



Pierce County

Office of the Prosecuting Attorney

930 Tacoma Avenue South, Room 946
Tacoma, Washington 98402-2171
Front Desk: (253) 798-7400

Prosecutor Mary E. Robnett

(253) 798-7792
FAX: (253) 798-6636
www.pierceprosecutor.org
pcprosatty@piercecountywa.gov

August 18, 2020

Chief Donald Ramsdell
Tacoma Police Department
3701 S. Pine Street
Tacoma WA 98409

Re: Officer Involved Fatal Incident
Tacoma Police Department Incident No. 1925100213
Prosecutor No. 201917086

Dear Chief Ramsdell:

We have reviewed the investigations stemming from the shooting death of Bennie Branch on September 8, 2019. The investigations were conducted by homicide detectives from the Pierce County Sheriff's Department ("PCSD"), investigators from our Investigative Services Unit ("ISU"), and investigators from the Medical Examiner's Office. Mr. Branch was shot and killed after a struggle with officers. He had in his possession a black CO₂ pistol that closely resembled a semiautomatic handgun. The shots were fired after the officers believed Mr. Branch intended to use the apparent firearm on them. We conclude that Police Patrol Officer (PPO) Ryan Bradley's use of force was justified and lawful.

Investigations

The current use of force investigation statute took effect on February 4, 2019. Specifically, it provides that "an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies." RCW 10.114.011. At the time of this incident, regulations implementing the statute and defining an "independent investigation" had yet to be promulgated. Nevertheless, the Tacoma Police Department requested that an independent agency, PCSD, conduct the investigation in conjunction with our ISU investigators and the Medical Examiner's investigators.

It is significant that the ISU and/or ME investigators were given full, unobstructed access to all aspects of the investigation from the very beginning. The investigator's access included:

- Timely notification of the investigators a short time after the scene was secured.
- Access to the scene while it was undisturbed with the evidence left in place.
- Presence and participation in interviews of key witnesses.¹

¹ The ISU investigator was unable to participate in the interview of Brenda Branch due in large part to her emotional state and, prior to his arrival, her desire to terminate the interview.

- Presence at the postmortem examination and access to all reports and case documentation from that examination.
- Presence and participation in the voluntary interviews of the involved officers.

Summary of Facts

This statement of facts is not intended to be a restatement of the full content of the investigative reports. It is a summary of only the most salient facts that are material to the determination of whether the officers' actions constituted lawful use of force.

On September 8, 2019, at approximately 2:36 a.m., PPO Angel Castaneda made contact with the occupants of a parked car near East 35th and East R Streets. While talking with the female driver, who was outside of the vehicle, a male, later identified as Mr. Branch, exited the vehicle to leave on foot. PPO Castaneda ordered him to stay in the vehicle and observed that the male was holding his hand near his waistband as if to conceal something. When asked what he was doing, the male said, "I am going to my car!" Mr. Branch walked off but continued to hold his right hand at his waistband.

PPO Castaneda frisked the driver and located a firearm. While detaining her, he broadcast a priority backup alert with a description of the male and his concerns that the male might be armed. PPO Castaneda observed Mr. Branch get into the passenger side of a red Subaru, which left the area. He radioed out a description of the Subaru, its direction, and his concerns about the possible presence of a firearm.

PPOs Ryan Bradley and Jonathan Aaron McNeely, a two-man unit in a fully-marked patrol vehicle, located the red Subaru and initiated a stop. PPO Shawn Gustason Jr. arrived shortly thereafter to assist. PPOs Bradley and McNeely observed the male suspect engaged in a physical struggle with a female in the driver's seat, who was shrieking. She would later be identified as Mr. Branch's mother, Brenda Branch.

Believing that they might be observing a carjacking, the officers approached the car to make a felony detention using a draw-and-direct technique with unambiguous commands, which Mr. Branch ignored. The officers holstered their weapons and tried to physically remove Mr. Branch from the vehicle, but he continued to be non-compliant and initiated a struggle. Two of the officers deployed tasers to effect his removal from the vehicle. One of the tasers was effective and Mr. Branch fell to the ground outside the vehicle.

