



**For Immediate Release  
April 25, 2023**

District Attorney Marc Bennett has completed the review of the use of deadly force that resulted in the death of Tyler G. Hodge. The incident occurred on June 19, 2021 in the 500 block of West Carlyle in Wichita, Sedgwick County, Kansas.

**SCOPE OF REPORT**

This report details the findings and conclusions limited specifically to criminal liability of the officer employed by the Wichita Police Department who shot Mr. Hodge on June 19, 2021.

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, provide any assessment of policy considerations, or address questions of possible civil actions where a lesser burden of proof would apply.

Questions as to whether the use of force in any particular case could have been avoided or de-escalated if the law enforcement officer(s) or citizen(s) had behaved differently in the moments leading up to the fatal use-of- force may not be properly addressed in a criminal investigation.

The sole question addressed by the District Attorney is whether sufficient evidence exists to establish beyond a reasonable doubt that a violation of the criminal laws of the State of Kansas occurred in this instance.

## SUMMARY

On June 19, 2021, at approximately 10:18 p.m. two uniformed Wichita Police officers, a male Officer #1 and a female officer were dispatched to a residence in the 500 block of W. Carlyle on a "check the welfare" call. The officers arrived at 10:31 p.m. and made contact with a female at the residence who was crying and reported she had been in an argument with her boyfriend. The female believed her boyfriend -- later identified as Tyler Hodge -- had left the residence, though she clarified she had not seen him leave. The officers received permission to enter the residence to make sure Hodge was no longer in the home.

The two officers entered the residence and checked the rooms. The female clarified that Hodge had physically battered her during their argument. One of the officers saw an empty gun case, suggesting Mr. Hodge may have access to a firearm. The female was asked if Mr. Hodge could be armed and she advised that he always carries a handgun on his person, so she assumed that he was armed.

After clearing the residence, the officers checked the attached garage and found a door standing open that led to the backyard. At approximately 10:36 p.m. the officers entered the backyard and saw a storage shed with its door partially open. One of the officers opened the shed door and illuminated the interior with a flashlight. The officers observed a bearded man in a yellow shirt, later identified as Mr. Hodge, sitting inside. Mr. Hodge was holding a black semi-automatic rifle between his legs, with the butt of the rifle on the floor and the barrel pointing up. Mr. Hodge had both hands on the barrel of the gun. He ignored verbal commands to put the gun down and, instead, stood and raised the rifle. The two officers retreated from the shed. Hodge fired two shots from inside the shed. This interaction was captured on the officers' body cameras. The two officers did not return fire.

A neighbor heard the noise outside and looked out her back door where she observed her neighbor standing by a storage shed firing what she described as a "long black rifle" toward the street.

At 10:36:37 p.m., the two officers took cover at the front of the residence of the original

call and the female officer radioed that shots had been fired. The dispatcher put out an "officer in trouble" call. Numerous Wichita Police officers, Sedgwick County Sheriff deputies and Kansas Highway Patrol troopers responded to the area.

One of the first responding officers left his patrol vehicle and began to move on foot Eastward down Carlyle Street. Moments later, Mr. Hodge fired several times at this male officer from an unknown location. The wounded officer's body camera recorded what happened next. As Mr. Hodge fired at the male officer, the officer responded verbally, "shots fired," then returned fire with his department-issued 9 mm handgun six times. The male officer was stuck in both legs and in his face and fell, unresponsive in the middle of the street. At 10:41:43 p.m., officers radioed in, "officer down." Several officers established a perimeter behind cover, but the officers still did not know Mr. Hodge's location. Mr. Hodge continued to fire toward the street from various unknown locations.

A uniformed Wichita Police sergeant, responding to the "officer in trouble" call and the report that an officer was down, drove to Carlyle Street from the East and observed the wounded officer lying in the street. The police sergeant exited his marked patrol vehicle and ran West to the downed officer's location. Gunshots were still being fired from Mr. Hodge. The sergeant saw that the downed officer was alive. The sergeant dragged the downed officer by the back of the officer's outer carrier vest to a safer location behind a vehicle for cover.

A second officer went to assist the sergeant. While the sergeant and that officer then dragged the wounded officer to a parked Wichita Police SUV, another officer fired four shots toward the last known direction of the suspect (Mr. Hodge), using a department-issued rifle. This was done to provide "covering fire" while the wounded officer was being removed to safety.

