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Jackson County Prosecuting Attorney

March 1, 2021

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Re: **Law Enforcement-involved shooting on March 12, 2020 at or near 52nd and Wabash[1]**

All interested parties:

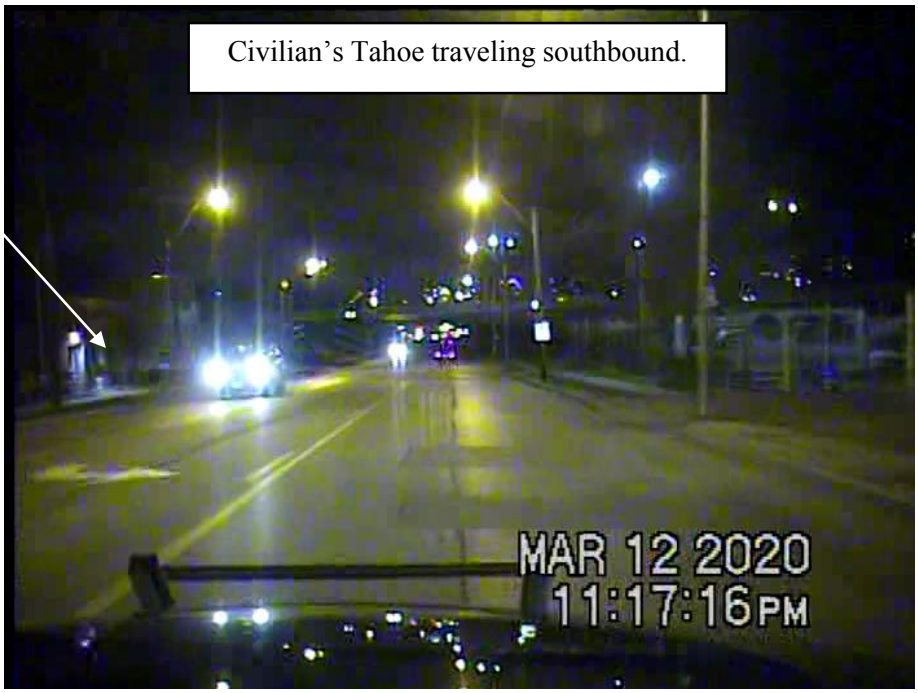
The Jackson County Prosecuting Attorney's Office convened its Use of Force Committee on multiple occasions to examine the circumstances surrounding the fatal shooting of a Civilian by a Kansas City, Missouri Police Department ("KCPD") Officer on March 12, 2020 in Jackson County.[2]

[1] The main investigative file is identified as KCPD O.I.S. CRN: KC20018628. At my request, the Missouri State Highway Patrol conducted a review of the file and performed additional investigative work. The Patrol's file is identified by Incident number 200565814.
[2] The victim of the use of force will hereinafter be referred to as the "Civilian" and the shooting KCPD Officer will be referred to as the "Officer."

An examination of the known circumstances conclusively show that the State would not be able to prove beyond a reasonable doubt that the Officer used excessive force, as defined in Missouri statutes and corresponding case law. The evidence developed in this matter, including independent civilian eyewitness statements and contemporaneously recorded audio, demonstrate that there is insufficient evidence to overcome the Officer's available defenses. Accordingly, for the reasons stated more fully below, this office will not seek charges against the Officer.

