COMMUNITY TASKFORCE

To Review Youth Corrections Systems Standards

Investigation

Autopsy Report

THE EIGHTEENTH JUDICIAL DISTRICT
DISTRICT COURT, SEDGWICK COUNTY, KANSAS

In the Matter of

Cedric Lofton

Case Number: _____

AUTOPSY REPORT

REGIONAL FORENSIC SCIENCE CENTER

Shelly Steadman, Ph.D. – Director
Timothy S. Gorrill, M.D., Ph.D. – District Coroner - Chief Medical Examiner

AUTOPSY REPORT

CASE: 18-21-3006

NAME: Lofton, Cedric

DATE: 9/27/2021

ADDRESS: 1221 South Fox Run, Wichita, Kansas 67207

TIME: 1020 hours

17 - year - old male

PERSONS PRESENT AT AUTOPSY:
Forensic Assistant: Kinsey Carroll

PATHOLOGIC DIAGNOSES

I. Complications of cardiopulmonary arrest sustained after physical struggle while restrained in the prone position
   A. Developed cardiopulmonary arrest after handcuffs applied while restrained in the prone position the morning of 9/24/2021
   B. Hospitalized on 9/24/2021, status post cardiopulmonary resuscitation
      1. Hospital course complicated by anoxic brain injury, acute respiratory failure, and acute kidney injury
   C. Pulmonary congestion and edema, and acute bronchopneumonia
II. Abrasions and contusions
III. COVID-19 positive (per hospital records)
IV. Toxicology studies are positive for carboxytetrahydrocannabinol in the urine

CAUSE OF DEATH: Complications of cardiopulmonary arrest sustained after physical struggle while restrained in the prone position

MANNER: Homicide

STATE OF KANSAS
SEDGWICK COUNTY
I hereby certify that the foregoing is a true and correct copy of the original instrument on file in this court. Dated: 12-27-21
Clerk of the District Court
By _____
Deputy Clerk

Timothy S. Gorrill, M.D., Ph.D.
District Coroner – Chief Medical Examiner

12/21/2021
Date signed

1109 N. Minneapolis • Wichita, Kansas 67214-3129 • Telephone (316) 660-4800 • Fax (316) 383-4535

CIRCUMSTANCES OF DEATH

According to reports, the decedent ran away from his foster home on 9/21/2021, and returned around 0000 hours on 9/24/2021, exhibiting erratic and aggressive behavior toward his foster family. Law enforcement personnel responded to the scene, and the decedent was taken into custody with the intention of taking him to a behavior health unit at a local hospital. While in custody the decedent assaulted one or more of the officers around him, and he was taken to the Sedgwick County Juvenile Intake and Assessment Center (JIAC) to be processed, arriving in a WRAP restraint system.

Video footage of subsequent events at the JIAC facility is reviewed and correlated with a timeline of events provided by law enforcement. The decedent was placed in a cell at approximately 0245 hours, and the WRAP system and handcuffs were subsequently removed by officers. A staff member opened the door to the cell at 0420 hours, allowing the decedent to enter the lobby. While in the lobby the decedent approached the staff member, who then motioned for another staff member to enter the lobby. The decedent was uncooperative and agitated. At 0426 hours the two staff members grabbed hold of the decedent's upper extremities. Shortly thereafter the decedent freed his right upper extremity and punched one of the staff members in the head. Staff members then struggled with the decedent and restrained him in a nearby room with the assistance of additional staff members. Shackles were placed around the decedent's ankles, and he was moved to the floor at 0433 hours, and rolled to the prone position. The decedent continued to struggle while restrained by staff. Handcuffs were applied with the decedent's hands behind his back at 0508 hours, after which the decedent calmed down, making occasional snoring sounds. Staff members were unable to locate a pulse at 0512 hours. The decedent was rolled onto his back and staff were still unable to find a pulse nor elicit a response to sternal rub. At 0513 hours staff initiated chest compressions and called for rescue personnel.

Rescue personnel arrived on scene and resumed resuscitative efforts, with eventual return of spontaneous circulation. He was transported to a local hospital, where his hospital course was complicated by acute respiratory failure, acute kidney injury, and anoxic brain injury. His urine drug screen was positive for cannabinoids. The decedent also tested positive for COVID-19. The decedent remained unresponsive, and brain death was pronounced at 0155 hours on 9/26/2021.

POSTMORTEM EXAMINATION

An autopsy is performed on the body of Cedric Lofton at the Sedgwick County Regional Forensic Science Center, Wichita, Kansas on September 27th, 2021.

RADIOGRAPHY

Full body x-rays demonstrate the presence of medical therapy.

CLOTHING

The body is received unclad accompanied by: see chain of custody documents.

EXTERNAL EXAMINATION

The body is received in a body bag. Body identification includes a yellow band around the right ankle with the case number 18-21-3006 and the name "Lofton, Cedric," a hospital band around the left wrist, and a tag affixed to the left 1st toe. The body is fingerprinted and photographed.

The body is that of a well-developed, well-nourished, adult male who weighs 135 pounds, is 70 inches in height and appears compatible with the stated age of 17 years.

The unembalmed body is cool to touch. Rigor mortis is well-developed in the extremities and the jaw. Unfixed purple livor mortis extends over the posterior surfaces of the body, except in areas exposed to pressure. Blunt injuries are present, and are described below. The scalp hair is black and measures up to 8 inches in length. The irises are brown. The corneas are translucent. The sclerae and conjunctivae are unremarkable. The nose and ears are not unusual. The teeth are in a good state of repair. The neck is unremarkable. The thorax is well-developed and symmetrical. The abdomen is flat. The anus and back are unremarkable. The genitalia are those of a normal adult male. The extremities are well-developed and symmetrical, without absence of digits.

IDENTIFYING MARKS AND SCARS

A tattoo of a diamond is on the flexor left forearm.

MEDICAL INTERVENTION

Evidence of medical intervention includes:

- an orally inserted airway
- an orogastric tube
- a cervical collar around the neck
- a cluster of four needle punctures on the right upper anterior chest
- electrocardiogram electrodes on the anterior trunk
- a Foley catheter entering the bladder
- a rectally inserted monitor
- a triple lumen catheter entering the right femoral crease
- a single lumen catheter entering the flexor right wrist
- a single lumen catheter entering the right antecubital fossa
- and an electrocardiogram electrode on the anterior distal right thigh.

EVIDENCE OF INJURY

Description of blunt force injuries

Discontinuous scabbed purple-brown abrasion is on the left cheek, lateral to the left eye, and inferior left forehead, in an area 3 x 4 ½ inches. Discontinuous scabbed abrasion is on the left

side of the nose, ½ x 1 ¼ inch. A scabbed abrasion is on the inferolateral left nostril, 3/16 x ¼ inch. A scabbed vertical abrasion is centered on the outer margin of the left lower lip, 1/8 x 3/8 inch. An oblique linear faint purple abrasion is on the lateral right cheek below the ear, ¼ inch. Reflection of the scalp reveals contusion in subcutaneous tissue of the left forehead deep to the aforementioned abrasion on the inferior left forehead, ¾ x 1 ½ inch.

A vertical purple linear scabbed abrasion is on the lateral left upper neck below the ear, 1/8 x 5/8 inch. Two faint purple linear abrasions are on the lateral right upper neck, 3/8 inch each.

A purple abrasion is on the anterosuperior left shoulder, ¾ x 1 inch. Purple abrasions are on the anterosuperior right shoulder, 1 x 1 ½ inch, and anterolateral right shoulder, 1 x 2 inches, within poorly circumscribed purple-pink discolored skin of the anterior, superior and lateral right shoulder, 4 ¼ x 6 inches. A dark purple-brown abrasion is on the midline upper back, ¾ x 1 ¼ inch. A dark purple-brown abrasion is on the midline upper-to-mid back, 1 ¼ x 2 ¼ inches. A dark purple abrasion is on the lateral right upper back, ¼ x 5/8 inch. A purple abrasion is on the midline lower back, ½ x 5/8 inch. Hemorrhage is in the anterior right deltoid muscle and over the lateral right clavicle. Slightly raised nodular deformity is on the anterior paraspinal left 11th rib, consistent with healed fracture.

A scabbed linear abrasion is on the back of the left hand proximal to the 2nd digit, 3/16 inch. A scabbed purple abrasion is on the proximal back of the left hand, ½ x 5/8 inch. A scabbed abrasion is on the radial extensor left wrist, 3/16 x 3/16 inch.

A scabbed oblique linear abrasion is on the proximal back of the right hand in line with the 2nd digit, 3/8 inch. A horizontal linear abrasion is on the proximal back of the right hand in line with the 3rd digit, 1/8 inch. Two superficial linear lacerations are on the ulnar distal right forearm, 1/8 x 5/8 inch each. Two purple abrasions are on the posteroinferior proximal right upper extremity, ¼ x ½ inch each. An oblique linear purple abrasion is midway along the posterior proximal right upper extremity, ¾ inch.

A purple abrasion is on the medial left ankle, ½ x 5/8 inch.

Two purple abrasions are on the anterior right knee, ½ x ¾ inch, and ½ x 1 ¼ inch. A purple abrasion is on the anteroinferomedial right knee, ¾ x 1 inch.

INTERNAL EXAMINATION

BODY CAVITIES

No adhesions or abnormal collections of fluid are in any of the body cavities. The body organs are present in normal anatomic position. The subcutaneous fat layer of the abdominal wall is 0.5 cm thick.

HEAD (CENTRAL NERVOUS SYSTEM)

The brain weighs 1320 grams and is soft, with friable cerebellum. The dura mater and falx cerebri are intact. The leptomeninges are thin and delicate. The cerebral hemispheres are symmetrical. The structures at the base of the brain, including cranial nerves and blood vessels, are intact and free of abnormality. Sections through the cerebral hemispheres reveal no lesions within the cortex, subcortical white matter, or deep parenchyma of either hemisphere. The cerebral ventricles are normal caliber. Sections through the brainstem and cerebellum are unremarkable. The spinal cord is not examined.

NECK

Examination of the soft tissues of the neck, including strap muscles and large vessels, reveals no abnormalities. The hyoid bone and larynx are intact. The tongue is normal.

CARDIOVASCULAR SYSTEM

The heart weighs 350 grams. The pericardial surfaces are smooth, glistening and unremarkable. The pericardial sac is free of significant fluid or adhesions. The coronary arteries arise normally, follow the usual distribution with a right dominant system, and are widely patent. The chambers and valves bear the usual size/position relationship and are unremarkable. The myocardium is dark red-brown, firm and unremarkable. The atrial and ventricular septa are intact. The aorta and its major branches arise normally follow the usual course. The vena cava and its major tributaries return to the heart in the usual distribution and are unremarkable.

RESPIRATORY SYSTEM

The right and left lungs weigh 950 and 650 grams, respectively. Bloody fluid is in the airways. The mucosal surfaces are smooth and congested. The pleural surfaces are smooth, glistening and unremarkable. The pulmonary parenchyma is laden with a marked amount of bloody fluid. The pulmonary arteries are normally developed and patent.

LIVER AND BILIARY SYSTEM

The liver weighs 1340 grams. The hepatic capsule is smooth, glistening and intact. It covers red-brown parenchyma with no focal lesions noted. The gallbladder contains about 30 mL of viscid green bile. The extrahepatic biliary tree is patent without evidence of calculi.

ALIMENTARY TRACT

The esophagus is lined by gray-white smooth mucosa. The gastric mucosa is arranged in the usual rugal folds and the lumen contains 200 mL of brown liquid. The small and large bowel are unremarkable. The appendix is present. The pancreas has a normal gray-white, lobulated appearance, and the ducts are clear.

GENITOURINARY TRACT

The kidneys weigh 200 grams each. The renal capsules are smooth, thin, semitransparent, and strip with ease from the underlying, smooth, red-brown, firm cortical surfaces. The cortex is sharply delineated from the medullary pyramids. The calyces, pelves and ureters are unremarkable. The urinary bladder contains the tip of a catheter, and 45 mL of clear yellow urine. The mucosa is gray-tan and smooth. The prostate and seminal vesicles are unremarkable.

RETICULOENDOTHELIAL SYSTEM

The spleen weighs 200 grams and has a smooth, intact capsule covering red-purple, moderately firm parenchyma. The splenic lymphoid follicles are unremarkable. The regional lymph nodes appear normal. The bone marrow is red-purple and homogenous without evidence of focal abnormality.

ENDOCRINE SYSTEM

The pituitary, thyroid and adrenal glands are unremarkable.

