



For Immediate Release
February 23, 2020

District Attorney Marc Bennett has completed the review of the use of deadly force that resulted in the death of Robert Sabater. The incident occurred on May 27, 2019 at 1945 S. Glenn, in Wichita, Sedgwick County, Kansas.

SCOPE OF REPORT

This report details the findings and conclusions limited specifically to criminal liability of the officers employed by the Wichita Police Department and deputies employed by the Sedgwick County Sheriff's Office who shot at Mr. Sabater at 1945 S. Glenn on May 27, 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 Wichita Police Department or 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 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

At 8:57 p.m. on May 27, 2019, 911 received a call from Robert Sabater, of 1945 S. Glenn, that people were in his backyard. Due to the frequency of such calls from that address, Mr. Sabater's address has been flagged with a "premises warning" by 911. This triggered a call to a WPD Sergeant (Officer #2 below), who had dealt with Mr. Sabater regularly in the past. The Sergeant knew that when Mr. Sabater used drugs, he often became paranoid and believed people were in his yard or in his home. The Sergeant, who had Mr. Sabater's personal number, spoke to him to calm him down. As a precaution, the Sergeant sent an officer to the location who found no one in Mr. Sabater's yard.

At 11:06 p.m. 911 received a second call from Mr. Sabater who claimed to have seen people with a gun in his yard. Again, the Sergeant called Mr. Sabater who acknowledged he had only seen shadows. The Sgt. encouraged him to try to sleep and they ended the call. Shortly thereafter, one of Mr. Sabater's neighbors called 911 to report shots coming from Mr. Sabater's residence.

Responding officers reported Mr. Sabater repeatedly stepped to his front door, fired a handgun out the door, and then shut the door. Mr. Sabater later ran into the street. Due to heavy rain, several officers were unclear initially whether he was holding a weapon, while others were better positioned to see him holding a handgun. Those officers yelled verbal commands to drop the weapon. Mr. Sabater refused to comply, and began running north. Multiple law enforcement officers pursued him through the neighborhood. Mr. Sabater stopped and raised his arm, holding the firearm at pursuing officers and deputies. Multiple officers and deputies fired at Mr. Sabater.

Officers described seeing Mr. Sabater fall. He then got back to his feet, turned to run before turning again and pointing the handgun at the pursuing officers. Officers and deputies fired at Mr. Sabater, striking him. He was pronounced dead at the scene. A 9 mm handgun with an extended magazine was located under his body.

INVESTIGATION

The Wichita Police Department officers and Sedgwick County Sheriff's deputies

involved in the incident were removed from the area and their respective firearms were secured. Law enforcement officers at the scene gave voluntary statements to investigators with the Wichita Police Department, the Sedgwick County Sheriff's Office and the Kansas Bureau of Investigations. The statements of thirteen law enforcement officers are included herein.

Civilian witnesses were interviewed by detectives with the Wichita Police Department and agents with the Kansas Bureau of Investigation. The statements of three eyewitnesses are included herein.

Crime Scene Investigators from the Wichita Police Department processed the scene. Evidence was submitted to the Kansas Bureau of Investigation for examination.

CIVILIAN WITNESS STATEMENTS

Investigators interviewed several witnesses on scene and later at the Wichita Police Department.

Witness 1 was interviewed by a detective with the Wichita Police Department. At the time, Witness 1 resided in the 1900 block of South Glenn.

On the night of May 26, 2019 around 9:30 pm or 10:00 p.m., Witness 1 heard “pops” approximately every half hour. He described the sounds as a “banging sound . . . like somebody on a trashcan, window, door something like that.” At approximately 11:00 p.m., he went outside and observed his neighbor, Mr. Sabater, looking out of his own door. Witness 1 said Mr. Sabater said, “Hey man. How’re you doin’? Um, some problems over here.” Witness 1 responded, “Okay, do I need to do anything?” Mr. Sabater replied, “No. No. Everything’s alright.”

It seemed to Witness 1 that Mr. Sabater was either yelling at someone on the phone or talking to himself. Sometime between 12:30 a.m. and 1:00 a.m., he heard three to four more shots. He went outside a second time, and Mr. Sabater told him to “call the cops.” Witness 1 stepped back inside his residence to call 911. Right before he called 911, he

heard another shot. While on the phone to 911, he saw a Wichita Police officer drive down the street and told the dispatcher he had seen the officer. He was ultimately instructed to contact that officer. When Witness 1 went outside to flag down the officer, he saw Mr. Sabater standing on his own porch wearing a black hat and a red shirt.

Witness 1 had known Mr. Sabater for approximately two years. Mr. Sabater had told him in the past that he liked to use cocaine and marijuana. Mr. Sabater had also claimed that he was wanted by Florida police. Witness 1 said Mr. Sabater's home alarm would go off nearly every other night which resulted in the police coming to the house. Witness 1 said a man and a pregnant woman had moved into the house with Mr. Sabater approximately one week earlier, but they had left earlier on the day of the incident and were not at that residence when this incident occurred. When asked if he knew whether Mr. Sabater owned any weapons, he said Mr. Sabater had asked him to purchase a gun for him approximately nine months earlier but he had declined. Witness 1 did not know whether Mr. Sabater had acquired a gun.

When Witness 1 made contact with the officer, Mr. Sabater went back inside his house. While talking to the officer, he heard a gunshot, and the officer told him to go back inside. A second police car arrived, and Witness 1 heard a "couple" more shots. He was told by officers to get away from his windows.

Witness 1 heard shots, which he believed to be from Mr. Sabater, and then heard approximately four "heavier bangs" he believed were officers returning fire however, he could not see officers firing.