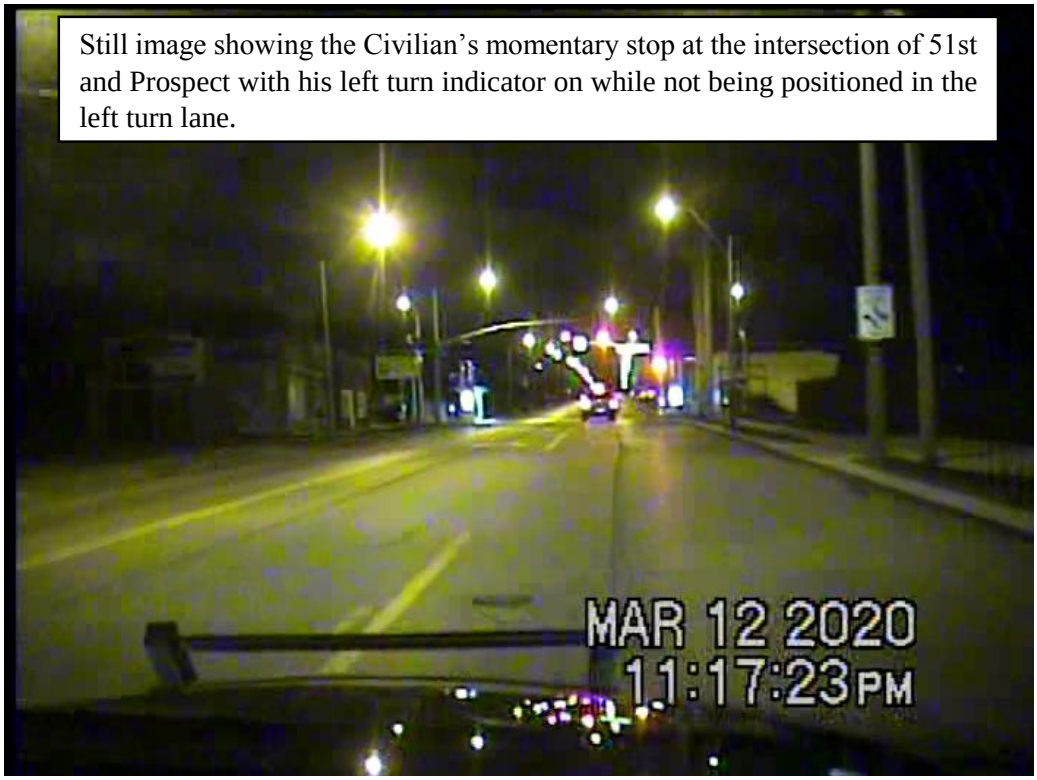
Summary of Facts

On the night of March 12, 2020, the Officer was patrolling Prospect Avenue by himself in his police vehicle. Just after 11:17 p.m., while traveling northbound, the Officer's dash camera footage shows that he observed a pair of headlights approach and then pass him in the southbound or opposite lane of traffic. Those headlights belonged to a Chevy Tahoe that was being driven by the Civilian.



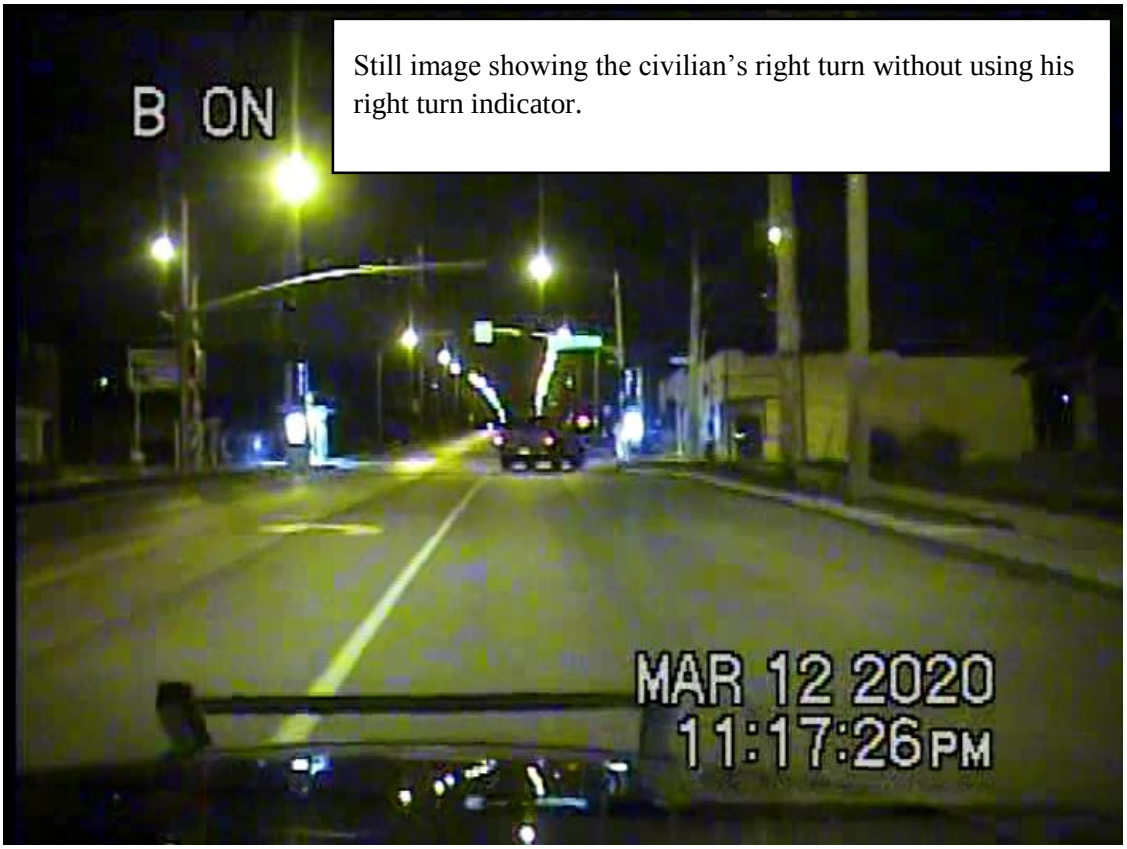
Apparently concerned that the Civilian was traveling at a rate of speed in excess of the posted limit, the Officer made a "U-turn" and accelerated his vehicle to catch up to the Civilian. At this point, the Officer did not turn on his vehicle's lights and sirens or attempt to stop the Civilian.