MUSCULOSKELETAL SYSTEM

The bony framework, supporting musculature, and soft tissues are not unusual.

EVIDENCE

The following items are collected and preserved: see chain of custody documents.

MICROSCOPIC DESCRIPTION

Block/slide list:

1) Left ventricle, and kidney
2) Septum, and kidney
3) Right ventricle, and liver
4) Left lung
5) Right lung
6) Frontal lobe
7) Cerebellum
8) Hippocampus

Brain: Vacuolation of the neuropil, increased perineuronal spaces, and scattered neurons show eosinophilic changes.

Lungs: Congestion, edema and intraalveolar extravasated erythrocytes. Sections from right lung show acute bronchopneumonia, characterized by neutrophilic inflammation with congestion of distal airways, and variably dense neutrophils in alveolar spaces.

Kidneys: Tubules dilated with flattened epithelium, and pink foamy material and occasional cells in lumens.

Heart, and liver: No significant pathological changes.

SICKLE CELL TEST

Screen for sickle cell disease is negative.

TOXICOLOGY

Blood (Hospital: 09/24/21; 0609):

Ethanol – Negative
Acetone – Negative

Negative for Amphetamine, Barbiturates, Benzodiazepines, Benzoylecgonine, Carisoprodol, Codeine, Fentanyl, Hydrocodone, Hydromorphone, Meprobamate, Methadone, Methamphetamine, Methylenedioxymethamphetamine [MDMA], Morphine, Oxycodone, Phencyclidine [PCP], Tramadol, and Zolpidem.

Blood (Heart):

Esmolol – Positive

Negative for Amitriptyline, Amphetamine, Chlordiazepoxide, Cocaine, Codeine, Cyclobenzaprine, Desipramine, Diazepam, Diphenhydramine, Doxepin, Hydrocodone, Imipramine, Meperidine, Methadone, Methamphetamine, Methylenedioxymethamphetamine [MDMA], Nordiazepam, Nortriptyline, Phencyclidine [PCP], Phentermine, Propoxyphene, Sertraline, Strychnine, Tramadol, Trazodone, Verapamil, and Zolpidem.

Urine:

Carboxytetrahydrocannabinol [THCA] – Positive
Esmolol – Positive

Urine:

Not detected for 4-carboxy-AMB-PINACA*, 4-carboxy-CUMYL-BINACA*, 4-carboxy-NA-PIM*, 5-fluoro-PICA 3,3-dimethylbutanoic acid*, 5-fluoro-PIC-ACID*, 5-fluoro-PINACA 3,3-dimethylbutanoic acid*, 5-fluoro-PINACA 3-methylbutanoic acid*, 5-fluoro-PINAC-ACID*, CHMIC-ACID*, CHMINACA 3,3-dimethylbutanoic acid*, CHMINACA-3-methylbutanoic acid*, FUBICA 3,3-dimethylbutanoic acid*, FUBIC-ACID*,

FUBINACA 3,3-dimethylbutanoic acid*, and FUBINACA 3-methylbutanoic acid*.

Negative for Amitriptyline, Amphetamine, Chlordiazepoxide, Cocaine, Codeine, Cyclobenzaprine, Desipramine, Diazepam, Diphenhydramine, Doxepin, Hydrocodone, Imipramine, Meperidine, Methadone, Methamphetamine, Methylenedioxymethamphetamine [MDMA], Nordiazepam, Nortriptyline, Phencyclidine [PCP], Phentermine, Propoxyphene, Sertraline, Strychnine, Tramadol, Trazodone, Verapamil, and Zolpidem.

*Analysis performed by NMS Labs; Horsham, PA.

Comment(s):

Blood (Hospital: 09/24/21; 0609): Presumptive positive cannabinoids by immunoassay – not confirmed.

See attached Center for Forensic Science Research and Education Toxicology Report [Case # 2021-0059], dated 7 Dec 21, for additional analyses.

OPINION

In my opinion Cedric Lofton died as a result of complications of cardiopulmonary arrest sustained after physical struggle while restrained in the prone position.

The manner of death is homicide.

TG:ml

REGIONAL FORENSIC SCIENCE CENTER

Shelly Steadman, Ph.D. — Director
Timothy S. Gorrill, M.D., Ph.D. — Chief Medical Examiner

COPY

FORENSIC LABORATORY DIVISION
TOXICOLOGY LABORATORY REPORT

NAME: LOFTON, Cedric	**TOXICOLOGY CASE NO:**	21-1048
	Agency Case No:	18-21-3006
Submitted by: T. Gorrill, M.D.	**Date Received:**	28 Sep 21

SPECIMENS SUBMITTED

Blood, Vitreous, Urine, Liver, Brain, Gastric Contents, Hospital Specimens, Hair

RESULTS

Blood (Hospital: 09/24/21; 0609):

Ethanol – Negative
Acetone – Negative

Negative for Amphetamine, Barbiturates, Benzodiazepines, Benzoylecgonine, Carisoprodol, Codeine, Fentanyl, Hydrocodone, Hydromorphone, Meprobamate, Methadone, Methamphetamine, Methylenedioxymethamphetamine [MDMA], Morphine, Oxycodone, Phencyclidine [PCP], Tramadol, and Zolpidem.

Blood (Heart):

Esmolol – Positive

Negative for Amitriptyline, Amphetamine, Chlordiazepoxide, Cocaine, Codeine, Cyclobenzaprine, Desipramine, Diazepam, Diphenhydramine, Doxepin, Hydrocodone, Imipramine, Meperidine, Methadone, Methamphetamine, Methylenedioxymethamphetamine [MDMA], Nordiazepam, Nortriptyline, Phencyclidine [PCP], Phentermine, Propoxyphene, Sertraline, Strychnine, Tramadol, Trazodone, Verapamil, and Zolpidem.

Urine:

Carboxytetrahydrocannabinol [THCA] – Positive
Esmolol – Positive

TPR

MNP/KBY

FORENSIC LABORATORY DIVISION
TOXICOLOGY LABORATORY REPORT

COPY

NAME: LOFTON, Cedric

Submitted by: T. Gorrill, M.D.

TOXICOLOGY CASE NO: 21-1048
Agency Case No: 18-21-3006
Date Received: 28 Sep 21

RESULTS, cont.

Urine:

Not detected for 4-carboxy-AMB-PINACA*, 4-carboxy-CUMYL-BINACA*, 4-carboxy-NA-PIM*, 5-fluoro-PICA 3,3-dimethylbutanoic acid*, 5-fluoro-PIC-ACID*, 5-fluoro-PINACA 3,3-dimethylbutanoic acid*, 5-fluoro-PINACA 3-methylbutanoic acid*, 5-fluoro-PINAC-ACID*, CHMIC-ACID*, CHMINACA 3,3-dimethylbutanoic acid*, CHMINACA-3-methylbutanoic acid*, FUBICA 3,3-dimethylbutanoic acid*, FUBIC-ACID*, FUBINACA 3,3-dimethylbutanoic acid*, and FUBINACA 3-methylbutanoic acid*.

Negative for Amitriptyline, Amphetamine, Chlordiazepoxide, Cocaine, Codeine, Cyclobenzaprine, Desipramine, Diazepam, Diphenhydramine, Doxepin, Hydrocodone, Imipramine, Meperidine, Methadone, Methamphetamine, Methylenedioxymethamphetamine [MDMA], Nordiazepam, Nortriptyline, Phencyclidine [PCP], Phentermine, Propoxyphene, Sertraline, Strychnine, Tramadol, Trazodone, Verapamil, and Zolpidem.

*Analysis performed by NMS Labs; Horsham, PA.

Comment(s):

Blood (Hospital: 09/24/21; 0609): Presumptive positive cannabinoids by immunoassay – not confirmed.

See attached Center for Forensic Science Research and Education Toxicology Report [Case # 2021-0059], dated 7 Dec 21, for additional analyses.

Results Certified by: _____ Date: 15 Dec 21
Timothy P. Rohrig, PhD, F-ABFT
Chief Toxicologist

cfsre
Center for Forensic Science Research and Education
2300 Stratford Ave, Willow Grove, PA 19090

CONFIDENTIAL

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Toxicology Report – Forensic Use Only
Report Issued: 12/07/2021

To: Kimberly Youso, MS, D-ABFT-FT
Sedgwick County Regional Forensic Science Center
1109 North Minneapolis St., Wichita, KS 67214

CFSRE Case #: 2021-0059
NMS Workorder #: 21350210
Agency Case #: 18-21-3006

Item(s) Received:

Exhibit #	Date Received	Description
1	10/26/2021	One (1) vial labeled "21350210-001" containing urine (~2-3 mL)

Results and Conclusions:

Exhibit #	Analyte	Concentration
1	None detected *(see Table 1)*	N/A

Methods of Analysis:

Exhibit #	Analytical Techniques
1	Liquid Chromatography Quadrupole Time of Flight Mass Spectrometry (LC-QTOF-MS)

Reference Comment(s):

1. N/A

Laboratory Comments:

I certify that the Center for Forensic Science Research and Education (CFSRE) has taken custody of the sample(s) and integrity seals were in order. The analysis was performed under chain of custody. The chain of custody documentation is included in the case file and can be received upon request. The remainder of the submitted sample is scheduled to be discarded six (6) weeks from the date of this report unless alternate arrangements are made prior thereto.

Case 2021-0059 was signed on 12/07/2021

Alex J. Krotulski, PhD
Associate Director

21-1049

Table 1: CFSRE testing scope for synthetic cannabinoid metabolites in urine

Metabolite Name	Chemical Formula	[M+H] Mass (Da)
PB-22 3-Carboxyindole	C14H17NO2	232.1332
5F-PB-22 3-Carboxyindole	C14H16FNO2	250.1238
5F-NPB-22 3-Carboxyindazole	C13H15FN2O2	251.1190
BB-22 3-Carboxyindole	C16H19NO2	258.1489
FUB-PB-22 3-Carboxyindole	C16H12FNO2	270.0925
MDMB-BUTINACA 3,3-Dimethylbutanoic Acid	C18H25N3O3	332.1969
UR-144 N-Pentanoic Acid	C21H27NO3	342.2064
4CN-MMB-BINACA 3-Methylbutanoic Acid	C18H22N4O3	343.1765
MDMB-4en-PINACA 3,3-Dimethylbutanoic Acid	C19H25N3O3	344.1969
4OH-ADB-BINACA	C18H26N4O3	347.2078
4F-MDMB-BICA 3,3-Dimethylbutanoic Acid	C19H25FN2O3	349.1922
5F-AMB 3-Methylbutanoic Acid	C18H24FN3O3	350.1875
4F-MDMB-BINACA 3,3-Dimethylbutanoic Acid	C18H24FN3O3	350.1875
AB-CHMINACA 3-Methylbutanoic Acid	C20H27N3O3	358.2125
2-COOH-MDMB-PICA	C19H24N2O5	361.1758
AB-PINACA N-Pentanoic Acid	C18H24N4O4	361.1870
ADB-BINACA N-Butanoic Acid	C18H24N4O4	361.1870
4OH-MDMB-BICA	C20H28N2O4	361.2122
4OH-MDMB-BINACA	C19H27N3O4	362.2074
5F-MDMB-PICA 3,3-Dimethylbutanoic Acid	C20H27FN2O3	363.2079
5F-ADB 3,3-Dimethylbutanoic Acid	C19H26FN3O3	364.2031
4-cyano CUMYL-BUTINACA N-Butanoic Acid	C21H23N3O3	366.1812
APP-BINACA 3-phenylpropanoic Acid	C21H23N3O3	366.1812
MMB-FUBINACA 3-Methylbutanoic Acid	C20H20FN3O3	370.1562
JWH-018 N-Pentanoic Acid	C24H21NO3	372.1594
MAB-CHMINACA 3,3-Dimethylbutanoic Acid	C21H29N3O3	372.2282
FUBIMINA N-pentanoic acid	C23H20N2O3	373.1547
ADBICA N-Pentanoic Acid	C20H27N3O4	374.2074
ADB-PINACA N-Pentanoic Acid	C19H26N4O4	375.2027
5OH-MDMB-PICA	C21H30N2O4	375.2278
4F-ABINACA N-Butanoic Acid	C22H27N3O3	382.2125
MDMB-FUBICA 3,3-Dimethylbutanoic Acid	C22H23FN2O3	383.1766
MDMB-FUBINACA 3,3-Dimethylbutanoic Acid	C21H22FN3O3	384.1718
AKB-48 N-Pentanoic Acid	C23H29N3O3	396.2282
AB-FUBINACA Oxobutanoic Acid	C20H19FN4O4	399.1463

Review of the Use of Force

For Immediate Release
January 18, 2022

District Attorney Marc Bennett has completed the review of the use of force that resulted in the death of Cedric Lofton. The incident occurred on September 24, 2021 at the Juvenile Intake and Assessment Center located at Wichita, Sedgwick County, Kansas.

