



JEAN PETERS BAKER

JACKSON COUNTY PROSECUTING ATTORNEY

April 24, 2017

Chief Darryl Forte
Kansas City Police Department
1125 Locust
Kansas City, MO 64106

Re: Officer-involved shooting on November 30, 2016

Dear Chief Forte:

On March 3, 2017, the Jackson County Prosecutor's Office Use of Force committee reviewed the investigation of the shooting death of David Crosby-Dowdy in Kansas City, Missouri occurring on November 30, 2016. This incident involved Officer [REDACTED] of the Kansas City, Missouri Police Department (KCPD), though members of other law enforcement agencies were present at the scene due to a joint task force investigating a recent shooting and robbery that occurred in Independence, Missouri. Based on the investigation and our analysis, our committee concluded the evidence does not support the filing of criminal charges against this officer.

Summary of Facts

On November 28, 2016, a shooting was reported at 11:52 a.m. at the Budget Inn motel located at 9040 E. 40 Highway, Independence, Missouri. Members of the Independence Police Department (IPD) reported to the scene and began their investigation of a shooting and robbery occurring moments earlier.¹ Upon arrival at the Budget Inn, officers contacted a Hispanic male with a gunshot wound to his right thigh. Witness statements, surveillance video and physical evidence recovered after a search warrant revealed the shooting at the Budget Inn occurred in Room 114, but included occupants from Room 301. Shortly after the shooting victim arrived at Room 114 to meet a black female, later determined to be [REDACTED] two unknown black males entered the Room. Both black males were armed and demanded the shooting victim's money. The victim stated that two black males entered the room, one carrying a handgun and one carrying a rifle. The victim believed the handgun was fake and would not fully comply with their demands. While the victim provided his wallet and his cell phone, he refused to turn over the keys to his vehicle. During a brief struggle, the taller black male, armed with a rifle or long-gun, shot him in the leg while attempting to take his money. All three suspects then left Room 114 and went into Room 301. The victim managed to get to his vehicle and drove to a nearby

¹ See IPD case file 2016-00089293 detailing the robbery and shooting occurring on November 28, 2016.



gas station, asking someone to contact police.² The victim was then transported to Centerpoint Hospital for treatment of his injuries. During the investigation of this robbery, [REDACTED] was arrested in Room 301 and [REDACTED] was arrested a short time later.

Police identified David Crosby-Dowdy, also known as “Silver Back” or “Silver” as one of the suspects of the robbery and the suspect who shot the victim. A task force was formed to identify the location of Dowdy. Witnesses describe Mr. Dowdy as carrying a Hi Point 9mm carbine rifle around the time of the robbery.³ By November 30, 2016, police received information that Mr. Dowdy may be at 925 Cleveland in Kansas City, Missouri. A task force of multiple law enforcement agencies was formed and surveillance was conducted by officers near this location.⁴

A briefing was provided to members of the task force seeking the arrest of Mr. Dowdy. During that briefing, it was shared that Mr. Dowdy was known to carry a weapon and recently made statements that he would not be taken into custody peacefully. A photo of Mr. Dowdy was provided to task force members showing him posing with a similar weapon as described by witnesses in the robbery and shooting in Independence, Missouri. This information was known to Officer [REDACTED]⁵

[REDACTED] was riding as the passenger with [REDACTED] both officers with the Kansas City, Missouri Police Department. Information was relayed to Officers [REDACTED] and [REDACTED] that Mr. Dowdy had entered into the front passenger side a red car outside of 925 Cleveland. Officer [REDACTED] activated his lights and sirens, attempting to pull over the vehicle. Officer [REDACTED] approached the driver’s side of the vehicle while [REDACTED] approached the passenger side. Neither officer knew Mr. Dowdy and relied on the briefing information to make an identification.

Officer [REDACTED] reported seeing a female passenger in the back seat, and immediately saw her hands, he then focused his attention on the front passenger. Upon [REDACTED]’s approach to the passenger side of the vehicle, he believed the front passenger was the person officers were seeking to arrest on a pick-up warrant for the Independence shooting.⁶ [REDACTED] further reported that he was informed that Mr. Dowdy was possibly armed, that he was sought for a shooting on November 28 and that Dowdy was prepared to “shoot it out” with police.⁷ Within moments, [REDACTED] saw money and a black gun in the hands of the front passenger. [REDACTED] opened the

² Suspects [REDACTED] and [REDACTED] were charged with Robbery in the First Degree and Armed Criminal Action in 16CR-04720-01 and 16CR-04719-01, respectively. [REDACTED] admitted to arranging a meeting with the victim as a “set up” for the robbery. Stating once the victim was disrobed, she agreed to text [REDACTED] to indicate it was time for [REDACTED] and Silverback to commit the robbery. [REDACTED] informed police that [REDACTED] was carrying a fake gun, but Silverback had a large gun. She further stated that Silverback shot the victim, but that the victim was not supposed to be shot. See IPD case file 2016-00089293.