The dash camera footage then shows that the Civilian stopped in the right lane of travel at a flashing red light at the intersection of 51st and Prospect. While momentarily stopped, the Civilian briefly displayed his left turn indicator although he was not in the identified lane for left turns at that intersection.



Still image showing the Civilian's momentary stop at the intersection of 51st and Prospect with his left turn indicator on while not being positioned in the left turn lane.

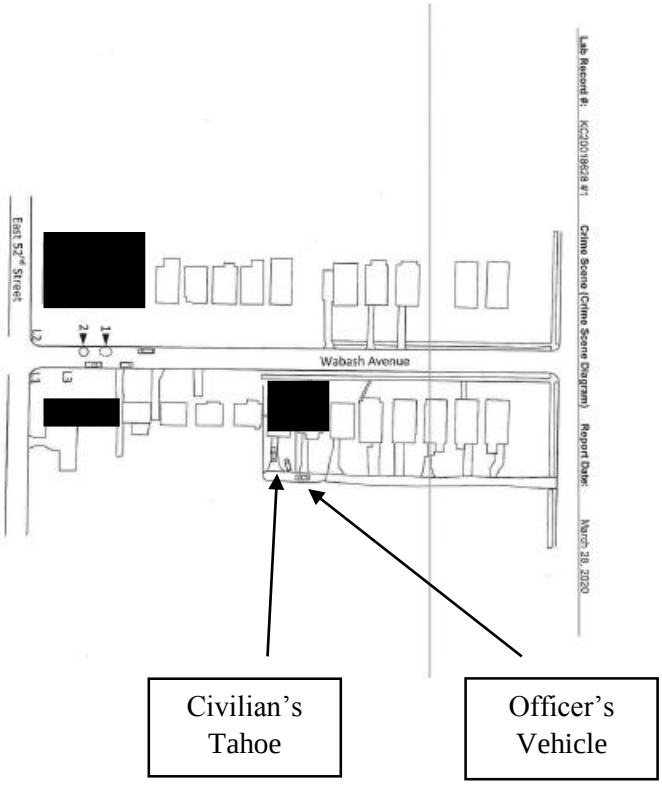
The Civilian then turned off his left turn indicator and made a right turn onto 51st Street without using a right turn indicator.



Still image showing the civilian's right turn without using his right turn indicator.

The Officer followed the Civilian by turning right onto 51st Street. The Officer did not turn on his vehicle's lights and sirens or attempt to stop the Civilian. Upon turning onto 51st Street, the Civilian then displayed his left turn indicator and turned left into an alley that runs parallel to Wabash between 51st and 52nd Street. The Officer followed by turning his vehicle into the alley. According to the communication logs, around this time, the Officer told dispatch that he had identified a traffic violation at 51st and Wabash.

After entering the alley, the Officer turned on his vehicle's lights and sirens signaling his intention to the Civilian that the Officer was stopping him. Shortly after doing so, the Officer's microphone came on. Once in the alley, the dash camera footage shows that the Civilian drove nearly to the end of the alley and then he parked the Tahoe perpendicular to the rear of a house on the east side of Wabash.



Still image showing the Tahoe parking in the alley.

The Officer is then heard on his radio informing KCPD dispatch and other officers that the Civilian "is bailing on foot." The Officer announced on his radio "5-1 and Wabash in the alley." After doing so, the dash camera footage shows the Officer run past the front of his vehicle in pursuit of the Civilian with his gun drawn. The remainder of the encounter was not captured by dash camera video footage. Likewise, there was no residential surveillance footage or other civilian footage that captured the encounter. Nonetheless, because he turned on his lights and sirens, the Officer's microphone was on and recording. Thus, there is limited audio recovered of the remainder of the encounter.

