



JEAN PETERS BAKER
Jackson County Prosecuting Attorney

November 5, 2019

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Mother of Terrance M. Bridges
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The Popham Law Firm
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Chief Richard Smith
Kansas City Police Department
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**Re: Law Enforcement-involved shooting on
May 26, 2019 at 7026 Bellefontaine Avenue¹**

All interested parties:

This office convened its Use of Force Committee on multiple occasions to examine the circumstances surrounding the fatal shooting of a Civilian² by a Kansas City, Missouri Police (“KCPD”) Officer on May 26, 2019 in Jackson County.

Summary of Facts

At the time of his death, the Civilian, a 30-year-old father of two, was living with his girlfriend at 7013 Bellefontaine Avenue. On the evening of May 25, 2019, the couple attended a family gathering before returning home. At some point over the course of the night, the couple began to argue. The argument turned physical and resulted in the girlfriend fleeing from 7013 Bellefontaine and running toward 7019 Bellefontaine.

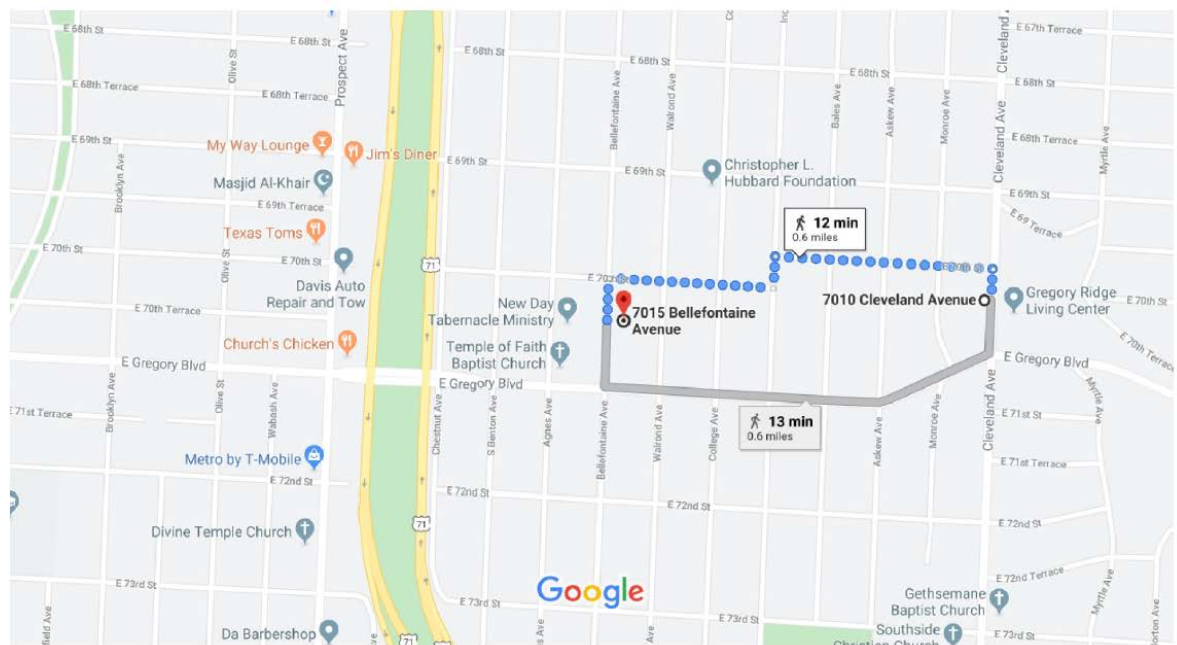
The residents of 7019 Bellefontaine, Witness 1 (a 62-year-old male), Witness 2 (a 61-year-old female), and Witness 3 (an 82-year-old female), observed a portion of the argument. Just after midnight, these three witnesses were saying goodbye to visiting family and leaving their front porch when they saw the girlfriend approaching. She was running shirtless, in her bra, and she asked these witnesses to call police because “he” had a gun. Witness 1 indicated that

¹ The investigative file is identified as O.I.S. CRN: 19-038768.