³ See IPD case file 2016-00089293.

⁴ See Detective T. Winborn’s report, “Pickup/Apprehension: David Dowdy-Crosby

⁵ See Formal Statement of Detective [REDACTED], page 3-4 (Freeman describes the material provided to the task force seeking to arrest Mr. Dowdy as including a photo received through the Missouri Department of Revenue, social media postings, including photographs of Mr. Dowdy, Mr. Dowdy’s driving record, criminal history of Mr. Dowdy, including NCIC, REJIS reports and text messages from a confidential informant).

⁶ See Formal Statement of Officer [REDACTED], page 3

⁷ *Id.* at page 3, 10-11.

passenger door and gave commands for the passenger to step out of the car. The passenger dropped the money and began to pull a gun out of his waistband.⁸

Officer [REDACTED] yelled "gun" to notify his partner and a struggle ensued over the passenger's weapon between [REDACTED] and Mr. Dowdy. Officer [REDACTED] reports giving him commands to "let go of the gun," but the struggle continued. As Mr. Dowdy continued to pull the weapon out, [REDACTED] fired four rounds into Dowdy's upper chest area.⁹ [REDACTED] then reported an officer from another department took possession of Dowdy's weapon and helped him remove Dowdy from the vehicle. They immediately attempted life-saving measures and applied pressure to his wounds, while [REDACTED] also called for an ambulance and gave directions for their arrival to the scene.¹⁰

Officer [REDACTED] a police officer with the KCPD, gave a detailed description of his interaction with the driver of the vehicle, along with the other passengers, as the driver was being apprehended. [REDACTED] describes Officer [REDACTED] as his partner and their efforts to stop the red car in order to identify the passenger.¹¹ He activated his lights and sirens and the driver of the red car immediately pulled over. [REDACTED] approached the driver, who kept both his hands on the steering wheel, always within his view.¹² Next, [REDACTED] heard [REDACTED] shout, "Gun" and [REDACTED] yelling commands to the front passenger and they are struggling over the passenger's gun. [REDACTED] did not give any verbal commands, but saw the front passenger reaching for a "long barreled black firearm."¹³ The passenger continued to reach for the weapon. Again, [REDACTED] heard his partner yell, "Gun, Gun!" and his partner drew his own the gun. [REDACTED] believed the front passenger was trying to "pull the gun out and raise the gun at an angle to where he can shoot."¹⁴ He saw [REDACTED] then fire his weapon three to four times. [REDACTED] also drew his weapon, but did not discharge it.¹⁵ [REDACTED] stated that both the driver and back seat passenger followed his commands and showed their hands to him. Both the driver and backseat passenger were removed from the car and [REDACTED] then helped perform life saving measures to the front passenger, Mr. Dowdy. [REDACTED] stated he applied a compression bandage and pressure until medics arrived.¹⁶

Special Agent with the Federal Bureau of Investigations (FBI), [REDACTED] also provided a detailed accounting to police of his involvement in this shooting.¹⁷ He joined the surveillance team at 8th and Van Brunt, looking for David Crosby-Dowdy, who was described as having shot someone over the weekend in Independence, Missouri.¹⁸ Though [REDACTED] described

⁸ *Id.* at page 4.

⁹ *Id.*

¹⁰ *Id.*

¹¹ See Statement of Officer [REDACTED] on November 30, 2016.

¹² *Id.* at pages 2 and 3, "the front driver still has his hands on the steering wheel and the female in the back, I can see her hands"

¹³ *Id.* at page 3.

¹⁴ *Id.* at page 3.

¹⁵ *Id.* at page 4.

¹⁶ *Id.* at page 3.

¹⁷ Statement of [REDACTED] on November 30, 2016. (note: one report incorrectly dates this report as November 20, 2016).

