



**For Immediate Release**  
**January 25<sup>th</sup> 2019**

District Attorney Marc Bennett has completed the review of the use of deadly force that resulted in the death of Kevin Perry. The incident occurred on March 18, 2017, at 2320 E. MacArthur, Lot A68, in Wichita, Sedgwick County, Kansas.

**SCOPE OF REPORT**

This report details the findings and conclusions limited specifically to criminal liability of the WPD officer who fatally shot Mr. Perry at 2320 E. MacArthur, Lot A68.

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 WPD, 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 officer(s) or citizen(s) had behaved differently in the moments leading up to the fatal use of force are not 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.

## FACTUAL SUMMARY

On Saturday, March 18, 2017 at approximately 7:51 p.m., 911 received a call from 2320 E. Macarthur, the Lamplighter Mobile Home Park, in reference to a domestic disturbance. The calling party reported that a male suspect had placed a gun to the head of a female victim. A subsequent dispatch updated officers that the suspect later turned the firearm on himself and was possibly suicidal.

The first Wichita Police Department (WPD) officers arrived at 2320 E. MacArthur at approximately 8:01 p.m. The officers spoke to the female victim and confirmed that the suspect, whom she identified as Mr. Perry, had ongoing mental health issues, had retained possession of a handgun and had threatened both her life and his own with the weapon. She told officers Mr. Perry had remained at his mobile home trailer at lot A68.

WPD officers set up a perimeter around lot A68. Officers (one of whom was a K-9 handler, with his K-9 unit, "Rooster") had taken cover at the southwest corner of the mobile home located directly north of Mr. Perry's trailer. Additional officers were across the street to the west.

Before officers contacted Mr. Perry, he exited the north (front) door of his trailer home at 8:28:25 p.m. Officers immediately verbally commanded Mr. Perry to raise his hands. In response, Mr. Perry initially complied. Mr. Perry was wearing jeans and a shirt under a sweat jacket.

Mr. Perry then lowered his hands, turned and began walking back to the door of the trailer, ignoring officer's commands. Officers heard Mr. Perry verbalize his refusal to comply. Officer 1 released his WPD K-9, "Rooster," to attempt contact with Mr. Perry in order to prevent Mr. Perry from re-entering the trailer. Rooster latched onto Mr. Perry's leg, causing Mr. Perry to sit on the porch steps.

At this point, Officer 3, standing across the street, saw Mr. Perry withdraw a

handgun from his waistband. The officer yelled, “gun.” Mr. Perry is seen on the Axon video of Officer 3, turning toward Rooster with the handgun. Mr. Perry fired his weapon. Officer 2 and Officer 3 returned fire. Rooster was struck in the shoulder by Mr. Perry’s weapon, and retreated to the position of his handler, where he died. Mr. Perry was struck twice in the chest by the officers’ fire.

After the shots were fired, Mr. Perry moved out of view of the officers. They were initially unsure whether he had entered the trailer or whether he had taken cover behind a short metal windbreak at the west side of the porch. Officers obtained a ballistics shield (“bunker”) and approached the porch. Mr. Perry was located in the doorway leading into the trailer, unconscious. A 9 mm Ruger handgun was found immediately adjacent to Mr. Perry. A 9 mm cartridge casing was found near the porch.

During a subsequent necropsy, a bullet “jacket” was recovered from the body of K-9 Rooster. Ballistics analysis later found that the bullet collected from the body of Rooster was consistent with the Ruger handgun collected from near Mr. Perry.

Mr. Perry was taken to the hospital by EMS. Mr. Perry was pronounced deceased at 9:18 p.m.

## INVESTIGATION

The officers involved in the incident were removed from the area and their weapons secured. Crime Scene Investigators from the WPD processed the scene. Evidence was submitted to the Sedgwick County Forensic Science Center for examination.

The officers directly involved in the incident, including Officer 2 and Officer 3 who fired their weapons, gave voluntary, recorded statements to investigators.

## CIVILIAN WITNESS STATEMENTS

Investigators interviewed several witnesses on scene and later at police headquarters.

**Witness 1:** Witness 1 submitted to a recorded interview in the hours after the shooting. She identified herself as having previously been in a dating relationship with Mr. Perry for 3-4 months and having lived for some of that time with Mr. Perry in the trailer home in the Lamplighter Trailer Park.

Witness 1 said she had gone to check on Mr. Perry that evening because he is schizophrenic and often hallucinates, seeing things that are not there. She added that she was also interested in asking about an amount of money that Mr. Perry owed to her.

