKENAERE,

Defendant.

**RECORD ON APPEAL - TRANSCRIPT
Volume II of III, pages 692 through 705**

APPEARANCES

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FRIDAY, NOVEMBER 19, 2021

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THE COURT: Good afternoon. I have previously told everybody in the room at various points, one in particular, that everybody here who was here during the trial remembers, that this was a sacred place. Everybody remember that conversation? It's especially true today, okay? And I appreciate everybody keeping that in mind as we are doing this afternoon rather.

I'll go ahead and call the case that I have here this afternoon. This is a continuation of State of Missouri v. Eric DeValkenaere. The case number is 2016-CR02823. I will show appearances by counsel who have previously been present. Also present on behalf of the State is Mr. Messonnaere.

I want to first acknowledge the hard work that trial counsel have put in to presenting this case to me. This was an extraordinarily well-tried case by fine lawyers on both sides, and I think it's important to acknowledge that. I also think it's important to acknowledge those who are here and have been here in the gallery on both sides of the issues here. With a few exceptions that are understandable that we dealt with and we worked through, I appreciate everybody's

1 respectful way that they had conducted themselves
2 while they have been in the courtroom during what
3 can only be described as a very tragic and
4 difficult case.

5 I took the matter under advisement after
6 hearing the evidence and arguments in the case,
7 which concluded on November 12 of 2021. I had
8 considered and weighed only the admissible
9 evidence in the case, including that evidence
10 presented through the testimony of witnesses and
11 exhibits as well as arguments of counsel.

12 There are certainly numerous significant and
13 troubling issues of fact that have been presented
14 in this case; however, I will say that many of the
15 critical facts are also undisputed, and as a
16 result, many of the fundamental issues that have
17 been presented to me for determination in this
18 case turn out to be issues of law, particularly
19 issues of law related to the 4th Amendment to the
20 United States Constitution and Article 15 Section
21 1 of the Missouri Constitution, which I will refer
22 to collectively in my comments this afternoon as
23 the 4th Amendment.

24 Initially it's got to be noted that the 4th
25 Amendment and its requirements are not ministerial

1 formalities, they are not loopholes for criminals
2 or suggestions that may simply be ignored for
3 purposes of expediency or convenience. Rather
4 these protections are fundamental to the effort to
5 preserve our freedom as citizens and our rightful
6 expectation that we will be free from unreasonable
7 government intrusion into our homes, property and
8 persons.

9 In this regard and as it has become an issue
10 in the case, it bears noting that this expectation
11 extends beyond the walls of our homes, apartments
12 or other dwellings and into areas that are called
13 the property's curtilage. Key to this analysis,
14 of course, are questions of reasonableness as
15 these protections are not absolute, and our rights
16 must be balanced against legitimate public
17 interest, foremost of which is public safety.

18 Thus, there are methods by which these
19 interests are balanced and which include various
20 requirements that must be met before the
21 government may lawfully engage in searches or
22 seizures as well as various exceptions to those
23 requirements applicable in certain circumstances.

24 These requirements and exceptions include
25 arrest warrants issued by a court on the basis of

1 probable cause to believe that someone has
2 committed a crime; search warrants issued by
3 courts, for example, to enter a dwelling or a car
4 or a computer to search for evidence or fruits of
5 criminal activity, and to seize such items again
6 after a finding of probable cause; the hot pursuit
7 exception to the warrant requirements of the 4th
8 Amendment; the exigent circumstances exception;
9 the good faith reliance on a search warrant
10 exception; the plain view doctrine and others.

