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FOR IMMEDIATE RELEASE

10-23-13

**BOONE COUNTY PROSECUTOR MAKES FILING DECISION
REGARDING THE SHOOTING DEATH OF BRANDON COLEMAN**

(Columbia, MO)---Dan Knight, the Boone County Prosecutor, has decided to not file charges with regard to the shooting death of Brandon Coleman. He has sent a letter to Ken Burton, Chief of Police of the Columbia Police Department, which is attached to this news release and sets forth his reasons for his decision. A copy of this letter can also be found on the Boone County Prosecuting Attorney’s website at showmeboone.com/pa under the “Prosecutor News” section. Please direct any media inquiries to Dan Knight at 886-4100. Thank you.



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Chief Ken Burton
Columbia Police Department
Sixth and Walnut
Columbia, MO 65201

Dear Chief Burton,

On July 26, 2013 I received a “request for review” that was sent to me by Captain Jill Schlude. The document indicated that the “name of the suspect(s)/subject(s) involved” was Dustin Deacon and the “type of offense” was listed as a homicide. Along with the request for review a number of police reports were sent to me. No probable cause statement pertaining to this shooting has been sent to my office. No arrests have been made with regard to this shooting.

This is an extremely serious matter and I have done my best to conduct a thorough investigation. I have read all the police reports. I have reviewed all video and audio recordings of witnesses’ statements. I have examined the physical evidence. I have talked to numerous police officers on many different occasions about this case. I reviewed the autopsy report and talked to the Boone County Medical Examiner about his findings. I have been to the scene of the shooting many times. I have interviewed 20 witnesses who were either directly involved in this incident or who were in the area of the shooting when it occurred. At my request, an investigator in this office test fired the shotgun used in this fatal shooting.

By this letter I will explain why the evidence, the law, and my ethical responsibilities as a prosecutor prohibit me from filing criminal charges with regard to the shooting death of Brandon Coleman.

EVIDENCE

The following is a summary of the credible evidence in this case:

Around the time of the fatal shooting of Brandon Coleman, Dustin Deacon, the shooter in this case, lived at 506 North Ann Street in Columbia, Missouri. Dustin lived there with his father, Rolland Deacon, and Dustin's girlfriend, Jordyn Perry. Dustin and Jordyn lived upstairs and Rolland lived downstairs at this residence.

Around this time Stephanie Deacon, who is Dustin's sister and Rolland's daughter, dated a person named Jyrus Cammack. There was also a juvenile female involved in this case whose identity cannot be released for legal reasons.

There is evidence that during this time period, Dustin and Rolland did not approve of Stephanie dating Jyrus because he is black. The Deacons are white.

At the time of this incident, Brandon was 25 years old, Dustin was 21 years old, Jyrus was 24 years old, Jordyn was 18 years old, Stephanie was 20 years old, the juvenile was 16 years old, and Rolland was 57 years old.

On the evening of 5-18-13 at about 9:37pm Dustin was involved in an accident where his vehicle struck a utility pole. Dustin eventually went to the hospital and he was given medication for head, neck and back pain.

After the accident, Jordyn, Stephanie, and the juvenile went to see Dustin at the hospital. Hospital rules allowed only 2 people to visit patients at a time and therefore only Stephanie and the juvenile went into Dustin's room to visit him while Jordyn waited outside of the room. When Stephanie and the juvenile came into the room, Dustin told them that he wanted to see Jordyn. This greatly upset Stephanie and the juvenile and they indicated their displeasure with both Dustin and Jordyn for this perceived slight before storming out of the hospital. Sadly, this senseless dispute that began at the hospital would set off a chain of events that would lead to the death of Brandon Coleman.

Later that night or early the next morning, the juvenile and Stephanie picked Jyrus up in a car the juvenile was driving. Also, Dustin and Jordyn went back to their residence from the hospital. Via telephone, Stephanie and the juvenile continued to argue with Dustin about what happened at the hospital. Jyrus also became involved in the dispute and he and Dustin argued with each other over the telephone. In the course of the argument between Dustin and Jyrus, and up until Dustin killed Brandon, Dustin called Jyrus a "n...r" and made other highly offensive remarks to

Jyrus based on Jyrus' race. There is also evidence that Jyrus made highly offensive remarks to Dustin based on Dustin's race.