¹⁸ *Id.* at page 2.

his location as not being close enough to identify the person getting into the red car, he believed Dowdy was in the car. Other task force members were asked to conduct a car stop to identify the front passenger. [REDACTED] parked approximately 10 yards behind Officer [REDACTED] to observe the stop.¹⁹ He describes [REDACTED] as engaged in a “normal conversation” with the driver, but “all of a sudden,” Officer [REDACTED]’s demeanor changed.²⁰ [REDACTED]’s feet shifted and he began giving verbal commands, and then he lunged into the car on the passenger side.²¹ [REDACTED] called for help and ran to the passenger side of the car when he heard gunshots.²² [REDACTED] then described a large gun that looked like a shotgun in between [REDACTED] and Mr. Dowdy.²³ [REDACTED] recovered the gun, immediately locking it up in another officer’s car. He then helped [REDACTED] lift Mr. Dowdy from the car and perform life-saving medical intervention to save Mr. Dowdy’s life.²⁴

Included among the physical evidence recovered from the scene were two firearms, one black Glock 22, Gen 4 from the shooting officer and a weapon taken from Mr. Dowdy, specifically a Hi-Point 995, 9x19 9mm rifle. The Hi-Point rifle appears to be the same weapon appearing in a Facebook photo depicting Mr. Dowdy that was posted on November 28th. The weapon was recovered first by FBI Agent [REDACTED] fully exposed from the lap of Mr. Dowdy. A ballistics count was conducted on both weapons, both weapons had ammunition remaining in the magazine and apparent blood was found on the stock of the rifle. The blood on the rifle supports the statements from witnesses regarding the position of the weapon during the shooting, indicating the rifle was exposed and in between Mr. Dowdy and Officer [REDACTED]

The driver of the red Ford car, [REDACTED] provided a statement to police that corroborated other witnesses at the scene and the physical evidence. [REDACTED] stated he only knew his passenger as “Silver” and that he agreed to give him a ride. [REDACTED] did not know the backseat passenger.²⁵ [REDACTED] was cooperative with the police during his statement and stated that he cooperated with the police during the car stop.²⁶ The backseat passenger, [REDACTED], provided an accounting of events from her perspective behind the front passenger. Ms. [REDACTED] claimed only to know the front passenger, Mr. Dowdy, as Dwayne Kingston and that she had no knowledge of the driver of the car having just met him.²⁷ [REDACTED] could not see the entirety of the incident due to her position in the backseat, but she did hear the officer provide commands to get his hands off the gun.²⁸ [REDACTED] provides a long narration of the events she witnessed, but

¹⁹ *Id.* at page 6.

²⁰ *Id.* at page 3 ([REDACTED] describes Officer [REDACTED] approaching the driver side of the vehicle and Officer [REDACTED] on the passenger side).

²¹ *Id.* at pages 3 and 5.

²² See Statement of Detective [REDACTED] page 7 (noting he heard [REDACTED] over the radio report that problems had begun in the arrest, then stating “Shots fired! Shots fired!”)

²³ Statement of Agent [REDACTED] at pages 3, 5.

²⁴ *Id.* at page 4.

²⁵ See Formal Statement of [REDACTED], taken on November 30, 2016.

²⁶ See page 3 ([REDACTED] states he immediately pulled over for the police and kept both hands in view of the officer).

²⁷ See Formal Statement of [REDACTED], taken on November 30, 2016.

²⁸ *Id.* (numerous statements from [REDACTED] state the officer provided commands to the passenger to put his hands up, but her statements are often conclusory indicating what the officer must have thought or what the passenger was intending to do; “[the officer] kept thinking that [Mr. Dowdy] was trying to grab the shotgun” page 2; “the cop thought that the dude was trying to pull the gun out.” Page 5; “the cop like thought you know that he was probably

eventually stresses that she did not see her friend, Mr. Dowdy, have his hands up as the police directed.²⁹

A review of the autopsy report provided by the Jackson County Medical Examiner, reveals that Mr. Dowdy was fatally killed by gunshot wounds to his upper chest area. Though witness accounts vary regarding the number of times Officer [REDACTED] fired his weapon (described as between 3 to 5 discharges) Mr. Dowdy was shot a total of 4 times. Mr. Dowdy was pronounced deceased after a transport to Truman Medical Hospital. A review of Mr. Dowdy's body examination supports the officer's testimony that medical intervention was performed at the scene and by medical personnel in route to Truman Medical.

