



MEDIA FACT SHEET- OFFICER INVOLVED SHOOTING

From: Steve Howe
(Olathe, KS)

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Johnson County District Attorney Steve Howe announces that his office has completed a review of the November 23, 2019 officer involved shooting that occurred in the 8400 block of Pflumm Circle, in Lenexa, Kansas. It is the determination of the District Attorney that the Officer's use of force was justified under Kansas law. Therefore, no criminal charges will be filed against that Officer.

SUMMARY OF FACTS AND FINDINGS

Initial Contact

On November 23, 2019 at approximately 2:30 p.m., a Lenexa police officer was driving southbound on Pflumm Road approaching 87th Street when he saw a Chevrolet Impala turn northbound onto Pflumm.

The Impala drew his attention for several reasons. Lenexa officers were on the lookout for a gold Impala that had warrants "associated" with it. The Officer was therefore alert to all Impalas, and because of the sun, initially thought this one might be gold. Soon thereafter, the Officer saw that it was silver, but observed both the driver and the passenger turned their heads and stared at him as he drove by. The driver appeared to be ducking down as well. Based on these actions, the Officer now wanted to get a license tag from the vehicle. As the Officer approached Pflumm, he turned his head to try to get a tag number. He saw the passenger in the Impala had also turned around to look at him. This distracted him from getting the license plate number.

Based on these actions, The Officer turned on his emergency equipment so that he could safely execute a U-turn back onto northbound Pflumm. He could see the Impala as it drove over a hill and then out of view.

As the Officer crested the same hill, he saw the Impala further down the road. Compared to other traffic on the same road, it appeared to be speeding. The Impala then executed an unsignaled, "erratic" left turn onto Pflumm Circle. The

Officer knew this to be a dead-end neighborhood—one way in and one way out.

Although this was not a pursuit, and the Officer was not trying to stop the Impala, it appeared to him as though the Impala was trying to evade him.

The Officer then drove through the neighborhood and found the Impala parked in the driveway of a residence in the 8400 block of Pflumm Circle.

The Shooting Incident

The Officer saw what appeared to be the driver of the Impala out of the car, standing next to another man in the driveway. The Officer pulled over, rolled down his window and asked the other man, who he believed to be the homeowner, if he 'knew these guys'. The homeowner answered no. The driver immediately returned to the Impala. The Officer was now concerned that there might be something more serious happening at the residence. The Officer attempted to pull forward to block the Impala from leaving the driveway.

Instead of stopping, the Impala drove forward into the yard of the residence—an attempt to get back onto the street. The Officer drove his car down the street to block this maneuver. The Impala then struck the passenger side of the police car.

The Officer decided to get out of the police car. He drew his weapon and went toward the back of his car. The Impala was slowly moving toward the Officer. The Officer yelled at the driver to stop. The Impala accelerated toward the Officer.

The Officer barely got out of the way of the Impala as it surged toward him. He fired seven rounds into the driver's side of the Impala, hitting the driver in the arm. The Officer suffered a minor injury when the car struck him.

The driver accelerated rapidly away from the scene. After the shooting, the passenger asked to be let out of the car. The driver then stopped the vehicle and dropped off the passenger by the side of the road. The driver then fled from Lenexa and Shawnee police officers. A very short time later, he caused a collision with a pickup truck and a mini-van at the intersection of Blackfish and Lackman in Shawnee, KS.

The driver was identified as Tevin White. It was later determined that Mr. White had an active warrant for his arrest. Mr. White is currently charged with two counts of aggravated battery against a law enforcement officer in Johnson County Case number 19CR3036. He is presumed innocent.

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.”

The Officer could follow the Impala to obtain a tag number

The Officer was permitted to follow the Impala, without making a stop, for any or no reason at all. In this case, he used his emergency equipment to facilitate a safe U-turn, and at no time was pursuing the Impala. This was not a seizure, it was merely observation.

The Officer could stop the Impala for traffic violations

After completing the U-turn, the Officer was able to see that the Impala was driving fast northbound on Pflumm Road. He then saw the Impala make a left turn without a signal onto Pflumm Circle. Both of these observations permitted the Officer to, if he chose, pull the Impala over under a ‘reasonable suspicion’ standard—among the lowest Fourth Amendment standards.

The Officer appropriately inquired about the Impala’s presence in the driveway

At this point, despite having reasonable suspicion to stop the Impala, the Officer still just wanted to get a license tag number. The Impala's driver, Mr. White, admittedly pulled into the driveway to try and evade the officer. The Officer believed from his training and experience that this was a tactic to avoid police. The Officer asked the homeowner if he knew Mr. White. This was not a Fourth Amendment seizure—at this point the Officer had done nothing to restrict Mr. White's movement.

Before the Officer had a chance to make a stop, Mr. White made a series of moves that changed this from a reasonable suspicion stop to probable cause for arrest, to deadly force, in seconds.

The Officer's use of deadly force was lawful

Mr. White hopped into the Impala after the homeowner denied knowing him. Immediately thereafter, the officer decided to make a stop and pulled into the driveway behind the Impala.

Mr. White drove the Impala further down the driveway, to the left and into the grassy yard of the home. The Officer drove up the street parallel to the Impala to prevent it from driving onto the street.

At this point, the Impala struck the side of the police car. This is an arrestable offense. Instead of stopping and surrendering, Mr. White reversed the Impala and tried to drive around a tree and go behind the police car.

The Officer got out of his police car and walked around the rear of it, to approach the Impala. The Impala appeared to be stopped, or at least moving extremely slowly, when the officer approached. As the Officer approached the Impala, it revved its engine and turned right toward the Officer.

It appeared to the Officer that the Impala was trying to run him over. A reasonable officer, in the same position, would have believed that he was being intentionally driven at. An Impala under these circumstances is a deadly weapon. The Officer told OISIT investigators that he believed that he was about to get run over and feared for his life. He shot to stop the threat against his life. This was a reasonable response.

Under the totality of the circumstances, it was reasonable for The Lenexa Officer to conclude that it was necessary to shoot at Tevin White in order to stop an imminent threat to his life. This is true when considering that he had literally seconds to make a life or death decision, as is the standard in these cases.

Therefore, it is my conclusion that the use of deadly force by the Lenexa officer on November 23, 2019 was justified as self-defense during an arrest by a law enforcement officer under *K.S.A. 21-5227*.
