

**OFFICE OF THE DISTRICT ATTORNEY
THIRD JUDICIAL DISTRICT OF KANSAS
Michael F. Kagay, District Attorney**

Use of Deadly Force Review

January 25, 2023

The Shawnee County District Attorney's Office has completed the review of the use of deadly force in the arrest of Taylor Lee Lowery on October 13, 2022 by law enforcement officers employed by the Topeka Police Department. This report details the District Attorney's findings and conclusions limited specifically to the potential criminal liability of the officers involved in the use of deadly force.

Scope of Report

The District Attorney's Office has no administrative or civil authority regarding use of force investigations. Therefore, this report does not address any administrative review that may be conducted by the involved law enforcement agency, nor does it address questions of possible civil actions where a lesser burden of proof would apply.

The sole question addressed by this report is whether sufficient evidence exists to establish beyond a reasonable doubt that a violation of the criminal laws of the state of Kansas occurred in this instance by any of the involved officers.

This case began as a call for service at a residence in Topeka, with the caller reporting a person was armed with a knife and attempting to force their way into the caller's bedroom. Officers arrived on scene and located the suspect, later identified as Taylor Lee Lowery ("Lowery") armed with the knife and attempted to stop him. Lowery fled in an SUV and was followed to a gas station. Lowery then attempted to forcefully remove a civilian from her car at the gas station and was confronted by officers. Lowery was shot and killed during the encounter.

Five officers discharged their firearms during the encounter. All five of the officers were on-duty law enforcement officers employed by the Topeka Police Department. Therefore, the Kansas Bureau of Investigation was asked to conduct the investigation into the shooting. The KBI did respond immediately and took control of the investigation (KBI # 22-513). The KBI completed their investigation and presented the case to the District Attorney's Office on November 16, 2022. The final ballistics report and autopsy report were submitted to the DA on December 8 and December 30, 2022.

While there were multiple other law enforcement officers engaged in the initial call for service, the eventual pursuit, and the final investigation, there were five (5) officers that discharged their firearms or otherwise engaged in a use of force while attempting to apprehend Lowery. The conduct of those officers are the subject of this review.

Summary of Investigation

On October 13, 2022, at approximately 12:30 AM, law enforcement was dispatched to 4842 SW Topeka Blvd, Lot #6, in reference to a 911 call for a domestic disturbance. [REDACTED], the calling party, reported that her adult male brother, Taylor Lowery, was in her home attempting to force his way into her bedroom. At 12:36 AM she told dispatch that she had barricaded herself in her bedroom and that Lowery was armed with a knife. Officer [REDACTED] of the Topeka Police Department was in the general area and he responded to the call. Another TPD officer was in the area and also responded. They arrived at approximately the same time and as they approached the trailer in Lot 6 they could see Lowery inside the residence wearing a pink shirt. They knocked and announced themselves as police but the door to the trailer was locked. They heard a female voice yelling from inside the trailer asking them to kick in the door. As one officer attempted to force the door open, the other officer observed Lowery opening a second “back” door to the residence on the same side of the trailer (doors depicted below), but then Lowery went back into the trailer.



At this time, a young boy (later identified as [REDACTED]) opened the door and officers went in and saw Lowery by the “back” door holding a butcher knife. They gave Lowery commands to stop and drop the knife. At 12:39:50, [REDACTED] can be heard yelling at Lowery to “cooperate.” Lowery did not comply and ran out the “back” door as the officers pursued.

The officers caught up to Lowery outside as he stopped and started waving the knife around in what one described as a “fighting stance.” He also had another object, later identified as a socket wrench, in his other hand. At this time, 12:41:38 AM, officers called in “Signal 13” to indicate officers were in distress and needed assistance.



Lowery then ran again and was able to get back into the trailer. Officers called in to dispatch at 12:42:13 that Lowery was barricaded in the house and they were forcing entry. Officers again forced entry and saw [REDACTED] running from the back of the trailer screaming that “he” is in the back room. Lowery then appeared from the back bedroom, still armed with the knife, and came towards the officers before exiting the “back” door.