Witness 1 believed Mr. Sabater then ran from the residence. He did not see him run, but he saw five or six officers running down the street and then he heard several subsequent shots.

Witness 2 was interviewed by a detective with the Wichita Police Department. Witness 2 had lived in the 1900 block of S. Glenn for approximately four years with his wife.

Witness 2 went to bed around 11:00 pm and awoke to the sound of a gunshot. After the second shot, he got out of bed. He looked out his door toward 1945 S. Glenn, and heard a third shot. He saw a male on the porch wearing a purple or blue shirt and dark pants. Witness 2 said it appeared the male on the porch was yelling and then knocked a chair off the porch into the yard. He then saw the man unscrew the porch light, and the porch of 1945 S. Glenn went dark. Witness 2 went outside to call 911. Once outside, he heard two more shots.

Witness 2 saw police arrive, and then heard another shot. He heard police tell the male to "put the gun down" several times. He could see the man open the door, he would then hear a shot and then he would see the door to the residence close again.

Witness 2 said the man then exited the house and stood in the street. He heard yelling but no shots at that time. The man then took off "at a dead run," up the street with a handgun in his hand. He saw several police officers pursue on foot. He heard "a gunshot and then a bunch of gunshots," which he described as a "big volley." Witness 2 was standing on his porch when he heard the shots, but due to the heavy rain, he could not see the shooting.

Witness 2 later discovered that his own house had been hit by a bullet. The bullet was found on the kitchen floor and turned over to law enforcement. He told the detective that he did not know the point at which his house had been shot that evening.

Witness 3 was interviewed by a detective at her residence in the 1900 block of South Glenn.

Witness 3 said, "all I seen and heard, officers tell this gentleman, 'Get down, get down.' Until he came across the street and the officers told him again, they all drew their guns." She said the man was walking away from the officers with his hands to his sides. She did not see him holding a weapon. She said that when the officers were telling the man to get down, she heard the man yell "fuck you" back to the officers.

She did not see the shooting because officers had told her to go back inside her residence.

LAW ENFORCEMENT OFFICER STATEMENTS

The law enforcement officers involved in the incident gave voluntary statements to investigators:

Officer 1 was interviewed by a detective with the Wichita Police Department. At the time of this incident, he had been out of the “Field Training Officer” program for approximately one month.

Officer 1 had been dispatched to check a “shots fired call at 1945 S. Glenn.” After he arrived in the area, he was flagged down by Witness 1. The man who flagged him down said that his neighbor who lived at 1945 S. Glenn had come outside and told him to call the police. Witness 1 said the man then ran back inside 1945 S. Glenn. Witness 1 told Officer 1 he had heard loud banging noises from inside the residence after the male ran back inside. Officer 1 then heard the loud banging noises himself and took cover behind a tree in the front yard of 1945 S. Glenn.

The officer then heard more banging, so he backed up and took cover behind his squad car. Officer 1 saw a male come outside the residence at 1945 S. Glenn with a black object in his hand the officer believed to be a gun. Officer 1 verbally identified himself as a police officer and gave commands to this male to drop the gun. Officer 1 was approximately twenty yards from the suspect. The officer pointed his own gun at the man. The officer’s gun was equipped with a light. The man did not comply and went back inside his residence.

As additional police officers arrived, the man opened his front door and fired shots outside. Officer 1 said the man continued to do so for approximately ten minutes, shooting one or two rounds at a time.

More officers with the Wichita Police Department and deputies with the Sedgwick County Sherriff’s Office arrived. The deputies positioned themselves behind a nearby vehicle. It

then began to rain extremely hard and, as a result, it became difficult to communicate over police radios. Officer 1 got inside his patrol vehicle to use the radio to communicate with other officers regarding what the suspect was doing. While in his vehicle, Officer 1 heard more shots from what he perceived to be the area the Sheriff Deputies had taken cover.

Officer 1 remained in the patrol vehicle for another two to five minutes. Officer 1 heard officers, who were near the front of his vehicle, giving commands and advising each time the man inside 1945 S. Glenn had come out. He then heard officers say the man was standing in the middle of the street, and saw officers running north on Glenn Street.

Officer 1 and other officers entered 1945 S. Glenn to clear the house and found no one inside. While inside the residence, he heard a “volley” of gunshots from some distance and then heard an officer say that the suspect was “down.”

Inside 1945 S. Glenn Officer 1 saw “multiple shell casings” by the front door, bullet holes in the storm door, ceiling and walls of the residence. He observed a Glock handgun on the kitchen counter, and blood on the front door. Officer 1 did not fire his weapon during this incident.

Officer 2 was interviewed by a detective with the Wichita Police Department. At the time of this incident, Officer 2 was a patrol sergeant employed by the Wichita Police Department for approximately twenty-six years.

Officer 2 began his shift at 8:30 pm on May 26, 2019. While conducting the squad room briefing for the officers starting their shift, a call came into 911 dispatch at 8:57 pm from Mr. Sabater, who complained there were people in his back yard at 1945 S. Glenn.

Officer 2 knew Mr. Sabater by name due to the number of calls he had made to that residence and phone conversations he had previously had with Mr. Sabater, often based on the same kind of allegations. Officer 2 knew that Mr. Sabater was paranoid, with a possible mental illness and it had been reported to him by other officers that Mr. Sabater

abused cocaine. Officer 2 knew the police department had issued a “premises warning” for both Mr. Sabater and his address after a previous encounter during which Mr. Sabater had come at officers armed with a knife, after having called 911 to report people were in his back yard. The premises warning dictated that when police officers were dispatched to that residence, at least three officers and a supervisor had to respond.