Shortly after she arrived at the trailer, she and Mr. Perry began to argue. He accused her of having the ability to “activate” a “tapeworm” inside of him that would lead to his death. Witness 1 stated that she and Mr. Perry also argued about the money. She said, approximately five minutes after her arrival, Mr. Perry hit her in the back of the neck. She responded by striking him back.

She said that Mr. Perry directed her to get his black Ruger handgun. During this interaction, she said he appeared to be speaking to someone who was not present. Mr. Perry told her he wanted the gun because he intended to shoot her in the leg. Witness 1 said she was afraid he would shoot her, so she looked for the gun, unsuccessfully, with the goal of removing the weapon from the residence.

After approximately 15 minutes, Witness 1 left the trailer and walked to another trailer located in the same area where she contacted a friend, Witness 6. She told Witness 6 what happened and he suggested she go back and apologize to Mr. Perry for demanding money. She agreed and walked back to Mr. Perry’s residence and found him outside on the porch. She said Mr. Perry was pointing a handgun at his own head. She said she told him, “*please don’t.*” He responded by saying “*You’re not ‘gonna fuck-up my life,*” and pointed the gun at her. She said she was approximately “1 ½ car lengths” away from Mr. Perry at the time.

She said that Mr. Perry told her to walk to the porch next door and put her ear to the door to listen. He then ordered her back at gunpoint. Witness #1 said Mr. Perry had the gun to his head and said he was going to make her watch as he shot himself. Throughout the confrontation, she said he intermittently pointed the weapon at himself or her. At one point he turned his back on her and she was able run back to Witness #6's trailer. She had contact with a different neighbor who told her the police had been called.

When police arrived, she told them what happened and was placed into a police vehicle. From there she could hear the officers talking to Mr. Perry, but could not hear what was specifically being said. She later heard 4–5 gunshots fired in rapid succession followed by officers saying "*shots fired.*" She did not know if the shots were from more than one gun. She could not see any of the shooting.

**Witness 2:** Witness 2 was interviewed by an officer at the scene and later by a detective. Witness 2 said she was in her residence in the Lamplighter Trailer Park when a neighbor came to her door and said, "*Hey, call the cops. This guy's got a gun pointed at a girl, and I don't have a phone.*"

Witness 2 called 911 and while on the phone, stepped outside of her door. She described a female running towards her and entering into her (Witness 2's) yard. She said the female (witness 1) was hysterical and screaming: "*He's trying to kill me. He's got a gun. Don't go over there, he'll shoot you. He's going to kill himself.*"

Witness 2 said a second female came into her yard and offered that a man was going to kill himself. Witness 2 said that she did not know either woman. She said the second woman took Witness 1 to the side of the trailer for protection.

Witness 2 said that while she was outside, she could hear a man yelling. The yelling was coming from the south, the direction from which Witness 1 had run. It sounded like a man who was either under the influence of something or had something wrong with him because he was slurring his words. She thought she could see the male at one point

stumbling and swinging a large object that she thought might have been a shotgun.

Witness 2 went back into her residence and later looked outside to see Witness 1 sitting on the curb. Witness 2 said the police arrived and took Witness 1 out of view.

Witness 2 said the next time she looked, she saw several police officers in uniform in what she described as a “triangle” with guns in their hands. She saw them walking toward the trailer where the man had been yelling. She heard more yelling, but could not tell what was being said or who was yelling. She thought multiple officers then fired their guns and heard shots and saw muzzle flashes. She described hearing a “bang,” followed by a short pause and then 3 to 4 more shots in rapid succession. She said it sounded like two shots were fired almost simultaneously. Because her view was blocked, she could not see what the officers were shooting at. She dropped to floor in response.

She then saw two additional officers approach with two shields. She did not see anything else until fire and EMS arrived. She then saw a person carried off on a stretcher. She estimated twenty minutes elapsed from the time she called 911 until the officers fired their weapons. She said she never saw the officers with a dog.

**Witness 3:** Witness 3 was interviewed by an officer at the scene and later by a detective. Witness 3 said he was in the residence of Witness 2 when he saw Witness 2, his girlfriend, on the phone to 911. He said a neighbor had come to the residence and said that a guy was holding a gun on a girl. Witness 3 went outside and heard screaming between a male and a female two trailers south of his residence. He said the male was yelling obscenities and slurring his words. He heard the male tell the female “*You sent the helicopters after me.*” He heard the female say “*Don’t hurt me,*” or “*Don’t shoot me.*” He said the female then came running into his yard.

