



**OFFICE OF THE DISTRICT ATTORNEY  
EIGHTEENTH JUDICIAL DISTRICT**

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March 3, 2023

Re: Roller City Skating Rink  
3200 blk of South Meridian  
12-31-2022

On January 27, 2023 I was presented with the results of the investigation conducted by Sheriff's investigators into events that occurred on the night of December 31, 2022 at Roller City Skating rink involving two off-duty officers and two juveniles--a 16 year old male and a 15 year old female.

**Scope**

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.

**Facts**

1. On December 31, 2022, at approximately 8:40 p.m., a 16 yr old juvenile male arrived at Roller City.
2. The skating rink was out of skates his size. The policy of the skating rink was that no one is allowed into the rink without skates.
3. The juvenile male's 15 year old girlfriend was already in the skating rink (she had arrived approximately two hours earlier to skate). She became agitated that her boyfriend would not be allowed into the rink, demanded her money back and made verbal threats.
4. The juvenile female was told by the owner to leave the rink as a result of her behavior.

An off-duty female officer and an off-duty male officer escorted the juvenile female from the rink area of the business.

5. The juvenile female removed her skates as instructed and walked toward the lobby area of the rink. As she approached the doors between the lobby and the rink, she stepped behind the counter toward the register where the management was located. The female officer stepped between the juvenile female and the register. The juvenile female again demanded her money and threatened the owner.

6. A female officer placed her hand on the juvenile female's shoulder in an attempt to physically remove her from the rink. The juvenile female responded by swinging her arms at the female officer. An off-duty male officer stepped in and placed the juvenile female on the ground. The female officer stepped forward to help and was kicked in the knee by the juvenile female, which caused the officer to lose her balance.

7. The officers stood the juvenile female up to her feet and led her through the doors that separate the interior of the rink and the lobby. Once in the lobby, the female officer lost her hold of the juvenile female. The juvenile female again swung an arm at the female officer. The female officer took the juvenile female to the ground. A third officer--a different male officer--stepped into the lobby to assist. This male officer got on his knees to hold the juvenile female's lower legs so the female officer could place handcuffs on the juvenile female.

8. At this point, the juvenile female's 16 year old boyfriend entered the lobby from outside the business and used a closed fist to punch the male officer in the back of the officer's head. This was described by both officers in subsequent interviews as well as interviews with 4 employees of the business, 2 juvenile patrons and an adult who was parked outside dropping off kids at the rink who witnessed the behavior through the glass entrance doors.

9. The male officer reacted to being punched in the head by getting to his feet, then attempting to take the male juvenile to the ground. Cell phone video which began to record at this point showed the male officer then attempted to strike the male juvenile twice. The first attempt missed. The second attempt made contact with the head of the male juvenile. The male juvenile responded by standing up while the male officer was still on his knees. The two continued to struggle physically with one another.

10. The male officer later described his thought process. He said he did not want to continue to fight the male. He could tell the female officer was still having trouble getting the

female juvenile under control and saw that the juvenile female appeared to be trying to get away from the female officer. The male officer was aware of the large group of juveniles in the lobby area. The male officer said he needed to end the altercation with the male juvenile without escalating the force used. Officers are trained to use the following levels of force: verbal commands, to pepper spray, to punches/ blows, to blunt force instrument (ex: baton), to stun gun, to lethal force.

11. The male officer said he pushed the male juvenile away from him to achieve distance between himself and the juvenile male so that he could utilize pepper spray and end the physical confrontation.

### **Legal Considerations**

1. *Kansas Statutes Annotated 21-5229 (formerly 21-3217)* resisting arrest, states:

A person is not authorized to use force to resist an arrest which such person knows is being made either by a law enforcement officer or by a private person summoned and directed by a law enforcement officer to make the arrest, even if the person arrested believes that the arrest is unlawful.

2. *Kansas Statutes Annotated 21-5227 (formerly 21-3215)*, Use of Force; law enforcement officer making an arrest, states:

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

3. 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.

### **Immunity**

In 2010, the Kansas Legislature enacted a series of statutes addressing 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. (2016 Supp.) 21-5220 et seq. The new statutes became effective on July 1, 2011, and are commonly known as this state’s “stand your ground law.” *State v. Younger*, No. 116, 441, *unpublished opinion*, (Feb. 16, 2018).

*Kansas Statutes Annotated* 21-5231 (2016 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.

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

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

### Analysis

The off-duty, male officer was in the process of assisting the female officer with the arrest and removal of a 15 year old female patron from the Roller City skating rink. The contact with the female and their efforts to effect an arrest were within their authority as off-duty officers working a part time security position.

The 16 year old male boyfriend to the juvenile female then entered the business and began to punch the male officer in the side of the head in violation of K.S.A. 21-5229 which prohibits individuals from using force to resist an arrest -- "even if the person arrested believes that the arrest is unlawful."

The officer responded with force, attempting first to punch the juvenile male (and missing), then striking him once before pushing him away in order to utilize what the officer was trained as lesser force, pepper spray.

### Conclusion

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

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 ultimate act of force may not be properly addressed in a criminal investigation.

The sole question addressed by the District Attorney is whether sufficient evidence exists to establish beyond a reasonable doubt that the male officer committed a misdemeanor battery in this instance.

The facts support a finding that the male officer was acting in self-defense when he reacted to being punched by the juvenile male. Had the officer punched the young man without provocation simply to effect an arrest, the stand your ground law and self-defense immunity

might not benefit the officer. But 9 separate witnesses each confirmed that the altercation began when the juvenile male ran into the lobby and began punching the male officer in the head. Under these facts, the state cannot establish that the officer was *not* acting reasonably.

Under these circumstances, the male officer is immune from prosecution under Kansas law. Under Kansas law and the facts of the case, I conclude that no criminal charges will be filed against the officer.

Marc Bennett  
District Attorney