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**Re: Law Enforcement-involved shooting on November 7,
2024 at [REDACTED] Independence, MO 64055¹**

All interested parties:

The loss of a young mother and her infant are devastating and tragic. As human beings and members of the victims' community, we grieve with the family and their loved ones for the losses they have suffered.

As prosecutors, we swear an oath that binds us to apply the law and analyze the facts without consideration for the sympathies we hold for the individuals involved in or impacted by an individual case. Our actions must never be guided by passion, prejudice, suspicions, or fear.

Many of the facts in this incident have been well publicized and they are not in reasonable dispute. The facts show that there was a lawful and factual basis for Independence Police Department officers to contact and detain the young mother, hereinafter referred to as the Civilian, on the afternoon of November 7, 2024.²

When an officer uses deadly force, the State must determine if that force was reasonable, immediate, and necessary based on the facts as they existed. Importantly, the caselaw that frames the analysis for reviewing the use of deadly force by an officer restricts this Office from determining that an officer's decisions were unreasonable in hindsight and/or that a retrospective review of the officer's actions show that other perhaps actions could have been taken and that those actions could have produced a different result.

The facts here show that the Shooting Officer did not escalate or manufacture a scenario in which his use of deadly force was unavoidable. Rather, the facts show that the Shooting Officer, with little to no time or space to react, responded to the Civilian's sudden and surprising knife attack by firing his weapon four times at her. The facts support that his actions were responsive and defensive in nature, and, therefore, under these circumstances the State cannot disprove the Shooting Officer's anticipated claims of self-defense beyond a reasonable doubt. When the Civilian attacked, she was holding the Infant Civilian. The facts show that because of this, when the Shooting Officer fired at the Civilian, the Infant Civilian was also struck. Accordingly, the shooting of the Infant Civilian must be analyzed separately.

In Missouri, a person who commits a homicide or assault has no criminal intent or liability when they act lawfully in defending themselves or another person. This is also true when a person lawfully acting to defend themselves or another person unintentionally harms a bystander during the defensive act.³ To hold someone criminally responsible in this circumstance, the State must overcome their claims of lawful defense with sufficient evidence to

¹ The investigative file is identified as O.I.S. CRN: 2024-007384. Pursuant to protocols of the Eastern Jackson County Police Incident Investigation Team, the Blue Springs Police Department, an agency not involved in this shooting, conducted the investigation.

² The victims of the use of force will hereinafter be referred to as the "Civilian" and "Infant Civilian" and the shooting IPD Officer will be referred to as the "Shooting Officer."

³ See State v. Zumwalt, 973 S.W. 2d 504, 506 (Mo. App. S.D. 1998).



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prove beyond a reasonable doubt that the person claiming to act defensively harmed a bystander intentionally or with criminal recklessness or criminal negligence as these terms are defined under Missouri law. Here, the unexpectedness and suddenness of the Civilian's attack while holding the Infant Civilian, compels us to conclude that there is insufficient evidence to show that the Shooting Officer fired at the Infant Civilian intentionally.

Under Missouri law, recklessly means "consciously disregarding a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation."⁴ The State would have to prove that mental element beyond a reasonable doubt. There is no doubt that the risk to Infant Civilian was substantial. But the State would also have to prove that the risk, including all the circumstances, was unjustifiable. The State would have to prove further that disregarding the risk to Infant Civilian was a "gross deviation" from what a reasonable person would do. Those considerations could not be evaluated with the benefit of 20/20 hindsight, but would rather be evaluated under the tense, rapidly evolving circumstances that the Shooting Officer faced at the moment of attack.⁵ Given that the Shooting Officer was faced with imminent death, the State could not meet its burden to prove recklessness beyond a reasonable doubt. Similarly, under Missouri law, "criminal negligence" means "failure to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation." § 556.061. For the same reasons explained above, the State cannot prove beyond a reasonable doubt that the Shooting Officer's conduct constituted a "gross deviation" from what a reasonable person would do under the circumstances.

As such, for the reasons stated herein, it is the judgment of this Use of Force Committee that the State cannot prove beyond a reasonable doubt that the Shooting Officer used excessive force, as defined in Missouri, under our statutes and the corresponding case law. **Because of this, we are compelled to decline filing charges against the Shooting Officer in this case.**

⁴ Section 556.061.