The female made contact with Witness 3’s neighbor, the one who had told his girlfriend to call 911, and told him “*Help me; he’s going to kill me.*” Witness 3 said another woman then approached and said, “*he’s got a gun to his head and going to kill himself.*” One of the neighbors took the two females into another trailer. Witness 3 went back into his

residence and stood at the door.

He heard a man yelling that he was going to “*kill myself*” and “*everybody here.*” Later, the female who had been arguing with the man later sat on the curb. He saw a police officer contact that female and move her out of his sight. Witness 3 said officers had unscrewed the lightbulbs from the street lamps for darkness. Robert described that he then saw four police officers on the south side of his residence, three of whom were in a group and the fourth officer positioned himself behind a yellow cargo truck across the street to the west. Witness 3 said the three officers in a group went around his trailer out of his sight.

He heard some yelling and a dog barking. He heard officers identifying themselves as Wichita Police. He then heard six to eight shots fired. Three shots came from the officer that was behind the yellow cargo truck. Witness 3 saw the muzzle flashes from the officer’s gun. He said the three officer group came back to the side of his trailer. He then saw two more officers contact the group of three. One officer gave them a “*shield.*” Then five officers left the side of his trailer again. Robert said he thought he heard someone yell, “*put it down.*”

**Witness 4:** Witness 4 was interviewed by a detective. He said he and Witness 5 were together and heard yelling and “*intense arguing,*” so they looked outside. He saw a man and a woman on a porch yelling at each other. When he next looked, he saw that same female standing under a carport. He heard the woman saying something like “*don’t shoot me.*” He saw the man that the woman had been arguing with “charge” at her with a gun in his hand, pointing the gun at her. He heard the woman say, “*don’t shoot me,*” and she ran to the rear of the trailer.

The male half of the argument then pointed the gun at his own head and made a statement to the effect, “*life isn’t worth it.*” Witness 4 then lost sight of the man and woman. He said the police then arrived and he and witness 5 left. He heard approximately five shots as they were leaving the trailer park. Witness 4 reported that he didn’t see the shooting.

**Witness 5:** Witness 5 was interviewed by a detective. He said that he and Witness 4 were watching TV when he heard screaming next door. Witness 5 looked out and saw a male yelling at a female. He said Witness 4 said the female was sitting under a carport, and the male was yelling at her from the porch next door. Witness 5 said he could hear the male telling the woman: *"I will shoot you."* He also heard the female crying and saying: *"Please don't shoot me, this is all I have."*

Witness 5 said he saw the male point to the house from which he (Witness 5) was looking. Witness 5 said the male turned back to the female in the carport and told her to get on the ground. When the male turned around, witness 5 saw that the man had a gun. He then called 911.

Witness 5 saw police arrive. He could see the male waving a flashlight around inside his own residence and on his front porch as if looking for something. Witness 5 said he and Witness 4 left the area. He heard shots being fired as they left the trailer park. He did not witness the shooting.

**Witness 6:** Witness 6 is a neighbor to Kevin Perry and knows both Mr. Perry and Witness 1, whom he knew had been in a relationship with one another at one time. He knew that Mr. Perry had been admitted for psychological assessment twice recently for attempting suicide and that Mr. Perry had recently inherited money which he used to purchase heroin. Witness 6 said the power had recently been shut off in Mr. Perry's trailer.

Witness 6 had been at Mr. Perry's trailer the day before the incident and saw a box for a Ruger handgun but did not see the gun.

Witness 6 said that the day of the incident, Witness 1 called him and then arrived at his trailer. She told him she needed a place to stay and that Mr. Perry owed her \$700.00. He knew Mr. Perry had recently sold his trailer and suggested to her that he might have the \$700.00 as a result. He also told her to be careful because of the gun.



He said Witness 1 then walked to Mr. Perry's trailer. He later heard them arguing inside the trailer. He said Witness 1 came back and told him Mr. Perry had threatened to shoot her, though she said she had not seen a gun. She also said Mr. Perry had hit her or put his hands on her in some way, and she had reacted by punching Mr. Perry. Witness 6 said he told her she should go back and apologize to Mr. Perry.

He said Witness 1 went back to Mr. Perry's residence. He next saw Witness 1 and Mr. Perry outside, and Mr. Perry had a small black semi-automatic handgun in his hand. Witness 6 could not tell whether or not the gun was being pointed at anyone. Witness 6 said he saw Witness 1 "*cowering*" near the carport of the trailer. Witness 6 did not have his phone, so he went to a neighbor's residence (Witness 2 and Witness 3) and told them to call the police. While at the neighbor's, Witness 6 saw Witness 1 approach his location. Witness 6 told her to hide behind his trailer. He then told her to contact the police when they arrived.

