



JEAN PETERS BAKER

JACKSON COUNTY PROSECUTING ATTORNEY

June 9, 2017

Chief Brad Halsey
Independence Police Department
223 N. Memorial Dr.
Independence, MO 64050

Re: Officer-involved shooting on January 7, 2017, at 8926 E. 37th, Terrace, Independence, Missouri

Chief Brad Halsey:

On February 6, 2017, the Jackson County Prosecutor's Office Use of Force committee reviewed the investigation of the shooting death of the Carlos Cruz in Independence on January 7, 2017. Based on the investigation¹ and our analysis, our committee concluded the evidence does not support the filing of criminal charges against Officer [REDACTED] of the Independence Police Department (hereinafter Officer 1) who shot Cruz.

Summary of Facts²

On January 7, 2017 at about 6:57 pm Independence Police officers were dispatched to 18926 E. 37th Terr., #4, Independence, MO in response to a 9-1-1 call.³ The caller was Cruz's mother (hereinafter Mother), who stated that her son was in the bathroom with a rifle in his mouth.⁴

¹ The reports regarding the investigation were filed under Independence Police Department Case Report Number (CRN) 2017-1356. In addition to the reports, the case file includes audio and video recordings of statements, dashcam videos, the initial 9-1-1 call that led to police going to the Carlos Cruz's residence, a recording of the radio traffic related to this incident, the dashcam videos from the officers' patrol cars, photographs, and the autopsy report.

² The legal standard governing self-defense, defense of others, and use of force in making an arrest considers what the person using force "reasonably believed" at the time of the use of force. *See, e.g., State v. Smith*, 456 S.W.3d 849, 852 (Mo. 2015); *State v. Edwards*, 60 S.W.3d 602, 612 (Mo. App. W.D. 2001). This test only considers the facts available to the person at the time of the use of force. *Edwards*, 60 S.W.3d at 612. As such, this summary only considers the facts known to Officer 1 at the time of the shooting.

³ CRN 2017-1356, Original Report, page 2; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356, Lead 12, page 1; CRN 2017-1356, Lead 15, page 1; Independence Radio at 0:00:30-:0:01:30.

⁴ CRN 2017-1356, Original Report, page 2; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356 Lead 3, page 3; CRN 2017-1356, Lead 11, page 1; CRN 2017-1356, Lead 12, page 1; CRN 2017-1356, Lead 15, page 1; 9-1-1 call.



Officers arrived on scene and heard yelling coming from inside the apartment.⁵ Officers observed Mother inside the apartment.⁶ Soon thereafter, a younger female exited onto a wooden-fenced patio.⁷ Police advised her to have everyone exit the apartment.⁸ The younger female, Mother, and several others including several smaller children then exited the apartment.⁹

After everyone had exited, officers heard a loud bang that sounded like it might be a gunshot, but the officers could not confirm that it was a gunshot.¹⁰ At some point, Officer 1 (and other officers) arrived on the scene to assist the original officers.¹¹ Approximately fifteen minutes after officers first arrived on the scene, officers saw Cruz walking into the living room of the apartment with a shotgun.¹² Eventually, Cruz exited on the patio with a shotgun in his left hand and a large bottle of alcohol in his right hand.¹³

Officers repeatedly instructed Cruz to put the gun down so they could talk.¹⁴ Cruz told the officers “you’re going to have to shoot me” and said “just kill me.”¹⁵

Cruz gripped the shotgun around the trigger area and pointed it toward the officers.¹⁶ Officers again advised him to put the gun down. Officer 1 fired one shot at Cruz and hit him in

⁵ CRN 2017-1356, Original Report, page 2; CRN 2017-1356, Lead 11, page 1; CRN 2017-1356, Lead 15, page 1.

⁶ CRN 2017-1356, Original Report, page 2.

⁷ CRN 2017-1356, Original Report, page 2; CRN 2017-1356, Lead 11, page 1; CRN 2017-1356, Lead 15, page 1.

⁸ CRN 2017-1356, Original Report, page 2; CRN 2017-1356, Lead 11, page 1; CRN 2017-1356, Lead 15, page 1.

⁹ CRN 2017-1356, Original Report, page 2; CRN 2017-1356, Lead 11, page 1; CRN 2017-1356, Lead 15, page 1.

¹⁰ CRN 2017-1356, Original Report, page 2; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356, Lead 14, page 1; CRN 2017-1356, Lead 15, page 1; Independence Radio at 16:50-0:17:05.

¹¹ CRN 2017-1356, Original Report, page 2; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356, Lead 7, page 1; CRN 2017-1356, Lead 14, page 1; CRN 2017-1356, Lead 25, page 1.

¹² CRN 2017-1356, Original Report, pages 2-3; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356, Lead 10, page 1; CRN 2017-1356, Lead 14, page 1; CRN 2017-1356, Lead 15, page 1; CRN 2017-1356, Lead 25, page 1; Independence Radio at 9:17:40-0:17:50, 0:18:20-0:18:35, 0:22:40-0:22:55.

¹³ CRN 2017-1356, Original Report, page 3; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356, [REDACTED] Supplement, pages 1-2; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356, Lead 7, page 1; CRN 2017-1356, Lead 7, page 1; CRN 2017-1356, Lead 11, page 2; CRN 2017-1356, Lead 14, page 1; CRN 2017-1356, Lead 15, page 2; CRN 2017-1356, Lead 25, page 2; CRN 2017-1356, Photographs 71-74, 76-77, 81-82, 100-01, 115-18, 121-22, 126-32, 138; Independence Radio at 0:23:15-0:23:25.