Lowery then went to a Chevrolet Equinox owned by [REDACTED] and fled from the scene. The officers called in that he was fleeing at 12:43:02 AM and that there was an aggravated assault on a law enforcement officer. They then left in an attempt to locate Lowery.

Multiple officers were monitoring the radio traffic and were responding to the area, including but not limited to Officer [REDACTED], Officer [REDACTED], Detective [REDACTED] and Sergeant [REDACTED]. Det. [REDACTED] and Sgt. [REDACTED] were riding together and were southbound on Topeka Blvd. at 12:43 AM when they heard Lowery could be headed their way. They then observed the Equinox matching the description pass northbound and they began to follow. They saw marked units heading South and told them to turn around.

Sgt. [REDACTED] and Detective [REDACTED] followed Lowery and called out that Lowery was pulling into Kwik Shop at 12:43:58 AM. They observed Lowery park his SUV and approach another vehicle. They then observed him attempt to violently pull a female from her vehicle. At 12:44:15 they called out on the radio that the subject was attempting a carjacking. They got out of their vehicle, identified themselves as police and began yelling commands to Lowery. Lowery turned towards Sgt. [REDACTED], raised the knife above his head and began charging. Both Det. [REDACTED] and Sgt. [REDACTED] had their duty weapons out and began firing at Lowery. Lowery went down and at 12:44:24 they called out that shots had been fired.

By this time, Officers [REDACTED], [REDACTED] and [REDACTED] had taken up positions near Lowery. Lowery got up and began moving towards Sgt. [REDACTED] again and [REDACTED], [REDACTED] and [REDACTED] began firing. Lowery went down again and they called out that shots had been fired again at 12:44:37 AM. Officers then began rendering aid but Lowery was pronounced dead at 12:57 AM.

Sgt. [REDACTED] described yelling commands at Lowery when Lowery was attempting to pull the lady from the car. Lowery looked up at him, screamed, raised the knife and charged him. Sgt. [REDACTED] described that he tried to move back to create distance but when Lowery got to about 5-10 feet from him he fired what he believed to be three rounds. He observed the suspect drop the knife and go down. He then observed the suspect get up and he heard additional rounds from others.

Detective [REDACTED] described ordering Lowery to “show us your hands” when Lowery was pulling the woman from her car. He then observed Lowery raise the knife and start sprinting towards Sgt. [REDACTED]. He said he fired when Lowery got within ten feet of [REDACTED] and that he believed they both fired simultaneously. He said Lowery then got up, grabbed something in his hand as he was moving towards officers and then other officers began shooting. When Lowery fell a second time he saw the object he had grabbed was a socket wrench. He then looked around and saw the knife on the ground and secured it.

Officers [REDACTED] and [REDACTED] were riding together and had been heading South on Topeka Blvd. when Sgt. [REDACTED] told them to turn around and that Lowery was at the Kwik Shop. They turned around and arrived as Lowery was running towards Sgt. [REDACTED] and the first shots were fired. Officer [REDACTED] described seeing the suspect drop something silver as he fell to the ground and assumed it was the knife that had been called out. He saw the suspect get up and attempt to retrieve an item from the ground. He saw Sgt. [REDACTED] attempt to push Lowery away from the item but Lowery was able to retrieve it. Lowery began to move his arm as if he was going to throw the “knife” or use it in a stabbing motion. He was in fear for the safety of his fellow officers and the civilians so he fired. Lowery went down again and at this time he saw that the silver object he picked up was a socket wrench. Officer [REDACTED] described seeing the suspect coming at Sgt. [REDACTED] with the large shiny object he thought was the knife so he began shooting and did not stop until the suspect was on the ground.

Officer [REDACTED] followed Lowery from the trailer Court but was well behind and arrived just as the first round of shots were fired. He observed Lowery get up when someone ([REDACTED]) “shoulder check” Lowery in what appeared to be an attempt to create distance. He saw Lowery bend down and grab something that he thought was the knife he had seen at the trailer a few moments before. Lowery was continuing to refuse commands and was less than 6 feet from officers so he fired.

