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July 12, 2021

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Honorable Tony Golik  
Clark County Prosecuting Attorney  
PO Box 5000  
Vancouver, WA 98666-5000

Re: CASE NUMBERS<sup>1</sup>:  
Vancouver Police: 2021-002648 (Lead Investigative Agency)  
Clark Regional Emergency Service Agency (CRESA): 21044025  
Camas Police: 21000110 (Investigating Agency)  
Clark County Sheriff's Office: 21001059 (Involved Agency)

Prosecutor Golik:

Thank you for requesting the Washington Association of Prosecuting Attorney (WAPA) review the above matters. In this first of a kind review, a team was selected with wide ranging experiences and backgrounds, representing counties of varying sizes. Selected for the review were:

**Jonathan Meyer**, Lewis County Prosecuting Attorney and current WAPA President;  
**Dolly Hunt**, Pend Oreille County Prosecuting Attorney and current WAPA Vice-President;  
**Joe Brusic**, Yakima County Prosecuting Attorney and current Chair of WAPA's Best Practices Committee;  
**Mary Robnett**, Pierce County Prosecuting Attorney and Co-Chair of WAPA's Criminal Committee; and  
**Adam Cornell**, Snohomish County Prosecuting Attorney and member of WAPA's Legislative Committee.

The members, independent of each other, conducted a thorough and complete review of all materials provided. This material included nearly 2500 pages of printed materials (including photographs) as well as digital files. These files were received from a variety of sources including the Clark County Prosecuting Attorney's Office, the lead investigative agency (the Vancouver Police Department), as well as a letter and attachments regarding the credibility of a private investigator<sup>2</sup>. After concluding the review, the members met via ZOOM to discuss the review, areas of concern, and conclusions reached by each member.

**PRELIMINARY CONSIDERATION**

As a preliminary matter, the members determined if RCW 10.114.011 has been satisfied. RCW 10.114.011 states:

<sup>1</sup> All case numbers refer to the same case, but to the different law enforcement agencies involved.

<sup>2</sup> It is unclear why this letter was provided by the sender. The investigator in question does not appear to be referenced in any of the reports or statements.

Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, 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. The investigation must be completely independent of the agency whose officer was involved in the use of deadly force. The criminal justice training commission must adopt rules establishing criteria to determine what qualifies as an independent investigation pursuant to this section.

As mandated in RCW 10.114.011, the Washington's Criminal Justice Training Commission (CJTC) created the definition and adopted rules outlining the qualifications of an "independent investigation". See WAC 139-12-030.

Each reviewing member understands and appreciates the importance of open and transparent investigations, reviews, and disclosures of use of force issues. Such rules, and the adherence to them, is vital in maintaining, building, and, in some instances, rebuilding trust between law enforcement and the community they are sworn to protect and serve.

The Clark County Sheriff's Office was involved in the use of force in this case. As a result, their involvement in any investigation must be, by law, rule, policy, and practice, limited to the greatest extent possible. In this case, the Clark County Sheriff's Office was not *completely* excluded, but the members of this committee find the limited participation of the Clark County Sheriff's Office did not impact, hinder, or obstruct the investigation in any way.

Vancouver Police Officer DeFebbo did respond to the scene<sup>3</sup>. However, this does not make the Vancouver Police an "involved agency." As is clear from his report, he responded *after* the report of "shots fired" was broadcast<sup>4</sup>. This, clearly, falls outside of the definition of "involved agency."<sup>5</sup> While it could be speculated that Officer DeFebbo could have ridden during the transport of Mr. Donald, the officer's presence at the scene of the use of force was the most appropriate at the time<sup>6</sup>.

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<sup>3</sup> WAPA-2021-1/62.

<sup>4</sup> *Id.*

<sup>5</sup> WAC 139-12-020.

<sup>6</sup> WAPA-2021-1/62.



After the use of force, Mr. Donald<sup>7</sup> was transported to the hospital<sup>8</sup>. It was reported Mr. Donald made no statements prior to the deputy being relieved by Detective Goudschaal of the Vancouver Police Department<sup>9</sup>. This was verified by medical personnel involved in transporting Mr. Donald to the hospital<sup>10</sup>. Had the deputy *not* ridden in the ambulance it is highly likely there would have been a delay in care for Mr. Donald. This is consistent with the standard set forth in WAC 139-12-030(1)(b).

Clark County Sheriff's Office Sgt. Bieber *did* advise Vancouver Police Detective Martin that a search warrant would likely not be needed<sup>11</sup>. This statement does appear to be ***inconsistent with the standard set forth in WAC 139-12-030(1)(b)***. However there is no evidence this statement had any impact in the investigation, and, in fact, a search warrant was obtained<sup>12</sup>.