Witness 6 saw police arrive. Approximately five minutes after he saw the police, he heard "*pop, pop, pop.*" He did not see the shooting.

## LAW ENFORCEMENT OFFICER STATEMENTS

**Officer 1:** WPD Officer 1 joined the WPD in 2004, was assigned to the Patrol South Bureau as a patrol officer and canine handler. He submitted to an interview the evening of the incident.

Officer 1 described hearing the call of a disturbance put out by the dispatcher. It was reported that a man had pointed a gun at a female. He believed that his canine may be of use on the call, so he volunteered to respond. He reported that when he arrived, other officers were already out at the scene and had taken up various positions in the area of the trailer house in question. He said a group of officers formed a "contact team" to the north of lot A68, and he joined that group.

Officer 1 said while moving in with the other officers, they encountered a subject sitting on the curb. Verbal commands were given to the person to come toward the officers, the person complied at which time the officers realized the person was female.

Officer 1 said the female told them that her boyfriend had a gun and had pointed it at her as well as his own head. She said she had been able to run away. She told officers her boyfriend was located at lot A68. Officer 1 said this female was taken away by a female officer. He and other officers then took up a position at the corner of trailer A67 next door to the north from the suspect's trailer while another officer took up a cover position across the street.

Officer 1 saw the beam of a flashlight shine across the pavement in front of him and the other officers and someone said there was movement. He looked around the corner of trailer A67 and activated his weapon-mounted light. He observed a white male standing between the porch and carport.

Officer 1 began giving verbal commands: "*Wichita Police. Put your hands on your head.*" He said the man put his hands on his head at first but then said something about needing to see the officers' ID. Officer 1 said the man then began moving back towards the trailer as if to go back inside. Officer 1 said that when the dispatcher initially put out the call, he understood there were possibly two females inside the trailer. Officer 1 said that he believed, there had been an Aggravated Assault, the suspect was reportedly armed and there were possibly people in the trailer the suspect was walking toward. He said he deployed his canine with an "override" command, which means that no matter what the suspect's actions are, the dog will bite the suspect. Officer 1 said the canine ran at the man and bit the male by the right foot. He could hear the male yelling: "*Oh God, Oh God*" and fall back on the stairs of the trailer. He watched the dog to make sure it had a sure bite as he began to approach the man to take him into custody.

Officer 1 could not see a gun in the male's hand, but he saw a muzzle flash from the suspect. Almost immediately after the suspect fired, he heard return fire from behind him from the officers. Officer 1 saw and felt at least two muzzle blasts from the officers. Officer

1 did not fire any shots. Officer 1 tried to recall his canine and the dog attempted to return. Officer 1 was not yet aware that the dog had been struck by gunfire. The dog ran to the area of the carport and died. Officer 1 said the male, later identified as Mr. Perry, went behind what the officer described as a sheet metal windbreak on the porch, where the officers lost sight of Mr. Perry.

Officer 1 said that Officer 3 walked up with a “bunker.” The two of them then approached the trailer and found the male lying unconscious on the porch in front of the door. Other officers pulled the male away from the door and rendered medical aid, while he and other officers went inside the trailer to check on anyone who may have been inside. They found no one else inside the residence. After clearing the trailer, the suspect was transported by EMS.

**Officer 2:** Officer 2 joined the WPD in 2015 and was assigned to Patrol South as a patrol officer. He submitted to an interview the night of the incident.

He told investigators that he responded to a dispatch involving a gun. Updated dispatches clarified that the incident involved a man and woman and the man had threatened to kill the woman. The dispatch ultimately added that the male had held the gun to the woman’s head and threatened to “*shoot himself and the female.*”

He and officer 6 arrived together and approached the scene on foot. Officers made contact with the female victim of the call who indicated the suspect was still at the trailer where the confrontation had occurred.

Officer 2 saw what appeared to be a flashlight inside Mr. Perry’s trailer. The officers positioned themselves in a perimeter around the trailer in question. Officer 2 was standing behind Officer 1 to the north of Mr. Perry’s trailer.

At one point, he saw the suspect, later identified as Mr. Perry, step outside and then off of the porch. Officer 1 began to give verbal commands to Mr. Perry to “turn around and walk backwards toward” the officers. Mr. Perry initially appeared to be compliant. Officer 2

saw something that appeared to be silver in Mr. Perry's back waistband.

