

# JEAN PETERS BAKER

## Jackson County Prosecuting Attorney

October 25, 2015

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

Re: Private Security Officer-involved shooting on May 3, 2015 at 7100 Eastwood Trafficway, Kansas City, Missouri

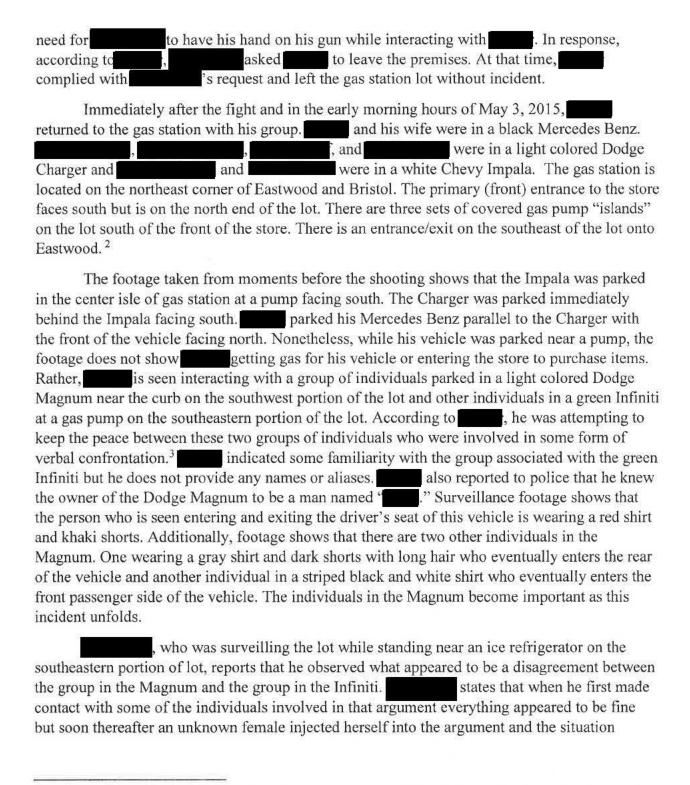
#### Chief Forte:

On October 7, 2015, the Jackson County Prosecutor's Office Use of Force committee reviewed the investigation of the non-fatal shooting in Kansas City on May 3, 2015. Based on the investigative file and our analysis, our committee has concluded that the evidence does not support the filing of criminal charges against

#### **Summary of Facts**

Pacquiao versus Floy	yd Mayweather boxin	d his wife, g match at the home of no, while traveling in to one another. Turner'	of a friend in Belt	on, Missouri.
Turner and his wife v	were part of group wh		three separate vel's group included	nicles, were
encounter, according walked into the store make physical contact	was employed to have a station lot ct with him, the two n	ne to watch the fight, ficway. It was at this red by the gas station a attempted to bump reports that a nen had a brief verbal is gun while interacting	time that fas security person or clip his should after a exchange.	irst encountered nel. During this ler as tempted to questioned the

provided a recorded statement immediately following the shooting which is a part of the investigative file.



<sup>&</sup>lt;sup>2</sup> The investigative file includes footage from three separate cameras. There is footage from inside the store which does not show the events on the lot but includes some audio ("CH01"). There is a footage from a camera pointed away from the store that shows the southeastern portion of the lot ("CH05") and a camera pointed to the southwestern portion of the lot ("CH06"). It should be noted that while CH06 captures the majority of the incident, it does not have audio.

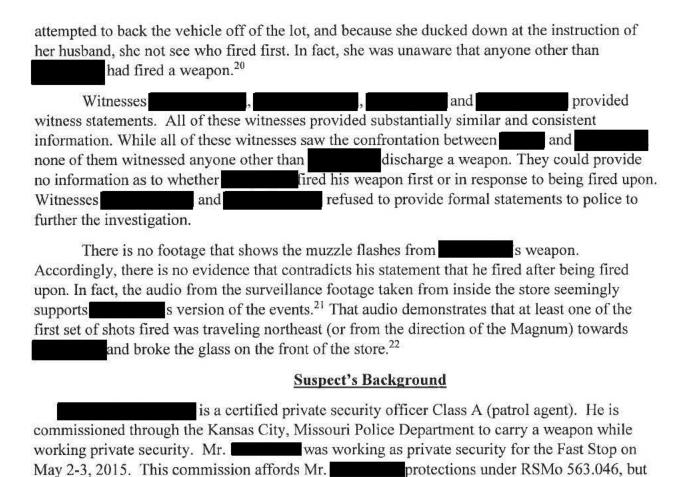
<sup>&</sup>lt;sup>3</sup> There is no evidence to suggest that either of these groups were associated with or even known to the other individuals in the state of these groups.

was standing near the individuals from one of the groups at the time of s command, became upset at and then began to curse at him while referencing their earlier interaction. Footage shows moving towards and aggressively throwing off the attempts by an unknown individual, wearing a dark shirt, to hold back from a confrontation with continues to ask that all parties leave the lot.
Though the footage is blurred and the gas pump obstructs the next set of events between and with and without the footage and witness accounts detail that pointed his hand at and then struck pointed hand. Furner then threatens to return to the lot and quickly takes out his baton and reaches to apparently seize by reaching for some neck and/or shoulder area. A physical struggle then begins and the two men begin moving northwest towards present, appears to attempt to break free from some grasp and papears to be trying to hold onto to while striking on leg(s) and torso area with his baton. While continually attempting to strike with his closed fist, finally breaks free and appears to strike in the head or face area, causing to lose his hat and stumble backwards. The recovers his balance, then pulls his service weapon, a 9mm handgun, as a crowd is beginning to form around both passenger's side of service.
Surveillance footage then shows "'s cousin, ", attempting to get between and while is still trying to hit and/or reach for
Casings recovered from the scene show that what happened next was the result of multiple guns being discharged and that one individual, was struck by a stray bullet while seated in the front seat of the Impala and the store window was struck by a stray
provided a recorded statement immediately following the shooting. This statement is a part of the investigative file.  CH06 at 3:00-3:22.  CH06 at 3:15-3:22.  CH06 at 3:22-4:12.  Id.  CH06 at 4:23-435  Id.  Id.  Id.  Id.  Id.  Id.  Id.  Id