⁵ See Graham v. Connor, 490 U.S. 386, 395 (1989).

Summary of Facts⁶

On November 6, 2024, Witness 1 attempted to see her son, hereinafter “Witness 2,” the Civilian, and the Infant Civilian at an Apartment Complex located at [REDACTED], Jackson County, Independence, MO 64055. Witness 1 knew the Civilian and she was aware that the Civilian and Witness 2 were in a relationship and living together with the Infant Civilian in the Apartment Complex.

Witness 1 stated that she attempted to go the Apartment Complex on November 6th to verify that the Children’s Division safety plan concerning the Infant Civilian was being followed. Per Witness 1, she was to confirm that the Civilian and Witness 2 were not alone with the Infant Civilian pursuant to the terms of the safety plan and that she was to report back to the Children’s Division. When Witness 1 arrived at the Apartment Complex, she was unable to see Witness 2, the Civilian, or the Infant Civilian as no one answered the door. When Witness 1 reported this to the Children’s Division, a Division worker appeared at the Apartment Complex in an attempt to make contact and to verify that the safety plan was being followed. The Children’s Division worker was also unable to make contact as there was again no answer at the door. Because of this, Witness 1 called the Independence Police Department, herein after referred to “IPD.”⁷ When police arrived, they also attempted to make contact but there was again no answer at the door.

On November 7, 2024, Witness 1 again attempted to make contact with Witness 2 in an another attempt to verify the Children’s Division safety plan was being followed. She was successful in speaking to Witness 2 by way of a facetime video conversation. Thereafter, based on what Witness 1 believed was an agreement for her to go to the apartment in the early afternoon, Witness 1 arrived at the Apartment Complex. Witness 1 alleges that upon entering the apartment, she was assaulted by the Civilian. Witness 1 would go on to allege multiple forms of assault, including that the Civilian threw an object at her, pulled her hair, and dragged her nearly down a flight of stairs causing some injuries. At approximately 1:43pm, Witness 1 called 911 to report the assault by the Civilian.

At 1:56 p.m., the Shooting Officer and the Witness Officer, arrived at the Apartment Complex to respond to Witness 1’s allegations of a domestic assault. The exchange between these officers and Witness 1 is captured on body camera video. In the exchange, these officers, expressing some concern about whether Witness 1 was the aggressor, questioned Witness 1

⁶ The investigative file provided to this office included multiple reports concerning the Civilian and her historical interactions with IPD. For the purpose of analyzing the Shooting Officer’s use of deadly force on November 7, 2024, the relevant facts are those known to the Shooting Officer. As such, this Office is not citing to the history of contacts by the Civilian with Law Enforcement. Likewise, while the investigative file provided to this office included training records from the Shooting Officer, this office conducted its own independent research into the Shooting Officer’s history in law enforcement as is common for investigations of this nature. While that information was compiled, similar to that of Civilian, the Shooting Officer’s history is not relevant to the analysis of his use of force in this circumstance and it is not cited in this report.

⁷ A reference to this call and the subsequent attempts to contact on November 6, 2024, were provided in the investigative file.



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about whether she was welcomed inside the apartment before the alleged assault occurred. In response, Witness 1 noted that the Witness 2 is the lease holder for the apartment and not the Civilian. In addition, Witness 1 provided some of the background circumstances for her presence at the Apartment complex including referencing the circumstances of and reasons for her attempts at contact on November 6.⁸ After Witness 1 expressed her willingness to participate in the investigation, the officers photographed Witness 1's injuries and contacted an ambulance for Witness 1. Thereafter, these officers then started their efforts to attempt to contact Witness 2 and the Civilian.

Just after 2:00 p.m., the Shooting Officer, the Witness Officer and the Property Manager for the Apartment Complex knocked on the apartment door. Eventually, Witness 2 answered the door and a brief conversation ensued. During the exchange, Witness 2 noted that he had "kicked both [Witness 1 and the Civilian] out" but that the Civilian, had found a way back into the unit. The Witness Officer informed Witness 2 that the officers wanted to enter the apartment to talk to Witness 2 and to locate and talk to the Civilian.⁹ When Witness 2 allowed these officers to enter, he noted that he was not violent. In response, the officers stated that "[the officers] don't want violent." Witness 2 concluded this portion of the exchange by noting that he was "trying to be peaceful." Prior to the officers entering the unit, Witness 2 provided vague statements and information about whether or not the Civilian was in fact inside the unit.

