

**St. Louis Circuit Attorney's Office Report Regarding the Review
into the Shooting Death of Kajieme Powell**



November 3, 2015

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I. INTRODUCTION

1. REVIEW OF POLICE OFFICER-INVOLVED SHOOTINGS: THE ROLE OF THE CIRCUIT ATTORNEY'S OFFICE

The Circuit Attorney's Office (CAO) handles state-level criminal matters, as a function of state government. The CAO is separate and independent from all other City of St. Louis government agencies including the St. Louis Metropolitan Police Department (SLMPD).

After the SLMPD adopted a new protocol related to police officer-involved shootings in September 2014, the CAO agreed to conduct an independent review of police officer-involved shootings occurring in the City of St. Louis, resulting in injury or death. These reviews are fully independent of an investigation undertaken by the SLMPD's Force Investigation Unit (FIU).

In this matter, upon receipt of the documents, witness statements, evidence and information from the SLMPD, the CAO embarked on a thorough and separate review of the facts and circumstances of this police shooting in which a person has been killed. As defined by law, the CAO may elect to request the legal functions of the grand jury to solely investigate a case. The CAO may also ask the grand jury to assist in a review by issuing investigative subpoenas. CAO staff may also conduct the investigation themselves. The decision regarding a course of action is determined on a case-by-case basis. The CAO can use legal investigative tools for its independent review. Prosecutors may conduct additional interviews with witnesses, subpoena witnesses to testify before the grand jury, collect and/or analyze physical and forensic evidence and apply current Missouri laws to available evidence.

The role of the CAO in conducting these reviews is to determine if a criminal violation of Missouri law has occurred and if such violation can be proven beyond a reasonable doubt in a court of law. Prosecutors will not make comments regarding the efficacy of police policies, procedures, training or other aspects of police conduct outside of the laws of the State of Missouri. Additionally, the findings of this office bear no weight on potential disciplinary action or civil litigation in these matters.

2. THE SHOOTING DEATH OF KAJIEME POWELL

On August 19, 2014 at approximately 12:28 p.m., Kajieme Powell was shot and killed by two on-duty SLMPD officers (Officers 1 and 2) in the 8700 block of Riverview Blvd. in the Baden neighborhood of the City of St. Louis.

The shooting occurred before the official creation of the FIU. The first case to have been formally investigated by the FIU was the shooting death of Vonderrit Myers, Jr., which occurred on October 8, 2014. The SLMPD later indicated that the FIU would also investigate Powell's death.

The FIU of the SLMPD reviewed the Powell case for criminal conduct and, on February 17, 2015, delivered its findings to the CAO for review. The SLMPD did not request any criminal charges in connection to this matter.

Upon completion of the review into Myers' death, the CAO initiated an independent and thorough review of the facts of Powell's death. As a completely separate entity, the SLMPD's findings did not, in any way, dictate the actions taken by the CAO.

Circuit Attorney Jennifer M. Joyce assembled a team of experienced prosecutors to conduct the investigation. Circuit Attorney Joyce elected not to request the grand jury's involvement as the investigative body for this case.

The team of attorneys and other CAO staff reviewed cell phone video of the incident, police reports, medical examiner reports, laboratory reports, ballistics reports, 911 calls, dispatch calls and a 3-D spatial analysis rendering conducted by a third party in addition to the 3-D written report following the analysis. They conducted additional interviews and made numerous attempts to gain further statements and information necessary to complete their investigation.

Circuit Attorney Joyce and other staff members have requested to meet with Powell's family privately. To date, those requests have been declined via the family's attorney.

What follows is a report making clear the CAO's decision in this matter and the reasons for it. In the interest of openness and transparency, the CAO has provided select crime scene photos, and autopsy report conclusions and included in the report additional items for an appendix so the public can best understand the basis for the CAO's conclusion. Questions regarding any other source documents or materials relative to the investigation should be directed to the SLMPD.

II. STATEMENT OF FACTS

The referenced statement of facts was developed by video of the shooting, witness accounts, the officers' accounts and physical and forensic evidence.

At approximately 12:15 p.m. on August 19, 2014, Powell went into a convenience store (hereafter referred to as "store") in the 8700 block of Riverview Blvd. in St. Louis. Two clerks were working in the store. They observed Powell leave the store with two energy drinks and place the drinks on the curb. Powell then returned to the store and took a snack item. He did not pay for any of the items and, according to the store's clerks, did not have permission to take the items without paying. For this reason, one of the clerks followed Powell out of the store and confronted him. According to witnesses, Powell threw the snack item into the street and a store clerk went and retrieved it. The clerk then asked about the energy drinks and Powell threatened him by saying, "if you come forward I'm going to f...ing kill you. I'm going to f...ing kill you, you stupid mother f...er." The clerk went back in the store and then walked back outside and asked again if Powell would return the drinks. The clerk said he attempted to calm Powell down, but Powell kept pacing and yelling and muttering to himself. Powell told him no, to call the police and that he would kill him if he got near the drinks.

Two witnesses called 911 and asked for police assistance. Callers reported Powell's demeanor and words as "threatening" or "aggressive." Witnesses reported that Powell repeatedly put his right hand in the pocket of his hooded sweatshirt. At one point, Powell was directly in front of the door of the business next door to the store. One of the people inside the business locked the door, concerned about Powell's behavior. As the owner of the business called 911, he/she observed Powell pull a knife from the right pocket of his hooded sweatshirt. Powell made a motion with the knife and returned it to his pocket. The business owner informed the 911 dispatcher of the presence of the knife.

One of the convenience store clerks placed two phone calls to 911, indicating Powell's behavior and the potential that Powell had a weapon. Dispatchers relayed information to two officers responding to the scene for the disturbance. It is possible that the dispatcher misheard the 911 call, because the dispatcher relayed information to police that Powell had two knives, one in his right pocket and one in his hand. Dispatchers provided a description of Powell and later, before the shooting, officers confirmed Powell's description with the dispatcher. No 911 caller informed the dispatcher that Powell was or appeared to be suffering from any kind of mental breakdown.

Prior to the officers' arrival, a witness began recording the incident with his cell phone. This video was widely disseminated to the public in the days following Powell's death. The witness told investigators that he came to the scene because he was told a guy was daring people to touch some sodas, and if they did, the guy would knock them out. The witness thought it was a joke. Once the witness approached the scene, he recognized Powell from the neighborhood and realized the situation was more serious than he first thought. The video depicts some of Powell's words and actions prior to the shooting and the shooting itself. The majority of the video is from one angle, as the person taking the video is west of the location of the shooting.

