

Christopher E. Smith, Cowley County Attorney

119 S. Summit St
Arkansas City, KS 67005
ph. 620-441-4540
fax. 620-442-8582

**Deputy/Assistant
County Attorneys**
Linda Loomis
Larry R. Schwartz
Matthew W. Wilson
Joshua S. Albin

311 E. 9th Ave
Winfield, KS 67156
ph. 620-221-5485
fax. 620-221-9461

Closing Report of the County Attorney in Reference to the Officer Involved Shooting of Tayler Rand Rock

Duty of the County Attorney in an Officer Involved Shooting

By operation of law, the County Attorney is responsible for making the criminal filing decision in all officer involved shootings. The same standard for charging decisions that is used in all criminal cases is applied to the review of an officer involved shooting incident. The filing decision analysis involves reviewing the totality of the facts developed in the investigation and the application of Kansas law to those facts. The facts and the law are then analyzed in relation to the criminal case filing standard.

For charges to be filed, the County Attorney must find that there is a reasonable likelihood that all of the elements of the crime charged can be proven beyond a reasonable doubt, unanimously, to twelve jurors, at trial, after considering all reasonable defenses. If this standard is met, then charges will be filed. If the standard is not met, then charges will not be filed.

It is the County Attorney's role to investigate and determine whether any violation of the Kansas criminal code may have occurred. It is not the duty of the County Attorney to determine whether or not an officer violated department policies or procedures which may subject him/her to discipline nor is it to determine whether or not an officer committed an act which could subject him/her to civil sanctions.

Conclusions of Law:

In an exhaustive search of relevant Kansas statutes and relevant case law, it is determined that the governing rule, when reviewing officer involved shootings, is that a law enforcement officer is presumed to have acted properly until/unless that presumption is overcome. There is a general presumption that a public official will act fairly, reasonably and impartially in the performance of the duties of his office (law enforcement officers are included in the term "public official").

K.S.A. 8-262 prohibits any person from operating a motor vehicle in the State of Kansas while that person's privilege to drive has been cancelled, suspended or revoked. The statute reads, in relevant part:

(a) (1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked or while such person's privilege to obtain a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and amendments thereto, shall be guilty of a class B nonperson misdemeanor on the first conviction and a class A nonperson misdemeanor on the second or subsequent conviction.

K.S.A. 22-2402 authorizes a law enforcement officer to stop a suspect he/she reasonably believes may be committing a crime. The statute reads, in relevant part:

(1) Without making an arrest, a law enforcement officer may stop any person in a public place whom such officer reasonably suspects is committing, has committed or is about to commit a crime and may demand of the name, address of such suspect and an explanation of such suspect's actions.

K.S.A. 22-2401 is the governing statute for arrests by law enforcement officers. It states:
A law enforcement officer may arrest a person under any of the following circumstances:

(a) The officer has a warrant commanding that the person be arrested.

(b) The officer has probable cause to believe that a warrant for the person's arrest has been issued in this state or in another jurisdiction for a felony committed therein.

(c) The officer has probable cause to believe that the person is committing or has committed:

(1) A felony; or

(2) a misdemeanor, and the law enforcement officer has probable cause to believe that:

(A) The person will not be apprehended or evidence of the crime will be irretrievably lost unless the person is immediately arrested;

(B) the person may cause injury to self or others or damage to property unless immediately arrested; or

(C) the person has intentionally inflicted bodily harm to another person.

(d) Any crime, except a traffic infraction or a cigarette or tobacco infraction, has been or is being committed by the person in the officer's view.

K.S.A. 22-2405 outlines the method of arrest available to law enforcement officers. It reads:

(1) An arrest is made by an actual restraint of the person arrested or by his submission to custody.

(2) An arrest may be made on any day and at any time of the day or night.

(3) All necessary and reasonable force may be used to effect an entry upon any building or property or part thereof to make an authorized arrest.

K.S.A. 21-5102 defines the specific classes of crimes in the State of Kansas. It reads:

A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions.

(a) A felony is a crime punishable by death or by imprisonment in any state correctional institution or a crime which is defined as a felony by law.