Officer 2 said that during previous situations, he typically called Mr. Sabater on the phone to assure him that no one was actually in his yard and to assure him the police would send an officer to the house to make sure. He typically told Mr. Sabater that officers would also watch his house and let him know that they had "his back." Officer 2 said that sometimes this calms Mr. Sabater, though sometimes this approach had been less effective.

On this evening, officers were dispatched to 1945 S. Glenn, and Officer 2 also called Mr. Sabater, as he has done in the past. He reached Mr. Sabater by phone, who told Officer 2 he had seen shadows in his backyard. Officer 2 said Mr. Sabater sounded calm, coherent and less delusional than in past calls. He asked Mr. Sabater if he had been drinking or using drugs that night and Mr. Sabater denied that he had.

Officer 2 reassured Mr. Sabater that no one was in his yard, and their call ended. Officer 2 was then dispatched to an unrelated attempted suicide call on the far west side of Wichita. While on that call, he learned that at 11:06 pm a second phone call had been placed to 911 from Mr. Sabater, again reporting someone was in his backyard, this time with a gun. Officer 2 sent an officer who had checked Mr. Sabater’s residence earlier in the night back to 1945 S. Glenn. Officer 2 then called Mr. Sabater again by phone.

When Mr. Sabater answered, it sounded to Officer 2 as though he was talking to someone else, though Officer 2 recognized Mr. Sabater could simply have been talking to himself. Officer 2 asked Mr. Sabater why he had reported seeing someone in his backyard with a gun. Mr. Sabater acknowledged that had not actually seen a gun, only shadows. Officer 2 told him not to say there was a gun if there wasn’t one. Officer 2 had been contacted by the officer he sent to check 1945 S. Glenn, who again found no one. Officer 2 again reassured Mr. Sabater that no one was in his yard and that police would be watching his house on

his behalf in an attempt to calm him down. Officer 2 told Mr. Sabater he needed to go lay down and try to sleep. Mr. Sabater agreed and they ended the phone call.

While still at the other call, Officer 2 learned that 911 received a call from Mr. Sabater's neighbor stating that shots had been fired from Mr. Sabater's residence. Officer 2 finished the call he was on, and drove to 1945 S. Glenn. While in-route, he heard radio traffic that a man inside of the house was coming outside, firing a gun, and then going back inside.

Officer 2 arrived at the scene, set up a command post and contacted off-duty command staff to advise them of the situation and to ask that the SWAT team be activated. At 1:52 am, he tried to call Mr. Sabater two times by phone, but was unable to make contact. His calls went to voicemail.

While speaking to another supervisor on scene, Officer 2 heard shots fired by a Sedgwick County Sheriff's sergeant. Officer 2 got his own patrol rifle and went by foot to the southwest corner of May & Glenn streets where he contacted other officers. Officer 2 sent officers to the back of 1945 S. Glenn to assist with evacuations of neighboring residences. Officer 2 heard more shots being fired from 1945 S. Glenn, followed by what sounded like officers returning fire.

Mr. Sabater then exited the residence and ran into the street, waving a dark object in his hand that Officer 2 believed to be a gun. Officer 2 said a "torrential downpour" had started but, despite the rain, he recognized the man as Mr. Sabater based on previous interactions. He heard Mr. Sabater yell something, so he responded by calling Mr. Sabater by name, repeatedly telling him to put the gun down. Officer 2 could hear another officer to his east also tell yelling "get on the ground." Mr. Sabater then ran back inside the house.

Seconds later, Mr. Sabater came out of the house again and screamed something, then ran north on Glenn Street. Officer 2 yelled for officers to watch their cover. Officer 2, Officer 1 and other officers then ran into 1945 S. Glenn to check for any potential victims because it had sounded to Officer 2 during an earlier call with Mr. Sabater, that Mr. Sabater might have been speaking to someone else in the house.

Officer 2 found the glass storm door shattered. Inside the residence, he smelled burnt marijuana. The officers cleared the house and found no one else inside. Officer 2 saw empty shell casings on the floor by the front door and a black handgun on the kitchen counter as well as loose rounds on the kitchen floor and countertop.

Officer 2 left the residence and proceeded north on foot. He could see other officers and deputies ahead of him following Mr. Sabater. Officer 2 heard officers giving verbal commands to “put the gun down,” or words to that effect. He could not see Mr. Sabater, but he could see officers pointing their guns. Officer 2 saw a muzzle flash then heard a “hail of gunfire.” He estimated that ten to fifteen shots were fired by officers.

Officer 2 went closer and could see the suspect on the ground. A ballistic shield was brought to the location and he saw officers approach Mr. Sabater. Officer 2 saw what he believed to be a full size Glock handgun with a 30 round extended magazine approximately twelve to fourteen inches away from Mr. Sabater's right arm. After other officers secured the scene, EMS checked Mr. Sabater and pronounced him deceased.

Officer 2 identified the officers who fired their weapons during this incident and arranged for them to be taken to WPD investigations for interview and further instructed the officers and deputies not to unload the firearms. Officer 2 remained on scene to help preserve evidence.

Officer 3 was interviewed by a detective with the Wichita Police Department and a KBI agent. At the time of this incident, Officer 3 had been employed by the Wichita Police Department for approximately three years.

Officer 3 was at the WPD Property & Evidence building at Central and Waco doing paperwork when he heard radio traffic reporting an “officer in trouble, shots fired” call on south Glenn Street. Officer 3 heard officers say a person was on the front porch firing a gun at them.

When Officer 3 arrived in the area and parked at the intersection of May & Glenn Streets.

