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February 7, 2020

Chief Geoff Jones
Columbia Police Department
Sixth and Walnut
Columbia, MO 65201

Dear Chief Jones,

On January 1, 2018, while inside Waffle House located at 904 Vandiver Drive in Columbia, Missouri, Matthew McMillan shot Le'quan Hord-Bush in the leg. After McMillan shot Hord-Bush, the two physically struggled with each other. During this struggle, Robert Moses, a security guard working at Waffle House, tried to end the confrontation between McMillan and Hord-Bush and gain control of the handgun McMillan used to shoot Hord-Bush. While this was going on, Moses shot and killed Anthony Warren. After the shootings occurred, Jaylon Freelon hid the gun McMillan used to shoot Hord-Bush.

The Columbia Police Department ("CPD") conducted an extensive investigation of this matter and sent materials to this office for review.

Freelon was charged with tampering with physical evidence and, on June 4, 2018, he pleaded guilty and was sentenced to five months in the Boone County Jail.

McMillan was charged with Murder in the 2nd degree (class A felony), Unlawful Use of a Weapon (class E felony), Assault in the 1st degree (class A felony), and Armed Criminal Action (unclassified felony). On November 19 and 20, 2019, a two-day jury trial was held, and the jury found McMillan guilty on all counts.

On January 18, 2020, the Court sentenced McMillan to:

- 30 years imprisonment for Murder in the 2nd degree (class A felony),
- 7 years imprisonment for Unlawful Use of a Weapon (class E felony),
- 30 years imprisonment for Assault in the 1st degree (class A felony), and
- 7 years imprisonment for Armed Criminal Action (unclassified felony).

With each sentence to run concurrent with each other.

In this letter, I will explain why the evidence, the law, and my ethical responsibilities as a prosecutor prohibit me from filing criminal charges against Robert Moses regarding the shooting of Anthony Warren. I have waited until now to announce my decision regarding whether charges would be filed against Moses because I did not want to do anything that could negatively impact the fairness of the trial in McMillan's case.

EVIDENCE

The following is a summary of the evidence that is most pertinent to this case:

On January 1, 2018, Robert Moses was employed by Signal 88 Security. During the early morning hours on that date, Moses was working as a security guard at Waffle House located at 904 Vandiver Drive. While at Waffle House, Moses was wearing a coat that had writings in white lettering which clearly identified him as a security officer. On the front left side of Moses's coat, "Signal 88 Security" was written, and on the front right side of Moses's coat, "SECURITY OFFICER" was written. On the left and right shoulder areas of the coat "SIGNAL 88 PRIVATE SECURITY" was written. On the rear upper portion of the coat, "Signal 88 Security" was written, and just below that, "SECURITY" was written in large letters.

Surveillance video obtained from Waffle House shows McMillan entered Waffle House at about 1:13am.

At about 1:30am, Moses called 911 and said, "Get them up here now. I want them all out of here right now." The 911 operator asked Moses what telephone number he was calling from, but Moses apparently hung up.

The surveillance video shows that at about 1:37am, Hord-Bush entered Waffle House.

Police officers from CPD responded to Waffle House, and at about 1:39am, they contacted Moses on the parking lot. Moses was upset, and he essentially told CPD officers he wanted them to remove anyone from Waffle House who was not buying something. Moses said he did not want an "incident" to occur. A police officer asked Moses if there was anyone

specifically who was causing a problem by fighting or yelling, and Moses did not answer. Moses indicated that he believed there were no problems at the time he was talking to police officers because civilians saw the police there. Police officers decided to leave the scene because it was stable at the time and there was no disturbance. At about 1:44am, the police officers left the Waffle House parking lot in marked police vehicles.

Surveillance video shows that immediately after police officers passed by his location in police vehicles to leave the Waffle House parking lot, Anthony Warren walked across the parking lot and entered Waffle House. Immediately after Warren entered Waffle House, he walked westbound, and he appeared to be looking for someone. At that time, McMillan, who was sitting in a seat in the west side of the restaurant facing the front door, got up out of his seat and walked east toward Warren. Warren looked directly at McMillan, then Warren turned around as McMillan approached him, and McMillan and Warren exited Waffle House together onto the parking lot. As McMillan and Warren exited Waffle House together through the first of the double doors, they both came within inches of Moses who was entering Waffle House at the time. The video shows that Moses looked directly at McMillan and Warren as they approached him, and Moses continued to focus on them as they passed him. It is unclear from the surveillance video where McMillan and Warren went on the parking lot.

