



**For Immediate Release  
February 23, 2026**

District Attorney Marc Bennett has completed the review of the use of deadly force that resulted in the death of Luis Rivera. The incident occurred on March 6, 2024 at 711 W. 21<sup>st</sup> St. N., in Wichita, Kansas.

This report was delayed by the need for the final ballistics report, which was issued November 6, 2025.

**SCOPE OF REPORT**

This report details the findings and conclusions limited specifically to criminal liability of the officers employed by the Wichita Police Department who shot Mr. Rivera on March 6, 2024. This comprehensive legal review has included law enforcement reports, video and audio records, witness interviews, ballistics and forensic findings, scene diagrams, the medical examiner's autopsy report, Kansas state statutes, and federal constitutional law.

The Office of the District Attorney has no administrative or civil authority regarding use of force investigations. Therefore, this report does not address any administrative review conducted by the Wichita Police Department, provide any assessment of policy considerations, or address questions of possible civil actions where a lesser burden of proof would apply.

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

The sole question addressed by the District Attorney is whether sufficient evidence exists

to establish beyond a reasonable doubt that a violation of the criminal laws of the State of Kansas occurred in this instance.

## SUMMARY

On the evening of March 6, 2024, at approximately 7:44 P.M. a male resident of 2349 N. Fairview in Wichita, Kansas called 911 to report that an unknown male (later identified as Luis Rivera) was holding the caller's roommates in the residence with a firearm. Wichita police officers arrived at the residence at approximately 7:55 P.M. and first stopped to speak with two apparent witnesses then hiding outside the house. Within moments, and before officers could confirm what was happening inside, Luis Rivera exited the house while holding a handgun to his head, and he began yelling at the officers while walking away.

The officers commanded Mr. Rivera to stop and to drop his gun. He did neither. Instead, Mr. Rivera continued to hold the handgun to his head while walking south on Fairview. The officers followed and continued to tell Mr. Rivera to drop his handgun. Additional officers were dispatched to the area.

For the next 10 minutes, Mr. Rivera held his handgun to his head, walked away from the officers, then would turn around and move aggressively toward the officers while screaming for the officers to shoot him. At other times, Mr. Rivera told officers that he was going to shoot them.

Mr. Rivera walked south to 21<sup>st</sup> Street and out into the busy 21<sup>st</sup> Street vehicle traffic. While amongst the cars he proceeded west toward Arkansas. Officers worked at shutting down traffic and pedestrians into the area. As officers followed him, a hostage negotiation-trained officer continued to speak to Mr. Rivera on a patrol car's loud-speaker. Mr. Rivera did not comply with any of the negotiator's requests.

At approximately 8:05 P.M. Mr. Rivera reached a parking lot located behind an abandoned commercial building at 711 W. 21<sup>st</sup>. St. North, on the southwest corner of 21<sup>st</sup> Street and Arkansas. With Mr. Rivera on the west side of Arkansas street, the officers stationed themselves in different positions along the east side of Arkansas street.

At approximately 8:07 P.M., while Mr. Rivera paced around in the parking lot, and at the direction of a police supervisor, Officer 1 fired at Mr. Rivera one “less-than-lethal” foam-tipped projectile. The projectile struck Mr. Rivera in his back. Instead of dropping his handgun, Mr. Rivera immediately reacted by turning around (to face east) toward Officer 1 (and the other officers near Officer 1), moved the muzzle of his handgun from the side of his head to a position pointing at the gathered officers, and fired his handgun three times. Eight police officers returned fire striking Mr. Rivera multiple times.

Officers provided life saving measures while awaiting medical personnel from the Wichita Fire Department and Sedgwick County EMS who arrived a few minutes later. The medical measures were unsuccessful. An autopsy the next day established that Mr. Rivera had died from multiple gunshot wounds.

The subsequent investigation revealed that since October 2023 Mr. Rivera had become more mentally unstable, was using methamphetamine, had suicidal thoughts, and that he had mentioned to a family member in recent phone texts, “suicide by cop.”

