

Dear Chief Humphrey,

In reviewing police use of force cases, it is critical to remember that the Prosecuting Attorney's Office is to make a determination of whether a crime has been committed, not whether the officers engaged in good police tactics. Further, it must be remembered that police officers are granted different rights and protections by the Legislature that apply to them when they are acting in the course of their duties as law enforcement officers. Finally, ***"(T)he prosecutor in a criminal case shall refrain from prosecuting a charge that the prosecutor knows is not supported by probable cause."*** Arkansas Rules of Professional Conduct, Rule 3.8: Special responsibilities of a prosecutor.

Arkansas Rules of Criminal Procedure 3.1

***A law enforcement officer lawfully present in any place may, in the performance of his duties, stop and detain any person who he reasonably suspects is committing, has committed, or is about to commit a felony.***

Arkansas Rules of Criminal Procedure 4.1

***A law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed a felony.***

### The stop

On 2/22/19 at approximately 11:04 a.m., Charles Starks was working in his capacity as a Little Rock police officer when he was notified of a stolen vehicle traveling west on 12<sup>th</sup> Street. Starks was able to get in behind the vehicle and eventually follow it on to a parking lot. Driving the vehicle was Bradley Blackshire, the eventual shooting victim. Desaray Clarke was in the front passenger seat.

By the time Starks got to the parking lot Mr. Blackshire had backed into a parking spot. There was a building directly behind his vehicle and an SUV was one space over and to his right. Starks parked his marked police unit directly in front of Mr. Blackshire's vehicle, but there was enough space to allow Mr. Blackshire to turn his wheels to the left and drive around the police unit. Given the way all three of these vehicles were situated, the only way for Mr. Blackshire to leave would be turning to his left.

***Pursuant to ARCrP 3.1, given what Starks had been told by other officers about the vehicle being stolen, Starks was authorized to block in the vehicle Mr. Blackshire was driving. This action would have been considered to be a detention and in the performance of his duties as a law enforcement officer. Starks was acting within the scope of his duties when he approached the vehicle to ask the driver questions.***

Starks exited his vehicle and went around to the driver's side of the stolen vehicle. Starks cannot be seen on the MVR, but he later admits to having his weapon drawn for officer safety upon exiting his unit. This is corroborated by Ms. Clarke in her statement to the police. Starks first

says “Hands, Hands” and then says “Roll the window down.” Mr. Blackshire can be heard saying “Whatcha (g)(w)anna shoot me for?” Starks later says he thought Mr. Blackshire said “You’re gonna have to shoot me.” Starks is at the window giving commands to get out of the car for 30-35 seconds and Mr. Blackshire refuses to comply. Starks in his statement to investigators says that Mr. Blackshire locked the door thereby preventing him from removing Mr. Blackshire from the vehicle. (p. 51).

*Pursuant to ARCrP 4.1 a law enforcement officer may arrest a person without a warrant if the officer has reasonable cause to believe that such person has committed a felony. Whether Starks was going to arrest Blackshire once he exited the vehicle will never be known, but Starks could have made a lawful arrest of Mr. Blackshire. Based on the information provided by other law enforcement officers, Starks had reasonable cause to believe that Mr. Blackshire had committed a felony (theft by receiving). Certainly Mr. Blackshire’s refusal to get out of the car and his attempt to drive off would have been evidence of his consciousness of guilt at trial.*

#### Deadly force

Arkansas Code Annotated 5-2-610

*A law enforcement officer is justified in using deadly physical force upon another person if the law enforcement officer reasonably believes that the use of deadly force is necessary to defend himself or a third person from what the officer reasonably believes to be the use or imminent use of deadly physical force.*

Arkansas Code Annotated 5-2-607

*A person is justified in using deadly physical force upon another person if the person reasonably believes the other person is using or about to use deadly physical force. A person is not required to retreat if the person is a law enforcement officer.*

#### Deadly physical force

*Physical force that under the circumstances in which it is being used is readily capable of causing death or serious physical injury.*

Starks ordered Mr. Blackshire to get out of the car at least 12 times. From both the surveillance video of the business on the parking lot and Starks’ MVR, it is apparent that while Starks is ordering Mr. Blackshire out of the car, the Blackshire vehicle is moving forward and to the left towards Starks. It is also clear that Starks is backing up before any shots are fired and before the car makes contact with him.