The Clark County Sheriff's Office was used for interviews of involved and witnessing deputies<sup>13</sup>. Although "equipment" is not defined (see WAC 139-12-020), the reviewing members do not consider the Clark County Sheriff's Office to be "equipment." If it were to be considered equipment, the members find the use of the facility did not impact the investigation. It is assumed, but unanswered, that the deputies did not have access to any case file(s) regarding this case before the interviews were conducted.

Likewise, records of the Clark County Jail, which is operated by the Clark County Sheriff's Office, were accessed in an attempt to identify Mr. Donald<sup>14</sup>. Access to these records were necessary and did not hamper the investigation in any way. WAC 139-12-030(1)(b).

WAC 139-12-030(1)(b) dictates "[n]o member of the involved agency may participate in any way with the investigation of police use of deadly force by the [CIIT]...." This clause is meant to address participation beyond the preservation of evidence outlined above. There is no indication of any such involvement other than discussed above. In addition, the involved and witnessing deputies did submit to interviews. The members do not consider the interviews as "participation" in the investigation."

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<sup>7</sup> Jenoa Devon Donald. WAPA-2021-1/12. Mr. Donald identity was established well into the investigation. WAPA-2021-1/15. His name is used throughout for clarity.

<sup>8</sup> WAPA-2021-1/10. The facts contained herein will cite to the numbering system assigned by the Lewis County Prosecutor's Office. The information referenced may be found in the record in more than one location. However, for clarity, the references will be to a single source. In this matter, the individual page numbers use the format of WAPA (Washington Association of Prosecuting Attorneys), the year (2021), the number of the investigation for that year (1), followed by the page number (#). In some instances, a reference cannot be made to a page number (i.e. 911 call or video).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> WAPA-2021-1/29.

<sup>12</sup> WAPA-2021-1/78.

<sup>13</sup> WAPA-2021-1/16.

<sup>14</sup> *Id.*

Each member of the investigative team was screened through a deconfliction process<sup>15</sup>. As a result of this process, Detective Mills was *not* assigned the lead role<sup>16</sup>. However, it does not mean that Detective Mills' had an *actual* conflict<sup>17</sup>, but the decision was appropriate in this case.

Consistent with WAC 139-12-030(3)(b), a family liaison was assigned and the family was notified shortly after a positive identification of Mr. Donald was made<sup>18</sup>. From the reports submitted, it cannot be determined if WAC 139-12-030(2)(b), (4)(c)(i) (non-law enforcement community representative) was complied with. Although critical to transparency, the community representatives are not involved in the investigatory process. As a result, the investigation in this matter was not impacted.

The reviewing WAPA members concludes RCW 10.114.011, and WAC 139-12-030, were complied with except as noted above. The members appreciate the thoroughness of the documentation, investigation, and transparency of the process.

The members would advise, in the future, to show compliance with the citizen advisory portion of the standards as well. In addition, during the interview with law enforcement involved in this incident, it appeared some questions suggested the answer and left little for the interviewee to explain or expound on. The members suggest this not occur in future interviews.

Finally, Deputy Boyle was given the Public Safety Warning (PSW)<sup>19</sup>. This seemed unnecessary and could have elicited information pertinent to the investigation. The reviewing members would suggest using the PSW only when absolutely necessary. However, the reviewing members did not find these factors impacted the investigation or the outcome.

### **APPLICABLE LAW**

The use of deadly force by a law enforcement officer is governed in Washington by RCW 9A.16.040. The applicable language outlines the analysis to be conducted in this case:

- (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 to overcome actual resistance to the execution of the legal process, mandate, or order of a court or officer, or in the discharge of a legal duty; or

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<sup>15</sup> WAPA-2021-1/21.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> WAPA-2021-1/31.

<sup>19</sup> WAPA-2021-1/569.



(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:

(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....

(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.

(5) This section shall not be construed as:

- (a) Affecting the permissible use of force by a person acting under the authority of RCW 9A.16.020 or 9A.16.050; or
- (b) Preventing a law enforcement agency from adopting standards pertaining to its use of deadly force that are more restrictive than this section.

### **GOOD FAITH ANALYSIS**

As outlined in 9A.16.040(1)(4), “good faith” looks at “...all the facts, circumstances, and information **known to the officer at the time**...”<sup>20</sup> While there are multiple factors that may, or may not, have factored into the events of the evening, only those known to Deputy Boyle, *at the time he fired his weapon*, are relevant to the analysis here. The facts known, or likely known, to Deputy Boyle at the time of the shooting are adequately outlined in the information provided.

