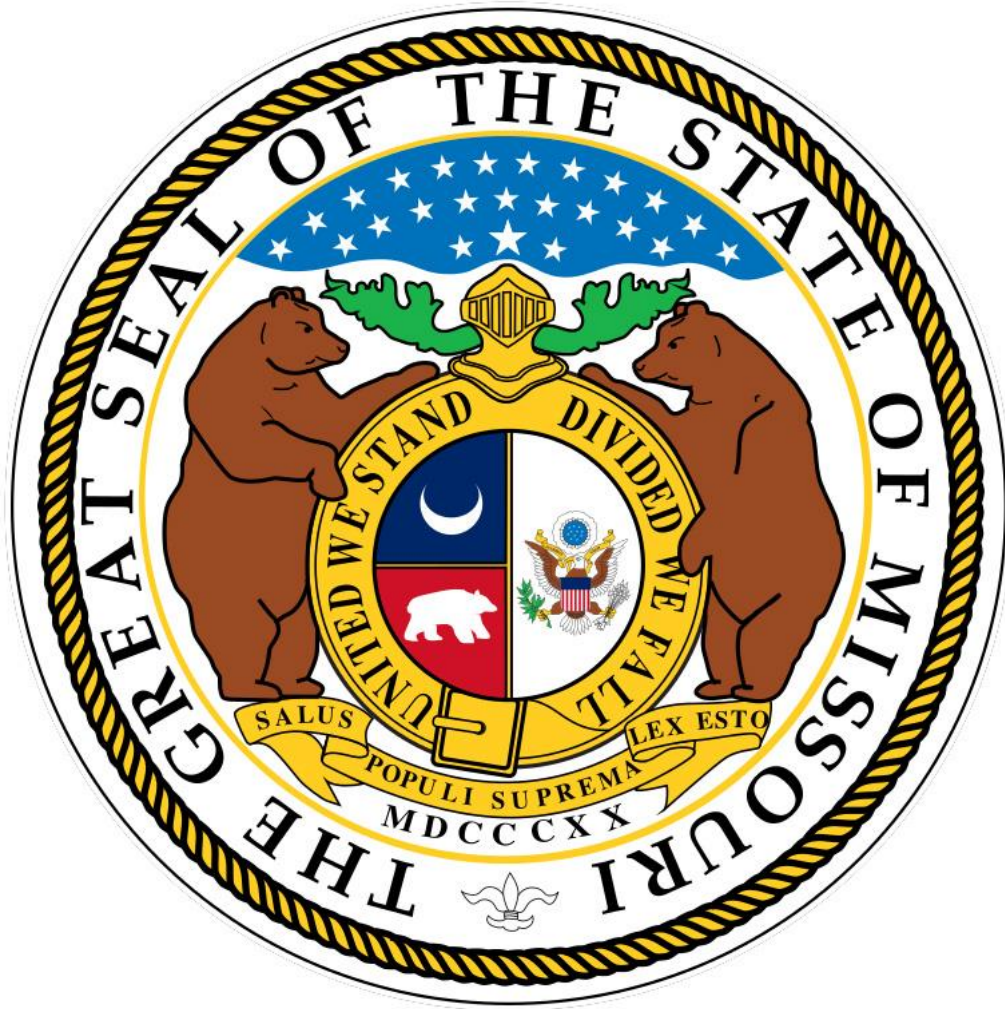


**Platte County Prosecuting Attorney's Report Regarding
the Officer-Involved Shooting of Jeffery Brown**



October 6, 2017

TABLE OF CONTENTS

I. INTRODUCTION

A. Review of Officer-Involved Shootings: The Role of the Prosecuting Attorney's Office

B. The Investigation of the Shooting of Jeffery Brown

II. APPLICABLE MISSOURI LAW

A. Law Enforcement Officer's Use of Force to Prevent Escape from Confinement (R.S.Mo. 563.056)

B. Law Enforcement Officer's Use of Force in Defense of Persons (R.S.Mo. 563.031)

III. STATEMENT OF FACTS

IV. CONCLUSIONS

V. APPENDIX

I. INTRODUCTION

A. Review of Officer-Involved Shootings: The Role of the Prosecuting Attorney's Office

Law enforcement officers perform the vital job of enforcing state, county, municipal, and federal laws. The enforcement of these laws sometimes brings peace officers into direct conflict with subjects who may be armed and dangerous. When legally justified, peace officers are permitted to use lethal force.