Officer 2 heard Mr. Perry yelling but could not discern what was being said. Mr. Perry then began to walk back toward the porch steps. Officer 1 released the K-9 which attempted to engage Mr. Perry, causing Mr. Perry to sit on the stairs leading up to the porch. He heard Mr. Perry yell but *"he wasn't saying anything"* He then saw Mr. Perry *"reach over his body, and then [I] heard an officer yell 'gun,' at that point I heard a pop and I seen the muzzle flash."* Officer 2 had stepped out from behind cover to handcuff Mr. Perry because he initially appeared to be compliant.

Officer 2 said he believed Mr. Perry *"was shooting at us 'cause we're the only ones he initially saw."* Officer 2 then fired back at Mr. Perry: *"I see a muzzle flash comin' from him and so then I fire."* He heard an officer fire from across the street and mistakenly thought Sgt. 1 fired a shotgun from a position to his (Officer 2's) left.

After the shots, he lost sight of Mr. Perry. Another officer brought a bunker up to the scene which officers used to approach the front porch. Officer 2 heard Officer 6 say, *"I got the gun."* Officers began to render aid to Mr. Perry while other officers cleared the house. EMS subsequently removed Mr. Perry from the scene.

**Officer 3:** Officer 3 joined the WPD in 2006. He submitted to an interview the night of the incident.

Officer 3 said he heard the dispatch of what initially sounded like a hostage situation. Subsequent information from dispatch clarified that a man with mental health issues had armed himself with a gun and threatened to shoot a female and shoot himself. Officer 3 responded to the scene of the incident with Officer 4.

The officers made contact with Sgt. 1 at the scene and drove within the trailer park to the location of the incident. They initially made contact with a female who Officer 3 understood was the victim in this incident. She said her ex-boyfriend whom she identified as Kevin Perry, was schizophrenic, had a gun and had originally held her inside the trailer

at lot number 68 with a gun. She told the officers that Mr. Perry set the gun down at one point and she was able to escape.

The officers approached lot 68 with the intent to set up a perimeter. In light of the suspect's mental health issues and his behavior that night of aggravated domestic violence, Officer 3 remembered saying out loud, "*let's not rush to failure here.*"

After the perimeter was set, officer 3 heard another officer over the radio say he saw movement. Officer 3 then heard the door of the trailer open and saw a flashlight. He looked through his own scope to ascertain whether the light was a weapon light (a light affixed to a firearm) of some kind. The person leaving the trailer, later identified as Mr. Perry, stepped down the stairs into the area of a carport. Officer 3 turned on his own weapon light and announced, "*Wichita Police. Get your hands up.*" The officers had previously agreed that if contact was made with the suspect, Officer 3 would make this initial verbal command and then Officer 1 with the K-9 would take over verbal commands to avoid confusing the K-9.

Officer 3 could tell Mr. Perry was holding a flashlight which was not attached to a weapon, so he lowered his own weapon. He said Mr. Perry initially raised his arms in response to officers. Then, in response to what Officer 1 was saying, Mr. Perry said, "*nope, that's not going to happen. You'll have to shoot me.*" Mr. Perry then turned and walked back (east) toward the steps of his trailer. As he turned, Officer 3 could see a gun in the back of Mr. Perry's waistband. Officer 3 either yelled "*gun*" or said it over the radio—he was not sure which. He saw the K-9 run toward Mr. Perry and get ahold of his leg. In response, Mr. Perry reached toward his own back and retrieved the gun. Officer 3 saw the gun in Mr. Perry's hand and yelled "*gun! gun!*" As he did, he could see that Officer 1 and Officer 2 had already begun to follow the K-9 and had stepped out from the cover afforded by the neighboring trailer where they had initially been standing. Officer 3 saw the officers to his left (north), saw that they were without cover and saw the gun in Mr. Perry's hand. At that point Officer 3 described the situation as follows: "*knowing I was their over-watch, knowing he had the gun out, . . . I knew I needed to protect them.*" The officer fired two rounds. He then waited "*a second or two*" to ensure the officers had not stepped in front

of him and fired once more.

Once a bunker was brought to the officers, Officer 3 and other officers approached the porch. They could not see Mr. Perry initially as he was behind a short metal privacy wall that surrounded the porch. Officer 3 found Mr. Perry lying in the doorway of the trailer. Officers rendered aid while other officers cleared the house. Mr. Perry struggled initially but was ultimately removed from the scene by EMS personnel.

**Officer 4:** Officer 4 joined the WPD in 2010 and was assigned to the Patrol South S.C.A.T. (Special Community Action Team). He rode to the scene with Officer 3. He was interviewed the evening of the incident.

