



**For Immediate Release
May 13, 2021**

District Attorney Marc Bennett has completed the review of the use of deadly force that resulted in the death of Deborah Lee Arbuckle. The incident occurred on December 30, 2019 at Mt. Vernon and Webb Road in Sedgwick County, Kansas.

SCOPE OF REPORT

This report details the findings and conclusions limited specifically to criminal liability of the deputy employed by the Sedgwick County Sheriff's Office who shot and killed Ms. Arbuckle on December 30, 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 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

On Sunday, December 30, 2019, at approximately 0312 hours, an Officer with the Wichita Police Department was traveling eastbound on Kellogg Drive, approaching Woodlawn. The officer observed a gray Volkswagen stopped at the intersection of Kellogg Drive and Fabrique. The officer saw license tag on the car and called it in. The tag was registered to a Chevy pickup. The officer pursued the Volkswagen on Kellogg to Oliver, where the driver attempted to exit off to Oliver Street. The officer activated his emergency equipment to effect a traffic stop. In response, the driver of the Volkswagen ran the red light at Kellogg Drive and Oliver and sped westbound onto Kellogg.

The officer pursued the Volkswagen at 80 mph on Kellogg. The Volkswagen exited Kellogg southbound onto I-135. The officer pursued and estimated the Volkswagen travelled at 90 mph on I-135. The chase was called off due to the high rate of speed near I-135 and Pawnee. The officer quickly lost visual sight of the Volkswagen. The officer drove into the neighborhood near Sunnybrook and Rutan and saw the same Volkswagen driving, but was unable to make contact.

A Sheriff's Deputy in the area, Deputy 1, heard the chase on the law enforcement radio channel and drove toward the last known location of the Volkswagen. He saw it turn onto MacArthur and drove toward the car. As the deputy approached, the Volkswagen performed a U-turn and accelerated eastbound away from the deputy. The deputy activated his emergency equipment and a car chase ensued.

For the next 19 minutes, Sheriff's Deputies pursued the Volkswagen, later determined to have been driven by Ms. Arbuckle, in southeast Sedgwick County, into Butler County and back into Sedgwick County. Ms. Arbuckle approached speeds of 90 mph while eastbound on Pawnee; drove through a red light at Pawnee and Rock; drove through a stop sign at Pawnee and Greenwich, continued eastbound at speeds at or exceeding 100 mph; traveled eastbound onto Citation Road in Butler County, traveling through the backyard of a residence. Deputy 1 was not able to keep up with the Volkswagen at that point and instead took up a position to utilize spike strips later in the chase -- at 127th street East and Pawnee, in Sedgwick County.

When the Volkswagen drove over the spike strips deployed by Deputy 1, the Volkswagen did not stop. Deputy 3 positioned his patrol unit behind the Volkswagen to perform a tactical vehicle intervention (TVI) which he first attempted as the Volkswagen turned north onto Greenwich, then a second time near Webb Road, and then a third time as the Volkswagen turned west onto Mt. Vernon from Webb Road. TVI is a "less-lethal" technique utilized during vehicle pursuits, whereby a deputy uses their patrol car to make contact with (certain types of) fleeing vehicles to push the car to cause it to "predictably stop potentially dangerous pursuits."

After the third TVI, the Volkswagen traveled approximately 30 yards eastbound on Mt. Vernon and came to a stop against the south curb, with the hood of the car facing southwest. The four pursuing deputies exited their vehicles and approached the Volkswagen on foot. When the white reverse lights of the Volkswagen activated, at least one deputy verbally warned the other deputies.

Deputy 3, who was west of the Volkswagen, on the passenger side, believed the deputies to the north and west would be struck by the Volkswagen as it reversed. He fired his handgun six times into the passenger side of the vehicle. The car rolled back to the south, toward the curb and came to a stop.

The driver was removed from the vehicle. She was pronounced deceased at the scene by EMS.

INVESTIGATION

Deputy 3 was removed from the area and his firearm was secured. Law enforcement officers gave voluntary statements to investigators with the Sedgwick County Sheriff's Office. The statements of four Sheriff's deputies and one Wichita Police Officer that were at or near the scene of the shooting are included herein as is the information set forth in the report of the first Sheriff's Deputy involved in the vehicle pursuit, Deputy 1.