The use of deadly force is set forth by Chapter 563 of the Revised Statutes of Missouri. "Deadly force" is defined as physical force which the actor uses with the purpose of causing or which he or she knows to create a substantial risk of causing death or serious physical injury. Deadly force includes firing a weapon at someone. When law enforcement officers, deputies, and/or federal agents use deadly force, the public has a right to expect that a complete, thorough, and transparent investigation will be conducted and that all parties shall be held legally accountable for their actions.

To ensure this expectation is met, prosecutors with the Platte County Prosecuting Attorney's Office are on call 24 hours a day to respond to the scene of every officer-involved shooting in the county. Prosecutors respond to the scene to view the evidence there as close in time as possible to any shooting and to assist law enforcement in conducting a complete and thorough investigation. After the investigation is concluded, the Prosecuting Attorney's Office conducts a comprehensive and objective review of the investigation to determine whether the officer(s) involved acted lawfully in using deadly force. This process concludes with the Platte County Prosecuting Attorney Eric G. Zahnd reviewing the case to make the final decision as to the lawfulness of the use of force. Written notice of the decision is then provided to the involved law enforcement agency, the investigative agency, and the officer(s).

The Prosecuting Attorney's Office's legal determination of whether a shooting is lawfully justified is separate and apart from whether the officer(s) followed departmental policies and/or used appropriate law enforcement tactics. In reviewing the use of deadly force, the Prosecuting Attorney's Office is limited to determining if the action taken was reasonable and justifiable.

This review process is in place to ensure that complete, thorough, and transparent investigations are conducted. When properly implemented, these procedures will produce professional investigations that hold all parties accountable. Because all involved parties are held accountable for their actions, the public can have an increased sense of confidence in their local officer's decision to use deadly force.

B. The Investigation of the Shooting of Jeffery Brown

In this case, Assistant Prosecuting Attorney Hannah Herring responded to the scene of the shooting shortly after it occurred on Monday, July 17, 2017. The incident was investigated by the Missouri State Highway Patrol's Division of Drug and Crime Control. Investigation by an

outside agency, as occurred in this instance, is consistent with best practices in officer- involved shooting cases.

The following day, investigators met with both First Assistant Prosecuting Attorney Mark Gibson and Ms. Herring to provide an overview of the facts related to the shooting. During that meeting, both Mr. Gibson and Ms. Herring reviewed surveillance video that captured the incident. Throughout the course of the investigation, Ms. Herring had regular telephone conversations with Sergeant B.D. Ussary, the lead investigator in the case, and Mr. Gibson and Mr. Zahnd also spoke with Sergeant Ussary on multiple occasions.

After the investigation was complete, Ms. Herring made a comprehensive review of the entire completed case file. Prosecuting Attorney Eric Zahnd then reviewed portions of the file and the surveillance video. Mr. Zahnd discussed the matter with Mr. Gibson and Ms. Herring before reaching his final decision in this matter.

II. APPLICABLE MISSOURI LAW

After review of all applicable Missouri criminal statutes, two specific Missouri laws emerged as critically relevant to the case: those governing an officer's authority to use deadly force when preventing escape from confinement and the authority to use force in self-defense. Summaries of those two laws are outlined below. For the actual language of the statutes, see the appendix.

A. Law Enforcement Officer's Use of Force to Prevent Escape from Confinement (R.S.Mo. 563.056)

A law enforcement officer may use physical force when he reasonably believes it is necessary to prevent escape from confinement or escape from transit to or from confinement. The use of deadly force is authorized in circumstances where it is authorized under other sections of Chapter 563, including in defense of persons, or where the officer reasonably believes there is a substantial risk the escapee is a danger to human life or would cause serious injury.

B. Law Enforcement Officer's Use of Force in Defense of Persons (R.S.Mo. 563.031)

Missouri law provides that a person may use physical force upon another person if he reasonably believes such force is necessary to defend himself. It further provides a person may use deadly force when he reasonably believes that such deadly force is necessary to protect himself from death, serious physical injury, or any forcible felony.

III. STATEMENT OF FACTS

On July 17, 2017, Northmoor Police Chief Kelly Clark was dispatched to the area of 2500 NW Vivion Road in reference to calls about a subject attempting to pass bad checks. Chief Clark made contact with a person later identified as Jeffery Brown, who matched the description of the suspect. As Chief Clark approached Mr. Brown, it appeared Mr. Brown was going to flee, so Chief Clark placed him in handcuffs behind his back. Chief Clark placed Mr. Brown in the front passenger seat of the patrol vehicle, secured him with a seatbelt, and transported him back to one of the businesses involved, Northland Pawn. Chief Clark then exited the vehicle to conduct further investigation. The vehicle was left running due to the excessive heat.

