



For Immediate Release
March 3, 2017

District Attorney Marc Bennett announces completion of the review of the law enforcement use of deadly force involving Caleb Douglas. The incident occurred on the morning of September 1, 2016, at 1100 block of North Tyler Road, in Wichita, Sedgwick County, Kansas.

The Office of the District Attorney has reviewed the results of the investigation conducted by the Kansas Bureau of Investigation, the Sedgwick County Kansas Sheriff's Department and Investigators from the District Attorney's Office.

SCOPE OF REPORT

This report details the findings and conclusions related solely to the criminal investigation into the death of Caleb Douglas. The only question addressed by this report is whether sufficient evidence exists to establish beyond a reasonable doubt that the criminal laws of the State of Kansas were violated.

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 Office, 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 officer(s) or citizen(s) had behaved differently in the moments leading up to the fatal use-of-force are not properly addressed in a criminal investigation.

FACTUAL SUMMARY

In the early morning hours of Thursday, September 1, 2016 at approximately 1:10 a.m., a deputy with the Sedgwick County Sheriff's Department affected a traffic stop of the 2003 Pontiac Grand Prix in the 1100 block of North Tyler Road in west Wichita, Kansas. The deputy had been driving northbound behind the Pontiac for approximately one mile and witnessed the driver's inability to maintain a single lane of traffic.

The deputy initiated his overhead lights to affect the traffic stop and to capture earlier traffic violations. In response, the driver pulled to the east curb of the northbound lanes and stopped.

Note that a deputy's motor vehicle recording device ("dashcam") will begin recording and will backup to capture the previous 30 seconds of video when the overhead light bar of a patrol vehicle is activated.

The video shows the patrol vehicle following the Pontiac from approximately the intersection of Tyler Road and 2nd Street north. After the Pontiac pulled to the curb, the deputy exited his patrol unit and walked to the driver's side of the Pontiac. The audio portion of the recording captured much of what the deputy said. The limitations of the microphone make it difficult to discern the details of the driver's verbal responses, though the driver can be heard responding verbally.

The deputy told the male driver he was being pulled over due to his inability to maintain the single lane of traffic. The deputy asked the driver his name and the driver can be heard responding, "*Caleb.*" The deputy asked, "*you under the influence of anything right now, Caleb?*" The driver's response is indiscernible. The deputy then said, "*'cause I smell marijuana.*" The driver again said something indiscernible in response and the deputy responded, "*go ahead and step out for me.*" The deputy took one to two steps south ostensibly to allow the driver room to open the door, when the Pontiac began to roll forward. The deputy immediately stepped forward and said words to the effect, "*go ahead and put it in park for me, bud.*" As the deputy spoke, the driver can be seen moving his hands up and to the driver's window in the direction of the deputy, while holding an object. The deputy reacted immediately by lowering his shoulders, yelling "*oh shit!*" and running back toward his patrol car. The driver leaned further out of the window with the object as the deputy retreated. As the deputy took approximately five steps south, toward his patrol car, he withdrew his own service weapon, turned and fired multiple shots at the Pontiac.

The Pontiac continued to roll forward for 2 to 3 seconds, then brake light activated momentarily as the Pontiac came to a complete halt for 1 second, before proceeding at an accelerated rate of speed northbound on Tyler Road. The Deputy can be heard calling in "*shots fired, shots fired.*" Seconds after the Pontiac fled the scene, a Wichita Police Department patrol cruiser is seen speeding northbound on Tyler in pursuit. The deputy re-entered his patrol vehicle and pursued.

Approximately two city blocks north of 13th Street North and Tyler Road—roughly $\frac{3}{4}$ to 1 mile north of the initial car stop—the WPD officer had conducted a felony car stop of a dark sedan to the east curb of the northbound lane. The deputy's dash camera recorded the deputy pulling up and telling the WPD officer that the car he had stopped was not the suspect Pontiac involved in the incident moments before. At that point, the law enforcement officers' attention was drawn to the west, where the suspect Pontiac had wrecked into a residence on the west side of Tyler Road.

The Deputy and the WPD officer ran to the Pontiac as other officers began to arrive. The sole occupant, later identified as Caleb Douglas, 18 yr old white male, was found unresponsive in the driver's seat. A significant fire had started in the engine compartment of the Pontiac so officers removed Mr. Douglas from the car and began to administer aid. As they removed Mr. Douglas, officers located a handgun in the floorboard of the driver's side. The responding WPD officer

removed the handgun and placed it away from the car in the grass south of the Pontiac.

The deputy was removed from the area. The deputy's weapon used in the shooting was secured. Crime Scene Investigators from the Sedgwick County Sheriff's Department processed the scene. Among the items recovered was a .40 caliber Smith & Wesson handgun located in the driver's side floorboard.

Mr. Douglas was subsequently pronounced dead. His body was transported to the Sedgwick County Regional Forensic Science Center for autopsy.

