



JEAN PETERS BAKER

JACKSON COUNTY PROSECUTING ATTORNEY

November 19, 2018

Chief Charles Iseman
Grandview Police Department
1200 Main St.
Grandview, MO 64030

Re: Officer Use of Force on July 1, 2018¹

Dear Chief Iseman:

On October 18, 2017, the Jackson County Prosecutor's Office Use of Force committee reviewed the investigation of the fatal shooting of a civilian² in Grandview, Missouri occurring on July 1, 2018. Our review for criminal charges included the officer employing lethal use of force from the Grandview, Missouri Police Department (GPD), along with another member of the police department who was assigned the deployment of less lethal measures. Based on the investigation and our analysis, our committee concluded the evidence does not support the filing of criminal charges against the officers.

Summary of Facts

On July 1, 2018, a call for service was received by dispatch for the Grandview, Missouri Police Department (GVPD). The caller was seeking police assistance to address her husband who was in a highly agitated state due to an apparent health condition possibly caused by a lack of insulin and intake of alcohol exacerbating an existing diabetic condition. The caller also stated her husband may possess swords when officers approach. The officers who arrived on scene were also aware the civilian may have swords in his possession, that he had expressed suicidal ideations and was expected to be combative and intoxicated.³ Several officers arrived within moments of the initial call and began to set up outside of the caller's residence while engaging the civilian through a loud speaker device. The civilian was inside his home when officers arrived.

Officers quickly gathered in the street near the entrance of the driveway to the civilian's home after they were tasked with their respective positions while enroute to the scene.⁴ The situation escalated quickly before officers had an opportunity to gather additional details at the scene when the civilian exited the side door of his residence. The hood of a blue Jeep Grand Cherokee that blocking the driveway was used as a perimeter for the officers, one officer armed with the beanbag propellant gun and the other with a

¹ Citations to the investigative file will be identified as O.I.S. MSHP #180398155.

² The victim of this use of force report is Larry J. Sannicolas and will hereinafter be referred to as the "civilian."

³ See transcript and audio recording of 911 call for service and radio traffic by officers at the scene with dispatch.

⁴ See radio traffic audio (assignments provided to officers enroute to the scene). Officers are told the subject is "going through a diabetic episode...his blood sugar is extremely high. He is armed with swords. He is intoxicated and he will be combative."



service rifle to provide additional coverage. Officer 2⁵ is seen running into position with a rifle within seconds of the shooting to provide coverage for Officer 1,⁶ who was tasked with the bean bag propellant.⁷

Officer 2's in-car video confirms this officer receives the original call from dispatch while at a nearby Quik Trip. The officer is seen responding to the scene at approximately 2:42 P.M., after parking his vehicle and blocking a nearby street to the resident's home. Officer 2 remains in this position until he is provided with additional instructions to change his position. He is then seen running into position at 2:50 P.M. as commands are being given by loud speaker to the civilian.⁸

In-car video footage shows Officer 1 pulling up to the scene at 2:47 P.M. and moving into position with a less-lethal bean bag propellant gun.⁹ He takes position behind the blue Jeep which is blocking entrance to the driveway of the civilian's home. Officer #1's in car-video recording provides much of the footage of the shooting, capturing the events beginning shortly after the civilian exits the side door of his home and approaches the officers.¹⁰ The civilian exits his side door at 2:49:39 P.M. (14:49:38) as multiple commands are given at that time by multiple officers, including the following: "let me see your hands, hands.. Show me your hands. Larry, it's the police."¹¹

A third GVPD officer, Officer [REDACTED] engaged the civilian via a loud speaker as the civilian exited the side door of the residence.¹² He was addressed by his first name and given commands to drop the swords, specifically Officer [REDACTED] made the following commands:

Larry, let me see your hands.

Larry, let me see both of your hands.

Larry, both hands in the air.

Drop the swords. Drop the swords.¹³

Approximately fifteen seconds elapsed from the point the first command is provided by loud speaker to the deployment of the first bean bag. Additional commands are provided by multiple officers just prior to Officer Carter's engagement on the speaker device. Nineteen seconds pass from the announcement of commands to firing of the rifle by Officer 2.¹⁴ There is no break in the activity, but a constant stream of events from the first moments the civilian exits his residence.

The in-car video footage from Officer 2's patrol car is a slightly different angle and perspective than the officers who took position behind the blue jeep, yet this footage captures much of the events for our review. This video shows both officers who were in position had a clear line of sight of the civilian and shows the civilian moving in their direction armed with a sword in each hand. The swords were 29.5-inch

⁵ Officer [REDACTED] is herein after referred to as Officer 2.

⁶ Officer [REDACTED] is herein after referred to as Officer 1.

⁷ See in-car video of both Officer 2 and Officer 1.

⁸ See Officer 2 in-car video.

⁹ See Officer 1 in-car video.

¹⁰ Id.

¹¹ See in-car audio report of Officer 2's patrol vehicle.