(b) A traffic infraction is a violation of any of the statutory provisions listed in subsection (c) of K.S.A. 8-2118, and amendments thereto.

(c) A cigarette or tobacco infraction is a violation of K.S.A. 2013 Supp. 21-6109 through 21-6114 and 21-6116 and subsection (m) or (n) of K.S.A. 79-3321, and amendments thereto.

(d) All other crimes are misdemeanors.

K.S.A. 8-2118(c) provides an exhaustive list of all traffic infractions in the State of Kansas. It lists the applicable statute and sets a minimum mandatory fine for each traffic offense.

K.S.A. 21-5227(a) is the governing statute for a law enforcement officer's use of force in making an arrest. The statute states:

(a) A law enforcement officer, or any person whom such 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.

(b) A law enforcement officer making an arrest pursuant to an invalid warrant is justified in the use of any force which such officer would be justified in using if the warrant were valid, unless such officer knows that the warrant is invalid.

K.S.A. 22-5229 prohibits any person from resisting a law enforcement officer making an arrest. The statute 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.

K.S.A. 21-5413(d)(3)(A) codifies the crime of aggravated battery against a law enforcement officer by use of a motor vehicle. It states:

(d) Aggravated battery against a law enforcement officer is:

(3) knowingly causing, with a motor vehicle, bodily harm to a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty

Findings of Fact:

The following facts were derived from the investigations conducted by the Senior Special Agents of the Kansas Bureau of Investigation, Troopers from the Kansas Highway Patrol, Officers of the Arkansas City Police Department, Arkansas City firefighters and EMTs, medical personnel from the South Central Kansas Regional Medical Center and the pathologists from the Sedgwick County Regional Forensic Science Center. The following is a synopsis of the factual situation leading up to, including, and after the incident involving the death of Tayler Rand Rock.

1. Tayler Rock and Ana Bedolla were engaged in a relationship beginning around July 2012 and had a child together in August 2013. In February 2014, that relationship had deteriorated to the point that Ms. Bedolla filed for a Protection from Abuse Order. (14-DM-55-A). Temporary orders were issued, conditions were set in reference to the minor child's visitation and these orders were continued on a temporary basis. The Temporary Order stated that:

The Defendant [Rock] shall have no contact with the plaintiff except for what is minimally necessary to facilitate parenting time between the parties (*sic.*) minor child and the defendant. The defendant shall have parenting time from 11:00 A.M. until noon on Thursdays and Sundays. Defendant shall not leave Cowley County or drive or smoke while he has the minor child.

The couple had been getting along "OK" while the PFA was in effect. On May 28, 2014, at 4:24 p.m., Ms. Bedolla's attorney dismissed the Protection from Abuse action at Ms. Bedolla's request. Ms. Bedolla was an employee of the Cowley County Sheriff's Department working as a Corrections Officer in the Cowley County Jail. She had been employed in that capacity for 2 years and 2 months.

2. On April 4, 2014, officers with the Cowley County Drug Task Force, after conducting an investigation, executed a search warrant at 1315 S. A Street, in Arkansas City, Kansas to look for marijuana and drug use paraphernalia. The search resulted in a criminal case being filed against Tayler Rock for misdemeanor possession of marijuana and possession of drug use paraphernalia in 14-CR-280-A.
3. Ms. Bedolla reported that on Thursday, May 29, 2014, she dropped her child off with Tayler Rock at about 2:45 p.m. Around 8:00 p.m., Tayler Rock informed Ms. Bedolla that she could come pick up the child. Ms. Bedolla and a friend arrived to pick up the child and were told by Tayler Rock that he was going to keep the child until Saturday. Ms. Bedolla, rather than confronting Tayler Rock, allowed the child to stay with him. Between 11:00 p.m. and midnight, Ms. Bedolla contacted the Arkansas City Police Department to inquire about the status of the PFA. She was told that there was no PFA on file and it was suggested that she contact her attorney.