² The victim of the use of force will hereinafter be referred to as the “Civilian.”

they would call the police but did not allow the girlfriend into his home. At this time, Witness 2 called the police and reported that the girlfriend said the person chasing her, i.e. the Civilian, was armed. Witness 1 then told Witness 2 and Witness 3 to go inside the home. As he did so, Witness 1 observed the girlfriend run alongside his driveway and he observed the Civilian running toward his home. Witness 1 closed the door and a short time later, Witness 1 reported a loud knocking on his door. He approached the door from the inside and, as he did so, the door began to be kicked in and was coming off the hinges. As the door began to open, Witness 1 observed the Civilian with his hands in the front pocket of his hooded sweatshirt. Fearing that the Civilian was armed, Witness 1 yelled to Witness 2 and Witness 3 to get back and he pushed the Civilian out of his home while tackling him onto the front lawn. As this was happening, Witness 2 called 911 a second time. After a physical struggle, Witness 1 believed that the Civilian was giving up, so Witness 1 stopped fighting. As that happened, according to Witness 1, the Civilian began to strike Witness 1 multiple times. Witness 1 ended up on the ground and reported that as the Civilian stopped striking him, the Civilian said, “[s]tay out of my business.” At that time, the Civilian left the front of 7019 Bellefontaine and Witness 1 returned inside of 7019 Bellefontaine.

It was raining in the early morning hours of May 26, 2019. At that time, the Officer involved in this shooting was working as a single person unit in a marked KCPD vehicle. At 12:24 a.m., he responded to a disturbance with an armed party at 7010 Cleveland. The Officer was joined by Police Officer 1 and Police Officer 2 in a separate KCPD vehicle. Upon arriving at that call, these officers were unable to identify or locate the person suspected of causing that disturbance. A short time later, at 12:35 a.m., a radio call was received stating that there was a disturbance with a weapon at 7015 Bellefontaine Avenue. This 911 call was made by Witness 2.³ Because of the nature of these two calls, the lack of an identified suspect at 7010 Cleveland, and the short distance between 7010 Cleveland and 7015 Bellefontaine,⁴ the three officers believed that the calls were related. Below is Google map showing the brief distance between the two addresses.



³ It appears that Witness 2 mistakenly reported 7015 Bellefontaine rather the girlfriend’s home which was 7013 Bellefontaine. 7015 Bellefontaine is the only house in between 7019 and 7013 Bellefontaine.

⁴ The distance between these two addresses is less than 1 mile.

As such, they left 7010 Cleveland to respond to 7015 Bellefontaine.⁵ While en route, the three officers received an update that there was an additional incident at 7019 Bellefontaine. The caller for this incident told dispatch that she was the same caller who had just called 911 concerning 7015 Bellefontaine.⁶ The nature of this call indicated to the officers approaching Bellefontaine that there had been a potential home invasion, kidnapping, and an assault involving a man and that the caller had information that the man was armed. This call was also made by Witness 2.

Upon arriving on Bellefontaine around 12:38 a.m., the Officer parked his patrol vehicle behind a truck on the west side of the street. The dash camera shows that the street was dark and wet from the light rain. The microphone also shows that the street was quiet but for the voices of the involved individuals. Police Officer 1 and Police Officer 2 parked their vehicles behind the Officer. Thereafter, the three officers exited their vehicles to conduct an area canvas for the subject of the calls. Shortly after doing so, the three officers encountered the girlfriend. The Officer reported that, upon seeing her, the girlfriend dropped a folding knife, which he picked up and put into his pocket. The conversation between the officers and the girlfriend is recorded on the Officer's microphone. In this conversation, the girlfriend appears to be distraught and under stress. Her voice is raised and she appears to be out of breath and/or crying. The girlfriend told the three officers that she was beaten and robbed of her car and money. She gave the officers a vague description of the vehicle and told the officers that the Civilian was headed to a bus station at 11th and Troost Avenue. When asked if she thought the Civilian would return to Bellefontaine, the girlfriend indicated that she believed he was headed to the bus station. Upon hearing this information, Police Officer 1 and Police Officer 2 left Bellefontaine for the bus station. The Officer stayed behind with the girlfriend and radio in the report of an armed carjacking.