At 10:46 p.m., the wounded officer was lifted into the back seat of the police SUV and the sergeant, along with a Sedgwick County Sheriff's deputy, drove the wounded officer to Via Christi St. Francis Medical Center. The Sheriff's deputy rendered aid by placing tourniquets on both legs of the wounded officer to control the bleeding. The officer

survived his wounds.

As officers maintained their positions behind cover, Mr. Hodge continued to fire his weapon. Officers observed a flashlight from the area from which the shots were being fired. Officer #3 was armed with a department-issued rifle and had taken cover with other officers behind a marked Wichita Police vehicle near the intersection of Carlyle and Gold. Officer #3 observed what appeared to be the suspect's flashlight being thrown. In response, Officer #3 illuminated the area on Carlyle Street with his own light and observed a male in a yellow shirt (Mr. Hodge) holding a black rifle. Officer #3, as well as another officer who was behind cover with him, observed Mr. Hodge facing the officers with the rifle pointed at them. At 10:59:41 p.m., Officer #3 fired one round from his rifle striking Mr. Hodge, which caused Hodge to fall.

Officers and deputies moved to where Mr. Hodge was lying. The law enforcement officers found him lying on his back with a black semi-automatic rifle lying across his chest. Officers moved him to the street, away from the residence and rendered aid by attempting to stop the bleeding from his injury and performing CPR. At 11:12 p.m., Mr. Hodge was pronounced deceased by EMS at that location. Officers and civilians were transported to the Investigations Division for interviews.

## INVESTIGATION

The Wichita Police Department officer who fired the fatal shot was removed from the area and his firearm was secured. Law enforcement officers at the scene gave voluntary statements to investigators with the Wichita Police Department and the Kansas Bureau of Investigations. The statements of three police officers at or near the scene of the shooting are included herein.

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

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

## CIVILIAN WITNESS STATEMENTS

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

**Witness 1:** was interviewed on June 19, 2021 by a detective with the Wichita Police Department.

Witness 1 resided in the 500 block of W. Carlyle with her domestic partner, Mr. Hodge and her juvenile daughter. She and Mr. Hodge had been in an on-and-off relationship for approximately five years.

Witness 1 had spent the day with Mr. Hodge. Around 8:00 or 9:00 p.m., she and Mr. Hodge began to argue. She said Mr. Hodge left the residence to go to a store. While he was gone, her daughter told her that Mr. Hodge had hit her (the daughter) the night before. Witness 1 became upset and confronted Mr. Hodge when he returned home. She said that Hodge began screaming at her and made the statement "She was mouthing off, and I popped her a good one." Witness 1 told him it was over between them and told him to leave. Mr. Hodge refused and told her that she would have to call the police.

Witness 1 said she and Mr. Hodge had separate bedrooms at the residence so she went into her room. Witness 1 stated that when she came out of her room, she bumped into Mr. Hodge. He put his hand on her throat and arm and shoved her into her bedroom. She said her daughter began texting her (Witness 1's) grandmother for help.

Witness 1 continued to demand that Mr. Hodge leave the house. She then heard what she described as the sound of a gun being "loaded or unloaded" in his room. Witness 1 told the detective that Mr. Hodge owned a handgun and what she described as an "AR" type of rifle. She said that while he was manipulating the gun, she could hear him making suicidal statements and saying that this was all her fault. Witness 1 said that after hearing the sound of the gun being "loaded or unloaded," she heard the back door open and shut as if Mr. Hodge had left the residence.

Witness 1 said that her grandmother arrived and a few minutes later, a male and female police officer arrived at the residence. Witness 1 said the officers checked the interior of the residence, then went to the backyard. Witness 1 said that a few minutes later, she heard “pop, pop” that she believed was gunfire. She specifically described hearing, "Pop, Pop," followed by "a couple more and a couple more after that.”

Witness 1 said the police then came and told her, her daughter and the grandmother to leave the residence. Witness 1 reported that she then checked her phone and saw that she had received a text message from Mr. Hodge, who was using her daughter’s phone.

Witness 1 allowed the detective conducting the interview to photograph the text message, which read:

“I tried to build my life back up I got a job I got a license I tried. I needed somebody to help me up. Not do everything they could to invalidate me. I should have tried harder. Please tell my family I wasn’t all bad. I love you.”