¹⁴ CRN 2017-1356, Original Report, page 3; CRN 2017-1356, [REDACTED] Supplement, page 2; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356, Lead 10, page 1; CRN 2017-1356, Lead 11, page 2; CRN 2017-1356, Lead 14, page 2; CRN 2017-1356, Lead 15, page 2; CRN 2017-1356, Lead 22; CRN 2017-1356, Lead 25, page 2; [REDACTED] Dashcam video.

¹⁵ CRN 2017-1356, Original Report, page 3; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356, [REDACTED] Supplement, page 2; CRN 2017-1356, [REDACTED] Supplement, page 1; CRN 2017-1356, Lead 10, page 1; CRN 2017-1356, Lead 15, page 2; CRN 2017-1356, Lead 25, page 2.

¹⁶ CRN 2017-1356, Original Report, page 3; CRN 2017-1356, [REDACTED] Supplement, page 2; CRN 2017-1356, [REDACTED] Supplement, page 2; CRN 2017-1356, Lead 7, page 1; CRN 2017-1356, Lead

the chest.¹⁷ Officers rushed into the apartment to secure the scene and render aid Cruz who was transported to CenterPoint Hospital where he was pronounced dead.¹⁸

The autopsy confirmed that there was a single gunshot – with both an entry wound and an exit wound.¹⁹ The bullet primarily passed through the liver with some damage to surrounding organs.²⁰ The damage to the liver was the cause of death.²¹ Toxicology reports showed that Cruz’s blood alcohol levels were well in excess of the legal limit.²²

Applicable Law

Under Missouri law, the primary statute applicable to the facts of this case is Section 563.031, RSMo., governing the use of force in defense of persons.²³ Under this section, a person may “use physical force upon another person when and to the extent he or she reasonably believes such force [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.” Section 563.031.1. A person may use deadly force to protect himself, herself, or another person from death, serious physical or any forcible felony. Section 563.031.2(1). A forcible felony is any felony that involves “the use or threat of physical force or violence” and includes all felony assaults. Section 563.011(3), RSMo.

For use of force in defense of persons, the person claiming the defense has the burden of injecting the defense at any trial. Section 556.051, RSMo.; Section 563.031.5; Section 563.046.4. Once the person claiming the defense has produced evidence – either through his own evidence or through the prosecution’s evidence – supporting the defense, the burden of proving that the person claiming the defense did not act lawfully falls on the State. Section 556.051; Section 563.031.5.

11, page 2; CRN 2017-1356, Lead 14, page 2; CRN 2017-1356, Lead 15, page 2; CRN 2017-1356, Lead 25, page 2.

¹⁷ CRN 2017-1356, Original Report, pages 3-4; CRN 2017-1356, [REDACTED] Supplement, page 2; CRN 2017-1356, [REDACTED] Supplement, page 2; CRN 2017-1356, Lead 1, page 1; CRN 2017-1356, Lead 7, page 2; CRN 2017-1356, Lead 11, page 2; CRN 2017-1356, Lead 14, page 2; CRN 2017-1356, Lead 15, page 2; CRN 2017-1356, Lead 25, page 2; Autopsy Report, page 2; Independence Radio at 0:25:25-0:25:45.

¹⁸ CRN 2017-1356, Original Report, page 3; CRN 2017-1356, [REDACTED] Supplement, page 2; CRN 2017-1356, page 2; CRN 2017-1356, Lead 1, page 1; CRN 2017-1356, Lead 25, page 2.

¹⁹ CRN 2017-1356, Lead 24; Autopsy Report, pages 2-3, 4-5.

²⁰ Autopsy Report, page 5.

²¹ Autopsy Report, page 8.

²² Autopsy report, page 8 (vitreous fluid showing appx.0.24 and blood showing approximately 0.30).

²³ Because, as discussed below, Officer 1’s use of force was permissible under the general defense of others statute, it is not necessary to address whether the circumstances of this case would fit within Section 563.046, RSMo., permitting officers to use additional force (beyond that permitted in the defense of person statute) when necessary to make an arrest.

Analysis

In this case, the statements of the officers involved and other witnesses indicate that Cruz carried a shotgun onto the porch at the time that he encountered the officers. After the shooting, the officers recovered that gun and confirmed that it was loaded. The statements of the officers and other witnesses (and the audio from the dashcams of the patrol cars) indicate that the officers attempted to persuade Cruz to put the gun down. In response to those efforts, Cruz repeatedly indicated that officers would need to shoot him. Cruz then grabbed the gun near the trigger and pointed it in the direction of the officers. This evidence supports Officer 1's statement that he was in fear for the officer's safety at the time that he fired a shot at Cruz. The evidence further supports the inference that a reasonable person would have believed that Cruz may have been about to commit a felony assault on the officers using that shotgun.

At the present time, there is no apparent evidence to rebut any claim of defense of persons. The audio from the dashcams corroborate that officers were attempting to peacefully resolve this situation before Cruz pointed the shotgun at them. Based on the current evidence, the only conclusion supported by the evidence is that a reasonable officer in the position faced by Officer 1 could have concluded that it was necessary to use deadly force. As such, there does not appear to be a reasonable probability that any charges against Officer 1 would be meritorious.

Conclusion

In light of the above evidence and principles of law, the Committee has determined that Officer 1's shooting of Cruz on January 7, 2017, appears to be justifiable under Missouri law on the specific facts of this case. Officer 1 was placed in a situation (an armed individual engaging in a course of conduct that appeared to pose a threat to officers who declined to drop his weapon) that contributed to a reasonable belief on the part of Officer 1 that his actions were necessary.

While the death of Cruz is a tragedy for his family and our community, that tragedy does not warrant the filing of charges against an officer that acted within the limits contained in the law.

Sincerely,



Jean Peters Baker
Prosecutor for Jackson County