



JEAN PETERS BAKER Jackson County Prosecuting Attorney

January 9, 2018

Chief Rick Smith
Kansas City Police Department
1125 Locust
Kansas City, MO 64106

Re: Officer-involved shooting on June 14, 2018¹

Dear Chief Smith:

On October 18, 2018, the Use of Force Committee of the Jackson County Prosecutor's Office reviewed the June 14, 2018, fatal shooting of two civilians, referred to as Civilian #1 and Civilian #2,² in Kansas City, Missouri. We reviewed the reports and evidence gathered by a law enforcement investigation into these events. We evaluated the legality of the actions taken by three officers from the Kansas City, Missouri Police Department (KCPD) related to this shooting in light of the applicable Missouri statutes and case law. Based on the investigation and our analysis, our committee concluded the evidence does not support the filing of criminal charges in connection with the incident.

Summary of Facts

On June 14, 2018, slightly before 5:00 p.m., several calls for police service were received by KCPD dispatch. Callers' descriptions of the need for police response varied, including a robbery with a weapon, assault, and disturbance. Officers were actually dispatched on a report of "disturbance with a weapon."³ The events that triggered the calls occurred in and near an area known as Barney-Allis Plaza (the Plaza), at West 12th and Wyandotte Streets, which is an outdoor open air park and meeting space atop a parking garage across from the downtown Marriott Hotel. Privately-funded security personnel monitor this space, which is also equipped with cameras. The cameras captured some of the events of June 14th and recordings were recovered and reviewed.

¹ References to this investigative file will be identified as O.I.S. KCPD #18-45094.

² Civilian #1 was identified as Timothy D. Mosley, a black male, age 33 years. Civilian #2 was identified as Robert A. White, a white male, age 34 years.

³ See KCPD #18-45094 file and call logs. For this review, the description provided to officers of the call for service is relevant because it informed what the officers knew at the time they approached the scene.

Important events of this incident were set in motion prior to the officers' arrival at the scene. A manager of the Marriott Hotel (Hotel), 1213 Wyandotte, was summoned to the lobby due to a suspicious party.⁴ The manager spoke to the suspicious individual in the lobby, a black male wearing a white shirt and black pants, later determined to be Civilian #1. Civilian #1 told the manager that he had just been released from jail and was looking for a room. When he was informed no rooms were available, Civilian #1 began to act strangely and stated, "there are a lot of people here with guns bothering me." Due to his odd behavior, the manager asked him to leave the Hotel property. Civilian #1 left and sat across the street at the Plaza. As the manager was walking through a skywalk connecting two adjacent properties, he witnessed Civilian #1 get into a golf cart driven by a security guard on the grounds of the Plaza. It appeared to the manager that Civilian #1 had his arm around the security guard. A short time later, the manager was notified by employees of the Hotel that Civilian #1 was shooting a firearm.

A security guard for the Plaza described to police two encounters with a man on the grounds, later determined to be Civilian #1.⁵ The guard's first encounter with Civilian #1 was on the grounds of the Plaza while the guard was operating a golf cart. Civilian #1 waived him over and told him that "people got guns and are talking about me doing something wrong." The male was speaking "off the wall" during this first encounter. The guard did not immediately report his concerns, but continued to watch Civilian #1 as he walked into the Hotel. Civilian #1 returned within a few minutes and got into his golf cart. He pulled out a handgun that he pointed into the guard's side. Civilian #1 then demanded, "You gonna do what I ask you to do," as he forced the guard to drive up to a white male who was also on the grounds of the Plaza. Civilian #1 then got out of the golf cart and began to strike the white male, later determined as Civilian #2, with the handgun. The altercation between these men provided an opportunity for the guard to run away to safety and report the incident to police with his radio.⁶

Additional witnesses were interviewed, including two employees⁷ of the Hotel, who provided an accounting to an officer as he was responding to work in an off-duty capacity for the Hotel.⁸ The off-duty officer, Officer #1, had just gotten out of his car to begin his shift in an off-duty capacity at the Hotel. He recalls hearing the radio traffic. He spoke with the Hotel employees who said they had witnessed an interaction between a "black male" and "white male" near the golf cart on the Plaza. He quickly responded to the Plaza.

Both Hotel employees recall that two agitated civilians were engaged in an altercation. The male employee noted what appeared to be violent movements between the two individuals on the

⁴ See recorded statement of [REDACTED] duty manager for the Hotel. The following accounting of events are contained within Mr. [REDACTED] statement. (Mr. [REDACTED] also reported during his encounter with Civilian #1 that he adjusted his waistband numerous times, as if he were holding something in that waistband).

⁵ See recorded statement of [REDACTED], security guard working to patrol the Plaza.

⁶ *Id.* The security guard was equipped with radio equipment that allowed him to contact KCPD dispatch directly. Civilian #1 had taken his cell phone during the second encounter.