¹² See Supplemental #7, Officer [REDACTED]'s in-car video capturing the audio recording of Officer [REDACTED]'s commands to the civilian.

¹³ Id. at 14:50:06-14:50:21.

¹⁴ Id. at 14:50:06-14:50:25.

length, with a 9.25-inch handle. The driveway was approximately 40 feet in length and has a downward incline. The path of the civilian was downward and in the direction of the officers.

The civilian was struck first in the lower abdomen with a beanbag deployed by Officer 1. The civilian continued in a forward momentum. A second beanbag round was deployed, striking the civilian again in the chest or abdomen region of his body. The civilian does not drop the swords or stop advancing. Officer 2 then fires 5 rounds with his rifle in the civilian's chest, hand and groin area, striking him repeatedly and fatally wounding him. The civilian is rendered aid at the scene, but dies from his wounds shortly after being transported to an area hospital.

Though video footage of these moments captures much of the events, the formal statements provided by the officers at the scene is instructive in evaluating the intent and credibility of the officers during those nineteen seconds. Officer 1 and Officer 2 stated they were informed by dispatch that they were about to engage with a party who was armed with two swords.¹⁵ Officer 1, who was armed with the beanbag propellant, described responding to the scene with lights and sirens and was tasked with putting other officers in position after arrival at the residence. From the information he received from dispatch, Officer 1 expected to encounter a party armed with two Samori swords.¹⁶ Officer 2 had the same accounting except he also reported being advised by dispatch that the party would be armed with two swords was suicidal.¹⁷

Officer 2 described the seconds between firing the first beanbag propellant to moment he fired his rifle at the civilian that he was continuing forward, he was scared for himself, but also for Officer 1 and he remembered saying: "God please no, no, no. And then I fired."¹⁸

Officer 1 describes what he saw just prior to firing his bean bag round two times within in close range: "it wasn't a run, but it wasn't a leisurely walk when [the civilian] exited" the side door of his home. "He walked with a purpose with the swords in his hands." Officer 1 then further describes witnessing the response to being struck with the beanbag two separate time in the abdomen: "[The civilian] buckled and flinched and was right back up...he was right back in the fight.... I tried to make space trying to figure out what our next engagement would be." "For someone to take two shots with a beanbag gun to the abdomen and just continue on...that was his intention to go towards us with those weapons ... he had a purpose, yeah."¹⁹

A third officer who was providing commands with the loud speaker was also armed with his taser which he never deployed. The officer described the conditions as rapidly evolving so that use of the taser was not a viable option.²⁰ Specifically, the officer stated his assessment of the conditions because "[the civilian] was way too close and moving way too fast to utilize the taser." As the officer described these conditions, it is important to note that he believed the civilian was suicidal and intoxicated. In his assessment whether the use of a taser would be effective or not, he described the civilian's approach toward them: "He was not in a leisurely walk, he was moving like he wanted something done. ... it was

¹⁵ See audio recording of Interview of Officer 1 taken on July 5, 2018 and audio recording of Interview with Officer 2 taken on July 5, 2018 taken at Missouri State Highway Patrol, Troop A Headquarters.

¹⁶ Id. at Interview of Officer 1.

¹⁷ Id. at Interview of Officer 2.

¹⁸ Id. See also, audio recording of Interview of Officer [REDACTED] taken on July 3, 2018 taken at Missouri State Highway Patrol, Troop A Headquarters, Officer [REDACTED] describes also having lethal coverage but did not fire his weapon and rendering aid to the victim immediately after the shooting.

¹⁹ Id. at interview of Officer 1.

²⁰ See audio recording of Interview of Officer [REDACTED] taken on July 3, 2018 taken at Missouri State Highway Patrol, Troop A Headquarters.

not a run, but slightly less than a jog” as he advanced toward them with swords in each hand ... [the swords were] not down at his sides, the swords were up in the air.”²¹

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. Our analysis included 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.²² 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.²³

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 the same belief.²⁴ This standard does not depend upon whether the belief turned out to be true or false.

Legal Analysis and Conclusion

A review guided by the surrounding facts of this case and governing law lead us to decline criminal charges against each officer, including the only officer who struck the civilian with lethal force. The evidence supports the conclusion that the civilian was armed with deadly weapons, 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 combative behavior. The actions taken by the officer to use force by firing at the civilian must be guided by Missouri law. Under Missouri law, the officer was not legally required, under these facts, to allow the civilian to completely close the distance with the swords or strike an officer with deadly force before employing his own force.

²¹ Id.

²² This provision is limited by *Tennessee v. Garner*, 471 U.S.1 (1985) limiting deadly force to prevent escape unless probably cause exists that the subject poses a significant threat of death or serious physical injury to the officer or others.

²³ Id.

²⁴ 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 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.)