Officer 4 heard a dispatch of a disturbance with a weapon and that a person was holding a gun to a female and the person may also be suicidal. He said he thought it may possibly be a hostage situation so he and Officer 3 responded to the call. He believed the call was to 2320 E. MacArthur Lot A68. When they arrived, two other officers were already on scene and approaching the trailer. A sergeant and two additional officers arrived at roughly the same time as he and Officer 3.

Officer 4 said that as they approached, they saw a person sitting in the street they subsequently determined to be female. The woman, Witness 1, said the suspect's name was Kevin Perry and that he had held a gun to her head.

A female officer stayed with her while he and Officer 3 took positions behind a cargo truck 25 to 30 yards away from the suspect trailer. Approximately five minutes after arriving on scene, Officer 4 saw a male, later identified as Mr. Perry, standing by the carport. He heard other officers giving commands to Mr. Perry to show them his hands. Mr. Perry had what Officer 4 believed to be a flashlight in his hand. Officer 4 said Officer 1 gave Mr. Perry a verbal command to turn around and walk back toward them. Mr. Perry refused and verbally responded that he was going back inside the trailer. Officer 1 released his K-9 with the verbal command to apprehend a suspect. Officer 4 lost sight of Mr. Perry but did see the dog running. He heard the man yelling, then a "pop," a pause and then five or

six additional gunshots. Officer 4 said from where he was, he could not see anyone shooting. He said he did see Officer 1 ducking when the shots occurred.

Officer 4 did not fire his weapon. He saw the K-9 run back and collapse at the carport. After another officer brought a bunker up to him, he and other officers went to the trailer and found Mr. Perry lying on the porch. Sgt. 1 notified EMS to move in. Officer 4 saw Officer 3 and another officer rendering aid by applying pressure to Mr. Perry's wounds. Officer 4 said the male was lying on his stomach when they made contact with him, and it appeared to him that the male had possibly two gunshot wounds. He said that EMS arrived and Mr. Perry began to "fight" with Officer 3. Mr. Perry was restrained then placed onto EMS's board as a result before being removed by EMS.

**Officer 5 :** Officer 5 joined the WPD in 2016. He submitted to an interviewed the night of the incident.

Officer 5 said that he was dispatched to the call of a disturbance with a weapon. Dispatch added that a male had pointed a gun at a female.

Officer 5 said, when he arrived other officers were already on the scene. He and other officers moved in on foot and made contact with a female, later identified as Witness 1, sitting on a curb. She stated she was the victim in this case. He heard her say that "*Kevin Perry*" pointed a gun at her. A female officer then took her back to a police patrol vehicle.

Officer 5 said witness 1 pointed out the lot where Mr. Perry would be. The officers then went to that location. He said Officer 3 then set up by a yellow box truck. He added that, as they moved up, Sgt. 1 instructed him to unscrew the lightbulb from the lamp post that was behind them, so that they could have a better visual on the trailer in question.

They got to A67, giving them a clear sightline of the driveway of lot A68. As they were getting into position, Officer 3 yelled, "*hey, we've got movement; he's coming out with a flashlight.*" Officer 5 saw a subject coming down the stairs from the deck of the trailer with a flashlight in his hand. He said the man, later identified as Mr. Perry, was given

instructions to walk to them and to put his hands in the air. Mr. Perry refused and responded that he wanted to see the officer's identification. Officer 5 heard the male say that he didn't believe they were police officers. Officer 5 said that all the officers were wearing regulation issued Wichita Police uniforms. Mr. Perry told them he didn't believe them, and he was going back inside.

He heard Officer 3 tell Mr. Perry , "*no, you can't go back inside Kevin, stay out here.*" Officer 5 said when Mr. Perry turned to go back inside, he saw a gun in Mr. Perry's hand. He also heard another officer yell: "*gun.*" Officer 5 said Sgt. 1 instructed Officer 1 to deploy his K-9. Officer 5 said the dog grabbed hold of Mr. Perry's leg. Officer 5 said Mr. Perry was on the steps of the deck when he heard Mr. Perry yelling something like "*get off me.*" Officer 5 said Mr. Perry pointed the gun down at the dog and fired. He saw Mr. Perry "*waiving*" the gun as officers fired. He heard the dog cry out and saw him run back (west) and collapse in the driveway.

Officer 5 had his gun at "threat ready" but not pointed at the suspect because there were officers in front of him. He did not fire. Officer 5 said that after the shots were fired, Mr. Perry got up onto the porch deck and was behind a short metal privacy wall out of sight. Sgt. 1 then called for a bunker and after it was brought up, Officer 5 and other officers advanced to the porch. Officer 5 said they found Mr. Perry face down on the deck. Officer 6 took possession of the gun located near Mr. Perry and handed it to officer 5. Officer 6 then applied pressure to what appeared to be two gunshot wounds. EMS and Fire arrived and transported Mr. Perry from the scene.

