



For Immediate Release
November 20, 2019

District Attorney Marc Bennett has completed the review of the use of deadly force that resulted in the death of David Bosiljevac. The incident occurred on January 28, 2019 at 3360 South Hydraulic, in Wichita, Sedgwick County, Kansas.

SCOPE OF REPORT

This report details the findings and conclusions limited specifically to criminal liability of the Sedgwick County Sheriff's Deputy, "Deputy 1," who fatally shot Mr. Bosiljevac at 3360 South Hydraulic on January 28, 2019.

The Office of the District Attorney has no administrative or civil authority regarding use of force investigations. Therefore, this report does not address any administrative review that may be conducted by the Sedgwick County Sheriff's Department, provide any assessment of policy considerations, or address questions of possible civil actions where a lesser burden of proof would apply.

Questions as to whether the use of force in any particular case could have been avoided or de-escalated if the law enforcement officer(s) or citizen(s) had behaved differently in the moments leading up to the fatal use-of- force may not be properly addressed in a criminal investigation.

The sole question addressed by the District Attorney is whether sufficient evidence exists to establish beyond a reasonable doubt that a violation of the criminal laws of the state of Kansas occurred in this instance.

SUMMARY

Sedgwick County District Court records show that Mr. Bosiljevac was charged with felony drug crimes in 2017 CR 1339 and allowed to sign an O.R. (own recognizance) bond on May 15, 2018. As the case proceeded, Mr. Bosiljevac failed to appear in court and his bond was revoked on more than one occasion. He subsequently entered a plea and was placed on probation. Later that year, a warrant was issued alleging Mr. Bosiljevac had violated conditions of his probation. On November 19, 2018, the bondsman for Big Fish Bail Bonds, Witness 1, posted a \$75,000 bond for Mr. Bosiljevac. In exchange, Mr. Bosiljevac was to appear in court to answer the allegations at a probation violation hearing. When Mr. Bosiljevac failed to appear at the hearing, a new warrant was issued and the state moved to forfeit the prior \$75,000 bond. As such, on Monday, January 28, 2019, he had an active warrant for the failure to appear at the probation violation hearing.

The morning of January 28, 2019, Witness 2, a friend of Mr. Bosiljevac, contacted Mr. Bosiljevac's bondsman, Witness 1, at Big Fish Bail Bonds. She had co-signed the \$75,000 bond. Witness 2 informed the bondsman that Mr. Bosiljevac was at the Max Secure Storage facility at 3360 South Hydraulic in a maroon colored vehicle that she believed to be stolen.

The bondsman, Witness 1, knew Mr. Bosiljevac had the active warrant related to the probation violation. He contacted the Sedgwick County Sheriff's Department's warrants division to advise deputies of Mr. Bosiljevac's location.

At 12:53 p.m., Deputy 1 arrived at 3360 South Hydraulic and made contact near the entrance to the facility with the bondsman who had also arrived. Deputy 2 arrived shortly thereafter. The bondsman advised the two deputies that he believed Mr. Bosiljevac was to the east of their location within the fenced area of the storage facility. The storage facility is made up of several free standing buildings containing individual storage units within the larger complex.

The deputies entered the facility and located the maroon car. Mr. Bosiljevac was standing at the rear of the car, parked next to an open storage unit when the deputies drove in and

parked. When Mr. Bosiljevac saw the deputies arrive in their respective vehicles, he ran to the driver's side door of the maroon vehicle and entered the vehicle.

Deputy 1 exited his patrol vehicle and approached the maroon vehicle on foot. Deputy 2 remained in his patrol vehicle in the event Mr. Bosiljevac attempted to flee in the car. Deputy 1 withdrew his department-issued handgun while giving Mr. Bosiljevac verbal commands to exit the car. Mr. Bosiljevac refused.

Deputy 1 would later describe seeing Mr. Bosiljevac pull a "silver" handgun from a brown holster or object of some kind that held the gun. Deputy 1 then described seeing Mr. Bosiljevac point the silver handgun directly at him. Deputy 1 fired his weapon striking Mr. Bosiljevac multiple times. At approximately 12:55 p.m., Deputy 1 advised "shots fired" by radio and requested EMS assistance.