Witness 1 told the detective that he had made suicidal statements in the past, including references to “suicide by cop.” She said he had previously told her “[t]o call the cops, and they will shoot him. They will pull the trigger, not me.” Witness 1 said that Mr. Hodge suffered from depression, for which he received treatment.

**Witness 2** was interviewed by a WPD detective. Witness 2 stated that she lives in the 500 block of Carlyle near the home in which Mr. Hodge resided with Witness 1.

Witness 2 knew that Witness #1 had lived in the residence for approximately five years. She had never spoken to Witness #1, but had met the male resident (Mr. Hodge) and had casual conversations.

Witness 2 said that on the night of June 19, 2021, she and her son were in her residence when she heard a noise. At first she did not realize it was a gunshot. After hearing the noise, Witness 2 told her son to go look out the back door. Witness 2 said that her son told her that there was a man with a gun outside and that “cops” were out there.

Witness 2 then went to back of the house and slightly opened her sliding door. She looked and saw her neighbor (Mr. Hodge) holding a gun. Witness 2 saw the man she recognized

as her neighbor (Mr. Hodge) shooting the gun towards the street. Witness 2 then called 911. When she saw her neighbor holding the gun, he was standing in front of a shed in his yard. Her neighbor was armed with what she described as a “long rifle, black gun.” She demonstrated for the detective that her neighbor was holding the gun to his shoulder, pointing the rifle toward the street and firing the rifle.

Witness 2 said she then looked out her front window and saw a police officer lying in the street. She saw another officer run up to the officer on the ground and drag that officer to another driveway. Witness 2 said that she returned to her back door and saw her neighbor standing next to the shed on the side of the shed. Witness 2 stated that she called 911 a second time to relay information as to where the shooter had moved to. That was the last thing she witnessed.

Witness 2 said that throughout this event she heard numerous shots fired. She stated that she did not hear her neighbor (Mr. Hodge) say anything during this incident. Witness 2 knew the incident was over when she looked out and saw police officers standing in the street and no longer behind cover.

## LAW ENFORCEMENT OFFICER STATEMENTS

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

**Officer 1:** On June 19, 2021, Officer 1 was interviewed by a detective with the Wichita Police Department. He was employed as a commissioned police officer with the Wichita Police Department assigned to Patrol South. He was wearing his blue issued Wichita Police Department uniform.

Approximately 10:18 p.m., Officer 1 and a female officer were dispatched to a check the welfare call in the 500 block of W. Carlyle. The dispatcher initially gave one address and later clarified that was not correct. Officer 1 checked the name on the call through the Wichita Police Niche database system and found the correct address.

Dispatch explained that the calling party had made the call on behalf of her daughter (Witness 1) and granddaughter who were in the home with the suspect (Mr. Hodge). Dispatch relayed that the calling party was receiving text messages from the granddaughter regarding the situation in the home.

At approximately 10:31 p.m., Officer 1 made contact with a female at the residence while the female officer he responded with was checking license tag numbers in the driveway.

When he made contact with the adult female resident, she was crying and said that she had gotten into an argument with her boyfriend who had left the residence. Officer 1 asked if she physically saw him leave the residence, and she said that she had not because she was in a back room. Officer 1 stated that he asked the female if they (he and the female officer) could come into the residence to see if the female's boyfriend was still in the house. The female allowed the officers to do so. He and the female officer checked the residence.

Officer 1 indicated that he saw a rifle in the corner of a bedroom, and he asked the female if her boyfriend was armed with any guns. The female told the officer that her boyfriend probably had a pistol on his person. Officer 1 saw a door that led from the kitchen into the attached garage of the residence. Both officers then entered the garage and found no one. Officer 1 said that a door that led from the garage to the backyard was open, and he and the female officer then went into the backyard.

After entering the backyard, officer 1 observed a storage shed in the yard with a door that was partially open. Officer 1 opened the shed door, illuminating the interior with his flashlight. Officer 1 observed a white male with a beard (later identified as Mr. Hodge), wearing a yellow shirt sitting in the shed armed with a rifle. Officer 1 said the male was seated facing him with the rifle between his legs with the barrel pointed up. The male had both hands gripping the barrel of the rifle.