The surveillance video shows that at about 1:46am, McMillan reentered Waffle House and walked by the location where Hord-Bush was sitting. On the video it appears that McMillan and Hord-Bush exchanged words with each other, then McMillan approached Hord-Bush. McMillan pulled out a .40 caliber handgun he was carrying, and Hord-Bush got out of his chair and apparently tried to wrestle the handgun from McMillan. They took some steps in a westward direction, and McMillan fired two shots at Hord-Bush. The first shot missed Hord-Bush and struck a wall in the restaurant. The second shot hit Hord-Bush. After McMillan shot Hord-Bush, they both fell onto the floor. While on the floor, the two apparently struggled for control of McMillan's handgun.

After McMillan shot Hord-Bush, mass chaos erupted at Waffle House. Most of the people who were inside Waffle House frantically exited the building, but some people ducked for cover. Numerous people could clearly be seen yelling and screaming.

As can be seen on the surveillance video, at the time of the shooting Moses was standing just outside the front door. Immediately after McMillan fired the weapon, Moses quickly entered Waffle House and pushed both

McMillan and Hord-Bush into a booth where Moses struggled to gain physical control of McMillan's gun.

The surveillance video shows that while Moses was struggling with McMillan and Hord-Bush, Marcus Goldman, Deandre O'Neal, Travis Weston, and Warren (who was outside Waffle House at the time McMillan shot Hord-Bush, and who walked past numerous patrons who were fleeing the restaurant as he entered) approached and surrounded Moses, and all were within at the most a few feet of Moses while Moses wrestled with McMillan and Hord-Bush. Moses had his back turned to Goldman, O'Neal, Weston, and Warren during this struggle. During this time, Lashonna Simmons picked up a large coffee pot and threw it at Moses, striking him in the area of his right shoulder and head. Immediately after Moses was struck by the coffee pot, Moses turned around, and he was apparently pushed by McMillan. Moses then shot Warren with a 9mm handgun, and Warren fell to the ground.

Warren was eventually taken to the hospital. When Warren arrived at the hospital, he did not have a pulse, and he was pronounced dead. Dr. Deiter Duff performed an autopsy on Warren's body on January 13, 2018. Dr. Duff determined that Warren was shot in the anterior left upper abdomen, and the gunshot wound caused Warren's death. Toxicology tests were performed, and Warren's blood alcohol concentration was .135%.

Hord-Bush, who was shot in the right upper thigh, was also taken to the hospital for treatment. Hord-Bush survived.

After the shooting, Freelon picked up McMillan's .40 caliber handgun from the ground and hid it behind Waffle House.

Police officers from CPD immediately responded to Waffle House. The scene was processed, and McMillan's .40 caliber handgun was located behind Waffle House. Police also recovered two .40 caliber cartridge cases that were determined to have been fired from McMillan's handgun and one 9mm cartridge case that was determined to have been fired from Moses's handgun.

Moses talked to police at the scene and at CPD. Moses said that while he was outside Waffle House, he heard gunshots, so he ran inside, and he heard screaming. Moses said after he entered Waffle House, he saw two males struggling to gain control of a gun that was on the ground. Moses said the two males were "going at each other." Moses said he grabbed both males to try to get the gun away from them. Moses said he pinned the two

males against a booth while he was trying to secure the gun, and during this time people started to surround him.

Moses said he removed a gun from his pocket and pointed it at the two males, and he told them that if they did not drop the gun, he was going to kill them. Moses said he was trying to prevent the two males from shooting anyone else. Moses said, "I couldn't just let them shoot it out." Moses said the gun the two males were struggling over was released, and it fell to the ground. Moses said he tried to gain control of the gun during the struggle, but he was ultimately unsuccessful. Moses said during this time, people were grabbing him from behind and "coming at [him]," and "they were coming to hurt [him]." Moses said, "The person just came at me, man. Talking about, that he said I shot his cousin, and the first thing went across my mind is this guy is gonna shoot me." Moses said he was hit "over the head" with a "bottle or something" during the struggle. Moses said he thought that the people who were "coming to hurt [him]" would have been able to see that Moses had a gun in his hand, so he reasoned that they must have been armed also.

Moses said he turned around and fired one shot to protect himself. Moses also said he fired his weapon because he did not want anyone to get control of the gun that was loose. Moses said, "I didn't mean to kill nobody," and "that's the last thing I ever wanted." Moses said, "I had to do what I had to do, man, to protect the public."

Detective Steven Wilmoth spoke to Moses at CPD. At one point, Wilmoth said to Moses, "Everything we're seeing on this video is you did nothing wrong. Everything we're, we're seeing shows that what you did was justified and your actions and caused by others, other influences." Wilmoth also told Moses, "I wanted to come in and let you know everything that we see, I can't say that I would have done any different."