Mr. Bosiljevac was pronounced dead at the scene by medical personnel.

INVESTIGATION

The two Sedgwick County Sheriff's deputies involved in the incident were removed from the area. The handgun issued to Deputy 1 was secured. The two Deputies gave voluntary, recorded statements to investigators.

Three civilian witnesses were each interviewed by Detectives with the Sedgwick County Sheriff's Department. A fourth person was interviewed who had previously employed Mr. Bosiljevac. An additional civilian witness located within the storage facility complex at the time of the shooting but refused to talk to law enforcement.

Crime Scene Investigators from the Sedgwick County Sheriff's Department processed the scene. Evidence was submitted to the Sedgwick County Forensic Science Center for examination.

CIVILIAN WITNESS STATEMENTS

Investigators interviewed several witnesses on scene and later at the Sedgwick County

Sheriff's Department.

Witness 1 was interviewed on January 28, 2019 by a detective with the Sedgwick County Sheriff's Department. The interview was recorded.

Witness 1 was employed as a bondsman for Big Fish Bail Bonds, on North Broadway in Wichita, where he has worked for twelve (12) years. He said he had been the bondsman for David Bosiljevac, and that Witness 2 was the co-signer for that bond. District Court records show the bond was initially posted in Sedgwick County criminal case 2017 CR 1339. Witness 1 said David Bosiljevac had an outstanding warrant for his arrest for failure to appear at a Probation Violation hearing. The bond on the new warrant was set at \$75,000.00.

Witness 1 stated that that on the morning of January 28, 2019, he received a call from Witness 2, the co-signer of Mr. Bosiljevac's bond. She told him that Mr. Bosiljevac had broken out her windows and had been threatening her. Witness 2 told Witness 1 that Mr. Bosiljevac was at the storage unit on South Hydraulic and was driving a maroon car, possibly a Ford Focus, which may be stolen.

Witness 1 stated that he contacted Deputies 1 and 2 with this information. Witness 1 said he met Deputy 1 at the storage facility, located at 3360 S. Hydraulic. Witness 1 told Deputy 1 the general location of the storage unit within the facility and told the deputy that Mr. Bosiljevac was driving a maroon vehicle that was possibly stolen. Deputy 2 arrived at that time.

Witness 1 said that Deputy 1 and Deputy 2 said they would go into the storage yard and see if Mr. Bosiljevac was there. If he was not, they would all leave. Witness 1 had been talking to Deputy 1 by phone that morning. When the two deputies entered the storage yard, Deputy 1 kept Witness 1 connected on the speaker of his cell phone in the event Deputy 1 needed witness 1 for some reason. The two deputies then drove into the facility while Witness 1 waited at the entrance.

Witness 1 heard on his speaker phone: “*Stop David. Don’t move David. Don’t move David. Stop David.*” He then heard gun shots. Witness 1 then heard over the phone “*Shots fired.*” Deputy 1 then addressed Witness 1 by his first name and said, “*you still there? . . . open up the gate, we’re going to get an ambulance and stuff on the way.*”

Witness 1 said he then entered the storage facility and contacted the manager and told him that there had been an incident and officers were coming. Witness 1 said he asked the manager to leave the gate open so emergency crews could get in as fast as possible.

Witness 1 said that he heard over his phone “*Let’s check for a pulse.*”

Witness 1 said that Witness 2 then called him on his phone. He answered and told her that he couldn’t talk because something had happened. During their ensuing conversation, Witness 1 asked her if Mr. Bosiljevac had a gun. She responded by saying, “*Well, he has an air pistol. Don’t tell me he pointed that thing.*” Witness 1 said she (Witness 2) clarified that Mr. Bosiljevac’s air gun looks like a real gun.

Witness 2 was interviewed by a detective with the Sedgwick County Sheriff’s Department. The interview was recorded.

