



Office of District Attorney **Press Release**

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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 May 3rd, 2020 officer involved shooting that occurred near 123rd street and Antioch, Overland Park, Kansas. It is the determination of the District Attorney that Overland Park Police Officer Michael Mosher's use of force on that day was justified under Kansas law.

SUMMARY OF FACTS AND FINDINGS

Driving to work

At around 5:45 p.m., Mike Mosher, an Overland Park Police Department officer, was driving to the Sanders Police Station to start his 6:00 patrol shift. He was driving on Antioch Road, getting ready to head east on 123rd Street which would take him directly to the police station. Off. Mosher was in his personal vehicle: a gold Mercedes SUV; and was in full uniform and kit including a ballistic vest, radio and sidearm. As he approached 123rd and Antioch, Officer Mosher encountered the remains of a hit-and-run car collision.

Hit-and-run

Shortly before Off. Mosher's arrival, D.S. was driving west on 123rd Street, stopped at the light at Antioch.

D.S. looked in his rear-view mirror and saw a car headed toward him "really fast." He braced for impact. He heard braking noises. The oncoming car rear-ended him and pushed his car into the intersection of 123rd/Antioch. D.S. was able to drive his car across Antioch. He parked on the west side of the intersection. The car that hit him was still in the intersection. D.S. searched for his insurance paperwork. When he looked up again, the car that hit him was gone.

Several people stopped to offer their help. One neighbor began cleaning debris out of the intersection.

The suspect car was a 2010 Honda Accord driven by 38-year-old Phillip Carney. After the collision, Mr. Carney drove the Accord east on 123rd Street. The Honda had extensive front-end damage and was leaking fluid. It apparently became disabled on 123rd Street just before Mackey—about a block east of Antioch.

This was where Mike Mosher encountered Phillip Carney.

Gunfight ends in two deaths

Although Officer Mosher was in uniform, he was not wearing a body camera. His SUV did not have a camera system. However, he used his personal cell phone to video record the final minute-and-a-half of this encounter with Mr. Carney.

The following is an excerpt from a transcript of the dispatch recordings leading up to the fatal encounter. There are no official times for the radio calls, and it is unclear how much time passed between some of the transmissions. “MM” is Officer Mosher. “D” is dispatch. Other numbers indicate OP units that were checking in. “231” is the first officer on the scene after the shootings, Officer “A.”

MM: Badge 917

D: Badge 917

MM: I'm coming into work off-duty. I'm behind a driver that is involved in some kind of hit and run accident. 1-2-3 and Antioch. Can you start me a unit please?

An undetermined amount of time passed—probably a few minutes at most, before the next sequence of calls. Officer Mosher interacted with Mr. Carney, who at some point got out of his Honda:

MM: Badge 917

D: Badge 917

(Unknown male voice): I'm not going to my car...

MM: Can you go ahead and upgrade that unit.

(Unknown male voice) I take no _____ ticket.

D: Copy. Calling 231 and 238, hit and run accident 123rd and Antioch.

238: 38 and Bluemont.

231: 231 copy. Do they need us to upgrade?

MM: Badge 917, go ahead and upgrade.

D: 1752

230: 230 to 917. Is that vehicle stopped?

MM: Yeah. We're just east of 1-2-3 and Antioch on 1-2-3. He got out of his car and confronted me. Refuses to get back in his car.

230: OK. Is it stable right now?

MM: Yeah, but I need units here, please.

230: Copy. They're on their way.

This was the last transmission that Mike Mosher made. The following is a transcript of the video recording from Officer Mosher's cell phone. "PC" is Phillip Carney. The video itself showed Mr. Carney standing very close to Officer Mosher:

MM: You don't know?

PC: I thought they were going through the light, you know two cars through the light, they stopped, and... boom.

MM: OK, can you go back up to your car for just a minute, ok?

PC: No.

MM: Why?

PC: Because I don't want to.

MM: OK, but we're out on the street, it's not really a safe place to be.

PC: Call Paul Morrison, he's my attorney. Yeah. Former DA of Kansas.

MM (to dispatch): Badge 917, go ahead and upgrade.

MM (to PC): OK, that- that's fine. Like I said if you just wait in your car, I got someone coming that can help you. I don't even know... like you got out of your car and you walked back to me.

PC: Your help, your help...OK, Major Keith Jenkins, I've known him since I was this high... Dan Carney is my uncle. I know how you guys operate. I don't trust you.

MM: OK, well like I said, I don't know why you stopped and got out of your car and came back to me. You know what I mean?

PC: You'll figure it out.

MM: I'll figure it out? Why don't you just go back and sit up in your car...

PC: (interrupting) No I'll stay right here.

MM: Ok, but it's not a safe place to be.

[At this point Mr. Carney looked away from Officer Mosher and raised his right hand, apparently motioning to cars driving by behind him.]

MM: (to dispatch): Yeah, we're just east of 1-2-3 and Antioch. On 1-2-3. He got out of his car, and confronted me. Refusing to get back in his car.

PC: I'm just sayin', like I know how the process works.

MM (to dispatch): Yeah but I need units here please.

At this point in the video-one minute and 35 seconds since it started recording- Mr. Carney reached behind his body and produced a black revolver, which he pointed upward. His index finger was clearly inside the trigger guard. In a continuing motion, Mr. Carney pointed the gun at Officer Mosher, who made a move to block or grab Mr. Carney's gun arm.

The camera apparently fell to the ground, where it captured a few fleeting glimpses of

Officer Mosher, and sound. One shot was recorded, followed by five in rapid succession. There was a brief pause, and then two more shots. No voices were heard. The camera continued to record as citizens and then police responded to the scene.

The gunfire stopped at one minute 43 seconds on the video.

