



# JEAN PETERS BAKER

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## JACKSON COUNTY PROSECUTING ATTORNEY

February 26, 2016

Family of Javon Hawkins

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██████████

██████████

1125 Locust  
Kansas City, MO 64106

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

**Re: Officer-involved use of force on July 9, 2015 at 70<sup>th</sup> Terrace and Paseo, CRN 15-47431 and 15-47503**

To all interested parties:

On January 26, 2016, the Jackson County Prosecutor's Office Use of Force committee reviewed the fatal shooting of Javon Hawkins by Officer ██████████ of the Kansas City, Missouri Police Department ("KCPD") on July 9, 2015. The KCPD file is found under case numbers 15-47431 and 15-47503. Based on the investigative file, information obtained from the family of the victim, and our analysis, our committee concluded that the evidence does not support the filing of criminal charges against Officer ██████████.

### Summary of Facts<sup>1</sup>

On July 9, 2015, at 4:40 PM a 911 call for service was received alerting law enforcement to a suspicious individual armed with a weapon heading toward a park and cemetery near Highland and Gregory. The 911 caller reported that a male, who was previously sitting in the street, was now running down the street with a sword. The caller went on to say that the male "just chopped at a car" with the sword and "he is swinging [the sword] at people."<sup>2</sup>

Police Officer ██████████ was the first responding officer to the scene. It was a sunny afternoon with multiple citizens outdoors. Officer ██████████ was wearing her department uniform and she was driving a marked patrol vehicle. Upon her arrival, she was directed by several civilian bystanders to the individual with a sword and provided additional details as she approached the park off Gregory Blvd.

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<sup>1</sup> The summary of the facts is taken from all witness statements, including the two officers on the scene, ██████████'s statement, multiple lay witnesses, physical evidence, photographs and dash cam video.

<sup>2</sup> The 911 call for service is found in CRN15-47503.



The first citizen encountered by [REDACTED] not only directed her to her to the park, but also to another individual believed to have more information. [REDACTED] next contacted a man who identified himself as a pastor who stated that the suspicious individual was walking down Highland, swinging a sword and yelling at people. He further indicated this individual had gone to the park which is next to the cemetery. Two other citizens directed [REDACTED] to the park and pointed to a male in a black shirt and indicated that this was the same person who was threatening people. Officer [REDACTED] exited her vehicle and drew her taser. A citizen saw [REDACTED] exit her vehicle with her Taser and advised [REDACTED] that the taser wouldn't be enough.<sup>3</sup> [REDACTED] continued to approach with her taser drawn, but kept a distance while awaiting backup to arrive. [REDACTED] statement to investigators was that the citizen's comments regarding her taser supported a perception that the individual may be dangerous.<sup>4</sup> With approximately 30 feet between them, [REDACTED] saw the male on his knees inside the park between a fire pit and the ball diamond. [REDACTED] believed that he was praying because his hands were in a "prayer position."<sup>5</sup> [REDACTED] kept a more distant position while awaiting backup, who was approaching along the tree line to the cemetery, before she engaged the male with a sword.

In the seconds that elapsed while [REDACTED] waited, the male stood up, picking up his sword in his right hand and moved directly toward her.<sup>6</sup> [REDACTED] reports his movement toward her was "purposeful."<sup>7</sup> Because of the manner of his approach, she gave immediate commands including "stop," "drop the weapon," and "drop the sword." These commands were repeated by [REDACTED], but the male continued to approach. During the entire encounter with law enforcement, this male did not verbally respond to any of the officers. To gain a safer distance between them, [REDACTED] moved backward. As she retreated, [REDACTED] drew her service weapon. She had her taser in her left hand and her service weapon in her right hand while giving commands to drop his weapon. All witnesses to this encounter recount the male failing to respond to [REDACTED]'s continued commands and that he advanced toward her.

