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M E M O R A N D U M

To: File
From: Todd Jackson, Deputy District Attorney
Date: May 8, 2019
Subject: The 2/5/19 Use of Deadly Physical Force by Vancouver Police Officers in Multnomah County, Oregon

In the discretion of the District Attorney, it has been determined there will be no grand jury review pursuant to District Attorney Policy 5.50 (Police Use of Force Resulting in Death or Significant Physical Injury) of Vancouver Police Sergeant Joe Graaf's decision to authorize the use of deadly force, or of either Vancouver Police Officer James Porter's or Vancouver Police Corporal Ryan Starbuck's use of deadly force during the 2/5/19 pursuit with Erkinson Bossy in Multnomah County, Oregon. District Attorney Policy 5.50 allows this discretion when grand jury review is unwarranted.

The following is a summary of the relevant facts and applicable law:

On 2/5/19 at approximately 7:28 p.m. Vancouver Police located Erkinson Bossy in a pick-up truck in an apartment complex parking lot located at 8701 NE 54th St Vancouver, WA. Law enforcement had determined Bossy aided in the commission of a murder that occurred in Kelso, WA on 1/22/19 and were looking for him. Bossy was initially in the passenger seat of the truck, which was operated by Hai Nguyen. As Vancouver Police attempted to box Bossy in and effectuate an arrest, Bossy jumped into the driver's seat of the truck. Before police could completely box him in, Bossy drove away from police and fled onto SR 500, and then onto I-205 Southbound. Vancouver Police pursued.

Vancouver Police Officers Cody Esau and James Porter were uninvolved in the attempt to arrest Bossy at the apartment complex. Officer Esau was operating a marked patrol car with his partner, Officer Porter, in the passenger seat. They heard a broadcast over the patrol radio that Vancouver officers were in pursuit of a fleeing murder suspect. Believing a murder had just occurred, they joined the pursuit.

As the pursuit neared Oregon on I-205 Southbound, Officers Esau and Porter took over the lead position. Since Officers Esau and Porter were not part of the initial arrest attempt, they did not know there was another person in the truck with Bossy.

Pursuing officers described Bossy as driving very erratically and at speeds ranging from 90 - 110 m.p.h. An update came over the radio that the suspect was armed with a handgun. Once they reached the Airport Way exit in Oregon, Officer Porter noticed Bossy change his driving pattern by slowing down and looking over his shoulder. It appeared to Officer Porter that Bossy was trying to determine exactly where they were in preparation to shoot. He ordered Officer Esau to drive over the lane line to limit Bossy's ability to get a good shot at them. Officer Porter asked for and received confirmation over the radio that they had probable cause to arrest Bossy for Murder in the First Degree and that Bossy was armed with a gun.

As they approached the I-205 / I-84 interchange, Officer Porter saw Bossy appear to turn his body toward them and extend his arm in their direction. He believed Bossy was pointing the gun at them to fire. Officer Porter determined he had a safe backdrop of woods and trees beyond the bending roadway and, fearing for his own safety and for the safety of his partner, fired his rifle through the windshield of the patrol vehicle at the fleeing truck. He saw what he described as puffs of glass coming from the passenger compartment of the truck which, based on his experience as a combat veteran, appeared to be compression bursts from gunfire coming from inside. At that point, he believed Bossy was actively shooting at them. Officer Porter fired 41 rounds at the truck. Despite numerous rounds hitting the truck, Bossy continued driving at a high rate of speed, taking the ramp off of I-205 Southbound onto I-84 Westbound toward downtown Portland.

Due to the high volume of radio traffic, Officer Porter was not able to broadcast that he believed he had exchanged gunfire with the truck until the pursuit entered I-84 Westbound. Officer Porter directed Officer Esau to pull over as Officer Porter thought he might have been hit by gunfire. Officer Esau pulled to the shoulder of I-84 Westbound near SE 74th Ave and determined Officer Porter had not been hit by gunfire, though he was covered in broken glass that had entered his eyes and mouth. Officers Porter and Esau were later transported to the hospital for evaluation and subsequently released.

Following Officer Porter's transmission that he had exchanged shots with the truck, Vancouver Police Sergeant Joe Graaf broadcast authorization to execute a Pursuit Immobilization/Intervention Technique ("PIT Maneuver") on the suspect vehicle to end the pursuit. Sergeant Graaf was involved in the initial attempt to arrest Bossy in Vancouver and the subsequent pursuit. He knew there was probable cause to arrest Bossy for Murder and that Bossy was believed to be armed with a gun. Sergeant Graaf believed a PIT Maneuver was necessary because the pursuit was rapidly approaching

downtown Portland, and he did not want to get into a shootout on downtown city streets or subject any other civilians to further risk of serious physical injury or death.

Once Officer Esau pulled out of the pursuit, Vancouver Police Corporal Ryan Starbuck moved into the lead position. Corporal Starbuck is an Emergency Vehicle Operator Course (EVOC) instructor as well as a PIT instructor. He had been involved in the pursuit from its inception in Vancouver and knew there was probable cause to arrest Bossy for Murder and that Bossy was believed to be armed with a gun. He also heard Officer Porter's broadcast that he had exchanged gunfire with Bossy, and Sergeant Graaf's authorization to perform a PIT Maneuver to stop the pursuit. He shared Sergeant Graaf's belief that Bossy posed a substantial risk of death or serious injury to the other people on the roadway.