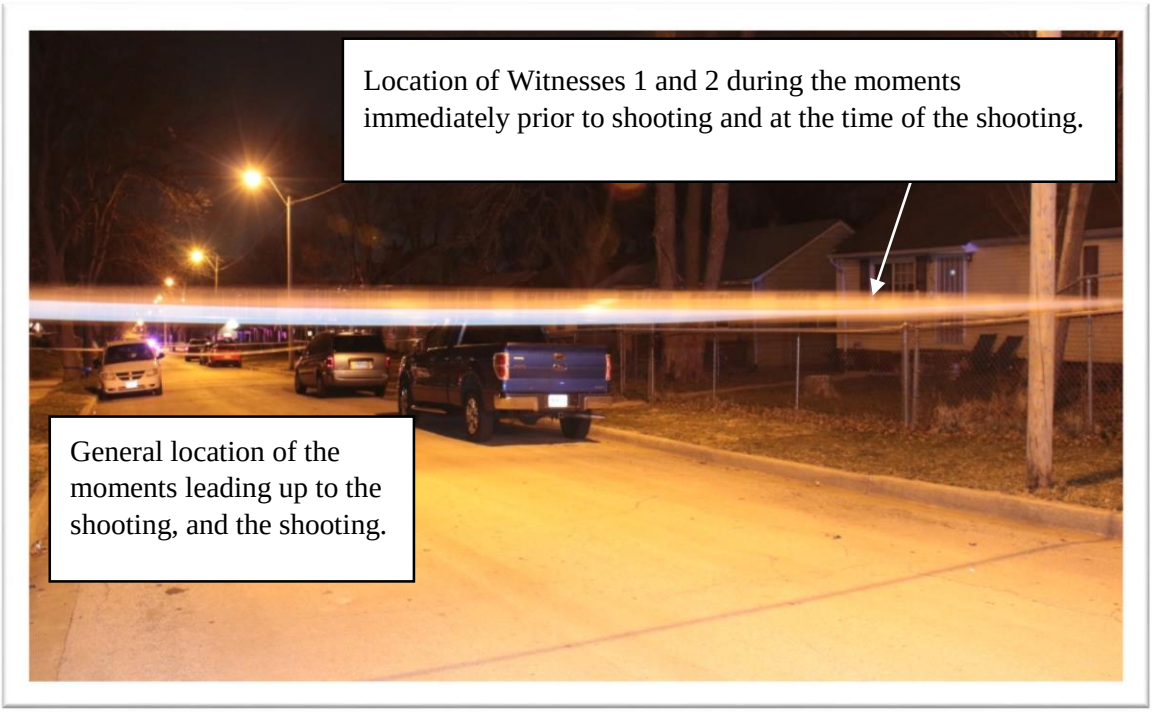
The next recorded sounds appear to be those of the Officer giving chase. Approximately 13 seconds later, the Officer is heard yelling "[H]ey stop!" to the Civilian. Thereafter, the foot chase continues and, approximately 27 seconds after his previous command, the Officer is heard providing his general location and a description of the Civilian as "a black male with jacket" on his radio to other officers. Approximately six seconds later, the Officer is again heard yelling "[S]top!" while still chasing/moving. After another six seconds pass, the Officer is again heard yelling commands to "[S]top!" The Officer is then heard giving his location on his radio as "5-2 and Wabash." Around this time, the Officer reported "[h]olding the air" on his radio. This signaled to other officers that the radio traffic should remain open and clear in case there was a need to request immediate or emergency assistance. Immediately thereafter, the Officer is heard commanding the Civilian to "[G]et on the ground!" The Officer is then heard saying "[D]rop!" and "[S]top!"

Seconds later, the Officer is heard yelling to the Civilian to "[S]how me your hands!" At this moment, the Civilian's voice is also present on the audio recording, however, perhaps due to the Civilian's distance away from the Officer, it is unclear what the Civilian is saying in response to the Officer's commands. After a short pause, the Officer is heard yelling "Dude, drop it!" in response to something the Civilian says. Following this, the Officer yells "Drop!" four times while he is heard moving before firing a series of shots in rapid succession. Immediately after firing the final shot, the Officer reports "[S]hots fired!" more than once on his radio. Once again, the Civilian is heard saying something but, again, it is unclear what he is saying. In response, the Officer is heard yelling commands to "[S]how me your hands!"

The Officer's audio was on and recording for minutes after the shooting. That audio reveals that within a minute of the shooting, other officers had arrived and began the process of rendering aid. During this time, the Officer is heard reporting to other responding officers that the Civilian has something "in his pocket" that he was trying to take out.

The physical evidence, including the shell casings produced by the Officer's weapon, showed that the shooting occurred on Wabash, closer to the west side of the street, and at or near the corner of 52nd and Wabash.

Within 24 hours of the shooting, Witness 1 and Witness 2 were interviewed.[3] Both observed the crucial part of the incident between the Civilian and the Officer from the front window of a residence directly across from the location.



