



February 09, 2023

Chief Paul West, #301
Wentzville Police Department
1019 Schroeder Creek Blvd
Wentzville, MO 63385

Re: January 17, 2023 Use of Force Investigation
St. Charles County PD report no. 23-258

Dear Chief West:

This office has officially concluded its review and investigation concerning officers of the St. Peters and St. Charles City Police Departments' use of force which resulted in the death of Sonny J. Vincent. This letter provides the factual background, the legal analysis, and the conclusion which this office has arrived regarding the aforementioned matter.

Overview

On January 17, 2023, several departments were working as partners in the St. Charles Regional Criminal Interdiction Task Force. Officers from the St. Peters Police Department observed a Chevrolet Silverado operated by Sonny Vincent at BP Gas Station at Salt Lick Road. The vehicle had a broken window and officers believed the vehicle was improperly registered. Officers initiated a traffic stop and the vehicle failed to comply and accelerated and entered westbound Highway I-70 West. Officers pursued Mr. Vincent on westbound I-70 where Mr. Vincent was operating the Chevy Silverado in a dangerous manner, driving at high speeds, weaving in and out of traffic and cutting off vehicles. The vehicle driven by Mr. Vincent was ultimately successfully disabled by stop sticks. Prior to exiting the vehicle, Mr. Vincent and his passenger were moving around inside the cabin of the vehicle. Mr. Vincent and his passenger both exited the Chevy Silverado (which was later discovered to be a stolen vehicle) and fled on foot north. Officer JL shouted to Mr. Vincent, and observed Mr. Vincent was displaying a gun in his right hand. Officer ZF pursued Mr. Vincent and his passenger from an alternate position and Officer ZF also observed Mr. Vincent with a gun in his hand and saw Mr. Vincent push the gun toward Officer ZF as though he was attempting to fire it. Both Officers JL and ZF believed that Mr. Vincent intended to use deadly force against them, and other officers in the area, and both fired their weapons at Mr. Vincent, striking him and ultimately causing his death.

Legal Analysis

Missouri Revised Statute 563.031 authorizes the use of force when the actor reasonably believes such force is necessary to defend himself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful force by such person. A person may use deadly force if he or she

reasonably believes that such deadly force is necessary to protect himself or herself, or another, against death, serious physical injury, or any forcible felony.

Missouri Approved Instruction 406.06 reads:

In this state the use of physical force, including the use of deadly force, to defend oneself is lawful in certain situations.

In order for a person lawfully to use non-deadly physical force in self-defense, he must reasonably believe such physical force is necessary to defend himself from what he reasonably believes to be the use or imminent use of unlawful force and he can only use physical force to the extent that he reasonably believes is necessary to defend himself.

But a person is not permitted to use deadly force unless he reasonably believes that the use of deadly force is necessary to protect himself against death or serious physical injury or the commission of a forcible felony.

A person is not required to retreat before resorting to the use of physical force to defend himself if he is in a location the person has a right to be.

The state has the burden of proving beyond a reasonable doubt that the defendant did not act in lawful self-defense. Unless you find beyond a reasonable doubt that the defendant did not act in lawful self-defense, you must find the defendant not guilty.

As used in this instruction, the term “reasonably believe” means a belief based on reasonable grounds, that is, grounds that could lead a reasonable person in the same situation to the same belief. This depends upon how the facts reasonably appeared. It does not depend upon whether the belief turned out to be true or false.

Also, Missouri Revised Statute 563.046 authorizes an officer effecting an arrest or preventing an escape from custody to use deadly force when the person to be arrested may otherwise endanger life or inflict serious physical injury to the officer or other unless arrested without delay.

Missouri Approved Instruction 406.14 reads:

A law enforcement officer can lawfully use force to make an arrest or to prevent escape if he is making a lawful arrest or an arrest which he reasonably believes to be lawful. An arrest is lawful if the officer reasonably believes that the person being arrested is committing an offense.

In making a lawful arrest or preventing escape after such an arrest, a law enforcement officer is entitled to use such force as reasonably appears necessary to effect the arrest or prevent the escape.

A law enforcement officer in making an arrest need not retreat or desist from his efforts because of resistance or threatened resistance by the person being arrested.

But in making an arrest or preventing escape, a law enforcement officer is not entitled to use deadly force, that is, force which he knows will create a substantial risk of causing death or serious physical injury, unless he reasonably believes that the person being arrested is attempting to escape by use of a deadly weapon or that the person may endanger life or inflict serious physical injury unless arrested without delay.