Witness 2 told the detective that she had been in a domestic relationship with Mr. Bosiljevac. She said that she had co-signed a bond for Mr. Bosiljevac, but on January 28, 2019, she knew that he had an active warrant for his arrest in reference to the bond she had earlier co-signed.

Witness 2 said she was afraid of Mr. Bosiljevac. She said that Mr. Bosiljevac had shown her what she believed were guns before that day, but she said he told her they were air/BB guns. She said the guns appeared to be real guns and did not have a “*red tip*” on their ends.

Earlier that day, she said she had been in a phone conversation with Mr. Bosiljevac and learned that he was at his storage unit at I-235 and Hydraulic. He wanted her to meet him there and threatened to hurt her roommate if she did not meet him at the storage unit.

She told him she would meet him as instructed but instead she called the bondsman, Witness 1, and told him where Mr. Bosiljevac was located. She also told the bondsman, Witness 1, the entry code to the storage facility because she wanted Mr. Bosiljevac arrested.

Witness 2 said Mr. Bosiljevac then texted her and wanted her to bring him something to drink. He also asked her not to call police while he was at the storage facility. A short time later, she said she called Mr. Bosiljevac and told him that she was on her way. She said while she was talking on the phone with Mr. Bosiljevac, she heard him say over the phone: *“What? What? What? What’s this? What’s this? No. No. No. What’s going on?”* She said Mr. Bosiljevac was not talking to her when he was making those comments, but to whomever was there with him. She responded by saying, *“Fuck you.”* She then heard approximately 5 gunshots. She said they sounded like someone was banging on a metal door. She said at that point, the phone disconnected.

Witness 3 was interviewed by a Sedgwick County Sheriff’s detective. The interview was recorded.

Witness 3 said he was employed doing construction-related work at the storage facility located at 3360 S. Hydraulic the morning of the shooting. He was seated in his vehicle talking on his phone at the time. He told the detective during the interview that he didn’t see the deputies pull into the storage facility and was not paying attention until he heard someone yell, *“Show me your hands”* and *“Get out of the vehicle.”* Witness 3 said the deputy said this 4, 5, or 6 times and he was loud. Witness 3 said the deputy was directing these commands to a male in a maroon vehicle.

Witness 3 indicated he had seen the male in the maroon car arrive at the storage facility earlier that morning around 9:00 a.m. He said it was around 12:30 p.m. when the deputies arrived.

Witness 3 said that from his vantage point, the deputy giving the commands had his back to Witness 3 and was standing to the (West) side of the maroon vehicle towards the rear

(South) of the driver's side of the vehicle. Witness 3 said the male in the maroon vehicle did not open the door or lower the window and did not appear to respond to the deputy. Witness 3 said he could not see the male's physical response inside the maroon car. He said that after the deputy repeatedly gave commands to the male in the car, the deputy fired shots into the maroon car. Witness 3 could not say how many shots were fired, but he estimated 7 or 8 shots. Witness 3 offered, "*the officer gave him plenty of warning.*"

Witness 4 was interviewed by a detective with the Sedgwick County Sheriff's Department.

Witness 4 was not present at the storage facility at the time of the shooting. He was a friend and former employer to Mr. Bosiljevac. He said that recently, he believed Mr. Bosiljevac had developed an addiction to methamphetamine. He said that he had overheard Mr. Bosiljevac tell co-workers at one point that he would pull his BB gun and point it at "cops" in order to have the cops kill him rather than go back to prison.

LAW ENFORCEMENT OFFICER STATEMENTS

The 2 law enforcement officers involved in the shooting incident gave recorded voluntary statements afterwards:

Deputy 1 was interviewed by a Sedgwick County Sheriff's detective. Deputy 1 became a road patrol Deputy in 2006 with the Sedgwick County Sheriff's Office after having worked in the jail the previous 5 years. Since that time, he has worked as a Patrol Deputy, a Judicial Deputy and most recently a Warrant Deputy. He was assigned as a Deputy with the Warrant Section of the Sheriff's Office at the time of this incident.