As the subject continued to advance in her direction, [REDACTED] continued to back away and she reported dropping her taser while continuing to hold on to her service weapon.<sup>8</sup> Specifically, [REDACTED] recalls retreating backward and to the right. She details her view of Hawkins left thumb release the sword from the sheath and shifting the sword from his right hand to his left. As he began to remove the sword from the sheath, [REDACTED] fired three shots. The distance between [REDACTED] and the male was approximately 5-7 feet when those shots were fired. The male was struck one time in the right shoulder. At this time, he turned and walked away from the officer still holding the sword. By this time, two additional officers, Officers [REDACTED] and [REDACTED], approached with their weapons drawn. The male briefly retreated behind a tree, but quickly reemerged. When he emerged, he was armed with the sword in his right hand, he had removed his pants and he was carrying them in his left hand, and he was advancing

<sup>3</sup> See page 2 of P.O. [REDACTED] statement to law enforcement

<sup>4</sup> *Id* at 2.

<sup>5</sup> *Id* at 2.

<sup>6</sup> Multiple witness statements, including law enforcement and lay witnesses, support this accounting.

<sup>7</sup> See page 2 of P.O. [REDACTED] statement to law enforcement

<sup>8</sup> P.O. [REDACTED] department issued taser is recovered from the grassy area of the park.

toward Officer [REDACTED]. [REDACTED] reports his advancement was “with the same determination” as before.<sup>9</sup> All three officers gave commands to drop the weapon and to stop. [REDACTED] reports backing up again as the subject advanced in order to maintain a safer distance, but when the male subject began to close the distance, she fired her weapon again. The male subject was struck in his abdomen by [REDACTED]’s fourth and final shot and died from his wounds several hours later. No other officers fired their weapons.<sup>10</sup>

The investigation determined the shooting victim to be Javon M. Hawkins, a twenty-one year old male with little interaction with law enforcement aside from minor traffic related violations. A search warrant of his residence included small amounts of a green leafy substance, swords, wooden swords deemed to be practice swords, a dagger, and a book titled, *The Art of Japanese Swordsmanship*.<sup>11</sup> Interviews with Mr. Hawkins family members revealed that Mr. Hawkins lived in the Kansas City area over much of the past year. His mother believed her son had an interest in martial arts and swords after his older brother was stationed in Okinawa, Japan while in the U.S. Navy. The investigation found that Mr. Hawkins was enrolled in Vatterott in November of 2014, to study automotive mechanics. Nonetheless, the investigation also indicated that Mr. Hawkins had officially withdrawn from Vatterott on March 19, 2015 and that he had stopped attending classes approximately a month prior to that date. Vatterott officials described Mr. Hawkins as quiet and identified that he was struggling academically. In February 2015, Hawkins informed school officials that he could no longer attend school due to getting a new job, but also due to other problems he was experiencing. Vatterott had no other information to report and the investigation revealed little other information regarding Hawkins mental state during the time of this incident.<sup>12</sup>

There were multiple witnesses to Mr. Hawkins encounter with law enforcement. [REDACTED] recalled witnessing a black male carrying a sword and yelling in the street. He described the individual as walking up to passing vehicles, jumping on the hood of a car and walking over the entire length of that car before jumping off. After jumping off the car, the male stuck the sword in the ground and repeatedly yelled, “Thank you!” [REDACTED] directed his wife to call 911. [REDACTED] did not witness any further events.

Area resident, [REDACTED], reported to police that she saw a black male in dark clothing swinging a sword in the street. Ms. [REDACTED] described the scene prior to law enforcement’s arrival. She described the young man [determined to be Mr. Hawkins] repeatedly

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<sup>9</sup> See page 2 of P.O. [REDACTED] statement to law enforcement.

<sup>10</sup> An ammunition count and the physical evidence recovered from the scene supports this finding.

<sup>11</sup> Evidence recovered or photographed at the scene is documented in reports from crime lab personnel CST Lori Nelson.

<sup>12</sup> Our investigation revealed little regarding Mr. Hawkins’s mental state before or during the shooting. While one may assume that Mr. Hawkins was suffering from a form of mental or emotional impairment, there is no evidence to suggest that he was or wasn’t. Toxicology reports revealed no findings of any substance that would impair him. Further, during this office’s communications with the Hawkins family, Mr. Hawkins’s [REDACTED], denied that his [REDACTED] was suffering from any mental illness or ailment. We are left with no further information at the time of this writing.

sheathing and unsheathing his sword, jumping on a parked car, and swinging the sword at cars. She then witnessed an encounter between Hawkins and another male citizen. In response to that verbal altercation, she directed the gentleman to keep a safe distance from Hawkins, fearing for his safety. When Ms. [REDACTED] approached, she heard the same male yelling at Hawkins and asking "what the hell was wrong with him." Ms. [REDACTED] called 911 and reported the gentleman was upset that "a crazy guy with a sword" had jumped on his car. She lost sight of Hawkins as he turned east on Gregory. Ms. [REDACTED] later reports directing a female officer driving a patrol wagon [Officer [REDACTED]] to the male who was yelling at [Hawkins]. That man left the scene before police could obtain a formal statement from him. Ms. [REDACTED] had no other information to report.