Rodney Coe, a cook at Waffle House who was present during the time of the shootings, was interviewed by police. Coe indicated McMillan shot Hord-Bush, the two males struggled for control of McMillan's gun, then Coe heard another gunshot. Coe said that most of the customers fled the restaurant after the shots. Coe said that Moses entered Waffle House, and Coe told Moses to "shoot them, shoot them." Coe said Moses grabbed the two males, and Moses struggled with them to gain control of the gun. Coe said while this was going on, four or five males began to rush Moses. Coe said that as the males were encroaching on Moses, Moses turned around and shot Warren. Coe said he wondered why the four or five males were "running towards a gunfight." Coe said he guessed Moses "had to do what he had to do."

Coe said he knew Warren and Warren's mother. Coe said he talked to Warren's mother after Warren was shot, and Coe told her that Warren and three other guys ran toward Moses, and they should have run in the opposite direction.

Police talked to Hord-Bush at the hospital. Hord-Bush essentially said he did not have any memory of the circumstances of being shot. At trial, Hord-Bush testified that he was sitting near the entrance of Waffle House waiting for a table when he saw McMillan begin to pull out a handgun and Hord-Bush jumped up and struggled with McMillan in an attempt to avoid getting shot. Hord-Bush said he did not recall ever seeing McMillan before this event, and that Hord-Bush did not do anything to provoke McMillan's actions.

Police attempted to interview people who could be seen on the surveillance video witnessing Moses struggling with Hord-Bush and McMillan and witnessing Moses shooting Warren. Many of those witnesses generally refused to talk to police about what they saw. Those witnesses who refused to participate in the investigation included Bailey, Goldman, O'Neal, Simmons, and Weston.

McMillan was eventually captured on January 20, 2018, in Kansas City, Missouri. McMillan did not make any statements to law enforcement about this case.

LEGAL ANALYSIS

Missouri law provides a statutory right to self-defense. Under Section 563.031, RSMo, a person has the right to use force if the person reasonably believes it is necessary to defend himself or herself against what he or she reasonably believes to be imminent use of unlawful force.

A person who is justified in using self-defense can use deadly force in some circumstances. Deadly force can be used if the person reasonably believes the force is necessary to protect himself or herself against "death, serious physical injury, or any forcible felony." §563.031.2(1). Forcible felonies include murder and assault. §563.011(4).

Self-defense is measured from the defendant's perspective based on what the defendant could have known at the time. To be legally justified in using force, the defendant must "reasonably believe" force is necessary based on how the facts "reasonably appeared" to the defendant. MAI-CR4th 406.06. Whether the defendant's belief turns out to have been true or false does not matter. *Id.* Instead, self-defense depends on whether, at the time, there were reasonable grounds that could lead a person in the

same situation to believe force was necessary. *See id; see also State v. Smith*, 456 S.W.3d 849, 852 (Mo. banc 2015).

When a defendant relies on a defense of self-defense, the burden is on the State to prove beyond a reasonable doubt that the person did not act in self-defense. *State v. Powers*, 913 S.W.2d 138, 141 (Mo. App. W.D. 1996).

The evidence in this case shows that Moses had the right to use deadly force against Warren:

After Moses heard the first gunshot he immediately ran inside and tried to subdue McMillan and Hord-Bush. Moses found himself in the middle of a terrifying, chaotic, and ultra-violent life or death struggle. The security video shows that Moses would have been aware that the vast majority of customers left Waffle House after the shooting. The security video shows that Warren and a few others approached Moses and surrounded him. Moses said he knew he was being surrounded, and he felt threatened by the people who surrounded him. Moses said he thought the people who surrounded him were "coming to hurt [him]." It was reasonable for Moses, given the position he was in, to think that Warren and the others who surrounded him posed an imminent threat to him.

Moses said, "The person just came at me, man. Talking about, that he said I shot his cousin, and the first thing went across my mind is this guy is gonna shoot me." Moses saw Warren and McMillan interacting with each other within a couple of minutes of Moses physically trying to subdue McMillan. Moses knew that McMillan was struggling for possession of a gun, so it would have been reasonable for Moses to believe that Warren, who was McMillan's associate, was also armed and could shoot Moses. It was reasonable for Moses, given the position he was in, to think he was in great danger from Warren and to believe he needed to use deadly force to protect himself.