Deputy 1 said that his primary duty in his current assignment is to arrest fugitives who have outstanding felony warrants. Deputy 1 said that when this incident occurred, he was wearing a Sedgwick County Sheriff's Officer's uniform with an outer (carrier) vest with a Sedgwick County Sheriff's Office badge on the front and "Sheriff" displayed on the front and back of the vest in yellow letters set against the black vest. He stated that on the day of this incident, he was driving an unmarked Sedgwick County Sheriff's Office Dodge

Charger with tinted windows and equipped with an emergency light bar in the windshield and emergency lights in the back window.

Deputy 1 said he had been assigned to look for a fugitive by the name of David Bosiljevac, who had an outstanding felony warrant for his arrest in regards to a probation violation. He said he had been looking for this individual for approximately one week.

Deputy 1 said that earlier that morning he received a phone call from a bondsman, Witness 1. Witness 1 told Deputy 1 that the co-signer of the bond for Mr. Bosiljevac had told him that Mr. Bosiljevac was to be at a storage facility located at I-235 and Hydraulic, possibly driving a red or maroon Ford Focus that may be stolen. Deputy 1 said that at approximately 12:30 p.m. that day, he drove to the storage facility. He was aware that Deputy 2 was also proceeding to the storage facility in a separate Sheriff's vehicle as a backup deputy, to assist Deputy 1. Witness 1 also planned to meet them at the storage facility location.

Deputy 1, Deputy 2 and Witness 1 all met at the entrance to the storage facility. Deputy 1 said he received the access code to enter the facility from Witness 1, who had obtained it from the co-signer of the bond, Witness 2. Deputy 1 said he then drove into the storage facility followed by Deputy 2. Deputy 1 said he had been talking on his cellphone to Witness 1, and he left the line open and put the cellphone in his vest as he entered the facility.

Deputy 1 had been told that Mr. Bosiljevac would likely be at a storage unit in row "I" of the facility. Deputy 1 said that as he turned a corner past an interior building onto row "I," he observed a red vehicle with the trunk open and saw Mr. Bosiljevac standing at the rear of the vehicle talking on a cellphone. Deputy 1 said that he recognized the individual at the rear of the vehicle as David Bosiljevac because of a photo he had of Mr. Bosiljevac that accompanied the warrant he had for his arrest.

Deputy 1 said that as he pulled to a stop behind the red vehicle, Mr. Bosiljevac saw him and ran from the trunk area of the red car toward the driver's side. Deputy 1 stated that he believed that Mr. Bosiljevac immediately recognized his vehicle as a law enforcement

vehicle, and that was why he was running. Deputy 1 did not have his emergency lights on when he pulled behind the red car. Deputy 1 said he first believed, when Mr. Bosiljevac started running, that this was going to turn into a foot pursuit.

Deputy 1 exited his vehicle to give chase. Instead of fleeing on foot, Deputy 1 said that Mr. Bosiljevac got into the driver's side door of the red vehicle and closed the door with the window up. Deputy 1 said that as he ran up to the driver's side of the vehicle, he drew his duty handgun, a 9mm Glock 17, and pointed it at Mr. Bosiljevac in a two handed point-shoulder position. Deputy 1 said he drew his weapon because he was concerned that now that the fugitive was in the vehicle, he may try to run over him and because Mr. Bosiljevac was a wanted fugitive with an outstanding felony warrant.

Deputy 1 said that as he was standing at the driver's side of the red vehicle, and pointing his handgun at Mr. Bosiljevac, he was giving verbal commands to Mr. Bosiljevac, "*Get out of your car. Get out of your car. Let me see your hands. Let me see your hands.*" Deputy 1 said that as he was yelling at Mr. Bosiljevac "*get out of your car,*" Mr. Bosiljevac was yelling back, "*No. No. No.*"

Deputy 1 said that instead of starting the red vehicle, he saw Mr. Bosiljevac pull a silver handgun from what he believed was a brown holster, or object containing the gun. Deputy 1 said Mr. Bosiljevac looked at him and pointed the silver handgun directly at him. Deputy 1 said he could see directly down the barrel of the gun that was pointed at him. Deputy 1 said he was in fear for his life when Mr. Bosiljevac pointed the gun at him. Deputy 1 said that his thought was: "*This guy is going to shoot me.*" Deputy 1 said that he then fired his handgun at Mr. Bosiljevac because he was in fear of being shot. The shots were fired in 3 to 4 seconds.