In his formal statement, the Officer indicated that he went into 7013 Bellefontaine and shut off the lights in the front porch of the house as he talked to the girlfriend. According to him, he did so to prevent anyone on the street from seeing inside the home while allowing him to view people on the street. The Officer's microphone and dash camera footage captured portions of what happened next. At approximately, 12:41 a.m., the Officer is heard asking the girlfriend if she wanted him to call an ambulance. She replied that she wanted her car and wanted him, presumably the Civilian, to go to jail. To which the Officer replied, "we'll get him. [d]on't worry." As this exchange happened, the Officer's vehicle dash camera, parked on the opposite side of the street from the girlfriend's home, captured the Civilian walking in the middle of the street past the front of 7013 Bellefontaine and the Officer's KCPD vehicle. Shortly thereafter, the Officer is heard asking the girlfriend, "Is this him right here?" The girlfriend then yelled in confirmation to the Officer that the man in the street was in fact the Civilian and she yelled to the Officer, "[t]hat's him right there. Go get him." The Officer responded to the girlfriend by asking, "that's him that pulled the g..."⁷ To which the girlfriend replied by yelling, "yeah."

The Officer left the porch at 12:42:32 a.m. and ran toward the Civilian. As he left the front porch area of 7013 Bellefontaine, he contacted Police Officer 1 and said that that they should come back since the Civilian was "outside." Additionally, the Officer illuminated the flash light feature on his hand gun and began to radio that the Civilian was running west bound

⁵ It would later be determined that 7010 Cleveland incident was not associated with any of the incidents on Bellefontaine.

⁶ This is the second 911 call made

⁷ In the recording, the Officer did not complete saying what appeared to be the beginning of the word "gun." Rather, as he began saying the word, the girlfriend responded.

in between the houses. While in pursuit, the Officer made his way up a slight slope in between 7026 Bellefontaine and 7024 Bellefontaine which is approximately 160 feet from 7013 Bellefontaine.

Below is a Google map showing houses identified in this incident:



The area between 7026 and 7024 is of particular significance in this case. A tall hedge, approximately 20 feet in length and approximately 5 feet in height, separates the front lawns of these two properties. The western edge of the hedge leads to the backyard space between the two properties. The below photograph shows the front of 7026 Bellefontaine, including the minor slope that the Officer climbed and the hedge that separates the front yards of 7026 Bellefontaine and 7024 Bellefontaine.

In his formal statement, the Officer said that, upon arriving to the space between 7024 Bellefontaine and 7026 Bellefontaine, he slowed his pace to observe what was in front of him. He then stated:

[a]s I'm going and I have to radio where the perimeter's gonna be. So as I get to the edge of the hedge I slow my pace a little bit and I'm able to see in front of me. And both, both backyards are gated off so I knew there was no way he could of gone straight even though he had a...he had about a five second head start. So I knew he took a right around the hedge which then at that point I'm thinking he's gonna run back to the victim's house with a gun and I just took her only way of defending herself which was her knife that she came out of the house with and its in my pocket. So, at that time, in my mind I know he's gonna be running back across the street towards her. So, as I'm getting closer to the edge of the hedge I'm slowing down so I can make the turn and as I turned the corner, I'm using the light on my gun to clear around the corner and the suspect that she pointed out was standing at the edge of the hedge waiting for me with his hands in his front hoodie pocket and he takes a few steps towards me. As I'm backing up, we're about two feet

from each other and he pulls his hands out of his hoodie pocket and towards me and I was...I was scared. I thought he had a gun. The way he brought his hands up out of his hoodie pocket it was like he was presenting a gun up towards me so I shot him.

The single shot fired by the Officer was recorded on his microphone and dash camera at 12:42:49 a.m. or 16-17 seconds after the Officer left 7013 Bellefontaine. From the time he left 7013 Bellefontaine to the time of the shooting, there is no conversation between the Officer and the Civilian and there are no commands given by the Officer.

Based on the Officer's statement, the shooting occurred at the most western part of the hedge, identified by the arrow inserted to the below picture.⁸



Location of the shooting.

Location of recovered shell.

There is no video depicting the moment the shot was fired. According to the file, Witness 1, Witness 2, Witness 3 and the girlfriend all reported that they did not visually witness the shooting. Witness 4 was inside the front room of 7026 Bellefontaine at the time of the shooting, but he did not visually witness the shooting. Thus, the only witnesses to this shooting were the Officer and the Civilian. Moreover, the dash camera, which was recording was parked some distance away. Thus, there is no video of the Officer's and Civilian's actions in the seconds leading up to the shooting or at the time of the shooting.