Eventually an agreement was reached between Dustin and the other group where Stephanie (who later admitted to law enforcement that she liked to fight) would fight Jordyn and Jyrus would fight Dustin. There was discussion about the fight taking place at a specified neutral location in Columbia. Jyrus, Stephanie and the juvenile went to that location to fight, but Dustin and Jordyn did not show up. The juvenile, Jyrus and Stephanie still wanted the fight to occur so the juvenile drove Jyrus and Stephanie to the area of Dustin's and Jordyn's residence at 506 Ann. The juvenile drove onto an alley located north of 506 Ann and which extended west from Ann, and parked her car on a parking lot that was on the north side of the alley. The parked car was not visible from 506 Ann. From this location, the 3 walked towards 506 Ann with the intent to force the confrontation. Members of this group came very close to going onto the property of 506 Ann and they challenged Jordyn and Dustin, who were at the residence at that time, to fight. Rolland, who was also at the residence, procured a corn knife (which is very similar to a machete) and met Stephanie, the juvenile and Jyrus outside in an area in front of 506 Ann. Rolland repeatedly told the three to leave and he repelled them north towards the alley. Rolland then returned to his residence, and Stephanie, Jyrus and the juvenile went to the alley.

Jyrus, Stephanie and the juvenile contacted Brandon and asked him to meet them so that he could keep Rolland out of the fight. Brandon agreed to come to the area for this purpose. At this time, Brandon owned a black 2010 Dodge Charger which he could have driven to the area of 506 Ann. Instead, Brandon called Jessica Mckinlay and asked her to pick him up in the area of the Hy-Vee Supermarket on Conley Road. Brandon drove his car to this location and Jessica met him there. Brandon got into Jessica's car and she saw that he was in possession of a .40 caliber semi automatic handgun that she had witnessed Brandon purchase for \$564.90 from a pawn shop in Columbia on 5-18-13 between 2:57pm and 3:05pm. Brandon told Jessica where he needed to go and she drove him to the above referenced parking lot area near 506 Ann where the juvenile had parked her car. When Brandon arrived, Jyrus, the juvenile, and Jessica saw that Brandon was in possession of his handgun. According to the toxicology report, at this time Brandon was under the influence of methamphetamine and marijuana.

From the parking lot area, members of the group, including Brandon, walked towards 506 Ann. Once again, Rolland attempted to repel the group's attack by advancing north from the area of 506 Ann towards the alley. On Ann Street, between 506 Ann and the alley, Brandon approached Rolland and pointed his

handgun at Rolland's head. Brandon's handgun was loaded with 9 hollow point cartridges in the magazine and 1 hollow point cartridge in the chamber which would have allowed Brandon to fire immediately upon pulling the trigger. Rolland said Brandon orally threatened to shoot him while he pointed his gun at Rolland's head.

Dustin was on his property when he observed Brandon point the gun at Rolland's head. When Dustin saw this, he took possession of his 12 gauge shotgun.

Jyrus told the police that Brandon advanced towards Rolland while pointing his gun at him and when Brandon arrived at a position that was a few feet from Rolland, Rolland swung the corn knife at Brandon, but missed because Brandon backed away. Jyrus told the police that Brandon continued to point his handgun at Rolland, he advanced again towards Rolland, and once again Rolland swung the corn knife at Brandon missing because Brandon backed away. Jyrus told the police that Brandon orally threatened to shoot Rolland while he pointed the gun at him.

Armed with the shotgun, Dustin went to a position that was just north of the property line of 506 Ann and saw that Brandon was still pointing his handgun at Rolland's head. Fearing that Brandon would shoot and kill his father, Dustin shot his shotgun 4 times in rapid succession at Brandon, striking Brandon 3 times. Dustin was probably about 35' to 50' away from Brandon when he shot him.

At about the time of the shooting, Jordyn was standing in the front yard of 506 Ann. Instead of Stephanie fighting Jordyn as was the original plan, the juvenile advanced onto the yard, knocked Jordyn down, and repeatedly punched her.