Deputy 1 could not say definitively how many shots he fired, but estimated that he fired approximately 10 times at Mr. Bosiljevac. He said that he could see some of his rounds were striking the metal post dividing the front and rear driver's side doors. Deputy 1 was concerned his rounds may not be hitting the subject because of this post, so as he fired, he moved in the direction of the rear of the vehicle in order to get a better angle and for

better protection and cover in the event Mr. Bosiljevac fired back at him.

Deputy 1 said he could see the subject moving, as he fired his weapon. Deputy 1 stated that when he saw the subject's head go down, he believed the threat posed by Mr. Bosiljevac, was over, and he stopped firing his weapon. When the deputy's handgun was collected, 1 round remained in the chamber.

Deputy 1 said he radioed in that shots had been fired and requested EMS to respond. Deputy 1 opened the driver's door of the vehicle and saw the silver handgun, which Mr. Bosiljevac had pointed at him, between the driver's seat and the "door jamb" of the red vehicle. Deputy 1 radioed that Mr. Bosiljevac's condition was "Code Red." Deputy 1 then felt for a pulse on Mr. Bosiljevac. When he did not feel one, the deputy radioed in that Mr. Bosiljevac was "Code Blue" meaning no pulse or respiration. Deputy 1 said that a responding Wichita Police Officer arrived and took him back to sit in the WPD patrol car. Deputy 1 again stated he fired his weapon at Mr. Bosiljevac because he was in fear for his life and the life of Deputy 2. Deputy 1 was not equipped with a body-worn camera.

Deputy 2 was interviewed by a Sedgwick County Sheriff's detective. The interview was recorded.

Deputy 2 said he had been employed as a Sheriff's Deputy with the Sedgwick County sheriff's Office for twenty years. He has served as a Patrol Deputy, a Judicial Deputy and a Warrant Deputy. Deputy 2 said he had been assigned to the Warrant Section for approximately the past thirteen years. His primary duty is to arrest fugitives who are wanted on outstanding Felony Warrants. Deputy 2 said that on the day of this incident, he was wearing a Sedgwick County Sheriff's office uniform and driving a Sedgwick County Sheriff's Office black Ford Explorer

Deputy 2 described the events of January 28, 2019 as follows: he received a text message from a bondsman, Witness 1, regarding an active felony warrant for an individual named David Bosiljevac. The text indicated Mr. Bosiljevac would be at a storage facility in the area of I-235 and Hydraulic. Deputy 2 looked up the warrant and saw that it had been

assigned to Deputy 1 to execute. When Deputy 2 looked up the warrant, he also saw a photo of David Bosiljevac that was attached with the warrant. Deputy 2 contacted Deputy 1 about this information at 1241 hours. Deputy 1 indicated that he had already received the same information from Witness 1 and was proceeding to the storage facility. Deputy 2 also went to that location to provide back-up for Deputy 1.

Deputy 2 stated that when he arrived at the storage facility, located at 3360 S. Hydraulic, Deputy 1 was there along with the bondsman, Witness 1. Deputy 2 said that Deputy 1 drove his (Deputy 1's) vehicle into the storage facility, and he followed Deputy 1 in his own vehicle. Deputy 2 said Witness 1 stayed back at the entrance as he and Deputy 1 entered the facility.

Deputy 2 said that as he followed Deputy 1, he observed Deputy 1 turn the corner onto one of the drives within the facility and then accelerate. Deputy 2 followed and stopped behind Deputy 1's vehicle, which had come to a stop. Deputy 2 said he observed David Bosiljevac standing at the rear of a maroon four-door sedan with the trunk open. He recognized Mr. Bosiljevac from the photo he had seen earlier. Deputy 2 then observed Mr. Bosiljevac run from the trunk area of the maroon vehicle to the driver's side of the car. Deputy 2 then observed Deputy 1 exit his Sheriff's Patrol vehicle and run in pursuit of the fugitive. Deputy 2 said he had both back windows of his patrol vehicle down approximately 4 inches and could hear Deputy 1's commands.