Crime Scene Investigators from the Sedgwick County Sheriff's Office processed the scene.

LAW ENFORCEMENT OFFICER STATEMENTS

Deputy 1: Deputy 1 submitted a written report detailing his involvement in the vehicle pursuit. He had approximately one year of experience with the Sedgwick County Sheriff's Office at the time of the incident and approximately three years prior experience with another agency.

Deputy 1 heard "an all channels broadcast" of the car chase involving the WPD officer, Officer 1, and the Gray Volkswagen w/ Tennessee plates. He was already in the area of 47th Street South and K-15 when he heard the Volkswagen exited southbound onto K-15 after the WPD pursuit had been "disregarded." He traveled northbound on K-15 to look for the vehicle. He saw the Volkswagen turn west onto McArthur. He followed the Volkswagen until he could see that it had a Tennessee tag. At 3:24 a.m., Deputy 1 advised dispatch he believed he was behind the same car.

The Volkswagen performed a U-Turn on McArthur. To keep up, the deputy activated his emergency equipment. The Volkswagen ran a red light onto Turnpike Drive and traveled at speeds approximately 70 mph to 31st St then northbound on Oliver through another red light.

The pursuit continued up Oliver to Pawnee, to Rock Rd., back to Pawnee at speeds ranging from 70, to 80 to 105 mph before going 100 mph on Webb. At 159th east, the Volkswagen drove through a residential backyard and Deputy 1 missed the turn. At that point, Deputy 2 took over as "lead vehicle" in the pursuit.

When Deputy heard 1 radio traffic that the pursuit re-entered Sedgwick County and that the Volkswagen was westbound on Pawnee, he deployed spikes at 127th and Pawnee. He witnessed the Volkswagen run over the spikes. After collecting the spikes, Deputy 1 drove to Mt. Vernon and Webb where the chase had ended. When he arrived, lethal force had already taken place.

Deputy 1 assisted other deputies in approaching the Volkswagen behind a ballistics shield.

He broke the glass of the driver's door, which allowed deputies to reach in and unlock the driver's door. Ms. Arbuckle was removed from the vehicle. He checked Ms. Arbuckle and found no pulse. EMS arrived and pronounced Ms. Arbuckle deceased at 4:00 a.m.

Deputy 2: Deputy 2 was interviewed by a detective with the Sedgwick County Sheriff's Office. He had approximately two years of experience with the Sheriff's Office at the time of the incident.

Deputy 2 heard the radio traffic that a Wichita Police Officer was involved in a vehicle pursuit with a Volkswagen with Tennessee plates near Kellogg and Oliver. He was near Pawnee and Hydraulic when the police "disregarded" the chase as it travelled southbound on 135 from Harry. He went to the area of K15 and 31st, because on the radio, the WPD Officer, Officer 1, said that the Volkswagen may have gotten off 135 at K15. He knew other deputies were also in the area.

Deputy 1 radioed that he was behind the suspect vehicle near K15 and MacArthur. Deputy 2 drove to the area and, when the Volkswagen began to accelerate, the deputies activated their emergency equipment.

Deputy 2 missed a turn on Turnpike Drive, and instead took MacArthur east. The pursuit went east into the county. Deputy 2 drove to back up Deputy 1 and caught up near 159th street. He believed Deputy 1 stopped, thinking Deputy 3 had arrived to perform the TVI. But Deputy 3 was not that close, so Deputy 2 took over as the lead patrol vehicle in the pursuit at 159th and Pawnee. Deputy 2 pursued the Volkswagen into Butler County and, later, back into Sedgwick County.

Near southwest 120th in Butler County, the Volkswagen's speed was over 120 mph. Spikes were eventually deployed by another deputy at Webb and Pawnee. Deputy 2 saw the Volkswagen's tires struck then continued to pursue until Deputy 3, the TVI deputy, took over as lead vehicle in the pursuit.

As the pursuit continued North on Webb, Deputy 3 performed the TVI for the first time,

causing the Volkswagen to spin, before it straightened out and continued. A second TVI is conducted, again causing the Volkswagen to spin before it continued, closer to the left curb line, which prevented a third TVI from taking place at that point. As the Volkswagen turned west onto Mt. Vernon, it appeared to Deputy 2 that Deputy 3 conducted a third TVI. The Volkswagen went up the (south) curb and stopped.