SCOPE OF REPORT

This report details the findings and conclusions limited specifically to criminal liability of the Sedgwick County employees employed at the Juvenile Intake and Assessment Center (JIAC) and those employed at the Juvenile Detention facility.

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 Sedgwick County, nor does the report 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), county employees or citizen(s) had behaved differently during the events that culminated in the fatality 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.

JIAC and JDF: Relevant Law and Policy

In Kansas, the Child in Need of Care Code sets forth the circumstances under which a law enforcement offer may place a child under 18 into police protective custody.

K.S.A. (2019 Supp.) 38-2231. Child under 18, when law enforcement officers or court services officers may take into custody; sheltering a runaway.

(b) A law enforcement officer shall take a child under 18 years of age into custody when the officer:

(1) Reasonably believes the child will be harmed if not immediately removed from the place or residence where the child has been found;

(2) has probable cause to believe that the child is a runaway or a missing person or a verified missing person entry for the child can be found in the national crime information center missing person system;

(3) reasonably believes the child is a victim of human trafficking, aggravated human trafficking or commercial sexual exploitation of a child; or

(4) reasonably believes the child is experiencing a mental health crisis and is likely to cause harm to self or others.

The Kansas Juvenile Justice Code sets forth the parameters under which a child under the age of 18 may be subject to arrest for a violation of the criminal laws of the state of Kansas.

K.S.A. (2019 Supp.) 38-2330. Juvenile taken into custody, when; procedure; release; detention in jail; notice to appear.

(a) A law enforcement officer may take a juvenile into custody when:

(1) Any offense has been or is being committed in the officer's view;

. . .

(c)(3) It shall be the duty of the officer to furnish the county or district attorney and the juvenile intake and assessment worker if the officer has delivered the juvenile to the worker . . . , with all of the information in the officer's possession pertaining to the juvenile, the juvenile's parent or other persons interested in or likely to be interested in the juvenile and all other facts and circumstances which caused the juvenile to be arrested or taken into custody.

K.S.A. (2019 Supp.) 38-2302 defines the following relevant terms as utilized in the Kansas Juvenile Justice Code:

> (o) "Juvenile correctional facility" means a facility operated by the secretary of corrections for the commitment of juvenile offenders.
>
> (p) "Juvenile corrections officer" means a certified employee of the department of corrections working at a juvenile correctional facility assigned by the secretary of corrections with responsibility for maintaining custody, security and control of juveniles in the custody of the secretary of corrections at a juvenile correctional facility.
>
> (q) "Juvenile detention facility" means a public or private facility licensed pursuant to article 5 of chapter 65 of the Kansas Statutes Annotated, and amendments thereto, which is used for the lawful custody of alleged or adjudicated juvenile offenders.
>
> (r) "Juvenile intake and assessment worker" means a responsible adult trained and authorized to perform intake and assessment services as part of the intake and assessment system established pursuant to K.S.A. 75-7023, and amendments thereto.

K.S.A. (2019 Supp.) 75-7023. Juvenile intake and assessment system; confidentiality of records; information collected; dispositional alternatives; custody of child; conditions of release:

> (a) The secretary for children and families may contract with the secretary of corrections to provide for the juvenile intake and assessment system and programs for children in need of care. Except as provided further, the secretary of corrections shall promulgate rules and regulations for the juvenile intake and assessment system and programs concerning juvenile offenders. If the secretary contracts with the office of judicial administration to administer the juvenile intake and assessment system and programs concerning juvenile offenders, the Supreme Court administrative orders shall be in force until such contract ends and the rules and regulations concerning juvenile intake and assessment system and programs concerning juvenile offenders have been adopted.

Subsection (b) of the statute discussed the confidentiality of the records and the limited use of information gathered during the assessment. The statute continues,

> (c) Upon a juvenile being taken into custody pursuant to K.S.A. 38-2330, and amendments thereto, a juvenile intake and assessment worker shall complete the intake and assessment process, making release and referral determinations as required by supreme court administrative order or district court rule, or except as provided above rules and regulations established by the secretary of corrections.
> (d) Except as provided in subsection (g) and in addition to any other information

required by the supreme court administrative order, the secretary for children and families, the secretary of corrections or by the district court of such district, the juvenile intake and assessment worker shall collect the following information either in person or over two-way audio or audio-visual communication:

(1) The results of a standardized detention risk assessment tool pursuant to K.S.A. 38-2302, and amendments thereto, if detention is being considered for the juvenile, such as the problem oriented screening instrument for teens;

(2) criminal history, including indications of criminal gang involvement;

(3) abuse history;

(4) substance abuse history;

(5) history of prior community services used or treatments provided;

(6) educational history;

(7) medical history;

(8) family history; and

(9) the results of other assessment instruments as approved by the secretary.

(e) After completion of the intake and assessment process for such child, the intake and assessment worker shall make both a release and a referral determination:

(1) Release the child to the custody of the child's parent, other legal guardian or another appropriate adult.

(2) Conditionally release the child to the child's parent, other legal guardian or another appropriate adult if the intake and assessment worker believes that if the conditions are met, it would be in the child's best interest to release the child to such child's parent, other legal guardian or another appropriate adult; and the intake and assessment worker has reason to believe that it might be harmful to the child to release the child to such child's parents, other legal guardian or another appropriate adult without imposing the conditions. The conditions may include, but not be limited to the alternatives listed in K.S.A. 38-2331(b), and amendments thereto, and the following:

(A) Participation of the child in counseling;

(B) participation of members of the child's family in counseling;

(C) participation by the child, members of the child's family and other relevant persons in mediation;

(D) provision of outpatient treatment for the child;

(E) referral of the child and the child's family to the secretary for children and families for services and the agreement of the child and family to accept and participate in the services offered;

(F) referral of the child and the child's family to available community resources or services and the agreement of the child and family to accept and participate in the services offered;

(G) requiring the child and members of the child's family to enter into a behavioral contract which may provide for regular school attendance among other requirements; or

(H) any special conditions necessary to protect the child from future abuse or neglect.

(3) Deliver the child to a shelter facility or a licensed attendant care center

along with the law enforcement officer's written application for a maximum stay of up to 72 hours. The shelter facility or licensed attendant care facility shall then have custody as if the child had been directly delivered to the facility by the law enforcement officer pursuant to K.S.A. 38-2232, and amendments thereto.

(4) The intake and assessment worker shall also refer the juvenile's case to one of the following:

(A) An immediate intervention program pursuant to K.S.A. 38-2346(b), and amendments thereto;

(B) the county or district attorney for appropriate proceedings to be filed, with or without a recommendation that the juvenile be considered for alternative means of adjudication programs pursuant to K.S.A. 38-2389, and amendments thereto, or immediate intervention pursuant to K.S.A. 38-2346, and amendments thereto; or

(C) refer the child and family to the secretary for children and families for investigations in regard to the allegations.

(f) The secretary of corrections, in conjunction with the office of judicial administration, shall develop, implement and validate on the Kansas juvenile population, a statewide detention risk assessment tool.

(1) The assessment shall be conducted for each youth under consideration for detention and may only be conducted by a juvenile intake and assessment worker who has completed training to conduct the detention risk assessment tool.

(2) The secretary and the office of judicial administration shall establish cutoff scores determining eligibility for placement in a juvenile detention facility or for referral to a community-based alternative to detention and shall collect and report data regarding the use of the detention risk assessment tool.

(3) The detention risk assessment tool includes an override function that may be approved by the court for use under certain circumstances. If approved by the court, the juvenile intake and assessment worker or the court may override the detention risk assessment tool score in order to direct placement in a short-term shelter facility, a community-based alternative to detention or, subject to K.S.A. 38-2331, and amendments thereto, a juvenile detention facility. Such override must be documented, include a written explanation and receive approval from the director of the intake and assessment center or the court.

(4) If a juvenile meets one or more eligibility criteria for detention or referral to a community-based alternative to detention, the person with authority to detain shall maintain discretion to release the juvenile if other less restrictive measures would be adequate.

(g) Parents, guardians and juveniles may access the juvenile intake and assessment programs on a voluntary basis. The parent or guardian shall be responsible for the costs of any such program utilized.

(h) Every juvenile intake and assessment worker shall receive training in evidence-based practices, including, but not limited to:

(1) Risk and needs assessments;
(2) individualized diversions based on needs and strengths;
(3) graduated responses;
(4) family engagement;
(5) trauma-informed care;
(6) substance abuse;
(7) mental health; and
(8) special education.

The Juvenile Intake and Assessment System in Kansas was developed in 1997 pursuant to K.S.A. 75-2023. In Sedgwick County, the Juvenile Intake and Assessment Center (JIAC) operates within the Sedgwick County Department of Corrections.

According to Sedgwick County Department of Corrections, the Center operates 24 hours per day, 365 days per year. Youth (aged 10-17) are assessed by workers at the center to be released to parents or a caregiver or are "booked" into the Juvenile Detention Center (JDF), also operated by the Sedgwick County Department of Corrections. Neither the JIAC nor the JDF are affiliated with the Sedgwick County Sheriff's Office.

The Sedgwick County JIAC averages 1,850 "intakes" annually. On average, 52% are returned to their families, 30% are booked into JDF, 15.5% are returned to their foster families and 2.5% are placed in an emergency shelter.

Policy re Use of Force

Juvenile Intake and Assessment Center (JIAC)

The Use of Force Policy of the Sedgwick County JIAC, policy 8.810 states,

> The Sedgwick County Department of Correction, Juvenile Services, Juvenile Intake and Assessment Center shall use force only when all other less restrictive methods of behavior control have been attempted and failed to protect the youth from injury, to prevent injury to others or to prevent escape.

The policy, which authorizes JIAC staff to utilize force/restraints, reads in part:

> I. Authorization to Allow Use of Force/Restraints
> A. The designated lead staff, intake specialist, intake coordinator, or program manager may authorize the use of force or restraints.
> B. The type and amount of force or restraint used shall only be to the extent reasonable and necessary to control a situation.
> C. The use of force or restraints may be used only as a temporary control measure

for the following reasons.

1. To protect staff or others -- justifiable self-defense.
2. To prevent the youth from self--injury.
3. To prevent escape from the facility.
4. To recover security devices (radios, employee badges, facility keys).
5. As a precaution against escape including preventing youth from pressing door access control system intercoms.
6. To move youth who fail to comply with lawful orders,
   To prevent escalation of a dangerous situation after less restrictive methods have been attempted and failed.

. . .

III. Levels of Physical Force and Their Use

A. Physical handling is a level of force that involves body positioning and passive restraint.

B. Use of mechanical restraints is a level of force that involves use of handcuffs, shackles and belly chains. They may be used for the same reasons as physical handling, but must be authorized by designated lead staff, intake specialist, intake coordinator, or program manager, except during emergencies.

1. Mechanical restraints shall not be used any longer than 30 consecutive minutes unless approved by the program manager or designee;

. . .

5. An assigned JIAC staff member shall continuously monitor any youth who is placed in restraints.

C. Use of the holding room can be a level of force when used to contain a youth whose behaviors are out of control (even if in mechanical restraints) and must be separated for the safety of others in the facility.

Juvenile Detention Facility (JDF)

The Use of Force Policy of Sedgwick County Juvenile Services and JDF, policy 3.1112 states,

> The Sedgwick County Department of Correction, Juvenile Services, Juvenile Detention Facility shall only use force for the physical restraint of residents when all other less restrictive methods of bringing behavior under control have been attempted and failed or diagnostically eliminated, to protect the resident from injury, to prevent injury to others, to prevent escape, or to protect property.

The policy, which authorizes JDF staff to utilize force/restraints, reads in part:

> I. Levels of Force
>
> A. Physical handling is the first level of force available to staff. Physical handling is justified to separate participants in a fight, for self-defense, for defending other staff, to protect other residents, to prevent property damage or to prevent escape. Physical handling may also be used to move residents who fail to comply with lawful orders.

> B. Use of mechanical restraints is the second level of use of force. This is the use of handcuffs and/or leg irons. Mechanical restraints are used only when authorized by the on duty supervisor, detention manager, corrections coordinator, deputy director of juvenile programs or MHP [mental health professional]. Mechanical restraints shall be used only when necessary as a control to prevent a resident from harming themselves or others while being moved to a secured room. Mechanical restraints shall never be used for longer than 30 minutes.

