



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 [REDACTED].

Summary of Facts

On May 2, 2015, [REDACTED] and his wife, [REDACTED], traveled to watch the Manny Pacquiao versus Floyd Mayweather boxing match at the home of a friend in Belton, Missouri. Turner and his wife were part of group who, while traveling in three separate vehicles, were either associated or related in some way to one another. Turner's group included [REDACTED]'s cousins, [REDACTED] and [REDACTED], and [REDACTED], [REDACTED], and [REDACTED].

Prior to arriving at his friend's home to watch the fight, [REDACTED] stopped at the Fast-Stop gas station located at 7100 Eastwood Trafficway. It was at this time that [REDACTED] first encountered [REDACTED]. [REDACTED] was employed by the gas station as security personnel. During this encounter, according to [REDACTED]¹, [REDACTED] attempted to bump or clip his shoulder as [REDACTED] walked into the store on the gas station lot. [REDACTED] reports that after [REDACTED] attempted to make physical contact with him, the two men had a brief verbal exchange. [REDACTED] questioned the need for [REDACTED] to have his hand on his gun while interacting with [REDACTED]. In response,

¹ [REDACTED] provided a recorded statement immediately following the shooting which is a part of the investigative file.



need for [REDACTED] to have his hand on his gun while interacting with [REDACTED]. In response, according to [REDACTED], [REDACTED] asked [REDACTED] to leave the premises. At that time, [REDACTED] complied with [REDACTED]'s request and left the gas station lot without incident.

Immediately after the fight and in the early morning hours of May 3, 2015, [REDACTED] returned to the gas station with his group. [REDACTED] and his wife were in a black Mercedes Benz. [REDACTED], [REDACTED], [REDACTED], and [REDACTED] were in a light colored Dodge Charger and [REDACTED] and [REDACTED] were in a white Chevy Impala. The gas station is located on the northeast corner of Eastwood and Bristol. The primary (front) entrance to the store faces south but is on the north end of the lot. There are three sets of covered gas pump "islands" on the lot south of the front of the store. There is an entrance/exit on the southeast of the lot onto Eastwood.²

The footage taken from moments before the shooting shows that the Impala was parked in the center isle of gas station at a pump facing south. The Charger was parked immediately behind the Impala facing south. [REDACTED] parked his Mercedes Benz parallel to the Charger with the front of the vehicle facing north. Nonetheless, while his vehicle was parked near a pump, the footage does not show [REDACTED] getting gas for his vehicle or entering the store to purchase items. Rather, [REDACTED] is seen interacting with a group of individuals parked in a light colored Dodge Magnum near the curb on the southwest portion of the lot and other individuals in a green Infiniti at a gas pump on the southeastern portion of the lot. According to [REDACTED], he was attempting to keep the peace between these two groups of individuals who were involved in some form of verbal confrontation.³ [REDACTED] indicated some familiarity with the group associated with the green Infiniti but he does not provide any names or aliases. [REDACTED] also reported to police that he knew the owner of the Dodge Magnum to be a man named "[REDACTED]." Surveillance footage shows that the person who is seen entering and exiting the driver's seat of this vehicle is wearing a red shirt and khaki shorts. Additionally, footage shows that there are two other individuals in the Magnum. One wearing a gray shirt and dark shorts with long hair who eventually enters the rear of the vehicle and another individual in a striped black and white shirt who eventually enters the front passenger side of the vehicle. The individuals in the Magnum become important as this incident unfolds.

[REDACTED], who was surveilling the lot while standing near an ice refrigerator on the southeastern portion of lot, reports that he observed what appeared to be a disagreement between the group in the Magnum and the group in the Infiniti. [REDACTED] states that when he first made contact with some of the individuals involved in that argument everything appeared to be fine but soon thereafter an unknown female injected herself into the argument and the situation

² 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.

³ There is no evidence to suggest that either of these groups were associated with or even known to the other individuals in [REDACTED]'s group.

seemed to escalate.⁴ Because of this, ██████ asked the groups to leave the lot. ██████, who 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 ██████.⁵ ██████ 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 ██████, video footage and witness accounts detail that ██████ pointed his hand at ██████ and ██████ then struck ██████'s pointed hand.⁶ Turner then threatens to return to the lot and ██████ quickly takes out his baton and reaches to apparently seize ██████ by reaching for ██████'s neck and/or shoulder area. A physical struggle then begins and the two men begin moving northwest towards ██████'s vehicle.⁷ Though no clear video is present, ██████ appears to attempt to break free from ██████'s grasp and ██████ appears to be trying to hold onto to ██████ while striking ██████ on leg(s) and torso area with his baton.⁸ ██████, 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. ██████ recovers his balance, then pulls his service weapon, a 9mm handgun, as a crowd is beginning to form around both ██████ and ██████ next to the passenger's side of ██████'s vehicle.⁹

Surveillance footage then shows ██████'s cousin, ██████, attempting to get between ██████ and ██████ while ██████ is still trying to hit and/or reach for ██████.¹⁰ Nonetheless, ██████ eventually frees himself with the help of the driver of the Magnum. ██████ then moved to the driver's side of his vehicle and after entering his vehicle, he and his wife attempted to flee the scene by driving northwest.¹¹ ██████ then block's the path of ██████ vehicle by moving to the front of the vehicle while pointing his weapon and giving commands for ██████ to stop.¹² While continually pointing his weapon at ██████ vehicle, ██████ then strikes the front hood of the car with his baton as ██████ begins to back his vehicle up to the southern portion of the lot. As this is occurring, the Dodge Magnum leaves the lot, and is seen traveling west on Eastwood.¹³

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

⁴ ██████ provided a recorded statement immediately following the shooting. This statement is a part of the investigative file.