As will be described in detail below, the three officers and Ms. Branch differ as to the exact circumstances of the ensuing struggle. However, they broadly agree on the following: The officers tried to place handcuffs on Mr. Branch and detain him, but he recovered from the effects of the taser. While struggling with Mr. Branch, the officers observed that he possessed what appeared to be a handgun. Mr. Branch levered himself up, got on his feet and attempted to flee, and while doing so the officers reported that he appeared to be reaching for his firearm. PPO Bradley then discharged his weapon, which resulted in Mr. Branch's death.

Interviews

PPOs McNeely and Gustason were interviewed on the morning of the shooting, September 8, and PPO Bradley was interviewed three days later on September 11. All three provided accounts consistent on the material details of what transpired.

At the outset of the stop, PPOs Bradley and McNeely saw a physical struggle taking place inside the vehicle between the female driver and Mr. Branch. The vehicle was rocking back and forth and there was a woman shrieking inside. The engine was revving as if someone was trying to put the car back into gear. The windows of the vehicle were also fogged up, making it difficult to see what was happening.

The officers were alarmed, unsure of what was happening in the vehicle, and concerned that Mr. Branch was armed. Among the possibilities was that they had interrupted a carjacking. It appeared that Mr. Branch was trying to force his way into the driver's seat and take control of the car as the female driver resisted and screamed.

The officers sought to conduct a felony detention. They used a draw-and-direct procedure whereby they gave unequivocal verbal commands for Mr. Branch to stop, show his hands, and get off the driver. Mr. Branch ignored those commands and the officers decided to holster their firearms and attempt to detain him by physical contact. PPO McNeely entered the vehicle through the passenger door while PPO Bradley opened the driver's door. PPO McNeely struggled to gain physical control of Mr. Branch as he continued to resist and force his way into the driver's seat as the female driver continued screaming. Mr. Branch ignored PPO Bradley's warning that he would be "tased" if he did not stop.

PPO McNeely stepped back and told PPO Bradley to "taze" Mr. Branch. By this time, PPO Gustason was also on the passenger side. PPO Gustason from the passenger side and PPO Bradley from the driver's side deployed their department-issued tasers. PPO Gustason's taser was effective; it caused "full lockup" and led to Mr. Branch falling prone onto the ground outside the driver's door of the car.

The use of non-deadly force from their tasers enabled the officers to remove Mr. Branch from the vehicle without significant injury. As they moved to handcuff him, Mr. Branch recovered from the taser and began to struggle again. During this part of the struggle all three officers became aware that Mr. Branch had what appeared to be a handgun in his front pants pocket. PPO Gustason stated that he felt the suspected gun and heard another officer shout a warning about a gun. PPO McNeely stated that he saw the suspected gun and shouted a warning and thereafter attempted to control Mr. Branch's arms in a bear hug in order to prevent him from using the gun. PPO Bradley stated that he heard the warning about a gun and saw the gun.

The shooting occurred after the officers' commands and physical compliance techniques were unsuccessful in controlling Mr. Branch. Mr. Branch was able to force his way to his feet while in possession of what appeared to be a handgun, against the commands and physical efforts

by the officers to detain him and apply restraints. It is important to note how each officer independently described the moments before the fatal shots.

According to PPO McNeely, he repeatedly warned Mr. Branch not to go for the gun. He further explained:

And as I'm fighting and he's trying to post and stand up, I can feel him start to like stand up and I, his left arm went to his waist area which is where I saw he had the gun so I basically just brought him into a bear hug. I had my right arm all the way around his neck just pinning him into my body. And then my left arm around like his right shoulder and I was just holding him tight. At that point I believe Officer Gustason was kind of in on the tussle too and I believe that he was trying to take control of the left arm hand area. I believe he was also yelling he's got the gun, he's got the gun. At that point to me, it was very clear that he was intent on pulling the gun out to us. His left arm kept going to his waistband. He kept shucking us off and trying to throw us off of him.