Officer 1 placed his hand on his department-issued handgun but did not remove it from the holster. Officer 1 told the male: "drop the gun" and the male replied "No." Officer 1



said the male immediately stood up and fired 2 rounds from the rifle. Officer 1 dropped his flashlight, and he and the female officer retreated to the front of the residence and took cover outside. They then called in shots fired on the police radio. Officer 1 took cover behind a grey SUV in the driveway, while the female officer took cover behind a tree. Officer 1 saw the male by the garage, and he told him to drop the gun. The male then turned and moved out of Officer 1's sight.

While Officer 1 was behind cover, another officer came up and asked where the subject was. Officer 1 responded that he did not know. The officer who contacted Officer 1 made his way down the street. Officer 1 heard a "volley" of gunfire that he described as five or six shots and saw the officer, who had just contacted him, fall to the ground. Officer 1 stated that he radioed in "officer down" and gave the location. Officer 1 described that another police officer came up and dragged the wounded officer away. Officer 1 stated that he moved across the street behind a car then later a tree for better cover. Officer 1 stated that he kept hearing shots being fired before finally hearing that the subject was down. Officer 1, along with other officers, moved up on the subject. He observed other officers move the subject to the intersection of Carlyle and Gold. He stated another officer ran up with a medical kit and attempted to render aid to the subject. Officer 1 stated that he was then brought to the Wichita Police Investigations Division to be interviewed.

The body camera video worn by Officer 1 depicted the white male with a beard wearing a yellow shirt in the storage shed as described by Officer 1 in his interview. His body camera video showed the male sitting in the shed holding a rifle as described in the interview. Officer 1 can be heard in the video saying: "put the gun down, put the gun down." The video then depicts the male in the yellow shirt standing up in the shed raising the rifle, at the same time Officer 1 was backing away. Two shots are then heard in the video as officer 1 described in his interview.

**Officer 2:** On June 19, 2021, Officer 2 was interviewed by detectives with the Wichita Police Department. He had been employed as a commissioned police officer for the Wichita Police Department since 2016 and was assigned to Patrol South. That night, Officer 2 was wearing his blue Wichita Police issued uniform with an outer carrier vest equipped with Police markings and his duty belt. He was driving a marked Wichita Police Ford Escape.

Officer 2 was in the Patrol South squad room with two other officers when he heard over the police radio a female officer screaming “shots fired” and that a person had a shotgun. Officer 2 stated that he, and the other two officers (Officer 3 as well as the officer who was later shot during the incident) got into Officer 2’s police vehicle and proceeded to the scene. Officer 2 drove utilizing the emergency lights and siren of the vehicle.

Officer 2 parked at the intersection of Gold and Carlyle streets and retrieved the ballistic shield, commonly referred to as a “Bunker,” while Officer 3 retrieved the patrol rifle from the police vehicle. After retrieving the bunker from the car, Officer 2 could no longer see the officer who was subsequently wounded. Officer 2 then heard several gunshots being fired, after which he and Officer 3 took cover behind the engine block of the police vehicle they had arrived in. He then saw the female Wichita Police Officer, who had originally called out “shots fired” over the radio, behind a tree. He yelled for the female officer to move back to where he and Officer 3 were located for better cover.

At that time, Officer 2 did not know the location of the suspect. Officer 2 observed what he believed was a police flashlight being tossed into a yard. He heard several more gunshots and then heard that an officer was down over the police radio. He looked over the hood of his police vehicle saw an unknown officer dragging an officer who was lying in the street. Officer 2 recognized the officer that was being dragged as the officer who had ridden with him and Officer 3 to the scene. Officer 2 stated that he continued to hear more gunshots from what he described as a “high caliber rifle” and that the shots “sounded close.”

Officer 2 received an update from a sergeant on the scene that the suspect was behind a fence next to a silver Jeep Patriot. Officer 2 saw a silver Jeep Patriot in a driveway. During the interview, Officer 2 was able to show the location of that vehicle, along with his location, on an aerial photograph of the area.

Officer 2 heard more shots, and then saw a male in a yellow shirt come out from behind a fence with a rifle in his hands. Officer 2 saw that this male suspect had the rifle pointed toward him and Officer 3. Officer 2 demonstrated to the detectives how the male was

holding the rifle at waist level with both hands pointed in their direction. He then heard a shot and felt what he described as "air." Officer 2 ducked down and thought for a moment that he may have been shot. When he rose back up after the shot was fired, he saw the male in the yellow shirt fall to the ground. Officer 2 realized, at that moment, that the shot he heard and felt had come from the rifle of Officer 3 and that Officer 3 had shot the male suspect (Mr. Hodge).

