

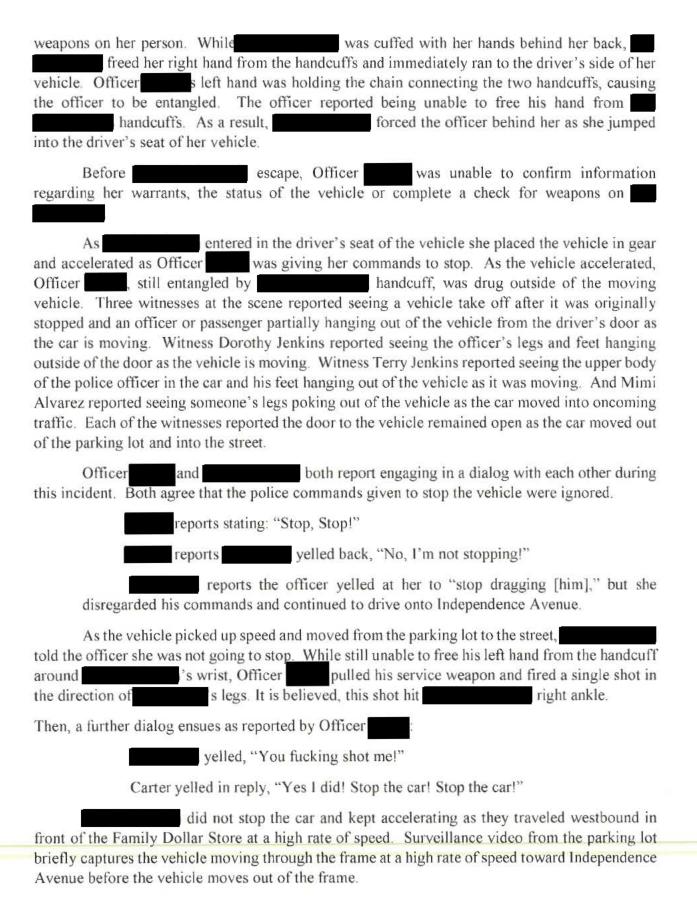
August 13, 2015

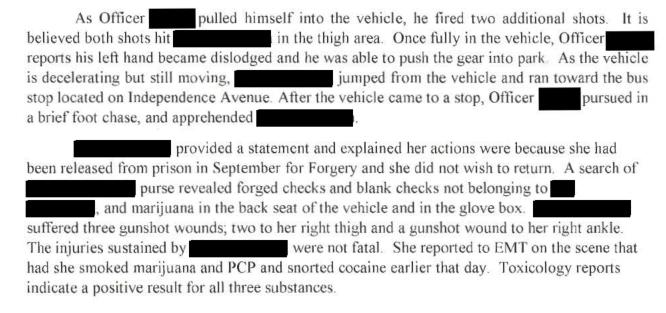
Chief Darryl Forte Kansas City Police Department 1125 Locust Kansas City, MO 64106

Re: Officer-involved use of force on December 12, 2014 at Wilson and Topping Avenue, CRN 14-89166

Chief Forte:

On June 17, 2015, the Jackson County Prosecutor's Office Use of Force committee reviewed the investigation of the nonfatal shooting of on December 12, 2014. This incident involved Officer of the Kansas City, Missouri Police Department. The KCPD case number is 14-89166. Based on the investigation and our analysis. our committee concluded the evidence does not support the filing of criminal charges against Officer Summary of Facts On December 12, 2014, Police Officer was working as a Traffic Enforcement Officer in uniform and in a marked patrol car. At 8:02 p.m., the officer was in the parking lot of CVS at Independence and White Avenue when he observed a blue Ford vehicle traveling westbound with no headlights or tail lights. He proceeded to stop the vehicle by utilizing his emergency equipment. The vehicle turned onto Wilson Avenue into the parking lot of the Family Dollar Store. As he stopped the vehicle, Officer observed a passenger flee from the vehicle. Multiple attempts were made to identify and locate the passenger for questioning, but the passenger was not located. detained the driver, identified as , ordering her from the vehicle, and eventually placing the driver in handcuffs. While detaining the driver, Officer received conflicting information from regarding ownership of the car, and also reported to the officer her license was license and registration information. suspended and that she may have warrants for her arrest. At this point, Officer she would be further detained to confirm her information, but he would check for





A total of three shell casings were recovered from the vehicle. Those casings were located in the center console, under the passenger seat and on the dashboard on the front passenger side.

