



JEAN PETERS BAKER
Jackson County Prosecuting Attorney

April 17, 2015

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

Re: Indictment of [REDACTED] – CRN 14-043828

Chief Forte:

On February 20, 2015, [REDACTED] was indicted by the grand jury for Assault in the First Degree and Armed Criminal Action after finding probable cause supporting the charges. The charges stem from a shooting in Kansas City, Missouri at 6418 E. 15th Terrace on June 24, 2014. The case number is 14-043828. Based on our continued investigation and analysis, our Use of Force committee concluded that the evidence no longer supported the pursuit of criminal charges against [REDACTED]. As a result, my office today dismissed the charges.

Summary of Facts

[REDACTED], was identified as a suspect in a pattern of property thefts from tractor trailers (thirty-one thefts were identified as part of the pattern between May 10, 2014 – June 3, 2015) and had an active warrant. Officers of the Kansas City Missouri Police Department planned a residence check at 6814 E. 15th Terrace in search of [REDACTED] about 2:30 p.m. on June 24, 2014. [REDACTED] and other officers had been briefed before attempting to take [REDACTED] into custody that he was known to flee and was considered dangerous. An officer saw [REDACTED] sitting on the front porch of the residence on East 15th Street. He knew the suspect by sight and yelled at him "[REDACTED] Stop!" But [REDACTED] went inside. [REDACTED] and another officer were at the back of the residence, and the first officer relayed information to them that [REDACTED] had gone inside.

According to [REDACTED] statements after the incident, [REDACTED] at the rear door of the residence and saw both of his hands pushing on the door. [REDACTED] described, "As that



door swings open...I start yelling, Hands. At that time, ... I see two hands come open, palms out, just like this, and push the screen door open. That's what I want to see. I want to see their hands." As [REDACTED] began to exit, he turned his body toward him as if he might confront him. [REDACTED] right hand dipped to his side, and [REDACTED] stated he believed [REDACTED] was reaching for a gun.

[REDACTED] fired a single shot with his service weapon, striking [REDACTED] on the left side of his face, causing serious physical injury to his jaw, teeth and tongue. [REDACTED], who fell to the ground, was then taken for medical treatment.

[REDACTED] has admitted that he knew officers were looking for him and was exiting the rear of his residence when he was shot. [REDACTED] maintains he did not see the officer, did not hear his commands and did not have an intention of harming the officer. After the shooting, [REDACTED] was found to be unarmed, but a screwdriver was located in his pants pocket.

Post-Indictment Investigation

After the indictment, further investigation by the Jackson County Prosecutor's Office uncovered additional information that impairs the continued prosecution of this matter.

First, evidence gathered in our post-indictment investigation undermined the reliability of the victim, [REDACTED], as the main and sole fact witness for the State. The mere assertion that an individual has made misrepresentations in the past or committed criminal acts does not render them unbelievable or prohibit a prosecutor from relying on their testimony. It does, however, require disclosure of such information to defense and requires further evaluation by the prosecutor. In the present case, our investigation revealed material statements made by [REDACTED] to the grand jury were inaccurate. Our office made several unsuccessful attempts to reach [REDACTED]. While some explanations may be provided for those inaccuracies, the credibility of [REDACTED] is impaired. For the state to meet its legal burden of guilt beyond a reasonable doubt, the jury must find the state's witness credible on material facts. Lacking other corroborating evidence, that burden would have to be carried alone by the testimony of [REDACTED].

Additional evidence provided to the State in a post-indictment investigation was information from a confidential informant. The information, provided to members of the Kansas City Police department, was that [REDACTED] made statements prior to the June 24 incident that he would not be taken by police if he was confronted by them. This witness informed police three days prior to the shooting and immediately after the shooting that [REDACTED] had stated he would rather shoot it out with police or make them think he had a weapon and be shot than return to jail. While this information was known to members of the police department, it was not known to prosecutors or the grand jury. The witness' statement is corroborated by other witness statements, phone logs, and email communication predating the shooting. [Note: this witness remains in federal custody on unrelated pending charges and demands dismissal of his charges for providing a formal statement regarding these events. No deals were provided for this testimony. Though the witness may remain unwilling to provide a formal statement, this testimony is relevant and probative to

our analysis. Further, the State believes the relevant portions of this testimony would be admissible during trial.]

Finally, on April 15, 2015, attorneys for ██████ provided the State several reports from expert witnesses. Each of those experts reviewed the State's evidence and support the conclusion that ██████'s action were reasonable and in justifiable self-defense. We anticipate their testimony will be admissible and leave little for cross-examination. Specifically, those reports support ██████'s action, believing ██████ was drawing a gun, not to wait until the firearm was clearly seen before firing a shot based on reaction times of .167 seconds to .22 seconds. The conclusions rendered ██████'s actions as consistent with a properly trained police officer facing these or similar circumstances and that he acted reasonably and justifiably by responding with physical force.

Legal Analysis

Under Missouri law 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. However, a person is not permitted to use deadly force unless he reasonably believes that the use of deadly force is necessary to protect himself against death or serious physical injury.

A law enforcement officer can lawfully use force to make an arrest or to prevent escape if he is making a lawful arrest or an arrest which he reasonably believes to be lawful. An arrest is lawful if the officer reasonably believes that the person being arrested has committed or is committing a crime or is executing an arrest warrant which he believes to be valid. In making a lawful arrest or preventing escape after such an arrest, a law enforcement officer is entitled to use such force as reasonably appears necessary to effect the arrest or prevent the escape. A law enforcement officer in making an arrest need not retreat or desist from his efforts because of resistance or threatened resistance by the person being arrested.

But in making an arrest or preventing escape, a law enforcement officer is not entitled to use deadly force, that is, force which he knows will create a substantial risk of causing death or serious physical injury, unless he reasonably believes that the person being arrested is attempting to escape by use of a deadly weapon or that the person may endanger life or inflict serious physical injury unless arrested without delay. And, even then, a law enforcement officer may use deadly force only if he reasonably believes the use of such force is immediately necessary to effect the arrest or prevent the escape.

The term "reasonably believe" means a belief based on reasonable grounds, that is, grounds that could lead a reasonable person in the same situation to the same belief. This depends upon

how the facts reasonably appeared. It does not depend upon whether the belief turned out to be true or false.

The State bears the burden of proving beyond a reasonable doubt that a person did not act in lawful self-defense. And, unless the State can meet its burden of proof, a jury is instructed that it must find a defendant not guilty.

Conclusion

All prosecutors have the unique responsibility of ministers of justice and not simply that of advocates. This responsibility carries with it specific obligations to the accused and that guilt is based on sufficient evidence. This office has long since operated by the simple principle that a prosecutor must be convinced of a defendant's guilt beyond a reasonable doubt. In adherence to that principle and my special duty as prosecutor, dismissal of these charges are necessitated. Our analysis is based on the facts of this case and applicable law in reaching the conclusion that we are unable to meet the State's burden of proof beyond a reasonable doubt that [REDACTED]'s use of force under Missouri law was not justifiable and that the State would stand no reasonable likelihood of sustaining a conviction in this matter.

Sincerely,



Jean Peters Baker
Prosecutor for Jackson County

CC: John O'Connor, Defense Counsel [REDACTED]
Virginia Murray, Legal Counsel for Kansas City, Missouri Police Department