⁷ See recorded statements of [REDACTED] and [REDACTED]. These witnesses are employees of the Hotel and provided a partial accounting of what they saw to an officer. Later they provided a more detailed statement to investigators in this matter. [REDACTED] saw "something happening" in the Plaza. She described seeing a black male bending over a golf cart, as if he were "pulling up carpet" and then she saw a white male "pop up" near the black male. She then heard officers given "both men" commands to put their hands up. Then next thing she heard was gunfire.

⁸ Officer [REDACTED] is referenced as Officer #1.

Plaza. Though the male employee believed the black male was the aggressor, it is not clear whether he relayed that information to Officer #1.⁹ He did recall telling Officer #1 that a guest of the Hotel believed he heard a gunshot during the disturbance between the two men. Even though they witnessed the events from a distance away, they were only able to inform Officer #1 that they witnessed a “disturbance” between the men. No source of information, either from radio traffic or from witnesses at this unfolding scene, was able to clarify what was occurring beyond a disturbance, possible gunfire, a robbery of a golf cart, and that the problem had not been resolved.

██████████, a patron of a nearby hotel, used his cell phone to film portions of the events of an earlier altercation between two individuals in the Plaza and a second recording capturing portions of the response by officers. Both of these recordings were placed on social media and were gathered by police.¹⁰ These recordings were compared to the surveillance recordings that captured a greater portion of the events on the Plaza. Mr. ██████████ recordings were from his hotel room and do not provide the best view of the incidents as compared to the surveillance recordings.¹¹

██████████ employee of a nearby hotel, who witnessed some of the events from the Hotel, saw two officers with guns drawn. He heard the officers providing commands to who he believed was a black male, but who he could not see clearly. The commands by officers that he recalls hearing were: “Put it down. Let me see your hands.”¹²

Each of the three officers provided a statement concerning the events that lead to the shooting. Each officer recalls that commands were provided to the civilians. Officer #1 describes approaching the Plaza with two other officers. At the time, it was his belief that a fight was in progress and that a gun was reportedly used.¹³ He drew his weapon upon seeing a man beating on the top of a golf cart and yelling, and then a white or light skinned male start wrestling with another individual. Both of the officers were yelling at both civilians to show their hands. The next thing Officer #1 saw was the black male coming up with a gun in his hand and pointing it directly at Officer #2 while the white male had his back to him.¹⁴ The two civilians were still “tied together” as if they were wrestling with each other. Neither civilian spoke to the officers or followed their commands. As the gun was pointed at Officer #2 by one

⁹ See statement of Officer #1 who describes what information he was provided by hotel staff, “a white guy and black they were fighting and they heard gunshots.” Earlier reports that a guest of the Hotel heard a gunshot could not be determined. While it is possible that a gunshot was fired, the weapon used by Civilian #1 was not fully operational. The weapon was able to be fired with some manipulation, but the weapon appears to be misfiring during his encounter with the police officers. KCPD lab personnel were able to successfully fire the gun, but only after some manipulation.

¹⁰ See recorded statement of ██████████

¹¹ It is noted during an interview with the family of Civilian #2 and the Prosecutor that the family previously viewed the recordings captured by ██████████ witnessing their loved one’s last moments. Mr. ██████████ posted his cell phone footage to a public platform.

¹² See recorded of ██████████. ██████████ also picked up one of the officers batons dropped at the entrance of the Plaza and provided the baton to the Kansas City, Missouri Police Department after the shooting.

¹³ Though Officer #1 was beginning his shift at the Hotel in an off-duty capacity, he was wearing his department issued police uniform.

¹⁴ Officer ██████████ is referenced as Officer #2.

of the suspects, Officer #1 then heard a gunshot. Officer #1 immediately dropped to his knee and returned fire.

Officer #2 approached the scene with his partner, Officer #3.¹⁵ Officers #2 and #3 were in KCPD issued bike uniforms due to the high temperatures on this date reaching 95 degrees Fahrenheit.¹⁶ The uniforms were marked with reflective "Police" banners on the front and back of the shirt, easily identifying them as police officers. The officers believed they were responding to a disturbance and a party armed with a gun over a stolen golf cart. Officer #2 was aware that the stolen golf cart was taken from a security guard. When he first approached with other officers he saw the two civilians just standing idly by a golf cart. He noticed the white male had put his hands up as the officers gave commands, but then the civilians immediately started fighting and ignored further commands. The three officers fanned out, with two officers (Officers #1 and #3) moving toward the golf cart.

Officer #2 described both males looking at him, and then remembers a gun coming up from between them. Officer #2 described the gun: "it was pointed right at me, I was looking down the barrel of a gun." Officer #2 then fired his weapon, aiming in between both of the civilians, explaining he could not tell which of them was holding the firearm at that point. Officer #2 had nothing to serve as cover from gunshots and was approximately 20 feet away from the gun when it was pointed at him. Officer #3 was also at this scene, however, he did not fire his weapon. His statement is consistent with the other officers on scene, however, Officer #3 believed that the first shot that was fired was by one of the civilians (though he did not know which party fired because both civilians had their hands on the gun as some point) and that one of the officers returned fire. Officer #3 was approximately seven to eight feet away when the first shot was fired, and saw dirt fly up where the round landed. Officer #3 never fired, but attempted to provide cover for the other officers.