Deputy 2 exited his patrol vehicle. The windows of the Volkswagen were tinted, so he was unable to make visual contact with the occupant. The deputies gave verbal commands and received no response.

". . . the vehicle starts to reverse and starts to come. I knew there were people behind me. I, at that point I wanted to shoot. I wanted to fire my gun because I thought he was 'gonna run one of us over. We were all right there and he started backing up into us. I didn't, didn't feel comfortable with shooting 'cause I knew [Deputy 3] was on my right, and I didn't know where he was in correlation to me, but it was so much so I yelled out, watch out . . . I was scared it was 'gonna hit somebody."

Deputy 2 heard gunfire and "ducked down." The Volkswagen stopped. The deputies moved into position behind another car. Deputy 2 uses the intercom system on another deputy's vehicle to give verbal commands to the driver of the Volkswagen.

Deputy 5 attempted to shoot the driver's side window out with a beanbag round, unsuccessfully. The vehicle "lurched forward" then stopped. The deputies approached the Volkswagen utilizing a ballistics shield ("bunker") and broke out the window with a baton. Ms. Arbuckle, the lone occupant of the Volkswagen, was non-responsive. She was removed from the car. EMS arrived and pronounced Ms. Arbuckle deceased.

Deputy 3: Deputy 3 was interviewed by two detectives with the Sedgwick County Sheriff's Office. He had approximately four years of experience as a patrol deputy with the Sheriff's Office at the time of the incident. He previously worked for approximately one year as a detention deputy.

On December 30, 2019, Deputy 3 was one of three deputies with the Sedgwick County Sheriff's Office certified in tactical vehicle intervention (TVI). Deputy 5, a sergeant, described Deputy 3 as "the most successful," TVI deputy, "by far the best on patrol right now."

Deputy 3 was located at west Kellogg when he heard the radio traffic regarding a vehicle pursuit involving a Volkswagen in southeast Wichita. He traveled eastbound on Kellogg at a high rate of speed (in excess of 100 mph) to the area of the pursuit of the Volkswagen begun by Deputy 1.

As the Volkswagen travelled westbound on Pawnee, he took over from Deputy 2 as the lead pursuit vehicle. Another Deputy deployed spikes, which slowed the speed of the Volkswagen "*pretty significantly.*" Given the slower speeds, Deputy 3 did not initially believe the TVI would be successful. When the Volkswagen turned north, and it did not appear the pursuit would end, he decided to attempt the first TVI. When he did, "*the car kind of just drove out of it.*" When the Volkswagen continued northbound, Deputy 3 attempted the second TVI: "*as the car rotated around my uh, push bar, I was able to get a pretty good look in through the, uh, front window a windscreen and then somewhat through her driver window, but the vehicle was pretty tinted it was difficult to see inside. But I did notice that it appeared to be the only occupant was just the driver.*"

The second TVI was also ineffective at stopping the Volkswagen, who was able to "just continue to, to drive." Deputy 3 got behind the Volkswagen again.

The Volkswagen then turned west into a residential neighborhood. Deputy 3 believed the driver did not intend to stop. The Deputy did not want the pursuit to continue through a residential neighborhood and so he conducted a third TVI. The later clarified that he was concerned that while the chase had taken place in unpopulated areas, he was concerned for the safety of residents in the area, given the driver's early willingness to drive through a residential yard earlier in the chase. When he conducted the TVI, the Volkswagen spun toward the south and west and came to a stop at the south curb of Mt. Vernon. Deputy 3

exited his patrol vehicle expecting the driver to run on foot.

Deputy 3 was concerned about the risk of "cross-fire" from his location west of the Volkswagen to the deputies approaching on foot from the north and east. He knew a deputy was next to him on the passenger's side of the Volkswagen and that Deputy 2 was on foot on the driver's side of the Volkswagen.