⁵ CH06 at 3:00-3:22.

⁶ CH06 at 3:15-3:22.

⁷ CH06 at 3:22-4:12.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ CH06 at 4:23-4:35

¹² *Id.*

¹³ *Id.*

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

As [REDACTED] 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 [REDACTED] and the store.¹⁶ Further, [REDACTED] also appears to be shooting in the direction of [REDACTED]'s vehicle. 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 [REDACTED] and [REDACTED].¹⁸

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, [REDACTED] is one of the individuals believed to have called police for assistance. During interviews, [REDACTED] stated he fired his weapon only in response to shots fired at him. [REDACTED] stated his belief was that someone in [REDACTED]'s vehicle was firing at him as the vehicle backed out of the lot. Members of the Kansas City, Missouri Police Department have attempted to seek help from [REDACTED] in identifying Quan, however, to date, despite his agreement to do so, [REDACTED] has not provided the identity of "[REDACTED]" 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 [REDACTED]. [REDACTED] suffered a gunshot wound to her lower right leg. Before the altercation between [REDACTED] and [REDACTED], surveillance footage shows [REDACTED] briefly exiting and then returning to the front passenger seat of the Impala.¹⁹ 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 [REDACTED] from the Magnum. That said, because of medical reasons, the bullet cannot be removed from [REDACTED]'s leg and, therefore, we are unable to verify the type of bullet and the potential shooter. [REDACTED] provided a statement to police in which she confirmed that [REDACTED] intervened as two males were arguing and ordered them to leave the lot and that a fight then ensued between [REDACTED] and [REDACTED], resulting in [REDACTED] firing his weapon into the Mercedes driven by [REDACTED]. 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.

Similar to [REDACTED], [REDACTED] also provided a witness statement detailing many of the events that led up to the shooting. She witnessed a portion of the altercation between her husband and [REDACTED]. Further, she was seated in the front passenger seat of the Mercedes when [REDACTED]

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.*

¹⁹ CH06 at 1:15-2:30.

attempted to back the vehicle off of the lot, and because she ducked down at the instruction of her husband, she not see who fired first. In fact, she was unaware that anyone other than [REDACTED] had fired a weapon.²⁰

Witnesses [REDACTED], [REDACTED], [REDACTED] and [REDACTED] provided witness statements. All of these witnesses provided substantially similar and consistent information. While all of these witnesses saw the confrontation between [REDACTED] and [REDACTED] none of them witnessed anyone other than [REDACTED] discharge a weapon. They could provide no information as to whether [REDACTED] fired his weapon first or in response to being fired upon. Witnesses [REDACTED] and [REDACTED] refused to provide formal statements to police to further the investigation.

There is no footage that shows the muzzle flashes from [REDACTED]'s weapon. Accordingly, there is no evidence that contradicts his statement that he fired after being fired upon. In fact, the audio from the surveillance footage taken from inside the store seemingly supports [REDACTED]'s version of the events.²¹ That audio demonstrates that at least one of the first set of shots fired was traveling northeast (or from the direction of the Magnum) towards [REDACTED] and broke the glass on the front of the store.²²

Suspect's Background

[REDACTED] is a certified private security officer Class A (patrol agent). He is commissioned through the Kansas City, Missouri Police Department to carry a weapon while working private security. Mr. [REDACTED] was working as private security for the Fast Stop on May 2-3, 2015. This commission affords Mr. [REDACTED] protections under RSMo 563.046, but as a private citizen, he is afforded protections under RSMo 563.031.

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].

²⁰ Ms. [REDACTED] 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.

²¹ CH01 at 4:25-4:37.

²² *Id.*

Conclusion

While there is little dispute regarding the basic facts of this case, it is apparent [REDACTED] was unaware of critical factors that lead to him discharging his weapon in the direction of the Mercedes. [REDACTED] incorrectly believed members of that vehicle were firing at him. Available evidence suggest [REDACTED] 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 [REDACTED] and the lot. The shots fired from this passing vehicle are believed to have struck [REDACTED] due to her position on the lot, rather than [REDACTED] who is firing in a different direction and away from [REDACTED]. Ballistic evidence cannot determine the caliber of ammunition used because the bullet remains lodged in [REDACTED]'s leg. [REDACTED] sustained non-fatal 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 [REDACTED]'s accounting of events that evening. The analysis is not whether [REDACTED] 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 [REDACTED]'s 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. [REDACTED] is a certified private security officer and therefore authorized to detain and apprehend suspects under Section 563.046 (as modified by *Garner*.) The commission providing Mr. [REDACTED] 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 [REDACTED] 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
Prosecutor for Jackson County

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