PPO Gustason was also in direct physical contact with Mr. Branch with the belief that he had a gun. He was attempting to control Mr. Branch's arms to prevent Branch from retrieving the gun. He told the investigators that he intended to use his gun but did not. As to the moments leading up to the firing of the fatal shots, he also stated:

[H]e was elbowing me and trying to get his hands, his arm free...I repeatedly said police department, get on your stomach...He tried to roll over like on his back and he, he got on all fours...And then he stood all the way up and then kept elbowin' and squirmin', and then I heard Bradley or [McNeely], I don't know who it was, say gun. And I, I don't know, I didn't react to that part 'cause I was still kind of just, I'm not gonna let go of this guy, is what I was thinkin' in my head. And I reached around, still having his arm kind of pinned with me, like around his waist. And I felt the, I felt a hard object...I'm not gonna let go. Let him get ahold of that gun. So I just kept holding his arm. He was really elbowin' and fightin', and, and I don't know what kind of happened with her, but I heard Bradley like, I'm gonna take a shot, and then I heard someone say take it, and I just pushed off him, and kind of like turned away and started to draw my service pistol and I heard want, like the first two or three shots going, a I turned and I can see Aaron and the subject kind of close together and the subject's back was facing all of us and he was, both hands were in front of him, like waistband area, like he was trying to pull somethin' out of his pocket. And I couldn't really make out what he was doing.

PPO Bradley was alerted to the gun by PPO McNeely but also saw the grip of a gun in Mr. Branch's pocket. He described his discharge of his firearm as follows:

And as he had gotten to his feet, and I had seen the firearm and I, and now had my firearm out, I told Officer McNeely I had lethal cover, saying something to the effect of brace contact, brace contact.² And Officer McNeely then yelled take it, take it. As he did so, Officer McNeely shoved off of the male and I immediately believed that Officer McNeely was creating distance from the male, to then go to, go to his firearm as well, and as he created that distance, the male was still facing towards me but slightly oblique. His hand was down at his left side right where the firearm was. I saw his left hand right at his waistband. Unequivocally I believed that he was going to access his firearm and shoot Officer McNeely, Officer Gustason, myself, or whoever this female was. I mean I don't know if this was an armed carjacking or what, but I had an immediate fear for the officers' safety that were present, and myself and this woman. So I fired my Department issued firearm at the male in rapid succession in a single volley.

PPO Bradley fired a total of 10 shots, 7 that struck Mr. Branch. After Mr. Branch went to the ground, PPO McNeely approached him and removed the apparent firearm from Mr. Branch's left front pants pocket. PPO McNeely then threw the firearm a safe distance and PPO Gustason began administering aid. All three officers were consistent in stating that PPO McNeely removed what was believed to be a handgun only after the shooting.

Investigators also interviewed Ms. Branch on the morning of September 8. Ms. Branch was extremely grief-stricken, and the interview was terminated early when she asked to stop so she could be with family. Much of her account is consistent with the officers and she was able to give insight into Mr. Branch's mindset. Ms. Branch explained that her son had been abusing methamphetamine and "talking crazy talk about he wanted to die, he was tired of doing drugs." Mr. Branch had a warrant for a probation violation and he was "running from probation." As Ms. Branch explained it, "I couldn't keep my son, he was on drugs, scared. He said he wasn't gonna back, he said they're gonna have to kill him. I didn't know he was serious."