first. backs his vehicle towards the southern end of the lot, the Magnum passes by and video captures multiple muzzle flashes from the rear passenger side of this vehicle. 15 Based on this video, the trajectory of that gun fire would have been northeast or towards and the store. 16 Further, also appears to be shooting in the direction of Although unclear, the trajectory of his fire appears to be towards the south/southwest. Lastly, as the Magnum passes the intersection of Eastwood and Bristol, the front passenger door opens, and at least one muzzle flash appears. 17 The trajectory of this fire would have been towards the northeast portion of the lot and towards Officers from the Kansas City, Missouri Police Department were dispatched to the gas station at 12:47 a.m. May 3, 2015 to respond to a disturbance involving a weapon. Based on the information in the file, assistance. During interviews, stated he fired his weapon only in response to shots fired at him. stated his belief was that someone in as the vehicle backed out of the lot. Members of the Kansas City, Missouri Police Department have attempted to seek help from in identifying Quan, however, to date, despite his agreement to do so, has not provided the identity of "for further investigation." Based on the documents and footage in front of the committee, it appears that someone in the Magnum is responsible for the shot fired that injured suffered a gunshot wound to her lower right leg. Before the altercation between and surveillance footage shows briefly exiting and then returning to the front passenger seat of the Impala. <sup>19</sup> She is not seen leaving the vehicle again and therefore, due to the position of her vehicle, she would have been in the line of fire directed towards from the Magnum. That said, because of medical reasons, the bullet cannot be removed from unable to verify the type of bullet and the potential shooter. provided a statement to police in which she confirmed that intervened as two males were arguing and ordered them to leave the lot and that a fight then ensued between and and resulting in firing his weapon into the Mercedes driven by . However, because she was ducking down as the gunfire began, she did not witness who shot in her direction and does not know who discharged their weapon first. also provided a witness statement detailing many of the Similar to events that led up to the shooting. She witnessed a portion of the altercation between her husband . Further, she was seated in the front passenger seat of the Mercedes when 14 Police would recover 3 "RP 40 S&W" casings near the northwest corner of the intersection of Eastwood and Bristol, 6 "FCNR 40 S&W" casings near lanes of travel on Eastwood and 12 "Hornady 9m Luger" casings from the southern portion of the lot. 15 Id. 16 Id. 17 Id. 18 Id.

bullet.14 Nonetheless, there is no evidence, let alone clear evidence, of who or what gun fired

19 CH06 at 1:15-2:30.



### Legal Analysis

as a private citizen, he is afforded protections under RSMo 563.031.

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 probably cause exists that the subject poses a significant threat of death or serious physical injury to the officer or others].

<sup>&</sup>lt;sup>20</sup> Ms. admits to having a handgun in her possession that evening while in the Mercedes, but it is clear that neither she nor Turner fired the weapon. She further states they did not have enough time to draw their weapon.

<sup>21</sup> CH01 at 4:25-4:37.

<sup>22</sup> Id.

### Conclusion

While there is little dispute regarding the basic facts of this case, it is apparent was unaware of critical factors that lead to him discharging his weapon in the direction of the Mercedes.  Mercedes.  Incorrectly believed members of that vehicle were firing at him. Available evidence suggest and other individuals on this parking lot were being fired upon by a passing vehicle, possibly from the Magnum. As noted, security cameras captured muzzle flashes coming from this vehicle traveling on the street and firing in the direction of and the lot. The shots fired from this passing vehicle are believed to have struck due to her position on the lot, rather than who is firing in a different direction and away from Ballistic evidence cannot determine the caliber of ammunition used because the bullet remains lodged in substant substantial injuries to her leg.
Based on the physical evidence, which shows that there were three shooters, witness statements and security footage, the State cannot overcome the legal defense provided under Section 563.031 supporting accounting of events that evening. The analysis is not whether was right or whether the State agrees with his actions, but rather, whether his belief was reasonable based upon how the events unfolded at the scene. Given that there is no evidence to dispute a belief that he was fired upon first, his conduct was not unreasonable and therefore this committee believes that he is entitled to the legal defense in Section 563.031.
Though the State cannot overcome his use of force in this circumstance beyond a reasonable doubt, this committee believes that his conduct requires further review. Mr. is a certified private security officer and therefore authorized to detain and apprehend suspects under Section 563.046 (as modified by <i>Garner</i> .) The commission providing Mr. this protection by Missouri law should be reviewed and, at a minimum, additional training should be provided on de-escalation techniques.
It is nothing short of miraculous that no other individual was more seriously injured than and that no individual was killed during these events that began with an argument and turned into shots being fired by multiple parties.
Sincerely,
Jean Peters Baker

cc: Virginia Murray, Legal Counsel for Kansas City, Missouri Police Department

Jean Peters Baker

Prosecutor for Jackson County