Each of the law enforcement officers that fired described that they fired in defense of self or others.

[REDACTED] was identified as the victim of the carjacking. She reported that she arrived at Kwik Shop driving her son’s Pontiac. [REDACTED] was in the passenger seat and her granddaughter was in the back seat. They were sitting in the car getting money to buy cigarettes when a man started banging on the driver’s window. [REDACTED] said she looked over and saw a “big black bald dude” at her door. He opened her door and began yelling at her to get out, then he grabbed her and started pulling on her. She said he had a big knife that he was holding at her stomach and side. She said that [REDACTED] was pulling back, to keep her in the car. The suspect then stood up and saw the police. He raised the knife and began shaking it, not surrendering but more of “come and get me because I’m gonna get you first.” She then heard shots, a pause, and then more shots. She looked back and saw the officers rendering aid. She felt that she would have been stabbed if officers had not saved her.

██████████ gave a similar account, stating that the suspect opened ██████████'s door and began yelling and trying to pull ██████████ out of the vehicle. She said that the suspect held a big knife to ██████████ when doing so. She started pulling back to keep ██████████ in the vehicle and then she heard people yelling "police." The only other thing she remembers is the suspect standing up and then shots being fired.

Civilian witnesses that were present at the Kwik Shop provided the following summarized accounts:

- ██████████ reported he was walking out of the store when he heard someone yelling "drop it" and then he heard gunshots.
- ██████████ observed an SUV pull into the station being followed by police. She saw the suspect trying to pull a lady from her car. She ran around the corner and heard gunshots.
- ██████████ saw Lowery get out of his SUV and approach the females in their car. He then saw Lowery turn and run at officers when the officers started shooting. Lowery went down and then got up and charged again when they shot again.
- ██████████ observed Lowery pull in and park the Equinox. He then saw Lowery get out and try to pull a lady out of a car. He said there were two ladies and a child in that car. He saw Lowery run at the officers and then the officers started shooting Lowery.
- ██████████ saw Lowery get of his SUV with a large butcher knife and a ratchet. He saw Lowery trying to pull a lady out of her car when detectives arrived. He yelled at the detectives that Lowery had a knife. Lowery then turned and ran at the detectives with the knife and they started shooting. Lowery fell and then got up and went at them again and they shot again.
- ██████████ saw Lowery pull up in his SUV and then he got out and tried to pull a lady out of her car. She then saw him turn and run at officers and they started shooting.

Video Analysis of Incident

Sgt. ██████████ and Detective ██████████ were not assigned or wearing body cameras, and the location where the interaction took place was in a blind spot of the Kwik Shop cameras. The Kwik Shop has a camera on the Southwest corner facing West, and another on the Northwest corner facing West. The cameras do run simultaneously, so by viewing them side by side it is easy to determine the area of the blind spot based upon the location of the pumps and the vehicles parked in the lot. While the entire incident is not captured, there are portions visible. The video does show the SUV arriving and Lowery exiting the vehicle. Lowery is circled exiting his vehicle in the still image below.