No higher level of force is authorized beyond "physical handling" or mechanical restraints in the county policy.

Attorney General's Opinion 2016-19

On November 21, 2016, the office of Kansas Attorney General, Derek Schmidt, issued Attorney General's opinion 2016-19, which answered the question posed by then Sedgwick County counselor, Eric Yost, whether JIAC ever obtains "legal custody that would permit JIAC to transport youth or make medical decisions?"

The answer provided in the Attorney General's Opinion cited the following definition of "custody" set forth in K.S.A. (2016 Supp.) 38-2202(h),

> Custody whether temporary, protective or legal, means the status created by court order or statute which vests in a custodian, whether and individual or an agency, the right to physical possession of the child and the right to determine placement of the child, subject to restrictions placed by the court.

The opinion cited K.S.A. 75-7023 (set forth above) which dictates that an intake and assessment worker "shall complete the intake and assessment process, making release and referral determinations," who is required to collect certain information before making the determination to either release the juvenile to their "parent, legal guardian or 'another appropriate adult,' . . . or deliver the juvenile to a shelter or licensed attendant care facility."

The opinion found that Kansas law summarizes the authority and duties of the JIAC but makes no provision for the grant of legal custody to JIAC, or the authority for JIAC "to make decisions concerning medical care and treatment for the juvenile." JIAC's role is "temporary and limited to assessing the circumstances of each individual juvenile,

determining which placement and referral option is in the best interest of that juvenile. . ." As such, JIAC "never obtains custody over a juvenile delivered to the JIAC by a law enforcement officer." Custody of the juvenile -- including the authority to make medical decisions for the juvenile -- remains with the law enforcement agency.

JIAC and JDF employees are not law enforcement officers. They do not attend the law enforcement training academy. They are hired by the county and provided on the job training and provided policies to follow.

FACTUAL SUMMARY

The facts set forth in the following summary are meant to summarize the contents of interviews, body camera videos, video recordings from the JIAC facility, forensic reports, and investigator's reports. Where quotes are indicated, the content came directly from transcripts of interviews or directly from reports, as indicated.

Background:

Cedric Lofton DOB: September 27, 2003 was living in Wichita after having been placed in foster care by way of a child in need of care petition initiated in his home jurisdiction of Junction City, Geary County, Kansas. His foster father in Wichita was interviewed on multiple occasions. He explained that Cedric had been placed with him since December of 2020. The foster father explained that he typically accepts only boys 17 years of age and older, "to help prepare them for adulthood."

The foster father told investigators that during the time Cedric was with him, Cedric had been doing fine in school and that he had no major issues with him until approximately one month prior to this incident, when Cedric began to act "paranoid." He explained that Cedric's behavior had gotten "progressively worse" the past two weeks. Cedric has begun to describe seeing things that were not present and to express fear that he was being pursued. One of his foster brothers later told investigators that Cedric became fearful of his foster brothers, and had complained that there were kids in his class at school that were robots who were trying to kill him.

The week prior, Cedric's biological grandmother died and Cedric went with members of his biological family on Friday September 18, 2021 and Saturday, September 19, 2021 to attend the funeral. The foster father said that when Cedric returned, "it got progressively worse, this week it was really bad." In a subsequent interview, he clarified that he felt Cedric's behavior deteriorated that Tuesday, September 22, 2021. He said that when Cedric returned to the foster home, Cedric's family expressed concern to the foster father that Cedric "was having either a mental breakdown and, or he was having an onset of schizophrenia." A family member subsequently interviewed by investigators clarified that he felt Cedric had had these thoughts for some time, but had only recently begun to express them.

The other foster boys in his care reported to the foster father that Cedric was using "K-2" and, according to the information provided to the foster father by another foster child, Cedric may have been doing it "often."

Subsequent interviews with the foster brothers confirmed that they had told the foster father they suspected Cedric was using one or more controlled substances (one said he "heard" Cedric was using methamphetamine or K-2 and the other suspected Cedric was using because Cedric said he was seeing and hearing things.) Both denied having seen Cedric use K-2.

Timeline

September 22, 2021 to September 24, 2021:

Wednesday, September 22, 2021:

The foster father reported that, according to one of his other foster children, Cedric had walked away from school around 2:00 p.m. on Wednesday. According to the foster father, Cedric did not return to the foster father's home until Thursday morning, September 23, 2021 at approximately 11:30 a.m.

Thursday September 23, 2021:

11:30 a.m. (approximately, according to interview of foster father) - Cedric returned to

the foster home.

Before Cedric returned home, the foster father had called Cedric in "as a runaway." The foster father spoke to his case worker at DCCCA (the foster care agency) and relayed his concerns regarding Cedric's deteriorating mental health. The worker at DCCCA directed the foster father to obtain a mental health evaluation for Cedric when he returned at COMCARE the Sedgwick County mental health provider.

When Cedric returned home Thursday morning, the foster father explained to Cedric that they needed to go to COMCARE to get an evaluation. He drove Cedric to COMCARE but when they arrived, Cedric exited the vehicle and walked away.

Friday September 24, 2021:

1:03 a.m. (approximately, according to interview of foster father) - Cedric returns to the foster father's home. The foster father called the foster care agency to alert them to the situation.

According to the foster father, his case worker told him, "don't let [Cedric] in the home, just call the police." The case worker told the foster father the agency was doing an "immediate discharge" on Cedric to remove him from the foster father's home.

The foster father told Cedric to wait on the porch, that he'd been discharged from the home and that they needed to get Cedric to the hospital to be "screened." The foster father said that he told Cedric, "I'm worried about you, so just stand out here on the porch."

1:07 a.m. - Foster father calls 911 (per foster agency instructions) and officers are dispatched to foster father's home in Wichita

1:13 a.m. - Officers with the Wichita Police Department arrive on scene per CAD (Computer Aided Dispatch).

The WPD body cameras show the foster father explaining to responding officers the situation and his concerns. The officers attempted to talk to Cedric but he could not initially provide them his last name, his date of birth or how long he had been at the foster home. While the foster father attempted to reach the foster

care agency's after-hour contact, the officers offered to accompany the foster father and Cedric to Via Christi, St. Joe mental hospital. Cedric was asked if he would go to St. Joe multiple times and declined. He told officers he was concerned about the people trying to kill him and indicated with his hand across the yard. The officer looked and saw no one.

For the next 58 minutes, officers spoke to Cedric in an effort to convince him to go with them to St. Joseph's Hospital for a mental health examination.

2:15 a.m. - Officers notified dispatch they needed assistance.

Cedric said he was not going to go to St. Joe. When told that he could not go inside the house, Cedric offered to sleep outside. Officers said they could not leave him outside.

The sergeant who responded to the scene told Cedric they needed to get him "some help" and asked him, "will you walk out to the car with us?" The sergeant later told investigators that when Cedric refused to go to St. Joe, and because the foster father had said Cedric was not allowed back into the home, the sergeant was not willing to leave Cedric unattended outside: "we can't walk away." So, officers told Cedric "it's time to go." Cedric was placed in police protective custody.

Cedric was seated on the porch. Two officers reached under each of his arms and began to lift Cedric up to take him to a patrol car. Cedric struck the officers and kicked the sergeant. The officers struggled for several minutes with Cedric, and were unable to get Cedric handcuffed. The primary officer's body camera video was knocked off and swung loosely during the struggle, but he later described using a "knee strike" at least 3 times against Cedric's hip/upper thigh, but Cedric did not react. The struggle went on for several minutes.

Others WPD officers respond. With additional assistance, Cedric is placed in leg shackles. WPD officers place Cedric in the "WRAP" restraint system in a seated position. The "WRAP system" is a canvass-type, movable plastic material used to wrap around the legs and arms/ lower torso of a person while in a seated position. Seat belt-styled straps such as those found in an automobile are then used to secure the person within the WRAP in the seated position.

2:23 a.m. - Emergency radio traffic is cleared for the incident.

The WPD sergeant determined that Cedric would be arrested and transported to JIAC (the juvenile intake and assessment center) for the crimes of battery of a law enforcement officer.

On the way to JIAC, one of the officers says to another, "For me, I think we should have taken him to St. Joe." (from body camera recording).

The WPF officer who signed Cedric into JIAC was later asked by investigators why Cedric was not taken to a medical facility instead of JIAC. The officer explained that Cedric did not display acute signs of physical injury or acute illness; that he showed no signs of being impaired due to alcohol use and while they had information he had used K-2 in the past, there was no information that he had used that day. The officer said he could not tell if Cedric had mental health issues without some baseline to which to compare his behavior. Finally, he had no indication Cedric was suicidal.

The sergeant was asked why Cedric was taken to JIAC instead of St. Joe. The sergeant, said the foster father had said Cedric had used K-2 in the past, but there was no information he was using that day. The sergeant, who had not received CIT (crisis intervention) training, said he believed Cedric was too combative to take to the hospital.

2:32 a.m. - Cedric is placed in the back of a patrol SUV in the WRAP restraint. The transportation to JIAC begins. JIAC was notified that law enforcement was transporting a "combative youth" to the facility.

2:44 a.m. - Cedric is delivered to JIAC and carried into the facility by WPD officers and one Eastborough Officer (who had responded to the scene), while he is still in the WRAP restraint. Cedric is then placed in holding room #2. One JIAC "intake specialist," a white male with 4 & 1/2 years of experience, was the only JIAC employee working at that time. The employee wore khakis and a short sleeved shirt with no duty belt, handcuffs or stun gun.

The JIAC employee later told investigators they want juveniles brought to the facility to cooperate with the intake and that formal uniforms can make "a barrier" with juveniles.

The JIAC intake specialist told investigators he had seen juveniles delivered to JIAC in the wrap system "a handful of times." He described Cedric as repeating

the phrase "let me down," when he was brought in, but said Cedric was not yelling and appeared to be calm when he was brought in by WPD.

3:33 a.m. - the JIAC intake specialist opened the door told holding room #2 and checked on Cedric.

The JIAC intake worker later told investigators that he told Cedric the officers would take the WRAP off of him but he'd have to stay in the room until officers left. Cedric asked him, "why would you lie to Jesus?" The intake worker asked Cedric if he would be cooperative and he responded, "we'll see." The intake specialist determined Cedric was not ready to be let out.

3:40 a.m. - The determination is made to remove the WRAP system. WPD officers enter holding room #2 and begin removing Cedric from the WRAP system.

3:44 a.m. - WRAP system is completely taken off of Cedric.

Body camera footage of the officers show Cedric talking to the officers as they removed the WRAP restraint system. He repeated, "kill yourself, kill yourself, kill yourself," several times. He said "I'm fucked up in the head," and "you can't control shit, control yourself" in the moments before officers exited holding room #2.

3:45 a.m. - Officers exit the holding room, leaving Cedric unrestrained in holding room #2 by himself.

4:16 a.m. - Law enforcement officers leave the JIAC.

4:20 a.m. - The JIAC intake specialist opens the door to holding room 2 and speaks to Cedric.

There is no audio on the recording at JIAC and JDF and JIAC workers are not equipped with body cameras.

The JIAC employee was later interviewed by detectives with the Sedgwick County Sheriff's Office. He said because Cedric had never been to that facility previously, he wanted to explain the process to Cedric. He told Cedric, "we're gonna go through a bunch of questions, I'm gonna take your height, weight and picture. I'm gonna do your fingerprints. And then I'm gonna call your guardian and they're gonna pick you up. . .you cooperate with me, we can get this stuff done real fast and you won't be here that long."

4:21 a.m. - Cedric walks out of the holding room into the open foyer of the JIAC.

4:23 a.m. - Cedric approaches the intake counter and reaches under the plexi-glass barrier and grabs the computer monitor on the other side.

The JIAC intake specialist tells investigators he told Cedric to step back. A JDF "senior corrections officer," a 26 year old white male who had worked at JDF less than 3 years, was nearby processing another juvenile into JDF who had been brought in earlier on homicide charges.

4:25 a.m. - The JIAC intake specialist picked up Cedric's jacket that Cedric had left on a chair in the lobby. Cedric reached for the jacket and began to approach the JIAC specialist. The JIAC specialist held his palm up to Cedric and stepped back from Cedric.

The JDF corrections officer enters the JIAC lobby.

The JIAC specialist later said he took the jacket because he would need to inventory the jacket as well as Cedric's shoes. (Note: when Cedric was brought into JIAC, the WPD had removed his shoes).