According to Ms. Branch, that morning her son "came in the car and told me to go...And I went. And turned, and saw the cops came up. And then he tried to floor it and I stopped the car." Ms. Branch agreed that the officers tased her son because he would not get out of the car. The taser contact led to him falling on the ground outside the car. Ms. Branch also heard the officers' shouts about the gun. In her interview she acknowledged that he had a gun and that the officers called out warnings about it during the struggle: "No. I didn't know where

² PPO Bradley's warning, "brace contact" or a similar verbal warning, was a signal taught in academy and firearms training. In close quarters threat engagement, he would have been aware that it is necessary to utter a warning to fellow officers that he was going to deploy his gun. In his interview he acknowledged that he was providing "lethal cover" while all three officers were in close contact with Mr. Branch. In that capacity he fired multiple shots from close range which proved fatal.

he had the gun. I don't know where he had the gun. I didn't know he had a gun until they said he got a gun, he got a gun. That's it. I didn't know."

The statement from Ms. Branch contradicts those of the officers concerning the gun. It is important to note that Ms. Branch was understandably extremely emotional and grief stricken after she witnessed the death of her son. She was interviewed using an audio recording system. In her narrative she stated that the officers disarmed Mr. Branch before he was shot:

He tried to take off. I turned the key off. They made me move and they tased him. They grabbed him out the car like a dog. Threw him to the ground and the one guy kept elbowing him in his head even when he was still on the ground. And then they finally saw that he had a gun. Somehow they take, got the gun from him, it was on the ground. He kicked the gun out the way. Then he got up and ran and they shot him.

Brenda Branch Statement, p.2.

Ms. Branch's statement about the officers disarming Mr. Branch before the shooting was reiterated several times in the interview. *Id.*, pp. 5, 7, 9 and 10. However, she also said that she did not see the gun before it was on the ground [*Id.* p. 7] and that she did not know how it happened but that:

"All I know is it was on the ground and he didn't have a gun in his hand. It was on him but not in his hand."

Id. p. 9-10.

Additional Information

In addition to the above-referenced interviews, the investigation included interviews of neighboring homeowners, forensic processing of the scene, forensic analysis of the evidence, and the medico-legal death investigation by the Medical Examiner.

Other than the three officers and Ms. Branch, investigators were unable to locate any witnesses to the shooting. Several witnesses did report hearing it. Statements from these witnesses included that there was screaming from a man and a woman, commands shouted by the officers, and then gunshots. For example, one witness reported that she heard "the officers yelling for a good amount of time" and "the yelling was escalated right before the shots. Like almost like panicky..." and "Just, I know the cops were, I don't want to say exactly what they said 'cause I'm, I'm not sure the exact wording, but they were like instructing the guy multiple, multiple, multiple times before they had to fire the shots."

The forensic processing included photographs, searching the Branch vehicle, and the recovery of physical evidence. Physical evidence was recovered and documented, including the locations of the officers' tasers, the CO₂ pistol, and cartridge cases from PPO Bradley's

gun. The scene consisted of a stretch of roadway on Portland Avenue across the street from a church. The roadway consists of two lanes each direction with a center turn lane. PPO Bradley's taser was recovered from the stripe of the center turn lane, as was the CO² pistol. Both were within a few feet of Mr. Branch's body.

The fired cartridge cases were also recovered from the roadway. A total of ten cartridge cases were recovered indicating that PPO Bradley fired ten shots. In his interview, he stated that he fired all of the shots "as fast as I could" and that "it happened as fast as a heartbeat." Ryan Bradley Statement, p.18. He also reloaded, ejecting the spent magazine and inserting a fresh magazine immediately after the shots.

The investigators also canvassed for video. There were no surveillance systems in the area. Video was recovered, however, from a video-equipped Puyallup Tribal patrol vehicle. Officer Travis Martin, responding to the shots-fired call, arrived at the scene soon after the shooting. His dash cam depicts the initial stages of the scene investigation.³

The Medical Examiner's investigation listed manner of death as "Homicide" and the cause of death was listed as "Multiple gunshot wounds." The autopsy detailed the placement and path of the gunshot wounds that caused Mr. Branch's death. The report detailed that Mr. Branch was struck by seven of the ten shots fired by PPO Bradley. Three of the shots were to the front of his body, and two of those penetrated his torso. Four additional shots struck Mr. Branch in the back, although one of those was a graze. One of the shots to the front torso and two to the back were described as potentially "rapidly fatal." Toxicology testing showed that Mr. Branch was "intoxicated on methamphetamine" at the time of death. His blood methamphetamine level was .46 mg/L.