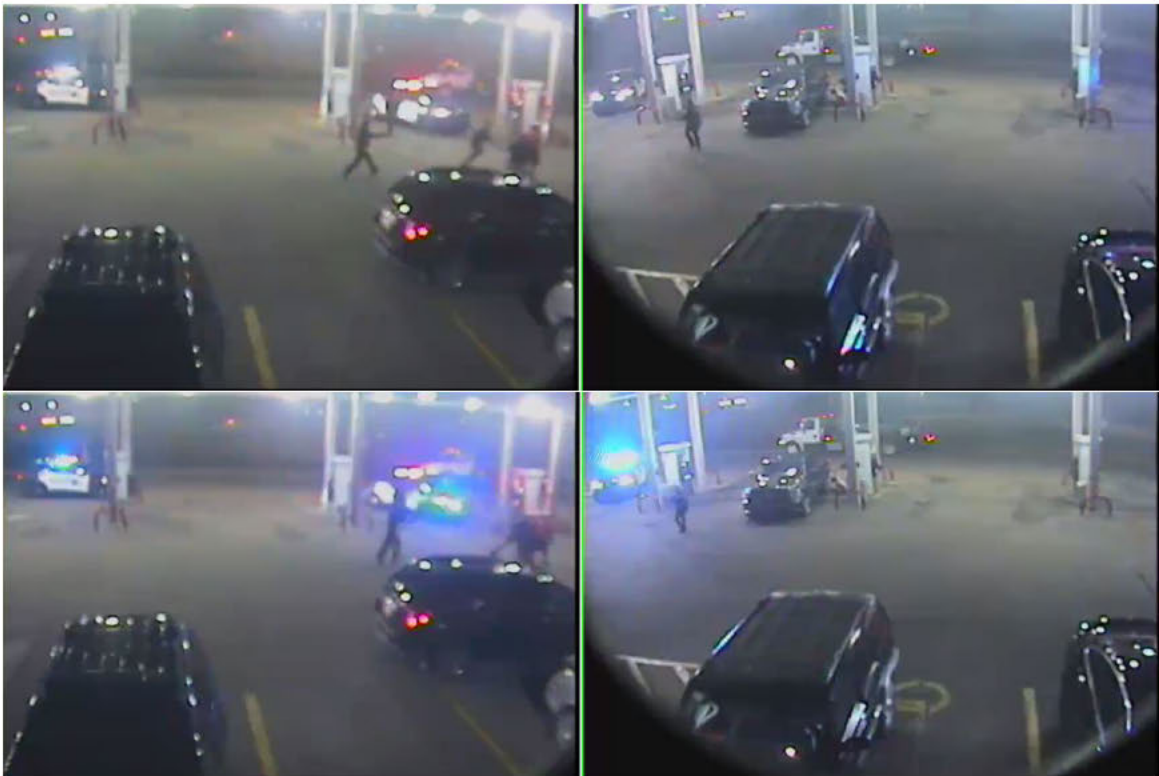
Lowery is seen going off camera into the blind spot where the carjacking victim was parked and Sgt. ██████'s car passes through into the blind spot as well. Sgt. ██████ then back peddles on foot into the camera frame with Lowery following as a patrol unit arrives between the pumps.



Lowery is then seen going all the way to the ground as described, before returning to his feet.



Sgt. [REDACTED] can then be seen pushing Lowery, and from body cameras worn by other officers arriving at that time, it is clear he is pushing Lowery away from the items on the ground.



Sgt. [REDACTED] is not successful and Lowery is able to reach over and pick up what is later determined to be the socket wrench.

