



## **MEDIA FACT SHEET- OFFICER INVOLVED SHOOTING**

From: Steve Howe  
(Olathe, KS)

Date: August 26<sup>th</sup>, 2021

Johnson County District Attorney Steve Howe announces that his office has completed a review of the May 26<sup>th</sup>, 2021 officer involved shooting that occurred at 1110 E. Santa Fe Street, Olathe, Kansas, involving the Olathe Police Department. This investigation was conducted by the Johnson County Officer Involved Shooting Investigation 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 the officer.

### **Summary of Fact and Findings**

#### **Man passed out inside vehicle in restaurant parking lot**

On Wednesday, May 26, 2021, employees of the *Strips* chicken restaurant in Olathe noticed a car parked in a space in their west lot. It was at an angle, and one of its wheels was over the curb. The driver (and sole occupant) of the car appeared to be asleep or passed out behind the wheel. At 4:46 p.m. an employee called 911 and reported a Saturn vehicle in "reserve spot #3" with the driver "nodding off" and possibly intoxicated. Olathe police officers were dispatched to *Strips* as a check welfare call and provided the information reported by the callers.

#### **Contact with the occupant of the vehicle**

Officer #1 arrived at the location at 4:51 p.m. Officer #1 parked away from the Saturn and approached the driver's side door. The driver (the only person in the car) appeared to be asleep. That person was later identified as Jesus Salazar. Officer #1 knocked on the window a few times without effect. Officer #1 observed a handgun ("a revolver") sitting on the passenger seat and decided to back off and wait for backup.

Officer #2 arrived about a minute later. Both officers then re-approached the vehicle. Officer #1 continued to knock on the driver's side window to wake up Mr. Salazar. Officer #2 was at the front passenger window. Mr. Salazar woke up and at first appeared disoriented. On multiple occasions the officers asked him to get out of the vehicle and to open his door. Mr. Salazar did not comply with their request and told the officers at one point he was not going to open the door.

During this interaction he moved his hand several times towards the revolver in the front passenger seat. On each occasion the two officers told him to keep his hands away from the weapon. Officer #1 asked for a third officer to respond and to park behind Mr. Salazar's vehicle to block him in so he could not drive off.

Officer #3 arrived shortly thereafter and parked the vehicle directly behind Mr. Salazar's vehicle. Officer #3 positioned himself behind Officer #1 towards the back of Mr. Salazar's vehicle.

### **Use of force**

Officers #1 and #2 continued to give verbal commands to Mr. Salazar. At this point Officer #2 saw him looking at the revolver and told him "don't do this." Mr. Salazar then picked up the revolver and brought it up across his body in the direction of Officer #1. Officer #1 saw this movement and begin backing away from the driver's window. At that time officer #2 fired one round striking Mr. Salazar in the abdomen. Mr. Salazar dropped the weapon and shortly thereafter got out of his vehicle screaming. All three officers told him to get on the ground. He refused and ran across the gas station west of the restaurant and, after a brief struggle, was arrested.

After detaining Mr. Salazar, officers rendered aid to him until Med Act arrived to take over his medical needs.

He was charged in Johnson County District Court case 21CR1623 with aggravated assault on a law enforcement officer and firearm possession by a felon. He is presumed innocent in that case.

### **Evidence Recovered**

The following relevant items were collected:

- .38 Smith/Wesson revolver from the inside of the Saturn.
- Confirmed samples of alprazolam, marijuana, THC, methamphetamine, heroin and LSD from inside the Saturn.
- Glock pistol with 16 rounds in magazine and one chambered, from Officer #2
- 9mm luger shell casing from the inside of the Saturn
  - 9mm shell casing was fired by Officer #2's Glock pistol.

## **Analysis**

### ***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.”

### **Welfare/DUI check**

These officers responded to a “check welfare” call that almost immediately turned into a DUI investigation. Jesus Salazar was passed out behind the wheel of a vehicle that had been haphazardly parked into a parking slot, with one wheel over the curb. Mr. Salazar was obviously disoriented.

The officers had a right to seize Mr. Salazar for the purposes of conducting an investigation into why he was passed out behind the wheel of his vehicle.

They did not need to “retreat” because he verbally resisted them.

## **Use of deadly force was justified**

This event moved quickly.

Officer #1 arrived at 4:51 p.m. Officer #2 arrived at 4:52. They both saw the revolver. Officer #3 arrived at 4:55. Most of this time was spent trying to persuade Mr. Salazar, by reason and command, to get out of the Saturn.

In the space of a few seconds, Mr. Salazar reached for and picked up his revolver, pointing it in the direction of Officer #1. Officer #2 did not need to wait for Mr. Salazar to fire in order to defend Officer #1. Officer #2 fired once, striking Mr. Salazar in the abdomen.

Analysis of the video of this event showed that Mr. Salazar defied the orders of the police, picked up his pistol, and moved it toward his left, in the direction of Officer #1. Officer #2 perceived this as a threat to Officer #1's life.

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 #2 had a subjective belief that deadly force was needed to defend against Jesus Salazar's imminent use of deadly force against Officer #1. Officer #2 told the OISIT investigators "I thought he was going to shoot Officer #1."

Objectively, the facts/video support this belief. Officers told Mr. Salazar multiple times not to pick up the revolver. This is exactly the scenario covered by the *Graham v. Connor* standard: officers in a tense situation who must make a decision in a split-second. In this case, Jesus Salazar initiated the event by failing to obey the lawful commands of the officers. He chose to escalate by picking up his revolver. Under all the appropriate legal statutes and cases as cited above, it was reasonable for Officer #2 to use deadly force against Mr. Salazar.

## **Conclusion**

Olathe Police Officer #2 lawfully used deadly force to defend another officer against an imminent threat of death or great bodily harm.

Therefore, the Olathe officer will not face criminal charges for the use of force that happened on May 26<sup>th</sup>, 2021.

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