**Officer 6:** Officer 6 joined the WPD in 2014. He submitted to an interview the night of the incident. Officer 6 and Officer 2 responded to the scene together.

Officer 6 said he responded to a dispatch of a disturbance with a weapon call. Additional follow up dispatches added that the male had a gun to his head and said he was going to shoot his girlfriend then shoot himself. After more officers arrived, they made contact with a female they found sitting on a curb. She told them the suspect was "inside of A68." They walked to that area where Officer 6 directed the other officer's attention to a



flashlight he saw being shone inside of the trailer.

He joined Officer 3 in taking cover behind a box truck parked across the street. He heard an officer say words to the effect, "He's coming out. He's got a flashlight" or something in his hand. Officer 6 saw a man step outside. An officer yelled verbal commands and the man, later identified as Mr. Perry, refused, said something to the effect, "you'll have to shoot me," then made a noise that sounded like a laugh and said, "I'm going back inside."

Officer 6 heard Officer 1 give verbal commands to the K-9 and Officer 6 heard Mr. Perry respond, "ow, ow." He could not see Mr. Perry but he then heard shots, "maybe two or so" followed by several shots from the officers. He lost sight of Mr. Perry and was unable to tell whether he was lying down or had retreated into the house.

After a bunker was brought to the officers, he and Officer 3 and Sgt. 1 approached the porch. He saw Mr. Perry lying on the porch near the front door with a handgun nearby. He took possession of the handgun and handed it to Officer 5. He then rendered aid to Mr. Perry, who became combative and had to be restrained until he could be placed on a gurney and removed by EMS.

**Sergeant 1:** Sgt. 1 joined the WPD in 1992. He submitted to an interview the night of the incident.

Sgt. 1 said he heard a dispatch of a disturbance with a weapon with a "signal 4" (suicidal person) at the Lamplighter Mobile Home Park. Officer 2 and Officer 6 were on the scene as well. The officers requested two additional officers be dispatched. Sgt. 1 said that the information on the call was coming from a third party that reported a male had pointed a weapon at a female, and the same male had put a gun to his own head.

Sgt. 1 said that officers approached the area and made contact with a female who was crying. The female told them that her boyfriend, Kevin, had pointed a gun at her and threatened to kill her and also himself. Sgt. 1 said he had Officer 3 positioned themselves near a cargo truck across the street from Mr. Perry's trailer. He told Officer 1 to give

verbal commands if the suspect came outside. Sgt. 1 said he got a phone number for the suspect from another officer who had looked up Mr. Perry in the WPD database.

Sgt. 1 was getting ready to attempt phone contact with Mr. Perry when Officer 3 stated: *"He's coming out."* Sgt. 1 observed a white male come out of the suspect house and down the stairs. Sgt. 1 said Officer 1 gave verbal commands by identifying them as Police and then instructing the male to walk toward them. The male then walked to a carport and told the officers *"no"* and said he wanted to see identification. The male then turned to walk back into the residence. Sgt. 1 said he then heard Officer 3 yell: *"gun."* He observed Officer 1 deploy the K-9. Sgt. 1 saw the dog engage the suspect's leg. The suspect went into a seated position on the second step of the porch yelling.

Sgt. 1 said he moved to get behind Off. 1 when he heard a "pop." He then heard Officer 3 fire a round and then a second round. Sgt. 1 said Mr. Perry then stood up and another officer fired.

Sgt. 1 said Mr. Perry left his sight. He saw the dog retreat, and the officers took cover. Sgt. 1 said he informed the dispatcher that shots had been fired, a K-9 was down and they needed a bunker. Officer ultimately approached the porch, rendered aid to Mr. Perry and cleared the residence. Mr. Perry was removed from the scene by EMS.

## CRIME SCENE INVESTIGATION

WPD Crime Scene Investigators processed the scene of the shooting which was photographed and diagrammed. Scene Investigators located, photographed, and collected items of physical evidence including: eight (8) shell casings and three firearms including a Ruger LC9S handgun (located next to Mr. Perry), a 9 mm Glock handgun fired by Officer 2 and a 5.56 Colt fired by Officer 3.

Overview image of incident location and incident time line.



Photos taken by crime scene investigators as well as still images captured from body camera videos are set forth below. In the image directly below, Mr. Perry initially raised his hands in response to officer's commands.



Mr. Perry then turned and began to walk back up the porch steps toward the door of the trailer.



