



JEAN PETERS BAKER
Jackson County Prosecuting Attorney

February 26, 2020

Brian Prince (deceased)
David Smith, Esq.
4130 Madison Avenue, Suite 100
Kansas City, MO 64111

Chief Richard Smith
Kansas City, Missouri Police Department
1125 Locust
Kansas City, MO 64111

**Re: Law Enforcement Use of Force on
September 2, 2017, 1701 W. 133rd Street, Kansas City, Missouri**¹

To all interested parties:

This office convened its Use of Force Committee to examine the facts and circumstances surrounding death of the Civilian² at the captioned time and place. Based on the investigative file, the law, and our analysis, our Committee has concluded that the evidence does not support the filing of criminal charges against the involved Kansas City, Missouri Police Officer.

Summary of Facts

During the afternoon of Saturday, September 2, 2017, Police Officer 1 and Police Officer 2 were dispatched to the Walmart store located at 1701 W. 133rd Street, Kansas City Missouri. Walmart loss prevention had requested that the Officers respond in regard to an in progress stealing. Specifically, Walmart loss prevention had observed the Civilian remove security devices from various items while walking through the store's aisles.

Upon their arrival, Officer 1 and Officer 2 made contact with the store's loss prevention employees. They then observed the video footage showing the Civilian's actions and his location

¹ The investigative file is identified as CRN: 17-76749.

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

in the store. The Officers then attempted to make contact with the Civilian. At the time, these Officers were dressed in full police uniforms with bullet proof vests. The encounter is captured in a surveillance video, but there is no sound. The entire encounter lasted less than 20 seconds of running video time. The video shows Officer 1 and Officer 2 approaching the Civilian. In a voluntary statement, Officer 1 noted that, as he got close to the Civilian, he said “hey Bud” in order to get the Civilian’s attention. Officer 2 reported that she did not recall the exact words that Officer 1 said, but she did recall Officer 1 attempting to get the Civilian’s attention. The video shows that as the Officers got within feet of the Civilian, the Civilian looked at them and then started to walk backward. After he did so, the Civilian looked over his shoulder and ran toward the store’s front door. A brief foot chase ensued. The video then shows that Officer 1 and Officer 2 took different paths to attempt to cut off the Civilian’s exit from the store.

Officer 2 was the first to come into contact with the Civilian. The main portion of the encounter occurred just past the front register area and closer to the beginning of vestibule area / entranceway of the store. The flooring in this area is tile. The video shows that Officer 2 attempted to stop the Civilian by physically reaching for and/or grabbing the Civilian’s arms. However, Officer 2’s attempts were not successful. The Civilian pulled his arms away from Officer 2 while, at the same time, he attempted to push Officer 2’s hands away from him in an apparent attempt to continue fleeing. This momentary physical contact between Officer 2 and the Civilian only slowed down the Civilian. As Officer 2 and the Civilian were still struggling with each other, Officer 1 ran at full speed toward the Civilian and Officer 2. Officer 1 then tackled the Civilian. Officer 1 did this by wrapping his hands around the Civilian hands and pulling him away from Officer 2. In his statement, Officer noted that he intended to have his body land on the ground with the Civilian on top of him and then roll the Civilian on to the ground to control the Civilian and stop the fleeing and struggle. The video shows that Officer 1 attempted to do just that. However, as Officer 1 landed on the ground and then swung the Civilian to the ground, the Civilian’s arms were being held by Officer 1. This resulted in the Civilian’s inability to use his arms to protect his head from hitting the floor.. As such, when the Civilian’s head struck the tile flooring, a pool of blood immediately appeared.

Upon standing up and observing the blood, Officer 1 directed Officer 2 to call an ambulance. Emergency medical services arrived moments later. Nonetheless, the Civilian fell into a coma and ultimately passed away approximately one month later on October 1, 2017.

