

**Pierce County****Office of the Prosecuting Attorney**

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March 1, 2022

Chief Avery Moore
Tacoma Police Department
3701 S. Pine Street
Tacoma WA 98409

Re: Officer Involved Use of Force
Tacoma Police Department Incident No. 20-226-00262
Prosecutor Case No. 202108764

Dear Chief Moore,

We have reviewed the independent investigation into Tacoma Police Patrol Officer (PPO) Nathan Reetz's use of deadly force that resulted in injuries to Dyrell Swinson. The investigation was conducted by the Lakewood Police Department. On August 12, 2020, law enforcement officers were looking for Mr. Swinson because he had been verified as a suspect in the shooting death of Jake Red. Mr. Swinson has since been charged with Murder in the Second Degree in Pierce County Cause No. 20-1-02081-0. When law enforcement officers located Mr. Swinson, he fled and then concealed himself under a parked car. The officers gave commands to Mr. Swinson to surrender but instead Mr. Swinson shot at several officers with a handgun. Mr. Swinson also shot and killed a police K-9 named Ronja. PPO Reetz fired back and struck Mr. Swinson. The wounds to Mr. Swinson caused substantial bodily harm. We have determined that PPO Reetz's use of force was justified and lawful.

Summary of facts

On August 12, 2020, at approximately 4:52 p.m., officers responded to a reported shooting with multiple shooters in the commercial parking lot located at South 64th Street and South Yakima Avenue. Nearby, officers found the body of Jake Red in a parked vehicle. Mr. Red had been shot multiple times including in the neck, back, and abdomen. In the parking lot where the shooting took place, officers located .380 and 9mm shell casings.

A witness identified Mr. Swinson as the shooter who killed Mr. Red. The witness' account was corroborated by surveillance video recovered at the scene. Early the next day, officers spotted Mr. Swinson driving a vehicle. An officer attempted to initiate a traffic stop which immediately led to a pursuit. The officer lost sight of Mr. Swinson but quickly located his abandoned vehicle after it had crashed into an unoccupied car in a residential area. Additional officers set up a containment area and began yard-to-yard searches. At approximately



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1:49 a.m. on August 13, 2020, an officer spotted Mr. Swinson hiding underneath a Yukon SUV. The officer began giving commands which drew the attention of additional officers in the area. There was initially some confusion about where Mr. Swinson was hiding. Some officers were walking in the immediate vicinity of the Yukon SUV unaware that Mr. Swinson was underneath. Mr. Swinson began shooting in the direction of officers. Officers Miller, Syler and Gustason were all in the line of fire but were not struck. Officer Syler was hit by shrapnel. Mr. Swinson shot and killed K-9 Ronja.

PPO Reetz returned fire and struck Mr. Swinson repeatedly. Mr. Swinson was transported to the hospital. Under the Yukon SUV, officers recovered a 9mm handgun and five 9mm shell casings. The 9 mm handgun appeared to have malfunctioned.

Lakewood Police Department conducted an independent investigation involving PPO Reetz's use of force. Mr. Swinson invoked his 5th Amendment right to remain silent and made no statements.

Analysis

The specific statute regarding law enforcement use of deadly force is RCW 9A.16.040. It provides as follows:

(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:

(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:

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(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.

...

(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.

The more general statute regarding use of force is RCW 9A.16.020. which provides as follows:

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, or a person assisting the officer and acting under the officer's direction;

“Necessary” means that 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.16.010(1).

Discharge of a legal duty – RCW 9A.16.020(1) and 040(1)(b)

PPO Reetz’s use of force was justified under the “discharge of duty” provisions in both use of force statutes 9A.16.040(1)(b) and RCW 9A.16.020(1). PPO Reetz and other responding officers were commissioned law enforcement officers. They had probable cause to believe Mr. Swinson had committed a murder and they were trying to arrest him. Arrest of a murder suspect is a lawful duty of a law enforcement officer. Because there was probable cause to believe he had committed a violent murder, the officers also had probable cause to believe that Mr. Swinson would pose a threat of serious physical harm to themselves and others if not apprehended. When Mr. Swinson began shooting at the officers, the threat intensified.

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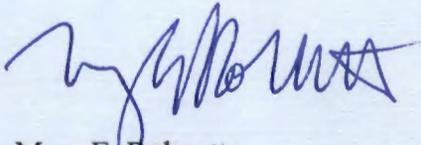
The good faith standard applies to any analysis under RCW 9A.16.040. PPO Reetz was aware that Mr. Swinson was wanted for murder and that he was trying to kill the officers who were trying to apprehend him. Under an objective standard, given all the facts, circumstances, and information known to PPO Reetz at the time, any similarly situated, reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical injury to themselves, to other officers and to the public.

Moreover, PPO Reetz had a personal right to defend himself and other officers. The use of force statute explicitly reserves the right of self-defense to law enforcement officers. RCW 9A.16.040(5). The general self-defense statute provides a party can lawfully use force if they are about to be injured, or to aid another about to be injured as long as the force used is not more than necessary. Because PPO Reetz and other officers were taking gun fire from Mr. Swinson, PPO Reetz had a personal right to defend himself, the other officers and any public who may have been in harm's way. There was no reasonably effective alternative to shooting at Mr. Swinson, the active shooter.

Conclusion

PPO Reetz's use of force was reasonable and necessary, therefore justified and lawful.

Sincerely,



Mary E. Robnett
Pierce County Prosecuting Attorney



Scott Peters
Deputy Prosecuting Attorney