Analysis

The legal standards to be applied in this case are found in RCW 9A.16.040, the current statute that applies to a law enforcement officer's use of deadly force, and RCW 9A.16.020 and 9A.16.050, the self-defense statutes of general application. At the time of this incident, RCW 9A.16.040 provided:

- (1) Homicide or the use of deadly force is justifiable in the following cases:
 - ...
 - (b) When necessarily used by a peace officer meeting the good faith standard of this section...in the discharge of a legal duty; or
 - (c) When necessarily used by a peace officer meeting the good faith standard of this section or person acting under the officer's command and in the officer's aid;

³ Officer Martin assisted by briefly detaining Ms. Branch in his video-equipped patrol car. During the time she was in the vehicle, she is obviously in the throes of grief but did not reference the circumstances of the shooting insofar as to whether she saw the gun before or after the shots were fired.

- (i) To arrest or apprehend a person who the officer reasonably believes has committed, has attempted to commit, is committing, or is attempting to commit a felony.
- (2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:
 - (a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening; or
 - (b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

Under these circumstances deadly force may also be used if necessary to prevent escape from the officer, where, if feasible, some warning is given, provided the officer meets the good faith standard of this section.

As to RCW 9A.16.040, the officers here were discharging a legal duty when they made an effort to detain Mr. Branch on reasonable belief that he was committing felony offenses. All three officers were on-duty, general authority peace officers commissioned to enforce the criminal and traffic laws of the state of Washington pursuant to RCW 10.31.020. When the officers contacted the Branch vehicle, they observed actions by Mr. Branch that reasonably appeared to be a carjacking and felonious assault. These observations were supported by PPO Castaneda's broadcast that a male subject left his scene in the Subaru while possibly armed. The officers therefore had a reasonable belief or probable cause to detain or arrest Mr. Branch for several violent felonies.

The circumstances warranted the felony draw-and-direct technique which they used to initiate contact with Mr. Branch. Considering the apparent struggle for control of a running and operable motor vehicle, the officers, in the discharge of their legal duty, necessarily had to intervene and stop what reasonably appeared to be a crime of violence in progress.

Mr. Branch's lack of response to verbal commands and his apparent forceful attempt to flee the scene in a what appeared to have been a commandeered vehicle necessitated further law enforcement action. The officers use of force training indicated to them that presence and lawful commands represented the first level of force. When this proved ineffectual they

holstered their firearms and attempted to use the next level, namely physical force and department-approved tasers. These non-lethal applications of force were fully consistent with the requirements of RCW 9A.16.020 and represented a reasonable and lawful escalation of force in response to Mr. Branch's non-compliance. The officers were justified in using such nondeadly force in an endeavor to detain a suspect reasonably believed to have committed an in-progress violent felony. These circumstances further escalated into what appeared to be a physical confrontation of a suspect armed with a handgun.

Under RCW 9A.16.040(1)(b) and (1)(c), the use of deadly force must be "necessary." "Necessary" is defined as "no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended." RCW 9A.16.040(1).

Considering all the facts and information known to him, PPO Bradley's use of deadly force was necessary. Mr. Branch was violently and desperately intent on resisting capture. He initially resisted commands at gunpoint, he was able to overcome the effects of a taser and the efforts of two trained patrol officers who were struggling to physically control him. PPO Gustason was attempting to pin his arms so that he could not access what appeared to be a pistol but Mr. Branch was nevertheless able to lever himself to his feet. Mr. Branch successfully resisted the officers' attempts to put him into restraints and therefore had the use of his hands and arms to readily access what appeared to be a handgun. He was by all appearances an armed carjacker attempting to evade capture who posed an immediate and grave danger to the officers, to Ms. Branch, and anyone nearby. Under these circumstances, there was no reasonably effective alternative to using deadly force to effectuate the lawful detention of Mr. Branch.