Moses said he was hit over the head with a "bottle or something" during the struggle. The video showed Simmons throwing the coffee pot at Moses and hitting him with it. Moses was not able to see what he was hit with or who threw the object at him because his vision was focused on McMillan and Hord-Bush. It was reasonable for Moses, given the position he was in, to think he was in great danger once he was struck with the hard object and to believe he needed to use deadly force to protect himself from the group of people who surrounded him.

Moses had his gun out during the struggle which would have been visible to people in the vicinity of the struggle. Moses said he thought that the

people who were "coming to hurt [him]" would have been able to see that Moses had a gun in his hand, so he reasoned that they also must have been armed. In the position he was in, it was reasonable for Moses to believe he needed to use deadly force to protect himself from the group of people who surrounded him who would have been able to see that Moses had his gun out.

Moses "reasonably believed" his use of force was necessary based on how the facts "reasonably appeared" to him at the time he shot Warren. There were "reasonable grounds" for Moses to believe his use of force was necessary based on the circumstances as they appeared to him. Therefore, Moses's use of force against Warren was justified under the laws of the State of Missouri, and Moses will not be prosecuted for shooting and killing Warren.

CONCLUSION

Moses deserves much credit for, at great risk to his own personal safety, taking action to subdue an incredibly dangerous situation. Upon hearing a gunshot from inside Waffle House, Moses did not hesitate to run inside and grab McMillan and Hord-Bush in an effort to prevent any more shots from being fired. Moses willingly engaged in a fierce struggle with McMillan and Hord-Bush to gain control of McMillan's handgun. Moses was successful in preventing McMillan from gaining control of his gun, which very well could have prevented McMillan from shooting Hord-Bush again or firing additional rounds while at Waffle House.

Warren, who was legally intoxicated at the time he was shot, exercised extremely poor judgment by converging on Moses during the struggle. Warren, by his own free will put himself in harm's way. In contrast to Warren, the vast majority of the Waffle House patrons reacted appropriately by either quickly exiting Waffle House or ducking to the ground after McMillan fired the first shot, thus allowing Moses to handle the situation. It would have been clear to Warren (who on numerous occasions was in close proximity to Moses prior to the outbreak of violence) that Moses was a security guard because the coat Moses was wearing had conspicuous writing on it labeling Moses as such. Further, it is quite possible that if Warren and the others had not surrounded Moses and diverted his attention from McMillan, McMillan would not have escaped.

I think it is safe to say that members of CPD share my opinion that Moses did not commit a crime for shooting Warren because no request to file charges against Moses was made, and no probable cause statement pertaining to Moses has been sent, to the Boone County Prosecuting

Attorney's Office. As you know, when law enforcement officers have probable cause to believe that a violent crime has been committed by a person, a probable cause statement is prepared by law enforcement and is sent to the prosecutor's office. Further, Steven Wilmoth, a very experienced detective, told Moses that he believed Moses acted lawfully.

Rule 4-3.8 of the Missouri Supreme Court Rules of Professional Conduct is entitled, "Special Responsibilities of a Prosecutor." That rule lists directives that prosecutors must follow. The very first directive begins with the following: "A prosecutor in a criminal case shall: (a) refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause."

Without a probable cause statement in this case, if I wished to pursue charges, my only option would be to present evidence to the grand jury. Since I know charges are not supported by probable cause, it would be unethical for me to pursue the case in this manner.

Even if I did present the case to the grand jury and it returned a true bill, Moses would still have the right to a jury trial wherein I would have to prove the charge beyond a reasonable doubt to twelve fair and impartial jurors before he could be convicted. This burden would be impossible to make. There is no probable cause to believe Moses committed a crime by shooting Warren, and logically, proof beyond a reasonable doubt does not exist.

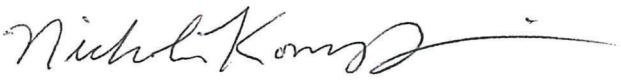
Most importantly, and I can not emphasize this enough, on top of the legal standards of proof, I will not seek a conviction in a case if I am not completely convinced that the person is guilty of the crime. I do not believe Moses committed a crime when he shot Warren, so Moses will not be charged.

Our office has talked to members of Warren's family about this case. We have expressed our sympathy to them. They would like for me to file charges against Moses for killing Warren. I cannot do so. I must follow the law and abide by my ethical responsibilities.

Since this case is of public interest, I am going to disclose this letter to the media. I believe it is important for citizens to clearly understand the circumstances of this shooting and why Moses acted lawfully in shooting Warren.

Thank you very much for taking the time to read this letter. If you have any questions, concerns, or if you do not agree with my analysis, please contact me.

Sincerely,



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