Witnesses later said that prior to the officers arriving at the Fairview residence on the day of the shooting, Mr. Rivera had entered their residence looking for his girlfriend and daughter. He was upset about their relationship, and Mr. Rivera was making suicidal statements. At one point, and believing that one of the residents was a police officer, Mr. Rivera pulled out a handgun, took the residents’ cellphones, and made the suspected resident strip off his clothes so that Mr. Rivera could confirm that the resident was not wearing recording equipment.

## INVESTIGATION

The Wichita Police Department officers who fired their firearms were removed from the area and subsequently interviewed. The Sedgwick County Sheriff’s Office handled the investigation and officer interviews.

Crime scene investigators processed the scene. Evidence was submitted to the Kansas

Bureau of Investigation for examination.

## LAW ENFORCEMENT OFFICER STATEMENTS

**Officer 1:** Officer 1 was a 4-year patrol officer with the Wichita Police Department. Officer 1 told investigators that he had responded to the area of 21<sup>st</sup> and Arkansas when the dispatcher reported an officer in trouble near 2349 N. Fairview. When Officer 1 arrived, he confirmed that officers were still requesting “less lethal” equipment. Officer 1 retrieved from his patrol car a .40 mm less lethal device and three foam-tipped rounds.

By the time Officer 1 joined the other officers who were already south of 21<sup>st</sup> and Arkansas, Officer 1 “could see the suspect with a dog around him walking around. He had a semi-automatic firearm handgun to his right temple and kept on saying ‘just shoot me’ as officers were giving him commands that no one wanted to hurt him . . . I could hear [other] officers telling him that they didn’t want to hurt him and to just put the firearm down and everything and he was not complying with any commands given.”



(Mr. Rivera walking in the street with his handgun to his head)



(Mr. Rivera, with his handgun to his head, standing behind the abandoned commercial building on the SW corner of 21<sup>st</sup> and Arkansas)

In response to a later question about the effectiveness of foam-tipped less lethal rounds, Officer 1 said, “It kind of depends. From my training, I know that they can be quite effective but it depends if the person is on any type of illicit drugs, muscular and agitated . . . so my thought was if I fired at his right shoulder it would possibly dislodge the firearm from his right hand and that would be best case scenario.”

When a supervisor approved Officer 1 to use the less lethal equipment, the first round malfunctioned and Officer 1 had to reload. “. . . I quickly detached the mechanism and reloaded it to try and find a secondary less lethal. I fired the shot and saw it hit in the upper right quadrant where I was aiming.”

“I can’t recall because everything happened so quickly but as soon as I fired that and it hit him, he pulled the firearm facing officers that were on Arkansas so me and the rest of the group over there, I saw a flash from his firearm and then just everybody that was beside me just gun fired and he was down before I could even lower my .40 mm and I could pull my sidearm out.” Officer 1 did not use lethal force during the event, but he did later assist Officer 2 with Mr. Rivera’s medical treatment.

**Officer 2:** Officer 2 was a 4-year patrol officer. Officer 2 told detectives that he was one of the three officers who first arrived at 2349 N. Fairview in response to the 911 disturbance call. Officer 2 said that he had spoken for only moments with two witnesses outside of the residence, who both appeared “unusually frightened,” when the residence door opened and a male appeared outside with a black handgun near his head.

The officers identified themselves and ordered the male (later identified as Luis Rivera) to drop his gun. Officer 2 said that Mr. Rivera “replied something like what the fuck are you going to do about it . . .” and he began walking southbound on Fairview. Mr. Rivera would “continue to turn around and yell back at us stuff like I’m going to shoot myself. I am going to shoot you.”

When Mr. Rivera reached 21<sup>st</sup> Street, he walked out into traffic and went west in the middle of 21<sup>st</sup> Street with the traffic passing him, still with his handgun to his head. While following Mr. Rivera, Officer 2 said that his “number one fear is that at any moment he is going to pull the gun away from his head and shoot at us or civilians are driving right by and [have] no idea. It was a very busy time of night on 21<sup>st</sup> and Ark for traffic. There is a lot of civilians around. I was afraid of him taking a hostage and firing on us or firing on another individual. It was just chaotic with civilians in the middle of everything . . .”