As Chief Clark entered Northland Pawn, Mr. Brown immediately maneuvered his handcuffs from the rear position to the front, then moved to the driver's seat. Mr. Brown placed the vehicle in reverse and backed into the parking lot. Chief Clark exited the business and approached the vehicle. At that time, Mr. Brown placed the vehicle into drive and accelerated in the direction of Chief Clark. Chief Clark drew his weapon, fired two rounds into the vehicle, and then holstered his weapon. The event was captured on Northland Pawn's surveillance video, which investigators later obtained.

Mr. Brown continued to drive his vehicle through the parking lot, then exited the parking lot and drove east on NW Vivion Road. Riverside Police Sergeant Jack Minor was parked across the street and immediately began pursuit of Mr. Brown. The vehicle struck a utility pole, causing extensive damage to the vehicle, and eventually came to rest facing east in the westbound lane of NW Vivion Road near Waukomis Drive.

Mr. Brown exited the vehicle and fled on foot, with Sergeant Minor directly behind him in a patrol vehicle. Mr. Brown fled into a wooded area and was pursued on foot by Sergeant Minor. Sergeant Minor lost sight of Mr. Brown in the woods, and a 36-minute manhunt ensued, involving numerous police agencies, canines, drones, and a Kansas City Police Department tactical team. Mr. Brown was located, and it was determined he had sustained gunshot wounds to his arms. He was treated on scene by the Riverside Fire Department and subsequently transported to North Kansas City Hospital via ambulance. Mr. Brown was found to have gunshot wounds on either side of his left forearm and on either side of his right upper arm.

Sergeant Minor's dash camera captured Mr. Brown fleeing in the vehicle, the crash, and the beginning of the foot pursuit. Investigators obtained that dash camera footage.

Mr. Brown was later interviewed, and he agreed to speak with investigators after being advised of his Miranda rights. Mr. Brown admitted to taking the police vehicle and stated he did so because he knew he had warrants for his arrest and he "panicked." Mr. Brown further stated he should not have done what he did and apologized for taking the police vehicle.

Investigators interviewed numerous witnesses at the scene. Virgil White, owner of Northland Pawn, stated he originally called the police when Mr. Brown came in to cash a check and there were inconsistencies on the check. Mr. White observed Chief Clark pull up to the store with Mr. Brown in the passenger seat. Chief Clark entered the store and then ran back out when Mr.

Brown began backing out of the parking space. Mr. White stated Mr. Brown started driving forward, almost running over Chief Clark, then Chief Clark fired two shots.

Investigators also interviewed Brad Rooks, a customer of Northland Pawn. Mr. Rooks stated the cop car was peeling out and tried to ram Chief Clark. He further stated Chief Clark then fired two shots at the vehicle.

Sergeant Minor wrote a report documenting his observations and involvement in the incident. He stated he was parked across the street from the parking lot where the incident occurred. He observed Chief Clark move toward his police vehicle and heard the vehicle's engine rev. The vehicle backed up and then drove forward. Sergeant Minor stated that from his perspective it appeared the vehicle hit Chief Clark. Sergeant Minor then pursued Mr. Brown both in his patrol vehicle and on foot.

Chief Clark was also interviewed. He detailed his interaction with Mr. Brown and stated he transported Mr. Brown to Northland Pawn for suspect identification. While he was in the store, someone yelled, "He's stealing your car." Chief Clark stated he ran towards the car when Mr. Brown, "dropped it in drive, and was coming right at me, I fired two shots."

Investigators recovered two .40 caliber shell casings from the parking lot in front of Northland Pawn. Two .40 caliber bullets were recovered from the patrol vehicle. While processing the vehicle, investigators used trajectory rods to determine the paths the bullets took through the vehicle. The first bullet went through the A-Pillar located between the front windshield and the driver's side front window. The bullet struck a thick rubber lining around the driver's side window, which forced the bullet to take a downward path. This bullet was recovered from inside the driver's front door. The second bullet appeared to travel through the driver's side front window and lodged under the seatbelt latch on the front passenger seat. This bullet was recovered under the passenger seat cushion.

IV. CONCLUSIONS

It is always regrettable when someone is shot and injured during police activities. However, the evidence in this case shows Mr. Brown stole a police vehicle after being placed in custody and drove that vehicle in the direction of Chief Clark.

Missouri law allows a law enforcement officer to use deadly force in defense of persons, including self-defense, to prevent escape during transport to confinement. Mr. Brown was in custody and would have been transported to confinement. Missouri law provides deadly force can be used to protect oneself from death or serious physical injury. In this case, the evidence shows Mr. Brown drove the patrol vehicle towards Chief Clark, which was an act capable of causing death or serious physical injury.