The business owner, the convenience store clerk and several other witnesses saw the events leading up to the shooting and the shooting itself.

Officer 1 and Officer 2 were riding in a marked SLMPD Tahoe and were called to respond to the scene of a man causing a disturbance in the 8700 block of Riverview Blvd. Officer 2 was driving and Officer 1 was riding in the passenger seat.

Powell was on the sidewalk with his right hand in his sweatshirt pocket when officers arrived. They exited and Powell approached them. The officers gave Powell commands for him to remove his hand from his pocket and drop the knife. Powell yelled at the officers multiple times to shoot him. The officers had their guns drawn during this interaction.

Though the police chief initially reported to the public that Powell had raised the knife over his head, video evidence shows Powell was holding the knife in what is referred to as an “overhand grip,” meaning the blade was pointing toward his pinky.

The officers yelled again for Powell to drop the knife, at which point Powell advanced quickly toward the officers with the knife in his hand. The officers fired their weapons, striking Powell. Neither officer emptied his magazine.

A 3-D spatial analysis report concluded that Powell was approximately 15 feet away from Officer 1 at the first audible shot and that Powell continued toward the officer another 10 feet after the first audible shot.

The report also concluded that, at the time of the first audible shot, Powell could have made contact with Officer 1 between 1.2 and 2.4 seconds.

Powell fell forward and hit the ground, rolling towards one of the officers. He was still moving as Officer 1 grabbed the knife and threw it from Powell’s reach. The officers conducted a search of Powell’s person and handcuffed him, per police training. They then radioed for assistance.

The scene was secured, Powell’s body was concealed from view, the area was cordoned off and the SLMPD investigation began.

III. EVIDENCE

1. OFFICER 1 and OFFICER 2

OFFICER 1

Officer 1 is a 32-year-old white male. He is a licensed law enforcement officer in the state of Missouri. He graduated from the SLMPD Academy in 2011.

On August 19, 2014, Officer 1 was working in his capacity as an SLMPD officer, in full uniform.

Officer 1 did not have Crisis Intervention Team training at the time of the shooting.

Officer 1’s Account

Officer 1 was first interviewed by an SLMPD homicide detective on August 19, 2014.

On January 16, 2015, Officer 1 provided his recorded statement of the incident to Lt. Roger Engelhardt with the FIU of the SLMPD.

During the review, CAO staff made a request to interview Officer 1. Through his attorney, Officer 1 declined the request. For its analysis, CAO staff subsequently relied on Officer 1's statement made to FIU investigators.

For a summary of Officer 1's statement, see section below entitled "Witnesses Not Interviewed by the Circuit Attorney's Office."

OFFICER 2

Officer 2 is a 27-year-old white male. He is a licensed law enforcement officer in the state of Missouri. He graduated from the SLMPD Academy in 2011.

On August 19, 2014, Officer 2 was working in his capacity as an SLMPD officer, in full uniform.

Officer 2 had Crisis Intervention Team training in April 2012.

Officer 2's Account

Officer 2 was first interviewed by an SLMPD homicide detective on 8/19/2014.

On January 16, 2015, Officer 2 provided his recorded statement of the incident to Lt. Roger Engelhardt with the FIU of the SLMPD.

During the review, CAO staff made a request to interview Officer 2. Through his attorney, Officer 2 declined the request. CAO staff subsequently relied on Officer 2's statement made to FIU investigators.

For a summary of Officer 2's statement, see section below entitled "Witnesses Not Interviewed by the Circuit Attorney's Office."

2. WITNESS STATEMENTS

Prosecutors and CAO staff members began their investigation into witnesses' statements by reviewing the interviews conducted by the FIU. Then, CAO staff members and prosecutors attempted to personally interview relevant and known witnesses and locate additional ones. A few witnesses declined to speak with the CAO.

Witnesses Interviewed by the Circuit Attorney's Office

CAO staff personally interviewed 12 people. These interviews included scene witnesses from the store and nearby business, witnesses who saw or heard portions of the events and the medical examiner.

Witness 1 – Witness 1 was working at the convenience store near where the shooting took place. He/she said that Powell entered the store, then left and came back. He/she said that Powell took energy drinks and snacks from the store without paying. When he/she told Powell he/she was going to call the police, he/she said Powell said he didn't care.

Witness 1 indicated that he/she was scared and then called the police. He/she said that Powell's hand in his pocket made him/her nervous and he/she was afraid that Powell had a gun or might have had a knife. He/she told CAO staff that he/she picked up a shotgun that was in the store, because he/she felt like he/she needed protection. He/she believes he/she made two phone calls to 911. At one point, he/she was outside the store for a few moments and saw Powell put down two energy drinks. He/she heard Powell say, "If someone touches them, I'm going to kill them."

Witness 1 did not see police arrive. He/she heard four or five shots, but was inside at the time near the cash register and said he/she could not see the shooting out the window.

Witness 2 – Witness 2 was working at the convenience store near where the shooting took place. He/she also saw Powell take items from the store. Witness 2 said he/she initially took a shotgun that was kept at the store and brought it outside but then put it away.

He/she returned outside prior to the shooting, attempting to speak with Powell. After police arrived, this witness said he/she was about seven feet from Powell and saw a knife in Powell's hand. He/she said that he/she could see Powell move towards the officers. He/she heard the officers telling Powell to drop the weapon and get down.

He/she told CAO staff that he/she thought there were four shots but was surprised when he/she later watched recorded cellphone video and heard more shots.

Witness 3 – Witness 3 was at a business near the location of the shooting. He/she noticed a man (Powell) in a hooded sweatshirt with his right hand in his right pocket. He/she described him as animated and angry.

He/she locked the door to the business, concerned because Powell was acting agitated. He/she said Powell kept circling around with his hand in his pocket. He/she called the police and told them that Powell seemed angry. He/she told CAO staff that when Powell was two or three feet away from the door of the business, he took a knife out of his pocket and, with it, motioned from side to side. Then he put the knife back in his pocket. When he was holding the knife, Witness 3 said he had the blade pointed toward his pinky.

Witness 3 said he/she could see a man videotaping the incident and one of the convenience store clerks (Witness 2) attempting to speak with Powell.

He/she continued to watch Powell and the incident. He/she saw the officers arrive at the scene and saw their guns drawn.

His/her account of the shooting is consistent with what is depicted on the cellphone video of the incident.

He/she indicated to CAO staff that he/she did not know Powell prior to the shooting. He/she did not know the responding officers.