11 Some of these issues might have required
12 further consideration in determination in this
13 case but for the Court's findings of fact or, over
14 archingly, the lack of any real dispute regarding
15 key questions of fact including these: On
16 December 3rd, 2019, defendant and Sgt. Schwalm had
17 no probable cause to believe that a crime had been
18 committed by Cameron Lamb; defendant and Sgt.
19 Schwalm had no arrest warrant for Cameron Lamb,
20 nor were they at 4154 College to arrest him, and
21 would not have had probable cause to do so or to
22 obtain a warrant to do so; defendant and Sgt.
23 Schwalm had no search warrant for the residence at
24 4154 College Avenue or for Cameron Lamb's vehicle,
25 and would not have had probable cause to seek or

1 obtain one; defendant and Sgt. Schwalm did not
2 have anyone's consent to be on the property at
3 4154 College; defendant and Sgt. Schwalm were not
4 engaged in a pursuit of Cameron Lamb, fresh, hot
5 or otherwise; no exigent circumstances as that
6 phrase has been defined by the law justified their
7 presence on the property at 4154 College that day.

8 Instead the defendant's position as stated by
9 his attorneys, their examination of the State's
10 witnesses, the defendant's expert witness and his
11 own statements and testimony is that he was
12 assisting and following Sgt. Schwalm, who was
13 engaged in an investigation into the circumstances
14 surrounding the actions of a red pickup truck that
15 matched the description of a pickup being driven
16 by Cameron Lamb into the driveway of the residence
17 and which had previously been chasing a purple
18 Mustang, a chase that was over, as they noted
19 themselves, and as was relayed to them by the
20 Kansas City Police Department helicopter overhead.

21 Indeed during his cross-examination defendant
22 repeatedly asserted that based on the totality of
23 the circumstances, he and Sgt. Schwalm had only
24 reasonable suspicion that criminal activity was
25 afoot, a specialized phrase used in the law that

1 an experienced and highly trained police officer
2 like the defendant knows the meaning of.

3 The law bears out the correctness of
4 defendant's testimony in this regard. The Kansas
5 City Police Department policies that defendant and
6 Sgt. Schwalm were trained on and obligated to
7 follow also bear it out, and the Court agrees with
8 him. Kansas City Police Department policies and
9 training also confirm that which the Court also
10 concludes, that Sgt. Schwalm and defendant's
11 encounter with Cameron Lamb at 4154 College took
12 place on the curtilage of the property.

13 All of this said, the law is similarly clear
14 that it is altogether proper for police officers
15 with legitimate business to enter areas of
16 curtilage open to the public. In the course of a
17 criminal investigation, a law enforcement officer
18 without a warrant is permitted to investigate a
19 crime or to conduct business at a residence in
20 places where the public is invited. The issue of
21 whether law enforcement officers have lawfully
22 entered a particular area designated as curtilage
23 to conduct an investigation or to conduct business
24 depends on whether or not the occupant has
25 exhibited a reasonable expectation of privacy in

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that area.

Where an occupant has taken effective steps to protect areas of the property from view and from uninvited visitors, then a privacy interest may be found in that area sufficient to preclude police from coming onto it for investigative purposes without permission.

This determination is necessarily case by case and, as expected, the Court has not been presented with legal authority regarding a factual situation precisely like the one that presents itself here and has not on its own found one.

Nevertheless, based on the Court's review of the law and the facts of this case, including those it has and will recite in its findings here, the Court concludes that the backyard of 4154 College and particularly the carport, driveway and garage areas were areas included within the curtilage of the residence, and that the occupants of the home, which included Cameron Lamb, had exhibited a reasonable expectation of privacy in those areas such that they cannot be deemed open to the public or places where the public is invited; in particular the north side of the area was enclosed by a fence and shielded from view by

1 bushes; the west side of the area was similarly
2 fenced and shielded from view by trees and bushes
3 as well as a hill sloping up to a church parking
4 lot on private property to the west. The backyard
5 and carport area were not able to be seen from the
6 street, and there was no evidence that the back
7 stairs leading up to the deck and back door or the
8 garage were accessible to or used by the general
9 public or visitors to the residence.

10 Indeed, the only way to see what was in the
11 back area of the house was to do what Sgt. Schwalm
12 did: Walk down a private driveway, one that
13 maintained its private nature notwithstanding the
14 fact that it was shared with the neighbor to the
15 south. Although there was some evidence that
16 Cameron Lamb performed work on vehicles in the
17 backyard for which he was paid, there was
18 insufficient evidence from which the Court can
19 conclude that this area or the carport area were
20 open to the public or otherwise placed where the
21 public was invited as those phrases have developed
22 under the law.