Deputy 2 heard Deputy 1 giving verbal commands to Mr. Bosiljevac: *"Stop. Don't get in the car. You're under arrest."* Deputy 2 observed Mr. Bosiljevac get into the maroon vehicle via the driver's side door and shut the door. Deputy 2 stated that he believed the fugitive was going to flee in the maroon vehicle, so he stayed in his vehicle to give chase.

Deputy 2 said that, while still in his vehicle, he then heard eight (8) or nine (9) gunshots and saw glass shattering from the maroon vehicle. He stated that he could only see Deputy 1's head, due to Deputy 1's vehicle being parked in front of him and the trunk being open on the maroon vehicle. Deputy 2 could not see Deputy 1 fire his weapon or the occupant of the car. He could only hear the shots and see glass shattering from the maroon vehicle.

Deputy 2 exited his vehicle and drew his own weapon, pointing it at the maroon vehicle. He heard Deputy 1 radioing in that shots had been fired. Deputy 2 asked Deputy 1 if he was okay. He said Deputy 1 responded, "*He drew on me.*" Deputy 2 took that to mean that Mr. Bosiljevac had pointed a handgun at Deputy 1.

Deputy 2 said Deputy 1 opened the driver's door of the maroon vehicle, and he (Deputy 2) saw that Mr. Bosiljevac had sustained several gunshot wounds to the head and neck area. Deputy 2 also said he observed the grips, to what he recognized as a semi-automatic handgun, between the driver's seat and the driver's door area of the maroon vehicle. Deputy 2 said Deputy 1 radioed that the suspect was "*Code Red,*" but then after Deputy 1 checked the subject for a pulse, Deputy 1 then radioed that the suspect was "*Code Blue.*"

Deputy 2 said he believed Mr. Bosiljevac was dead at that point. Deputy 2 said a Wichita Police Officer arrived and had Deputy 1 sit in a patrol car.

Deputy 2 said that after the shooting, he heard Deputy 1's phone in a pocket on his right-side, and it sounded like it was on speaker phone. Deputy 2 believed that the bondsman, Witness 1 was still on speaker phone with Deputy 1. Deputy 2 indicated that his Sheriff's Department vehicle is not equipped with a dash camera. He stated that his own AXON video, body camera's battery was dead, so this event was not captured on body camera.

CRIME SCENE INVESTIGATION

Sedgwick County Sheriff's Department Crime Scene Investigators processed the scene of the shooting which was photographed and diagrammed. Scene Investigators located, photographed, and collected items of physical evidence including: a handgun, 16 shell casings and a silver in color airsoft handgun collected from within a maroon Ford. Deputy 1's handgun had one unfired round remaining in the chamber. They were unable to locate any surveillance cameras that captured the shooting.



Storage facility – overhead view





Overhead view. Mr. Bosiljevac's maroon car, Deputy 1's patrol vehicle and Deputy 2's patrol vehicle.



The air gun between Mr. Bosiljevac's seat and the interior wall of the car, as located by crime scene investigators.



The air gun collected from Mr. Bosiljevac's car.

FORENSIC EVIDENCE & AUTOPSY RESULTS

The firearm evidence collected from the scene of the shooting including 9mm cartridge casings, the department-issued handgun, as well as the bullet projectile/fragments from the autopsy of David Bosiljevac were examined at the Sedgwick County Regional Forensic Science Center. The weapon, which was found with 1 live round still in the chamber, was submitted for examination.

According to the report from the Sedgwick County Regional Forensic Science Center, dated April 17, 2019, all the cartridge casings collected at the scene were identified as “having been fired in” Deputy 1’s handgun. The weapon met the definition of a firearm and was functional.