Witness 1 was near the front window of the residence when Witness 1's attention was drawn by the sound of "screaming." Witness 1, who noted that her window was cracked open,

[3] Witness 2 was interviewed just hours after the shooting in the early morning of March 13, 2020. Witness 1 was interviewed on the afternoon of March 13, 2020.

then looked outside and observed the Civilian being pursued by the Officer. At that time, Witness 1 called for Witness 2 to come to the window. These witnesses collectively informed investigators that the Officer gave multiple commands to the Civilian including, "Stop," "put it down," and "drop it." Both witnesses stated separately that the Civilian had his arm extended toward the Officer. Witness 1 described the Civilian moving towards the Officer with his right arm extended and covered with something. Witness 2 described the Civilian moving towards the Officer with his arm up and "pointing whatever it was" at the Officer. Upon further questioning, Witness 2 indicated that it appeared as though the item in the Civilian's hand was a gun. Additionally, Witness 2 reported that the Civilian was saying something in response to the Officer's commands but it was unclear what. Finally, both witnesses reported that after multiple commands given by the Officer as the Civilian proceeded toward the Officer with his arm extended, the Officer, who was back peddling in response to the Civilian, fired multiple shots.

Despite multiple efforts by law enforcement investigators, and this office's investigators, no other civilian witnesses were identified who stated that they saw the shooting or the moments immediately preceding the shooting. On March 13, 2020 and April 27, 2020, KCPD Investigators conducted witness searches or canvasses on Wabash Avenue between 51st and 52nd. It should be noted that additional witnesses were identified in reports who provided some further information of value. According to KCPD investigators, on the day after the shooting, Witness 3, another resident on Wabash, who lived closer to the alley where the Civilian and the Officer left their vehicles, reported that he heard the men leave the alley and move south on Wabash toward 52nd. Sometime before the shooting, Witness 3 observed the Civilian pointing something at his head and then point "it" at the Officer. Despite follow-up efforts, Witness 3 was unwilling to provide an additional statement to investigators. This Committee made multiple additional attempts to canvass the street. [4] Those efforts resulted in similar reports to those documented by KCPD and the Missouri Highway Patrol in that residents heard indecipherable screaming and then heard gunshots. No other witnesses were identified who saw the events.[5]

Three days after the shooting, the Officer appeared for a voluntary interview with his lawyer. In that statement, he reported that he believed the Civilian was speeding and that when he got behind the Civilian, he believed that the Civilian was attempting to evade him by putting on a turn signal showing he was going left and then turning right. Further, the Officer reported that after the foot chase, the Civilian stopped at 52nd and Wabash and turned back, with his

[4] Based on information provided by the Civilian's family, this Committee interviewed Witness 4, Witness 5, and Witness 6. These witnesses lived in houses on the west side of Wabash closer to 52nd. Witness 4 did not see or hear anything on the night of the shooting. Witness 5 and Witness 6 indicated that they were woken up by hearing someone yell "drop it…drop it!" These witnesses did not see the shooting. Neither Witness 4 or Witness 5 and Witness 6 had surveillance cameras on their homes that captured the shooting or moments leading up to the shooting.

[5] The Highway Patrol received a report that someone associated with a house at the western corner of Wabash and 52nd told the Civilian's family that they observed the Civilian surrendering to the Officer at the time he was shot. The Highway Patrol made multiple efforts to identify this witness. Investigation revealed that the house in question was vacant on March 12, 2020. The prior resident moved out of that home at the end of February 2020, and the new resident did not take possession until April 2020. No information was developed that any person was present at the house in question on the night of the shooting.

hands in his jacket pocket. The Officer reported that the Civilian held up his hand toward the Officer "as if he's got a gun." The Officer stated that the Civilian was saying things such as "I'm gonna shoot you! I'm gonna get you! Better kill me, I'm gonna kill you!" The Officer stated that right before the shooting, the Civilian sprinted toward him as he backed up. Finally, the Officer stated that he did not render aid to the Civilian because even after the shooting, the Civilian was still moving and the Officer was still unsure what the Civilian had in his hand.[6]