4. On Friday, April 30, 2014, Ms. Bedolla attempted to contact her attorney and was informed that her attorney was unavailable. Eventually, Ms. Bedolla's attorney was able to make contact with Tayler Rock's attorney to request that Tayler Rock return the child to Ms. Bedolla. Tayler Rock's attorney stated that he was not working that day and would not be contacting Tayler Rock. Ms. Bedolla texted Tayler Rock attempting to get the child returned. The child was not returned to her.
5. Later that morning, Ms. Bedolla saw Tayler Rock driving in Arkansas City. She contacted ACPD to report Tayler Rock driving as she knew that his license was suspended. Dispatch confirmed the suspended status of Tayler Rock's license and radioed the information to patrol units. Later that night, Tayler Rock allowed Ms. Bedolla to speak to the child by telephone.
6. On Saturday, May 31, 2014, around 6:00 p.m., Ms. Bedolla received a telephone call from a woman she knew to be the mother of Tayler Rock's other child. This woman and her child live in Coffeyville, Kansas. The woman told Ms. Bedolla that Tayler Rock and her [Ms. Bedolla's] child had come to Coffeyville around noon and were on their way back to Arkansas City. The woman reported to Ms. Bedolla that the child was in dirty clothes, that she had needed to change the child's diaper several times since Tayler Rock would not do so, and that the child was being given whole milk instead of formula.
7. Ms. Bedolla then contacted a deputy with the Cowley County Sheriff's Department. She informed the deputy of the situation and that Tayler Rock was supposed to be coming back to Arkansas City from Coffeyville. She told the deputy that Tayler Rock had a suspended driver's license and that her child was in the car with Tayler Rock. The deputy told Ms. Bedolla that he would keep an eye out for Tayler Rock. Ms. Bedolla was concerned for the welfare of her child. The deputy also told Ms. Bedolla that she should contact the Coffeyville Police Department and the ACPD to report her concerns.
8. At the deputy's suggestion, Ms. Bedolla contacted the Coffeyville Police Department to report that Tayler Rock was driving on a suspended license, but she was told that the police would only issue a citation in that instance and would not arrest Tayler Rock.
9. Shortly after speaking with the deputy, Ms. Bedolla again contacted the ACPD and reported that Tayler Rock would be coming into town, driving on a suspended driver's license, and would have their child with him. Dispatch advised Ms. Bedolla that it would make officers aware of the situation.
10. The deputy reported that he had come on duty at approximately 6:00 p.m. on Saturday, May 31, 2014. He received the call from Ms. Bedolla at about 6:10 p.m. that day.
11. The deputy decided that he would see if he could locate Tayler Rock and complete the welfare check on the child. The deputy also called a fellow deputy, who was working the east part of the county, and relayed the information about the welfare check on the child.

12. After purchasing fuel at the north-end of Arkansas City for his vehicle, the deputy took the by-pass to US-166 and traveled east. Close to the K-15 and US-166 junction [commonly known as the Dexter turn], the deputy observed a green Ford Taurus that matched the description of Tayler Rock's car traveling west. The vehicle appeared to be speeding and the deputy clocked the car at over 70 mph in a 65 mph zone. The deputy did not remember the exact speed of the vehicle.
13. The deputy turned his vehicle around and confirmed through dispatch the status of Tayler Rock's driver's license. Dispatch advised that Tayler Rock's license was suspended. The deputy then asked how many priors Tayler Rock had had for driving while suspended. Dispatch advised he had two (2). The deputy responded that he was going to attempt to stop the vehicle.
14. The deputy turned on his emergency lights to initiate a stop of the vehicle. The vehicle slowed but did not stop for over a mile. The deputy, through his training and experience, believed the driver might have been impaired in some way due to slowing, but not stopping the vehicle. The vehicle finally stopped. The deputy had already decided that he was going to arrest Tayler Rock for driving on a suspended driver's license, as per department policy.
15. As the deputy approached Tayler Rock's vehicle, he observed Tayler Rock leaning out of the driver's door window with his upper torso and hands extended out of the vehicle. The deputy noted that this was not normal behavior for a person being stopped by the police. The deputy noted that the vehicle was still running and that there was a child in a forward-facing car seat on the back passenger side of the vehicle.
16. The deputy reported that Tayler Rock began asking, "Why are you stopping me?" and told the deputy, "Fuck you; you can't stop me." The deputy responded by identifying himself and telling Tayler Rock that his license was suspended and that he [Tayler Rock] should not be driving. The deputy told Tayler Rock that he was under arrest. Tayler Rock responded by stating, "You don't have any reason to stop me."
17. The driver's window was fully down and the deputy explained to Tayler Rock that he would need to step out of the vehicle and cooperate as he was under arrest. Tayler Rock kept saying, "You don't have any reason to stop me" and "You are just fucking with me." The deputy again told Tayler Rock that he needed to step out of the vehicle and cooperate as he was under arrest. Tayler Rock responded by rolling his window completely up.
18. The deputy raised his voice, so Tayler Rock could hear him through the closed window, and commanded Tayler Rock to roll the window down and to get out of the car. There was no response from Tayler Rock. The deputy again stated that Tayler Rock was under arrest and warned him that he would have to break the window and use force against Tayler Rock if he did not comply. The deputy stated, "Let's not make it go that way." Tayler Rock then rolled the window down about 4" to 6" and told the deputy, "I'm not doing this. Fuck you. You have no reason to stop me."