An autopsy was performed on the body of David Bosiljevac on January 29, 2019, at the Sedgwick County Regional Forensic Science Center. The final autopsy report, dated April 24, 2019 determined that Mr. Bosiljevac died as a result of “multiple gunshot wounds of the head, neck and torso.” According to the autopsy, 2 gunshot wounds perforated his upper left back; 1 penetrated his upper left back; 1 perforated his left cheek; 6 perforated and penetrated his “left occipital region and left neck” and finally 1 perforated his left middle finger. Given the appearance and location of the wounds, the coroner believes Mr. Bosiljevac was struck at least 9 separate times. The manner of death was homicide. A toxicology report was submitted with the autopsy and found Mr. Bosiljevac to have been positive for amphetamine (0.37 mg/kg in his brain) and methamphetamine (1.1 mg/L in femoral blood collected & 5.9 mg/kg in his brain).

A bag of methamphetamine weighing 9.571 grams was located in Mr. Bosiljevac’s left front pocket.

KANSAS LAW

In Kansas all persons, including law enforcement officers, are entitled to defend themselves and others against the use of unlawful force. K.S.A. 2018 Supp. 21-5220 states:

(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 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 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.

The term “use of force” includes words or actions directed at or upon another person or thing that reasonably convey the threat of force, the presentation or display of the means of force or the application of physical force, including by a weapon. “Use of deadly force” means the application of any physical force which is likely to cause death or great bodily harm to a person.

The Kansas Supreme Court has made clear that the analysis of a self-defense claim presents a “two prong test”:

“The first is subjective and requires a showing that McCullough sincerely and honestly believed it was necessary to kill to defend herself or others. The second prong is an objective standard and requires a showing that a reasonable person in [the same] circumstances would have perceived the use of deadly force in self-defense as necessary.” *State v. McCullough*, 293 Kan. 970 (2012).

With respect to a law enforcement officer’s use of force, in *Graham v. Connor*, 490 U.S. 386, 396 (1989), the United States Supreme Court clarified that any assessment of objective reasonableness must take into account the contextual realities faced by the officer:

“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.”

A. **Immunity**

In 2010, the Kansas Legislature enacted a series of statutes addressing the use of force, including the use of deadly force, in the defense of a person or property, including a person’s dwelling. See K.S.A. 2018 Supp. 21-5220 et seq. The new statutes became effective on July 1, 2011, and are commonly known as this state’s “stand your ground law.” *State v. Barlow*, 303 Kan. 804 (2016); *State v. Younger, unpublished opinion*, No. 116, 441)(Feb. 16, 2018).

K.S.A. 2018 Supp. 21-5231 **Immunity from Prosecution**, reads,

- (a) A person who uses force which is subject to the provisions of K.S.A. 21-5226, and amendments thereto, is justified pursuant to K.S.A. 21-5222, 21-5223 or 21-5225, and amendments thereto, is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer who was acting in the performance of such officer's official duties and the officer identified the officer's self in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer.

K.S.A. 2018 Supp. 21-5222, **Defense of a Person, . . . no duty to Retreat**, reads,

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

K.S.A. 2018 Supp. 21-5224, **Use of Force; presumptions**, reads,

- (a) . . . a person is presumed to have a reasonable belief that deadly force is necessary to prevent imminent death or great bodily harm to such person or another person if:
 - (1) The person against whom the force is used, at the time the force is used:
 - (A) Is unlawfully or forcefully entering or has unlawfully entered and is present within, the dwelling, place or work or occupied

- vehicle of the person using the force; or
- (B) has removed or is attempting to remove another person against such person's will from the dwelling, place of work or occupied vehicle of the person using the force; and
- (2) The person using the force knows or has reason to believe that any of the conditions set forth in paragraph (1) is occurring or has occurred.

No such presumption of reasonableness exists if the person utilizing force does so against a law enforcement officer per K.S.A. 21-5224(b)(4):

- (b) The presumption set forth in subsection (a) does not apply if, at the time the force is used:

. . . (4) the person against whom the force is used is a law enforcement officer who has entered or is attempting to enter a dwelling, place of work or occupied vehicle in the lawful performance of such officer's lawful duties, and the person using force knows or reasonably should know that the person who has entered or is attempting to enter is a law enforcement officer.