[REDACTED] described a young male as running down the street with a sword, noting he was not wearing shoes. She yelled at him, "don't do it," as he was running away. Other residents in the area reported only seeing a black male running down the block with something in his hand. One civilian reported that the object was a stick and another reported it as a pipe. One resident, fearful of providing a statement to police, provided a letter to police recounting the incident. This witness specifically stated she did not want to get involved and didn't want her neighbors to know she provided information. While she did not witness the shooting, she heard the gunshots. She heard yelling and then saw a boy with something in his hands by the fire pit.<sup>13</sup>

Other residents provided a more detailed accounting, including [REDACTED]. Ms. [REDACTED] reported being startled by hearing someone screaming as if they were badly injured. Though she was frightened, she walked toward the screaming and saw a light skinned man with a long black object. As the man came toward her, she yelled at him. This male eventually ran toward the park. She then saw him on his knees in the park, holding a sword and screaming, "Rrrrrr." As Officer [REDACTED] approached, Ms. [REDACTED] directed her to the park, and reported hearing the same female officer yelling at him. She watched the man walk in circles while the officer was trying to talk to him. The officer backed up while pointing her gun at him. She stated that the man "still wouldn't surrender." The man then charged the female officer with the sword and she fired her weapon.

Another resident, [REDACTED], provided a statement recounting what she witnessed. She heard a man yelling, "Rrrrrr." Ms. [REDACTED] then saw a man sitting in the street with his knees to his chest, his arms were "flailing" and he was yelling. The man got up, was hopping and swinging the sword and yelling at passing cars stating, "I got a sword, I got a sword." He began to come toward her and her mother, but then took off toward the park while still swinging the sword. When the officers arrived, they directed him to put down the sword, but the man pulled the sword out of its case and started charging the female officer. When the officer fired her weapon, Ms. [REDACTED] began to back out of the park. Other witnesses from around the park, including [REDACTED], [REDACTED], and [REDACTED], provided an accounting of officers giving orders to a young male in the park, but the man failed to follow the instructions.

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<sup>13</sup> A copy of this letter is included in the investigative file.



The physical evidence supports the accounting by the three officers at the scene and the lay witnesses. The machete or sword, as it is often referenced in the investigative file, was photographed and recovered. The blade is approximately 28 inches in length, with a handle of approximately 8 inches in length.



**Picture of machete before it was recovered by Crime Scene Investigators**

Pictures of machete after recovery by Crime Scene Investigators



Picture of machete after recovery by Crime Scene Investigators





Officer [REDACTED] taser was recovered from the park in the grass. Additionally, an approaching police vehicle's dash cam video captures the final shot taken by Officer [REDACTED]. The angle of the dash cam video does not capture the victim, Mr. Hawkins, as he is behind a fire pit that is blocked from the camera's view. The video shows Officer [REDACTED] with her gun drawn, taking steps backing away from Mr. Hawkins, giving commands, and then firing a single shot. The shooting officer is then seen dropping to her knees. The video supports Officer [REDACTED] recounting of events and explanation of dropping to the ground after the fourth and final shot as because of the high level of adrenaline that she had just expended. Medical personnel then arrives and Mr. Hawkins is taken to Research Medical Hospital for treatment for his gunshot wounds. Efforts to save his life were unsuccessful. Mr. Hawkins died that evening.

### **Legal Analysis**

The facts of this case require an analysis of the applicability of the legal defense set forth by Missouri law in Section 563.031, RSMo. This law governs the use of force in defense of other 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 or she reasonably believes is immediately necessary to effect the arrest or to prevent 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].