Witness 4 – Witness 4 was inside the nearby business at the time of the shooting. He/she heard Witness 3 place the 911 call. He/she also saw Powell with the knife. He/she saw Powell take it out of his pocket and then put it back. He/she said that Powell looked angry and agitated. He/she said he/she did not see the shooting because he/she moved away from the window before the shooting started. He/she said he/she did not know the officers.

Witness 5 – Witness 5 was inside the nearby business at the time of the shooting. He/she saw Powell outside walking back and forth in front of the business. He/she said that Powell was very angry. He/she did not see anything in Powell's hands. He/she saw the police officers. He/she could not hear what they were saying. He/she said that he/she could see Powell moving towards the officers. He/she could not say how many shots were fired.

Witness 6 – Witness 6 was working on a job on the same block of the shooting but across the boulevard. He/she saw the store clerk and Powell have what appeared to be a verbal altercation.

He/she said that Powell was acting aggressively. He/she saw the police officers arrive and could hear the police ask Powell to put his hands up, but said it seemed Powell wasn't listening to them. He/she said Powell had his hand in his pocket. He/she did not see a knife in Powell's hand but did see one on the ground after the shooting.

Witness 7 – Witness 7 was outside at the time of the shooting across the street from the convenience store. He/she saw Powell come out of the store and described him as belligerent. He/she did not personally see a knife. He/she heard police tell Powell to “drop it.”

Witness 8 – Witness 8 was inside his/her home nearby at the time of the shooting. He/she looked out the window after hearing someone talking really loudly. Witness 8 witnessed the shooting and saw Powell fall. He/she saw Powell “jerking” and then saw the officers handcuff Powell.

Witness 9 – Witness 9 was standing in the median of the street and watched as Powell was yelling and walking back and forth. He/she did not personally see a knife. He/she heard the police tell Powell to “put your hands up.”

Witness 10 – Witness 10 was riding in a car on the street when the shooting happened. He/she saw Powell walking back and forth in front of the store and the business. He/she heard police telling Powell to stay back. He/she heard the shots from the officer. He/she did not see anything in Powell's hands. He/she called 911 about the shooting.

Witness 11 – Witness 11 was at home when a friend told him/her that there was a man at the corner store that had stolen things and thrown them in the street. He/she thought it was a joke at first. He/she grabbed his/her phone and went down the street, recording the events with the phone's camera.

He/she recognized Powell as someone he/she was aware of from the neighborhood. He/she noticed that Powell was “agitated.” He/she said that police pulled up and officers exited with their guns drawn.

He/she said that he could hear the officers yelling for Powell to put down the knife. He/she heard Powell saying “shoot me” to the officers. He/she said that the officers shot approximately 12 times, including when Powell was on the ground. He/she said that he/she did not see a knife in Powell's hand. He/she saw the police officers begin to check on Powell, turn him over and begin to handcuff him.

He/she later provided the cellphone video to an attorney, who provided it to police. The video was released by the SLMPD and widely disseminated to the public.

Witness 12 – Witness 12 was in the area at the time of the incident and witnessed the shooting. He/she saw Powell outside the store.

He/she said when police arrived on scene, people were telling Powell to calm down, but no one would go near Powell. He/she said police pulled up on the curb with weapons drawn. He/she said that Powell had his hands in his pocket and would not remove them when police told him to do so. Witness 12 said he/she did not know what Powell had in his pocket and said that he/she thought that Powell might have a gun.

Witness 12 said he/she was scared of Powell, although he/she never saw what was in Powell's pocket. Witness 12 said he/she heard Powell say, “just shoot me,” more than once. He/she said he

saw Powell's fists balled up and he was leaning forward. He/she said Powell again says, "Just shoot me," and he/she saw the officers open fire.

Medical Examiner– CAO staff spoke with the City of St. Louis Medical Examiner. See further explanation of the ME's findings later in this report.

Witnesses Not Interviewed by The Circuit Attorney's Office

Prosecutors made requests to the public for people to come forward with information regarding this matter in an effort to interview all available witnesses and gather all relevant information. Prosecutors also made attempts to interview individuals who spoke to the media claiming to have information pertinent to the case.

Officer 1 – As stated in the earlier section entitled "Officer 1's Account," Officer 1 declined to be interviewed by CAO prosecutors and staff.

The following is a summary of Officer 1's interview with police:

He and his partner, Officer 2, received a call for a disturbance at a convenience store. The call was for a male who was refusing to give back some items that he had taken from the store. The officers were given a description of the suspect. Officer 2 was driving and Officer 1 was in the passenger seat.

While on the way, Officer 1 said they received a description of a man who was possibly armed with knives by a second caller. When they arrived, they observed a male who matched the description and Officer 2 asked for the description again. The dispatcher had relayed that the second caller said that the man was possibly armed with two knives and was pacing around.

Upon arrival to the scene, Officer 1 said that he observed the subject's right hand in his jacket pocket, staring at them as they approached. He told investigators that they went past, made a U-turn and parked about 30 feet back at the entrance to the parking lot.

As they began to exit their vehicle, Officer 1 said they asked the subject to show his hand. He did and Officer 1 said he could see that Powell had a knife in his right hand. As Officer 1 exited the vehicle, he kept the door open, saw the knife and then drew his weapon.

Officer 1 said they told him to drop the knife and the man began advancing toward them. The man was holding the knife in what's described as an overhand grip. This was described by Officer 1 as the subject having the handle in his hand with the blade going toward the bottom of the hand. According to Officer 1, the blade was near the pinky finger of Powell's right hand.

Officer 1 said that initially the knife was straight out to subject's right side. When the man approached, Officer 1 said that the man's arm swung and was raised up a bit.

Officer 1 said that they continued to give the man orders. He refused to obey the orders and stepped up on the retaining wall and came more towards Officer 1's direction, yelling "Shoot me, kill me, shoot me, kill me." Officer 1 said the man continued walking towards them and the vehicle. He did not drop the knife.

Officer 1 said that, at one point, the man was probably 12-15 feet from him. Officer 1 said he dropped his left hand toward his department-issued Taser in his cargo pocket. Officer 1 said that

the subject stepped up his pace and had the knife in an overhand grip and he started to raise the knife. Officer 1 said the incident was unfolding so rapidly, he felt he didn't have time to deploy the Taser. Also, knowing how Tasers work and considering the man's clothing, Officer 1 said the Taser was not a viable option.

Officer 1 said he fired the first shot from his weapon when the man was about 6-8 feet from him. He said that he did not measure the distance, but that was his estimation.