Officer 2 said that other officers were giving commands to Mr. Rivera. “. . . there was another officer who is a crisis negotiator who was actually right there kind of following us in the car on the loud speaker giving commands.”

While gathered with other officers on the east side of Arkansas south of 21<sup>st</sup> Street, Officer 2 watched as the less lethal round impacted Mr. Rivera. “It hit him on the left kidney area. I watched impact and he immediately gun to his head turned around to his right and took one or two steps toward us and just punched out and started shooting at us . . . I saw his hand come out and I saw a muzzle flash which is about the same time I was pressing the trigger to protect myself and the other officers.” Officer 2 fired his rifle multiple times.

Officer 2, who is also a tactical medical instructor, said that “within probably ten seconds

of the shooting” he reached Mr. Rivera and began to render aid. An officer “handed me a medical kit and I started locating wounds on him and directing other officers to put chest seals on to pack wounds and started applying chest seals myself and then coaching other officers on their CPR.”

**Officer 3**, a three-year patrol officer, told investigators that by the time that he had arrived in the area, Mr. Rivera was walking near the car wash at 21<sup>st</sup> and Arkansas. “. . . I see the subject kind of like pacing pretty fast, walking around, yelling. I couldn’t understand what he was saying. I can see he had a gun to his head.” Officer 3 recalled that other officers were giving Mr. Rivera commands.

Officer 3 took up a position near a fence to the south of the parking lot where Mr. Rivera was standing when the less lethal round struck him in the back. “I hear the shot of the less lethal and I see the subject look like he got hit because he stutters, jerks like he got hit and that upset him and that’s when I see him point the gun out toward those officers and he fired one round and that’s when I start shooting at him . . . I was in fear for my partners that were going to get shot because they were all lined up. There were at least eight officers just lined up right there . . . yeah, they were going to get killed.” Officer 3 fired his rifle multiple times.

**Officer 4** was a four-year patrol officer. Officer 4 said that she responded to the officer-in-trouble call. When Officer 4 arrived Mr. Rivera was nearing the car wash. Officer 4 first blocked traffic south of 21<sup>st</sup> Street and Arkansas and then joined the officers near the car wash when Mr. Rivera was walking west toward Arkansas. Officer 4 said that she heard an officer on a vehicle PA giving commands, and when Mr. Rivera passed Officer 4, she too yelled to put down his gun, that officers wanted to help him. Mr. Rivera did not comply.

Officer 4 said that Mr. Rivera entered the parking lot behind the building that she recalled was a KFC on the southwest corner of 21<sup>st</sup> and Arkansas. “Someone fires off a less lethal . . . he turns around to face officers and he points the gun straight at them and fires off rounds. I see the muzzle flash go off on the gun . . . I was scared. I thought one of our own

got shot so I feared their safety and of course my own.” Officer 4 fired her handgun multiple times.

Officer 4 then witnessed other officers render aid to Mr. Rivera by placing wound seals and doing CPR compressions while they awaited the EMS. Officer 4 also ran to her car to obtain additional wound seals for the treating officers.

**Officer 5**, a 5-year veteran patrol officer, told detectives that he responded to the officer-in-trouble call on North Fairview. When Officer 5 arrived, he blocked eastbound traffic to the west of where Mr. Rivera was then walking on 21<sup>st</sup> near Waco.

As Mr. Rivera approached, Officer 5 said that he took cover and told Mr. Rivera several times to drop the gun. “He didn’t respond at all to anything that I was saying to him. He didn’t respond appropriately at all. He made the comment I’ll pull this trigger and then he made the other comment that I’ll point this at you . . . I did make the comment, please don’t make us do this but he continued westbound. It had absolutely zero effect on him whatsoever.”

Officer 5 watched as the less lethal was fired at Mr. Rivera. “It looked like it hit the male in the back. At that point, in one quick motion, the male turned around already with his gun out and began firing rounds at us. I was in fear for my life and the other officers there so I returned fire.” Officer 5 fired his rifle multiple times.

Officer 5 then observed officers begin lifesaving measures on Mr. Rivera.