"I believe I had my firearm drawn already for the standard felony car stop giving orders to the car pretty quickly. Uh, our vehicle, that I could distinctly remember the vehicle revving up. Um, and then I could hear the tires slipping. Uh, noticed that the vehicle was in reverse and coming directly at myself and the other Deputy or Officer standing just to the left of me. Uh, I could see, I had a little bit more angle out then where I could see the front tire starting to rotate. Cause this was the tire that was, um, had lost the rubber off of most, the majority of it. So the tire was having difficulty catching, but it was just spinning at a high rate, like she was really trying to get on the, on the car. Luckily the tires were deflated to the point where she, the car had struggled to get uh, as much traction as she was, as much as, as much traction as she was putting in the gas, uh, as throttle. So even, even with her, the car not having much traction, it still came back really quickly at us. Uh, I took a couple of steps just directly to the West, um, where the car went past me, but with me, with knowing that, uh, there was another cop, right next to me uh, I got, I got scared that, um, not only I was going get run over, but even more so that my partner next to me was going to."

Deputy 3 fired his handgun six times into the Volkswagen through the front passenger window. He was unable to see the driver through the tinted windows but, believing the driver was operating the car to make it reverse, he aimed at the area he believed the driver would be within the car.

The Volkswagen came to a stop. Deputy 3 backed further away to the north behind Deputy 4's patrol vehicle. The deputies were unable to see into the Volkswagen due to the heavy tint on the windows. Deputy 5 attempted to shoot beanbag rounds to break the driver's side window without success. Deputy 1 then approached behind a ballistics shield and used a baton to break out the driver's side window.

Ms. Arbuckle was removed from the car. A deputy checked her for a pulse and found none. Once on scene, EMS pronounced Ms. Arbuckle deceased.

Deputy 4: Deputy 4 was interviewed by a detective with the Sedgwick County Sheriff's Office. He had approximately two years of experience with the Sheriff's Office at the time of the incident.

Deputy 4 was near Meridian and 47th when he heard an east side officer with the Wichita Police Department, Officer 1, was involved in a vehicle pursuit. He drove toward the pursuit but believed it had been "disregarded" by the time he got to Hydraulic and 47th. Then he heard the pursuit had begun again with Deputy 1.

Deputy 4 waited near Pawnee and Webb when the pursuit went into Butler County. Given the high rate of speed of the pursuit, instead of attempting to catch up to the pursuit, he placed spikes at his location. When the pursuit reentered Sedgwick County, he heard that another deputy had successfully utilized spikes east of his location. Deputy 4 was then able to utilize his spikes on the Volkswagen as it was westbound on Pawnee. As he moved his spikes from the roadway, he saw one of the deputies TVI the Volkswagen. He began to pursue when he saw Deputy 3 TVI the car as it attempted to turn west onto Mt. Vernon.

Deputy 4 parked and approached the location where the Volkswagen stopped on foot. He went to the side of Deputy 2's patrol vehicle to assist with the felony car stop. He was on the driver's side of the Volkswagen but was unable to see into the driver's side due to the tint on the windows.

". . . we're trying to give him orders to just exit the vehicle with their hands up and everything uh, the vehicle just, you could hear it rev up and it started to back up. And so as it backed up, since I was on the passenger side, uh, I thought they were going to hit me. So I just immediately turned around to get behind [Deputy 2's] car. And, uh, as I was running to get behind [Deputy 2's] car, I heard, uh, like five gunshots."

He went around to the passenger side of the Volkswagen. Deputies on the driver's side attempted unsuccessfully to break the driver's side window. Eventually a team approached the car and were able to break out the window, and remove the driver who appeared to be deceased.

Deputy 5: Deputy 5 was interviewed by detectives with the Sedgwick County Sheriff's Office. Deputy 5 is a Sergeant with the Sheriff's Office, he had eleven years of experience

at the time of the incident and had previously worked as a law enforcement officer with another law enforcement agency.

He heard radio traffic involving Deputy 1, who said "I've got that car," though Deputy 5 was not aware of the previous chase involving WPD. He then heard Deputy 2 say over the radio that he was on his way, which Deputy 5 took to mean that Deputy 2 intended to back up Deputy 1. When he heard the driver of the suspect car had sped away, he authorized "spikes" and a TVI. Deputy 5 was on Kellogg when the call came out, and proceeded to the area of the car chase.