19. The deputy was barely able to get his arm into the window and reached for the manual lock to unlock the door. As the deputy pulled up on the lock, Tayler Rock slapped the knob back down relocking the door. The deputy again told Tayler Rock that he was under arrest and that he needed to stop resisting. The deputy was able to unlock the door and get it open on the second attempt.
20. When the deputy got the door open, he stepped into the doorway. Tayler Rock began kicking the deputy with his left foot while pushing and punching the deputy with his left hand. The deputy attempted to get a "wrist lock" on Tayler Rock's left wrist in order to pull him out of the car, but he was unable to do so. As the deputy tried to get Tayler Rock out of the vehicle, Tayler Rock "lurched" the car forward. The deputy warned Tayler Rock, "Tayler, don't do this; you are going to get hurt."
21. The deputy then removed his extendable baton, extended it and warned Tayler Rock, "Tayler, stop now. Quit resisting." The deputy attempted to make a strike, but since Tayler Rock was kicking him and noting the small space, he realized that he would be unable to make an effective strike.
22. Again attempting to gain compliance from Tayler Rock, the deputy entered the vehicle to try to get a "force lock" on Tayler Rock's arm with the baton. The deputy's intent was to gain control of the situation by using pain compliance and to get Tayler Rock out of the vehicle.
23. While the deputy was inside the vehicle with the baton against Tayler Rock, Tayler Rock grabbed the deputy's left wrist with his right hand and accelerated the vehicle. The deputy began to fall backwards, but he was unable to get free from Tayler Rock's grip. The deputy was face-to-face with Tayler Rock. He dropped his baton and grabbed his handgun. He warned Tayler Rock, "Tayler, don't make me shoot you."
24. Tayler Rock responded by rapidly accelerating his vehicle. The deputy stated that he had no doubt in his mind that Tayler Rock was going to kill him. As the deputy fell backwards, he reported that he knew he was going to die and that he had to fire his service weapon in order to save his life.
25. The deputy fired his service weapon into Tayler Rock's body and kept firing until Tayler Rock let go. The deputy was able to break free of the vehicle. The deputy was drug through the ditch and felt the vehicle run over his left leg.
26. The car continued traveling forward going through a fence and out into a field where it finally stopped. The deputy radioed that shots had been fired.
27. When the vehicle stopped, the deputy saw "smoke" coming from under the hood. Worried that the car might catch fire and that the child and driver were still inside, the deputy, despite being in a great deal of pain, went to the car to retrieve the child. He retrieved the uninjured child, took the child to people from a passing car which had stopped and then went go back to assist Tayler Rock.