Numerous witnesses at Northland Pawn stated Mr. Brown tried to hit or almost hit Chief Clark with the vehicle. Sergeant Minor stated it appeared from his perspective that the vehicle actually hit Chief Clark. Chief Clark stated Mr. Brown put the vehicle in drive and drove right at him. Surveillance video from Northland Pawn confirms Mr. Brown drove the vehicle towards Chief Clark. The below picture is a screenshot from that video, which depicts the vehicle facing Chief Clark:



The processing of the patrol vehicle, with use of trajectory rods, resulted in the conclusion that the first bullet hit the A-Pillar between the front windshield and the driver's side window, travelling from front to back. This shows Chief Clark fired his weapon while the vehicle was driving in his direction. The below picture depicts the trajectory rod used to determine the direction the bullet was traveling:



The evidence also indicates the second bullet traveled through the driver's front window, through Mr. Brown's left forearm, through Mr. Brown's right upper arm, and lodged in the passenger seat. Assuming Mr. Brown's hands were on the steering wheel, the locations of his wounds also indicate the bullet was traveling in a front-to-back path, rather than from side-to-side. This indicates the second bullet was also fired while the vehicle was facing in the direction of Chief Clark.

Based on the statement of witnesses and the surveillance video, the Prosecuting Attorney's Office determined Mr. Brown drove the patrol vehicle in Chief Clark's direction. Based on the evidence investigators uncovered during their processing of the patrol vehicle, the Prosecuting Attorney's Office determined Chief Clark fired his weapon while the patrol vehicle was facing him. It is the Prosecuting Attorney's Office's conclusion that Chief Clark reasonably believed Mr. Brown was going to hit him with the patrol vehicle. This would certainly have caused death or serious physical injury, so Chief Clark acted lawfully in defense of his person when he discharged his weapon.

After a thorough review of the evidence in this case, the Platte County Prosecuting Attorney's Office concludes that Northmoor Police Chief Kelly Clark's actions in shooting Mr. Jeffery Brown were reasonable and justified under the circumstances. This matter is considered closed and the Prosecuting Attorney's Office will not consider action of any kind against Chief Clark.

V. APPENDIX

563.056. Use of force to prevent escape from confinement

1. A guard or other law enforcement officer may, subject to the provisions of subsection 2 of this section, use physical force when he reasonably believes such to be immediately necessary to prevent escape from confinement or in transit thereto or therefrom.
2. A guard or other law enforcement officer may use deadly force under circumstances described in subsection 1 of this section only:
 - (1) When such use of deadly force is authorized under other sections of this chapter; or
 - (2) When he or she reasonably believes there is a substantial risk that the escapee will endanger human life or cause serious physical injury unless the escape is prevented.
3. The defendant shall have the burden of injecting the issue of justification under this section.

563.031. Use of force in defense of persons

1. A person may, subject to the provisions of subsection 2 of this section, 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, unless:
 - (1) The actor was the initial aggressor; except that in such case his or her use of force is nevertheless justifiable provided:
 - (a) He or she has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened use of unlawful force; or
 - (b) He or she is a law enforcement officer and as such is an aggressor pursuant to section 563.046; or
 - (c) The aggressor is justified under some other provision of this chapter or other provision of law;
 - (2) Under the circumstances as the actor reasonably believes them to be, the person whom he or she seeks to protect would not be justified in using such protective force;
 - (3) The actor was attempting to commit, committing, or escaping after the commission of a forcible felony.
2. A person shall not use deadly force upon another person under the circumstances specified in subsection 1 of this section unless:

(1) He or she reasonably believes that such deadly force is necessary to protect himself, or herself or her unborn child, or another against death, serious physical injury, or any forcible felony;

(2) Such force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter a dwelling, residence, or vehicle lawfully occupied by such person; or

(3) Such force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter private property that is owned or leased by an individual, or is occupied by an individual who has been given specific authority by the property owner to occupy the property, claiming a justification of using protective force under this section.

3. A person does not have a duty to retreat:

(1) From a dwelling, residence, or vehicle where the person is not unlawfully entering or unlawfully remaining;

(2) From private property that is owned or leased by such individual; or

(3) If the person is in any other location such person has the right to be.

4. The justification afforded by this section extends to the use of physical restraint as protective force provided that the actor takes all reasonable measures to terminate the restraint as soon as it is reasonable to do so.

5. The defendant shall have the burden of injecting the issue of justification under this section. If a defendant asserts that his or her use of force is described under subdivision (2) of subsection 2 of this section, the burden shall then be on the state to prove beyond a reasonable doubt that the defendant did not reasonably believe that the use of such force was necessary to defend against what he or she reasonably believed was the use or imminent use of unlawful force.