Deputy 5 heard the deputies in pursuit were going into Butler County. He pulled over at 127th Street, where Deputy 1 placed spikes. When the Volkswagen returned into Sedgwick County westbound on Pawnee, impacting the spikes at 127th. Deputy 5 heard radio traffic that another Deputy successfully spiked the Volkswagen west of his location. The Volkswagen then turned north onto Webb Rd. He was approximately one mile behind the pursuit, but believed that Deputy 3 performed a TVI as the pursuit traveled north at a slow rate of speed (estimated 10-25 mph), which enabled Deputy 5 to catch up to the pursuit.

The Volkswagen turned west onto Mt. Vernon, and Deputy 3 attempted a TVI. The cars travelled at very slow speeds as the turn was made, which "pushed" the Volkswagen to the curb. Deputy 3 moved his car to the passenger side of the vehicle in what Deputy 5 thought was an attempt to pin the vehicle in.

Deputy 5 got out of his patrol vehicle and approached the Volkswagen with the other deputies to conduct a felony car stop.

"I started to give verbal commands. Um, and it was from the time that we got out of our vehicles and set up for this. It was a very short period of time before the suspect, put the car in reverse and started driving at the Deputies at the other, on the other side of the car . . . engine revving. I don't remember hearing tires peel, but um, engine revving a very loud and it was moving back very quickly. As it was coming back I was immediately afraid that the two deputies that were on that side were going to be hit. I could see [Deputy 3] dive off, further away, and when I

started to move to the back of the car, [Deputy 4] came around the back of the car. So I could see him coming around the back of the car as she was backing up. Um, at that, at that point, I, I was in immediate fear that somebody was going to get hit because she, there was very small distance between, uh, [Deputy 3's] car, the suspect car and [Deputy 2's] car. It was uh, basically just enough room to fit a car through. And I thought that those two deputies on that side were going to get hit. . . if I had a clear shot. Uh, when I saw [Deputy 3] go to that other side, I knew that he was in between me and, uh, the suspect vehicle. So I was going to move around to a better position to be able to, um, uh, to basically end this uh, pursuit or end this threat of this individual hitting these two deputies that were back here . . . but that's when, uh, maybe a little further than that. Um, but that's when the shots were fired.

The deputies approached the vehicle, made verbal commands to occupant(s) and received no response. They were unable to see into the vehicle due to the tint on the windows, so Deputy 5 attempted to use bean bag rounds to break the driver's side window, but was unsuccessful despite firing five rounds at the driver's window and three at the rear driver's side window. Deputy 1 was able to break the driver's side window with a baton, though the heavy tint kept the window largely intact, so it "*several more strikes to be able to break the window out.*"

Deputy 5 could then see the driver was not moving and "not responsive." He saw blood on her upper torso. He was able to unlock the driver's door, open the door and remove Ms. Arbuckle from the vehicle. He directed a deputy to "*check for vitals*" and the deputy found none.

WPD Officer 1: Officer 1 was interviewed by two detectives with the Sedgwick County Sheriff's Office. Officer 1 had been with the Wichita Police Department for approximately six years at the time of the incident.

Officer 1 described the initial pursuit of the Volkswagen on Kellogg, to 135 south when he heard his "supervisor say disregard." He was still in the area when he heard Deputy 1 radio that he was pursuing the same Volkswagen.

Officer 1 returned to the area of Kellogg and Woodlawn and heard over the radio the pursuit had entered into Butler County. When he heard they were entering Sedgwick

County again, he went toward Webb and Pawnee to block the intersection from on-coming cars but heard a deputy had set up spikes there, so Officer 1 waited near Pebblebrook on south Webb.

He saw the pursuit and more than one effort by a deputy to effect a TVI. When the pursuit went past his position, he followed. He saw another TVI occur as the Volkswagen turned west onto Mt. Vernon.

"And then it was patrol cars kind of surrounding it, deputies outside the vehicle. There was nowhere for it to go. There was a curb and patrol cars behind it. So, and then as I'm pulling up, I see it um go reverse toward the vehicles and where the deputies are. I could see 'em, they were behind it and on the passenger side of the vehicle. Uh, and it reverses and I hear some gun shots . . . I mean, the car accelerated in reverse. I mean, it's not like, it's not like going slow. It's a deliberate act back towards the, and if it hits somebody its 'gonna hurt 'em or kill 'em."