And even then, a law enforcement officer may use deadly force only if he reasonably believes the use of such force is immediately necessary to effect the arrest or prevent the escape.

As used in this instruction, the term “reasonably believe” means a belief based on reasonable grounds, that is, grounds which could lead a reasonable person in the same situation to the same belief. This depends upon how the facts reasonably appeared. It does not depend upon whether the belief turned out to be true or false.

In *Graham v. Connor*, the United States Supreme Court articulated that claims of excessive force, deadly or not, in the course of an arrest, investigatory stop, or other “seizure” of a citizen are properly analyzed under the Fourth Amendment’s “objective reasonableness” standard, rather than under a substantive due process standard. 490 U.S. 386 (1989). The Fourth Amendment “reasonableness” inquiry is whether the officers’ actions are “objectively reasonable” in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation. The “reasonableness” of a particular use of force must be judged from the perspective of a reasonable officer on the scene, and its calculus must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a particular situation. *Graham* at 387.

The Court noted, “the test of reasonableness under the Fourth amendment is not capable of precise definition or mechanical application, however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. *Graham* at 396; citing *Tennessee v. Garner*, 471 U.S. 1, at 8-9 (1985). The Court cautioned that 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. *Graham* at 396; citing *Terry v. Ohio*, 392 U.S. 1, at 20-22 (1968). Further, the Court advised that 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. *Graham* at 397.

More recently in *White v. United States*, 959 F. 3d 328 (2020), the Eighth Circuit Court of Appeals evaluated the plaintiff-appellant’s action under the Federal Tort Claims Act by examining and applying Missouri state law. In *White*, ATF agent Hansen acting as a member of Special Response Team participated in an arrest plan for a violent criminal who planned to kill the occupants of a drug stash house they were planning to rob. Upon hearing the appropriate command, Hansen jumped from the U-Haul, shouting “Police. Let me see your hands” multiple times. He observed the suspects’ car approximately 20 feet away from him and the other SRT members. He then saw the car’s reverse lights light up and he heard the engine rev. Hansen feared the suspects’ car was going to hit the agents. Upon seeing the car begin to back up, Hansen fired three shots at the driver’s side, one of which struck and killed the plaintiff-

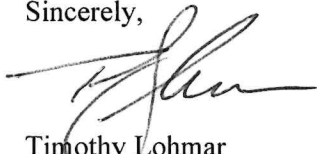
appellant's son. Citing RSMo 563.046.3(2)(c), the Court reasoned that Hansen's use of deadly force was reasonable if he reasonably believed that such force as necessary to protect himself or the other agents against death or serious physical injury. The Court also cited RSMo 563.031.2(1) which permits deadly force if the person reasonably believes that such deadly force is necessary to protect himself or another against death, serious physical injury, or any forcible felony. *White* at 332. The appellate court noted that the district court found that Hansen knew that the suspects would be armed and that the arrest would be dangerous. Hansen also believe that the rearward-moving vehicle might kill or seriously injure himself or the other agents due to the fact that it was traveling at over 15 miles per hour. The district court properly determined that Hansen reasonably believed that deadly force was necessary to protect himself and the other agents from the vehicle and that he had acted reasonably by firing his service weapon.

Further, in a number of cases, the courts have found that an officer's use of deadly force is reasonable when a suspect moves out of the officer's line of sight such that the officer could reasonably believe the suspect was reaching for a weapon. *Manis v. Lawson*, 585 F. 3d 839, 844 (5th Cir. 2009) citing *Ontiveros v. City of Rosenberg, Tex.*, 564 F.3d 379 (5th Cir. 2009); *Reese v. Anderson*, 926 F.2d 494, 501 (5th Cir. 2009); *Young v. City of Killeen, TX*, 775 F.2d 1349, 1352-53 (5th Cir. 1985).

Conclusion

In the case at hand, Officers JL and ZF's use of deadly force was justified. Mr. Vincent was non-compliant and fled a vehicle stop in a manner which put the lives of other in danger. Upon successful deployment of stop sticks, disabling the vehicle driven by Mr. Vincent, he continued to flee from officers. He possessed, displayed, and appeared to attempt to fire his gun at the officers. Officers LP and ZF believed that they were in substantial risk of serious physical injury or death as well as the risk Mr. Vincent posed to the other officers in close proximity. The use of deadly force was objectively reasonable given the facts and circumstances presented to the officers. The officers based their actions upon their reasonable belief that Mr. Vincent posed an immediate risk to the safety of the officers and others and was actively attempting to evade arrest in a dangerous manner.

Sincerely,



Timothy Lohmar
Prosecuting Attorney