The JDF officer told investigators he heard the JIAC specialist telling Cedric about the intake process and how quickly they could be done if Cedric cooperated. The corrections officer said Cedric was "just walking around" and "kinda behaving oddly." The JDF officer said he made a "10-19" request (asking other JDF personnel to come to his location) and entered the lobby and spoke to Cedric himself. He echoed the JIAC specialist's comments, telling Cedric to cooperate so he could be released sooner. The JDF officer said Cedric only repeated the officer's words back to him.

The JIAC intake specialist said that he and the JDF officer directed Cedric to back up and go sit in one of the holding rooms, telling him, "you don't even have to shut the door," in an effort to "de-escalate." On the video, the JIAC specialist can be seen pointing toward the holding room. He told investigators Cedric asked him "what would you do if I touch you?" Cedric walked toward the intake counter again and the intake specialist stepped between Cedric and the window. The intake specialist put his hand up. The JDF officer and JIAC intake specialist stepped toward Cedric and initiated what the specialist later called an "escort hold," to move Cedric back to the holding room.

4:26 a.m. - As the JIAC intake specialist and the JDF senior corrections officer each

take hold of one of Cedric's arms, he struggles to get away. His right arm comes free and he strikes the JIAC worker, knocking his glasses to the ground. The two men continue to move Cedric and all three stumble toward the holding rooms at the end of the lobby, ending up finally in holding room #1. During the course of the struggle as they enter holding room, the JDF officer's eyeglasses also fall to the ground and his duty belt comes off and falls to the floor. The JIAC worker is not issued handcuffs and the JDF officer's handcuffs are on the belt on the ground. Neither man is issued a stun gun, nor are stun guns authorized by policy.

4:27 a.m. - two JDF supervisors, one white female with 14 years of experience and one African American male, with 13 years of experience (he was not on the schedule but later said he had come in to complete employee evaluations) enter the JIAC lobby in response to the earlier "10-19" sent by the JDF officer. They then enter the holding room #1 to assist.

4:29 a.m. - leg shackles are applied to Cedric by the JDF corrections officer.

4:33 a.m. - Cedric is moved by the JIAC and JDF personnel from a seated position on the bench area to the floor, face down to better control the situation and possibly place handcuffs on Cedric.

The JIAC intake specialist, the JDF senior corrections officer as well as the male and female JDF supervisors, were each interviewed by detectives with the Sedgwick County Sheriff's Office. The employees each relayed that the male JIAC employee had ahold of Cedric's ankles, the JDF senior corrections officer had ahold of Cedric's left arm, the female JDF supervisor was holding Cedric's thighs down and the male JDF supervisor had Cedric's right arm.

The male JDF supervisor later told detectives that while they were restraining Cedric, he (the male JDF supervisor) asked the JIAC intake specialist if Cedric was to be booked into JDF or released and the JIAC specialist responded that the plan was to release Cedric. The male JDF supervisor, who said he usually has an ability to talk to kids and calm them down (a trait his personnel file indicates he was recognized for in the past) had no success de-escalating the situation by talking to Cedric. He described Cedric as having "a blank stare" and "not listening to anything I'm saying."

The employees later told investigators in varying details, that during the

struggle, Cedric was "mumbling" at times, repeated that he was "Jesus," said that staff should kill themselves and that he would "hex" them. None of the employees reported hearing Cedric express concern about an inability to breath. There is no audio on the JIAC video and JIAC and JDF employees do not wear body cameras.

The decision was made to get someone else to come to the room and replace the JIAC specialist so he could call 911 and ask the WPD to come back to transport Cedric to St. Joe. JIAC does not transport juveniles to St. Joe.

4:50 a.m. - a different JDF worker, a 29 year old Hispanic male with approximately 5 years of experience at JDF, responds to the holding room and replaces the position of the JIAC intake specialist who then leaves the holding room to go call 911 to dispatch WPD to come back to JIAC to transport Cedric to St. Joe.

4:53 a.m. - the JIAC specialist returns to the holding room.

The others recall the JIAC specialist saying they needed to have Cedric in handcuffs for the WPD. Until that point they had been unable to get Cedric into handcuffs. The female JDF supervisor remembered the JIAC specialist told them the WPD had a diabetic emergency that had taken precedence. She said Cedric continued to argue and resist as they waited.

4:59 a.m. - the JIAC specialist exits holding room #1 and the lobby to call 911 again.

5:02 a.m. - A different WPD sergeant calls the JIAC specialist back. The new sergeant said he was trying to arrange to have EMS transport Cedric to St. Joe.

5:08 a.m. - handcuffs are applied to Cedric.

The male JDF supervisor and JDF corrections officer went to wash their hands/ arms. They reported having a small amount of blood from an unknown source, though Cedric was later seen to have a bloody nose. According to the employees, Cedric finally relaxed--which allowed the handcuffs to be applied. At or about that time, the employees said Cedric began to "snore."

5:11 a.m. - WPD is dispatched back to JIAC (per CAD)

5:12 a.m. - the JIAC specialist does not hear Cedric breathing. He checks Cedric's pulse and could not find one.

5:13 a.m. - Cedric is rolled to his back and staff performs a sternum rub. When there is no response from Cedric, chest compressions are begun by the JDF supervisors, who alternate. The JIAC supervisor calls 911 to request EMS.

5:16 a.m. - a JDF employee goes to look for an AED (automated external defibrillator). The JIAC facility did not have one.

5:18 a.m. - WPD re-enters the lobby.

5:20 a.m. - EMS enters the lobby. The handcuffs are removed. Cedric is moved out of the holding room and into the lobby a few steps away. The EMS report states, "pt [patient] is found pulseless and apneic . . . EMS note no significant trauma or injuries to the face, neck, chest, or head, and no significant injuries were noted during laryngoscopy."

5:24 a.m. - Cedric is triaged code blue (no pulse, not breathing). Lifesaving measures continue.

5:37 a.m. - Cedric is triaged code red (pulse present but critical).

5:43 a.m. - Cedric is laid on a gurney in the JIAC lobby.

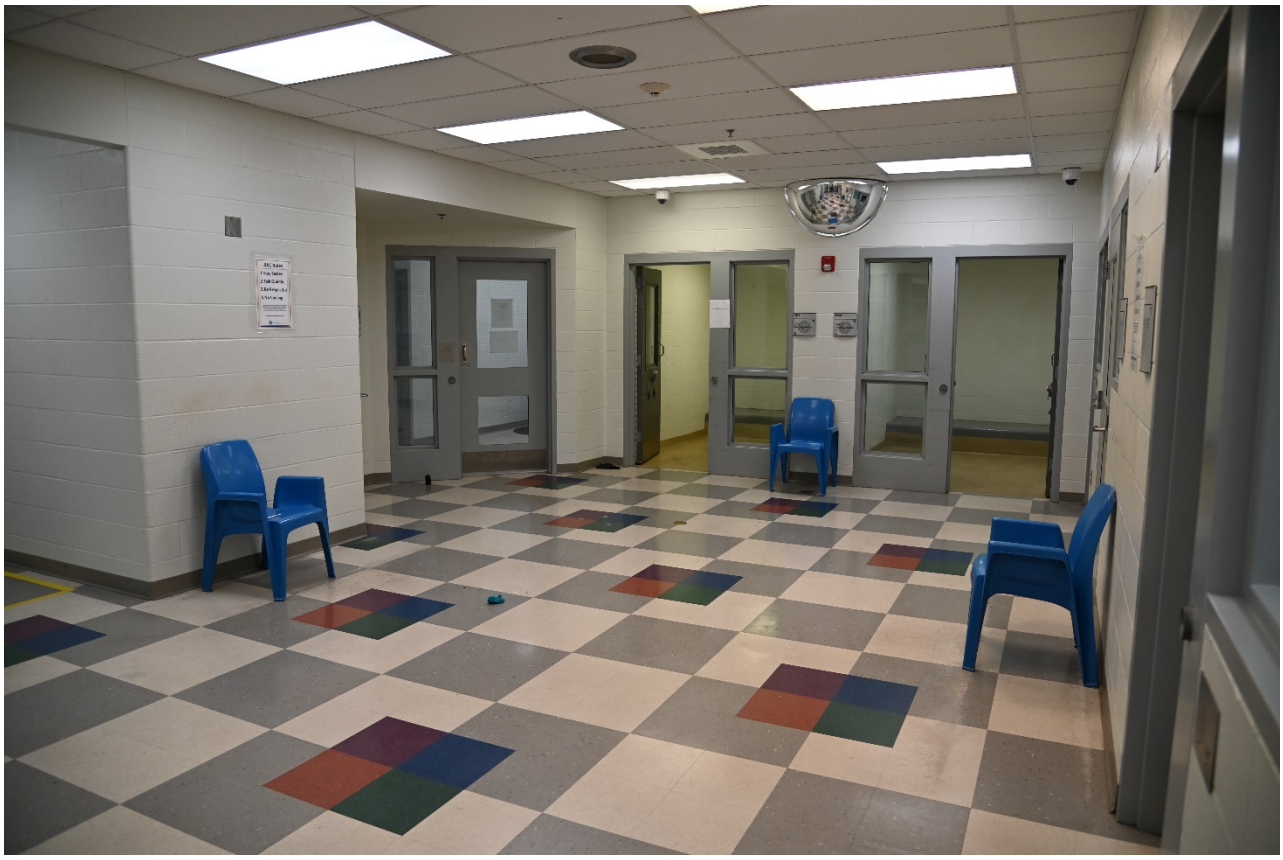
5:46 a.m. - EMS exits the lobby transporting Cedric.

5:53 a.m. - Cedric is transported to Wesley Medical Center

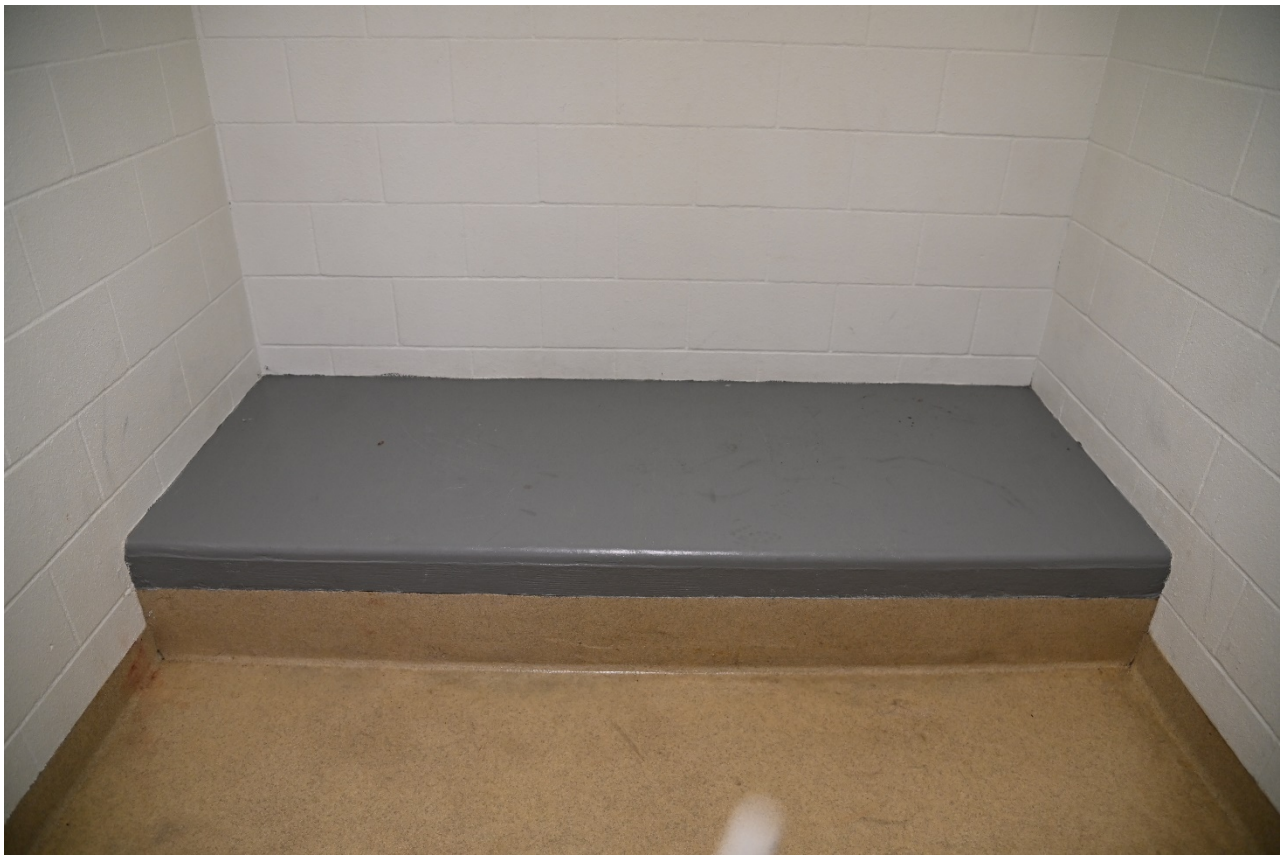
INVESTIGATION

The one JIAC intake specialist and four JDF employees who had direct physical contact with Cedric Lofton on September 24, 2021 were each interviewed separately by investigators with the Sedgwick County Sheriff' Department as was the foster father. Police officers with the Wichita Police Department who had contact with Cedric at the foster father's home and transported him to JIAC were interviewed by agents with the Kansas Bureau of Investigations as were the foster brothers, school personnel at Cedric's school and the foster father (a subsequent interview).