The unit included a kitchen, living room, and two bedrooms. One of the bedroom doors was closed. The other bedroom door, located on the north side of the unit, was open. In his statement, the Shooting Officer stated that when he entered the unit, based on the allegations of Witness 1 and the statement by Witness 2 that he threw Witness 1 out, he believed that there were grounds to arrest the Civilian and Witness 2 for their roles in the assault of Witness 1. As such, the Shooting Officer's goals upon entering the apartment was to conduct a protective sweep, i.e. a check or search of the unit for weapons or other persons, and to locate the Civilian.

At approximately 2:05 p.m., the Shooting Officer entered the open door of the bedroom on the north side of the apartment. His body camera shows the Civilian standing and holding the Infant Civilian inside of what appears to be a nurse-like area located inside of that bedroom's closet. The bedroom, including the closet, is 17 feet in length. In the middle of the room there is a bed and a table. The closet area is approximately 5 feet and 6 inches in length.

The body camera footage shows the Civilian wearing a loose-fitting garment that resembles a night gown. Although the Shooting Officer attempts to verbally communicate with the Civilian, the Civilian provides no verbal response. Instead, she makes various nods and

⁸ It should be noted that when these officers met with Witness 1, they were joined by Witness 1's husband. The Property Manager for the Apartment Complex was also present.

⁹ The conversation referenced here was captured on body camera. Throughout the exchange, Witness 2, who is attempting to cooperate, provides responses that appear confused. At one point, in response to the Witness Officer describing him as being "difficult," Witness 2 states that he has multiple personalities.

gestures in response to the Shooting Officer's inquiries about her current state and whether she is okay. The Shooting Officer communicated the Civilian's location to the Witness Officer who was continuing his interaction with Witness 2. The body camera footage shows that in preparation for her arrest, the officers contacted IPD dispatch. An off duty IPD officer working in dispatch relayed to the officers that in a prior call for service, the Civilian was armed with a knife. The Shooting Officer recalls examining the clothing of the Civilian and believing that she could not be concealing a knife.

In his statement after the shooting, the Shooting Officer noted that he was immediately concerned that the Civilian was using the Infant Civilian as a shield and/or a way to deter the officers from arresting her. His contemporaneous actions show that this concern was present at the time leading up to the shooting. The body camera footage shows the Shooting Officer and the Witness Officer communicating verbally and through gestures in an attempt to coordinate a plan to effect the arrest of the Civilian without harm to the Infant Civilian. The planning included attempts by these officers to get Witness 2 to take the Infant Civilian. Those attempts were rejected by Witness 2 who did not provide any such assistance. In response to this, the Shooting Officer, who, after encountering the Civilian, was concerned that she was exhibiting signs consistent with being an emotionally disturbed person, contacted IPD dispatch to request assistance from a Crisis Intervention Team Officer and a civilian Co-Responder. Per his statement, the Shooting Officer noted that the plan was to attempt to have the Co-Responder talk to the Civilian to see if she would allow for someone to take the Infant Civilian, and then she could be arrested. If that plan did not succeed, then because of the presence of more law enforcement personnel, one officer could take the Infant Civilian while the others physically arrested the Civilian. In and around this time, the body camera footage also shows the officers discussing "going 33." This is a law enforcement term for taking a child into protective custody. The body camera footage shows that to plan for this potential the Shooting Officer discussing who the biological father of the Infant Civilian was with Witness 2 and requesting that Children's Division be dispatched to the apartment.¹⁰ Throughout the duration of this time period, the Civilian remained in and/or near the nurse-like area in the closet while holding the Infant Civilian. She is seen feeding the Infant Civilian and sitting on the floor. Additionally, throughout this time period, she continued to be non-verbal and she continued to respond with head nods and gestures to the questions from these officers.