As this is happening, Starks says that he saw Mr. Blackshire move his hand down on the shifter to put the car in gear. Starks further says that hand stays out of sight. This is corroborated by Desaray Clarke who says that Mr. Blackshire is digging around in his pocket where she says he normally keeps his gun (p. 191). While Starks never claims that he sees Mr. Blackshire with a gun, on page 51 of the file Starks says that he couldn’t tell if Mr. Blackshire was reaching for something.

Even though Starks is backing up, the car does bump Starks before a shot is ever fired. It appears after that first contact that Starks gets in front of the car, and Starks admits as much. On page 68-69 of the file, Starks is asked why he crossed over in front of the car. Starks explains that officers are trained to seek cover behind their vehicle's engine block to avoid getting shot. He says that he was terrified and that if Mr. Blackshire had a firearm he, Starks, believed the only safe place for him to take cover was behind his vehicle.

Starks also states on several occasions that he is trying to stay squared up to Mr. Blackshire so that his vest will provide maximum protection against gun fire (p. 50). This is why when the vehicle hits Starks the second time he falls on the hood of the car.

With all that being said, Starks fires at least 3 times while still not being directly in front of the car. And even though the car is moving towards him, it is moving very slowly. Starks and the car cross paths as it turns to the left and into him as he tries to get to his unit. When the car hits him the second time Starks falls on the hood of the car and continues to fire.

*Graham v. Connor, 490 U.S. 386 (1989) addresses what is reasonable conduct by a police officer when he uses force, deadly or otherwise, in the line of duty. Pursuant to Graham, "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 vision of 20/20 hindsight." Graham at 396.*

*"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." Id. at 397.*

*From the time Mr. Blackshire's vehicle first bumps Starks to the time Officer Simpson rams the Blackshire vehicle, only 5 seconds pass. There is less than one second that passes between Starks getting bumped by the vehicle, the vehicle continuing towards Starks, and Starks firing his first shot. So even though the video gives the impression of everything happening slowly, these are truly split-second judgments that Starks is making.*

*Without question, Mr. Blackshire's vehicle is a deadly weapon. It is also obvious that it was moving in Starks' direction. It will be argued that the vehicle was moving too slowly to be a threat. But the fact that it is moving at all indicates that Mr. Blackshire had his foot on the gas (at the very least it was not on the brake). Starks' close proximity to the vehicle, and the fact that he is backing up when the car first makes contact with him, show that Starks is in the path of the vehicle and is at risk of deadly force being used against him the same as if Mr. Blackshire were pointing a gun at him. The use of deadly force by Mr. Blackshire was as imminent as a stepped on accelerator and no different from a pulled trigger.*

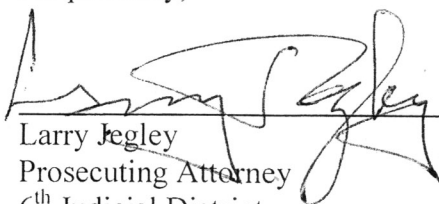
*It will be argued that Starks should not have moved in front of the car. But according to Starks, even though he had not seen a gun, he was afraid of getting shot. The reasonableness of his belief that he might get shot are confirmed by several things: 1) Starks said that Mr. Blackshire put his hand down on the shifter and refused to show it, 2) Ms. Clarke said that*

*Mr. Blackshire was fishing around in his pocket where he usually kept his gun, 3) live .45 caliber cartridges were found in two of Mr. Blackshire's pockets, 4) a loaded .45 caliber handgun with a round in the chamber and 8 rounds in the magazine was located in the Blackshire vehicle after the shooting, and 5) Ms. Clarke believed that Mr. Blackshire was going to shoot Starks because he had told her he had shot at the police on a previous occasion (p. 192). Because Starks believed he was going to be shot he attempted to go to his unit to seek cover from gun fire and that is what put him in the path of Mr. Blackshire's vehicle. Finally, even if Starks believed he could have retreated, he was not required to do so when he was acting in his capacity as a law enforcement officer (see A.C.A. 5-2-607).*

*Starks was confronted with the imminent threat of deadly force in two forms; 1) the vehicle that was driving toward him and from which he had no duty to retreat, and 2) his reasonable belief that Mr. Blackshire was going to shoot him. Starks' use of force, under Arkansas law and prior decisions by the United States Supreme Court, was justified.*

A copy of this file has been forwarded to the Federal authorities.

Respectfully,

 4/19/2019  
Larry Jegley  
Prosecuting Attorney  
6<sup>th</sup> Judicial District