23 Finally, it was essentially undisputed that a
24 large barbecue grill and car hood had been
25 situated on the northwest corner of the residence

1 for the express purpose of shielding the backyard
2 and carport area from public view.

3 Indeed, in his December 3rd, 2019, interview
4 defendant characterized the grill and hood as
5 positioned to act like a fence, and stated that he
6 had to push over the barricade in order to get
7 into the backyard.

8 The totality of the circumstances including
9 those facts just set out, but not limited to those
10 facts, causes this court to conclude that Sgt.
11 Schwalm was not lawfully present in the
12 backyard-carport area of 4154 College on December
13 3rd, 2019, nor was the defendant when he followed
14 Sgt. Schwalm into that area and when defendant
15 encountered Cameron Lamb and when he then shot
16 him.

17 Having so determined, the Court is compelled
18 to further conclude that the State has met its
19 burden to prove beyond a reasonable doubt that
20 Sgt. Schwalm and defendant were the initial
21 aggressors in the encounter with Cameron Lamb on
22 December 3rd, 2019, and had a duty to retreat from
23 the encounter under the circumstances.

24 The Court is further compelled to find beyond
25 a reasonable doubt that when defendant shot and

1 killed Cameron Lamb, No. 1, defendant was not
2 acting in lawful self-defense; No. 2, defendant
3 was not acting in lawful defense of Sgt. Schwalm;
4 and 3, it being conceded that defendant and Sgt.
5 Schwalm were not effecting an arrest of Cameron
6 Lamb or preventing his escape after an arrest,
7 that defendant did not lawfully utilize deadly
8 force as a law enforcement officer under Missouri
9 use of force laws applicable to such officers.

10 The Court further finds from the admissible
11 evidence beyond a reasonable doubt that when
12 defendant follows Sgt. Schwalm into the backyard
13 of 4154 College and engaged Cameron Lamb,
14 ultimately shooting and killing him, he did so
15 without considering or being aware of the
16 substantial and unjustifiable risks associated
17 with his conduct, including but not limited to the
18 fact that Sgt. Schwalm and he were unlawfully on
19 the property, that they were both escalating a
20 situation that previously had deescalated, and
21 that their actions created or exacerbated the risk
22 that what ultimately occurred would.

23 The Court concludes that this conduct was a
24 gross deviation from the standard of care that a
25 reasonable person would exercise in the situation

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and constituted criminal negligence as that phrase is defined under Missouri law.

Accordingly, as to Count 1 in which defendant is charged with the Class C felony of involuntary manslaughter in the first degree, the Court finds the defendant guilty of the lesser included offense of involuntary manslaughter in the second degree, a Class E felony.

As to Count 2, the unclassified felony of armed criminal action, the Court finds the defendant guilty.

A date for sentencing will be determined after further consultation with counsel. The Court will order the preparation of a Sentencing Assessment Report. If the defendant chooses to file a motion for new trial, the deadline for doing so is extended ten days. I will order that the defendant remain free on bond pending sentencing.

That will be the Court's order. Counsel will withdraw their exhibits. Good luck, everybody.

(The hearing concluded at 1:15 p.m.)

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REPORTER'S CERTIFICATE

I, Charla Milne-Cathcart, Certified Court Reporter, certify that I was the substitute official court reporter for Division 6 of the Jackson County Circuit Court; that on November 19, 2021, I was present and reported all of the proceedings in STATE OF MISSOURI, Plaintiff, vs. ERIC J. DeVALKENAERE, Defendant, Case No. 2016-CR02823.

I further certify that the foregoing thirteen pages contain a true and accurate reproduction of the proceedings transcribed.

In compliance with Supreme Court Rule 84.18, I further certify the cost of preparing this transcript as follows:

14 pages @ \$2.60 per page \$36.40

/s/ Charla M. Milne-Cathcart

Charla M. Milne-Cathcart C.C.R. No. 560
Swing Court Reporter
Jackson County Circuit Court at Kansas City

Transcript completed: May 13, 2022