



MEDIA FACT SHEET- OFFICER INVOLVED SHOOTING

From: Steve Howe
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Johnson County District Attorney Steve Howe announces that his office has completed a review of the November 24, 2019, officer involved shooting that occurred in the 400 block of Cardinal in Olathe, Kansas. This investigation was conducted by the Johnson County Officer Involved Shooting Team. It is the determination of the District Attorney that both officers' use of force was justified under Kansas law. Therefore, no criminal charges will be filed against either officer.

SUMMARY OF FACTS AND FINDINGS

Initial Auto Burglary Call

On November 24, 2019, at approximately 11:30 p.m., Olathe police officers were dispatched to the neighborhood of Cedar and Clairborne on a report of two males possibly being involved in automobile burglaries. This eventually led to two Olathe officers using deadly force during this incident. To ensure clarity to a very confusing situation, we will designate the two officers as Officer #1 and Officer #2.

Olathe Officer #1 was driving a marked police vehicle and saw two males walking in the area of Willow Street and College Way. These individuals were 16-year-olds Christian Batson and Deven Mann. Upon seeing Officer #1, the two individuals ran away. Officer #1 lost sight of them, but soon located them as the Officer was heading north on the 400 block of Cardinal.

Shooting Incident

Officer #1 drove toward the two individuals who were heading south on Cardinal. Officer #1 drove up to the two individuals, got out of the patrol vehicle and then asked to speak with them. They responded "fuck you" or a similar phrase. They continued walking away from Officer #1, heading south. Batson then threw something on the ground, which was later determined to be a bag of marijuana. Batson then turned towards Officer #1 and then he immediately began shooting at Officer #1. Officer #1, in fear for their life, returned fire. No one was hit in this initial exchange of gunfire.

Other officers had been converging on this area based on Officer #1's report of seeing the two individuals. Officer #2 was one of the responding officers. Officer #2 arrived from the south and turned the corner onto the 400 block of Cardinal and immediately heard gunshots. Officer #2 and other patrol vehicles stopped their vehicles at the end of the street and exited their marked patrol vehicle. Officer #2 believed they were being shot at. Officer #1 had seen Batson shoot south towards the responding officers as they arrived at the scene. Officer #2 drew a weapon, walked north down Cardinal Street and saw Batson throw something onto a windshield on the west side of the street. Officer #2 remembered hearing more gunshots. Officer #2 and other Olathe police officers closed quickly with Batson and Mann. At all times, multiple officers were shouting at both suspects to surrender and to get on the ground.

Second use of Force

Officer #2 saw Mann and focused attention on him. This was approximately the same time that other officers unsuccessfully used a Taser on Batson.

At this point, Batson ran down the street and got into Officer #1's police car. Officer #1 saw this and knew that this put Batson in close proximity to a patrol rifle and shotgun (as well as the car itself). Officer #1 fired additional shots at the police car. No one was hit.

Third use of Force

During this same period of time, Officer #2 repeatedly ordered Mann to get on the ground. Mann continued to walk away from Officer #2 on the east side of the street. Mann was told multiple times to show his hands and get on the ground. When the opportunity presented itself, Officer #2 "bull-rushed" Mann in the street, but was initially unable to get him to the ground. After a quick fight, Mann was taken to the ground, where the struggle continued. As this was happening, Batson stepped out of Officer #1's patrol vehicle, yelled profanity at the officers and ran towards Mann and Officer #2, who were in a physical struggle. Officers observed Batson strike Officer #2 until Batson was subdued by other officers.

During Mann's struggle with Officer #2, a handgun fell out of Mann's pocket and onto the ground. Mann reached for the gun.

Officer #2, who had a service pistol in hand during this fight, shot Mann once. Mann immediately stopped struggling, and was handcuffed. The gun was moved safely away from Mann. The two firearms used by Batson and Mann were stolen from a residential burglary a short time before this incident.

Batson is charged with two counts of attempted capital murder and seven other felonies in 19JV1362. Mann is charged with aggravated assault on a law enforcement. They are presumed innocent of these charges.

Analysis

Applicable law

K.S.A. 22-2402 authorizes a law enforcement officer to “stop any person in a public place whom such officer reasonably suspects is committing, has committed, or is about to commit a crime...”