This analysis is also guided by the *Graham v. Connor*<sup>14</sup> decision providing any review of an officer's use of force to be weighed against the immediate threat the suspect poses to the safety of the officer or others. The *Graham* Court provides that any analysis of deadly force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. The law guides our analysis of the officer's conduct while balancing the intrusion on an individual's rights. There is no dispute that the officer's conduct caused the death of Mr. Hawkins.

### **Conclusion**

In the present case, no dispute exists to certain facts. Mr. Hawkins was carrying a machete, his conduct was perceived as threatening by witnesses, and he failed to respond to commands by officers. Through much of the encounter, however, the machete remained in its case. According to many witnesses, Mr. Hawkins had pulled the machete from the sheath. At one point in the encounter with [REDACTED], Mr. Hawkins began to pull the weapon from its sheath while he advanced toward the officer. The evidence supports Hawkins approached toward [REDACTED] was in a determined manner and he disregarded her repeated commands. Not only did he fail to respond to her commands, he failed to respond verbally in any way during their brief encounter, leaving Officer [REDACTED] to make assessments of his dangerousness from his movements and facial expressions alone.

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<sup>14</sup> 490 U.S. 386 (1989).



Missouri Supreme Court has long established that a knife may qualify as a deadly weapon under Section 556.061.9, RSMo 1978. In *State v. Martin*, 633 S.W.2d 80, 82 (Mo. Banc 1982), the Court held that a knife, seven to eight inches in length with a four to five inch blade was properly deemed a deadly weapon under Missouri law. Mr. Hawkins was armed with a machete that had a blade, at least, 28 inches in length with a handle measuring approximately 8 inches in length. Not only was the assessment by Officer [REDACTED] reasonable that this object posed a danger to herself or others, it was a deadly weapon.

In short, the assessment by Officer [REDACTED] that Mr. Hawkins was a threat to the safety of other citizens, other officers, and herself was reasonable given all circumstances present at the time. Multiple commands were given to Mr. Hawkins, not just by [REDACTED] but by Officers [REDACTED] and [REDACTED]. The officers report is consistent with witnesses at the scene that Mr. Hawkins was told to stop, drop the sword, but those commands were disregarded. [REDACTED]'s statement and the surrounding circumstances supports her belief that she was in danger from Mr. Hawkins's actions. Missouri's self-defense and defense of others provision is applicable in these circumstances. It is important to note that Mr. Hawkins was found in a public park on a sunny summer day. Multiple people were outside. The park where this incident occurred has a baseball diamond and a barbecue pit which are often used by citizens. Officer [REDACTED]'s duty to protect unsuspecting citizens from harm posed by Mr. Hawkins was triggered at the moment she responded to the subject 911 call for service. At the time of that initial call, [REDACTED] could not and did not know the danger she would encounter. [REDACTED] initially fired three shots with one striking Hawkins in the shoulder. For a few brief moments, Hawkins retreats. Tragically, that shot was not sufficient to subdue him. He re-emerged, still determined, still approaching, and still armed with the machete. She then gave additional commands and backed up to show retreat before she fired the fourth and final shot. Consequently, this shot resulted in Mr. Hawkins death. Though the outcome is tragic and leaves many, including Officer [REDACTED], wanting a different outcome, the applicable law when applied to these circumstances requires us to conclude that [REDACTED]'s actions were "legally reasonable" because [REDACTED] response was consistent with what a reasonable person would have done if confronted with similar circumstances.

Officer [REDACTED]'s actions of firing her weapon at Hawkins are protected under Missouri's self-defense law as her belief that the shots fired were necessary to defend against the imminent threat posed by Mr. Hawkins that afternoon. *See* RSMo 563.031 and 563.046. The circumstances faced by the officers showed multiple attempts to resolve the danger without force. [REDACTED] made multiple attempts to show retreat, she did retreat, she provided commands, but each of her commands were ignored, and she repeated the same scenario a second time as Mr. Hawkins reemerged before firing that fatal shot. Many questions remain regarding Hawkins mental state and we are left with an assumption that Hawkins was in need of help, but was without the support or resources to find that assistance. His mental state, however, does not change [REDACTED]'s assessment of the actions she believed were necessary to protect herself and others from an imminent threat.

Sincerely,

*Jean Peters Baker*

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Jean Peters Baker  
Prosecutor for Jackson County

Cc: Virginia Murray, Legal Counsel for KCPD