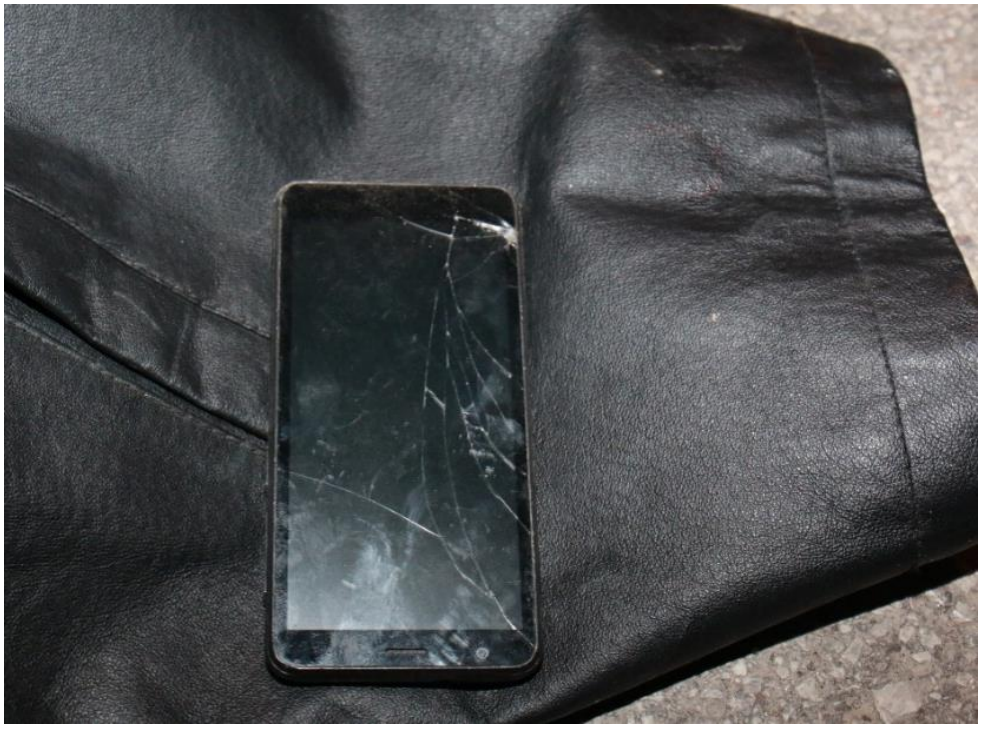
It is clear from the Use of Force Committee's review of the audio recording that the Civilian made statements to the Officer in the moments immediately prior to the shooting. Attempts were made to enhance the sound quality to learn what the Civilian was saying. This included consulting with a sound expert. But the Committee was unable to further discern the statements.

The evidence shows that the Officer shot five times at the Civilian. The evidence does not show whether the shots were fired at close range. The Civilian was struck by three separate bullets in the abdomen, the right hip and the back of the right elbow.[7] The evidence also shows the Civilian was wearing a jacket. First responders cut it open during attempts to render aid.

[6] KCPD conducted this interview prior to the Missouri Highway Patrol's involvement. The Prosecutor's office was not included. The Officer was not asked why he chased the Civilian, what other options were available, or why the Officer did not call for assistance upon beginning a foot chase. Further, the Officer was not questioned regarding Witness 1's statement that the Officer said "I'm sorry" following the shooting.

[7] The autopsy reports and associated documents show a bullet was recovered from the Civilian's lower back. This bullet was from a prior unassociated wound sustained by the Civilian.

No gun or other weapon was found on the Civilian. Crime scene technicians eventually recovered the jacket and placed it into evidence. Inside the right pocket of that jacket was a black cell phone.



The Civilian was taken from the scene to a local hospital. Despite resuscitative efforts and surgery, he ultimately passed away early on the morning of March 13, 2020.

Applicable Law

Any examination of use of force by a law enforcement officer in the State of Missouri must analyze the applicability of the legal defense set forth in Section 563.046, RSMo. In some circumstances, Missouri law permits a law enforcement officer to use force, even deadly force, in making an arrest or in preventing an escape.[8] First, the officer must have a reasonable belief that the person being arrested has committed or is committing a crime.[9] Second, if an officer determines that force is necessary to effect an arrest, the officer can only use a level of force that is reasonably necessary to effect the arrest or prevent the escape.[10] Moreover, the law does not require that an officer retreat or desist from his or her efforts because of resistance or threatened resistance by the person being arrested.

[8] Section 563.046, RSMo, Missouri Approved Instructions ("MAI") 406.14; See Tennessee v. Garner, 471 U.S.1 (1985) (holding that deadly force may be used to prevent escape where probable cause exists that shows that the subject sought poses a significant threat of death or serious physical injury to the officer or others).
[9] Id.
[10] Id.

