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JACKSON COUNTY PROSECUTING ATTORNEY

November 28, 2017

SAC George Lauder
Bureau of Alcohol, Tobacco, Firearms
1251 NW Briarcliff Parkway, Suite 600
Kansas City, Missouri 64116

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

Chief Brad Halsey
Independence Police Department
223 N. Memorial Drive
Independence, MO 64050

Re: Officer-involved shooting on May 11, 2017 at Crossland Economy Hotel[1]

Dear SAC Lauder, Chief Smith, Chief Halsey:

On September 27, 2017, the Jackson County Prosecutor's Office Use of Force committee reviewed the investigation of the non-shooting of a civilian[2] in Independence, Missouri occurring on May 11, 2017. Our review included an ATF agent, and two officers from 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 seeking the arrest of the civilian from a charged crime occurring in Grain Valley, Missouri on May 8, 2017. Based on the investigation and our analysis, our committee concluded the evidence does not support the filing of criminal charges against any of these officers.

Summary of Facts

On May 8, 2017, a Missouri Highway Patrol officer encountered the civilian during an investigation regarding stolen equipment, including transport trailers and vehicles. During that encounter, the civilian pointed what was described as a sawed off shotgun at the officer. The civilian then fled the scene. Charges were filed against the civilian for Unlawful Use of a

[1] Citations to the investigative file will be identified as O.I.S. I.P.D. #17-31970
[2] The victim of this use of force report is Jason T. Simon and will hereinafter be referred to as the "civilian."

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Weapon - Exhibiting, and a warrant was issued for his arrest in 1716-CR021-2-01.[3] A joint task force of multiple law enforcement agencies was initiated to serve this warrant. On May 9, 2017, an alert was issued to law enforcement the civilian posed a threat to officer safety after an assault on a law enforcement officer and ultimately turning the weapon on himself threatening harm.[4] By May 11, 2017, police received information that the civilian may be in the area. The task force then tracked the civilian to a motel in Independence, Missouri.

Upon arrival at the Crossland Economy Hotel, located in Independence, Missouri, law enforcement prepared for the arrest of the civilian. Officers worked with a witness from Room 315 to establish the civilian's location. Several law enforcement agents awaited the civilian's arrival in the hotel parking lot.

The civilian arrived at the hotel and parked his vehicle. Upon exiting the vehicle, officers determined him to be carrying a backpack and a brown towel that appeared to be covering another object in his hands.[5] Officers attempted to communicate by radio transmission but were unable to clearly communicate the civilian's location to fellow officers. While two officers began to approach the civilian as he entered the stairwell of the motel, they believed the civilian was holding a weapon in his right hand. These officer's continued to pursue the civilian and announced "Police" and provided commands for him to drop the weapon. The civilian disregarded their commands and approached Room #315. The officers witnessed the civilian attempt to enter other rooms on the 3rd floor of the hotel and try to engage other occupants of the hotel.[6]

The two officers pursuing the civilian on the ground level again try to engage the civilian with commands. The officers both report the brown towel was discarded by the civilian and thrown over the 3rd Floor balcony of the hotel, revealing a black pistol grip shotgun.[7] At this time, the ATF Agent and Officer 1 fired in the direction of the civilian after multiple commands were disregarded and as the civilian adjusted the weapon in his right hand.[8] Both officers reported fearing for other members of law enforcement who were believed to be in the civilian's line of fire and located on the opposite end of the 3rd floor breezeway.[9] It should be noted that officers on the opposite end of the breezeway were out of view of the civilian, the ATF agent and

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[3] See IPD file MO048113J, case file 1716-CR02102-01 detailing the investigation and assault of a law enforcement officer on May 8, 2017.

[4] The prosecutor confirmed an alert was made to other law enforcement agencies of the civilian's threat to another officer and himself.

[5] See recorded statements by ATF S.A. [redacted] hereinafter referred to as ATF agent, and KCPD [redacted] hereinafter referred to as Officer 1, both statements occurring on May 24, 2017 by members of the Independence Police Department.