**Officer 6** was a 6-year patrol officer at the time of the incident. Officer 6 said that he was working an accident when a call came out concerning a person with a gun on Fairview. By the time Officer 6 arrived in the area, he was assigned to block traffic at 21<sup>st</sup> and Arkansas as the person [Mr. Rivera] with a gun was already walking west in 21<sup>st</sup> street traffic. Officer 6 heard officers telling Mr. Rivera to drop the gun and trying to negotiate with him. Officer 6 watched as Mr. Rivera walked behind the car wash and crossed Arkansas to behind the abandoned PCS parking lot.

Officer 6 then heard a supervisor authorize the use of less lethal, and watched as the less lethal round struck Mr. Rivera in the back. “[Mr. Rivera] almost immediately turns around, walks toward officer . . . [and] I just remember him straightening his arm and then bang, muzzle flash and then we all open fired.” Officer 6 said, “. . . what went through my mind at that point is I need to shoot this guy or he is going to shoot one of the other officers . . .”

**Officer 7** was a 4-year patrol officer. Officer 7 was one of the three officers assigned to respond to the original 911 call at 2349 N. Fairview. Officer 7 said that when he arrived on Fairview the officers attempted to speak with two men who appeared to be the 911 callers. “. . . and that’s when somebody came out of the house and down the steps and he was holding a gun to his head . . . I shouted at him to drop the gun . . . with the gun still pointed at his head, he just turns and starts walking south and he’s not listening to anything anybody is saying.”

With other officers, Officer 7 followed Mr. Rivera to the parking lot on the SW corner of 21<sup>st</sup> and Arkansas behind “some abandoned T-Mobile building or something.”

“. . . they must have gotten it [less lethal] to reload because they, [fired a] .40 foam baton round at his back. It seems to hit him in the back. At that point, after he is hit, he turns around and he punches out with the gun and starts approaching us and I shoot him.”

“I knew that he didn’t point the gun at me but I knew when he turned around and punched out, I knew where he was pointing it, there was another group of officers and there were dozens of us out there so I thought he was going to shoot another officer . . . I didn’t want him to shoot anybody so I knew I had to stop him from doing that.” Officer 7 fired his handgun one time.

**Officer 8**, a 6-year patrol officer, told investigators that he heard an officer-in-trouble call and headed for the area. When he arrived, the subject was in the middle of 21<sup>st</sup> Street about Rosenthal. “I heard [officers say] drop the gun multiple times . . . I heard over the PA of the patrol car that I was next to that they were saying don’t make a permanent

decision. We don't want to hurt you. He was yelling multiple times. The one I remember specifically was 'you are going to have to hurt me' . . . “

Officer 8 witnessed the less lethal round strike Mr. Rivera just below his left shoulder blade. “That's when he turned. I saw him turn, punch out one handed and saw the muzzle flash and heard the (inaudible) in the direction of the officer that fired the less lethal and that's when I deployed and fired my rifle . . . I have to stop this. He is shooting at my officers. I have to stop this.” Officer 8 fired his rifle multiple times.

**Officer 9** was a 7-month patrol officer still in field training and riding with a Field Training Officer (FTO). Officer 9 told detectives that he and his FTO responded to the need for additional officers in the area of north Fairview. When they arrived near 22<sup>nd</sup> and Fairview, Officer 9 could hear officers down the street saying “drop the gun, drop the gun.” Officer 9 joined other officers who followed Mr. Rivera down Fairview, west on 21<sup>st</sup> Street and eventually they all reached the abandoned property west of the car wash.

“ . . . I see the officer fire the less lethal round at the suspect's back and as the suspect is hit, he freezes and as he freezes, he pulls the gun from his head and starts turning around and I see him with the gun and looks like he is turning it at us and I see the muzzle go off and at that point I fire two or three rounds and I was in fear that either I was going to be shot or one of my fellow partners were going to be shot.” Officer 9 fired his handgun multiple times.

Although not involved himself, Officer 9 watched other “officers cut off his clothing. At one point, I saw officers do CPR” on Mr. Rivera.



(Mr. Rivera turning toward the officers and pointing his handgun)



(A second angle from a second bodycam showing Mr. Rivera moving his handgun from his head toward the officers)

## CRIME SCENE INVESTIGATION

Crime Scene Investigators processed the scene of the shooting. Investigators located in the parking lot the following:

Firearm(s):

1 – Stoeger STR 9 mm handgun – located next to Mr. Rivera.