When it comes to the criminal review of a police officer's use of deadly force, specific rules apply. In Missouri, a law enforcement officer can use force that the officer knows will create a substantial risk of causing death or serious physical injury only when the officer reasonably believes that the person being arrested is attempting to escape by using a deadly weapon or when the person being arrested may endanger life or inflict serious physical injury unless arrested without further delay.[11] Even then, an officer can use this heightened level of force only when he reasonably believes that the use of such force is immediately necessary to effect the arrest or prevent the escape.[12]

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. [13]

This standard is based upon the holding in Graham v. Connor. In Graham, the Court articulated specifics that must be considered in determining the constitutionality of an officer's use of force and held that an officer is entitled to use deadly force when a review of the circumstances confronting that officer show that his actions were objectively reasonable.[14] The Court held that a proper analysis of the reasonableness of the force used must examine the totality of the circumstances, including the paying of careful attention to facts and circumstances involved from the perspective of officer on the scene not through the lens of 20/20 hindsight.[15] The Court instructed that this analysis must allow for the split-second decisions that often occur in these tense, uncertain, and rapidly evolving situations. The Court held that 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.[16]

In multiple cases since then, the Court has made clear that whether the use of force – including the use of deadly force – is excessive is a fact-specific question that requires considering whether the use of force was unreasonable in light of the events as viewed from the perspective of the officer.[17]

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[11] Id.
[12] Id.
[13] MAI 406.14. See Garner, 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 decisions that often occur in these tense, uncertain, and rapidly evolving situations).
[14] 490 U.S. 386, 395 (1989).
[15] Id. at 397.
[16] Id. at 396.
[17] See, e.g., Mulenix v. Luna, 136 S. Ct. 305 (2015); Plumhoff v. Rickard, 134 S. Ct. 2012 (2014); Scott v. Harris, 550 U.S. 372 (2007).

This standard does not depend upon whether the belief turned out to be true or false.[18] And Missouri law goes further: an officer has no legal duty to "retreat or desist" from his efforts because of resistance or threatened resistance by the person being arrested.[19]

As such, in this matter, the Officer was not entitled to shoot at the Civilian *unless* he reasonably believed *either* that (1) the Civilian may have inflicted serious physical injury unless arrested without delay; *or* (2) the Civilian was attempting to escape by use of a deadly weapon. Even then, the officer was authorized to shoot at the Civilian *only if* he reasonably believed that shooting him was immediately necessary to effect the arrest or prevent the escape.[20]

In addition to the instruction on use of force by a law enforcement officer, at trial, the Officer would also be entitled to the self-defense instruction applicable to civilians. Similar to the use of force instruction, the self-defense instruction allows a person to legally use deadly force to defend themselves from what they reasonably believe to be the use or imminent use of force against them that would cause serious physical injury or death or to stop the commission of a forcible felony. Under this instruction, a person is not required to retreat before resorting to using force to defend themselves. Finally, the term reasonable belief is specifically defined to match the definition found in the use of force instruction. See MAI 406.06.

Finally, we must be guided by the appropriate charging standard which mandates that "[a] prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice."[21]

Analysis and Conclusion

As Prosecutors, it is our solemn responsibility to seek justice for both the victim and the accused in a criminal matter. As human beings and members of this community, we are sensitive to issues of race, implicit bias and imperfect balances of power. However, the carrying out of our legal responsibility is not guided by feelings or suspicions. Rather, our sworn duty requires us to be faithfully bound to the evidence and law.

Here, under Missouri law, the evidence shows that the Officer is entitled to a specific justification defense allowed law enforcement officers using force.[22] The evidence shows that the Officer did have a legal basis, i.e. the traffic violation, to stop the Civilian.[23] Moreover, once the Officer turned on his lights and sirens in the alley in an effort to stop the Civilian and the Civilian exited his vehicle and fled on foot, the Officer had a second basis, resisting a lawful stop, to pursue and arrest the Civilian.[24] Further, while there can be debate about whether the

[18] MAI 406.14
[19] MAI 406.14.
[20] Id.
[21] ABA STANDARDS FOR PROSECUTION FUNCTION 3-4.3(a) (2015); See MO. SUP. CT. R. 4-3.8(a).
[22] MAI 406.14 [Use of Force instruction].
[23] The specific violation would likely have been improper use of a turn signal pursuant to Section 304.019, RSMo.
[24] See Section 575.150, RSMo.

Officer *should* have pursued the Civilian given the circumstances, i.e. given the nature of the law violations at issue and given that the Officer was alone, under the applicable law, the Committee is barred from determining that charges are appropriate simply because the Officer decided to pursue the Civilian under these circumstances. As noted above, under the law, the Officer is not required to "desist from his efforts because of resistance or threatened resistance by the person being arrested."[25]

Given the law, the next step in the analysis is to determine whether the force used in attempting to make the arrest was reasonable. As noted, the applicable legal standard requires us to determine how the facts reasonably appeared to the Officer at the time of the shooting.[26] Importantly, the law does not require that a belief be found to be true for it to be reasonable.[27] It is an undisputed fact that the Civilian was unarmed at the time of the shooting. But the law restricts this Committee to evaluating only what was known or reasonably believed prior to or at the time of the shooting. Thus, the fact that the Civilian was found to be unarmed after the shooting is not, by itself, determinative of whether charges should be filed against the Officer.[28]

Our Committee has determined that there are insufficient established facts in this case to demonstrate that the Officer's belief was unreasonable at the time of the shooting. Because there is no video of the shooting, the main evidence comes from witness statements and recorded audio. Nonetheless, as in all criminal reviews my office takes part in, this Committee does not simply accept the statement of involved parties, i.e. suspects, victims, or witnesses. Rather, statements must be placed against other information, i.e. evidence, about an event to determine whether they are credible and thus believable.