Officer 3 observed a male open the door of the residence and fire a gun. The man then repeated this same action four to six times. A thunderstorm began with what the officer described as “torrential rain,” lightning and wind, strong enough to cause the flashlight belonging to the sheriff deputy’s next to him to short circuit. Officer 3 quickly took the light apart because it was illuminating their position. While he did so, the male came out of the house again and stood in the street. Officer 3 heard law enforcement officers giving him verbal commands to “stop,” “drop the gun,” “let me see your hands,” and “lay down.” Officer 3 and several Sheriff’s deputies approached the man using the cover of a pickup truck, at which time the man began running north on Glenn Street.

Officer 3 saw several officers move forward and he called out for officers to secure the residence. Officer 3 heard multiple shots which believed to be an exchange of fire between law enforcement officers and the suspect.

Using a parked police vehicle at the intersection of Dora & Glenn Streets for cover, Officer 3 saw the suspect was on the ground, while his upper body was upright and turning towards officers with his arms extended. Officer 3 saw the man holding what he believed to be a handgun aimed at the officers. Officer 3 discharged his weapon at the suspect, between three to six times. Officer 3 stated he felt Mr. Sabater was a “very immediate threat.” Officer 3 said that several law enforcement officers around him also fired at the suspect. When asked if he thought Mr. Sabater was going to shoot, he responded, “Absolutely. Shoot one of the other officers, shoot an officer, shoot the gun through one of the residence. Maybe try to get up and run again.”

Officer 3 waited for a ballistic shield to be brought to his location, at which time he and five other officers approached Ms. Sabater. Officer 3 saw no reaction from Mr. Sabater. He saw a black Glock handgun, equipped with an extended magazine on the ground very near to Mr. Sabater. He observed another officer move the gun into the grass.

Officer 4 was interviewed by a detective with the Wichita Police Department and an Agent with Kansas Bureau of Investigation. At the time, Officer 4 had worked for the Wichita Police Department for approximately three months.

Officer 4 told the detective that on the night of this incident, he and two other patrol officers were dispatched to 1945 S. Glenn in reference to what he remembered as a “check the welfare” call. The call was from the resident who reported people were behind his house and surrounding his house with guns. Officer 4 arrived at that location along with the other officers who had also been dispatched on the call. One of the other officers told him when they arrived that many police calls come from that address, and that it had been “flagged” as a multi-officer response address because the resident there was “super paranoid,” had “mental issues” and was an “avid drug user.”

Officer 4 was told by a more senior officer at the scene that they would check the front and back yard, but they would not attempt to contact the resident. According to that older officer, when police have contacted the resident in the past, he had greeted them at the door armed with a knife or a gun and had made verbal threats to kill officers.

The officers checked the front and back yards of the residence and found no one there. Officer 4 then left the residence and responded to other, unrelated calls until he heard a “check shots” call at 1945 S. Glenn. Officer 4 responded again but did not initially recognize the address as the same address he had been to earlier in the evening.

Officer 4 contacted Officer 1 at May & Glenn Streets. Officer 4 heard shots being fired and observed the door to 1945 S. Glenn open, a shot being fired from a gun, and then the door to the residence closing again. Officer 4 did not know at whom the person inside the residence was shooting. He said this occurred four or five times. While securing the perimeter of 1945 S. Glenn, he heard a shot fired from the residence, then one to two shots were fired at the residence in response by what he believed to be a Sheriff's Deputy.

Officer 4 then saw a man run into the street from the residence. He observed a black object in the subject's hand that he believed was a gun. Officer 4 said the man was pointing the object at him and other officers. Officer 4 indicated that he did not fire his own weapon at that time because of crossfire concerns involving other officers. He heard verbal commands from other officers to “drop the gun” “get down” and “stop.” In response, the man began to run towards Dora Street. Officer 4 and other officers followed.

Officer 4 lost sight of the man for a moment, and got behind a WPD SUV for cover.

Officer 4 heard one or two gunshots. Officer 4 raised up from behind the cover of the SUV and saw the subject laying on the ground. Officer 4 again heard other officers giving verbal commands, “drop the gun. Put the gun down. Don’t move.” Officer 4 then knelt down on one knee when the subject “got up abruptly” and started to run west on Dora Street. Officer 4 stated the suspect took approximately two steps and “whipped around real fast and I saw him present what appeared to be a handgun at, towards our, us and the houses in the area, and it appeared he was going to try shoot or harm us or something, so I fired three or four rounds at him cause I didn’t want, I didn’t know if he got the opportunity if he was going to shoot me or the other officers on scene.” Officer 4 said several officers to his left also fired their weapons at the subject at that moment. Officer 4 said the suspect “fell down” and the officers stopped firing.

Officer 4 saw other officers approach the suspect with a ballistics shield and secured the area.

Officer 5 was interviewed by a detective with the Wichita Police Department and an Agent with the KBI. At the time of this incident, Officer 5 had been employed with the Wichita Police Department for approximately seven years as a patrol officer.

Officer 5 said that on the night of this incident, he was closing the Old Town Entertainment District downtown when he heard of an “officer in trouble with shots fired” call come over the police radio. Officer 5 proceeded to the location of the call using the emergency equipment on his police vehicle. While in route, Officer 5 heard officers over the police radio asking for rifles. Officer 5 had been issued a rifle, so when he arrived in the area of the call, he retrieved his patrol rifle from the trunk of his patrol car and went to the intersection of May & Glenn Streets on foot. Officer 5 heard a shot fired while he was retrieving his rifle.