Just before approximately 2:15 p.m., the Civilian, despite being told by the officers to stay where she was, left the nurse-like area and moved to the bed next to a side table in the middle of the bedroom while holding the Infant Civilian. As she was seated on the bed, the Civilian cradled the Infant Civilian. Witness 2 was also seated on another side of the bed facing away from the Civilian. At this time, both officers were in the bedroom. The Civilian was seen sticking her middle finger at the officers and also attempting what appeared to be sign language which neither officer could understand.¹¹ Shortly thereafter, the body camera shows the officers gesturing to each other as if in preparation to coordinate her arrest and/or have one physically move toward the Civilian and one move toward the Infant Civilian. As this is happening, the

¹⁰ Dispatch records show that the Children's Division was in fact dispatched to the apartment and was en route at the time of the shooting.

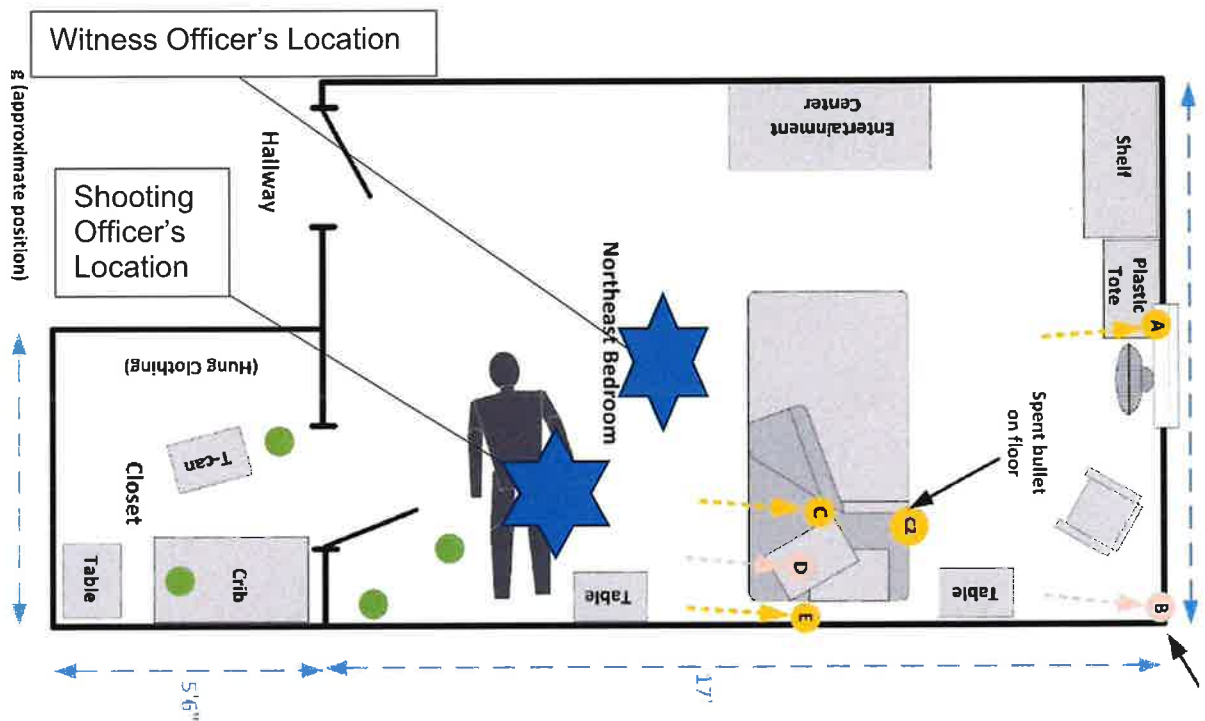
¹¹ The officers requested the assistance of Witness 2 in interpreting the sign language used by the Civilian but he informed the officers that he was unable to interpret.



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footage shows the Civilian wave her finger as if to communicate “no” or a negative response to this communication between the officers. At this time, both officers were in arms reach of the Civilian and the Infant Civilian. The Shooting Officer was directly in front of the Civilian. His back was to nursey-like area inside the closet. The Witness Officer was to the Civilian’s right from her seated position on the bed. The Witness Officer’s back was near the open door to the hallway.

The location of the officers before the shooting is identified in the below crime scene diagram:



Just before 2:17 p.m., the Civilian, while still cradling the Infant Civilian and sitting on the bed, suddenly reached toward the bedside table, pulled out a butcher’s knife which was previously concealed, and stood up. The body camera footage shows that as she rises to her feet, the Shooting Officer moves back toward the nursey-like area inside closet as the knife blade is pointed at him.