After Brandon was shot, he dropped his gun. Rolland stepped on Brandon's gun and kept his foot on top of it. Rolland asked people in the area to call 911. When the police arrived Rolland was still standing on Brandon's gun.

After the shooting, Dustin and Jordyn went into their residence. They called 911 and Dustin told the 911 operator that he shot Brandon because Brandon pointed a gun at Rolland and he thought that Brandon was going to kill Rolland.

Police officers from the Columbia Police Department came to the scene. When they arrived, Brandon was lying on the ground, still alive. Police observed Brandon moving his arms for several minutes while lying down.

Dustin, Rolland, Jordyn, Jyrus, Stephanie, the juvenile, Jessica and others went to the Columbia Police Department that day for questioning and they gave statements

to police officers. Dustin admitted that he shot Brandon and he said that the reason he did so was because Brandon pointed a gun at Rolland and he thought Brandon was going to kill Rolland.

Police officers processed the area of the shooting and they searched the interior of 506 Ann. Inside the residence, they recovered the shotgun Dustin shot Brandon with and many other firearms belonging to Dustin.

Dr. Carl Christopher Stacy performed the autopsy on 5-20-13 and he prepared an autopsy report. He found that Brandon was shot with "birdshot" and that he was most likely shot 3 times. Dr. Stacy identified and described the 3 groupings of shots. He found that one shot was generally to Brandon's "Left Face, Left Neck, Right Upper Chest and Right Anterior Arm". He found that another shot was generally to Brandon's "Left Lower Chest and Left Abdomen" that also "most likely" included a "Shotgun Wound of Posterior Left Hand." He also found that another shot was generally to Brandon's "Posterior Right Thigh and Leg and Posterior Left Leg." Dr. Stacy could not give an opinion about when the shots occurred with relation to each other.

Dr. Stacy wrote that Brandon died from these shotgun wounds with resultant blood loss.

FURTHER ANALYSIS OF THE EVIDENCE

ROLLAND'S USE OF THE CORN KNIFE

The most believable evidence is that Rolland possessed a corn knife during this incident. Rolland told law enforcement officers that he couldn't remember if he was armed with a corn knife, but he admitted that he could have been. Rolland said he owned 2 corn knives and that he kept them around his residence. Police officers located and recovered 2 corn knives inside 506 Ann that were similar to each other and similar to the description Rolland gave of the corn knives.

Some witnesses described seeing something in Rolland's hand that was consistent with the recovered corn knives. There were some witnesses, however, who said they did not see Rolland in possession of any weapon. Dustin said he did not know if Rolland was armed with any weapon including a corn knife.

Rolland did not strike Brandon or anyone else with the corn knife during this incident. The credible evidence is that Rolland did not swing the corn knife at anyone other than Brandon during this incident and that he did not raise the corn knife in a threatening manner towards anyone else.

SHOOTING DETAILS

With respect to the shooting, the following evidence was analyzed: the number of shots fired, how quickly they were fired, the distance between Dustin and Brandon at the time of the shooting, whether or not Dustin shot at Brandon while he was on the ground, whether or not Dustin shot at Brandon after it was apparent he was no longer a threat, and whether or not there was a late shot. A discussion of the evidence follows.

EVIDENCE THAT 4 SHOTS WERE FIRED

Police officers found 4 shotgun shell casings that were close together on the ground just north of the fence located just north of 506 Ann. No other expended shotgun shell casings were found. The shotgun that was used in this incident was capable of holding a maximum of 4 shotgun shells of the type that were fired.

As stated above, Dr. Stacy found that Brandon was most likely shot 3 times.

Witnesses provided a wide range of estimates regarding the number of shots they thought were fired. Numerous witnesses, particularly the individuals involved in this incident, indicated they thought that there were around 4 shots fired.

EVIDENCE THAT THE SHOTS WERE FIRED IN RAPID SUCCESSION

Witnesses reported hearing shots fired in rapid succession. The shotgun was an automatic, not a pump, which allowed for rounds to be fired as quickly as the trigger could be pulled. In addition, as stated above, the shotgun that was used in this incident was capable of holding a maximum of 4 shotgun shells of the type that were fired which is significant because no reloading would have been necessary in order for 4 shots to be fired. No witnesses told law enforcement that they witnessed Dustin reload his shotgun and fire again at Brandon.