The investigative file, specifically the dash camera audio, shows that after a brief foot chase, the Officer gave multiple clear commands to the Civilian for approximately one minute. That audio is corroborated by Witness 1 and Witness 2. Based on the evidence, the Officer, using commands, attempted for some time to get the Civilian to demonstrate that he was not a threat and that he could be taken into custody without incident or without the need for the Officer to use additional force. Moreover, the Officer, who was the suspect in this investigation, was not the only person who believed the Civilian's actions demonstrated that he was armed and/or a threat to the Officer. The physical evidence, including the location of shell casings and crime scene pictures, show that Witness and 1 and Witness 2 were in a position from which they could have seen and heard the crucial portions of the encounter.

In the moments leading up to the shooting, the established evidence is that the Civilian was observed by the Officer, and also by two civilian eyewitnesses from a nearby house. All three gave statements to investigators. The Use of Force Committee finds that the statements corroborate each other. None of the three described the Civilian's actions leading up to the shooting as communicating a desire to surrender, or an assurance that he meant no harm. All three eyewitnesses separately described that immediately before the shooting, the Civilian was

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[25] Id.
[26] Id. It should be noted that this is the same standard that applies in traditional, i.e. civilian and civilian, self-defense. As noted above, both of these defenses would likely apply to this case. MAI 406.06.
[27] Id.
[28] MAI 406.14.

approaching the officer with his hand raised toward the Officer.[29] The Officer told investigators that the Civilian held up his hand toward the Officer "as if he's got a gun." Witness 1 described the Civilian moving towards the Officer with his right arm extended and covered with something. Witness 2 described the Civilian moving towards the Officer with his arm up and "pointing whatever it was" at the Officer. Upon further questioning, Witness 2 indicated that it appeared as though the item in the Civilian's hand was a gun. The two civilian witnesses stated that the Officer gave multiple commands to the Civilian including, "stop," "put it down," and "drop it." Both civilian witnesses reported that, after the multiple commands, as the Civilian proceeded towards the Officer with his hand up, the back-pedaling Officer fired multiple shots.

Because there are no other witnesses to counter the Officer's corroborated account of the shooting, the only evidence suggesting that the Officer's belief may be unreasonable are the words of the Civilian in the moments prior to the shooting. As noted, this Committee could not with any clarity identify what the Civilian was saying. That said, even assuming that the Civilian was attempting or intending to verbally communicate that he was not a threat, he was not armed, and/or wanting to surrender, the evidence before this Committee suggests that the Witnesses who observed the communication, like the Officer who presumably heard the Civilian responding to him in some way, did not, at the time, report that they believed that the Civilian's words and actions demonstrated or showed that he was not a threat. [30]

This Committee did not come to this decision lightly. To be clear, our decision should not be interpreted as a statement indicating that this Committee believes the "right" or "just" thing happened. A member of our community, one of the people we have sworn to represent, is gone. We offer our deepest condolences and sympathy to the Civilian's family and loved ones. Nonetheless, we accept that our review of this incident is ethically and legally limited to a review of the appropriateness of criminal charges.

Accordingly, we do not believe the facts and law support charges here.

Sincerely,

Jean Peters Baker

Jean Peters Baker
Prosecutor for Jackson County

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[29] The Civilian's family indicated that the Civilian had undergone abdominal surgery days prior to the shooting. The family further noted that, during his post-operative recovery, they had observed the Civilian to be restricted in his bodily movements. Because the Civilian is now deceased, there are unresolved questions about what if anything the Civilian actually intended to do or communicate with his bodily movements. That said, the law restricts our analysis to whether the Officer's belief is reasonable based on the evidence and not what the actual intent of the Civilian was at the time of the shooting.

[30] During this investigation, this Committee received information attempting to label this incident as one in which the Civilian was surrendering when he was shot and killed or one in which the Civilian wanted to engage the Officer in an encounter that he knew would lead to his own death. As stated in part by our accounting of the evidence, we cannot conclude that either of these labels is appropriate. Rather, pursuant to our stated duty, we are declining to proceed with charges because the evidence is insufficient to charge.