When he got to May & Glenn Streets, he observed officers taking cover behind a WPD Tahoe SUV and joined them. He was the only officer in that group with a rifle. Officer 5

clarified with the other officers there which house was the correct house in question, and then took a position laying prone on his stomach with his rifle aimed at the house.

Officer 5 saw the door to the house open. He saw a muzzle flash, heard the shot, and saw the door to the residence close. Officer 5 could not see the person who fired the shot from inside the residence. The person in the house repeated this action approximately seven or eight times according to the officer.

Officer 5 told the detective that during one instance where the suspect opened the door and fired a shot, a sheriff's deputy fired two rounds from a rifle from behind the cover of a Toyota SUV east of the residence. In response, the suspect continued to fire randomly from the house.

While watching this residence, the officer observed a male come from the residence, move around on the porch and then proceed down the driveway into the street. He could see the man waving his arms "really erratically" and could see that there was something in the man's hand. Officer 5 said there was no light on the man who was "shadowed." The officer said he then found himself in an exposed position, so he got up and moved back to the cover of a vehicle.

Officer 5 could hear other officers giving the man verbal commands to show his hands and to "drop the gun." He then saw the man run north on Glenn Street. When the man turned to run, the officer could see that the black object in his hand appeared to be a gun.

As the officers ran north after the suspect, they called out their locations to alert other officers where they were. At one point, Officer 5 lost sight of the suspect and asked another officer where the subject went. He was told that the male went west of a police vehicle parked at the intersection of Glenn & Dora Streets.

Officer 5 saw the suspect moving quickly eastbound on Dora Street still waiving the gun. He heard shots fired by officers, but not from the officers nearest him. He saw the subject fall in the middle of Dora Street. Officer 5 heard more verbal commands, "drop the gun"

and “show us your hands,” directed to the man. Officer 5 saw the man get up and proceed in a northeasterly direction. The man then turned in his direction and “begins to raise the gun up.” In response, Officer 5 fired his patrol rifle at the same time other officers fired as well. Officer 5 believed he fired two to three shots at the suspect. He said he fired because “he pointed a gun at me. It’s – I was afraid for my life. I was afraid for the officers’ lives that were with me.”

Officer 5 said when he next saw the male, he was “down” and not moving. Officer 5 and the officers near him took cover until a ballistics shield was brought up and another team of officers approached the man to secure the scene.

Officer 6 was interviewed by a detective with the Wichita Police Department and an agent with an agent with the KBI. At the time of this incident, Officer 6 had been employed by the Wichita Police Department for nearly three years.

While responding to an unrelated call, he heard police radio traffic of a “check shots” call. He then heard a supervisor calling for more officers to respond. Officer 6 left the call he was on and responded with red lights and sirens.

He arrived and parked his patrol car at Dora & Glenn Streets, north of 1945 S. Glenn, blocking the intersection. After exiting his vehicle, he heard a shot fired. He joined other WPD officers and Sheriff’s deputies in taking cover behind his vehicle. The WPD officers then moved to another location, leaving him with the deputies.

While behind the cover of his vehicle, he could see a “shadow” in the middle of the street. He could not tell if it was an officer or the suspect. He asked but the deputies near him had no better view. Officer 6 then saw the “shadow” figure “kind of running” north in his direction. He then heard radio traffic that the subject was running north, toward Officer 6 and the deputies.

Officer 6 was concerned about a “crossfire” situation, so he and one of the deputies moved east behind another patrol vehicle for cover. Officer 6 saw the suspect running with a gun

in his right hand. He saw the suspect looking in different directions and “waving” the gun in each direction as he did so. Officer 6 then lost sight of the subject.

He heard other officers giving several verbal commands for the suspect to drop the gun, and then heard a law enforcement officer fire a rifle. Officer 6 heard more verbal commands by officers for the subject to “drop the gun.”

A nearby Sheriff's Deputy stepped in front of him. He got behind the deputy and they left the cover of the patrol car to begin “moving up.” Officer 6 saw the suspect waving the gun in his hand. He heard more verbal commands from officers who told the subject to drop the gun. Officer 6 could not tell if the subject was on his knees or on his feet, but saw that the suspect then pointed the gun at “us,” (meaning Officer 6 and the sheriff's deputy he was with) so Officer 6 fired approximately eight shots at the subject. Officer 6 said, “I was in fear that I was 'gonna be shot. I was in fear I was 'gonna die.” Officer 6 said that when he fired his eight shots, the subject fell, and he quit firing. Officer 6 said that after a “bunker” was obtained, other officers approached the male to secure the scene. Officer 6 was not in that group of officers.

Officer 7 was interviewed by a detective with the Wichita Police Department and an agent with the Kansas Bureau of Investigation. At the time, Officer 7, had been employed by the Wichita Police Department for over three years as a patrol officer.

Officer 7 heard radio traffic of an officer in trouble on the west side. He switched his radio to the west side channel and heard that shots had been fired. Officer 7 responded to the call with lights and siren activated, and parked his patrol vehicle in the area of May & Glenn Streets. When he got out of his patrol vehicle, he heard shots being fired so he armed himself with a patrol rifle from his vehicle. Officer 7 took cover behind a WPD Tahoe with other officers. He then moved and took cover behind a pickup parked in a driveway. He was joined by two sheriff's deputies. One of them being Officer 12.

Officer 7 could not see the front of 1945 S. Glenn, so he moved to try and get to a better location but had to return to the truck for cover. He knew shots were being fired from

1945 S. Glenn and though he could not see the person firing, he could see the front door of the residence open and see a muzzle flash as shots were fired from the residence. Officer 7 said that while he was behind the truck heavy rain began to fall.