Applicable Law

Our examination of this officer's use of force is governed by Missouri law, and the applicability of legal defenses set forth under Missouri's statutes and caselaw. First, we analyzed Section 563.046, RSMo, governing the use of force by a law enforcement officer when effectuating an arrest. This provision specifically authorizes an officer to use the physical force as he or she reasonably believes is immediately necessary to effect the arrest or to prevent an escape from custody.³⁰ Should an officer determine that force is necessary to effect an arrest, the officer may only use a level of force that is reasonably necessary to effect the arrest or prevent the escape and the officer must have a good faith belief that the person has committed a crime.³¹

Next, we reviewed Section 563.031, RSMo, governing the use of force in defense of persons, providing that a person may ... use physical force upon another when and to the extent he or she reasonably believes [is] necessary to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful force by such other person. In the context of use of force, the term "reasonable belief" is specifically defined as a belief based on reasonable grounds that could lead a reasonable person in the same situation to the same belief.³² This standard does not depend upon whether the belief turned out to be true or false.

gonna shoot him, but he wasn't." Page 6; [the officer] probably saw like you know him fiddling with his gun." Page 17;

²⁹ See page 32 (Ms. [REDACTED] states the front passenger did not have his hands up as she had previously stated to investigators.)

³⁰ This provision is limited by *Tennessee v. Garner*, 471 U.S.1 (1985) limiting deadly force to prevent escape unless probable cause exists that the subject poses a significant threat of death or serious physical injury to the officer or others.

³¹ *Id.*

³² MAI 306.14 [3]. See *Tennessee*, 471 U.S. 11-12 (holding that a proper analysis of whether the deadly force used was constitutional must include an examination of the totality of the circumstances, including the payment of careful attention to facts and circumstances involved from the perspective of a reasonable officer on the scene and not through the lens of 20/20 hindsight. This analysis must also allow for the split-second decision that often occur in these tense, uncertain, and rapidly evolving situations); *Graham v. Connor*, 490 U.S. 386, 395-397 (1989) (holding that in determining the constitutionality of an officer's use of force and held that an officer is only entitled to use deadly force when a review of the circumstances confronting that officer show that his/her actions were objectively reasonable. Further, any analysis of the circumstances and facts must include a discussion of: (i) the severity of the

Legal Analysis and Conclusion

A review guided by the surrounding facts of this case and governing law lead us to decline criminal charges against Officer [REDACTED]. The evidence supports the conclusion that Mr. Dowdy was armed with a deadly weapon and was not complying with the warnings of the officer at the time of the shooting. Though this car stop and shooting transpired quickly, under Missouri law and facts known to this officer at the time of the shooting, the officer's conduct can be described as legally reasonable. Officer [REDACTED] and Mr. Dowdy struggled over a long rifle, Hi-Point 995 that Mr. Dowdy pulled from his waistband during this encounter. Ultimately, the actions taken by the officer to use deadly force by shooting Mr. Dowdy must be guided by Missouri law rather than a desire for a different outcome. The officer was not legally required, under these facts, to allow Mr. Dowdy to point or discharge the weapon at him or others in the vehicle before employing his own force. The Court has provided guidance regarding the evaluation of an officer's conduct by stating the officer "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hind-sight." *Graham*, 490 U.S. at 396-97. "The calculus ... must [allow] for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." *Id.* This is one of those circumstances where a split-second decision was required under quickly evolving circumstances with tragic consequences.

The testimony of each of the witnesses who had a vantage point of the shooting and the physical evidence support this narrative. Special Agent [REDACTED] stated that an uneventful car stop and arrest, within moments, became a fatal shooting. Agent [REDACTED] noted the quick change in demeanor of Officer [REDACTED] the heightened intensity of those moments and the struggle that he witnessed occurring within the Red Ford car between the officer and the passenger.

While the shooting death of David Crosby-Dowdy is a tragedy for his family and our community, that tragedy does not warrant the filing of criminal charges against an officer that acted within the limits contained in the law.

Sincerely,

Jean Peters Baker

Jean Peters Baker
Prosecutor for Jackson County

cc: Virginia Murray, Legal Counsel for Kansas City, Missouri Police Department
[REDACTED] Police Officer, Kansas City, Missouri Police Department
[REDACTED] Mother of David Crosby-Dowdy, Kansas City, Missouri

crime at issue, (ii) whether the victim of the force posed an immediate threat to the safety of the officer or others, and (iii) whether the victim is actively resisting or attempting to evade arrest by flight.)