Crime Scene Investigators from the Sedgwick County Sheriff's Department processed the holding room #1 at the JIAC where the physical struggle took place.



The JIAC lobby showing holding room #1 (the first open door on the left) and holding room #2 (the open door to the right).



The interior of holding room #1.

FORENSIC EVIDENCE & AUTOPSY RESULTS

Cedric Lofton was taken to Wesley Medical center from JIAC on September 24, 2021. He was pronounced dead on September 26, 2021 at 1:55 a.m. An autopsy was performed on the body of Cedric Lofton on September 27, 2021, at the Sedgwick County Regional Forensic Science Center. He was listed as being 5'10" tall and weighing 135 lbs at the time of the autopsy.

Vials of Cedric Lofton's blood and urine were collected at the time of the autopsy on September 27, 2021. These samples were sent to the Center for Forensic Science Research and Education in Horsham, Pennsylvania which has the capacity to screen for a litany of analogues commonly associated with the drug known as K-2. The report dated December 07, 2021 found the presence of Carboxytetrahydrocannabinol [THCA] in his urine as well

as a beta blocker called esmolol. The esmolol would have been administered at the hospital and would not have contributed to his death. The THCA in his urine indicates Cedric had ingested marijuana, but would not have contributed to his death.

With respect to K2, the report states "none detected." Whether Cedric had used K2 in the past as had been reported to law enforcement, cannot be confirmed. According to the former toxicologist for Sedgwick County, if ingested at levels normally associated with typical use, K2 would be expected to be out of a person's system (not detectable) between 2-4 days after ingestion. Based on the test conducted on his urine that was collected on September 27th (roughly 2 days after Cedric lost consciousness in JIAC), there is no likelihood of any toxicologically significant presence of K2 in his system while he was at JIAC. Past K2 use (if any) would not have contributed to his death.

The final autopsy report, dated December 21, 2021, determined that Cedric Lofton died as a result of "complications of cardiopulmonary arrest sustained after physical struggle while restrained in the prone position." The manner of death was determined to be homicide.

"A Guide for Medical Examiners" published by the National Association of Medical Examiners, recognizes there are typically 5 descriptors utilized in autopsy reports when listing a manner of death: (1) Natural; (2) Accident; (3) Suicide; (4) Homicide; and (5) Undetermined. The term “homicide” reflects the determination that a volitional (non-accidental) act was committed by someone other than the deceased that lead to the death of the deceased. The finding does not reflect a dispositive legal conclusion that murder or homicide charges are supported under the laws of a particular state.
The guide states:

> An assessment of “intent” does relate to manner-of-death classification: it necessarily underlies the quasi-judicial responsibility derived from the enabling law in the relevant jurisdiction of the death certifier. However, the legal view of intent may differ from the death investigator’s viewpoint. It is sometimes agonizingly difficult, and occasionally impossible, for the unbiased investigator to infer a victim’s or “perpetrator’s” intent. Intent is also much more apparent in some cases than others. For this reason, the concept of “voluntary acts” or “volition” may be useful. In general, if a person’s death results at the “hands of another” who committed a harmful volitional act directed at the victim, the death may be considered a homicide from the death investigation standpoint. . . Although there

> may not have been intent to kill the victim, the victim died because of the harmful, intentional, volitional act committed by another person. Thus, the manner of death may be classified as homicide because of the intentional or volitional act—not because there was intent to kill.

The guide further recognizes,

> Deaths due to positional restraint induced by law enforcement personnel or to choke holds or other measures to subdue may be classified as Homicide. In such cases, there may not be intent to kill, but the death results from one or more intentional, volitional, potentially harmful acts directed at the decedent (without consent, of course). Further, there is some value to the homicide classification toward reducing the public perception that a "cover up" is being perpetrated by the death investigation agency.

Investigators and attorneys with the office of the District Attorney spoke to the coroner to discuss his findings. The following explanations were provided in that meeting.

The "acute kidney injury" listed in the report is a reference to damage done to Cedric's kidney when his heart stopped. There was no evidence of blunt force or sharp force injury to the kidney.

The description of "pulmonary congestion and edema and acute bronchopneumonia," was described as a likely "downstream event" (something that occurred later in the hospital) and not a condition that effected Cedric the night of September 24, 2021.

The administration of the WRAP system by the WPD earlier that night was not a contributory factor to the death of Cedric Lofton, as the evidence showed he was up, calm and conscious for some 42 minutes between the time the WRAP system was removed at 3:44 a.m. until the physical contact between Cedric and the JIAC and JDF personnel began at 4:26 a.m.

Multiple "[a]brasions and contusions" were identified in the autopsy, but none would have caused or contributed to Cedric's death. Bruises and scrapes did not kill Cedric.

Summarized, the cause of death was brought about by the position in which Cedric was held as well as the ongoing struggle which lasted for over thirty minutes largely unabated. The long-lasting struggle while in the face-down position impeded his breathing, which caused the supply of oxygen to his heart to be compromised to the point that his heart stopped. This lead to a lack of oxygen to his brain which caused the anoxic brain injury

and caused his kidney to shut down (the "acute kidney injury.")

He clarified that the lengthy struggle alone was not the cause of death, nor was the prone position in which Cedric was held. The combination of both conditions lead to the death of Cedric Lofton.

KANSAS LAW

Self-defense: In Kansas all persons are entitled to defend themselves and others against the use of unlawful force. K.S.A. (2019 Supp.) 21-5222, **Defense of a person, no duty to retreat**, 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" is defined in K.S.A. (2019 Supp.) 21-5221 and includes "(1)(A) words or actions" directed at or upon another person or thing "that reasonably convey the threat of force, . . . (B) the presentation or display of the means of force; or (C) the application of physical force, including by a weapon."

K.S.A. (2019 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."

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
(Stand Your Ground)

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 are commonly known as the "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. As used in this subsection, "criminal prosecution" includes arrest, detention in custody and charging or prosecution of the defendant.

On March 10, 2017, in *State v. Hardy*, 305 Kan. 1001, 390 P.3d30 (2017), the Kansas Supreme Court upheld the dismissal of an aggravated battery case. Hardy, who was seated in the passenger seat of a parked convertible at a party, when another man, Flores, "approached the passenger side of the convertible, reached in, and struck Hardy two to three times in the face. Hardy picked up [the driver's] gun from the console and shot Flores once."

The *Hardy* 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.

The *Hardy* Court found the "risk of great bodily harm" to Hardy by virtue of the punch to the face, was imminent. As such, he had the right to use deadly force. The case was determined to have been properly dismissed.

The same day *Hardy* was decided, the Kansas Supreme Court upheld the decision of another district court judge to dismiss Aggravated Battery charges against a man who stabbed his neighbor after an initially friendly wrestling match turned "sour." In *State v. Evans*, 305 Kan. 1072 (2017), the unarmed victim was alleged to have followed Evans into Evan's garage when the wrestling match ended. Evans said the victim verbally threatened him which the victim denied. Evans stabbed the unarmed man in the chest with a "katana-style sword." Based on these facts, the Kansas Supreme Court found "substantial competent evidence" to support the dismissal of the charges on stand your ground immunity.

In *State v. Betts*, __ Kan. ___, Syl.1, 489 P.3d 866 (June 18, 2021) (*petition for review granted*), the Kansas Court of Appeals sustained the district court's grant of immunity when a police officer with the Wichita Police Department was charged with reckless aggravated battery for shooting at a barking dog that lunged at him, when bullet fragments fired from the officer's gun ricocheted off the floor and struck a child seated just behind the dog, inflicting nonfatal injuries. The court rejected the State's argument that the officer reacted recklessly when he shot at the dog in self-defense, holding:

> Syl. 1 sufficient evidence supported trial court's finding that an objectively reasonable person in defendant's position could have concluded that force was necessary to defend himself, as could support finding that defendant qualified for immunity, and
> Syl. 2 immunity statute permits a district court to consider a defendant's claims of self-defense regardless of whether the State has charged the

> defendant with conduct that constitutes an intentional, knowing, or reckless crime.

In *State v. Dukes*, 59 Kan.App.3d 367 (2021), the Kansas Court of Appeals upheld the decision of the district court to dismiss the Voluntary Manslaughter charge, based on self-defense/stand your ground immunity.

Dukes was approached by a man named Berryman who had sent him verbal threats in the past via Facebook (which Dukes testified he had not taken seriously). When Dukes saw Berryman approach, Dukes pointed a gun at Berryman. Berryman responded, "I got something for you," then ran back toward his own car. The evidence was inconclusive as to whether Berryman held a weapon when he initially walked toward Dukes, but Mr. Dukes testified that he believed Berryman was going back to his car to get a gun given the statement, "I've got something for you." That is why Dukes said he shot and killed Berryman as he 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. *Dukes*, 59 Kan.App.3d, at Syl. 2; citing *State v. Phillips*, 312 Kan. 643, Syl. 4 (2021).

The *Dukes* Court also added the following quote from *State v. Phillips*, 312 Kan. 643 (2021):

> The State may also overcome a defendant's request for immunity by demonstrating that the defendant was the initial aggressor as defined in K.S.A. 2020 Supp. 21-5226 and thus provoked the use of force. *Dukes*, 59 Kan.App.3d, at 372.

A. 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."

Charging:

The National Prosecution Standards promulgated by the National District Attorneys Association, though not binding, are utilized by the Office of the District Attorney. Rule 4-2.2 reads,

> A prosecutor should file charges that he or she believes adequately encompass the accused's criminal activity and which he or she reasonably believes *can be substantiated by admissible evidence at trial.* (emphasis added)

ANALYSIS

On September 24, 2021 Cedric Lofton was brought to the Juvenile Intake and Assessment Center by officers with the Wichita Police Department to be processed for multiple counts of battery of a law enforcement officer after striking and kicking officers who had initially made contact with Cedric and put him into police protective custody to transport him to St. Joe Hospital for a mental health evaluation.

Whether the State of Kansas should accept a foster care system that responds to a foster father's expression of concern that his foster son is in mental distress by telling the man, don't let him in the house and call the police -- is a legitimate question. A question, in fact, that may well demand answers. The directive to call the police does not however,

constitute a criminal act. Telling the foster father to call police did not cause Cedric's death.

Whether officers should have taken Cedric to St. Joe instead of JIAC--given the information provided by the foster father that Cedric had been struggling mentally the last few days, and may have recently used K-2 (later toxicological analysis showed none present)--also presents a legitimate question. However, the decision to take Cedric to JIAC instead of St. Joe is not a criminal act. The act of taking him to JIAC, by itself, did not cause Cedric's death.

Cedric struggled with at least two WPD police officers and a sergeant, requiring the assistance of additional backup officers to place Cedric in a WRAP system. Whether a 17 year old should have been placed in the WRAP system is a legitimate question. Because Cedric was out of the WRAP system for some 42 minutes before the struggle began with the JIAC and JDF staff, the use of the WRAP--while ripe for policy considerations--is not ultimately germane to the consideration of criminal charges because the WRAP was not the proximate cause of his death:

> To establish that one thing proximately caused another, a party must prove two elements: cause-in-fact and legal causation. Generally, causation-in-fact requires proof that it is more likely than not that, but for the defendant's conduct, the result would not have occurred. Legal cause limits the defendant's liability even when his or her conduct was the cause-in-fact of a result by requiring that the defendant is only liable when it was foreseeable that the defendant's conduct might have created a risk of the harm and the result of that conduct and any contributing causes were foreseeable). *State v. Arnett*, 307 Kan. 648 (2018).