K.S.A. 21-5230, addresses the **duty to retreat**,

“A person who is not engaged in an unlawful activity and who is attacked in a place where such person has a right to be has *no duty to retreat* and has the right to stand such person's ground and use any force which such person would be justified in using under article 32 of chapter 21 of the *Kansas Statutes Annotated*, . . . K.S.A. 2018 Supp. 21-5202 through 21-5208, 21-5210 through 21-5212, and 21-5220 through 21-5231, and amendments thereto.”

On March 10, 2017, in *State v. Hardy*, 305 Kan. 1001, 390 P.3d30 (2017), the Kansas Supreme Court recognized that immunity granted by K.S.A. 21-5231 is distinct from self-defense, citing with approval the dissent in *State v. Evans*, 51 Kan.App.2d 1043 (2015):

Self-defense and immunity are clearly distinct concepts. If immunity were the same as self-defense, there would have been no need to adopt a specific immunity statute because K.S.A. 2014 Supp. 21-5222 would have sufficed. Perhaps most importantly, because K.S.A. 2014 Supp. 21-5231 grants immunity from arrest and prosecution rather than a mere defense to liability, it is effectively lost if a case is erroneously permitted to go to trial. [Citation omitted] . . . [a] prosecutor must rebut a claim of statutory immunity before the case can go to trial. *Hardy*, 305 Kan. at 1009-1010.

B. Use of Force During Arrest

K.S.A. 2018 Supp. 21-5227, Use of Force; law enforcement officer making an arrest, States:

“A law enforcement officer, or any person whom such law enforcement officer has summoned or directed to assist in making a lawful arrest need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. Such officer is justified in the use of any force which such officer reasonably believes to be necessary to effect the arrest and the use of any force which such officer reasonably believes to be necessary to defend the officer’s self or another from bodily harm while making the arrest. However, such officer is justified in using deadly force only when such officer reasonably believes that such force is necessary to prevent death or great bodily harm to such officer or another person, or when such officer reasonably believes that such force is necessary to prevent the arrest from being defeated by resistance or escape and such officer has probable cause to believe that the person to be arrested has committed or attempted to commit a felony involving death or great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that such person will endanger human life or inflict great bodily harm unless arrested without delay.”

CONCLUSION

On January 28, 2019, Deputy 1 exercised deadly force resulting in the death of David Bosiljevac.


Under K.S.A. 2018 Supp. 21-5222(b), a person may employ deadly force when the person reasonably believes that deadly force is necessary to prevent imminent risk of great bodily harm to another.

Since 2011, under the Kansas stand your ground law, one who acts in defense of himself or to protect a third party is immune from prosecution. See K.S.A. 2018 Supp. 21-5231. Meaning, a person may not be charged, prosecuted (or subsequently sued) unless the state can establish that they were not acting reasonably under the circumstances. In *Graham v. Connor*, the United States Supreme Court made clear that assessment as to the reasonableness of an officer’s decision to utilize deadly force must be made within the context in which the officer found himself – not from the perspective of “20/20 hindsight.”

The investigation established that David Bosiljevac produced what appeared to be a handgun as Deputy 1 approached Mr. Bosiljevac’s car. The actions of Mr. Bosiljevac constituted what Deputy 1 believed to be a threat of force, likely to cause great bodily harm or death to Deputy 1. As such, Deputy 1 reasonably believed Mr. Bosiljevac posed an

imminent lethal threat and fired his weapon for 3-4 seconds in response. Under these circumstances, the Deputy is immune from prosecution under Kansas law.

Under Kansas law and the facts of the case, I conclude that no criminal charges can be filed against the officer.

A handwritten signature in black ink, appearing to read "Marc Bennett". The signature is fluid and cursive, with a long horizontal stroke at the end.

District Attorney Marc Bennett
*18th Judicial District of
Kansas*