Officer 1 said the subject's demeanor was enraged; he looked disconnected and aggressive. Officer 1 said he did not believe the man would surrender the knife based on his demeanor.

After Officer 1 fired the shots, he said that he retrieved the knife from the subject's hand, conducted a pat down and placed him in handcuffs. He said that Officer 2 made a call for aid and for medical assistance for the subject.

Officer 1 told investigators that his training was to use deadly force against a person armed with a knife when the person came within 21 feet.

Officer 1 told investigators he felt the man was a threat to his life.

Officer 2 – As stated in the earlier section entitled "Officer 2's Account," Officer 2 declined to be interviewed by CAO prosecutors and staff.

The following is a summary of Officer 2's interview with police:

Officer 2 was working with his partner, Officer 1, when they received a call to a disturbance at a store where a man had come into the store and stolen items.

While in route to the call, Officer 1 received additional information that a caller from the business next to the convenience store said a male was pacing in front of the business. The witness had indicated that he/she saw the man with a knife, that he/she had locked his/her door, that he/she was afraid and that he/she didn't know what the man was about to do.

Officer 2 said he was driving and pulled up at the location. He saw a man that matched the description but asked dispatch for the description again to be sure. He said that he positioned the vehicle north of the subject to give them a decent reactionary distance. He said they believed the suspect to be armed.

Officer 2 said he pulled up on the sidewalk and angled the vehicle toward the subject. He said he exited the police car and immediately saw the man's right hand in his pocket. He believed him to be armed with a knife but training tells them to be prepared for a higher threat.

Officer 2 said that he pulled his gun. The subject pulled his knife and advanced toward them saying, "Shoot me, kill me." Officer 2 said they gave him orders to stop, but the subject advanced toward his partner, then backed up and climbed on to the wall, and then advanced toward his partner again. As Powell approached, Officer 2 said they fired. The subject went down. When he was down, Officer 2 said he was still moving toward his partner. Officer 2 said he fired two more times.

Officer 2 said they did a pat down and cuffed the man. They removed the knife and placed it a safe distance away.

Officer 2 said that he had to use deadly force against someone armed because his training says that the reactionary gap¹ is 20 feet. When he fired, Officer 2 said he believed the subject was well within that distance and could cause injury to them.

Additional Witnesses – CAO staff attempted to interview other witnesses. Some witnesses declined to be interviewed. CAO staff also requested a meeting with Powell’s grandmother, who is the listed next of kin. She and other family members of Powell have indicated to the media that they had additional information regarding Powell. Through their attorney, Jermaine Wooten, Powell’s grandmother declined to speak with CAO staff privately along with her attorney. On August 19, 2015, the Circuit Attorney’s Office again requested to speak privately with Powell’s grandmother and her attorney, and through an attorney, the request was again denied.

3. CELLPHONE VIDEO

A person present at the time of the shooting recorded a portion of the events leading up to the shooting, the shooting itself and a portion of the aftermath. Prosecutors and CAO staff thoroughly reviewed and studied the video. They also reviewed thousands of frame-by-frame still images from that video.

On the video, Powell is seen walking around on the sidewalk. He can be heard saying that he is on Facebook and Instagram. He asks, “Do you know who I am” and says, “I am tired of this s***.” It is unclear to whom he is speaking.

A police car comes to a stop approximately one minute and 20 seconds into the video. Powell looks back and backs up a few steps. Powell pulls a knife from his pocket approximately 10 seconds later on the video. He is seen approaching officers as he does so. On the video, Powell can be heard saying “Shoot me, shoot me now,” several times.

On the video, police can be seen arriving and drawing their weapons. The officers can be heard telling Powell to get his hands out of his pockets at least three times. The officers can be heard telling Powell to drop the knife at least three times. A witness can also be heard saying, “Drop it, bro.”

At one minute and 40 seconds into the video, Powell is seen advancing towards Officer 1. The shooting begins and lasts approximately three seconds.

In the video, Powell appears to still be moving even after he is shot and lying on the ground. Officer 1 begins to roll Powell over to handcuff him at approximately two minutes and 36 seconds into the video.

4. 3-D SPATIAL ANALYSIS

Utilizing the video and photographic evidence from the above-mentioned cell phone video (including 11,692 individual frames) and the photographs taken by the Evidence Technician Unit at the scene, a 3-D spatial analysis report was generated by a third-party company called St. Louis Traffic Accident Reconstruction.

¹ “Reactionary Gap” is a term of art in law enforcement that refers to the distance that police officers are trained to seek to keep between themselves and armed suspects in order to respond effectively to sudden threats.

A copy of the full report is included in the appendix to this report.

That report concluded the following: that Powell was walking towards the officers at a rate significantly above that of a typical pedestrian; that Powell was approximately 15 feet away from Officer 1 at the first audible shot; that Powell continued another 10 feet after the first audible shot; that Powell was eight feet away from Officer 1 when stopped (Officer 1 stepped backwards during the encounter).

The report also concluded that at the time of the first shot, Powell could have made contact with Officer 1 in about 1.2 and 2.4 seconds.

5. AUTOPSY REPORTS

According to the City of St. Louis Medical Examiner's report, there were 13 entrance wounds and five exit wounds on Powell's body. One of the entrance wounds on the upper left arm was likely a re-entry wound, meaning a bullet entered, exited and then re-entered Powell's body. The medical examiner determined that four of the shots would have been fatal eventually. The order of the shots cannot be determined. The medical examiner, however, concluded that none of the shots would have been immediately fatal and that Powell could still have been moving after he was on the ground.

Toxicological tests were performed. All returned negative results.

6. BALLISTICS REPORTS

Twelve cartridge casings were recovered from the scene consistent with department-approved ammunition.

Eight 9mm caliber, 6/right twist, copper jacketed bullets were recovered from the morgue. Four of them were determined to be from one officer's gun. Four of them were determined to be from the other officer's gun.

Each of the officer's firearms was submitted to the laboratory with its magazine and cartridges. Each firearm still had 10 cartridges in its magazine. The capacity for each firearm is 15 cartridges in the magazine, plus one in the chamber (total of 16).

Therefore, it can be concluded that each officer fired six times.

7. THE KNIFE

Several witnesses saw a knife in Powell's possession, including the officers who arrived on scene. Officer 1 told investigators he removed the knife from Powell's hand after the shooting. An approximately nine inch-long, wood-handled and metal-bladed knife was photographed on scene and taken into evidence.