28. The deputy performed CPR on Tayler Rock until he was relieved by other officers responding to the area.
29. Law enforcement officers arrived on scene as did medical personnel from the Arkansas City Fire Department. Immediate life saving aid was rendered to Tayler Rock and aid was rendered to the deputy. Both were transported, by separate ambulances, to the South Central Kansas Medical Center to be treated. Prior to being transported to the hospital, the deputy's service weapon was collected by the undersheriff as evidence.
30. The deputy's service weapon (a Glock .40 caliber) was transferred to the K.B.I. and it was determined that five (5) rounds had been fired from the weapon.
31. Upon arrival at SCKMC, Tayler Rock was pronounced dead. His body was secured as evidence and was transported to a sealed cooler at William Newton Hospital in Winfield to await an autopsy.
32. The deputy was treated at the hospital for injuries he sustained in the incident. His uniform pants, uniform shirt and boots were collected as evidence. The deputy submitted to a drug test prior to being given any pain medication. The results of the drug test were negative for all substances tested.
33. Upon examination of the deputy's uniform it was noted that there were grass stains, marks and tears consistent with the deputy being dragged.
34. While at SCKMC, it was noted that the deputy sustained injuries to his left knee, left foot, left ankle, left shoulder and left hand. He continues to receive medical treatment and is scheduled for surgery in the near future.
35. Two witnesses to the occurrence were identified and interviewed. Both stated that they saw the deputy leaning inside the stopped vehicle. They then saw the car accelerate with the deputy still leaning in. The car was traveling fast and went down into the ditch, through the fence and into the field. They lost sight of the deputy when the car went into the ditch. They both saw the deputy limp to his car, drive a short distance ahead and then climb over the fence to go to the car in the field.
36. The witnesses stated it was obvious that the deputy was in pain, but he went to the car, waved at them to come to him and then began walking toward them with something in his hands. The deputy handed them a child and told them to stay and watch her as he was going to return to help the driver. They saw the deputy remove the driver from the car and begin to perform CPR.

37. During the investigation it was discovered that the in-car camera in the deputy's patrol car was not functioning properly. The problems with the camera had been reported to the sheriff's department in January of 2014. It was reported that the camera's focus would zoom in and out, that the VCR tape would fast-forward and re-wind indiscriminately and that the date/time stamp was constantly inaccurate. It was decided, by the Sheriff's Department, not to repair/replace the camera as that entire patrol vehicle was scheduled to be replaced in 2014.
38. Upon an inspection of the in-car camera system, requested by the K.B.I. and performed by the company handling repairs of the camera, it was determined that the "autofocus" feature was set to be continually activated, thus causing the focus to zoom in and out. It was also determined that the malfunctions with the VCR tapes were the result of using and re-using tapes which had been recorded on and over several times. The problem with the date/time stamp was traced to a malfunctioning battery pack which supplied back-up power to the in-car camera system.
39. On June 2, 2014, an autopsy was performed on the body of Tayler Rock at the Regional Forensic Science Center in Wichita, Kansas. The results of the autopsy found five (5) gunshot wounds to Tayler Rock.
- a. Gunshot wound to the left lower anterior neck traveling to the right, down and backward.
 - b. Gunshot wound to the left pectoral chest traveling to the right, downward and backward.
 - c. Gunshot wound to the left lower chest traveling to the right, up and backward.
 - d. Gunshot wound to the lateral left abdomen traveling to the right and backward.
 - e. Gunshot wound to the right arm traveling toward the radial and flexor aspect of the arm.

Insignificant trace amounts of tetrahydrocannabinol and carboxytetrahydrocannabinol were present in Tayler Rock's toxicology screen. The cause of death was determined to be from multiple gunshot wounds to the chest. The manner of death was classified as a homicide. The autopsy report was received by the KBI on August 26, 2014.

40. When questioned about the gunshot wounds and given the deputy's version of the events in question, the forensic pathologist stated that the wounds to Tayler Rock were consistent with the information provided by the deputy. There was no reason, forensically, to doubt the description of the event as relayed by the deputy.