All recovered projectiles and shell casings were submitted to the Sedgwick County Forensic Science Center for examination and comparison to the deputy's department issued 9 mm handgun and to the .40 caliber semi-automatic handgun located inside the suspect Pontiac.

The deputy gave a voluntary, recorded statement to investigators with the Sheriff's Department and the Kansas Bureau of Investigations (KBI).

REVIEW OF THE INVESTIGATION

Interviews were conducted with all witnesses. Transcripts of those interviews, reports of the officers and detectives involved in the investigation, reports of the examination of the scene, physical evidence recovered, the results of the forensic testing and the autopsy report were all reviewed.

LAW ENFORCEMENT OFFICER STATEMENTS

The deputy gave a recorded voluntary statement. A Wichita police Officer who was near the scene at the time of the shooting was also interviewed.

Sheriff's Deputy: The Sedgwick County Sheriff's Deputy involved in the shooting is a 1-year veteran of the department having previously worked as a detention deputy for two years and as law enforcement officer in another jurisdiction for an additional ten years. He was interviewed by investigators for the Sedgwick County Sheriff's Department and the Kansas Bureau of Investigation and provided the following information:

At approximately 1:08 a.m., he first saw the Pontiac traveling northbound on Tyler Road south of Central Avenue. Over the next several minutes he witnessed the driver cross the center line several times. The deputy initiated a car stop to check for impairment. As he approached the driver, the deputy reported he did not notice the smell of alcohol, but he did notice the smell of burnt marijuana. When he smelled the marijuana, he described looking around the driver's compartment of the Pontiac and seeing no signs of either contraband or weapons inside.

The deputy said the driver seemed compliant and provided his license to the deputy. When the deputy

told the driver he smelled marijuana, the deputy recalled the driver responding, “*Well, sir, I’ll be honest with you, I do smoke marijuana.*” The deputy then asked the driver to step out of the car, thinking he would continue with field sobriety tests to ensure the driver was not under the influence. At that point, the officer described the following:

“I have no idea where the hell that gun was at, whether he was sitting on it or, but all the sudden it came up and I’m looking right at it.” (from video-taped interview)

The deputy further described the weapon as having a silver or steel slide. He described the driver moving his hand relative to the weapon:

“I saw him come up on the slide. I don’t know if he didn’t have a round chambered or if it misfired, or, but I saw his hand come up on the slide.” (from video-taped interview)

The deputy said he thought he was a “dead man,” because the driver had the gun pointed at him before he (the deputy) realized the driver was armed. He ran several steps south toward his own patrol vehicle before turning to “square up” and fire his weapon at the suspect vehicle. He said that he thought he fired 4 or 5 times but as he continued to pull the trigger, he realized nothing was happening. He looked down, saw the slide of his own weapon was back and realized he had fired all of his rounds and needed to reload.

Before getting back into his patrol car, he saw a WPD patrol unit speed by. The deputy proceeded north on Tyler Road until he had traveled several blocks north of 13th and Tyler Road where he saw the WPD officer had pulled over a vehicle. The deputy got out of his own patrol car and saw that the back windshield of the stopped car was undamaged. Thinking he had struck the back windshield of the suspect car, he told the WPD officer that this was not the right car. At that point, he saw the driver of the stopped vehicle pointing to the west. He looked west, across Tyler Road and saw the suspect Pontiac wrecked into a residential structure. The deputy ran to the Pontiac with the WPD officer and saw the suspect driver unresponsive in the driver’s seat.

The engine compartment of the Pontiac appeared to be on fire. He said other officers had arrived at this point, and they opened the back door of the Pontiac and were able to remove the suspect from the vehicle away from the fire. When they removed the driver, the deputy saw a handgun at the driver’s feet, which looked to the deputy to be the same weapon with the steel or silver slide that had been pointed at him earlier.

WPD Officer: A Wichita Police Department officer was doing paperwork in the parking lot of Northwest High School just after 1:00 a.m. that morning. From his vantage point roughly 75 yards to the east, the officer saw a deputy engaged in a car stop with a civilian vehicle. The officer could see the passenger side of the two vehicles, from the vantage point of the rear of the patrol vehicle.

The officer looked up at the car stop intermittently while attending to his own paperwork. After

approximately 40 seconds, the officer's attention was drawn to the deputy "back-peddling" away from the stopped vehicle and "blading himself," and creating a "reactionary gap" or distance between the deputy and the car. The officer heard multiple shots fired, and was cognizant that the suspect vehicle did not immediately leave the scene but did seconds later.

The officer immediately proceeded after the Pontiac. Approximately ¾ to 1 mile north of the initial stop, the WPD officer initiated a felony traffic stop of a northbound sedan that appeared to match what he had seen of the suspect Pontiac. The deputy arrived seconds after the car stop and recognized that the stopped car was not the suspect Pontiac. The driver of the now stopped vehicle motioned back to the south and west at which point both law enforcement officers could see the suspect Pontiac which had left Tyler Road traveling west/northwest, jumped the west curb of south bound North Tyler Road and run through a chain link fence before striking a house at 1505 North Maybelle.