Simply put, the coroner has made clear he had no reason to believe the use of the WRAP restraint contributed to the death of Cedric Lofton.

At least seven law enforcement officers--including the 6 it took to carry Cedric from the patrol SUV to into JIAC while he was seated in the WRAP restraint--then left Cedric unrestrained with a single JIAC intake specialist who was not equipped with restraints or a stun gun--something this intake worker said he has encountered "a handful of times." Whether this makes sense upon reflection, likewise raises a legitimate question. But

again, Cedric did not die because he was left alone unrestrained in holding room #2.

The legal question is whether criminal charges will be brought against the JIAC intake specialist, the female JDF supervisor, the off-duty male JDF supervisor, the JDF senior corrections officer, or the fourth JDF employee who stepped in for a short time to assist when the JIAC intake specialist went to call 911? To answer that question, the following must be resolved:

1. Did these staff members commit a crime when they held Cedric down? If not initially, did they do so when the struggle extended for at least 35 minutes (from 4:33 a.m. when he was moved from the bench to a prone position on the floor, until approximately 5:08 a.m. when the handcuffs were applied and he began to "snore")?
2. If the answer to either is yes, are they protected by the stand your ground self-defense immunity in Kansas?

Homicides in Kansas generally require the state to prove one of the *three* following mental states (*mens rea*): intentional, knowing or reckless. Notably, there is no negligent homicide in Kansas.

Murder charges require the state to prove that the accused acted with an intent to kill. There is no evidence uncovered by this investigation to support the suggestion that these individuals intentionally set out to kill Cedric.

With respect to a "knowing" *mens rea*, "[a] person acts 'knowingly,' or 'with knowledge,' with respect to a result of such person's conduct when such person is aware that such person's conduct is reasonably certain to cause the result." Again, there is no evidence to suggest these individuals knew the damage that was being caused to Cedric's system as they restrained him on the floor. They insist that he continued to say the sort of things that were heard on the WPD officer's body camera videos: "kill yourself, kill yourself," and repeated references to being Jesus. None of the people interviewed say they heard Cedric ask for help or complain of either an inability or impeded ability to breath. Without audio tape, there is no evidence to dispute this recitation. That they were acting within their use of force

policies (JIAC and JDF), using approved physical holds and mechanical restraints for a period time within their policy, further undermines any argument that they knew their conduct would lead to his death.

The notion that they acted "recklessly"--for instance, to establish involuntary manslaughter for recklessly causing Cedric's death--might sound appropriate in the general sense of the word, but this conclusion is not supported by the specific definition of "reckless" in Kansas law. K.S.A. 21-5202(j) specifically defines "recklessly" as follows:

> (j) A person acts "recklessly" or is "reckless," when such person consciously disregards a substantial and unjustifiable risk that circumstances exist or that a result will follow, and such disregard constitutes a gross deviation from the standard of care which a reasonable person would exercise in the situation.

The staff members were doing as they were trained--using force by way of "physical restraints" and "mechanical restraints" to protect themselves and to get Cedric to comply with lawful directives of the JIAC intake worker. The four staff members who took part in the restraint as well as the 5th employee who stepped in for a shorter period of time, all insisted in subsequent interviews that no one was laying on Cedric's torso--they were restraining his arms, and lower legs only. Though it is difficult to see at times in the video, given the angle of the mounted camera, the workers can be seen on their knees, or leaning on the cement bench. It does not appear that any of the four laid directly on top of or placed their weight on Cedric's back/torso. Had anyone put their full weight on his back/chest for an extended period of time during this struggle, it is hard to imagine Cedric could have remained conscious and struggling for 35 minutes. The lack of significant blunt force injuries located during the autopsy to his torso/back/chest and the presence only of minimal abrasions and contusions--further diminishes such an argument. Holding someone by the arms, and lower legs while the person struggles does not establish an "unjustifiable risk" sufficient to prove reckless *mens rea* element under Kansas law.

There is another definition of Involuntary Manslaughter that must be considered. K.S.A. 21-5405 (a)(4), defines involuntary manslaughter as the killing of another human committed "during the commission of a lawful act in an unlawful manner."

Did the JIAC and JDF workers act in a lawful manner when they restrained Cedric? Under K.S.A. 21-5222(b), a person may employ force, including deadly force, when the person reasonably believes that force is necessary to prevent imminent risk of great bodily harm to himself or another.

The JIAC worker and the JDF worker had the right under Kansas law and by their facility's use of force policy to physically move Cedric to the holding room when he refused to comply with reasonable demands. When he resisted and punched the JIAC worker, and struggled with the JIAC and JDF worker, Kansas law--both statutes and case law--have made it abundantly clear that they had the right to defend themselves. Under the Kansas stand your ground law--imposed by the Kansas legislature in 2011---and a litany of cases since its enactment interpreting that law, these staff members are immune from prosecution for the act of restraining Cedric and then holding him to gain compliance.

The more complicated question is whether they went too far by holding him down as long as they did.

Since 2011, under the Kansas "stand your ground" law, one who acts in defense of himself or who acts to protect a third party is immune from prosecution. See K.S.A. 21-5231. This means, a person may not be arrested, charged, or prosecuted unless the State can establish that (1) the defendant did not honestly believe the use of force was necessary under the circumstances, and/or (2) a reasonable person would not believe the use of force was necessary under the circumstances. *State v. Phillips*, 312 Kan. 643, Syl. 4. (2021).

Since the legislature passed stand your ground, the Kansas appellate courts have held that a person can use a firearm to shoot an unarmed assailant who is punching them in the face (State v. Hardy); can stab an unarmed neighbor with a "katana-style sword" after being verbally threatened and followed into their own garage (State v. Evans); can shoot an unarmed man in the back on the belief that the other man is running to a car to retrieve a gun (State v. Dukes); and can shoot at a charging pet dog inside a house despite the presence of a child just beyond that dog (State v. Betts).

If Cedric had complied but the JIAC and JDF employees had ignored him and continued to restrain Cedric prone on the ground for an extended period of time, the analysis would be different. However, the evidence is that Cedric continued to struggle until he finally "relaxed" at or about the moment the handcuffs were applied at 5:08 a.m. Throughout the struggle there is no evidence that the workers discerned anything from Cedric, physically or verbally to indicate Cedric was in physical distress. The video, the interviews of all the employees and the coroner's findings regarding the effect of a prolonged struggle, support the conclusion that Cedric continued to offer resistance to the physical restraints being applied to his hands and legs. That he continued to resist for some thirty minutes meant the staff could continue to lawfully apply restraint.

One might reasonably ask, "Why didn't one of these people make the decision to simply let him up?"--instead of holding him down for so long just to keep him from hurting one of them or himself? But the law dictates that they are judged by their actions not on choices not made. They chose to hold on because he continued to resist. At the 17 minute mark (4:50 a.m.) the JIAC worker went to call 911 to get the WPD back to take Cedric to St. Joe when it became clear Cedric was not going to comply or calm down. Their training and their policy allowed them to physically restrain and use handcuffs or shackles. If restraints don't work, they are trained to hold on and wait until the juvenile relaxes. Policy allows them to do this for up to 30 minutes and beyond with supervisor approval. There were two supervisors in the room participating.

CONCLUSION

Individuals who act in self-defense in Kansas are immune from prosecution under the Kansas stand your ground law unless the state can establish, (1) the defendant did not honestly believe the use of force was necessary under the circumstances, and/or (2) a reasonable person would not believe the use of force was necessary under the circumstances. *State v. Phillips*, 312 Kan. at Syl. 4.

The evidence available shows that Cedric was given directives by the JIAC intake specialist to step back from the intake counter after he reached under the plexi-glass shield and

grabbed a computer monitor. When Cedric continued to approach the area of the intake counter, he was directed to return to a holding room at the other end of the JIAC lobby. When Cedric did not respond, the JIAC intake specialist and the JDF corrections officer attempted to explain to Cedric that he would be released as soon as he cooperated with the intake. When Cedric did not comply, at 4:26 a.m., the two men attempted to physically move Cedric to the holding room as they were permitted by county policy. Cedric reacted by striking the JIAC worker. The men then acted in self-defense and continued to forcibly move Cedric toward the holding room. Two additional JDF workers, both supervisors, entered the holding room to assist. At 4:29 a.m., leg shackles were applied. The four adults initially restrained Cedric in a seated position on the built-in bench in the room. At 5:33 a.m., they moved Cedric to the floor in a prone position to gain better control and in an effort to apply handcuffs.

Throughout the time Cedric was prone on the floor, the four adults (and a 5th who later joined briefly so the JIAC worker could leave to call 911) report that Cedric continued to physically resist and was non-responsive to their repeated requests for him to relax. They held his ankles, his right arm, left arm and thighs. The adults all report that Cedric never complained of a diminished ability to breath and instead continued to make statements that led them to believe he was either under the influence of drugs or having a mental health crisis. The adults report that no one put their full weight on Cedric as he lay prone. The video shows the adults appear to kneel or lay down next to Cedric. After approximately 17 minutes on the floor, one adult left to make a 911 call to ask that WPD return to JIAC to take Cedric to a mental health hospital. As they waited for WPD to then return, the 4 adult staff continued to hold Cedric prone while he struggled. They said they restrained Cedric per policy to protect themselves and to keep Cedric from hurting himself. After a total of 35 minutes on the floor (4:33 a.m. to 5:08 a.m.), Cedric quit resisting and began to "snore," according to the adults in the room.

The JIAC and JDF employees acted in self-defense under Kansas law. They are immune from prosecution as a result of Kansas's robust stand your ground law. This conclusion is not a reflection of this office's approval of what happened to Cedric Lofton on September 24, 2021. This should never have happened.

Pursuant to the Kansas self-defense and stand your ground law, the JDF and JIAC employees are immune from prosecution.

No criminal charges will be filed.

District Attorney Marc Bennett
18th Judicial District of Kansas

Addendum

A. Recommendations

To prevent a tragedy of this magnitude from happening again, the County manager, Tom Stolz, asked in September of 2021 that I make public any recommendations I arrived at during the review of the facts uncovered by the investigation. To that end, and without commentary as to the merits of any potential civil litigation filed on behalf of Cedric Lofton or his family, I offer the following:

1. It is uncontroverted that it took not less than 6 officers with the Wichita Police Department to place Cedric Lofton in the WRAP system. These officers then carried him into the JIAC in the restraint and, once unrestrained, left him with a single JIAC intake specialist. There was nothing about this that violated policy and in fact, the JIAC specialist said he'd seen juveniles brought in to the center in the WRAP System "a handful" of times.

I would ask that county policy be examined. Should a juvenile in a WRAP be brought to the JIAC? Should a single JIAC worker be expected to then handle someone described as "a combative juvenile" alone? Should the officers who bring an allegedly combative, noncompliant youth into the JIAC instead be required to remain on scene (or at least nearby) at the JIAC until the juvenile is processed?

2. When juveniles are brought into JIAC and processed either to booking in JDF or back out the doors to some other placement, I would ask the county to consider updating the video recording system to cover more areas of the lobby and holding rooms and to ensure that the recording system includes audio capacity.

3. The county and city need to determine whether law enforcement officers have received adequate training regarding encounters with juveniles (or adults) that present with an apparent mental health break? Should additional training be offered regarding when and under what circumstances a person can and should be taken to St. Joe as opposed to JIAC (or jail for adults)? Should the county implement remote/virtual access to mental health

consults in the field in such circumstances?

4. When and if a juvenile enters JIAC in a state of mental distress, rather than contacting the law enforcement agency that delivered the juvenile to the facility to request that the agency return to JIAC to transport the juvenile to St. Joe, is there a quicker, more efficient mechanism to obtain help? In this matter the first call to 911 to ask the police to return occurred 17 minutes after Cedric was moved to the prone position and some 18 minutes before he began to "snore" and quit breathing.

5. When a foster parent contacts their foster agency to report that a foster child is in mental distress, does this state system owe a better response than a directive to call the police and not let the foster child re-enter the home?

B. Additional Information

The following attachments are provided as a response to concerns raised in media coverage and public comments during this investigation.

I. Law Enforcement Accountability

Question: Does the Office of the District Attorney hold law enforcement officers and county employees accountable for crimes they are alleged to have committed?

Answer: Since January of 2013, the Office of the District Attorney has charged no less than 33 individuals employed by the Wichita Police Department (16), the Sedgwick County Sheriff's Department (12), Emergency Medical Services (3) and other law enforcement agencies in the jurisdiction (2) with crimes ranging from DUI to Aggravated Sexual Battery to Kidnapping.