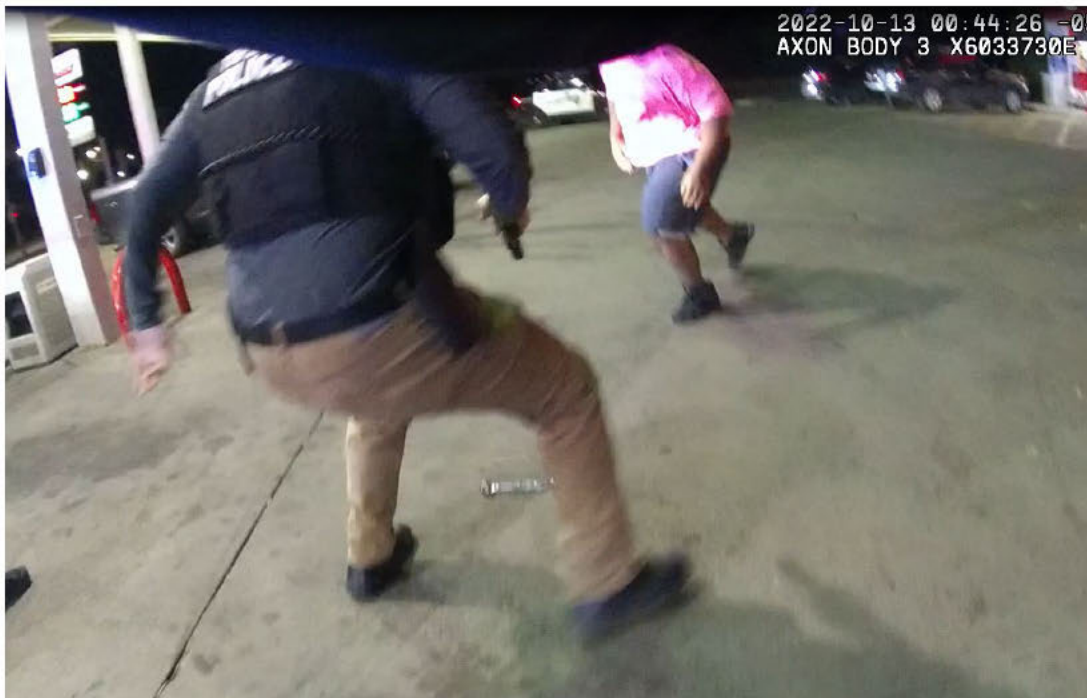


The body cameras of the officers arriving on scene capture the events that occurred immediately after Lowery being shot the first time and falling to the ground. From the body cameras, once Lowery is back on his feet the video shows Sgt. [REDACTED] attempting to push Lowery away from the items on the ground. From the time he gets to his feet after being shot the first time, to the time Sgt. [REDACTED] pushes him, to the time that he charges and grabs the wrench and raises it and the second volley of shots ring out, a total of three (3) seconds elapses. The knife and the wrench are highlighted in the still frames below that contain timestamps.





The body cameras then show Lowery advancing towards officers and continuing to go after the items on the ground when shots are fired again.





Follow-Up Investigation

██████████ later reported to law enforcement that Lowery had been acting weird that night and that she had been trying to get him to calm down and just go to sleep. ██████████, Lowery's nephew, told law enforcement that his uncle was acting weird and was carrying a big knife around that night. ██████████ was with ██████████ in her bedroom when the 911 call was made. He said that Lowery had been using methamphetamine and had not slept in four days. He said that ██████████ did not go to work that night because she did not want to leave the kids with Lowery. He described Lowery as "big and fast" and acting really weird, walking around with a big knife all night. When the police got there Lowery went nuts and knocked in the bedroom door to get the keys to ██████████'s SUV. He described the responding officers as nice and said they were just trying to get Lowery to put the knife down.

Deputies that went back to lot 6 to secure the trailer noted that the door to the back bedroom appeared to have been beat on and that it appeared to have marks from a knife or axe, consistent with ██████████' statement that Lowery had been attempting to force his way into the bedroom.



Autopsy

Crime scene collection determined there were 34 shots fired between the five law enforcement officers. The autopsy performed on Lowery determined that he was struck by multiple projectiles and ten projectiles were recovered during that examination. The most significant injuries consisted of three gunshot wounds to the abdomen and three gunshot wounds to the chest. These gunshot

wounds were determined to be the cause of death. Toxicology revealed that Lowery was under the influence of amphetamine, Methamphetamine, and cocaine at the time of his death.

Legal Standards

In Kansas, all persons, including law enforcement officers, are entitled to defend themselves or others against the imminent use of unlawful force, and may use deadly force if the person reasonably believes deadly force is necessary to prevent imminent death or great bodily harm to themselves or others. K.S.A. 21-5222. A person who uses deadly force pursuant to K.S.A. 21-5222 is immune from criminal prosecution for the use of such force, subject to a very limited exception, pursuant to K.S.A. 21-5231.

While officers who properly utilize deadly force are immune from criminal prosecution, like any other person in Kansas, law enforcement officers also have specific authority granted to them to utilize deadly force in specific circumstances. Pursuant to K.S.A. 21-5227(a), “A law enforcement officer...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....”

