



JEAN PETERS BAKER

JACKSON COUNTY PROSECUTING ATTORNEY

June 17, 2017

Chief Brad Halsey
Independence Police Department
223 N Memorial Dr.
Independence, MO 64050

Chief Chris Soule
Sugar Creek Police Department
1001 Heroes Way
Sugar Creek, MO 64054

Re: Officer involved shootings, January 24, 2017

Dear Chief Halsey and Chief Soule:

The Jackson County Prosecuting Attorney Office's use of force committee met on March 3, 2017 regarding this case and concluded that the law does not support criminal charges against either officer. The committee determined no criminal charges are appropriate for Independence Police Officer [REDACTED] or Sugar Creek Police Officer [REDACTED] who fatally shot Dakota Lukehart and injured [REDACTED] in the early morning hours of January 24, 2017.

Summary of the Facts¹

Around 2:00 a.m., Independence Police Officer [REDACTED] attempted to stop a red, four-door car, later determined to be driven by Dakota Lukehart, for an expired tag. Mr. Lukehart failed to stop for this officer and continued to evade police on an extended pursuit until reaching a dead-end street in Sugar Creek, Missouri. Independence Police Officer [REDACTED] entered the pursuit to assist Officer [REDACTED] near Truman Road and River in Independence, Missouri. Both officers continued to pursue the red car to McBride Street where a Sugar Creek police officer also entered the pursuit. Officers believed the pursuit had ended as McBride is a dead-end street and the red car came to a stop. As Officer [REDACTED] began to approach Lukehart's car, Lukehart drove forward, turning the car around in the dead-end, directing his car in the path of other officers who had exited their patrol cars.

¹ The facts that form the basis of this letter come from the Independence Police Department investigation case number 12017-5078, and reports found under Sugar Creek case number 17-0150.



As Officer [REDACTED] joined the pursuit, he witnessed the red car's driver commit multiple traffic violations, including running red lights, traveling at excessive speeds and driving into the path of oncoming traffic nearly striking another vehicle, and tossing an item out of the window of the fleeing car.⁷ Believing the car had stopped and the chase had ended, Officer [REDACTED] approached the red car on foot.⁸ [REDACTED] drew his duty weapon with his gun light on in order to illuminate the red car. He described looking "face to face, eye to eye" with the driver.⁹ He then gave commands for the driver to show his hands. The driver of the red car did not follow commands and turned the steering wheel toward him, turning the vehicle around. As [REDACTED] continued to provide commands to the driver and shouted, "don't do it," the red car accelerated toward him. [REDACTED] described hearing the engine of the red car as if "the hammer was being dropped," demonstrating it was not a slow acceleration.¹⁰ [REDACTED] believed he could not get out of the path of the approaching vehicle given the proximity of other patrol cars and the quick acceleration of the red car toward him, explaining, "I felt I was in danger and had nowhere else to go."¹¹ [REDACTED] then fired his weapon into the driver's side through the windshield. While [REDACTED] knew other officers were at the scene, he did not know who was behind him, only that another patrol vehicle had partially blocked the path on McBride. Once the red vehicle stopped a second time, the occupants of the car followed commands to show their hands and came out of the red car voluntarily.¹² [REDACTED] did not fire his weapon again after the vehicle came to a stop. It was at this time that he realized the driver and passenger had been shot, but is not sure if the shots he fired caused the injuries.

During the car pursuit, Sugar Creek Officer [REDACTED] was listening to radio traffic while on patrol near his city's boundary line at the intersection of Colonial and Union streets.¹³ [REDACTED] decided to assist by, first, attempting to deploy stop-sticks. He was unable to successfully stop the car with the stop-sticks, so he assisted the Independence officers in the on-going pursuit. Like [REDACTED] [REDACTED] described the red car coming to a full stop on McBride, allowing him enough time to exit his patrol car on foot. As [REDACTED] walked toward the red car to assist with the arrest, he had his duty weapon drawn and gave commands to the driver. Next, [REDACTED] describes the red car "rev" the engine and move North in the direction of Officer [REDACTED] and himself.¹⁴ The officer explained his confinement and the oncoming car as not having "the space to move left or right" so felt he must fire his weapon.¹⁵ He described being scared for himself, but more for "the IPD Officer" since he was more directly in the line of the driver's pursuit.¹⁶ He thought he fired into the driver's side of the vehicle and was not sure if his shots hit either driver or passenger. [REDACTED] rendered aid to the occupants of the red car once they were secured in handcuffs until other personnel arrived to relieve him.

⁷ IPD recorded statement of Officer [REDACTED] taken on January 27, 2017.

⁸ Id.

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id. [REDACTED] describes being unaware a passenger was in the red car until it came to a final resting point because his focus was solely on the driver.

¹³ IPD report case number 2017-5078, Supplemental report of Officer [REDACTED] interview. See recorded statement of Officer [REDACTED] taken on January 26, 2017.

¹⁴ Id.

¹⁵ Id.

¹⁶ Id. (it should be noted neither officer knew each other prior to this incident).