EVIDENCE THAT BRANDON WAS SHOT AT A DISTANCE OF ABOUT 35' TO 50'

A person who lived in the area of 506 Ann was inside his residence when he heard the shots fired. He waited about 10 seconds, looked outside and saw Dustin in the area where the 4 shotgun shells were later located. The witness also saw Brandon on the ground at that time. The distance between the positions where this witness first saw Dustin and Brandon was determined to be approximately 46'.

When Dr. Stacy performed the autopsy, he did not observe any soot, stippling or wadding marks which indicated that Brandon was not shot at close range.

Ben White, an investigator at the Boone County Prosecutor's Office and an expert with regard to the use of firearms, test fired the shotgun used in this incident. He fired the shotgun at cardboard targets at ranges of 5', 10', 15', 20', 25', 30', 35', 40', 45', and 50', measured from the muzzle of the shotgun to the targets. He then compared the patterns on the targets with the patterns observed on the autopsy photographs. White estimated that Brandon was shot at a distance of between 35' and 50' measured from the muzzle of the shotgun. More specifically, it was White's opinion that Brandon was shot at a distance of about 45' measured from the muzzle of the shotgun.

EVIDENCE THAT DUSTIN DID NOT SHOOT AT BRANDON WHILE BRANDON WAS ON THE GROUND

Jyrus, Dustin, and Rolland all said that all the shots were fired before Brandon fell to the ground. No witnesses told law enforcement they saw Dustin shoot at Brandon while he was on the ground. There is no evidence that Dustin shot at Brandon while Brandon was on the ground.

NO EVIDENCE THAT DUSTIN SHOT AT BRANDON AFTER IT WAS APPARENT THAT BRANDON WAS NO LONGER A THREAT

As stated above, for at least several minutes after Brandon was shot it was clear that he was still alive while he was lying on the ground. Dustin did not shoot at Brandon again even though Brandon was alive and Dustin had the ability to shoot Brandon more times. Additionally, there is no evidence that Dustin shot at Brandon after he was obviously incapacitated or otherwise clearly unable to be a threat to Rolland or anyone else.

POSSIBLE FINAL SHOT

Some witnesses reported that after the initial shots were fired there was a significant delay and then they heard something that sounded like another gunshot in the general area. There was a very wide range of estimates by some witnesses regarding when this possible shot occurred in relation to the last of the initial shots. These estimates ranged from seconds to minutes.

There were witnesses who reported hearing a loud bang, but they didn't know if it came from a gun. No physical evidence was located which indicated a later shot was fired. No witness reported seeing anyone fire this possible shot. There is no evidence about who shot this possible shot.

Also, there were a number of witnesses who said they heard the initial shots but did not hear anything later that sounded like a gunshot or a loud bang.

JYRUS' STATEMENTS

Jyrus has been insistent that Dustin be charged for shooting Brandon. To a certain extent, Jyrus downplayed his role and Brandon's role in this incident and some of his statements lack credibility.

Jyrus was interviewed by members of CPD on 5-19-13 and by my office on 9-10-13. Jyrus told law enforcement that Brandon was his best friend and they were like brothers.

Despite significant evidence to the contrary, throughout all of Jyrus' statements to law enforcement he claimed that he knew nothing about the plan for himself to fight Dustin and for Stephanie to fight Jordyn. Jordyn, Stephanie and the juvenile all indicated that everyone, including Jyrus, knew about the plan. Jyrus admitted he took his shirt off during this incident, but he claimed he didn't have any particular reason for doing that and he said he had a habit of taking his shirt off for no reason at all.

Jyrus repeatedly and adamantly told law enforcement officers it was pure coincidence that Brandon and Jessica just happened to show up in the area of 506 Ann on 5-19-13 at about 3:00am right before the shooting. Jyrus claimed that he, Stephanie and the juvenile never asked Brandon to come to the area. Eventually, Jyrus claimed that the juvenile, not Jyrus, called Brandon and asked him to come to the area. At one point Jyrus said to a CPD police officer, "I swear to God, sir, I did not call him (Brandon) over there." When Jyrus spoke to members of my office, he admitted that he did in fact personally call Brandon and ask him to come over to the area of 506 Ann to "watch" Jyrus' "back."