Law enforcement officers may be criminally liable in matters involving the use of deadly force when their conduct clearly violates the Fourth Amendment to the United States Constitution. The Fourth Amendment guarantees “[t]he right of the people to be secure in their persons * * *, against unreasonable searches and seizures, shall not be violated * * *.” Whenever a law enforcement officer restrains the freedom of a person to walk away, he or she has seized that person. *Tennessee v. Garner*, 471 U.S. 1, 11–12, 105 S. Ct. 1694, 85 L.E.d 2d. 1 (1985). Apprehension through the use of deadly force is a seizure subject to the reasonableness requirement of the Fourth Amendment. *Id.* All claims that law enforcement officers have used excessive force—deadly or not—in the course of an arrest, investigation stop, or other seizure should be analyzed under the Fourth Amendment and its “reasonableness” standard.

The constitutional standard parallels state law as to the authority vested in law enforcement officers in the use of force when making an arrest. In *Garner*, 471 U.S. at 7, the United States Supreme Court affirmed that when an officer has probable cause to believe that a suspect poses a significant threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape through the use of deadly force.

The lens through which the matter should be viewed is that of a “reasonable officer on the scene,” standing in the officer’s shoes, perceiving what he then perceived and acting within the limits of his knowledge or information as it then existed. *Graham v. Connor*, 490 U.S. 386, 395, 109 S. Ct. 1865, 1867, 104 L. Ed. 2d 443 (1989).

The use of deadly force must be “reasonable” when viewed from the perspective of a reasonable officer on the scene, rather than with the ²⁰/₂₀ vision of hindsight. *Campbell v. City of Leavenworth*, 28 Kan. App. 2d 120, 125–26, 13 P.3d 917 (2000) citing *U.S. v. Holloway*, 906 F.Supp. 1437,

1441 (D. Kan.1995). “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.” *Holloway*, 906 F.Supp. at 1441.

Whether an officer’s actions are reasonable requires consideration of: (I) the severity of the crime at issue; (II) whether the suspect poses an immediate threat to the safety of the officers or others; and (III) whether he is actively resisting arrest or attempting to evade arrest by flight. *Weigel v. Broad*, 544 F.3d 1143, 1151–52 (10th Cir. 2008) citing *Graham v. Connor*, 490 U.S. 386, 395, 109 S. Ct. 1865, 1871, 104 L.Ed.2d 443 (1989). In accessing the immediacy of the threat, our 10th Circuit Court of Appeals has set forth a four test (commonly referred to as the “*Larsen Test*”): (a) whether the officers ordered the suspect to drop his weapon, and the suspect’s compliance with police commands; (b) whether any hostile motions were made with the weapon towards the officers; (c) the distance separating the officers and the suspect; and (d) the manifest intentions of the suspect. See *Estate of Larsen ex rel. Sturdivan v. Murr*, 511 F.3d 1255, 1260 (10th Cir. 2008).

Analysis

When an officer has probable cause to believe a crime of domestic violence has occurred, the officer is required by law to make an arrest. In this case, two officers of the Topeka Police Department responded to a domestic call where the victim reported that her adult brother was armed with a knife and attempting to force his way into her bedroom where she was barricaded. Lowery was a resident of the trailer in question, and was the sibling of the reporting party. When officers attempted to make contact with him he came at them with a large knife and refused multiple commands as he then fled from the scene. While the investigation was not complete at this point, the officers were duty bound to complete the investigation and make an arrest not just for their own safety and the safety of the community, but also because they were duty-bound to make an arrest pursuant to statute. Even had this not been a crime of domestic violence, they were duty bound to attempt to take Lowery into custody. K.S.A. 22-2401 sets forth the circumstances under which a law enforcement officer is authorized to arrest an individual. Those circumstances include:

- (1) When an officer has probable cause to believe that a person is committing or has committed a felony, K.S.A. 22-2401(c)(1),
- (2) When an officer has probable cause to believe that a person is committing or has committed a misdemeanor and the officer has probable cause to believe the person may cause injury to self or others, or damage to property unless immediately arrested, K.S.A. 22-2401(c)(2)(B), or
- (3) When 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. 22-2401(d).