Officer 1 saw the car move forward again but stop at the curb line. He exited his patrol vehicle and assisted the deputies by providing cover while they approached the driver's side door and attempted unsuccessfully to break it using bean bag rounds. He then provided cover while a deputy broke the window using a baton. Once the window was broken and the deputies gained access to the car, he saw the unresponsive female driver was removed from the car.

CRIME SCENE INVESTIGATION

Crime Scene Investigators with the Sedgwick County Sheriff's Office processed the scene of the shooting that they photographed and diagrammed. Scene Investigators located, photographed, and collected items of physical evidence.



FORENSIC EVIDENCE & AUTOPSY RESULTS

An autopsy was performed on the body of Deborah Arbuckle on December 30, 2019, at the Sedgwick County Regional Forensic Science Center. The final autopsy report, dated April 3 2020, determined that Ms. Arbuckle died as a result of a gunshot wound to the head. According to the autopsy, Ms. Arbuckle sustained a gunshot wound to the head and a gunshot wound to the thigh. The toxicology report determined Ms. Arbuckle's blood contained 0.51 mg/L cocaine; was positive for Cocaethylene; and positive for Benzoylcegonine-8.0 mg/L.

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 that 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. (2016~~8~~ 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.

On February 21, 2021, the Kansas Court of Appeals ruled in *State v. Dukes*, ___ Kan.App.3d ___ (2021), that the district court had appropriately found Mr. Dukes was immune from prosecution. Mr. Dukes was approached on foot by a man named Berryman who had previously sent him verbal threats via Facebook, which Dukes testified he had not taken seriously. When Dukes saw Berryman, Dukes exposed a gun for Berryman to see. Berryman responded, "I got something for you," then ran back toward his own car. Mr.

Dukes testified that he believed Berryman was going back to his car to get a gun due to Berryman's statement, "I've got something for you." In response, Dukes said he shot and killed Berryman as Berryman reached the car. Police later located a handgun on the floorboard of Berryman's car. The district court and the Court of Appeals ruled Dukes was immune from prosecution because the state's evidence could not overcome self-defense immunity:

After a defendant in a criminal case files a motion requesting immunity under K.S.A. 2020 Supp. 21-5231, the State must come forward with evidence establishing probable cause that the defendant's use of force was not statutorily justified. This generally means the State must show probable cause that (1) the defendant did not honestly believe the use of force was necessary or (2) a reasonable person would not believe the use of force was necessary under the circumstances.

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 December 30, 2019, a deputy employed by the Sedgwick County Sheriff's Office utilized deadly force resulting in the death of Deborah Arbuckle.

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 Ms. Arbuckle engaged in a high speed pursuit with an officer with the Wichita Police Department on Kellogg and then southbound I-135. When that pursuit was called off by the officer's supervisor due to excessive speed, a Sheriff's Deputy, who was aware of the earlier chase, approached the area and located Ms. Arbuckle's car. When she accelerated away from his vehicle, he activated his emergency equipment and another pursuit ensued in the southeast corner of Sedgwick County, into Butler County and back into Sedgwick County. Spike strips were utilized as well as TVI. After the third TVI, her Volkswagen came to a rest on the south curb of Mt. Vernon just west of Webb Road. When officers approached on foot, they heard the engine "rev" and saw the car reverse. Deputy 3 fired his weapon to stop what he perceived to be a threat of bodily injury to himself and his fellow deputies.

To overcome self-defense immunity, the question under Kansas criminal law is not whether Deputy 3 *had* to use deadly force, or whether he *could* have chosen other, less deadly options. The analysis required by Kansas law is whether evidence exists to establish (1) that the deputy did not honestly believe the use of force was necessary or (2) a reasonable person would not believe the use of force was necessary under the circumstances. Under the circumstances established by the investigation, Deputy 3 is immune from prosecution under Kansas law.

Under Kansas law and the facts of the case, I conclude no criminal charges will be filed against Deputy 3.

A handwritten signature in black ink, appearing to read "Marc Bennett". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

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