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State of Kansas
County of Labette

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FOR IMMEDIATE RELEASE
RE: Officer Involved Shooting Findings

Labette County Attorney Stephen P. Jones announces the completion of the review of the law enforcement use of deadly force resulting in the shooting and death of Scott Allen Souders, a 38 year old white male of Chetopa, KS. The incident occurred on August 12, 2019, at the home of Mr. Souders 1110 Cherry Street, Chetopa, Labette County Kansas.

County Attorney Jones has reviewed the reports of the investigation conducted by the Kansas Bureau of Investigation, and narrative reports compiled by the Labette County Sheriff's Office and the Chetopa Police Department.

A. Scope of Report:

This report details the findings and conclusions limited specifically to criminal liability of the Chetopa Police Department officer, the lead officer, who fatally shot Mr. Souders at 1110 Cherry Street.

The Labette County 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 Chetopa 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 officer(s) or citizen(s) had behaved differently in the moments leading up to the fatal use of force are not properly addressed in a criminal investigation.

The only question examined by this report is whether sufficient evidence exists to establish beyond a reasonable doubt that the criminal laws of the State of Kansas were violated in this instance.

B. Findings:

Three or four weeks prior to August 12, 2019, Chetopa Police Department received a tip regarding the odor of marijuana and 1110 Cherry Street, Chetopa, Kansas. Sometime after the tip had been reported Chetopa Police Department opened an investigation to the 1110 Cherry Street address. On August 11, 2019 two Chetopa Police officers drove to the home at 1110 Cherry Street and attempted to speak to the residents of the home.

The two Chetopa Police officers rang the doorbell and knocked on the storm door several times. The Chetopa Police officers could hear nothing but barking dogs inside the residence. After receiving no answer, the Chetopa Police officers decided to open the storm door and knock directly on the wooden front door. As the storm door was opened both officers smelled the odor of green marijuana. One of the officers heard someone inside tell the dogs to stop barking. No one answered the door.

After leaving the residence at 1110 Cherry Street, the officers believed they had enough information to apply for a search warrant. Later that evening, the officers did apply for a search warrant. At approximately 11:00PM the search warrant was granted by the District Court Judge who was on call.

Shortly after approval of the search warrant, four officers from Chetopa Police planned the execution of the search warrant. At approximately Midnight these four officers attempted to execute the search warrant.

At approximately 12:12:29 on August 12, 2019 three Chetopa Police officers began knocking on the wooden front door and loudly announcing "Police Department, search warrant." "Police Department, come to your door or I'm gonna break your door down." This activity took place till 12:14:04, when the Officers began attempting to breach the locked front door with a sledgehammer. At 12:14:20 three officers gained entry through the front door of 1110 Cherry Street.

The lead officer made entry into the front room, closely followed by two other officers. The lead officer was making his way to a hallway where at 12:14:34 Mr. Sounders yelled "Freeze (expletive)" The lead officer encountered Mr. Souders presenting an AR type rifle in the shooting position and at 12:14:35 the lead officer fired three shots. Mr. Souders was hit twice, one of the shots being fatal.

C. Kansas Law:

In Kansas, all persons including law enforcement officers are entitled to defend themselves and others against the use of unlawful force. Kansas Statutes Annotated (K.S.A.) 21-5222 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. See K.S.A. 21-5221(a)(1). “Use of deadly force” means the application of any physical force which is likely to cause death or great bodily harm to a person. See K.S.A. 21-5221(a)(2).

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).

K.S.A. 21-5231 (formerly K.S.A. 21-3219), enacted in 2006, states that a person who is justified in the use of force in self-defense “is immune from criminal prosecution.”

I. 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.

II. Application of Kansas Law

A person's use of deadly force in self-defense is judged on a "case by case" basis. Only such force reasonably needed to defend against another's imminent use of unlawful force is legally permissible under Kansas law.

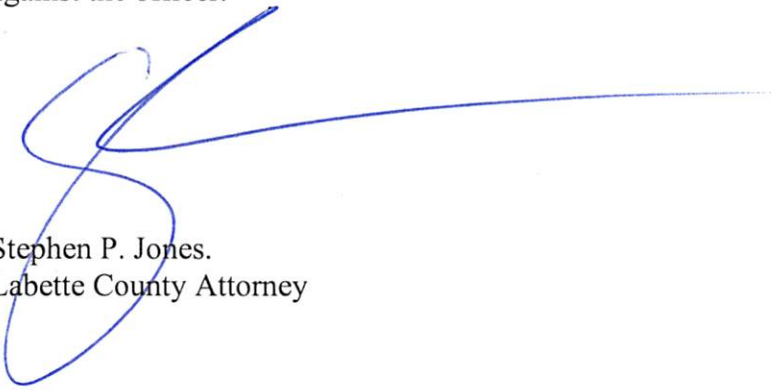
D. Conclusion:

On August 12, 2019, the lead officer exercised the use of deadly force resulting in the shooting and death of Scott Allen Souders.

Since 2011, under Kansas law, one who acts in defense of himself or to protect a third party is immune from prosecution. See K.S.A. 21-5231. Meaning, a person may not be charged, prosecuted (or subsequently sued) unless the state can establish that they were not acting reasonably under the circumstances. In *Graham v. Connor*, the United States Supreme Court made clear that assessment as to the reasonableness of an officer's decision to utilize deadly force must be made within the context in which the officer found himself - not from the perspective of "20/20 hindsight."

The investigation found no evidence to establish beyond a reasonable doubt that the officer's use-of-force in defense of himself and/or the other officers at the scene was unreasonable under the circumstances. The investigation indicates there is no evidence to prove beyond a reasonable doubt that the lead officer acted in an unreasonable manner in the defense of himself and/or other officers at the scene.

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



Stephen P. Jones.
Labette County Attorney