See appendix for pictures of the knife.

8. DNA ANALYSIS

The knife recovered from the scene was swabbed for DNA by the SLMPD Crime Lab. The swab of apparent blood from both the blade and the handle matched Powell's DNA profile.

The two beverage cans were also recovered from the scene. The swab from one open can matched Powell's DNA profile. The swab from the other open can did not have DNA results suitable for comparison.

9. DISPATCH AND 911 CALLS

Three separate phone calls were made to 911 immediately prior to Powell's death.

The first of the calls was placed by one of the convenience store clerks at approximately 12:18 p.m. The caller indicated to police that Powell had walked out of the store with some "stuff." The clerk gave a description of Powell to the dispatcher.

The dispatcher then relayed that information to Officers 1 and 2. The dispatcher told the officers that the subject was "creating a disturbance" at the location and provided a description.

The second 911 call was placed at approximately 12:20 p.m. by a person at the nearby business. He/she provided the same description of Powell, indicating that Powell seemed "very upset." He/she said that he/she locked the door to the business, because he/she didn't want Powell to come in. He/she then told the dispatcher that Powell had a knife in his hand. He/she again repeated information and told the dispatcher that Powell had a knife in his pocket.

The dispatcher then relayed this information to Officers 1 and 2. The dispatcher told the officers that the 911 caller stated that the subject had "a knife in his right pocket and one in his hand." It appears that the dispatcher misinterpreted the 911 caller regarding the number of knives in Powell's possession.

The store clerk who made the first 911 call placed another call at approximately 12:26 p.m. The caller indicated that Powell had his hand in his pocket. The caller sounds as if he/she is distressed, telling the dispatcher, "I don't know if he's got a gun or not."

The third 911 call was not relayed to the officers.

Prior to arriving on the scene, Officer 2 asked dispatch for the description of the subject and dispatch provided it again.

Prosecutors also reviewed 911 and dispatch recordings after the shooting, as witnesses and officers relayed additional information about the shooting, requesting EMS and additional police backup.

See appendix for the transcript of the initial 911 calls and dispatch recordings.

10. ADDITIONAL EVIDENCE

Prosecutors also reviewed surveillance video from the store on which Powell can be seen taking items without paying. Prosecutors and staff additionally reviewed crime scene video and photographs.

See appendix for some of the pictures from the scene.

IV. DISCUSSION

1. ISSUE

Prosecutors have reviewed available witness statements, physical evidence and forensic evidence related to the shooting death of Kajieme Powell.

The role of the CAO is to review the evidence and determine if a violation of Missouri law occurred. The CAO will not make comment regarding the efficacy of police policies, procedures, training or other aspects of police conduct outside of the laws of the State of Missouri. To pursue criminal prosecution, prosecutors must have the evidence to prove a crime occurred beyond a reasonable doubt. Therefore, in this case, prosecutors considered the following issues:

Did either Officer 1 or Officer 2 commit a crime under Missouri law, and if so, can the crime be proven beyond a reasonable doubt?

2. APPLICABLE MISSOURI LAW

To answer this question, prosecutors reviewed applicable Missouri criminal statutes, including those for homicide. Three specific Missouri laws emerged as critically relevant to the case: those laws governing a person's ability to act in lawful self-defense, a person's ability to act in defense of others and an officer's authority to use deadly force when making an arrest. Those laws are outlined, in summary, below. *For the actual language of the statutes, see the appendix.*

Use of force in defense of persons (563.031 covers both self-defense and defense of others)

Physical Force: According to Missouri law, a person may use physical force upon another person when he or she reasonably believes such force to be necessary to defend himself or herself.

Deadly Force: The law allows a person to use deadly force when he or she reasonably believes^[2] that such deadly force is necessary to protect *himself or another person* from death, serious physical injury or any forcible felony.

To use physical and/or deadly force, the law states that the person claiming self-defense cannot be the "initial aggressor" in the incident, unless that person is a law enforcement officer. It does not matter who first produces a weapon; a police officer, under the law, is entitled to self-defense even if he or she is the initial aggressor.

Law enforcement officer's use of force in making arrest (563.046)

Non-Deadly Force: Police officers are entitled by Missouri law to make an arrest. An officer may use force to make the arrest, but only the level of force he or she reasonably believes is necessary.

Deadly Force: The times when an officer is allowed under Missouri law to use deadly force to make an arrest are more limited. Under the law, officers are allowed to use deadly force only when:

"The officer reasonably believes^[3] that such use of deadly force is immediately necessary to effect the arrest **AND** the officer also reasonably believes that the person to be arrested has done at least one of three things:

^[2] Same jury instructions apply.

- 1.) The person being arrested has committed or attempted to commit a *felony* OR
- 2.) The person being arrested is attempting to escape by use of a deadly weapon OR
- 3.) The person being arrested may otherwise endanger life or inflict serious physical injury unless arrested without delay.”

3. ANALYSIS

Prosecutors applied Missouri law to the facts and evidence available in this case, including witness interviews, physical evidence and forensic evidence. The following is a summary of their analysis and application of the laws considering the available evidence.

Use of force in defense of persons

Officers 1 and 2 were acting in their full capacity as law enforcement officers and, on the date in question, were responding to calls for a man causing a disturbance and refusing to give back items he had unlawfully taken from a convenience store. They also retain rights afforded to regular citizens.

Prior to their arrival at the scene, the officers received information that the man was armed with two knives. Upon their arrival, the officers observed Powell to match the description of the person with the knives. No 911 caller indicated that Powell was or appeared to be suffering from any kind of mental illness or ailment.

Immediately after they arrived on scene, Powell began advancing towards the officers in what they observed to be an aggressive manner. Powell’s aggressive and agitated behavior was also perceived by other witnesses. The officers, like several of the witnesses, saw that Powell had a knife in his hand. As evidenced by the video and the officers’ statements, Powell refused to comply with police demands to drop the knife and repeatedly advanced towards the officers. The 3-D spatial analysis report indicated that Powell came within 15 feet of Officer 1 when the first shot was fired. More, the report concluded that, based upon the speed of his movement, Powell could have been in contact with Officer 1 in about 1.2 and 2.4 seconds.

In a recorded interview, Officer 1 indicated he was in fear for his own safety. Officer 2 indicated that Powell could have caused serious injury to them.