He then saw a man he described as a white male, wearing jeans and a possible "cut off T-shirt" or "tank top," come out of 1945 S. Glenn and stand in the middle of Glenn Street. Officer 7 said the man pointed an object, which he believed to be a gun, to the south then began running north. Officer 7 pursued north behind other officers and deputies.

Officer 7 lost sight of the man while moving north, but heard one shot. When he got to Dora Street, he saw the man lying on the curb with his body partially in the grass. Officer 7 heard other officers giving verbal commands to the subject to drop the gun. As he approached, he saw the man was on his side. The man then stood up with an object in his hand, which the officer believed to be a gun. When the man began to run west, Officer 7 fired his patrol rifle two times. When he fired, other officers fired several rounds "simultaneously."

Officer 7 said he fired his rifle, "based on the totality of the circumstances, officer safety, my safety of, . . . what's been reported to us over the radio, and his actions, I felt that it was in the best safety of everybody that I discharged my firearm and stopped the threat of . . . anybody else or anybody getting injured, or killed at that point based on the weapon that was, that was being used."

Officer 8 was interviewed by a detective with the Sedgwick County Sheriff's Office and an agent with the Kansas Bureau of Investigation. At the time, Officer 8 had been employed by the Sedgwick County Sheriff's Office for over one year as a patrol deputy.

Officer 8 was patrolling the Oaklawn area when he heard radio traffic that officers were involved in a "shots-fired" call. He responded to the call and followed another patrol vehicle to the location. Officer 8 retrieved his patrol rifle from his vehicle after hearing radio traffic that the subject was firing rounds from his house. Officer 8 saw Officer 12 and joined him behind cover.

Officer 8 and Officer 12 then went to a nearby residence and told the occupants to go to their basement. He and Officer 12 then returned to their original position.

The person in the house fired five to ten times from the residence. On one occasion, the subject exposed himself from behind the cover of the door and Officer 12 fired one or possibly two rounds at the subject. Officer 8 said he was instructed by Officer 12 to move to an alley to try and get into a better position to see the residence. When Officer 8 got to the alley, he heard radio traffic that the suspect had come out into the street. Officer 8 used the light mounted on his rifle to illuminate the suspect. This allowed him to see the suspect pointing a gun. Officer 8 yelled out for other officers that the suspect had a gun.

Officer 8 gave multiple verbal commands to the suspect to drop the gun and to get on the ground. Officer 8 did not know if the suspect saw him or if he heard him, but the suspect did not comply with the commands and ran north. In the heavy rain coming down, he lost sight of the suspect. Officer 8 said he, and Officer 12, began walking north with WPD officers.

Officer 8 then saw the man running in circles in the street, so he took cover behind a vehicle. The suspect began waving the gun around and at one point tripped and fell. Several officers were telling the man to drop the gun. He said he and Officer 12 both told the suspect "let me see your hands." The suspect got on his knees, waved the gun around and then stood up. He said the suspect then got completely on his feet. Officer 8 was approximately fifty feet from the suspect when the suspect turned and pointed the gun in his direction. Officer 8 fired three to four rounds at the suspect from his patrol rifle, and the suspect fell. Officer 8 believed he struck the man, though he heard several other law enforcement officers fire their guns at the same time.

Officer 8 joined other law enforcement officers who utilized a ballistic shield to move toward the suspect. When Officer 8 pulled the man's left arm from underneath his body, he saw a gun come out from under the suspect's body, which he described as a Glock with an extended magazine. He watched as Officer 9 then secured the weapon.

Officer 9 was interviewed by a detective with the Sedgwick County Sheriff's Office and an agent with the Kansas Bureau of Investigation. At the time, Officer 9 had been employed as a patrol deputy for the Sedgwick County Sheriff's Office for approximately three years.

Officer 9 was on a traffic stop in the City of Wichita when he heard radio traffic of an "officer in trouble." He responded to the area of the call where he met up with Officer 10 and parked his patrol vehicle on Dora Street between Euclid and Glenn. Officer 9 got his patrol rifle as he exited his vehicle. He and Officer 10 then took cover behind a police vehicle at the intersection of Dora & Glenn Streets along with Officer 6 and other officers. Officer 9 could hear shots being fired, though he could not see the house or the person involved in this incident from his location.

After approximately 10 minutes, he saw someone standing in the street. At first, he thought the person may have been a police officer, but he heard police traffic that it was the suspect. Officer 9 then heard radio traffic that the suspect was running north, towards his location. Officer 9 and the officers who were with him were concerned about possible crossfire so they moved behind another parked police vehicle at that same location. Once behind that vehicle, Officer 9 came into contact with Officer 11, who was behind the same vehicle.

After Officer 9 saw the suspect run past other parked patrol cars, he and other officers gave verbal commands to the suspect, including "show me your hands." Officer 9 said it was raining hard which limited his vision. Officer 9 said the suspect approached him, and the officers he was with.

Officer 9 could hear the suspect "yelling," as the man approached him and the other law enforcement officers. He heard the suspect yelling, "Shoot me. Shoot me. Shoot me." Officer 9 stated that he could see that the suspect's arms were extended, but he could not initially see a gun in the suspect's hands.

Officer 9 saw that Officer 11 was in a kneeling position armed with a patrol rifle. Officer 9 saw Officer 11 fire one shot after which, the suspect fell in the grass. Officer 9 saw the

suspect start to get up. Officer 9 could see the suspect pointing a gun at him and the officers he was near. Officer 9 said, "I was afraid that he did have ammunition still in the gun and that he was going to shoot at us. And at that point, I believe I fired three to four" times. Officer 9 said several other officers fired "simultaneously." Officer 9 said the suspect went down and did not move.