Legal Analysis

Under Missouri law, there are two statutes that govern the use of force applicable to the facts of this case. Section 563.031, RSMo governs 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. Further, Section 563.046, RSMo governs the use of force by police officers when effectuating an arrest. This provision specifically authorizes a law enforcement officer in the use of such physical force as he reasonably believes is immediately necessary to effect the arrest or to prevent the escape from custody [as limited by *Temnessee 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].

The Garner decision provides a framework for our review, however, we sought guidance from other case law, including a review of Graham v. Connor, 490 U.S. 386 (1989). The Garner decision involved a review of the use of deadly force by a Memphis police officer against a fleeing suspect. Garner determined an officer's command of a burglary suspect to halt was disregarded as the burglary suspect fled on foot over a fence. The Memphis officer used deadly force to stop this individual despite being "reasonably sure" the burglary suspect was unarmed. Different factors apply in the present case for our review, but we rely on Garner as a basis to guide the use of deadly force when preventing escape of one who poses a significant threat of death or serious physical injury to the officer or others.

The Graham decision directs the review of the officer's use of force weighed against the immediate threat the suspect poses to the safety of the officer or others. Our analysis requires a
review of the "reasonableness" of Officer 's conduct in light of the facts and circumstances
confronting him - through the eyes of a "reasonable officer on the scene." Officer
he continued to fear for his safety and the safety of others while was in control of
the vehicle. Officer and agree the commands to stop the vehicle were
continually disregarded. It is an important fact that Officer was not at a safe distance
outside and away from the vehicle driven by
found himself inside the vehicle, unable to free himself from
disregarded his repeated commands to stop and
vehicle. The fact that used the vehicle to facilitate her escape is not disputed.
According to statement, her actions were to avoid going back into custody for
her outstanding warrants. The vehicle is properly regarded as a dangerous instrument under this
factual scenario. Our review, then, is based on the objective reasonableness" of Officer
actions of firing three shots, striking . We are further directed to review Officer
's actions under Missouri's self-defense language to determine whether Officer
reasonably believed the three shots fired were necessary to defend against the threat. See RSMo
563.031 and 563.046.
Conclusion
Officer 's use of force on December 12, 2014 was deemed justifiable under the specific facts of this case, under governing case law and under Missouri law.
The physical evidence supports Officer s account of firing three shots from his
service weapon and the sequence of those shots. We acknowledge this was a fluid and dynamic
event that concluded within seconds of the original stop. Our review required an understanding
from all witnesses, including the lay witnesses, the officer's account,
statements, along with all physical evidence. Officer sentanglement in the handcuffs,
placed him in a precarious scenario, to which had a distinct advantage over his
personal safety and unsuspecting members of the public in that area. Once placed in this
scenario, the committee found Officer scenario, the committee found Officer scenario is actions legally reasonable under Missouri self-
defense laws. Under Garner and Connor reviews, the decisions made by Officer
his weapon were reasonable as continued to pose a substantial risk to his safety
his weapon were reasonable as continued to pose a substantial risk to his safety and to the safety of the general public while she maintained control of the vehicle and while she
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and to the safety of the general public while she maintained control of the vehicle and while she disregarded commands by Officer to simply stop the vehicle.
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and to the safety of the general public while she maintained control of the vehicle and while she disregarded commands by Officer to simply stop the vehicle. The actions of placed the officer in direct harm, as well as, unsuspecting members of the community. Her behavior on December 12, 2014 was unlawful, erratic, and
and to the safety of the general public while she maintained control of the vehicle and while she disregarded commands by Officer to simply stop the vehicle. The actions of placed the officer in direct harm, as well as, unsuspecting

all individuals involved are informed of this decision, therefore, I will continue attempts to speak with through her legal counsel and Officer regarding this decision.

Sincerely,

Jean Peters Baker

Prosecutor for Jackson County

Jean Peters Baker

Cc: Virginia Murray, Legal Counsel for KCPD