The Witness Officer's body camera footage shows the close proximity and distance between the Civilian and the Shooting Officer at the moment she pulled the knife.¹²



The Shooting Officer's location when the knife was pulled.

¹² The time stamps, located on the upper right side of the still images from the body camera video, uses military time, i.e. 14:16:51, instead of standard time, i.e. 2:16:51.



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The Civilian quickly stepped toward the Witness Officer with the knife blade pointed in his direction as shown here before moving toward the Shooting Officer:



In response, the Witness Officer quickly backs toward the hallway behind him as he yells “no.” The Civilian then turned and advanced toward the Shooting Officer. Unlike the Witness Officer, who moved to an open space to escape the attack, the Shooting Officer’s back was to the nurse-like area inside the closet.¹³ Per his statement, the Shooting Officer noted that he drew his weapon almost immediately after the Civilian pulled the knife. However, he did not fire at this point. Rather, it was when the Civilian stopped moving toward the Witness Officer and started moving toward him and closing distance in her pursuit that he fired four times at the Civilian. The shots appear to have been fired as the Civilian was just steps away and as his back came into contact with the items inside the confined space of the nurse-like area in the closet.

¹³ This area was less than 6 feet in length and that distance was further limited by objects inside the nurse-like area.

While it is difficult to capture the timing and suddenness of the events immediately described above in writing, the body camera timestamps shows that the Civilian reached for the knife at approximately 2:16:51. The Shooting Officer fired at the Civilian between timestamps 2:16:52 and 2:16:53 from a distance of mere steps away.



In his statement after the shooting, the Shooting Officer stated that, after the attack began, he had “tunnel vision” and his sole focus was on the knife. He added that as he fired his weapon, he believed that he was being or would be stabbed. The Civilian sustained four gunshot wounds. One to her wrist, one to her neck, one to her torso, and one to her back. She was pronounced dead at the scene.¹⁴ The Infant Civilian sustained a gunshot wound to her head. She was rushed from the scene and pronounced dead a hospital.

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. In some circumstances, Missouri law permits a law enforcement officer to use force, even deadly force,

¹⁴ Following the shooting, the Shooting Officer handcuffed the Civilian before attempting to provide medical care. In his statement, he expressed that this was done out of a dual concern for securing the Civilian and ensuring that he was then able to ensure that Witness 2 did not become a threat.



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in making an arrest or in preventing an escape.¹⁵ First, the officer must have a reasonable belief that the person being arrested has committed or is committing a crime.¹⁶ 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.¹⁷ Moreover, the law does not require that an officer retreat or desist from his or her efforts because of resistance or threatened resistance by the person being arrested.

When it comes to the criminal review of a police officer's use of deadly force, specific rules 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.¹⁸ 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.¹⁹

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.²⁰

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.²¹ 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.²²

¹⁵ 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).

¹⁶ Id.

¹⁷ Id.

¹⁸ Id.

¹⁹ Id.

²⁰ 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 decisions that often occur in these tense, uncertain, and rapidly evolving situations).

²¹ 490 U.S. 386, 395 (1989).

²² Id. at 397.

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.²³

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 at the time.²⁴ This standard does not depend upon whether the belief turned out to be true or false.²⁵ 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.²⁶

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 her was immediately necessary to effect the arrest or prevent the escape.²⁷

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 and defense of others instruction applicable to all civilians.²⁸ Similar to the use of force instruction, the self-defense and defense of others instructions allow a person to legally use deadly force to defend themselves or another 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 resorting to using force to defend themselves or another. The term reasonable belief is specifically defined to match the definition found in the use of force instruction.

When an actor harms a bystander while attempting to defend themselves or another, their actions must be examined to determine if they intentionally or recklessly harmed the bystander. With respect to intentional conduct, Missouri law defines the manner in which a person can act purposefully, i.e. with the “conscious object” to do a certain thing or achieve a certain result, or

²³ *Id.* at 396.

²⁴ See, e.g., *Mulenix v. Luna*, 136 S. Ct. 305 (2015); *Plumhoff v. Rickard*, 134 S. Ct. 1012 (2014); *Scott v. Harris*, 550 U.S. 372 (2007).