Officer 2 stated that he took the bunker and proceeded toward the male in the yellow shirt on the ground with Officer 3 behind him with the rifle. As other officers took the suspect into custody, he gave Officer 3 the bunker and took the rifle from him. Officer 2 then assisted other officers in getting people out of a house. Officer 2 indicated that he was then placed into a patrol car, the rifle was secured without being unloaded or tampered with, and he was transported to the Wichita Police Investigations Division to be interviewed.

**Officer 3:** On June 19, 2021, Officer 3 was interviewed by a detective with the Wichita Police Department and an Agent with the Kansas Bureau of Investigations. He had been employed as a commissioned police officer for the Wichita Police Department five years. He was assigned as a patrol officer to Patrol South. Officer 3 was wearing his blue Wichita Police issued uniform, an outer carrier vest with a Wichita Police badge on the front, and his duty belt. He had arrived in a marked Wichita Police Ford Explorer with a light bar and "Police" written on both sides of the vehicle.

Officer 3 was in the squad room at the Patrol South station when he heard what he called a "scream" from a female officer come over the police radio about "shots fired" and something about a shotgun. Officer 3 described the scream as a "scared for your life scream." Officer 3 said he, Officer 2, and a third officer (the 3rd officer is the officer who was shot during this incident) all got into a single police vehicle, described above, and proceeded to the female officer's location.

The officers arrived at Carlyle Street and made contact with Officer #1 and the female officer who had made the initial call. Officer 3, who was certified to use a patrol rifle, retrieved the rifle from the back of the marked police vehicle and took cover with Officer 2

behind the police vehicle. The female officer who made the initial "shots fired" call told him at that point that she had misspoken over the radio traffic when she said the suspect was armed with a shotgun. She clarified that the male was actually armed with a rifle.

Officer 3 heard 2 to 3 gunshots and saw a police officer with a light fall to the ground. Officer 3 did not know who the injured officer was at that time. Officer 3 radioed that an officer was down. Officer 3 could not see the shooter when the officer was shot. He went on to say that while behind the cover of the police vehicle he could hear shots being fired. He heard a police sergeant say that officers were taking fire. He said the shots stopped for a moment then began again. Officer 3 stated that he still did not know where the shooter was.

Officer 3 said that while behind the police vehicle, he saw a flashlight being thrown. He reacted by lighting up the area with his own flashlight. As he did so, he saw the suspect, whom he described as a white male, holding a black rifle. When he illuminated the suspect, he saw the man was facing directly at him with the rifle in his hands pointing in what Officer 3 described as a "ready" position. He demonstrated to the detective that the man did not have the rifle completely up to his shoulder but held it just below his shoulder.

Officer 3 stated that when he saw the male with the rifle, he fired one shot from his patrol rifle. When he fired, he heard "bang, bang" -- which investigators believed may have been an echo effect created by the houses. Thinking the suspect had fired as well, Officer 3 immediately ducked back behind cover. When he raised again seconds later, he saw the suspect fall. Officer 3 stated that he fired one shot during this incident. Officer 3 shouted out "suspect down, suspect down."

Officer 3 then got behind Officer 2, who had the ballistic shield, and he and other officers moved up to where the male was lying. Other officers took the man into custody while Officer 3 provided cover in the event there was a second shooter. He then went with other officers to help clear a residence. He stated there were several other officers there at that point so he stepped back and allowed them to clear the residence. He indicated that he

transferred possession of the rifle to Officer 2. Officer 3 did not clear or unload the rifle but put the rifle on safety. He was then brought to the Investigations Division to be interviewed.

In the interview, detectives asked Officer 3 what was going through his mind when he arrived at the location. He said that when the female officer told him the suspect was armed with a rifle, he was "scared" for his life and "everyone else" because they didn't know where the suspect was located. He saw the male officer who was shot and described the "terrified" feeling. When he fired at the male suspect, he reported thinking, "He's going to start shooting this way, no doubt because I just put my flashlight on, and he now knows where I'm at." Officer 3 stated that he thought the suspect was going to "immediately" shoot at him. He stated he was afraid for his own life when he fired his rifle at the male.

Officer 3 stated that he was wearing a body camera which he had turned on; however, he later realized it fell from his head and was dangling from his uniform, though he was unsure when. As a result, Officer 3's body camera video did not capture images of the moment when he saw Mr. Hodge and fired his rifle.