[6] ATF Agent states seeing the civilian attempt to enter an unknown female's room and the civilian engaging her in the hallway outside of her room.

[7] See recorded interview of AFT Agent and recorded interview of Officer 1.

[8] Id.

[9] Id.

Officer 1.[10] It is believed that neither officer struck the civilian though the civilian momentarily stopped, and then ran in the direction of other officers located on the 3rd Floor still armed with the shotgun. Officer 1 reported shouting to other officers that the civilian was still armed.[11] As the civilian ran through the breezeway, he approached Officer 2.

Officer 2 remained in Room #315 during the first part of this encounter. He heard a "frantic knock" on his door and looked through the peephole.[12] He saw the civilian at his door and yelling to be let in. He also heard other agents yelling at the civilian to show his hands and "get on the ground."[13] Officer 2 then exited the room to look for the civilian with other law enforcement members. He recognized the voices of Officer 1 and the ATF agent yelling from the south side of the building to "Drop the gun," and then heard multiple gun shots coming from the South side of the hotel.[14] Officer 2 and others stayed on the north side of the hotel on the 3rd floor to determine the civilian's position. He was utilizing a ballistic shield for protection when the civilian came running in a "full sprint" in his direction.[15] Multiple agents began to engage the civilian with commands to drop the gun, but the civilian continued in their direction armed with his shotgun. Officer 2 fired a single round, striking the civilian in his right arm. The civilian was approximately 6 feet from Officer 2 when he fired his weapon.[16] After being shot, the civilian continued to resist, but eventually allowed them to render aid to him.[17]

The civilian was shot a single time in the shoulder area. Officers provided medical intervention to his wound, including tying a tourniquet to stop the bleeding. Many officers accounted that the civilian was combative during the entire encounter, including during the rendering of aid. The civilian was then transported to Centerpoint Hospital for treatment of his injuries. After recovery from his injuries, the civilian was transported to the Jackson County Detention Center regarding his pending warrants.

Several officers provided an accounting of the events that lead to the shooting and arrest of the civilian. Each of those statements are consistent in content from their perspectives of the accounting provided by the ATF agent, Officer 1 and Officer 2. Along with officers, several lay witnesses also provided an accounting of the events. The pertinent part of those witness statements are noted as follows:

> Witness #1 provided information to police regarding the location of the civilian. The witness agreed to text the civilian, asking him to come to the Crossland Ecomony hotel and

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[10] Information was obtained by the prosecutor after a walk-through of the hotel and parking lot and a review of crime scene photographs and video.
[11] See recorded statement of Officer 1.
[12] See recorded interview of KCPD [redacted], hereinafter noted as Officer 2 on May 24, 2017.
[13] Id.
[14] Id.
[15] Id.
[16] Id.
[17] This statement is supported by multiple law enforcement agents at the scene and in the recorded statements of ATF Agent, Officer 1 and Officer 2.

eventually telling him to come up to room #315. She reported to police that the civilian would be driving a Ford truck and provided information that the civilian had been stealing vehicles. She further stated that the civilian was "losing his freaking mind" due to the amounts of Methamphetamine he had been using and that he had been violent with her in the past. The witness believed the civilian was suicidal and had told her if he found himself in a "run in with cops, he would make them kill him.t[18]

Throughout the evening, Witness #1 provided text messages to law enforcement directing the civilian to the location at Crossland. Those text messages were recovered by law enforcement personnel by photographing the text conversation and confirm the witness' account of events in her formal statement.[19]

Witness #2 was also staying in room #315 and knew the civilian from previous encounters. The witness stated his experiences with the civilian corroborated that of Witness #1. He stating that the civilian was known to be violent and that he left a hotel in Grandview to get away from the civilian. He also reported that the civilian was usually under the influence of drugs and violatile.[20]

Witness #3 was staying in room #340 on May 11, 2017 and encountered a white male while on the 3rd floor balcony. The witness describes hearing noises on her balcony and seeing a white male running toward her with a backpack and a gun pointed at her. She feared he would shoot her, so she ran into her room and locked the door. Then she heard the man attempting to enter her room. She heard approximately 5 gunshots, but did not see what happened as she was in her room with the door closed.[21]