²⁵ MAI 406.14. It should be noted that this Instruction defines the law applicable to criminally reviewing an officer’s use of force in Missouri. While the internal policies of a department in which an officer works may be helpful in understanding why an officer did certain things, the failure to follow those policies will not, by itself, create criminal liability. Likewise, an officer’s following of policies, by itself, will not alleviate criminal liability.

²⁶ MAI 406.14.

²⁷ *Id.*

²⁸ See MAI 406.06 and MAI 406.08.



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knowingly, i.e. being aware of their conduct or aware that their conduct will cause a certain result.²⁹ Likewise, under Missouri law, criminal recklessness is defined as the conscious disregarding of “a substantial and unjustifiable risk that circumstances exist or that a result will follow [and that] such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.”³⁰ When examining if an actor is reckless, it is also appropriate to examine whether their actions are negligent. Under Missouri law, criminal negligence is defined as a failure “to be aware of a substantial and unjustifiable risk that circumstances exist or a result will follow, and such failure constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.”³¹ However, the legal principle of transferred intent applies as a defense when it is shown that an actor mistakenly harms a bystander while acting to defend himself or another.³²

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 the anticipated admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interests of justice.”³³

Analysis and Conclusion

From the facts, the anticipated evidence shows that the Shooting Officer is entitled to a set of defenses provided to law enforcement officers using force.³⁴ The evidence shows that the Officer did have a factual and legal basis, i.e. a call for service to investigate and arrest for assault, to stop and detain the Civilian. Given the law, the next step in the analysis is to determine whether the force used in attempting to make the arrest was reasonable.

The entire interaction between the Civilian and the Shooting Officer is captured on body camera with audio. Prior to the shooting, for approximately 11 minutes, from 2:05:04 to 2:16:52, the Shooting Officer did not touch or aggressively engage with the Civilian in his attempts to arrest her. Rather, the footage shows that the Shooting Officer and the Witness Officer made

²⁹ See Section 562.014. 2 and Section 562.014. 3.

³⁰ See Section 562.016.4.

³¹ See Section 562.016.5.

³² See State v. Zumwalt, 973 S.W. 2d 504, 506 (Mo. App. S.D. 1998) (holding that “[i]f the killing or injury of a person intended to be hit would, under all the circumstances, have been excusable or justifiable on the theory of self-defense, then the unintended killing or injury of a bystander by a random shot fired in the proper and prudent exercise of such self-defense is also excusable or justifiable.”); See also State v. Israel, 872 S.W.2d 647 (Mo. App. E.D. 1994) (holding that a defendant who fired blindly and killed bystanders while attempting to stop a knife attack may claim self-defense in response to allegations that he acted with criminal recklessness or criminal negligence).

³³ ABA STANDARDS FOR PROSECUTION FUNCTION 3-4.3(a) (2015); See MO. SUP. CT. R. 4-3.8(a).

³⁴ MAI 406.14 [Use of Force instruction].

efforts to attempt to plan to take the Civilian into custody in a way that would not harm the Infant Civilian. This included attempts to engage the Civilian, attempts to get Witness 2 to take the Infant Civilian, and an attempt to call for Crisis Intervention Officers and a civilian Co-Responder. Moreover, the Shooting Officer also attempted to plan for the care of the Infant Civilian following the arrest by contacting the Children's Division. Put differently, the Shooting Officer was acutely aware of the Infant Civilian and was attempting to take specific steps to ensure that she would not be harmed in the Civilian's arrest. Nonetheless, perhaps in part because the incident concluded with the tragic shooting deaths of the Civilian and the Infant Civilian, it is natural to debate what one could have done through the lens of hindsight if he or she were in the shoes of the Shooting Officer at the time of the attack. In theory, it may have been possible for the Shooting Officer to avoid shooting at the Civilian and striking her and/or the Infant Civilian by disarming the Civilian of the knife by using physical force or some other non-lethal law enforcement tool. However, as noted, the applicable legal standard requires us to determine how the facts reasonably appeared to the Shooting Officer at the time of the shooting.³⁵ Moreover, we are restrained by the applicable caselaw which cautions us to refrain from reviewing an officer's actions "through the lens of 20/20 hindsight."³⁶ In other words, what else could have been done to avoid the outcome is not relevant. Rather, our purpose under the law is to determine if what was done was reasonable and not whether it was the best course of action.