Jyrus insisted that he did not know that Brandon had the handgun in his possession before Dustin fatally shot him. The juvenile told law enforcement that when Brandon arrived in the car he had the gun in his hand and that Jyrus handled the gun himself. Jyrus was asked to submit to a DNA sample for the purpose of determining whether or not his DNA was on Brandon's gun. Jyrus refused to provide a sample of his DNA and he said he would need to consult with an attorney before he decided what to do.

At CPD, Jyrus spoke to CPD police officers Joe Jackson and Jon Voss. During the following exchange, Jyrus indicated that he thought that Dustin believed that Brandon might shoot Rolland; he acknowledged that it was reasonable for a son to

try to protect a father held at gunpoint; and he admitted that Brandon pointed the gun at Rolland and then Rolland swung at Brandon.

Jyrus= "...After those 2 times of when her dad tried to hit B.C. (Jyrus demonstrated Rolland's 2 swinging motions) with that, uh, knife, you know what I'm saying, he was just pointing (Jyrus demonstrated how Brandon was pointing the gun) I guess that's when Dod (Dustin) was like you know 'he might shoot my dad' ... That's what I figured. Cause I mean anybody would."

Joe Jackson= "If someone pointed a gun at your dad"

Jyrus= "I mean...I'm not going to lie, I don't want to incriminate myself, but if somebody was just, had a gun at my dad's head, I mean, I would want to protect them too."

Jon Voss= "Um, hum..."

Jyrus= "But I mean in the same breath though, still sir, I mean he tried to hit B.C. twice with that thing. If B.C. really wanted to shoot you..."

Joe Jackson= "But that was after he pointed the gun at him though."

Jon Voss= "Right."

Jyrus= "Yeah."

Near the end of Jyrus' statement to Jackson and Voss, the following exchange occurred at which time Jyrus admitted to the police officers that if someone pointed a gun at his dad's head he could not say he would not shoot that person.

Joe Jackson= "I got to tell you if somebody pointed a gun at my dad's head I'd shoot him too, probably. I'd defend my dad."

Jyrus= "Well I can't say I wouldn't shoot him, but I would want to."

Jon Voss= "I don't know if I'd wait as long as Dod did, to tell you the truth."

LEGAL ANALYSIS

Dustin's use of force in this case was legally justified. In Missouri, a person is legally justified in using force to defend another person if she or he reasonably believes the force is necessary to defend the third person from the "imminent use of unlawful force." § 563.031.1, RSMo. This is true unless "under the circumstances as the actor reasonably believes them to be, the person whom he or she seeks to protect would not be justified in using such protective force." § 563.031.1(2). Force used in defense of another can include deadly force if the person reasonably believes deadly force is necessary to protect the other "against death, serious physical injury, or any forcible felony." § 563.031.2, RSMo.

Dustin was legally justified in shooting Brandon because Brandon was an initial aggressor in the confrontation and Brandon was not acting in lawful self-defense or defense of others when he produced the gun. A person who is an initial aggressor, that is, "one who first attacks or threatens to attack another," *State v. Hughes*, 84 S.W.3d 176, 179 (Mo. Ct. App., S.D. 2002), cannot use force in self defense or defense of another unless he or she "has withdrawn from the encounter and effectively communicated such withdrawal to such other person." § 563.031.1(1). As long as a person is the initial aggressor in an encounter that person cannot use force until he or she withdraws from the encounter. *See Walton v. State*, 240 S.W.3d 783, 786 (Mo. Ct. App., S.D. 2007) (noting that self-defense was not available to a defendant if he was the initial aggressor).

In the present case Brandon and members of his group were the initial aggressors in the encounter with the residents of 506 Ann, and Brandon never withdrew from that encounter. Because Brandon came to the scene in response to Jyrus' call to aid in the fight, Brandon was acting together with Stephanie, Jyrus, and the juvenile when that group approached 506 Ann, threatening to attack Jordyn and Dustin. As part of the group that threatened to attack, Brandon was an initial aggressor. *See State v. Hughes*, 84 S.W.3d 176, 180-181 (Mo. Ct. App., S.D. 2002) (holding that evidence showing defendant and a group of others went to victim's property in a loud, obnoxious manner and threatened to "kick [victim's] ass," supported a finding that members of the defendant's group were the initial aggressors).