All three circumstances were applicable in this incident. Therefore, the attempted stop and arrest of Lowery was justified at its inception. The analysis then turns to the use of deadly force in attempting to make the arrest. There are several key facts that the District Attorney noted in this analysis:

- Law enforcement received reports identifying Lowery as the suspect armed with a knife.
- Law enforcement observed Lowery handling the knife in a very aggressive manner.
- Law enforcement observed Lowery advance towards them with the knife.
- Law enforcement observed the damage caused by Lowery to his sister's door.
- Law enforcement observed Lowery refusing multiple lawful commands.
- Law enforcement observed Lowery attempting to commit an aggravated robbery and aggravated battery by attempting to pull a woman from her car with a knife.
- Law enforcement again observed Lowery advancing towards them in an aggressive manner as he continued to disobey commands.
- Even after being shot the first time, Lowery continued to disobey and advance towards law enforcement officers with what was believed to be the same knife.

Severity of the Crime.

The first *Graham* factor that must be analyzed involves the severity of the crime that law enforcement was investigating. It is clear that law enforcement was dealing with a serious ongoing threat. Lowery had used a large knife to attempt to gain access to his barricaded sister, he advanced at officers in a threatening manner with the knife, he attempted to pull a woman from her car using the knife, and ultimately he charged at officers with the knife while screaming. There is no doubt that these were serious crimes that invoked law enforcement's duty to protect themselves and the public.

Immediacy of the Threat

The second *Graham* factor that must be analyzed involves assessing the immediacy of the threat perceived by the officers that utilized deadly force. During this incident, which lasted only a few minutes from inception to completion, and only a few seconds from the attempted carjacking to the final shot, law enforcement was constantly engaged with Lowery attempting to get him to stop. It was not until he fully charged at Sgt. [REDACTED] and was within a couple of feet that Det. [REDACTED] and Sgt. [REDACTED] fired their weapons. Then, the remaining officers fired when they observed Lowery get back to his feet and charge towards officers as he reached and picked up what turned out to be the socket wrench. The knife had a silver shiny blade that was approximately 9-10 inches in length, and the socket wrench was the same approximate length and had a similar color and shine. While the still frames above clearly show Lowery never picked up the knife after being shot the first time, in the three seconds it took for Lowery to get to his feet, physically engage Sgt. [REDACTED], and lunge forward to pick up an item from the ground, it is objectively reasonable that the officers mistook the wrench for the knife that Lowery had been wielding. After the escalating behavior that each officer was aware of, which culminated in Lowery attempting a carjacking with a knife and then charging officers with the same knife once, and then it was perceived a second time, each officer reasonably perceived the life threatening danger posed to themselves, their fellow officers, and the general public.

Active Resistance

The third and final *Graham* factor for determining the reasonableness of the actions of the officers is the active resistance of Lowery or his attempts to evade law enforcement. In this incident, as set forth above, Lowery was actively resisting in several ways. He refused commands, attempted to evade of officers at the trailer, aggressively approached officers with the knife when he felt cornered at the trailer court, fled from the scene, attempted to pull a woman from her car using the knife, and ultimately charged officers with the knife. Even after being shot, Lowery continued to

disregard commands and was acting aggressively as he reached for what officers thought was the knife he had already used multiple times.

Conclusion

The District Attorney has completed the review of the KBI investigation into the use of force by law enforcement in attempting to arrest Taylor Lowery. This review included all reports, photos and videos. It is the opinion of the District Attorney that the use of force applied by each of the five (5) named officers was reasonable and lawful. The involved officers placed themselves in imminent life-threatening danger in order to fulfill their obligation to protect the public. It was only through their efforts in utilizing deadly force that they were able to finally bring an end to the danger posed by Lowery. The investigation revealed that each of the 34 projectiles fired was justified. For the reasons set forth in this report, the District Attorney has concluded that the five (5) named officers are not criminally liable for their use of force and the District Attorney's Office will not seek criminal prosecution of those officers.