## CRIME SCENE INVESTIGATION

Wichita Police Department Crime Scene Investigators processed the scene of the shooting. Investigators located the following:

Firearms:

- 1 - Core AR-15 5.56 rifle in the possession of Mr. Hodge;
- 1- Beretta PX4 Storm 9 mm handgun left in the shed - possessed by Mr. Hodge.
  
- 1 - Colt M4 Carbine 5.56 black police rifle - fired by Officer 3.
- 1 - Colt M4 Carbine 5.56 black police rifle - fired by another WPD Officer to provide cover while officers removed the wounded officer from the street.
- 1 - Glock 17 Gen. 4 9 mm handgun - fired by the wounded officer.

Cartridge casings:

12 - (fired) .223 cartridge casings were collected that were fired by the rifle utilized by Mr. Hodge. 2 of these 12 casings were collected inside the shed.

11 - (fired) cartridge casings were collected from firearms fired by WPD officers. 6 were 9 mm casings fired by the wounded officer in response to being fired upon by Mr. Hodge (as recorded by the officer's axon); 4 were .223 casings fired by another WPD officer to provide "covering fire" for the officers who removed the wounded officer from the scene. 1 was the .223 casing from the fatal shot fired by Officer 3.



Still photo captured from Officer #1's axon camera showing Mr. Hodge inside the shed.



Still images captures from body camera of Mr. Hodge standing with rifle.





CSI photo of inside of the shed. .223 magazine on floor and spent shell casings indicated by yellow cones #19 and #18. A 9 mm pistol is near cone #20.

## FORENSIC EVIDENCE & AUTOPSY RESULTS

An autopsy was performed on the body of Tyler Hodge on June 21, 2021 at the Sedgwick County Regional Forensic Science Center. The final autopsy report dated August 26, 2021, determined that Mr. Hodge died as a result of a single gunshot wound to the "trunk."

The toxicology report detected no alcohol or drugs in Mr. Hodge's system.

## KANSAS LAW

In Kansas all persons, including law enforcement officers, are entitled to defend themselves and others against the use of unlawful force. K.S.A. 21-5220 states:

- (a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such force is necessary to defend such person or a third person against such other's imminent use of unlawful force.
- (b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes deadly force is necessary to prevent imminent death or great bodily harm to such person or a third person.
- (c) Nothing in this section shall require a person to retreat if such person is using force to protect such person or a third person.

The term "use of force" includes words or actions directed at or upon another person or thing that reasonably convey the threat of force, the presentation or display of the means of force or the application of physical force, including by a weapon. "Use of deadly force" means the application of any physical force which is likely to cause death or great bodily harm to a person.

The Kansas Supreme Court has made clear that the analysis of a self-defense claim presents a "two prong test":

"The first is subjective and requires a showing that McCullough sincerely and honestly believed it was necessary to kill to defend herself or others. The second prong is an objective standard and requires a showing that a reasonable person in [the same] circumstances would have perceived

the use of deadly force in self-defense as necessary.” *State v. McCullough*, 293 Kan. 970 (2012).

With respect to a law enforcement officer’s use of force, in *Graham v. Connor*, 490 U.S. 386, 396 (1989), the United States Supreme Court clarified that any assessment of objective reasonableness must take into account the contextual realities faced by the officer:

“The ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”

“The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.”

#### A. **Immunity**

In 2010, the Kansas Legislature enacted a series of statutes addressing the use of force, including the use of deadly force, in the defense of a person or property, including a person’s dwelling. See K.S.A. (2018 Supp.) 21-5220 et seq. The new statutes became effective on July 1, 2011, and are commonly known as this state’s “stand your ground law.” *State v. Barlow*, 303 Kan. 804 (2016); *State v. Younger*, unpublished opinion, No. 116, 441 (Feb. 16, 2018).

K.S.A. 21-5231 (2018 Supp.) **Immunity from Prosecution**, reads,

- (a) A person who uses force which is subject to the provisions of K.S.A. 21-5226, and amendments thereto, is justified pursuant to K.S.A. 21-5222, 21-5223 or 21-5225, and amendments thereto, is immune from criminal prosecution and civil action for the use of such force, unless the person against whom force was used is a law enforcement officer who was acting in the performance of such officer's official duties and the officer identified the officer's self in accordance with any applicable law or the person using force knew or reasonably should have known that the person was a law enforcement officer.