Mr. Perry sat on the porch steps after WPD K-9, Rooster, gained control of his right leg.



The arrow indicates the Ruger handgun in Mr. Perry's hand.



The location of the Ruger as found on the porch.



Mr. Perry's Ruger LC9 handgun





Photo of the scene taken by CSI.



## FORENSIC EVIDENCE & AUTOPSY RESULTS

The firearm evidence collected from the scene of the shooting including (1) one Ruger 9 mm Model LC9s; (2) one 9 mm Glock, Model 17 Gen. 4; and (3) one 5.56 caliber Colt, model M4 Carbine. A total of eight cartridge casings were located: four 9 mm shell casings and four .223 cartridge casings (capable of being fired through the 5.56 caliber Colt). One bullet “jacket” was collected during the necropsy of K-9 Rooster. 3 bullets/bullet fragments were recovered at the scene (two on the ground, one recovered from a piece of wood). No bullets were recovered during the autopsy of Kevin Perry at the Sedgwick County Regional Forensic Science Center. The two gunshot wounds to his chest had corresponding exit wounds to his back. One live (unspent) 9 mm round was found in his clothing. Multiple unfired rounds of ammunition of various calibers were located inside Mr. Perry’s residence. These were not tested, as they were unrelated to this incident.

According to the ballistics report generated by the Firearm and Toolmark Examiner from the Sedgwick County Regional Forensic Science Center, dated July 11, 2017 one 9 mm cartridge casing collected at the scene was identified as “having been fired in” the 9 mm Ruger found near Kevin Perry. The bullet jacket collected during the necropsy conducted on the body of K-9 Rooster was identified as “having been fired from” the 9 mm Ruger found near Kevin Perry.

Four .223 mm cartridge casings located at the scene were identified as “having been fired in” the 5.56 mm Colt fired by Officer 3. One bullet collected at the scene was identified as “having been fired from” the 5.56 Colt fired by Officer 3.

Three cartridge casings were identified as having been fired from the 9 mm Glock fired by Officer 2.

One bullet was eliminated as having been fired by the 9 mm Ruger and the 5.56 Colt but “could neither be identified nor eliminated as having been fired from” the 9 mm Glock.

An autopsy was performed on the body of Kevin Perry on March 20, 2017, at the Sedgwick County Regional Forensic Science Center. The final autopsy report, dated May 25, 2017, determined that Mr. Perry died as a result of gunshot wounds to the “right upper chest” and “lower right chest,” and the manner of death was homicide. Specimens were collected for toxicological examination. The toxicology report submitted with the autopsy concluded that Mr. Perry’s blood contained Amphetamine – 0.38 mg/L and Methamphetamine – 4.3 mg/L.

## KANSAS LAW

In Kansas all persons, including law enforcement officers, are entitled to defend themselves and others against the use of unlawful force. **Kansas Statutes Annotated** 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. (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, *unpublished opinion*, No. 116, 441 (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.

*Kansas Statutes Annotated* (2016 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.

*Kansas Statutes Annotated* (2016 Supp.) 21-5223, **Defense of Dwelling**, . . . **no**

**duty to Retreat**, reads,

- (c) A person is justified in the use of deadly force to prevent or terminate unlawful entry into or attack upon any dwelling, place of work or occupied vehicle if such person reasonably believes that such use of force is necessary to prevent imminent death or great bodily harm to such person or another.

*Kansas Statutes Annotated* (2016 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.

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

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

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

**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.”

## CONCLUSION

On March 18, 2017, Officer 2 and Officer 3 exercised deadly force resulting in the death of Kevin Perry.

Under K.S.A. 21-5222, 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 Kansas law, one who acts in defense of himself or to protect a third party is immune from prosecution. See K.S.A. 21-5231. Meaning, a person may not be charged, prosecuted (or subsequently sued) unless the state can establish that they were 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 officers responded to a domestic disturbance in which the suspect, later identified as Kevin Perry, had pointed a handgun at his ex-girlfriend, subsequently pointed the gun at himself, threatened to kill his ex-girlfriend and then shoot himself. After officers arrived, Mr. Perry exited the trailer home and was initially compliant. He then dropped his hands and began to re-enter the residence, stating his intent to do so. An officer released the K-9 and Mr. Perry retrieved the handgun he had on his person. The officers reacted and fired seconds after Mr. Perry fired. Officer 2 and Officer 3 reasonably believed Mr. Perry posed an imminent lethal threat to the officers.

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

A handwritten signature in black ink, appearing to read "Marc Bennett", with a stylized flourish at the end.

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