Nonetheless, in the moments immediately following the sound of the single gunshot, the Officer's microphone recorded the following exchange between the Officer and the Civilian:

The Officer: Show me your hands.
The Civilian: I ain't got nothing.
The Officer: Get on the ground.
The Civilian: You shot me.
The Officer: Why'd you attack me, dude?
The Civilian: I didn't attack you.

⁸ The small cone in this picture indicates the location of the recovered shell casing. The Civilian's personal property and, presumably, his blood were located on an area of grass between the house and grass in this picture. Also, the front lights to 7026 Bellefontaine are on in this picture taken after the shooting. Those lights were not on at the time of the shooting.

During his formal interview, the Officer said that he was given an opportunity to review his dash camera footage which included the above exchange. He confirmed during that interview that he did not give the Civilian any commands during the brief foot chase and stated that he did not give commands because of the distance and because he was giving out instructions on a potential perimeter. Further, when he was asked to explain what he meant by “attack,” the Officer noted, “I said, ‘why did you attack me?’ Out of...I mean, I don’t know, I wasn’t looking for an answer, I guess. It was just instinct.”

In the moments after the shooting, the girlfriend, Police Officer 1, Police Officer 2 and medical personnel arrived at the scene. The Civilian was treated for a single gunshot wound to the front chest by police at the scene and then by medical personnel. The Medical Examiner ruled the Civilian’s death a homicide. The bullet entered the Civilian’s chest just above his left nipple. The bullet traveled left to right and downward through the Civilian’s body where it came to rest at the base of his spine. There was no evidence to indicate the distance from which the Civilian was shot. Lastly, despite the resuscitative efforts, the Civilian ultimately passed away at Research Hospital later that morning.

At the time he was shot, the Civilian did not have a weapon. Likewise, no gun was recovered in the area of 7026 Bellefontaine, 7024 Bellefontaine, 7019 Bellefontaine, or 7013 Bellefontaine.

Applicable Law

Any examination of use of force by a law enforcement officer in the State of Missouri must analyze the applicability of the legal defense set forth in Section 563.046, RSMo. Under Missouri law, the use of force, even deadly force, by a law enforcement officer in making an arrest or in preventing an escape is legal in some circumstances.⁹ First, the officer must have a reasonable belief that the person being arrested has committed or is committing a crime.¹⁰ Second, if an officer determines that force is necessary to effect an arrest, the officer can only use a level of force that is reasonably necessary to effect the arrest or prevent the escape.¹¹ Moreover, the law does not require that an officer retreat or desist from his/her efforts because of resistance or threatened resistance by the person being arrested.

When it comes to the use of deadly force, there are specific rules that apply. In Missouri, a law enforcement officer can use force that the officer knows will create a substantial risk of causing death or serious physical injury only 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.¹² Even then, an officer can use this heightened level of force only when he reasonably believes that the use of such force is immediately necessary to effect the arrest or prevent the escape.¹³

⁹ Section 563.046, RSMo, Missouri Approved Instructions (“MAI”) 406.14; 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).

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

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.¹⁴

This standard is based upon the holding in Graham v. Connor. In Graham, the Court articulated specifics that must be considered in determining the constitutionality of an officer’s use of force and held that an officer is entitled to use deadly force when a review of the circumstances confronting that officer show that his actions were objectively reasonable.¹⁵ The Court held that a proper analysis of the reasonableness of the force used must examine the totality of the circumstances, including the paying of careful attention to facts and circumstances involved from the perspective of officer on the scene not through the lens of 20/20 hindsight.¹⁶ The Court instructed that this analysis must allow for the split-second decisions that often occur in these tense, uncertain, and rapidly evolving situations. The Court held that 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.¹⁷

In multiple cases since then, the Court has made clear that whether the use of force – including the use of deadly force – is excessive is a fact-specific question that requires considering whether the use of force was unreasonable in light of the events as viewed from the perspective of the officer.¹⁸

This standard does not depend upon whether the belief turned out to be true or false.¹⁹ And Missouri law goes further: an officer has no legal duty to “retreat or desist” from his efforts because of resistance or threatened resistance by the person being arrested.²⁰