Analysis:

Kansas Statutes Annotated 22-2402(1) authorizes a law enforcement officer to stop a suspect he/she reasonably believes may be committing a crime. The statute states, in relevant part:

(1) Without making an arrest, a law enforcement officer may stop any person in a public place whom such officer reasonably suspects is committing, has committed or is about to commit a crime and may demand of the name, address of such suspect and an explanation of such suspect's actions.

Taylor Rock was stopped by a duly sworn law enforcement officer, employed by the Cowley County Sheriff's Office, who had prior knowledge of Taylor Rock's driver's license suspension and then verified such information prior to effectuating the traffic stop.

K.S.A. 22-2401(d) allows a law enforcement officer to arrest a person who has committed a misdemeanor offense in the presence of the officer. That statute reads,

A law enforcement officer may arrest a person under any of the following circumstances:

(d) Any crime, except a traffic infraction or a cigarette or tobacco infraction, has been or is being committed by the person in the officer's view.

K.S.A. 21-5102 defines the classes of crimes in Kansas. It reads, in relevant part:

A crime is an act or omission defined by law and for which, upon conviction, a sentence of death, imprisonment or fine, or both imprisonment and fine, is authorized or, in the case of a traffic infraction or a cigarette or tobacco infraction, a fine is authorized. Crimes are classified as felonies, misdemeanors, traffic infractions and cigarette or tobacco infractions. ...

(b) A traffic infraction is a violation of any of the statutory provisions listed in subsection (c) of K.S.A. 8-2118, and amendments thereto.

K.S.A. 8-2118(c) lists all offenses classified as traffic offenses, gives the specific statute for reference and lists the minimum mandatory fine for each traffic offense. The crime of "driving while cancelled, suspended or revoked" is not listed as a traffic offense.

In fact, K.S.A. 8-262 specifically prohibits any person from operating a motor vehicle in the State of Kansas while that person's privilege to drive has been cancelled, suspended or revoked.

The statute reads, in relevant part:

(a) (1) Any person who drives a motor vehicle on any highway of this state at a time when such person's privilege so to do is canceled, suspended or revoked or while such person's privilege to obtain a driver's license is suspended or revoked pursuant to K.S.A. 8-252a, and amendments thereto, shall be guilty of a class B nonperson misdemeanor on the first conviction and a class A nonperson misdemeanor on the second or subsequent conviction.

There is no doubt that on May 31, 2014, Tayler Rock was operating a motor vehicle upon a highway of this state while his driving privileges were suspended. This action, by law, is a misdemeanor crime and not a traffic infraction. The deputy saw Tayler Rock operating his vehicle, thus the crime was being committed in his presence which allowed the officer to stop Tayler Rock and, if need be, to arrest Tayler Rock. The deputy lawfully stopped Tayler Rock.

Once Tayler Rock stopped his vehicle, the deputy approached the vehicle and witnessed Tayler Rock leaning out the driver's window with his upper torso and hands extended. The deputy noted that this was not normal behavior for a person who has been stopped by law enforcement. When the deputy arrived at the driver's door, Tayler Rock began demanding a reason for the stop and was verbally aggressive toward the deputy. A child in a forward facing car seat, on the rear-passenger side was observed by the deputy. The deputy responded by introducing himself and told Tayler Rock that he had a suspended license and should not be driving. Tayler Rock was then told that he was under arrest. At that point, Tayler Rock again became verbally abusive with the deputy, rolled his window up and refused to submit to the lawful commands of the deputy. K.S.A. 22-5229 prohibits any person from resisting a law enforcement officer making an arrest. The statute specifically 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.

Once Tayler Rock was told that he was under arrest, he had a legal duty to comply with the commands of the law enforcement officer.

The deputy commanded Tayler Rock to roll the window down and open the door as he was under arrest. There was no response from Tayler Rock. The deputy again stated that Tayler Rock was under arrest and warned him that he would have to break the window and use force against Tayler Rock if he did not comply. The deputy stated, "Let's not make it go that way." Tayler Rock then rolled the window down about 4" to 6" and again became verbally abusive toward the deputy. The deputy was barely able to get his arm into the window and reached for the manual lock to unlock the door. As the deputy pulled up on the lock, Tayler Rock slapped the knob back down relocking the door. The deputy again told Tayler Rock that he was under arrest and that he needed to stop resisting. The deputy was able to unlock the door and get it open on the second attempt.

