



Office of District Attorney  
**Press Release**

da.jocogov.org

**STATE OF KANSAS**

**Tenth Judicial District**

**Steve Howe, District Attorney**

**PRESS RELEASE - FOR IMMEDIATE RELEASE**

**MEDIA FACT SHEET- OFFICER INVOLVED SHOOTING**

From: Steve Howe. Johnson County District Attorney

Date: July 22, 2022

(Olathe, KS)

Johnson County District Attorney Steve Howe announces that his office has completed a review of the March 4, 2022 officer-involved shooting that occurred at Olathe East High School. One Olathe police officer discharged his firearm resulting in the injuries to Jaylon Elmore. This investigation was conducted by the Johnson County Officer Involved Shooting Investigative Team (OISIT). It is the determination of the District Attorney that the officer's use of force was justified under Kansas law. Therefore, no criminal charges will be filed against the officer.

**Summary of Fact and Findings**

**Rumor of gun in school leads to attempted search**

Olathe East High School (OEHS) is located near 127<sup>th</sup> Street and Black Bob Road in Olathe, Johnson County, Kansas.

On March 4, 2022 Olathe East administrators became aware of a rumor that a male student had been bringing a gun to school. The administrators (a male and a female assistant principal) determined that the suspected student was Jaylon Elmore.

The administrators notified the OEHS school resource officer (SRO) —a veteran of the Olathe Police Department- that there might be a weapon issue.

The administrators went to the classroom where Mr. Elmore was and asked him to come to the office with them to discuss some class issues. The male assistant principal asked him to bring his backpack so that he would have his laptop. At this point, they did not mention the gun issue to him.

Mr. Elmore accompanied the male assistant principal to his office in the administration area of Olathe East. The female assistant principal followed them down the hallway. She stayed in the hallway to supervise the passing period for students.

The male assistant principal and Mr. Elmore sat at a small table inside the office. Mr. Elmore kept his backpack on, behind his back. The male assistant principal discussed Mr. Elmore's school schedule with him. The female assistant principal then joined them.

They eased into the subject of a 'rumor' that 'someone' had a gun at school, and eventually told Mr. Elmore that he would have to let the administrators search his backpack. Mr. Elmore refused to have his backpack searched.

### **Events leading up to shooting**

At 10:35 a.m., the male assistant principal sent the SRO the following text: "Come to my office now." The SRO was aware of the gun rumor and knew that Mr. Elmore was in the assistant principal's office. The SRO immediately went to that office.

The administrators continued to tell Mr. Elmore that he would have to allow the backpack to be searched. Mr. Elmore continued to refuse.

The SRO entered the office and stood by the door. He was in full police uniform. Although he was armed, he kept his pistol holstered.

What happened next took seconds from beginning to end. The male assistant principal again asked Mr. Elmore to allow him to search his backpack. Mr. Elmore stood up. When Mr. Elmore stood up, the male assistant principal did as well. Mr. Elmore swung his backpack from his back to his chest. The male assistant principal approached Mr. Elmore. The male assistant principal did not see what happened next but rather *heard* a series of gunshots. The shots were "coming right where my head was." He did not see Mr. Elmore with the gun until after the shots had been fired.

The female assistant principal saw Mr. Elmore draw a pistol out of the backpack, point it at the SRO, and shoot. She told investigators that Mr. Elmore shot "at least three times" before the SRO had an opportunity to respond.

The SRO saw Mr. Elmore draw a pistol and shoot him at point blank range. "He just started shooting at me." The SRO felt the impact of the bullets on his body. In that moment, he believed he was going to die. He was able to draw his weapon and return fire.

During the exchange of gunfire, the male assistant principal tackled Mr. Elmore and they fell to the floor, with the administrator on top. Only then did he see a gun in Mr. Elmore's hand. The SRO was able to see that Mr. Elmore was no longer a threat and holstered his weapon. The SRO then began to treat his own injuries and give instructions to staff on treating Mr. Elmore's injuries. Soon thereafter law enforcement and other first responders arrived at the scene.

### **Three Injured by gunfire**

The SRO received gunshot wounds to his left thigh, his right chest and his left arm/shoulder. His body worn camera, which was mounted square in the middle of his chest, was destroyed by a bullet. He survived his injuries. He was shot four times.

The male assistant principal received gunshot wounds to his thigh and his forearm, which he survived. He was shot twice.

Mr. Elmore received gunshot wounds to his abdomen and his left thigh. He was in the hospital for weeks, before being transferred to the jail. He was shot twice.