As such, in this matter, the Officer was not entitled to shoot at the Civilian *unless* he reasonably believed *either* that (1) the Civilian may have inflicted serious physical injury unless arrested without delay; *or* (2) the Civilian was attempting to escape by use of a deadly weapon. Even then, the officer was authorized to shoot at the Civilian *only if* he reasonably believed that shooting him was immediately necessary to effect the arrest or prevent the escape.²¹

Finally, we must be guided by the appropriate charging standard which mandates that “[a] prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to

¹⁴ MAI 406.14. See Garner, 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);

¹⁵ 490 U.S. 386, 395 (1989).

¹⁶ Id. at 397.

¹⁷ Id. at 396.

¹⁸ See, e.g., Mulenix v. Luna, 136 S. Ct. 305 (2015); Plumhoff v. Rickard, 134 S. Ct. 2012 (2014); Scott v. Harris, 550 U.S. 372 (2007).

¹⁹ MAI 406.14

²⁰ MAI 406.14.

²¹ Id.

support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.”^{22 23}

Analysis and Conclusion

The Use of Force Committee determined that there are insufficient established facts in this case to support a charge. The investigative file shows that within five minutes of arriving on Bellefontaine concerning a party believed to be armed, the Officer (i) met a person who said the Civilian was armed, i.e. the girlfriend, (ii) observed the Civilian walk past his own home without stopping and past his police vehicle, (iii) began a foot pursuit of the Civilian, and (iv) suddenly encountered the Civilian and fired a shot at the Civilian. Likewise, we now know that the Civilian was not armed at the time he was shot. Finally we know what part of the Civilian’s body the bullet struck. That is the extent of the established facts in this case.

Because there are no commands by the Officer and no video indicating that the Civilian knew where the Officer was and/or that the Officer was pursuing him, there is a question as to whether the Civilian was aware of the Officer’s actions or efforts or whether the Civilian had any idea where the Officer was immediately prior to coming into contact with him. This raises questions about whether the Officer was reasonable in viewing the Civilian’s actions as resisting and, more significantly, threatening. Likewise, given the recorded statements from the Officer and the Civilian in the moments after the shooting, there is also a question as to what, if anything, the Civilian was doing at the time he was shot.²⁴ This question was further heightened by the Officer’s formal statement. In one instance, that statement described the Civilian as coming toward him while taking his hands out of his hooded sweat shirt, while in another instance the Officer stated that when he used the word “attack” out of “instinct” when talking to the Civilian after the shooting.²⁵

The Committee, which is made up of veterans lawyers with decades of litigation experience in violent crimes prosecutions, made multiple attempts to seek out information and evidence to resolve these disputes. Within hours of the shooting, I along with another Prosecutor arrived at the scene within hours of the shooting. I, along with another member of the Committee, observed the Officer’s formal statement. After that, members of this Committee made multiple visits to the scene and had contact with witnesses in an attempt to determine the

²² ABA STANDARDS FOR PROSECUTION FUNCTION 3-4.3(a) (2015); See MO. SUP. CT. R. 4-3.8(a).

²³ In addition to the instruction on use of force by a law enforcement officer, at trial, the Officer would also be entitled to the self-defense instruction applicable to civilians. Similar to the use of force instruction, that instruction allows a person to legally use deadly force to defend themselves from what they reasonably believe to be the use or imminent use of force against them that would cause serious physical injury or death or to stop the commission of a forcible felony. Under this instruction, a person is not required to retreat before restoring to using force to defend themselves. Finally, the term reasonable belief is specifically defined to match the definition found in the use of force instruction. See MAI 406.06.