Once the deputy got the door open, he stepped into the doorway. Tayler Rock began kicking the deputy with his left foot while pushing and punching the deputy with his left hand. The deputy attempted to get a "wrist lock" on Tayler Rock's left wrist, to pull him out of the car, but he was unable to do so. As the deputy tried to get Tayler Rock out of the vehicle, Tayler Rock "lurched" the car forward. The deputy warned Tayler Rock saying, "Tayler, don't do this, you are going to get hurt."

The deputy then removed his extendable baton, extended it and warned Tayler Rock, "Tayler, stop now. Quit resisting." The deputy attempted to make a strike, but since Tayler Rock was kicking him and noting the small space, he realized that he would be unable to make an effective

strike. Again attempting to gain compliance from Tayler Rock, the deputy entered the vehicle to try to get a “force lock” on Tayler Rock’s arm with the baton. The deputy’s intent was to gain control of the situation by using pain compliance and to get Tayler Rock out of the vehicle. K.S.A. 21-5227(a) is the governing statute for a law enforcement officer’s use of force in making an arrest. The statute states, in relevant part:

A law enforcement officer, or any person whom such 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.

Tayler Rock’s refusal to comply with the deputy’s lawful commands, his verbal belligerence, and his active physical resistance required the deputy to deploy physical force to gain compliance. The use of force was reasonable, necessary and prudent given the situation at hand. Tayler Rock’s refusal to comply with the deputy’s lawful commands, his verbal belligerence, and his active physical resistance placed his child, himself and the deputy in a situation where injury or death could occur.

Traffic encounters between citizens and law enforcement officers are and remain one of the most dangerous interactions with the public for law enforcement personnel. According to the Federal Bureau of Investigation’s, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted*, between 2003 and 2012, 96 officers across the nation were killed as a result of a traffic encounter. In 2012 alone, there were 4,450 law enforcement officers in the United States who suffered serious bodily injury as a result of traffic encounters. In *Arizona v. Johnson*, 555 U.S. 323, 129 S.Ct. 781, the United States Supreme Court reiterated its long held assertion concerning the dangerousness of traffic encounters by stating, “Furthermore, the Court has recognized that traffic stops are ‘especially fraught with dangers to police officers.’” A driver’s failure to comply with the lawful commands of a law enforcement officer, verbal aggression towards the officer and physical resistance by the offender places the officer, offender and passengers of the vehicle at risk for harm. The Kansas Supreme Court noted in *State v. Reiss*, 299 Kan. 291, 326 P.3d 367 (2014), that:

The United States Supreme Court has described police officer safety as a “weighty interest,” particularly during traffic stops. *Ohio v. Robinette*, 519 U.S. 33, 117 S.Ct. 417. ... We independently observe per the United States Supreme Court, “The risk of harm to both the police and the occupants [of a stopped vehicle] is minimized ... if the officers routinely exercise unquestioned command of the situation.

While the deputy was inside the vehicle with the baton against Tayler Rock, Tayler Rock grabbed the deputy’s left wrist with his right hand and accelerated the vehicle. The deputy began to fall backwards but was unable to get free from Tayler Rock’s grip. The deputy was face-to-face with Tayler Rock. He dropped his baton and grabbed his handgun. He warned Tayler

Rock, “Tayler, don’t make me shoot you.” Tayler Rock responded by rapidly accelerating his vehicle. As the deputy fell backwards, he reported that he knew he was going to die. The deputy stated that he had no doubt in his mind that Tayler Rock was going to kill him. Since Tayler Rock was not stopping, not listening, and had been resistive from the start, the deputy knew he had to fire his service weapon in order to save his life. The deputy fired into Tayler Rock and kept firing until Tayler Rock let go and the deputy was able to break free of the vehicle.