A ballistic shield was brought up to the scene and he and other officers used it to approach the suspect. Officer 9 saw a Glock handgun under the suspect's body. He picked up the gun up and tossed it into nearby grass. Officer 9 stayed with the Glock handgun until he was relieved by another law enforcement officer.

Officer 10 was interviewed by a detective with the Sedgwick County Sheriff's Office and an agent with the Kansas Bureau of Investigation. At the time, Officer 10 had worked as a uniformed patrol deputy for the Sedgwick County Sheriff's Office for approximately nine months. Prior to being employed by Sedgwick County, he worked as a police officer for another law enforcement agency for approximately three years.

Officer 10 responded to the call of an officer in trouble. After he arrived at the scene, he made contact with Officer 9 and they took cover behind a vehicle parked north of the house where the incident was taking place. Officer 10 heard a shot fired at one point, but was unable to determine who fired. He then heard radio traffic that the suspect kept firing, and that a Sheriff's deputy had fired. Heavy rain obscured his ability to hear and see.

At one point, Officer 10 heard radio traffic that the suspect had begun running north in the street. Officer 10 did not see the suspect until someone else shot, and he saw the suspect "partially on the ground." A streetlight at the intersection nearby lit the area when the man fell. He heard Officers 9 & 11 give verbal commands to the suspect to stop and to get on the ground. Officer 10 also heard the suspect saying: "Just shoot me. Just shoot me."

Officer 10 observed the suspect sit up and "swing with his right arm." Officer 10

responded by firing three to five shots at the man, because “he’d already fired upon all the officers down here, and he was yelling to just shoot me and then swung around with a motion like this and like he was aiming towards us.” Officer 10 did not see the gun in the man’s hand but, when he observed the man turn towards him, he thought the subject had a gun. He added, “I thought he was getting ready to shoot at us.” Several other law enforcement officers fired at the same time that he did. Officer 10 said he was twenty-five to thirty yards away from the man when he fired.

After a ballistic shield was brought up to the scene, other officers approached the suspect and secured the area.

Officer 11 was interviewed by a detective with the Sedgwick County Sheriff’s Office and an agent with the Kansas Bureau of Investigation. At the time, Officer 11 had been employed by the Sedgwick County Sheriff’s Office as a commissioned deputy for approximately one year. Prior to that, he worked as a Detention Deputy at the Sedgwick County Adult Detention Center.

Officer 11 told the detective he responded to an “officer in trouble, shots fired call” on the west side of Wichita and parked his patrol vehicle in the area of Dora & Vine Streets. When he arrived, he heard shots being fired, and radio traffic from other officers at the scene that a suspect was firing shots from a residence. Officer 11 retrieved his patrol rifle and proceeded west to Glenn Street.

He made contact with a WPD officer and took cover with him behind a vehicle in the area of Dora & Glenn Streets. He heard more shots fired, and radio traffic that the suspect was shooting from inside his residence. Officer 11 moved and took cover with Officer 9 and Officer 6. He then heard radio traffic that the subject had entered the street. Officer 11 could see a person in the street, but initially thought it was an officer. Radio traffic then relayed that the suspect had run north, toward Officer 11.

Officer 11 saw the man run into the intersection near the officer’s position. It had begun to rain heavily, which made visibility difficult through his glasses. He was able to see who he

believed to be the suspect. He described the man as “frantic.” The officer gave verbal commands to the suspect to put his hands in the air. The suspect did not respond and instead began looking in different directions. The officer could not see whether the suspect had a gun. The suspect then pointed a dark object at the officer, and come directly at the officer. Officer 11 told the man, “drop the gun.” He then fired one round directly at the suspect, which caused the man to fall near a curb line. Officer 11 said he fired because, “I thought he was going to shoot me.”

Officer 11 said he was less clear about subsequent events after the stress of shooting. He did see the suspect moving and knew that other officers fired.

Officer 12 was interviewed by a detective with the Sedgwick County Sheriff's Office and an agent with the Kansas Bureau of Investigation. At the time, Officer 12 was a sergeant and had been employed in law enforcement for nearly twenty years, the last ten with the Sedgwick County Sheriff's Office.

Officer 12 was finishing his paperwork for an unrelated case when he heard the "tones" over radio traffic as an officer in trouble with shots fired. He heard additional radio traffic from other responding officers that the suspect was shooting out of the front door of the residence.

Officer 12 parked on May Street. He heard shots being fired. He retrieved his rifle and proceeded on foot toward the house. He positioned himself roughly 30 yards from the suspect's residence. He saw the suspect open the front door of the residence, fire a weapon once or twice, then shut the door. He estimated the suspect fired roughly twelve to fifteen shots in this manner. He was not clear what the suspect was shooting at or whether the suspect was alone. He directed officers to contact neighbors across the street from the suspect to remove them from their residence. The officer approached another homeowner and instructed that person to get their family to their own basement.

As the suspect shot, the officer saw a handgun on one occasion and, subsequently, when the suspect opened the door again, the officer saw more of the suspect's body. At that

time, the officer shot twice at the suspect. The suspect reacted by going back into the house. The officer then saw a light go on then off inside the structure and then the suspect came out of the house.

It had begun raining extremely hard, which had already caused visibility issues and issues related to communication via radio. Officer 12 heard other officers yelling commands. Due to lack of visibility, the officer could not see whether the suspect was armed. He wasn't sure whether the suspect was coming outside to surrender, when he saw the suspect run north. Officer 12 and other officers pursued on foot.