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 by a law enforcement officer in making an arrest or in preventing an escape is legal in some circumstances.³ First, the officer must have a reasonable belief that the

³ 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).

person being arrested has committed or is committing a crime.⁴ 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.⁵

When it comes to the use of deadly force, there are specific rules that apply. In Missouri, a law enforcement 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.⁶ Furthermore, even then, an officer can only use deadly force when he or she reasonably believes that the use of such force is immediately necessary to effect the arrest or prevent the escape.⁷ 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.⁸ 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.⁹

Analysis and Conclusion

Our Committee has concluded that the State cannot overcome, beyond a reasonable doubt, Officer 1’s legal defense as set forth in Section 563.046, RSMo.

Our legal obligation requires us to focus on whether the decision to use force was reasonable from the perspective of the officer. Therefore, we are legally required to search for

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ MAI 406.14 [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.)

⁹ MAI 406.14.

evidence which shows that the belief formulated by the officer at the time of the event was unreasonable. The undisputed evidence concerning this analysis is:

- (i) Officer 1 attempted to contact the Civilian;
- (ii) the Civilian then fled from the Officers;
- (iii) Officer 2 attempted to grab the Civilian and seize him;
- (iv) the Civilian was actively struggling with Officer 2 when Officer 1 approached;
- (v) Officer 1 attempted to break up the struggle between Officer 2 and the Civilian and seized the Civilian by tackling him to ground; and
- (vi) Officer 1 attempted to tackle the Civilian with his body landing on the ground and the Civilian on top of him and then swinging the Civilian to the ground to gain control and/or complete the arrest.

The law allows police officer to use only the force necessary to make an arrest.¹⁰ Furthermore, the law does not require a police officer abandon his or her efforts from arresting a suspect because the suspect is resisting.¹¹ Here, the video shows that some physical force was necessary to complete the seizure of the Civilian. Officer 1 intended to tackle the Civilian to take control of him. He intended to do so by falling on the floor first and then swinging the Civilian to the ground. The video shows that the tackle technique used by Officer 1 was consistent with his intention.

Thus, while this attempt, under these circumstances, was reasonable, the outcome was tragic. There is insufficient evidence to support a conclusion that Officer 1 was using more force than was necessary or that possessed a criminal mental state, i.e. knowingly, recklessly, or with criminal negligence, when he used force. That said, this committee analyzed the size disparity between Officer 1, approximately 240 lbs, and the Civilian, approximately 89 lbs, to determine whether a different method could have safely brought the arrest to a conclusion. However, the law precludes this type of post event analysis,¹² and, here, the available information shows that Officer 1 observed the Civilian actively resisting and struggling with Officer 2, and he attempted in that moment to act to take control of the Civilian. Moreover, the video surveillance does not support a finding that Officer 1 attempted to have Civilian's head or body make contact with the floor first or from a standing or upright position under the weight of Officer 1's body. As discussed, Officer 1's intention appears quite different and separate from the knowing use of force that creates a substantial risk of death or serious physical injury. Here, the video surveillance shows that Officer 1 attempted to avoid the risk of injury to the Civilian. Lastly, the location of the encounter was not planned and there is no evidence to suggest that he sought to have the Civilian's head and body make contact with tile flooring. Rather, the location seems to have been the product of happenstance resulting from the unplanned encounter between the Civilian and Officer 2.

¹⁰ MAI 406.14.

¹¹ *Id.*

¹² *Tennessee*, 471 U.S. 11-12

Accordingly, based on the facts and information before this Committee, there is insufficient evidence that shows that Officer 1's conduct was unreasonable in attempting to seize the Civilian and therefore this Committee believes that he is entitled to the legal defense in Section 563.046, RSMo. That said, while we do not believe that criminal charges are appropriate in this circumstance, we would be remiss in not stating that this case represents a series of unfortunate events that resulted in a death. To that end, this office extends our deepest sympathies to the Civilian's family, loved ones, and friends for their loss.

Sincerely,

A handwritten signature in cursive script that reads "Jean Peters Baker".

Jean Peters Baker

Prosecutor for Jackson County