Knives are legally regarded as a dangerous instrument, which according to the law means any instrument, article or substance, which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury. (MO State Statute 556.061)

Under the circumstances, it was reasonable for the officers to believe that Powell was advancing on Officer 1 to inflict serious physical injury or to commit the forcible felony of assault against one or both of the officers. Therefore, prosecutors conclude that the officers could have reasonably believed the use of deadly force was necessary to protect them from Powell. While Officer 2 was farther away from Powell, Officer 2 could still have reasonably believed that Powell posed an immediate threat to Officer 1 and/or to himself.

^[3] Missouri approved jury instructions (306.06A) define the term “reasonably believes” as a belief, based on reasonable grounds that could lead a reasonable person in the same situation to the same belief. The standard does not depend upon whether the belief turned out to be true or false.

Some people have publicly suggested that the officers knew or should have known Powell's mental state. There is no evidence to suggest the officers knew Powell was suffering from a mental illness or ailment, and no evidence has been provided to police or prosecutors that Powell was suffering from a mental illness or ailment. Under the law, however, an aggressor's mental state does not change a person's legal ability to protect him or herself from that aggressor.

Prosecutors therefore conclude that, under the law, Officer 1's deadly force was a legal act of self-defense. Prosecutors further conclude that Officer 2's deadly force was a legal act to protect Officer 1. Section 563.063 authorizes the use of force in defense of others, including deadly force, where appropriate. Though acting as law enforcement officers at the time, had either Officer 1 or Officer 2 been acting in any other capacity, or simply walking down the street when Powell approached them in this manner, both would still have been legally justified in using deadly force.

Law enforcement officer's use of force in making arrest

While the laws of self-defense and defense of others are most pertinent to this particular set of facts and circumstances, prosecutors also reviewed whether or not the officers had the ability to use deadly force in making an arrest.

Shortly after Officer 1 and Officer 2 arrived on scene, they observed Powell openly displaying a knife in an angry or threatening manner. Under the law, this conduct would constitute the crime of Unlawful Use of Weapon-Exhibiting, a Class D felony. By advancing upon the officers, Powell could also have been committing the offense of Second-Degree Assault on a Law Enforcement Officer, a Class C felony. The officers, therefore, would have had legal justification to arrest Powell.

Under Missouri law, police officers may use deadly force to make an arrest when they reasonably believe that deadly force is necessary to make the arrest and when they also reasonably believe that the person being arrested may endanger life or inflict serious physical injury unless arrested without delay.

4. CONCLUSION

The fact that Officer 1 and Officer 2 shot Kajieme Powell and that he died as a result of these injuries is not in dispute. It is a tragedy that a life was lost in this incident.

As is their role, prosecutors must only determine if a violation of criminal law occurred. Given the available facts, video, witness statements, physical and forensic evidence, and for the reasons outlined in the discussion above, prosecutors have determined a criminal violation against either officer could not be proven beyond a reasonable doubt. Therefore, charges will not be filed in this case.

V. APPENDIX

1. PHOTOS FROM SCENE, EVIDENCE



Shell casings on passenger side of car at scene.



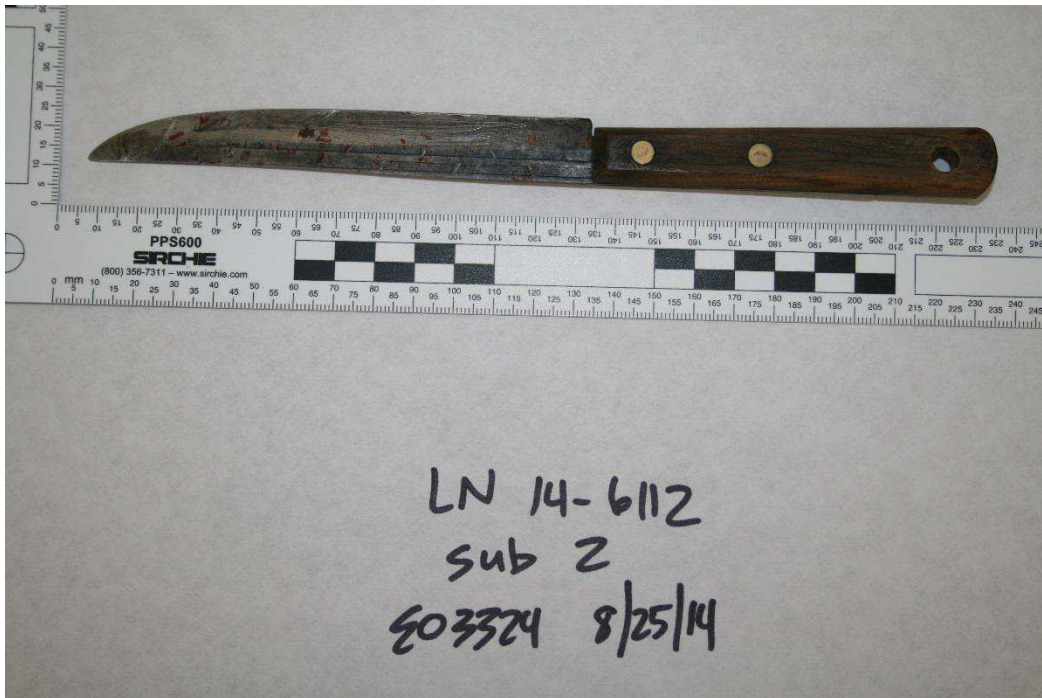
Shell casings on driver side of car at scene.



Scene from parking lot of nearby business.



Knife on ground at the scene of the shooting.



Knife in Powell's possession during the incident.

2. TRANSCRIPT OF THE 911 CALLS

THE DISPATCHER'S VOICE IS IN ITALICS. THE CALLER'S VOICE IS NOT. THE CAO HAS REDACTED PERSONAL INFORMATION OF THE CALLERS IN ORDER TO PROTECT THEIR IDENTITY.

12:18 pm (1 minute)

Yes ma'am I've got someone in 6 Star store on Riverview and he walking out with the stuff

What's going on?

He just a black tall guy walking out with the stuff

A black tall guy walking out with what stuff?

He got like two (unintelligible) drinks and uh donuts

What is he wearing?

He got like a blue hoodie and khaki pants

Alright what's your name?

My name is REDACTED

And a call back number for you?

REDACTED

Alright we're going to get officers over there, did you see what direction he went in?

