



JEAN PETERS BAKER
Jackson County Prosecuting Attorney

September 2, 2015

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

**Re: Officer-involved shooting on January 9, 2015 at Petticoat Lane and Main,
Kansas City, Missouri, CRN 15-02031**

Chief Forte:

On August 24, 2015, the Jackson County Prosecutor's Office Use of Force committee reviewed the investigation of the non-fatal shooting of [REDACTED] in Kansas City occurring on January 9, 2015. This incident involved [REDACTED] and Police Officer [REDACTED] of the Kansas City, Missouri Police Department, under KCPD case number 15-02031. Based on the investigation and our analysis, our committee concluded the evidence does not support the filing of criminal charges against [REDACTED] or [REDACTED].

Summary of Facts

On January 9, 2015 [REDACTED] entered the Commerce Bank at 922 Walnut and demanded money. He brandished what appeared to be an explosive device. A bank teller activated the silent alarm while others in the bank called 911. As instructed, bank employees placed more than \$29,000 in U.S. currency [REDACTED]'s black duffel bag. [REDACTED] fled the bank and headed southbound on Main Street.

At the same time of the bank robbery, Police Officer [REDACTED] was working in an off-duty capacity at Missouri Bank and Trust bank. [REDACTED] heard the robbery call and immediately responded in the direction of Commerce Bank. As he made his way down Main Street he witnessed [REDACTED] attempt to carjack a car occupied by Merium Simmons. [REDACTED] was working at a parking garage at 1025 Main, also in an off-duty capacity, when he heard tires screeching and went to investigate. [REDACTED] then saw [REDACTED] with a gun.

These facts are corroborated by several witnesses. Merium Simmons told authorities that a man approached her car, beat on her window and produced a gun at which time she hit the gas causing her tires to squeal. Damon Bruster was standing on Main Street smoking a cigarette also saw [REDACTED] attempt to carjack a car with a long black revolver. Another witness, Corey Eisenlohr, saw [REDACTED] with a gun in his hand attempting to get into cars. Steven Forney also witnessed [REDACTED] attempt to carjack



Ms. Simmons, and reported to police that he saw [REDACTED] point a gun at Mr. Forney when Mr. Forney confronted [REDACTED].

[REDACTED] and [REDACTED], both in uniform, began to chase [REDACTED] from Main eastbound on Petticoat Lane. Several times [REDACTED] ordered [REDACTED] to stop and drop the gun. [REDACTED] failed to comply with [REDACTED]'s commands. [REDACTED] saw the defendant stop in the middle of the street and point a gun at [REDACTED]. Dianne Forney also saw [REDACTED] point a gun at the officer from her vantage point at #10 Petticoat Lane. [REDACTED] continued running eastbound on Main after he pointed his gun at [REDACTED]. He again pointed his gun at [REDACTED] from behind an SUV parked on the south side of Petticoat Lane. [REDACTED] then fired three shots at [REDACTED]. [REDACTED] fired two shots at [REDACTED]. The shooting was captured on a surveillance camera maintained by Executive Hills Security.

[REDACTED] fell to the ground as a result of the gunshot wounds. He had a black duffel bag across his body that contained the stolen money and a revolver. The Kansas City Crime Lab conducted reviews of the weapon recovered from [REDACTED] and found the weapon did not function as submitted, though the revolver was able to fire with some modification.

[REDACTED] also found what appeared to be an explosive device. While [REDACTED] was transported to Truman Medical Center, the Bomb and Arson Squad was brought in to diffuse, what was believed to be, an explosive device. The FBI handled the bank robbery investigation while members of the Kansas City Police Department conducted the attempted robbery and assault investigations. [REDACTED] was later charged in the United States District Court of Western Missouri with Bank Robbery, Carjacking and Use of a Firearm in a Violent Felony. No State charges were filed against [REDACTED].

Legal Analysis

Under Missouri law, there are two statutes applicable to the facts of this case -- Section 563.031, RSMo. (governing the use of force in defense of persons) and Section 563.046, RSMo (governing the use of force by police officers when effectuating an arrest). In pertinent part they provide that a person may... use physical force upon another person when and to the extent he or she reasonably believes such force to be 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. Section 563.031, RSMo.

Under Section 563.046, RSMo, a law enforcement officer need not retreat or desist from efforts to effect an arrest, or from efforts to prevent an escape from custody, of a person he reasonably believes to have committed an offense because of resistance or threatened resistance of the arrestee. Generally, a law enforcement officer is justified in the use of such physical force as he reasonably believes is immediately necessary to effect the arrest or to prevent the escape from custody.

Conclusion

In this case, witnesses Merium Simmons, Damon Bruster, Cory Eisenlohr and Steven and Diane Forney saw [REDACTED] with a gun. [REDACTED] pointed the gun at Mr. Forney. Ms. Forney saw [REDACTED] point a gun at the officers. The video surveillance of the shooting corroborates the statements of the officers and Ms. Forney. The police located a loaded revolver on [REDACTED] person along with the U.S. currency taken during the bank robbery in the duffel bag carried by [REDACTED]. The lab's findings that this revolver required modification to function does not change the analysis of this case.

[REDACTED] and [REDACTED] personally observed [REDACTED] commit the felonies of robbery and armed criminal action. These officers believed they saw a revolver and further believed this weapon was

fully capable of lethal force. [REDACTED] failed to obey [REDACTED] commands and pointed the gun at [REDACTED]. The evidence supports [REDACTED]'s claim that he was justified in using deadly force to defend himself from what reasonably appeared to be the imminent use of deadly force by [REDACTED]. Further, the evidence supports [REDACTED]'s determination that [REDACTED] "may otherwise endanger life or inflict serious physical injury unless arrested without delay."¹ Additionally, the evidence supports [REDACTED]'s claim that he was justified in using lethal force in defense of other persons.² Based upon the totality of the evidence in this case, and in the interests of justice, no charges are appropriate based upon the use of force by police officers in this case.

Sincerely,



Jean Peters Baker
Prosecutor for Jackson County

Cc: Virginia Murray, Legal Counsel for Kansas City, Missouri Police Department

¹ RSMo Section 563.046.3(2)(c)

² RSMo Section 563.031.1