Witness #4 saw a white male with a long gun on the 3rd floor of her hotel as she was walking to her room. She attempted to alert officers of the armed subject. Moments later she heard gunshots, but she did not see the shooting.[22]

Witness #5 is a private security officer for the hotel who was in the parking lot of the hotel attempting to jump start another occupant's vehicle. The witness heard screaming and saw a white male running into the breezeway. The witness also saw multiple officers in plain clothes, and directed the officers toward the white male running toward Room #340, attempting to get inside that room. He saw this white male with a backpack and a gun. He

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[18] See video recording and supplemental investigative report from May 12, 2017 of witness Sarah Cain.

[19] See photograph of text messages IMG 3813.JPG – IMG 3823.JPG (IMG 3818 and 3819 direct the civilian to the hotel).

[20] See video recording and supplemental investigative report from May 12, 2017 of witness [redacted]

[21] See video recording and supplemental investigative report from May 12, 2017 of witness [redacted]

[22] See video recording and supplemental investigative report from May 12, 2017 of witness [redacted]

heard officers providing commands to the white male and yelling "he's got a shotgun." He then saw the white male turn around, then heard 4-6 gunshots.[23]

Witness #5 was outside smoking a cigarette and working alongside the security guard connecting jumper cables to his car battery. His accounting is similar to Witness #5's formal report, but heard 2 shots and believed one of those shots hit the subject because he witnessed the white male "stutter step[]" though he reported that did not stop him. He then heard officers communicating with each other and then heard 2 more shots. He also stated, "[the officers] gave him every chance in the world to put the gun down."[24]

Also recovered from the scene on the third floor in the breezeway were multiple items taken from the civilian's person or in his backpack. Additional items of physical evidence were recovered or reviewed for this investigation, including the following items: text messages from an informant to the civilian in the moments leading up to the shooting, Facebook posts[25] made by the civilian prior to the shooting, a black backpack containing multiple items and the gun believed to be held by the civilian throughout the evening of May 11 and into the early moments of May 12, 2017.[26]

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[23] See video recording and supplemental investigative report from May 12, 2017 of witness [redacted]

[24] See video recording and supplemental investigative report taken on May 12, 2017 of witness [redacted]

[25] Facebook posts believed to be made by the civilian on May 3 (8 days prior to this shooting) indicate he was seeking violence as a response to problems he may encounter.

[26] See Crime Scene Report authored by [redacted] photography of crime scene/recovered property.

[27] Gun recovered from the crime scene held by the civilian during the encounter

Finally, the civilian made statements in recorded phone calls made from the Jackson County Detention Center to a female believed to be his mother regarding his intentions on the evening of his arrest.[28] Specially, the civilian's mother asked him if he intended for the officers to shoot him. Below is the pertinent part of that phone conversation:

The civilian: I wish they would have just killed me, for real.

Female caller: Your dad thought that was what you were looking for.

The civilian: (inaudible)

Female caller: You wanted them to kill you?

The civilian: Yeah, I did.[29]

Applicable Law

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[27] See Id. item #10, labeled as Mossberg pistol grip Model 500A pump shotgun 12 gauge, recovered with one round in the chamber and ammunition in the loading tube.
[28] Recording #63067040, call recorded on May 18, 2017.
[29] Id.

Our examination of each of the 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]

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. [32] 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. The evidence supports the conclusion that the civilian 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. Ultimately, the civilian directed a pistol-grip long rifle at officers. The actions taken by the officer to use force by firing at the civilian must be guided by Missouri law. Under Missouri

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[30] 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.

[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 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.)

law, the officer was not legally required, under these facts, to allow the civilian to point or discharge the weapon at him or others 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.* The circumstances of this encounter were directed by the actions of the civilian, giving the officers involved little more than a split-second to make decisions.

The testimony of each of the witnesses who had a vantage point of the shooting and the physical evidence support this narrative does not support the filing of criminal charges against any of the officers 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
Legal Counsel for the Civilian