Sometime after Officer Mosher's last transmission, "231"- Officer "A"—arrived at D.S.' location on the west side of 123rd/Antioch. Officer "A" had been on duty in another district, when he heard the call about the hit-and-run. He did not know who "Badge 917" was, but responded to the call and upgraded to lights-and-siren when directed.

When Officer "A" arrived at the crash scene, he saw several people gathered around D.S.' car. They told him that they heard gunshots coming from the east. Officer "A" then drove east on 123rd to investigate the sound of gunfire. As he did so, he heard dispatch put out the officer-needs-assistance tone. Officer "A" believed that dispatch thought he was in trouble or had been harmed. He told them he was not hurt. He was the first officer on the scene of the shooting.

Crime Scene

Officer "A" arrived to find a gold Mercedes SUV parked in the eastbound lane of 123rd Street just west of Mackey. The Mercedes was a car-length or so behind a disabled Honda Accord.

Officer Mike Mosher was lying down in between the two vehicles. He was unresponsive. Phillip Carney was also lying on the ground, at Officer Mosher's feet, unresponsive. Mr. Carney had a gun in his hand, which Officer "A" kicked away.

P.F., a nurse, lived nearby. She was in her backyard when she heard what she thought were fireworks. She did not see the shooting, but saw the aftermath, and ran towards the incident. She saw the officer and another man. She immediately began chest compressions on Officer Mosher.

P.F. was performing chest compressions when Officer "A" arrived. He helped P.F. tend to Officer Mosher.

More officers arrived on scene, then paramedics. They attempted CPR on Mr. Carney, but he was declared dead after paramedics examined him.

Officer Mosher was transported to Overland Park Regional Medical Center where he succumbed to his wounds.

A handgun was recovered from Mr. Carney, as indicated above.

Officer Mosher's service handgun was also recovered from the scene.

Both Officer Mosher and Phillip Carney died of gunshot wounds.

Toxicology analysis revealed the presence of amphetamine, diazepam, nordiazepam, alprazolam, benzoylecgonine (cocaine degradation product), and ethanol (BAC .236) in Mr. Carney's system.

Witnesses

Several witnesses observed the incident. Some of their observations:

S.B. heard the crash near her residence. She went outside a few minutes later and saw a "crashed car" with front-end damage on the street. She saw an SUV behind the crashed car.

S.B. saw a person (Phillip Carney) standing near the driver's door of the SUV. She saw the officer (Mike Mosher) standing at the door of his SUV. They were close to each other. She heard the officer say- "nicely" –"Why did you get out of the car?" He repeated this several times. She saw Mr. Carney gesture with his hands. The conversation became animated.

S.B. saw Mr. Carney pull a gun on Officer Mosher. The officer deflected it with his arm or arms. This is when she heard the first gunshot. She heard several more shots but did not see who fired because she ran inside.

J.B. was driving north on Antioch around 6:00 p.m. At 123rd Street he saw car debris, including a bumper and glass, in the roadway. As he prepared to turn right onto eastbound 123rd Street, there was a traffic backup of five to six cars. He saw two males standing about ten feet apart, but could not hear if they were talking. J.B. saw one of the men gesture to the eastbound traffic to drive in the westbound lane of 123rd Street.

J.B. followed the cars ahead of him, but stopped behind a gold Mercedes SUV (Officer Mosher's car), in order to let a westbound car go by. At this point, he realized that one of the men was a police officer, who was in a conversation with the other man (Mr. Carney).

J.B. saw Mr. Carney pull 'what appeared to be a firearm' out of the right side of his waistband and fire two shots directly at Officer Mosher, who returned fire. J.B. drove in reverse away from the scene and called 911.

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.”

Use of deadly force was justified

Mike Mosher was on his way to work when he happened upon Phillip Carney. It appears that Officer Mosher quickly concluded that there had been a hit and run collision. As was his duty, he stopped and notified dispatch.

At some point, Phillip Carney got out of his car. Officer Mosher either asked or ordered him to get back in his car. The dispatch recording apparently captured Mr. Carney arguing with the officer: “I’m not going to my car.” The mobile phone video depicted Mr.

Carney, slurring his words, arguing with the officer; refusing to return to his car and await other officers.

Mr. Carney drew a gun and pointed it at Officer Mosher. A brief gunfight ensued. Both men were killed.

Mr. Carney escalated this situation into a deadly force event. Officer Mosher was calm and collected, in voice and appearance, while Mr. Carney was agitated and uncooperative, in voice and appearance. Mr. Carney had illegal drugs in his system.

Mr. Carney was not being arrested or even detained by Officer Mosher. The evidence is that Officer Mosher treated this like a car accident; he asked Mr. Carney to return to or remain in his car for his own safety, as cars were passing by. Officer Mosher was waiting on backup officers to arrive. Phillip Carney drew his weapon and fired at Officer Mosher, who returned fire in self-defense.

Phillip Carney had no reason to defend himself from Officer Mosher. Even if Officer Mosher were making an arrest, Mr. Carney would have been precluded from resisting that arrest pursuant to *K.S.A. 21-5229*.

Because Officer Mosher was not arresting Phillip Carney, *K.S.A. 21-5227, Law Enforcement Officer Making Arrest* would not apply.

However, Michael Mosher, 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*. He did not have to retreat from Phillip Carney's imminent use of force.

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).

Clearly, Michael Mosher was both subjectively and objectively justified to use deadly force under the facts and circumstances as revealed by the Officer Involved Shooting Investigation Team investigation. He was suddenly attacked by Phillip Carney and had a right to defend himself from the deadly force Mr. Carney used.

Conclusion

Overland Park Police Officer Michael Mosher, in his last act as a law enforcement officer, lawfully used deadly force to defend himself against a patently imminent and actual threat of death or great bodily harm.