In use of force cases, it is important to bear in mind that actual danger is not required. As it turned out, what Mr. Branch possessed was a CO² pistol, not a firearm. Nevertheless, per WPIC 16.07:

A person is entitled to act on appearances in defending himself, if that person believes in good faith and on reasonable grounds that he is in actual danger of great personal injury, although it afterwards might develop that the person was mistaken as to the extent of the danger.

Actual danger is not necessary for a homicide to be justifiable.

Here, while the CO² pistol was not a firearm, it gave every appearance of being one, particularly when only partially visible in Mr. Branch's clothing. Mr. Branch's behavior—clutching it, going for it, and refusing to keep his hands visible—gave every reason to believe it was real. Ms. Branch acknowledged that the officers were exclaiming during the struggle, "he got a gun, he got a gun." These exclamations were a genuine and reasonable belief from the perspective of the officers who saw and felt the pistol in Mr. Branch's pocket during the violent struggle. This analysis would be the same as a situation with an actual firearm that

was unloaded. In either scenario, the officers' lawful use of force must be judged based on their right to act on appearances.

Ms. Branch's statement includes her assertion that Mr. Branch had been disarmed when shots were fired, and there is good reason to believe that this statement was her honest belief about what happened. However there is also good reason to believe that she was mistaken.

PPO Bradley had deployed his taser and had it in his hand before the shots. He dropped it during the struggle and unholstered his firearm. The taser was recovered on the ground a short distance from Mr. Branch's body and near the CO² pistol. It is reasonable to conclude that Ms. Branch saw the taser on the ground and believed it to be the pistol that the officers had shouted warnings about. Ms. Branch stated in her recorded interview that she never saw an officer take the pistol from Mr. Branch and only first saw the pistol on the ground. Significantly, PPO Bradley's taser closely resembled a black semiautomatic handgun in appearance. Given the stress of the event, the time of night, and only fleeting glances, Ms. Branch understandably could have confused the taser on the ground for the pistol the officers were yelling about.

This likelihood is even more reasonable considering that all three officers specifically and directly stated that PPO McNeely removed the CO² pistol from Mr. Branch's pocket only after the shooting. This occurred as PPO Gustason was commencing CPR. Their statements were video recorded and PPOs Gustason and McNeely provided them soon after the shooting.

It is often necessary to reconcile conflicting evidence and to account for the burden of proof when analyzing cases. Ms. Branch's statement, like that of the officers, does not indicate intentional falsification. It is filled with her understandable emotional devastation at the loss of her son and her account of what she thought she saw during an extremely chaotic and fast-moving experience.

In reviewing this case, we must also address the fair question of why Mr. Branch would have been going for a non-lethal CO² pistol during his interactions with the officers. Mr. Branch was high on methamphetamine, which is consistent with the level of aggression the officers reported and undoubtedly impaired his thought processing. Further, as previously noted, Ms. Branch reported in her recorded interview that her son was suicidal, running from a warrant, and had stated that he would force police to kill him before he went back to jail.

Mr. Branch's actions on September 8 are consistent with certain historical contacts he had with law enforcement. In six separate contacts between August 2015 and August 2019, Mr. Branch exhibited behavior that was suicidal, highly aggressive towards law enforcement, or efforts at flight. For example, in August 2015, an officer arrested Mr. Branch and he became extremely upset and exhibited signs that he was under the influence of an unknown substance. He repeatedly stated that he wanted to die, demanded that the officers shoot and kill him, threatened to kill the officers, and bashed his head against hard objects to try and harm himself.

In another incident, in August 2019, officers conducted a traffic stop of a vehicle and sought to arrest Mr. Branch on outstanding warrants. An officer approached the car but Mr. Branch, who was the front-seat passenger, suddenly overcame the driver's will and put the car into drive, pressed the gas pedal, and took control of the steering vehicle. Mr. Branch then drove the car off but crashed nearby and fled on foot.