Cartridge casings:

1 – fired CBC 9 mm Luger casing – located near Mr. Rivera.

2 – fired Blazer 9 mm Luger casings – located near Mr. Rivera.

Other:

1 – spent 40mm foam-tipped projectile – fired by Officer 1.

Investigators located the following across on the east side of Arkansas where officers were stationed:

Cartridge casings:

8 – Speer .223 caliber cartridge casings – fired by Officer 2.

9 – Speer .223 caliber cartridge casings – fired by Officer 3.

3 – Speer 9 mm caliber cartridge casings – fired by Officer 4.

4 – Speer .223 caliber cartridge casings – fired by Officer 5.

7 – Speer 9 mm caliber cartridge casings – fired by Officer 6.

1 – Speer 9 mm caliber cartridge casings – fired by Officer 7.

9 – Speer .223 caliber cartridge casings – fired by Officer 8.

3 – Speer 9 mm caliber cartridge casings – fired by Officer 9.

## FORENSIC EVIDENCE & AUTOPSY RESULTS

An autopsy was performed on the body of Luis Rivera on March 7, 2024 at the Sedgwick County Regional Forensic Science Center. The autopsy report was filed with the Sedgwick County District Court on July 24, 2024. The cause of death was determined to be from multiple gunshot wounds.

The toxicology report detected Amphetamine – 0.08 mg/L in Mr. Rivera's femoral

blood; and Methamphetamine – 0.67 mg/L in the femoral blood, and 3.9 mg/kg. in the brain. Mr. Rivera was negative for ethanol, and all other drugs.

Both the July 18, 2024 preliminary ballistics report, and the November 6, 2025 final ballistics report, are consistent with the evidence, the bodycam videos, and the witness interviews. The reports support that Mr. Rivera fired three bullets from a Stoeger 9mm handgun; and, that multiple officers then fired multiple rounds from both 9mm and .223 firearms striking Luis Rivera multiple times.

## KANSAS LAW

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

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

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

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

“The first is subjective and requires a showing that McCullough sincerely and honestly believed it was necessary to kill to defend herself or others. The second prong is an objective standard and requires a showing that a reasonable person in [the same] circumstances would have perceived the use of deadly force in self-defense as necessary.” *State v.*

*McCullough*, 293 Kan. 970 (2012).

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

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

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

#### A. **Immunity**

In 2010, the Kansas Legislature enacted a series of statutes addressing the use of force, including the use of deadly force, in the defense of a person or property, including a person's dwelling. See K.S.A. (2021 Supp.) 21-5220 et seq. The new statutes became effective on July 1, 2011, and are commonly known as this state's “stand your ground law.” *State v. Barlow*, 303 Kan. 804 (2016); *State v. Younger*, unpublished opinion, No. 116, 441 (Feb. 16, 2018).

K.S.A. 21-5231 (2021 Supp.) **Immunity from Prosecution**, reads,

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

K.S.A. (2021 Supp.) 21-5222, **Defense of A Person, . . . no duty to Retreat**, reads,

- (a) A person is justified in the use of force against another when and to the extent it appears to such person and such person reasonably believes that such force is necessary to defend such person or a third person against such other's imminent use of unlawful force.
- (b) A person is justified in the use of deadly force under circumstances described

in subsection (a) if such person reasonably believes that such use of force is necessary to prevent imminent death or great bodily harm to such person or a third person.

K.S.A. (2021 Supp.) 21-5224, **Use of Force; presumptions**, reads,

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

(1) The person against whom the force is used, at the time the force is used:

(A) Is unlawfully or forcefully entering or has unlawfully entered and is present within, the dwelling, place or work or occupied vehicle of the person using the force; or

(B) has removed or is attempting to remove another person against such person's will from the dwelling, place of work or occupied vehicle of the person using the force; and

(2) The person using the force knows or has reason to believe that any of the conditions set forth in paragraph (1) is occurring or has occurred.