He just outside, outside the door. He refuse to give the stuff back

Alright we'll get police over there

12:20 pm (1 minute 23 seconds)

St. Louis City Police this is REDACTED

Yes I'm going to need the police. I'm at 87XX Riverview and I don't know what's going on the corner but there is a young man in khaki pants and a blue hooded shirt. Black male maybe about six foot with a white t-shirt and beard. And he's just walking back and forth. He must have had a dispute with the person at 8701 Riverview but he's in front of my business and he just seems very upset. I don't know what he's getting ready to do. But, um, I don't know if the person in the store called but I'm calling because I done locked my door. I don't want this guy to come in here. Be he's upset for – he's got a knife in his hand. He got a knife in his pocket, he got a knife in his pocket, in his right pocket. And he must be threatening the store owner because I seen the store owner come outside, up here to the business. So he has a knife in his hand and he's in front of 87XX Riverview. He looks like he's probably

about 20/22 and like I said he's got on brown Khaki pants, a blue hooded sweatshirt jacket, and a white t-shirt with a beard.

Alright, we're gonna get officers over there. Did you want to leave a name and number at all?

My name is REDACTED and I'm at REDACTED

Thank you REDACTED we'll get police over there and find out what's going on

12:26 pm (37 seconds)

City police, REDACTED

Yes ma'am I'm REDACTED. I just called. The guy's still outside. He got his hand in his pocket. I don't know if he's got a gun or not.

(unintelligible)

You called us already?

Yeah I just called like 3 minutes ago. I need (unintelligible).

Okay well you have to give us time to get there.

Okay I'm just (unintelligible) the situation ma'am.

And I understand that but you have to give us time to get there. You called 3 minutes ago. I'll let the officers know.

I'm sorry, I'm sorry ma'am.

It's okay, I understand but give us time to get there okay?

Okay thank you.

Alright, bye bye.

3. TRANSCRIPT OF DISPATCH CALLS

#13

The next portion of this recording we're going to be monitoring the radio transmissions on District 6 channel. The time is 12:20 p.m.

#14

Dispatcher: 634

Cop: 34

Dispatcher: Call to disturbance. 87XX Riverview. 87XX Riverview. Cross street McLaran. Caller said that the Six Stars Market, there's a black male, tall, blue hooded jacket, khaki pants, creating a disturbance, and refusing to give back items. The caller's name is XXXXXX.

Cop: Clear

#15

Dispatcher: 634

Cop: 34

Dispatcher: We got another call on this. The same subject is walking back and forth now in front of the business. Caller said he's got a knife in his right pocket and one in his hand. The caller is the in the business nearby.

Cop: Clear

#16

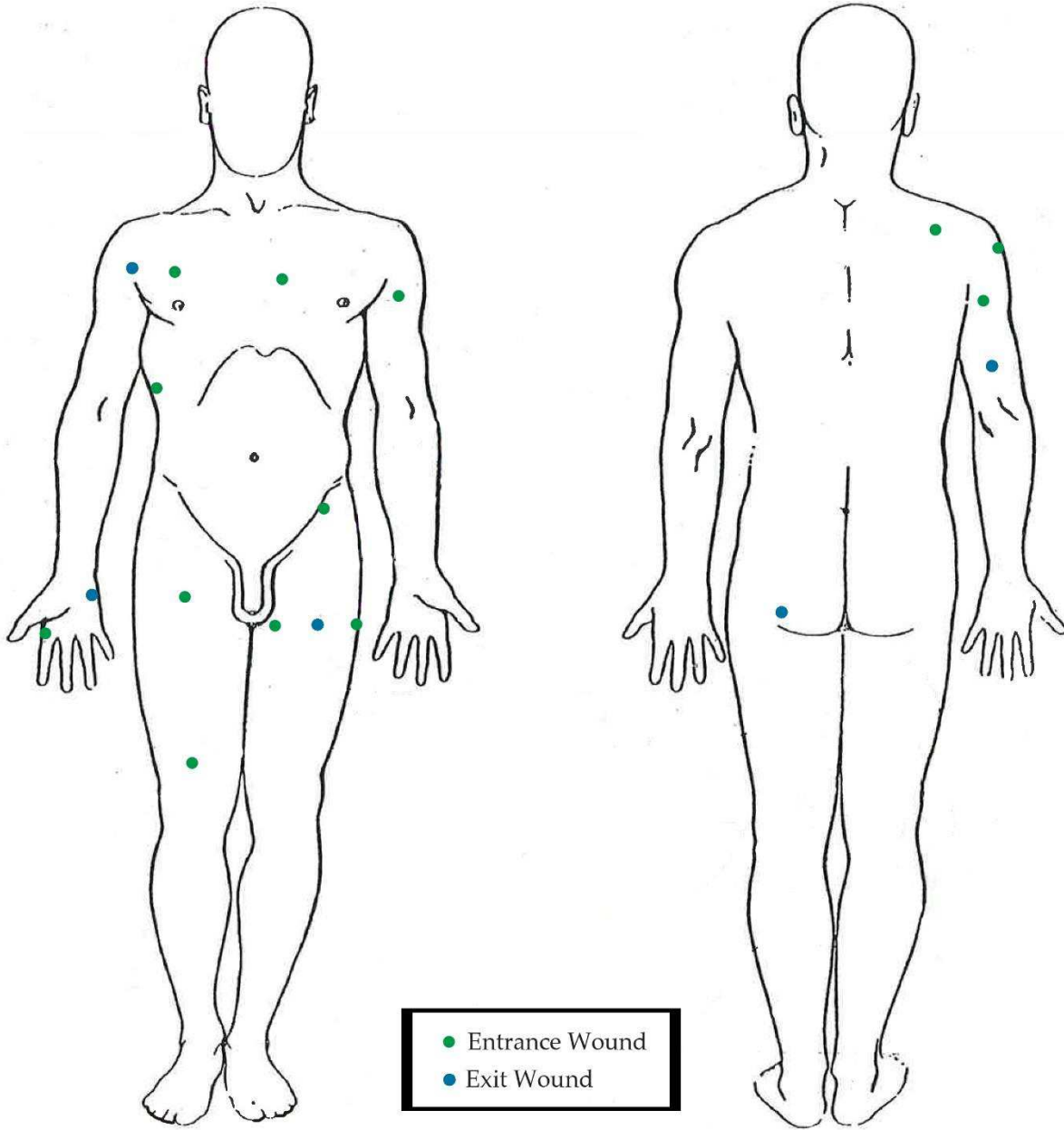
Cop: 634

Dispatcher: 634

Cop: I'm out in the area can you give me the description one more time?