Brandon had also not withdrawn from the encounter or communicated any withdrawal before the shooting. To the contrary, Brandon approached Rolland and pointed his loaded handgun at Rolland's head. Thus, at the time of the shooting Brandon was clearly one of the initial aggressors, and he certainly had not withdrawn from the conflict or communicated any intent to withdraw to Rolland or anyone else which was required under the law in order for him to use any force. In

addition, at the time that Brandon attacked Rolland, the juvenile, who was one of Brandon's co-actors, proceeded to assault Jordyn in the front yard.

Because Brandon was an initial aggressor, even though Rolland was using a corn knife to repel Brandon's group, Brandon could not lawfully use force against Rolland. *See Walton v. State*, 240 S.W.3d at 786; § 563.031. Instead, Brandon's act of pointing the gun at Rolland constituted unlawful force, permitting Dustin to act in lawful defense of Rolland. Further, because Brandon pointing the gun at Rolland created circumstances in which Dustin reasonably perceived an imminent threat of death or serious physical injury to Rolland, under the law of the State of Missouri, Dustin was legally justified in using deadly force, including shooting Brandon with the purpose to kill him.

As an initial aggressor, Brandon could not lawfully use force against Rolland even if Rolland was using excessive force (which he wasn't) by bringing the corn knife. A person who is an initial aggressor is not justified in using force to protect himself or herself from a counter-attack that he or she provoked unless he or she first withdraws from the encounter. MAI-CR3d 306.08A; § 563.031; *Walton v. State*, 240 S.W.3d at 786. Thus, regardless of the amount of force used by Rolland, as an initial aggressor, Brandon and the others could not lawfully use force to defend against Rolland.

Further, Rolland's use of the corn knife was clearly within the legal limits of defense of others. At the time Rolland possessed the corn knife he was acting to defend Jordyn and Dustin from threats of assault by the other group. While a person cannot use deadly force in response to a simple assault, *State v. Mangum*, 390 S.W.3d 853, 866 (Mo. Ct. App., W.D. 2013), just carrying the corn knife or even waving it around would not necessarily constitute deadly force. "There is no authority that the use of a knife constitutes the use of deadly force as a matter of law." *State v. Westfall*, 75 S.W.3d 278, 283 (Mo. banc 2002). Further, brandishing a knife to hold someone at bay without intending to stab them is not deadly force. *See Id.* at 282-283 (holding that a jury could have concluded that defendant did not use deadly force based on the defendant's testimony that he pulled out a knife and waived it around blindly to get the victim off of him). The credible evidence is that Rolland carried the corn knife but did not waive it at anyone close to striking distance, except for Brandon, and that was not until after Brandon threatened Rolland with the gun. Thus, Rolland's use of the corn knife was lawful.

The castle doctrine may have permitted the use of deadly force by Rolland under the circumstances. Pursuant to the castle doctrine, as embodied by Missouri statutes, a person who is entitled to use force in defense of persons can use deadly

force if “Such force is used against a person who . . . attempts to unlawfully enter private property that is owned or leased by an individual claiming a justification of using protective force under this section.” § 563.031.2(3). Stephanie, the juvenile, Jyrus and Brandon approaching Rolland’s residence and threatening to assault Jordyn and Dustin justified use of some force by Rolland in Jordyn’s and Dustin’s defense. Rolland repeatedly told the group to leave, making attempted entry into the property by the group unlawful. Thus, under the castle doctrine, even if using the corn knife before Brandon pointed the gun at Rolland was deadly force, which it clearly wasn’t, Rolland may have been justified in using such force.