K.S.A. (2018 Supp.) 21-5222, **Defense of A Person, . . . no duty to Retreat**, reads,

- (a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such force is necessary to defend such person or a third person against such other’s

imminent use of unlawful force.

- (b) A person is justified in the use of deadly force under circumstances described in subsection (a) if such person reasonably believes that such use of force is necessary to prevent imminent death or great bodily harm to such person or a third person.

K.S.A. (2016~~8~~ Supp.) 21-5224, **Use of Force; presumptions**, reads,

(a) . . . a person is presumed to have a reasonable belief that deadly force is necessary to prevent imminent death or great bodily harm to such person or another person if:

- (1) The person against whom the force is used, at the time the force is used:
  - (A) Is unlawfully or forcefully entering or has unlawfully entered and is present within, the dwelling, place or work or occupied vehicle of the person using the force; or
  - (B) has removed or is attempting to remove another person against such person's will from the dwelling, place of work or occupied vehicle of the person using the force; and
- (2) The person using the force knows or has reason to believe that any of the conditions set forth in paragraph (1) is occurring or has occurred.

No such presumption of reasonableness exists if the person utilizing force does so against a law enforcement officer per K.S.A. 21-5224(b)(4):

- (b) The presumption set forth in subsection (a) does not apply if, at the time the force is used:

. . . (4) the person against whom the force is used is a law enforcement officer who has entered or is attempting to enter a dwelling, place of work or occupied vehicle in the lawful performance of such officer's lawful duties, and the person using force knows or reasonably should know that the person who has entered or is attempting to enter is a law enforcement officer.

K.S.A. 21-5230, addresses the **duty to retreat**,

“A person who is not engaged in an unlawful activity and who is attacked in a place where such person has a right to be has *no duty to retreat* and has the right to stand such person's ground and use any force which such person would be justified in using under article 32 of chapter 21 of the *Kansas Statutes Annotated*, . . . K.S.A. 2018 Supp. 21-5202 through 21-5208, 21-5210 through 21-5212, and 21-5220 through 21-5231, and amendments thereto.”

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

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

In *State v. Dukes*, 59 Kan.App.3d 367 (2021), the Kansas Court of Appeals ruled that the district court had appropriately found Mr. Dukes was immune from prosecution under K.S.A. 21-5222. Mr. 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 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.

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.

### **B. Use of Force During Arrest**

K.S.A. 21-5227, Use of Force; law enforcement officer making an arrest, States:

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

## **CONCLUSION**

On June 19, 2021, an officer employed by the Wichita Police Department utilized deadly force resulting in the death of Tyler Hodge.

Under K.S.A. 21-5222(b), a person may employ deadly force when the person reasonably believes that deadly force is necessary to prevent imminent risk of great bodily harm to himself or another.

Since 2011, under the Kansas "stand your ground" law, one who acts in defense of himself or to protect a third party is immune from prosecution. See K.S.A. 21-5231. Meaning, a person may not be charged or prosecuted unless the state can establish that the person who utilized deadly force was *not* acting reasonably under the circumstances. In *Graham v.*

*Connor*, the United States Supreme Court made clear that assessment as to the reasonableness of an officer's decision to utilize deadly force must be made within the context in which the officer found himself – not from the perspective of “20/20 hindsight.”

The investigation established that Mr. Hodge fired two shots at officers who, responding to a check welfare call, made contact with Mr. Hodge in a shed in his backyard. The officers retreated to safety at which point Mr. Hodge began to fire his weapon toward the street in their direction. As other officers arrived, Mr. Hodge continued to fire his rifle in the direction of responding officers, ultimately striking and gravely injuring one officer three times. As other officers moved in to remove the fallen officer from the street where he had lain for approximately five minutes, other officers remained behind patrol cars and other objects (houses, trees) for cover. Thirteen minutes after the wounded officer was removed, Officer 3 saw Mr. Hodge expose himself from behind cover while still armed with the rifle. Mr. Hodge raised the weapon toward officers. Officer 3 fired a single shot, which struck and killed Mr. Hodge.

Under the totality of the circumstances, Officer 3 is clearly 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 Officer 3.

A handwritten signature in black ink, appearing to read "Marc Bennett". The signature is fluid and cursive, with a long horizontal stroke at the end.

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