Dispatcher: A black male, tall, blue hooded jacket, khaki pants

4. STATE'S RENDERING OF MEDICAL EXAMINER'S AUTOPSY



5. ANALYSIS OF PUBLIC STATEMENTS

<u>Statements Made Public</u>	<u>Evidence</u>
Powell was approaching the officers with an “overhand” grip and the knife held high.	Police initially released this information to the public, but shortly thereafter, the department corrected the information. Several witnesses, including the officers, describe Powell as holding the knife in what’s known as an “overhand” grip, meaning the blade was pointing down, not up. Powell is not seen raising the knife high at any point in the video.
Powell came within “three-to-four” feet of the officer.	Police initially released this information but later stated that it was an estimate derived from witness accounts. Subsequent investigation, including a 3-D spatial analysis report, concluded that Powell was approximately 15 feet away from Officer 1 when the first shots were fired. Powell continued another 10 feet after the first audible shot. Powell was eight feet away from Officer 1 when the shooting stopped. (Officer 1 stepped backwards during the encounter.)
Powell was suffering from a mental illness and officers should have responded differently.	No 911 caller indicated that Powell was suffering from a mental illness. When arriving on scene, officers knew only that the subject was armed and agitated. To date, there is no evidence or assertion from the family that Powell was suffering from a mental illness. One of the officers who responded to the scene was Crisis Intervention Team (CIT) trained. The other was not.
The officers were handcuffing a subject who was already dead.	On video, Powell is seen making clear movements with his right arm after he had been shot and after he was on the ground. Both officers indicated that their training tells them to handcuff a subject to secure the scene, even after the subject has been shot. This is standard police protocol.
The officers could have used a Taser.	Chief Dotson said that Tasers, which fire probes intended to deliver a debilitating electrical shock, might not have been an effective option because they aren’t always accurate and may not penetrate clothing.
Powell had permission to remove items without paying.	The clerks and the owner of the store dispute this claim.
The knife was a butter knife.	The knife is a wood-handled knife with a metal blade.

6. CORRESPONDENCE WITH PRIVATE ATTORNEYS



CIRCUIT ATTORNEY
CITY OF ST. LOUIS

JENNIFER M. JOYCE

CARNAHAN COURTHOUSE
1114 Market St. Room 401
St. Louis, Missouri 63101
(314) 622-4941
FAX: (314) 622-3369

July 13, 2015

Mr. Jermaine Wooten
4144 Lindell Blvd
Suite 225
St. Louis, MO 63108

VIA U.S. MAIL and FACSIMILE: 314-736-5772

Dear Mr. Wooten:

I spoke with your assistant this morning regarding our meeting with Ms. Mildred Powell. Thank you for reaching out to us. We look forward to hearing from you and to meeting Ms. Powell. Your assistant also asked if there were any additional family members we would like to speak with and I wanted to let you know that we are happy to speak with anyone who is willing to meet with us regarding our investigation. Ms. Powell indicated that she was available to meet with us Tuesday, July 13, 2015, at 10:00 a.m. Please let me know if this is still an acceptable time for Ms. Powell.

Please do not hesitate to call me
discuss these meetings.

REDACTED to

Sincerely,
REDACTED

7. MISSOURI STATUTES:

563.046. Law enforcement officer's use of force in making an arrest.

1. A law enforcement officer need not retreat or desist from efforts to effect the arrest, or from efforts to prevent the escape from custody, of a person he reasonably believes to have committed an offense because of resistance or threatened resistance of the arrestee. In addition to the use of physical force authorized under other sections of this chapter, he is, subject to the provisions of subsections 2 and 3, justified in the use of such physical force as he reasonably believes is immediately necessary to effect the arrest or to prevent the escape from custody.

2. The use of any physical force in making an arrest is not justified under this section unless the arrest is lawful or the law enforcement officer reasonably believes the arrest is lawful.

3. A law enforcement officer in effecting an arrest or in preventing an escape from custody is justified in using deadly force only

(1) When such is authorized under other sections of this chapter; or

(2) When he reasonably believes that such use of deadly force is immediately necessary to effect the arrest and also reasonably believes that the person to be arrested

(a) Has committed or attempted to commit a felony; or

(b) Is attempting to escape by use of a deadly weapon; or

(c) May otherwise endanger life or inflict serious physical injury unless arrested without delay.

4. The defendant shall have the burden of injecting the issue of justification under this section.

563.031. Use of force in defense of persons.

1. A person may, subject to the provisions of subsection 2 of this section, use physical force upon another person when and to the extent he or she reasonably believes such force to be necessary to defend himself or herself or a third person from what he or she reasonably believes to be the use or imminent use of unlawful force by such other person, unless:

(1) The actor was the initial aggressor; except that in such case his or her use of force is nevertheless justifiable provided:

(a) He or she has withdrawn from the encounter and effectively communicated such withdrawal to such other person but the latter persists in continuing the incident by the use or threatened use of unlawful force; or

(b) He or she is a law enforcement officer and as such is an aggressor pursuant to section 563.046; or

(c) The aggressor is justified under some other provision of this chapter or other provision of law;

(2) Under the circumstances as the actor reasonably believes them to be, the person whom he or she seeks to protect would not be justified in using such protective force;

(3) The actor was attempting to commit, committing, or escaping after the commission of a forcible felony.

2. A person may not use deadly force upon another person under the circumstances specified in subsection 1 of this section unless:

(1) He or she reasonably believes that such deadly force is necessary to protect himself, or herself or her unborn child, or another against death, serious physical injury, or any forcible felony;

(2) Such force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter a dwelling, residence, or vehicle lawfully occupied by such person; or

(3) Such force is used against a person who unlawfully enters, remains after unlawfully entering, or attempts to unlawfully enter private property that is owned or leased by an individual claiming a justification of using protective force under this section.

3. A person does not have a duty to retreat from a dwelling, residence, or vehicle where the person is not unlawfully entering or unlawfully remaining. A person does not have a duty to retreat from private property that is owned or leased by such individual.

4. The justification afforded by this section extends to the use of physical restraint as protective force provided that the actor takes all reasonable measures to terminate the restraint as soon as it is reasonable to do so.

5. The defendant shall have the burden of injecting the issue of justification under this section. If a defendant asserts that his or her use of force is described under subdivision (2) of subsection 2 of this section, the burden shall then be on the state to prove beyond a reasonable doubt that the defendant did not reasonably believe that the use of such force was necessary to defend against what he or she reasonably believed was the use or imminent use of unlawful force.

(L. 1977 S.B. 60, A.L. 1993 S.B. 180, A.L. 2007 S.B. 62 & 41, A.L. 2010 H.B. 1692, et al. merged with H.B. 2081)