Since 2009, the Office of the District Attorney has charged 51 cases involving 47 defendants (some had multiple cases) who were employed by the Wichita Police Department, the Sedgwick County Sheriff's Office, EMS, Department of Corrections, the Fire Department and the Department of Child and Family Services.

II. Transparency

Question: Why weren't videos from JIAC and body camera videos from the WPD released immediately to the public?

Answer: To do so would violate the ethics rules of the Kansas Supreme Court.

Supreme Court Rule 3.6 reads:

> (a) A lawyer who is participating or has participated in the investigation or litigation of a matter shall not make an extrajudicial statement that the lawyer knows or reasonably should know will be disseminated by means of public communication and will have a substantial likelihood of materially prejudicing an adjudicative proceeding in the matter.
>
> (b) Notwithstanding paragraph (a) a lawyer may state:
>
> (1) the claim or defense involved and, except when prohibited by law, the identity of the persons involved;
>
> (2) information contained in a public record;
>
> (3) that an investigation of the matter is in progress;
>
> (4) the scheduling or result of any step in litigation;
>
> (5) a request for assistance in obtaining evidence and information necessary thereto;
>
> (6) a warning of danger concerning the behavior of a person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and
>
> (7) in a criminal case, in addition to subparagraphs (1) through (6):
>
> (i) the identity, residence, occupation and family status of the accused;
>
> (ii) if the accused has not been apprehended, information necessary to aid in apprehension of that person;
>
> (iii) the fact, time and place of arrest; and
>
> (iv) the identity of investigating and arresting officers or agencies and the length of the investigation.
>
> (c) Notwithstanding paragraph (a), a lawyer may make a statement that a

reasonable lawyer would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the lawyer or the lawyer's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(d) No lawyer associated in a firm or government agency with a lawyer subject to paragraph (a) shall make a statement prohibited by paragraph (a).

There is another rule specifically directed at prosecutors: Rule 3.8. That rule contains the following language at subsection (f) that requires the prosecutor to direct that law enforcement officers not say anything or release any information that I could not myself:

(f) except for statements that are necessary to inform the public of the nature and extent of the prosecutor's action and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused ***and exercise reasonable care to prevent investigators, law enforcement personnel, employees or other persons assisting or associated with the prosecutor in a criminal case from making an extrajudicial statement that the prosecutor would be prohibited from making under Rule 3.6 or this Rule***. (emphasis added).

These rules are intended to be clear and unforgiving. This is why we do not release videos until the final decision has been made that a case cannot be sustained; or when the video/statement/photo is admitted as evidence in open court following the filing of charges. Body camera or surveillance video is evidence, the same as a recorded confession or a murder weapon recovered at the scene of a crime.

III. Recusal

Question: Whether the District Attorney should recuse himself in this case.

Answer: The law on the subject of "the appearance of impropriety" goes back some time. Since the *In re Estate of Koch* case in 1993, our Supreme Court made it clear that with respect to attorneys, the law can't be based only on how something "seems" (appearance of impropriety) because then there is no standard at all.

Some might suggest that even if the law doesn't require it, a completely "independent" prosecutor should review the investigation and handle the prosecution. K.S.A. 22a-106 dictates how a special prosecutor is chosen:

> "§(d) *Notwithstanding any of the provisions of this act the district attorney, with the approval of the board of county commissioners, may appoint and employ special counsel when necessary to assist the district attorney in the discharge of his duties, such special counsel not to be subject to the restrictions contained in paragraph (b) herein.*"

Meaning, I would have to pick my replacement and the county commission would have to approve and pay the person. Would those distrustful of the current system be satisfied that I hand-picked my own replacement?

Another option I could pursue would be to ask the AG to step in and handle this investigation. The question would be why? What legally recognized conflict exists that would require that I contact Kansas Attorney General to ask that he handle this matter? The Kansas Secretary of State's website, revised in 2019, offers the following commentary:

> A public officer has a duty to serve the public and must avoid situations that will cause him/her to act in a way that is not in the best interest of the public. Any such action is considered a breach of confidence. See *Anderson v. City of Parsons*, 209 Kan. 337, 341 (1972) ('We . . . recognize the common law principle that a public officer owes an undivided duty to the public whom he serves and is not permitted to place himself in a position that will subject him to conflicting duties or cause him to act other than for the best interest of the public.')

I have no connection to the individuals involved in this case other than the fact that we

both draw our paychecks from the county. Prior to this investigation, I'd never heard of any of them. I have no personal interest – legal, financial or otherwise -- in whether these individuals or the county or the city is the subject of criminal or civil litigation.

Supreme Court Rule 1.1 also offers guidance to practicing attorneys regarding conflicts of interest and contains a detailed analysis of the issue. There is nothing in the rule to suggest that recusal due is required or suggested in circumstances such as those present in the current matter.

The National Prosecution Standards promulgated by the National District Attorneys Association, though not binding, are instructive. Their rule 1-3.1 reads,

> A prosecutor should not hold an interest or engage in activities, financial or otherwise, that conflict, have a significant potential to conflict, or are likely to create a reasonable appearance of conflict with the duties and responsibilities of the prosecutor's office. 1-3.1

The laws on the books with respect to a conflict of interest – like K.S.A. 19-205 – are nearly all concerned with an office holder who runs for another office and are therefore of little value in this situation.

I will concede that it would be easier for me to ask someone else to review this. But down the road, what justification would I have for not sending every difficult or unpopular decision to the AG or to some hand-picked appointee?

I was elected to handle the responsibilities of the District Attorney. I do everything I can to surround myself with people with skill, experience and above all, integrity. Making tough decisions is part of the job and not something to be farmed out.

IV. Self-Defense Immunity/ Stand Your Ground in Sedgwick County

Question: Does the Office of the District Attorney only apply the "stand your ground" self-defense immunity law to law enforcement officers and public employees?

Answer: Since being sworn into office in January of 2013, the Office of the District Attorney has declined to file charges against 33 people based on self-defense immunity. Of the 33 cases, the coroner determined that 30 were homicides; 1 was an accident; 1 was listed as undetermined; and 1 remains pending.

Of that list, the racial breakdown of the suspects was as follows:

* 11 Caucasian;
* 17 African American (16 bm and 1 bf);
* 4 were Hispanic;
* 1 was Asian.

Civilian Self-defense determinations made by the District Attorney since 2013:

1. 2013 - A white male shot and killed Robert Lea (WM). The coroner ruled the case a homicide.
2. 2014 - An African American male shot and killed Layfayette Johnson (BM). The coroner ruled the case a homicide.
3. 2014 - An African American male killed Marlon Beavers (BM) during home break in. The coroner ruled the case a homicide.
4. 2014 - An African American male shot and killed Cayli Phillips (BF) and Eddie Centeno (HF) in argument outside apartment complex. The coroner ruled both deaths were homicides.
5. 2014 - An African American male shot and killed Marcus Collins (BM) in a home invasion robbery during a card game. The coroner ruled the case a homicide.
6. 2014 - A white male homeowner shot Cody Reid (WM) during a burglary. The coroner ruled the case a homicide.
7. 2015 - A white male killed Billy Massey (WM) when Massey entered his house with a gun. The coroner ruled the case a homicide.
8. 2015 - An African American male shot and killed Dorce Pittman (BM). Pittman shot into a house and the resident returned fire. The coroner ruled the case a homicide.
9. 2016 - An African American male killed Mandrelle Washington (BM) at a fight at a party. The coroner ruled the case an accident.
10. 2016 - a white male killed William Polzin (WM). Classified as domestic violence case. The coroner ruled the manner of death was undetermined.
11. 2016 - a white male killed Brandon Kirksey (BM) in an argument in the street. (WM shooter later killed by law enforcement in an officer-involved shooting in Cowley County) The coroner ruled the case a homicide.

12. 2016 - An African American male killed Amadou Doumbia (BM). The coroner ruled the case a homicide.
13. 2018 - An African American male shot (1) Jeremy Burdine (BM) & (2) Ky Jones (BM) breaking into the shooter's house. The coroner ruled the case a homicide.
14. 2018 - An African American male shot Jeremy Riggans (BM). The coroner ruled the case a homicide.
15. 2018 - A white male killed Billy Barger (WM). The coroner ruled the case a homicide.
16. 2018 - A white male homeowner killed Christian Webb (WM) in home invasion. The coroner ruled the case a homicide.
17. 2018 -An Hispanic male shot a Hispanic male who in turn shot and killed Jess Villalobos (HM) in mutual combat. The coroner ruled the case a homicide.
18. 2018 - An African American male shot Jose Deloen (HM) on N Amidon. The coroner ruled the case a homicide.
19. 2018 -An Asian male patron shot and killed Dashawn Bradford (BM) during a robbery of a convenience store. The coroner ruled the case a homicide.
20. 2019 - An African American male shot Elberto Costello Jr. (BM) on North Woodlawn. The coroner ruled the case a homicide.
21. 2019 - A white male shot Charles Cunningham (WM) attempting to break into his house. Shooter charged in federal court with various crimes related to possession of guns and drugs. The coroner ruled the case a homicide.
22. 2019 - A white male shot Jesse Greene (BM) on S. Topeka. The coroner ruled the case a homicide.
23. 2020 - An African American female shot and killed Rahim Omar (BM) in domestic violence dispute. The coroner ruled the case a homicide.
24. 2020 - A white male killed Keion White (BM) at a motel on W Kellogg. The coroner ruled the case a homicide.
25. 2020 - An Hispanic male shot Jeremy Retania (HM) on S Sycamore. The coroner ruled the case a homicide.
26 & 27. 2020 - two African American males shot and killed Eurland Rice-Green (BM) while all were seated in a car during a gun sale. The coroner ruled the case a homicide.
28. 2020 - An Hispanic male killed Steven Murithi (BM) after he broke into the shooter's apartment. The coroner ruled the case a homicide.
29. 2021 - An African American male punched Sharrod Rollen after Rollen swung at him. A single punch. Rollen hit his head on pavement and later died. The coroner ruled the case a homicide.
30. 2021 - An Hispanic male shot Quantin McIntosh (BM) after McIntosh brandished a gun. The coroner ruled the case a homicide.
31. 2021 - An African American male shot Shay Prewitt (WM) who had a gun pointed at the shooter's uncle. The coroner ruled the case a homicide.
32. 2021 - An African American male punched Alonzo Hazelwood (BM) outside a bar. The coroner's report is pending.
33. 2021 - A white male shot Jerry Gahlen (WM) on the turnpike. The coroner ruled the case a homicide.

Homicides Dismissed by a District Court Judge

Cases involving citizens who killed someone who were then charged by the Office of the District Attorney and later had their case dismissed by the district court based on self-defense/ stand your ground.

1. State v. Rotramel (17 CR 389) - a white female who killed a white male. Judge dismissed the case at the immunity hearing. The coroner had ruled the case a homicide.

2. State v. Dukes (18CR1646) - an African American male was charged for the shooting death of Mr. Berryman (BM). Judge dismissed the case at immunity hearing. The coroner ruled the case a homicide.

3. State v. Staley (20Cr1544) - An African American male was charged by the office for stabbing another man (BM) to death when the man pushed him up against an oven. Judge dismissed at immunity hearing. The coroner ruled the case a homicide.

Officer involved fatalities

Since 2013, the following fatalities were the result of officer involved shootings and were not charged based on self-defense immunity.

1. 2013 - Jarrod Woosypiti - (WM) WPD, KHP & SO
   * *2013 - Horace Gwynn - determined to be self-inflicted*
2. 2014 - David Zehring (WM) - SO
3. 2014 - Icarus Randolph (BM) - WPD
4. 2015 - John Paul Quintero (HM) - WPD
5. 2015 - Nicholas Garner (WM) - WPD
6. 2015 – Erik Fowler (WM) - SO
   * 2016 - Caleb Douglas (WM) determined to be self-inflicted
7. 2017 - Jeffrey Holden (WM) - WPD
8. 2017 - Kevin Perry – (WM) - WPD
9. 2017 - Jose Ortiz – (HM) - WPD
10. 2017 - Andrew Finch – (WM) - WPD
11. 2019 - Geoffrey Morris (WM) -- WPD
12. 2019 - Fred Burton (WM) - WPD
13. 2019 - Robert Sabater (WM) - WPD & SO
14. 2019 - Debra Arbuckle (WF) - SO
15. 2020 - Paul Peraza (HM) - WPD