



MEDIA FACT SHEET- OFFICER INVOLVED SHOOTING

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Johnson County District Attorney Steve Howe announces that his office has completed a review of the December 15, 2020, officer involved shooting that occurred in Overland Park, Kansas. This investigation was conducted by the Johnson County Officer Involved Shooting Team. 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

On December 15, 2020, Officer Daniel Vance was on duty as a Kansas City Kansas police officer. Officer Vance was driving a marked KCKPD car and was in full police uniform. At around 3:55 p.m., a hit-and-run collision took place near Woodland and Douglas in Kansas City, Wyandotte County, Kansas. A responding KCKPD officer saw a tan-colored four door car with a temporary tag driving away from the scene. The officer attempted to stop the car, which had damage to the rear passenger side, but the car failed to yield. Officer Vance heard the radio broadcast of the hit and run, which provided a vehicle description of the involved vehicle. He then began a systematic search of the surrounding area.

Eventually, Officer Vance wound up on "County Line Road", which is also called 47th Street. The street divides Wyandotte County to the north and Johnson County to the south. Officer Vance drove past Conser Street and noticed a car that matched the description of the suspect car parked at the end of the cul-de-sac that is Conser Street. Conser Street is south of 47th and thus in Overland Park, Johnson County, Kansas.

Officer Vance pulled into the cul-de-sac, parked his car and walked to a position where he could observe the car without being seen. Officer Vance called for backup and decided to observe, but not contact, the apparent driver of the suspect vehicle, who was outside the car doing something.

Officer Vance walked to a tree just west of where the suspect car was parked. Officer Vance tried to hide behind the tree so as not to alert the suspect, whom he described as a white or light skinned man wearing a hood and a mask.

For a short period of time, Officer Vance moved around the tree as the suspect moved near the car. Then, the suspect looked directly at Officer Vance while putting his hands near his waistband.

Officer Vance very quickly realized that he had been seen and ordered the suspect to show his hands, but it was too late. The suspect, using the car for cover, drew a handgun. He placed his arms on the roof of the car and aimed at Officer Vance using a two-handed grip. The suspect shot at Officer Vance multiple times. Officer Vance later told investigators that the suspect was able to shoot at him before Officer Vance could draw and fire.

Officer Vance was struck in the chest with a bullet—which hit his Taser gear and was stopped by his ballistic vest. Another bullet struck and injured his left forearm. Officer Vance was able to fire his weapon once and then his gun malfunctioned. Officer Vance took cover and cleared his weapon. By the time Officer Vance was able to re-engage, the suspect car had driven south through a chain link fence, up an embankment and onto I-635.

KCKPD backup units arrived and Officer Vance was treated and released from the hospital the same day. Officer Vance did not wear a body camera and there are no video or audio recordings or eye-witnesses to this event. The ballistics evidence at the scene supported Officer Vance's version of events.

A short time later, police found a 2002 Buick Regal which had been abandoned at an address in Kansas City Kansas. This was determined to be the suspect vehicle. A fired cartridge case was found inside the car. There was also a bullet embedded in the driver's side, 'B-post', of the car.

Based on evidence located at the scene and in the vehicle, investigators determined that the suspect who shot officer Vance was Jesse James Flaughter. On December 20, 2020, he was taken into custody at a residence in Edgerton, Kansas. He is currently charged with Attempted Capital Murder in Johnson County case number 20CR3245.

Analysis and Applicable Law

K.S.A. 21-5222, Defense of a Person states, in part:

a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such use of force is necessary to defend such person or a third person against such other's imminent use of unlawful force.

(b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes that such use of deadly force

is necessary to prevent imminent death or great bodily harm to such person or a third person.

(c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third 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.

K.S.A. 21-5229 states that a person is not authorized to use force to resist an arrest which such person knows is being made by a law enforcement officer even if they believe the arrest is unlawful.

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.”

Officer Vance was outside of his jurisdiction when these events unfolded. However, he was not taking any law enforcement action:

- He was observing a suspect;
- He did not seize the suspect by command or other action;
- He did not attempt to arrest the suspect;
- He did not draw his weapon or otherwise use force against the suspect.

The suspect, Jesse James Flaughner, initiated this deadly encounter by suddenly and without provocation drawing a weapon, aiming, and shooting Officer Vance in his center body mass.

There is no evidence that Mr. Flaughner had any reason to defend himself from Officer Vance. He methodically and deliberately tried to kill Officer Vance.

Because Officer Vance was not arresting Mr. Flaughner, K.S.A. 21-5227, Law Enforcement Officer Making Arrest, would not apply.

However, Daniel Vance, like every Kansas citizen, enjoyed a natural and statutory right to defend himself from the imminent use of deadly force. See K.S.A. 21-5222:

Kansas law requires a two-step analysis in any 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 Vance told OISIT investigators that he “was just looking right down the barrel” of Mr. Flaughter’s gun when it was fired. He “braced” himself “because I thought I was going to get shot.” He was afraid for the worst and thought he was about to be “killed right now.” He felt the gunshots strike him—and then fired back.

Clearly, Daniel Vance was both subjectively and objectively justified to use deadly force under the facts and circumstances as revealed by the OISIT investigation. He was suddenly attacked by Jesse James Flaughter—who fired at him before he could draw his weapon and fire in self-defense. Under the totality of the circumstances, he did what a reasonable officer would do—returned fire.

Conclusion

Kansas City, Kansas Police Officer Daniel Vance lawfully used deadly force to defend himself against a patently imminent and actual threat of death or great bodily harm. This was a justifiable use of deadly force.

Stephen M. Howe
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