Applicable Law

Our examination of each 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. 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.

We also 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

¹⁵ Officer [REDACTED] is referenced as Officer #3.

¹⁶ See statement of Officer #2 and subsequent police reports referring to statements made at the scene by Officer #2.

the same belief. This standard does not depend upon whether the belief turned out to be true or false.

We also reviewed the doctrine of transferred intent, a legal application that effectively transfers the intent between two victims. Therefore, if a shooter's intent was to injure Person A, but the shooter also injures Person B, the intent will be transferred between the victims even if the shooting of Person B was accidental.¹⁷ The viability of a claim of assault by a bystander against a police officer turns on the reasonableness of the application of force by the police against the intended suspect.¹⁸ As noted in *Brown*, the doctrine of transferred intent applied to the innocent bystander in that case, who was positioned behind a fence and out of the view of officers. Because the officers intended to fire upon the intended target, that intent transferred to the bystander.¹⁹

Legal Analysis and Conclusion

The surrounding facts of this case and governing law leads us to decline criminal charges against each officer, including the officers who struck Civilian #2, who was unarmed during this encounter. The evidence demonstrates that Civilian #1 was armed with a deadly weapon, repeatedly failing to comply with the commands of multiple officers at the time of the shooting, and his conduct leading up to the shooting demonstrates an intent to engage in violent behavior that imminently threatened the lives of the officers. Ultimately, Civilian #1 pointed his handgun directly at an Officer who was attempting to make an arrest. The surveillance recording shows Civilian #1 attempting to pull the trigger of that weapon while pointed at Officer #2. Though it does not appear that the firearm actually fired at that time, Civilian #1 pointed the weapon at the officer and his wrist appears to dip as if attempting trigger pulls of the weapon.

Although it is not relevant to the officers' reasonable belief at the time, the investigation subsequently confirmed that Civilian #1's handgun could indeed be fired with some manipulation. Because Civilian #1 had one arm around the body of Civilian #2 while attempting to fire with his other hand, a reasonable inference from the evidence demonstrates he was simply unable to make the weapon fire.

The actions taken by the officers to use force by firing at both civilians is guided by Missouri and federal law. Under applicable law, the officer was not legally required, under these facts, to allow the civilian to discharge the weapon at him or others before employing his own force. The Supreme 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 v. Connor*, 490 U.S. 396, 397 (1989). "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.* The circumstances of this encounter were directly prompted by the actions of Civilian #1, giving the officers involved little more than a split second to make decisions. In fact, each of the three

¹⁷ See *Carnes v. Thompson*, Supreme Court of Missouri. 48 S.W. 2d 903 (1932); *Bell v. Missouri*, 497 S.W.3d 880, 882-83 (Mo Ct App, E.D. 2016).

¹⁸ See *Brown v. Ransweiler*, 171 Cal. App. 4th 516, 527 n.10 (2009) (under transferred intent doctrine, if police officer's actions are reasonable as to the suspect, then they are necessarily reasonable as to the third-party plaintiff).

¹⁹ *Kong Meng Xiong v. City of Merced*, 2015 U.S. Dist. LEXIS 99146, *110-111 (E.D. CA 2015).

officers involved in this encounter believed that Civilian #1 was attempted to kill them or others in that moment, requiring them to take immediate actions to protect their lives and the lives of others.

After reviewing and studying surveillance recordings from different angles, and after witness interviews, we conclude that Civilian #2 appears to have been an innocent bystander who was pulled into these events by Civilian #1's aggressive and unilateral actions. While the investigation concludes that Civilian #2 is an apparent victim of Civilian #1, the three police officers who arrived on the scene are not legally responsible for the death of Civilian #2. The officers had only a few seconds to make a determination of what was transpiring as it dramatically unfolded before them and to act. They provided multiple directions to Civilian #1 to end this encounter peacefully. They were compelled to fire when Civilian #1 ignored commands, pointed his weapon at an officer, attempted to fire it, and caused the officers to legally use deadly force in their defense and in the defense of others, killing both civilians.

Officer #2 described "looking down the barrel of a gun." At that moment, the range of options for a response was greatly limited. Officer #2 described firing his weapon in the direction of the barrel of the gun. Officer #2 was not given the opportunity of time to assess which of the two men, tangled together, was pointing a lethal weapon at him or the ability to separate them in order to safely eliminate the threat against him. He simply had to respond for his own safety and the safety of others. Immediately after the shooting this officer recalls checking his hip thinking he was shot during this altercation by the man pointing the gun in his direction.²⁰

The testimony of each of the witnesses who had a vantage point of the shooting and the physical evidence, including surveillance recordings of the events of that day, do not support the filing of criminal charges against the officers whose actions that day were legal and justifiable with respect to the deaths of both civilians.

Sincerely,



Jean Peters Baker
Prosecutor for Jackson County

Cc: Jennifer Atterbury, Legal Counsel for Kansas City, Missouri Police Department
John Kurtz, Legal Counsel for the Civilian #2
Parents of Civilian #1