Again, K.S.A. 21-5227(a) is the governing statute for a law enforcement officer’s use of deadly force in making an arrest. The statute states, in relevant part:

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...

It is disingenuous to argue that grabbing an officer’s wrist, refusing to let go, accelerating a vehicle and dragging an officer alongside that vehicle would not place an officer at a risk of serious bodily harm or death. In fact, Kansas enacted a statute dealing with this very type of scenario. K.S.A. 21-5413(d)(3)(A) codifies the crime of aggravated battery against a law enforcement officer by use of a motor vehicle. It states, in relevant part:

(d) Aggravated battery against a law enforcement officer is:

(3) knowingly causing, with a motor vehicle, bodily harm to a:

(A) Uniformed or properly identified state, county or city law enforcement officer while the officer is engaged in the performance of the officer's duty

The deputy clearly stated that he knew he was going to die. The deputy clearly stated that he had no doubt in his mind that Tayler Rock was going to kill him. Since Tayler Rock was not stopping, was not listening, was not obeying lawful commands, and had been resistive from the start, the deputy knew he had to fire his service weapon in order to save his life.

The sole issue before me is whether the deputy’s use of deadly force against Tayler Rock was legally justified.

In *Graham v. Conner*, 490 U.S. 386, 109 S.Ct. 1865, the United States Supreme Court stated:

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. ... [T]he “reasonableness” inquiry in an excessive force case is an objective one: the question is whether the officer’s actions are “objectively reasonable” in light of the facts and circumstances confronting them...

The “reasonable officer” standard was adopted by the State of Kansas in *Lewis v. Marmon*, 8 Kan.App.2d 277, 655 P.2d 953,. The Kansas Appellate Court wrote:

Because of the nature of police work, the law does not require infallible judgment on the part of a police officer. He is not required to know with certainty that his life or another's life is threatened in order to justify his use of deadly force. All that is required is that the officer's belief be reasonable under the circumstances presented.

This "reasonable officer" standard was again approved by the State of Kansas in *Campbell v. City of Leavenworth*, 28 Kan.App.2d 120, 13 P.3d 917 (2000), review denied February 7, 2001, when the Kansas Appellate Court stated:

[An] officer's actions must be determined in light of the facts and circumstances which led to those actions. We agree with the United States District Court for the District of Kansas that 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. Quoting *U.S. v. Holloway*, 906 F.Supp. 1437 (D.Kan. 1995).

Thus, the standard by which an officer's use of force is to be judged is one of a "reasonable officer under the totality of the circumstances." There is also guidance from the Kansas Supreme Court in *Dauffenbach v. City of Wichita*, 233 Kan. 1028, 667 P.2d 380 (1983). The Court stated:

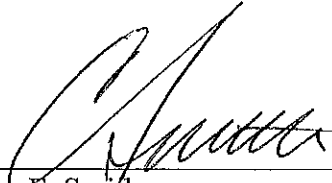
...[A] police officer is presumed to have acted properly until the presumption is overcome. There is a general presumption that a public official will act fairly, reasonably and impartially in the performance of the duties of his office. *Gladden v. State*, 196 Kan. 586, 413 P.2d 124 (1966).

In this matter, it is undoubtedly clear that the deputy was placed in a situation whereby great bodily harm or death could be inflicted. It is also without any serious doubt that a vehicle weighing more than 3,300 lbs. was deliberately used as a deadly weapon against the deputy by Tayler Rock. The deputy clearly had a right to defend himself from perceived and, ultimately, actual harm. The actions of Tayler Rock on May 31, 2014, when considered in totality, show that he placed himself and his minor child in danger of injury or death and placed the deputy in the unenviable position of having to decide whether or not to use deadly force to keep himself from serious injury or death. Thus, the decision, by the deputy, to use deadly force was reasonable under these circumstances.

Conclusion:

While the events of May 31, 2014, which resulted in the death of Tayler Rand Rock, were tragic and will affect the lives of many people, it is determined that the actions of the Cowley County Sheriff's Office deputy were justified.

I so find.



Christopher E. Smith
County Attorney
Cowley County, Kansas