Dustin’s conduct in verbalizing a desire to Jyrus, Stephanie and the juvenile for Dustin to fight Jyrus and for Jordyn to fight Stephanie did not make Dustin the initial aggressor. Also, Dustin’s racial insults directed at Jyrus did not make him the initial aggressor. The initial aggressor is “the first to physically attack or threaten to attack.” *State v. Anthony*, 319 S.W.3d 524, 530 (Mo. Ct. App., S.D. 2010). The law of self-defense is concerned with the use or imminent use of unlawful force, not simply insults or inflammatory language. *See* § 563.031. “Mere insults are not sufficient provocation to justify an assault or make the speaker the aggressor.” *Dorsey v. State*, 113 S.W.3d 311, 316 (Mo. Ct. App., S.D. 2003). Thus, regardless of how offensive Dustin’s language was to Jyrus and his group, it did not permit, under the laws of the State of Missouri, Jyrus and his group to attack Dustin. Dustin’s language also did not make Dustin the initial aggressor or otherwise provide justification for Brandon to produce the gun.

Despite Brandon pointing a gun at Rolland, Jyrus told police that use of force by Dustin was unnecessary because Brandon had only pointed the gun at Rolland and had not yet fired when Dustin shot. According to Jyrus, that should have indicated to Dustin that, while Brandon was pointing the gun, he did not really intend to shoot Rolland. However, the undisputed fact is that the conflict had escalated to the point where Brandon was pointing a gun at Rolland in a threatening manner. The law of defense of others does not require a person to wait until a shot has been fired to use force in defense. *See* § 563.031.1 (permitting defense of others in response to the use or “imminent use” of force); *State v. Beck*, 167 S.W.3d 767, 787 (Mo. Ct. App., W.D. 2005) (“ . . . in requiring the defendant to have a reasonable belief concerning the necessity of his actions to defend against the unlawful force of the victim to avoid harm or injury, § 563.031 does not require proof that the defendant's actions were actually necessary, but only that he reasonably believed that they were necessary”).

The evidence in this case clearly establishes that Dustin’s actions in shooting Brandon were lawful under the laws of the State of Missouri. Under § 563.074.1

RSMo, “a person who uses force described in section...563.031...is justified in using such force and such fact shall be an absolute defense to criminal prosecution...” Because Dustin acted lawfully with respect to shooting Brandon, he has an absolute defense to criminal charges, so he will not be charged for this shooting.

A PROSECUTOR’S ETHICAL RESPONSIBILITIES

Ethically, I, as a prosecutor, cannot prosecute a charge that I know is not supported by probable cause. As stated above, under the laws of the State of Missouri, I believe Dustin committed no crime by shooting Brandon.

I think it is safe to say that members of the Columbia Police Department share my opinion that no crime was committed, which is evidenced by no probable cause statement being sent to my office. As you know, when police officers in fact have probable cause to believe that a violent crime has been committed by a particular person, probable cause statements are sent to my office. Further, during an exchange between Joe Jackson, Jon Voss and Jyrus Cammack referenced above, Jackson and Voss, both very outstanding detectives who were heavily involved in the investigation of this case, indicated that they believed Dustin 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 a 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. Further, throughout my career as a prosecutor, with regard to every case I have taken to the grand jury, I have strongly believed that the charge was supported by probable cause, and also that I could prove the charge beyond a reasonable doubt to 12 fair and impartial jurors on a petit jury, which is required before a person can be convicted of a crime.

Most importantly, 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 charged is guilty of the crime.

There is no probable cause to believe Dustin committed a crime by shooting Brandon, and logically, proof beyond a reasonable doubt simply does not exist.

CONCLUSION

Under the evidence in this case Dustin Deacon is not guilty of committing a crime for shooting Brandon Coleman because of Missouri's laws relating to the defense of others. However, I want to emphasize that any self defense or defense of others case must be reviewed upon its specific evidence.

I have talked to members of Brandon's family about this terrible tragedy. Understandably, they are heartbroken. I have expressed my sympathy to them. I have informed them about my decision. They would like for me to file charges against Dustin for killing Brandon. I cannot do so. I must follow the law and abide by my ethical responsibilities.

Since this is a case of general public interest, I am going to disclose this letter to the media. I believe it is very important for citizens to clearly understand why I am making the decision to not file charges related to this shooting.

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,



Daniel K. Knight
Boone County Prosecuting Attorney