Officer 12 lost sight of the suspect, when he heard radio traffic that the suspect was at the next intersection. He approached and saw the suspect on the ground. The suspect then stood up, and officer 12 saw a black handgun with an extended magazine. The man raised the weapon at the officers. Officer 12 and other officers fired at the suspect.

As a sergeant on scene, he directed officers not to approach the suspect until a ballistic shield could be brought to the area. The shield was brought up and Officer 12 and another sergeant approached the suspect and secured the scene.

Officer 13 was interviewed by a detective with the Wichita Police Department. At the time, Officer 13 had been employed by the Wichita Police Department for over fourteen years and served as a patrol supervisor. He was also a member of the WPD SWAT team.

Officer 13 responded to the call of an officer in trouble. When he arrived at the location, he initially took a position across the street from the suspect's house with Officer 12. He later moved away from Officer 12 for better cover, but remained in the area across the street.

From this position, he observed a male open the front door of the residence and fire one shot. Officer 13 said it did not appear to him that the male was aiming but rather firing from "waist level." Officer 13 heard a shot being fired in response, by who he believed to be Officer 12. Officer 13 did not see Officer 12 fire, but he was familiar with the sound of the rifle that was fired, and knew Officer 12 was armed with that type of rifle.

Officer 13 moved to try and get a better view. While moving, the man exited the residence again. Officer 13's view was obstructed by a fence and trees. He could hear verbal commands being given by officers, and then saw the suspect run north. Officer 13 moved around neighboring houses and proceeded north, but lost sight of the suspect.

Officer 13 observed a law enforcement vehicle, with officers taking cover at the intersection of Glenn & Dora Streets. He then saw the suspect “whip his arm out and it looks like he’s holding a gun at - at arm’s length towards the officers” when the officers all fired simultaneously. Officer 13 approached and saw the suspect on the ground. A ballistic shield was brought to the scene. He and other officers used the shield to approach the suspect and secure the area. Officer 13 saw a black Glock handgun lying in the grass near the suspect.

Additional Witnesses.

Another eight civilians gave tape-recorded interviews with law enforcement investigators. Additionally, another fifteen law enforcement officers were also interviewed by investigators. These civilians and law enforcement officers were at or near the area of Mr. Sabater's residence at the time of the incident, and either heard shots being fired or verbal commands, but did not see the shooting that led to Mr. Sabater's death. Some saw him run, or the heard the shots fired, but they were not able to see what if anything Mr. Sabater was doing physically prior to the shots being fired or which officers fired their weapons.

CRIME SCENE INVESTIGATION

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 the Glock 9 mm handgun with an extended magazine located under Mr. Sabater. A total of forty-six spent shell casings fired by law enforcement officers were collected. A total of thirty-two spent shell casings fired by Mr. Sabater both inside and outside his home were collected.



The Glock handgun found under Mr. Sabater.



A still photo from an officer's body camera footage of Mr. Sabater extending his handgun.

FORENSIC EVIDENCE & AUTOPSY RESULTS

The firearm evidence collected including the 9 mm Glock handgun found under Mr. Sabater as well as a second handgun located in his residence. Eighteen 9mm shell casings and eight .223 shell casings fired by officers with the Wichita Police Department were collected from the area where Mr. Sabater was shot. Thirteen shell casings fired by deputies with the Sedgwick County Sheriff's Office were collected from the area where Mr. Sabater was shot. 32 shell casings fired by Mr. Sabater were located.

An autopsy was performed on the body of Robert Sabater on May 28, 2019, at the Sedgwick County Regional Forensic Science Center. The final autopsy report, dated August 16, 2019, determined that Mr. Sabater died as a result of multiple gunshot wounds. According to the autopsy, Mr. Sabater sustained three "penetrating" gunshot wounds and five "perforating" injuries to his torso; two penetrating and two perforating wounds to his upper extremities;

one penetrating and two perforating to his lower extremities; and three "grazing" wounds to his left thigh and left forearm. The toxicology report determined Mr. Sabater's brain tested positive for methamphetamine (2.9 mg/kg); amphetamine (0.24 mg/kg) and phencyclidine (PCP) (greater than 50 ng/g).

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. 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. 21-5231 (2018 Supp.) **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. (2020 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. 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 May 27, 2019, five officers with the Wichita Police Department and five deputies with the Sedgwick County Sheriff’s Office utilized deadly force resulting in the death of Robert Sabater.

Under K.S.A. 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 himself or 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. 21-5231. Meaning, a person may not be charged, prosecuted (or subsequently sued) unless the state can establish that the person who utilized deadly force was *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 Mr. Sabater fired multiple rounds both inside and outside of his house, causing neighbors to contact 911 which caused law enforcement officers to be dispatched. When officers and deputies arrived, he continued to shoot his handgun out the front door of his residence. One Sheriff’s Sgt. (Officer 12) returned fire, to no effect. Mr. Sabater later ran with a gun into the street, ignored verbal commands to drop his gun, and ran north of his house. Officers did not fire initially due to concerns they would expose one another to cross fire compounded by poor visibility as a result of heavy rain. The officers pursued Mr. Sabater on foot. When they verbally commanded him to drop his weapon, Mr. Sabater instead raised his handgun at the officers who responded by shooting. Mr. Sabater appeared to officers to have gone to the ground initially, but got back up to run. Officers reported that he again turned his weapon on the officers, several of whom shot—nearly simultaneously--killing Mr. Sabater. Two law enforcement officers reported hearing Mr. Sabater repeatedly yelling the phrase, “shoot me.”

Under these circumstances, the officers and deputies are immune from prosecution under Kansas law.

Under Kansas law and the facts of the case, I conclude that no criminal charges will be filed against the officers and deputies.

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*