The WPD officer ran to the car and saw fire flaring up from the engine compartment. He saw Mr. Douglas, the only occupant, unresponsive in the driver's seat, with his feet located in the driver's side floorboard and his upper torso slumped back. The officer noted Mr. Douglas appeared to have suffered a gunshot wound to the head. Concerned about the growing fire in the engine compartment, another officer removed Mr. Douglas from the Pontiac through the rear passenger door to the grass north of the wreck where other officers began administering aid. The initial responding WPD officer saw a handgun and went back into the burning car to retrieve the weapon. His body camera footage shows the retrieval of the handgun—later identified as a .40 caliber Smith & Wesson—from the right side of the driver's side floorboard. The officer removed the gun from the car, placed it in the grass away from the Pontiac stayed with the gun until it could be collected by crime scene investigators.

A civilian neighbor produced a fire extinguisher which the officer used to put out the fire in the Pontiac.

CRIME SCENE INVESTIGATION

The Sedgwick County Sheriff's Department Crime Scene Investigators processed both the scene of the shooting, the location of the wreck and the Pontiac. All scenes were photographed and, as necessary, diagrammed. An inventory was kept of collected evidence.

Scene Investigators located, photographed, and collected several items of physical evidence from the two scenes on Tyler Road including: "a .40 caliber Smith & Wesson SD 40VE#HEC3438 handgun with an extended magazine" and 4 rounds with 1 in the chamber located inside the suspect Pontiac. One fired .40 caliber cartridge casing located inside the passenger compartment of the Pontiac. Additionally, drug paraphernalia, one .40 caliber magazine and two additional live .40 caliber rounds were located inside the Pontiac.

A total of sixteen (16) fired .9mm cartridge casings were recovered by crime scene investigators at the initial car stop in the 1100 block of North Tyler. The following still photos were collected from the dash cam of the Sedgwick County Sheriff's Deputy.



09/01/2016 01:11:38



09/01/2016 01:11:38
DLC -



09/01/2016 01:11:39
DLC -



FORENSIC EVIDENCE AND AUTOPSY RESULTS

The .40 caliber Smith & Wesson handgun collected from the interior of the suspect Pontiac and the department-issued 9 mm handgun fired by the Sedgwick County Sheriff's Deputy were both submitted for examination at the Sedgwick County Regional Forensic Science Center.

During the autopsy, the coroner located two projectiles from the body of Caleb Douglas: one from his left shoulder and one from his head. Both were collected for subsequent analysis at the Sedgwick County Regional Forensic Science Center.

Caleb Douglas was pronounced dead at 2:28 a.m. hours on the morning of September 1, 2016. An autopsy was performed on his body later that morning at the Sedgwick County Regional Forensic Science Center. The autopsy documented a single, fatal gunshot wound to the head, and a single nonfatal gunshot wound to the left shoulder. Toxicology testing was also performed on the body of Mr. Douglas. The results of the testing showed his blood was negative for alcohol, positive for benzoylecgonine 0.17 mg/L (the "inactive" metabolite of recent cocaine ingestion), positive for tetrahydrocannabinol [THC] 15 ng/mL and negative for all other drugs screened.

The autopsy determined the cause of Caleb Douglas's death was a single gunshot wound to the head and the manner of death was suicide. The autopsy concludes, "The projectile recovered from the decedent's brain matched the above mentioned handgun recovered from the decedent's vehicle."

KANSAS LAW

In Kansas all persons including law enforcement officers are entitled to defend themselves and others against the use of unlawful force. **Kansas Statutes Annotated** 21-5220 (formerly 21-3211) 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).

Kansas Statutes Annotated 21-5231 (formerly 21-3219), enacted in 2006, states that a person who is justified in the use of force in self-defense “is immune from criminal prosecution.”

A. Use of Force During Arrest

Kansas Statutes Annotated 21-5227 (formerly 21-3215), 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.”

B. Application of Kansas Law

A person’s use of deadly force in self-defense is judged on a “case by case” basis. Only such force reasonably needed to defend against another’s imminent use of unlawful force is legally permissible under Kansas law.

CONCLUSION

On September 1, 2016 the Sedgwick County Sheriff’s Deputy exercised deadly force, resulting in a single, non-fatal gunshot injury to the left shoulder of the driver of a Caleb Douglas. The evidence uncovered during the course of the investigation found no credible evidence that the deputy’s use of force in self-defense was unreasonable under the circumstances he encountered.

When Mr. Douglas raised the .40 caliber firearm at the deputy after the deputy asked him to step from the vehicle, this act constituted an application of force likely to cause great bodily harm or death. The deputy reasonably believed Mr. Douglas presented an imminent lethal threat to the deputy's life.

The deputy acted in an objectively reasonable manner in defending himself against an individual armed with a firearm. Under Kansas law and the facts of the case, I conclude that no criminal charges will be filed against the deputy.

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