As they approached Lloyd Center, Corporal Starbuck saw a clear stretch of freeway lined on both sides with Jersey barriers and no other cars. He knew from his training and experience that the Jersey barriers would operate to contain the truck once he initiated the PIT Maneuver, greatly minimizing the risk to other officers and civilians. He initiated the PIT Maneuver by using his patrol vehicle to make contact with the rear quarter panel of the truck. Due to the speeds involved, Vancouver Police Department Policy classifies a PIT Maneuver under these circumstances as a use of deadly force. Bossy was able to maintain control of the truck through the first attempt. The second attempt caused Bossy to slide into the center median, then move across the lanes of travel to the northern Jersey barrier. The truck slid along the northern Jersey barrier until it came to a rest. When other units in the pursuit came up on the truck they saw that Bossy was outside on the roadway and apparently injured. Bossy was placed under arrest and transported to a hospital for medical treatment. Officers identified Hai Nguyen in the back seat of the truck, and had him climb out. Nguyen was placed under arrest without incident.

The entire pursuit lasted approximately 10 minutes, from 7:28 p.m. to 7:38 p.m.

The homicide detail of the Portland Police Bureau (PPB) responded to investigate the incident due to the fact that Vancouver Police Officers had used deadly force on a person within the City of Portland. PPB Detectives determined that the truck in which Bossy fled police had been hit by multiple rifle rounds. Detectives searched the truck and found a gun in a backpack sitting on the front passenger seat floorboard. While detectives determined the gun was loaded, they did not find a round in the chamber or any ejected cartridge casings in the truck, or any other evidence a gun was fired from inside the truck. They also did not find any bullet strikes on Officers Esau and Porter's patrol car consistent with it having been hit by bullets from the gun found in the truck. Officers conducted a line search walking slowly up I-84 and the adjacent Max train tracks looking for a gun that may have been thrown from the vehicle. They did not find a discarded gun along the freeway or Max train tracks.

Medical personnel determined Bossy was not hit by gunfire, but had injuries consistent with the truck running over him. He was treated and later released to the custody of the Multnomah County Sheriff's Office. Nguyen had a small burn mark on his hip that, according to medical personnel, did not appear to be a gunshot wound. Its cause is unknown. Nguyen had no other injuries from the incident.

Portland Police Homicide Detective Anthony Merrill spoke to Bossy who said he fled police to evade capture and thought they were trying to arrest him for his involvement in the 1/22/19 Kelso, Washington murder. He said during the pursuit he was driving the truck and while he knew the gun was in the truck, never took it out or fired it at the pursuing officers.

Detective Merrill spoke to Hai Nguyen who said he was in the truck during the pursuit. He said he was sitting in the middle back seat of the truck. He said at one point he had a cell phone in his hand and was holding it near his head. He also said while holding the phone up, he looked over his shoulder at pursuing officers multiple times. He said he did not access any gun during the pursuit, and did not see Bossy with one. He said after they hit the Jersey barrier, Bossy opened the door and jumped out of the vehicle. He did not see what happened after that as he was ducked down in the back seat of the truck.

The Cowlitz County Prosecutor's Office has filed the following charges against Bossy for his involvement in the 1/22/19 Kelso, Washington murder: Murder in the First Degree with Firearm Enhancement, Robbery in the First Degree with Firearm Enhancement, and Unlawful Possession of a Firearm in the Second Degree.

In this case, the investigating Detectives with the Portland Police Bureau have concluded Officer Porter, Corporal Starbuck, and Sergeant Graaf were justified in their decisions to authorize and use deadly force during the dangerous high speed pursuit on 2/5/19. I agree with that conclusion.

ORS 161.235 authorizes law enforcement to use physical force upon another person, when and to the extent the peace officer reasonably believes it necessary, to make an arrest, or, for self-defense or defense of a third party from what the peace officer reasonably believes to be the imminent use of physical force while making or attempting to make an arrest.

ORS 161.239 authorizes law enforcement to use deadly physical force to make an arrest only when a peace officer reasonably believes he or she is in one of a specific set of circumstances. As is relevant to this case, those circumstances include: (1) A situation in which a peace officer reasonably believes the crime committed was a felony or an attempted felony involving the use or threatened imminent use of physical force against a person, (2) A situation in which a peace officer reasonably believes the use of deadly physical force is necessary to defend the peace officer or another person from the use or

threatened imminent use of deadly physical force, (3) A situation in which a peace officer reasonably believes the crime committed was a felony or attempt to commit a felony and under the totality of the circumstances existing at the time and place, the use of such force is necessary, or (4) A situation in which a peace officer reasonably believes his or her life or personal safety is endangered in the particular circumstances involved. Notably, each one of these circumstances independently provides legal authorization for a peace officer to use deadly force to make an arrest.

In this case, the evidence clearly establishes that the above described statutory authorizations for the use of deadly force by a peace officer to make an arrest apply to the officers' decisions and conduct on 2/5/19.

Furthermore, the investigation has established that no person was physically injured by Officer Porter's gunfire, and that Bossy was injured during the PIT Maneuver as a result of his own decision to jump out of the moving vehicle.

Regarding criminal charges against Bossy for his conduct in Multnomah County, currently available information is sufficient for this office to conclude that, at this time, Bossy could be charged with Fleeing or Attempting to Elude a Police Officer, Reckless Driving, and Recklessly Endangering Another Person. However, the compelling nature of the murder prosecution Bossy faces in Cowlitz County necessitates his return to their jurisdiction without further delay. This office is in contact with the Cowlitz County Prosecutor's Office and if additional material information related to the Multnomah County case is revealed through their prosecution, this office will review it. Moreover, Multnomah County charges may be filed at any time within the applicable statutes of limitation.