The passenger of the red, four-door car was identified as Mr. [REDACTED]. Mr. [REDACTED] provided an accounting to police of his involvement in this case. Most importantly, Mr. [REDACTED] provided details unknowable to the police during the pursuit and at the time of the shooting. What was reported as a red, four-door sedan, was a maroon in color, 1996 Mercury Sable belonging to Mr. [REDACTED].⁴⁴ [REDACTED] advised that Mr. Lukecart was the driver of his vehicle during the pursuit with police and that he was in the passenger seat. He further advised that Mr. Lukecart would not stop for the police because he had warrants for his arrest, a gun in the car and he did not want to go back to jail. [REDACTED] asked to be let out of the car, but Lukecart refused and continued to evade the police. While eluding the police, [REDACTED] noted that Lukecart threw multiple items out of the window, including drug paraphernalia, the gun and some methamphetamine. Prior to throwing the gun out, Lukecart reportedly threw the gun at [REDACTED] and directed him to shoot at pursuing officers.⁴⁵ [REDACTED] refused and threw the gun back at Lukecart. Finally, the car came to a stop at a dead-end street, but Lukecart stated, "Fuck it!" as he appeared to drive directly in the path of a police officer.⁴⁶ [REDACTED] thought the officer had been struck by their vehicle and stated that he expected shots to be fired.⁴⁷ The evidence shows [REDACTED] was the passenger in the red car, the car was licensed to him and he was struck by gunfire and transported to the hospital for treatment.

Several items were recovered from Mr. [REDACTED]'s, including a box of 9mm ammunition inside the glove box, and a backpack containing binoculars, flashlights and black gloves. A large flat screen television was located in the trunk of [REDACTED]'s car along with a rubber mallet and flat head screwdriver on the floor by front passenger seat.

The physical evidence recovered from multiple scenes included a white Styrofoam cup thrown from the driver's side window of the red car during the pursuit. Officer [REDACTED]'s dash cam reveals a large white cup being thrown in the area of 37th Street and River during the chase. The cup appears to break and a gun is observed coming out of the inside of the cup. A gun was recovered from a concerned citizen who picked the gun up from "the middle of the street" at 37th and Delaware, also part of the path of the fleeing red car.⁴⁸ The citizen described the gun was as having a clip in it and being in the "cocked" position. The citizen collected the gun because he was alarmed a young person might find the gun so he picked it up using his sleeve and called police in order to get it into police custody. The citizen explained the weapon was found on January 24, 2017 at 8:32 am while he was on-duty working as a driver and picking up a passenger at a home on 37th Street in Sugar Creek, Missouri.

Applicable Law

The examination of use of force by a law enforcement officer in the State of Missouri must include an analysis of the applicability of the legal defense set forth in Section 563.046, RSMo. Under Missouri law, the use of force by a law enforcement officer in making an arrest or

⁴⁴ See IPD case report number 17-5078, interview of [REDACTED] provided on January 26, 2017.

⁴⁵ See Id.

⁴⁶ Id.

⁴⁷ Id.

⁴⁸ See IPD case report number 17-5078, interview of [REDACTED] provided on January 24, 2017.

in preventing an escape is legal in some circumstances.⁵⁶ Those circumstances first require the officer had a reasonable belief that the person being arrested has committed or is committing a crime.⁵⁷ Second, if an officer determines that force is necessary to effect an arrest, the officer can only use the level of force that is reasonably necessary to effect the arrest or prevent the escape of that individual.⁵⁸

When it comes to the use of deadly force, there are specific rules that apply. In Missouri, an officer can only use force that the officer knows will create a substantial risk of causing death or serious physical injury 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.⁵⁹ Even then, an officer can only use this heightened level of force when he/she reasonably believes that the use of such force is immediately necessary to effect the arrest or prevent the escape.⁶⁰ 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.⁶¹ This standard does not depend upon whether the belief turned out to be true or false. Lastly, it should be noted that under the applicable law, an officer has no legal duty to “retreat or desist” from his efforts because of resistance or threatened resistance by the person being arrested.⁶²

In this specific case, Missouri law authorizes Officers [REDACTED] and [REDACTED] to use deadly force to stop a suspect from fleeing when they *reasonably* believe that the suspect would endanger the lives of others if the driver of the red car is not arrested without delay.⁶³ The U.S. Supreme

⁵⁶ Section 563.046, RSMo, Missouri Approved Instructions (“MAI”) 306.14; *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).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ MAI 306.14 [3]. *See Tennessee*, 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 decision that often occur in these tense, uncertain, and rapidly evolving situations); *Graham v. Connor*, 490 U.S. 386, 395-397 (1989) (holding that in determining the constitutionality of an officer’s use of force and held that an officer is only entitled to use deadly force when a review of the circumstances confronting that officer show that his/her actions were objectively reasonable. Further, 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.)

⁶² MAI 306.14.