²⁴ If this case were charged and had proceeded to trial, it is the belief of the Committee that the statement by the Civilian would be admissible under one or more exceptions to hearsay. MAI 410.22 (Dying Declarations); State v. Taylor, 298 S.W.3d 482, 493 (Mo. banc 2009) (discussing present sense impression); State v. Kemp, 212 S.W.3d 135, 145 (Mo. banc 2007) (discussing excited utterance);

²⁵ If this case were charged and had proceeded to trial, this statement is potentially admissible under the theory of consciousness of guilt. State v. Eisele, 414 S.W.3d 507, 514 (Mo. App. E.D. 2013).

terrain, lighting, distance between residences, critical landmarks, and lines of sight for the people involved in this incident. Members of the Committee examined the findings of the medical examiner, including bullet trajectory, in an effort to determine whether there was information which could identify the position of the Civilian's body at the time he was shot. The Committee also requested that investigators conduct a demonstration at a similar time of night and using a similar weapon and flash light scope in an attempt to examine the field of vision available to the Officer at the time of the shooting. The Committee made efforts to enhance and/or enlarge the segments of the dash camera video to determine if any more information could be revealed. Those efforts yielded no results. In addition, this office requested that investigators re-canvass the area for any personal video surveillance from residents that may have captured the shooting or the moments prior to the shooting. Unfortunately, this effort also yielded no results.

As Prosecutors we enjoy a unique and dynamic role in the criminal justice system. It is our responsibility to fairly seek justice for both the victim and the accused. As members of this community, we are sensitive to and instructed by the issues of race, implicit bias and imperfect balances of power. However, we cannot be guided by feelings. Rather, our sworn duty requires us to be faithfully bound to the evidence and law. The Committee met over multiple sessions reviewing this matter and the law.

As noted, the applicable legal standard requires us to determine how the facts reasonably appeared to the Officer at the time of the shooting.²⁶ Moreover, we understand that the law does not require that a belief be found to be true for it to be reasonable.²⁷ Nonetheless, as in all criminal reviews this office takes part in, this Committee does not simply accept the statement of involved parties, i.e. suspects, victims, or witnesses. Rather, statements must be placed against other information, i.e. evidence, about an event to determine whether they are credible and thus believable. Here, despite its efforts, the Committee's review could not entirely resolve the critical factual disputes that would allow us to form the factual core of the legal analysis for a charging decision.

In light of this, the Committee concluded that the decision to charge the Officer rested on a determination of the credibility of statements and accounts of the shooting made by the Officer and the Civilian and the weight to be attributed to those statements and accounts in light of all the evidence. To file a criminal complaint based solely on the Civilian's final words would require the Committee to ignore or discount the information provided to the Officer that the Civilian was believed to be armed. Further, the Officer formally stated that the Civilian waited and stepped toward him while raising his hands from the pocket of his hooded sweatshirt. This Office's ethical obligation is to file charges only where there is evidence to support a conviction beyond a reasonable doubt. We now know that the Civilian was not armed at the time of the shooting, but the officer's mistaken belief that he was armed was reasonable given the information provided to him by witnesses.

After hearing the evidence over multiple sessions, including subpoenaed testimony from the Officer and testimony from other witnesses, the State presented the Grand Jurors with proposed charges for Voluntary Manslaughter and Armed Criminal Action. The State also informed the Grand Jurors that the State stood ready to provide different or lesser charges should those be requested by the Grand Jurors during their deliberations. In the end, the Grand Jurors

²⁶ MAI 406.14. It should be noted that this is the same standard that applies in traditional, i.e. civilian and civilian, self-defense. As noted above, both of these defenses would likely apply to this case. MAI 406.06.

²⁷ Id.

determined that charges should not be filed against the Officer. The Grand Jurors do not bind this office, but, because, under the facts of this case, the decision to charge depends on a credibility determination that is best made by jurors, we will honor their decision.

Because no charges are being filed, this office is legally prohibited from discussing the substance of the testimony by the parties before the Grand Jury. This Committee did not come to the decision to forward this case to the Grand Jury lightly. The Committee understood that confidentiality was a specific limitation to using the Grand Jury, but we also believed it was appropriate for a Grand Jury to weigh the credibility of the officer's statement, as ultimately a petit jury would, if charged. The Committee believed that the Grand Jury should also determine whether enough credible facts support the filing of a charge against the Officer.²⁸ We thank the Grand Jurors for their time and attention to this matter over the course of their sessions.

This incident is a tragedy that we wish had simply not occurred. We offer our deepest condolences and sympathy to the Civilian's family and loved ones.

Sincerely,

A handwritten signature in black ink that reads "Jean Peters Baker". The signature is written in a cursive, flowing style.

Jean Peters Baker
Prosecutor for Jackson County

²⁸ Jackson County Prosecutor's Office Use of Force Review Protocol, page 10.