K.S.A. 22-2401 authorizes a law enforcement officer to arrest a person when he has probable cause to believe that the person has committed a felony; or a misdemeanor plus the officer has probable cause that the person will not be apprehended unless the person is immediately arrested; or has intentionally inflicted bodily harm to another person.

K.S.A. 21-5227 authorizes law enforcement officers to use force when “making a lawful arrest.” They need not retreat or desist from making the arrest in the face of resistance by the arrestee. Officers may use deadly force if they reasonably believe that such force is necessary to prevent death or great bodily harm to themselves or others.

Graham v. Connor, 109 S. Ct. 1865 (1989), demands a “totality of the circumstances” approach to an officer’s use of force. It also defines what “reasonableness” should mean:

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. “

“The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments –in circumstances that are tense, uncertain, and rapidly evolving- about the amount of force that is necessary in a particular situation.”

K.S.A. 21-5222, authorizes any citizen to defend themselves using deadly force if they reasonably believe that it is necessary to prevent imminent death

Kansas law requires a two-step analysis in a citizen deadly-force self-defense claim. The claimant must have an *actual (subjective)* belief that using deadly force was necessary to prevent imminent death or great bodily harm to the claimant or someone else. That belief must be *reasonable (objective)*. See *State v. McCullough*, 293 Kan. 970, 270 P.3d 1142 (2015).

Officer #1 had reason to stop and question the juveniles

Under the totality of the circumstances, Officer #1 had reasonable suspicion to believe that the two people who ran away from this Officer could have been

involved in an auto burglary that had just been reported in the area. Officer #1 was therefore authorized by *K.S.A. 22-2402* and its supporting caselaw to stop and question Batson and Mann.

Once Batson and Mann refused to comply with Officer #1's lawful command, they were subject to arrest

Officer #1 lawfully ordered Batson and Mann to stop for questioning in the investigation of a felony crime (auto burglary). Refusal to do so was the crime of felony interference (obstructing official duty), *K.S.A. 21-5904(a)(3)*. Officer #1 could therefore proceed to arrest them pursuant to *K.S.A. 22-2401*. However, neither Batson or Mann complied with Officer #1's request and thus no detention ever occurred. At the very least, Officer #1 had the right to briefly detain both individuals to determine if they were involved in the automobile burglary that had been reported.

Batson's actions immediately turned this into a deadly force situation and made the initial use of force lawful

Within perhaps seconds of confronting Mann and Batson, Batson opened fire on Officer #1. Officer #1 was in fear for their life at this time. Officer #1 was justified in using deadly force by returning fire at Batson. Officer #1 also saw Batson shoot south in the direction of the arriving backup officers, but did not shoot at him because of the backdrop.

Shooting at Batson when he entered the police car was lawful

Officer #1's second use of deadly force occurred when Batson, after initially shooting at officers and refusing their commands, ran to and got into Officer #1's patrol car. Officer #1 told investigators that "inside the car were guns and everything police related." There was an AR patrol rifle and a shotgun, and Officer #1 did not remember if the keys were in the car or on Officer #1's person. Officer #1 was "scared" that Batson might have another gun and get ahold of the long guns in the car, and thus shot to stop that threat.

This is a reasonable response to Batson's actions. Police were still trying to arrest him, now for a plethora of crimes. *K.S.A. 21-5227* authorizes the use of deadly force when an arrestee attempts to escape using a deadly weapon. It appeared to Officer #1 that Batson was attempting to obtain weapons to facilitate further mayhem. This was a reasonable belief, especially under the *Graham v. Connor* standards.

Officer #2 lawfully used force in defense

Officer #2 was authorized to arrest Mann at the time Mann was tackled on Cardinal Street. Mann, with the aid of Batson, continued to resist arrest and

battered Officer #2. This occurred after multiple gunshots had been fired at multiple officers.

During the arrest, a gun fell out of Mann's hoodie pocket. Mann tried to reach for it. Officer #2 yelled "gun" and then shot Mann once. Officer #2 believed that Mann was "going to hurt me...hurt me or others by firing the gun and I'm not going to allow that to happen, so I fired my weapon."

Officer #2's belief that this was a deadly force situation is reasonable under all controlling statutes and case law. Officer #2 acted as a reasonable police officer would, under the same circumstances.

Conclusion

Therefore, it is my conclusion that the uses of deadly force by Olathe Officer #1 and Olathe Officer #2 were justified as defense of self or others during an arrest by a law enforcement officer under *K.S.A. 21-5227*.