The decision to exercise the use of force by Officer 2²⁵ was followed by a series of events, none of which the officer had an opportunity to change. First, Officer 2 fired his weapon after multiple commands were provided to the civilian to drop the swords and only after the use of less-lethal force against the civilian did not appear to constrain the civilian. A police officer has a duty to preserve public safety and order through use of commands backed by a threat of force or the actual use of physical force but that decision is a matter of discretion by the officer and the officer must apply that discretion determining whether or not to deploy force within the moments available at an unfolding scene. The Court has provided guidance for our review regarding 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.* Officer 2's decision to deadly force in that moment may be weighed, in part, through the statement of Officer 1. Officer 1 noted after firing the second less-lethal round, he had no more options available to him. "He considered what his next move would be when Officer 2 began to fire." The circumstances of this encounter were directed by the actions of the civilian, giving the officers involved little more than three seconds to make decisions.

In the present set of facts, the bean bag rounds were only fired after multiple commands were provided to the civilian. Though it is impossible to ascertain the civilian's motives, he clearly disregards the commands provided to him. A view of the in-car video shows the civilian continues to proceed toward the officers with a sword in each hand, actively resisting the officers. The swords are nearly 39 inches in length, allowing the civilian to close the gap between him and the officers with a much shorter distance than armed with a shorter blade. The officers were aware that the civilian was intoxicated, combative, and maybe disoriented from a medical condition. The officers were aware that family members retreated to safety from the civilian and that they called a for police response. And Officer 1 perceives the civilian, at this moment, to be a threat to the safety of officers and other individuals who have gathered on the other side of the street.

The use of the bean bag rounds were an attempt to subdue or contain this civilian. Officers had no safe method of retreat available to them as the civilian closed the distance between himself and the officers and he continued to move in their direction. His continued forward momentum toward the officers suggests to a reasonable officer that the civilian means harm. The belief of both officers as demonstrated in their formal interviews is that the civilian meant to harm them or others with those swords. Though we learned during our review more information about the civilian's medical condition, the officers did not have the benefit of guessing a less damaging intent of the civilian. The question is whether their actions, based on those 19 seconds were reasonable, not with the benefit of a cold review from a safe distance. It must also be noted that other civilians were behind the officers a few feet away, on the other side of the street, some who had contacted the police for their own safety based on the civilian's earlier conduct. Even if the conduct of the civilian were caused by his delusional state, it was reasonable for officers to believe he posed a significant threat to them and others. He resisted their commands. He refused to drop either weapon. He failed to stop coming toward the officers. He was confrontational and he was agitated.

²⁵ It should be noted information that was obtained during a meeting with the officer informing him that no charges would be filed. This officer volunteered that he had previous contact with the civilian. The officer remembered the civilian at the time of the shooting from this previous encounter as an individual who was friendly and pro-police. Even with that knowledge, the officer believed the civilian posed an imminent threat during the encounter. While this information was not used by the Use of Force Committee in our analysis, it is relevant to his state of mind during the events of July 1st.

Bean bag rounds are designed to cause a “sudden burst of debilitating, localized pain” in order to gain control over an individual “similar to a baton strike.”²⁶ Others have described the strike as similar to being struck with a 95 mile per hour fast ball, but it would be impossible to accurately predict an individual’s response to that strike. A bean bag gun is considered a “less-lethal” weapon, as opposed to a non-lethal weapon, because the bean bags can cause serious injury or death if they hit a relatively sensitive area of the body. The use of bean bags in this scenario provided a safer intervention because the civilian could not be safely approached due to being armed with swords. As in this case, these rounds are prone to failure if something is inhibiting or muffling the feeling of pain. Bean bag rounds are heavy nylon cloth about the size of a tea bag or baby sock filled with an ounce of lead birdshot and loaded into a standard-size shotgun shell.²⁷ As in the present case, the bean bags were deployed through a munitions delivery system, usually a standard shotgun adapted to fire these rounds. In this rapid and fluid series of events, it was not unreasonable for Officer 2 to determine that the bean bag rounds were ineffective and that no other means were available for him to stop the advancing threat.

It should also be noted that the vehicle blocking the driveway did not provide an adequate barrier to ensure safety between the civilian and the officers. While the vehicle added additional time by which the civilian had to travel around it, he was certainly capable of doing so. Photographs and available video footage of the crime scene demonstrate enough space was allowed for the civilian to move around the front of the vehicle and directly in the path of officers and other civilians on the street.

The testimony of the officers who had the most direct vantage point of the shooting, the physical evidence, as well as audio and video footage support the narrative of the shooting officer. While the shooting officer’s actions resulted in the loss of life of a loving husband and father who was in need of service, the evidence does not support the filing of criminal charges against either officer who acted within the limits contained in the law.

Sincerely,



Jean Peters Baker

Prosecutor for Jackson County

Cc: Legal Counsel for Grandview Police Department
David Smith, Legal Counsel for the Civilian
Legal Counsel for Officer 1 and Officer 2
Brad Ussary, Missouri State Highway Patrol

²⁶ Civil Liability for the Police Use of Impact Projectiles, 2012 (12) AELE Mo. L. J. 101.

²⁷ Id.