Here, the Shooting Officer had little distance within which to escape from the sudden and unprovoked surprise attack. He also had only seconds to determine how to respond to an attack of this nature. The facts do not allow the State to argue that this is a circumstance where the Shooting Officer escalated or created the circumstance that led to the shooting.³⁷ Thus, because he used deadly force to respond to a threat of deadly force that he did not provoke and because his use of deadly force was immediate and necessary and that he stopped shooting once the

³⁵ Id. 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.

³⁶ See Graham v. O'Connor, 490 U.S. 386, 397 (1989).

³⁷ Courts have evaluated claims from litigants that Officers violated the 4th Amendment and used excessive force by provoking an emotionally distressed person to attack officers thus allowing officers to respond with force. In one such case, Estate of Biegert by Biegert v. Molitor, 968 F.3d 693 (7th Cir. 2020), the decedent's estate contended that the officers acted unreasonably by creating the conditions that precipitated the violent encounter and the officers created the situation that ultimately led to Biegert's death by failing to make a plan for the encounter, failing to secure the knife block in the kitchen, and questioning Biegert, who was suffering from some emotional or mental health distress, aggressively. However, the Court held that:

"none of these actions rendered the officers' subsequent use of force unreasonable, nor did the officers' creation of a dangerous situation constitute an independent violation of Biegert's constitutional rights. The officers might have made mistakes, and those mistakes might have provoked Biegert's violent resistance. Even if so, however, it does not follow that their actions violated the Fourth Amendment."



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attack ceased, he was acting within the law and the State cannot prove beyond a reasonable doubt that his actions were unreasonable.

The Shooting Officer intended to shoot the Civilian as a defense to her attack. In this circumstance, his intent to act defensively transfers to any unintended victims. As such, the State can only proceed with charges if there is evidence that he intentionally shot at the Infant Civilian or recklessly or negligently struck her. Here, because of the sudden and unanticipated nature of the attack carried out by the Civilian while holding the Infant Civilian, there is not sufficient evidence to prove beyond a reasonable doubt that the Shooting Officer intentionally shot the Infant Civilian. Rather, the evidence shows that the Shooting Officer shot the Civilian who was holding the Infant Civilian.

Likewise, as noted at the outset of this report, to establish that he consciously disregarded the risk of harming the Infant Civilian or that he failed to be aware of the risk of harming the Infant Civilian, so as to establish that he acted with criminal recklessness or criminal negligence, the State must have sufficient evidence to prove the required mental element beyond a reasonable doubt. While the risk to the infant Civilian was substantial, the law restricts us from reviewing evidence through the “lens of “20/20 hindsight,” and requires us to review the evidence under the “under the tense, rapidly evolving circumstances” that the Shooting Officer confronted when the Civilian commenced her attack.³⁸ Under those circumstances, the State cannot meet its burden to prove recklessness or negligence beyond a reasonable doubt.

This is the law that we are bound to apply to the facts of this incident. The law does not change because of the innocence or age of the bystander. Here, the facts do not allow the State to argue that the Shooting Officer had time to contemplate that the Infant Civilian could or would be harmed by his decision to fire to defend himself or another. Instead, the video footage, the layout of the room, the Shooting Officer’s statement and the Witness Officer’s Statement, the main pieces of the anticipated admissible evidence, support the conclusion that the Shooting Officer reacted to the attack and fired to stop the potentially deadly attack and threat presented by the Civilian.

³⁸ See Graham v. O’Connor, 490 U.S. 386, 397 (1989).

To be clear, we did not arrive at this decision lightly. We recognize the profound loss suffered by the families and our entire community and frankly wish that circumstances were handled differently. However, that is not the role of this Committee or this Office. Rather, our review of this incident is ethically and legally limited to determining only whether criminal charges are appropriate. After a thorough and independent review of available evidence and applicable legal standards, this Office has determined that we will not file criminal charges against the Shooting Officer. While this decision may not bring the closure many seek, especially given the weight of this tragedy, we are issuing this letter to uphold our commitment to transparency.

Sincerely,


Melesa N. Johnson
Prosecutor for Jackson County