⁶³ Section 563.046, RSMo, Missouri Approved Instructions (“MAI”) 306.14; *See Tennessee v. Garner*, 471 U.S.1 (1985) (holding that deadly force may be used to prevent escape where probable

Court caselaw also authorizes the use of deadly force in circumstances like [REDACTED] and [REDACTED] found themselves in. In *Plumhoff v. Rickard*, 134 S. Ct. 2012 (2014), the U.S. Supreme Court held a deceased driver's Fourth Amendment rights were not violated by officers who fired into and at his vehicle 15 times. During the chase that preceded the shooting, the decedent drove at high speeds, swerved through traffic, and struck multiple police cars. *Id.* at 2017-2018. Eerily similar to this facts found in the present case, just before shots were fired by officers, the decedent was blocked in by the officers. *Id.* The front bumper of the decedent's car was flush against a police cruiser. *Id.* At that moment, the decedent accelerated his vehicle, and, in doing so, put an officer who was out of his vehicle in danger of being struck by decedent's car. *Id.* At that time, three shots were fired into the car and when the decedent's vehicle cleared the police cruiser, an additional 12 shots were fired by officers as he attempted to flee. *Id.* The Court noted that because the decedent never abandoned his attempt to flee during the 10 second span when the shots were fired, it was not unreasonable for the officers to conclude that the decedent's flight would continue and, if allowed to do so, the decedent would once again pose a deadly threat for others on the road. *Id.* at 2022. See also *Mullenix v. Luna*, 136 S. Ct. 305 (2015); *Brosseau v. Haugen*, 543 U.S. 194 (2004); *Scott v. Harris*, 550 U.S. 372 (2007).⁶⁴

Analysis and Conclusion

Our Committee has concluded that the State cannot overcome either law enforcement officer's legal defense as set forth in Section 563.046, RSMo in this set of circumstance beyond a reasonable doubt, concluding that neither officer should be criminally charged.

The Committee considered all available facts, however, was guided by two main factors. First, the officers did not know each other prior to the shooting and were not trained together. The officers work for different departments, however, both officers fired their weapons nearly simultaneously and based on the same calculation. The belief articulated by both officers that Mr. Lukecart demonstrated his intent of inflicting serious physical injury when he accelerated the red car directly in their path is reasonable. It should also be noted that both Officer [REDACTED] and [REDACTED] ceased firing into the red car after it came to a stop a second time. As the officers articulated, they believed the threat of the red car had passed and that the occupants of that vehicle no longer posed the same threat level. Another significant factor for the Committee was the statements by the passenger in the car. The intent of the driver, Mr. Lukecart, was articulated not just by his actions, but by his words.

cause exists that shows that the subject sought poses a significant threat of death or serious physical injury to the officer or others).

⁶⁴ While this committee is not required to follow the holdings of the U.S. Supreme Court precedent cited in this paragraph when discussing the application of the legal defense as set forth in Section 563.046, RSMo, the facts of these cases were sought to provide some guidance for this Committee to analyze the reasonableness of Officer [REDACTED] and Officer [REDACTED] decision to use that level of force.

With respect to Officer [REDACTED]'s use of force, he was placed most directly in the path of the red car. [REDACTED] was only afforded the time necessary to make a decision to fire his weapon from the point in time the red car could close the distance to him from approximately 25 feet away. It is significant that [REDACTED] described hearing the motor of the red car accelerate and the statement by the driver that his intent was to drive forward. Though the law does not require that an officer's belief be correct to be legally reasonable, in the present case, there can be no question of the driver's intent. His intent was to get away from officers trying to stop him and he was willing to strike them in order to make his escape.

With respect to Officer [REDACTED]'s use of force, Mr. Lukecart had committed numerous dangerous felonies, including several that endangered the lives of innocent citizens. And Mr. Lukecart showed no signs of stopping his dangerous actions: he led police on a lengthy high-speed chase; he had attempted to avoid police by driving through multiple neighborhoods, he ran through stop signs and stop lights in the process; and he had refused to stop, even when officers gave specific commands.

All officers at the scene believed the chase had ended when Mr. Lukecart stopped his vehicle after taking a turn onto a dead-end street. All officers present at the scene began to approach the stopped car on foot, but Mr. Lukecart told his passenger, "Fuck it" and began driving directly in the path of officers. While any officer's action to shoot into a moving vehicle to disable the driver is a risky maneuver and should be avoided when possible, both shooting officers determined they had no other viable options at that moment. Based on their statements, the physical evidence and corresponding testimony, our committee finds that conduct is lawful.

We are guided in our decision-making that both officer's actions "must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hind-sight." *Graham*, 490 U.S. at 396-97. "The calculus ... must [allow] for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving." *Id.* Such as in the present situation, when a car the officer believed had stopped and was on a narrow roadway on a dead end street rev's its motor and drives directly into your path.

Accordingly, based on the facts and information in this matter, this Committee does not believe that the law authorizes the filing of charges against Officer [REDACTED] or Officer [REDACTED].

Sincerely yours,



Jean Peters Baker
Jackson County Prosecuting Attorney