



JEAN PETERS BAKER
Jackson County Prosecuting Attorney

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 [REDACTED] on December 12, 2014. This incident involved Officer [REDACTED] 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 [REDACTED].

Summary of Facts

On December 12, 2014, Police Officer [REDACTED] 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 [REDACTED] 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.

Officer [REDACTED] detained the driver, identified as [REDACTED], ordering her from the vehicle, and eventually placing the driver in handcuffs. While detaining the driver, Officer [REDACTED] received conflicting information from [REDACTED] regarding ownership of the car, and license and registration information. [REDACTED] also reported to the officer her license was suspended and that she may have warrants for her arrest. At this point, Officer [REDACTED] informed [REDACTED] she would be further detained to confirm her information, but he would check for



weapons on her person. While [REDACTED] was cuffed with her hands behind her back, [REDACTED] freed her right hand from the handcuffs and immediately ran to the driver's side of her vehicle. Officer [REDACTED]'s left hand was holding the chain connecting the two handcuffs, causing the officer to be entangled. The officer reported being unable to free his hand from [REDACTED] handcuffs. As a result, [REDACTED] forced the officer behind her as she jumped into the driver's seat of her vehicle.

Before [REDACTED] escape, Officer [REDACTED] was unable to confirm information regarding her warrants, the status of the vehicle or complete a check for weapons on [REDACTED].

As [REDACTED] entered in the driver's seat of the vehicle she placed the vehicle in gear and accelerated as Officer [REDACTED] was giving her commands to stop. As the vehicle accelerated, Officer [REDACTED], still entangled by [REDACTED] handcuff, was drug outside of the moving vehicle. Three witnesses at the scene reported seeing a vehicle take off after it was originally stopped and an officer or passenger partially hanging out of the vehicle from the driver's door as the car is moving. Witness Dorothy Jenkins reported seeing the officer's legs and feet hanging outside of the door as the vehicle is moving. Witness Terry Jenkins reported seeing the upper body of the police officer in the car and his feet hanging out of the vehicle as it was moving. And Mimi Alvarez reported seeing someone's legs poking out of the vehicle as the car moved into oncoming traffic. Each of the witnesses reported the door to the vehicle remained open as the car moved out of the parking lot and into the street.

Officer [REDACTED] and [REDACTED] both report engaging in a dialog with each other during this incident. Both agree that the police commands given to stop the vehicle were ignored.

[REDACTED] reports stating: "Stop, Stop!"

[REDACTED] reports [REDACTED] yelled back, "No, I'm not stopping!"

[REDACTED] reports the officer yelled at her to "stop dragging [him]," but she disregarded his commands and continued to drive onto Independence Avenue.

As the vehicle picked up speed and moved from the parking lot to the street, [REDACTED] told the officer she was not going to stop. While still unable to free his left hand from the handcuff around [REDACTED]'s wrist, Officer [REDACTED] pulled his service weapon and fired a single shot in the direction of [REDACTED]'s legs. It is believed, this shot hit [REDACTED] right ankle.

Then, a further dialog ensues as reported by Officer [REDACTED]:

[REDACTED] yelled, "You fucking shot me!"

Carter yelled in reply, "Yes I did! Stop the car! Stop the car!"

[REDACTED] did not stop the car and kept accelerating as they traveled westbound in front of the Family Dollar Store at a high rate of speed. Surveillance video from the parking lot briefly captures the vehicle moving through the frame at a high rate of speed toward Independence Avenue before the vehicle moves out of the frame.

As Officer [REDACTED] pulled himself into the vehicle, he fired two additional shots. It is believed both shots hit [REDACTED] in the thigh area. Once fully in the vehicle, Officer [REDACTED] reports his left hand became dislodged and he was able to push the gear into park. As the vehicle is decelerating but still moving, [REDACTED] jumped from the vehicle and ran toward the bus stop located on Independence Avenue. After the vehicle came to a stop, Officer [REDACTED] pursued in a brief foot chase, and apprehended [REDACTED].

[REDACTED] provided a statement and explained her actions were because she had been released from prison in September for Forgery and she did not wish to return. A search of [REDACTED] purse revealed forged checks and blank checks not belonging to [REDACTED], and marijuana in the back seat of the vehicle and in the glove box. [REDACTED] suffered three gunshot wounds; two to her right thigh and a gunshot wound to her right ankle. The injuries sustained by [REDACTED] were not fatal. She reported to EMT on the scene that had she smoked marijuana and PCP and snorted cocaine earlier that day. Toxicology reports indicate a positive result for all three substances.

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 *Tennessee v. Garner*, 471 U.S.1 (1985) limiting deadly force to prevent escape unless probable 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 [REDACTED]'s conduct in light of the facts and circumstances confronting him – through the eyes of a "reasonable officer on the scene." Officer [REDACTED] stated he continued to fear for his safety and the safety of others while [REDACTED] was in control of the vehicle. Officer [REDACTED] and [REDACTED] agree the commands to stop the vehicle were continually disregarded. It is an important fact that Officer [REDACTED] was not at a safe distance outside and away from the vehicle driven by [REDACTED]. To the contrary, Officer [REDACTED] found himself inside the vehicle, unable to free himself from [REDACTED] grip, while she disregarded his repeated commands to stop and [REDACTED] remained in control of the vehicle. The fact that [REDACTED] used the vehicle to facilitate her escape is not disputed. According to [REDACTED] 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 [REDACTED]'s actions of firing three shots, striking [REDACTED]. We are further directed to review Officer [REDACTED]'s actions under Missouri's self-defense language to determine whether Officer [REDACTED] reasonably believed the three shots fired were necessary to defend against the threat. See RSMo 563.031 and 563.046.

Conclusion

Officer [REDACTED]'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 [REDACTED]'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, [REDACTED] statements, along with all physical evidence. Officer [REDACTED]'s entanglement in the handcuffs, placed him in a precarious scenario, to which [REDACTED] 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 [REDACTED]'s actions legally reasonable under Missouri self-defense laws. Under *Garner* and *Connor* reviews, the decisions made by Officer [REDACTED] to fire his weapon were reasonable as [REDACTED] 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 disregarded commands by Officer [REDACTED] to simply stop the vehicle.

The actions of [REDACTED] placed the officer in direct harm, as well as, unsuspecting members of the community. Her behavior on December 12, 2014 was unlawful, erratic, and dangerous, and guided by a desire to avoid being taken into custody for other unlawful actions. We are grateful that Officer [REDACTED] was not injured, that [REDACTED] was not more seriously injured and that no members of the public were injured during this encounter. It is important that

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

Sincerely,

Jean Peters Baker

Jean Peters Baker
Prosecutor for Jackson County

Cc: Virginia Murray, Legal Counsel for KCPD