### **Weapons used**

The investigation determined that Jaylon Elmore fired a Polymer80 9mm handgun.

The investigation determined that the SRO fired a department-issued Glock 9mm handgun.

Investigators determined that four of the fired cartridge cases recovered at the scene were fired in the Polymer80 9mm firearm used by Mr. Elmore. A bullet removed from the school resource officer's shoulder was fired in this same gun.

Investigators determined that four of the fired cartridge cases recovered at the scene were fired from the Glock 9mm firearm used by the SRO.

In sum, the SRO and Jaylon Elmore each fired four shots.

## **Analysis**

### ***Applicable law***

K.S.A. 21-5222, *Defense of a Person* states, in part:

- 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 use of 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 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.*

K.S.A. 21-5227 authorizes law enforcement officers to use force when “making a lawful arrest.” They need not retreat or desist from making the arrest in the face of resistance by the arrestee. Officers may use deadly force if they reasonably believe that such force is necessary to prevent death or great bodily harm to themselves or others.

*Graham v. Connor*, 109 S. Ct. 1865 (1989), demands a “totality of the circumstances” approach to an officer’s use of force. It also defines what “reasonableness” should mean:

“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.”

### ***Search by school officials***

The two assistant principals were well within their authority to demand that Jaylon Elmore submit his backpack to a search.

“Under ordinary circumstances, a search of a student by a teacher or other school official is justified at its inception when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school.”

“Limited involvement of law enforcement officers in an otherwise reasonable and legal search of a student by school authorities does not turn that search into a search for law enforcement purposes requiring probable cause.”

*State v. Burdette*, 43 Kan. App 2d (2010), Syllabus 4, 5.

*Burdette* stated that searches of students at school, by school officials, need not be supported by probable cause.

The Olathe East assistant principals were made aware that a student had brought a gun to school. They determined the name of the most likely suspect. They had reasonable grounds to summon and search that student for the presence of a deadly weapon. Indeed, they had a duty to do so.

### **Involvement of the School Resource Officer**

The SRO was made aware that two Olathe East assistant principals were investigating a rumor that a student had brought a gun to school. This was obviously a serious, urgent issue.

The SRO was made aware that the student whom they suspected was Jaylon Elmore. He knew that they were bringing Mr. Elmore to the school office area. He remained in his office and did not take a lead role in summoning, escorting or questioning Mr. Elmore. He went to the assistant principal's office only after being urgently summoned by text.

As noted above, his presence did not transform this incident into a probable cause search by law enforcement. In fact, the SRO had very little involvement up until the shooting began.

### **Use of deadly force was justified**

This event became deadly in a very rapid manner.

Mr. Elmore began moving his backpack from his back to his chest either just before or just after the officer entered the small office.

The SRO stood by the door while the administrators continued to admonish Mr. Elmore to allow his backpack to be searched.

In very rapid succession, Mr. Elmore produced his handgun and fired four times point blank at the officer. Three of the four shots hit him in center body mass, one literally in the middle of his chest. The fourth shot hit him in the leg. Both the SRO and the female assistant principal indicate that Mr. Elmore shot before the SRO could unholster his weapon.

Only after being shot did the SRO return fire. During the exchange of gunfire, the male assistant principal tackled Mr. Elmore and they fell to the floor, with the administrator on top. The SRO shot four times, hitting Mr. Elmore twice. The male assistant principal was most likely shot by the SRO's bullets. This event was over in seconds.

Kansas law requires a two-step analysis in any deadly-force self-defense claim. The claimant must have an *actual (subjective)* belief that using deadly force was necessary to prevent imminent death or great bodily harm to the claimant or someone else. That belief must be *reasonable (objective)*. See *State v. McCullough*, 293 Kan. 970, 270 P.3d 1142 (2015).

### **Conclusion**

The Olathe School Resource Officer believed that he was going to die when Jaylon Elmore drew a handgun and began firing at him. He watched the muzzle flashes and felt the bullets impact his body. This was a sudden burst of deadly violence without provocation.

Objectively, the facts support this belief. The female assistant principal told investigators that Mr. Elmore drew and shot his gun before the SRO could respond. The SRO was shot four times resulting in three gunshot wounds. This was clearly a deadly force situation. Under all the appropriate legal statutes and cases as cited above, it was reasonable for the officer to use deadly force against Jaylon Elmore.

In light of Mr. Elmore's pending criminal case and my ethical obligations under Supreme Court Rule 3.6 and 3.8, I will not be conducting a press conference or making any further comments at this time.