The prior incidents are consistent with the officers' accounts of what transpired in this case. Mr. Branch had previously demonstrated a willingness to engage in extreme measures to avoid arrest. His August 2019 effort to commandeer a vehicle to avoid apprehension is quite similar to the officers' account of what transpired in this case. Ms. Branch's own account that her son was suicidal and would force the cops to kill him echoes to his August 2015 arrest. This documented history cannot be overlooked in assessing Mr. Branch's mindset and what transpired on September 8.

In addition to being "necessary," deadly force must also meet the good faith standard in RCW 9A.16.040(4):

A peace officer shall not be held criminally liable for using deadly force in good faith, where "good faith" is an objective standard which shall consider all the facts, circumstances, and information known to the officer at the time to determine whether a similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual.

Given that Mr. Branch had ignored commands, overcome a taser, resisted physical force, was apparently armed, and appeared to be reaching for the weapon, any similarly situated reasonable officer would have believed the use of deadly force was necessary to protect themselves, the other officers, Ms. Branch, and anyone in the area.

PPO Bradley also had a personal right of self-defense in addition to the peace officer use-of-force provisions. RCW 9A.16.040(5)(a) specifically provides that the statute "shall not be construed as...Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050. RCW 9A.16.020, the general statute regarding lawful use of force, provides:

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of a legal duty...

(2) Whenever necessarily used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person...

The analysis under RCW 9A.16.020 is similar to the analysis under RCW 9A.16.040(1)(b). When this event occurred, the officers were public officers acting in the performance of their legal duty. They used escalating force but were faced with an apparent imminent life-threatening situation. As previously noted, PPO Bradley had no reasonably effective alternative other than using deadly force. The use of deadly force was reasonably to effectuate the lawful purpose of stopping Mr. Branch.

PPO Bradley's actions were also justified under RCW 9A.16.050, the statute that defines justifiable homicide. RCW 9A.16.050 provides:

Homicide is also justifiable when committed either:

- (1) In the lawful defense of the slayer...or of any other person in his or her presence or company when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or
- (2) In the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence...

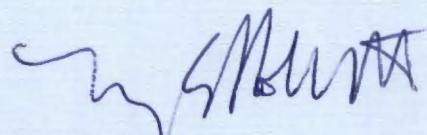
It is important to note that in self-defense cases, actual and imminent danger is not required: "In Washington, '[a] jury may find self-defense on the basis of the defendant's subjective, reasonable belief of imminent harm from the victim. Given this subjective component, there need be no finding of actual imminent harm.' *State v. Studd*, 137 Wn.2d 533, 545, 973 P.2d 1049 (1999) (citation omitted).

Apart from his duty as a police officer, PPO Bradley reasonably feared that Mr. Branch was going to shoot him, his fellow officers, Ms. Branch or anyone nearby if he were to get free or have the free use of his hands. Before employing deadly force, PPO Bradley and the other officers gave multiple verbal commands over an extended period of time and used several non-lethal, approved compliance techniques to no avail. Despite these efforts and with two trained police officers attempting to control him, Mr. Branch was able to get to his feet and move his hands in the direction of what all three officers believed was a gun. Under these circumstances, PPO Bradley was not required to place himself, his fellow officers, or Ms. Branch at further risk before using deadly force in self-defense.

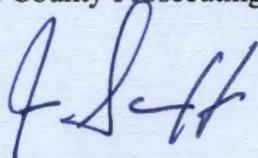
Conclusion

The attempt to detain Mr. Branch was lawful, the deadly force was necessary, and the decision to use deadly force was made in good faith. For the reasons outlined above, we conclude that PPO Bradley's use of force was justified and lawful.

Sincerely,



Mary Robnett
Pierce County Prosecuting Attorney



James Schacht
Chief Criminal Deputy Prosecutor
Pierce County Prosecuting Attorney's Office

cc: Detective Byron Brockway, Pierce County Sheriff's Department