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

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

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

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

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

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

(2015):

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

In *State v. Dukes*, 59 Kan.App.2d 367 (2021), the Kansas Court of Appeals ruled that the district court had appropriately found Mr. Dukes was immune from prosecution under K.S.A. 21-5222. Mr. Dukes was approached by a man named Berryman who had sent him verbal threats in the past via Facebook (which Dukes testified he had not taken seriously). When Dukes saw Berryman approach, Dukes pointed a gun at Berryman. Berryman responded, "I got something for you," then ran back toward his car. The evidence was inconclusive as to whether Berryman held a weapon when he initially walked toward Dukes, but Mr. Dukes testified that he believed Berryman was going back to his car to get a gun given the statement, "I've got something for you." That is why Dukes said he shot and killed Berryman as he reached the car. Police later located a handgun on the floorboard of Berryman's car. The district court and the Court of Appeals ruled Dukes was immune from prosecution because the state's evidence could not overcome self-defense immunity:

After a defendant in a criminal case files a motion requesting immunity under K.S.A. 2020 Supp. 21-5231, the State must come forward with evidence establishing probable cause that the defendant's use of force was not statutorily justified. This generally means the State must show probable cause that (1) the defendant did not honestly believe the use of force was necessary or (2) a reasonable person would not believe the use of force was necessary under the circumstances. *Dukes*, 59 Kan.App.2d, at Syl. 2.

The *Dukes* Court also added the following quote from *State v. Phillips*, 312, Kan. 643 (2021):

The State may also overcome a defendant's request for immunity by

demonstrating that the defendant was the initial aggressor as defined in K.S.A. 2020 Supp. 21-5226 and thus provoked the use of force. *Dukes*, 59 Kan.App.3d, at 372.

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

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

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

## **CONCLUSION**

On March 6, 2024, at nearly the exact same moment, eight officers employed by the Wichita Police Department each employed deadly force against Luis Rivera. Due to the multiple injuries, it cannot be determined which particular gunshot wound could be considered the fatal shot. Further, and for the same reason, it cannot be determined which particular officer(s) fired such fatal shot(s). However, under these particular circumstances, the inability to determine that information does not impact the assessment of criminal liability.

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

Since 2011, under the Kansas "stand your ground" law, one who acts in defense of himself

or to protect a third party is immune from prosecution. See K.S.A. 21-5231. Meaning, a person may not be charged or prosecuted unless the state can establish that the person who utilized deadly force was *not* acting reasonably under the circumstances. In *Graham v. Connor*, the United States Supreme Court made clear that assessment as to the reasonableness of an officer's decision to utilize deadly force must be made within the context in which the officer found himself – not from the perspective of “20/20 hindsight.”

The investigation established that while apparently suffering from mental depression and having consumed amphetamine and methamphetamine, Mr. Rivera entered a third-party's residence, threatened the residents with a handgun, forcibly took the cell phones of others, and forced one resident to remove his clothes so that Mr. Rivera could confirm that the resident was not a police officer wearing a recording device.

When officers arrived, Mr. Rivera walked out of the residence with a handgun to his head and, despite repeated orders to stop and drop the weapon, proceeded to lead officers on a 10-minute foot pursuit to 21<sup>st</sup> Street and Arkansas, all the while threatening to shoot himself and to shoot the officers. When officers attempted to disarm Mr. Rivera with a less lethal foam projectile, Mr. Rivera pointed his handgun at the officers and fired 3 times.

Eight different law enforcement officers – Officers 2, 3, 4, 5, 6, 7, 8, and 9 –reacted to the situation, determined that when Mr. Rivera turned toward the gathered officers and fired his handgun three times, that his actions posed an immediate threat to them and to the other officers stationed in the area, and they each made the near-simultaneous decision to fire their respective weapons. That all eight officers made the same decision to shoot in the same moment, without coordination or communication with one another in the moment, speaks to the reasonableness of their individual assessments and the reasonableness of the determination that a lethal risk was posed by Mr. Rivera.

Under the totality of the circumstances, Officers 2, 3, 4, 5, 6, 7, 8, and 9 are immune from prosecution under Kansas law.

Under Kansas law and the facts of the case, I conclude that no criminal charges will be filed in this matter.

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

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