### **FACTORS NOT CONSIDERED**

There were numerous prior contacts with Mr. Donald provided with the case file dating back to 2009 and materials relating to a civil matter. These reports/documents were not considered in reaching the conclusions herein. There is not any indication/evidence Deputy Boyle had any knowledge or information regarding Mr. Donald’s history or background at the time of the shooting. Also not considered was the criminal history of Mr. Donald.

### **FACTS KNOWN TO DEPUTY BOYLE AT THE TIME OF THE SHOOTING**

Deputy Boyle was interviewed five (5) days after the shooting<sup>21</sup>. Deputy Boyle heard units being dispatched to an area known to him from a history of responses to the address, which he did not recall during the interview, and hostile law enforcement contacts<sup>22</sup>. Deputy Boyle also saw there were three (3) vehicles mentioned in the call<sup>23</sup>.

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<sup>20</sup> See 9A.16.040(4); emphasis added.

<sup>21</sup> WAPA-2021-1/590.

<sup>22</sup> WAPA-2021-1/599-600.

<sup>23</sup> WAPA-2021-1/600.



Upon arrival in the area, Deputy Boyle observed a vehicle with a defective tail lamp and decided to initiate a traffic stop<sup>24</sup>. During the initial part of the stop, Mr. Donald appeared to be cooperative<sup>25</sup>. Additional deputies arrive at the scene of the stop<sup>26</sup>.

While in his vehicle, Deputy Boyle heard another deputy tell Mr. Donald to "...show me your hands."<sup>27</sup> Deputy Boyle hears additional commands regarding Mr. Donald and his hands and decides to remove Mr. Donald from the vehicle and detain him, but "...had no interest in arresting him at this point."<sup>28</sup> Deputy Boyle approaches the car ("...hustle[s] up there"), opens the door and tells Mr. Donald "[h]ey, you need to get out of the car."<sup>29</sup> Mr. Donald refused the command which prompted Deputy Boyle to "...grab[] his left wrist, and [] say. '[n]o, you need to get out of the car now.'<sup>30</sup>"

The two (2) begin to struggle<sup>31</sup> with Deputy Troupe<sup>32</sup> also getting involved in the struggle<sup>33</sup>. Deputy Boyle then tells Mr. Donald he, Deputy Boyle, is going to release his K9 and Mr. Donald will be bit if he does not get out of the car<sup>34</sup>. The struggle continued and Deputy Boyle then strikes Mr. Donald in the face with a closed fist "...with less than 50% of [his] strength."<sup>35</sup> Mr. Donald then turns his body and kicked Deputy Boyle twice and, as Deputy Boyle recovers his position, Mr. Donald grabbed Deputy Boyle's outer vest, turning him and making his Taser inaccessible<sup>36</sup>.

Mr. Donald was able to start his car and Deputy Boyle was in a position where he was unable to free himself and get out of the vehicle<sup>37</sup>. Deputy Boyle described the engine as "revving" and warning Mr. Donald on multiple occasions that if he did not stop, he would be shot<sup>38</sup>.

Deputy Boyle described the tires of the car spinning, the car moving forward, and, having exhausted all options, believed he was going to die<sup>39</sup>. Deputy Boyle drew his weapon and fired two (2) shots<sup>40</sup>. Deputy Boyle was able to free himself and get out of the vehicle<sup>41</sup>.

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<sup>24</sup> WAPA-2021-1/601.

<sup>25</sup> WAPA-2021-1/601-602.

<sup>26</sup> WAPA-2021-1/602.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.*

<sup>29</sup> WAPA-2021-1/602-603.

<sup>30</sup> WAPA-2021-1/603.

<sup>31</sup> *Id.*

<sup>32</sup> Deputy Troupe's name is misspelled in Deputy Boyle's statement as "Troop."

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> WAPA-2021-1/603-604.

<sup>37</sup> WAPA-2021-1/604.

<sup>38</sup> *Id.*

<sup>39</sup> WAPA-2021-1/604-605.

<sup>40</sup> WAPA-2021-1/605.

<sup>41</sup> *Id.*

## OTHER WITNESSES

### **A. Deputy Troupe**

Deputy Troupe was interviewed within a very short window after the shooting<sup>42</sup>. Deputy Troupe responded to the call and noted, due to the area, multiple units typically respond<sup>43</sup>. Because of this, Deputy Troupe opted to respond to back-up Deputy Boyle<sup>44</sup>. Deputy Troupe observed a “three to five inch metal spike with an end on it, and a ball handle and observed Mr. Donald move pliers nearer to him<sup>45</sup>. It does not appear this information was communicated to Deputy Boyle. During this observation, Deputy Troupe repeatedly gave commands to Mr. Donald which were not complied with<sup>46</sup>.

Deputy Troupe describes the struggle and believing the metal spike will be used as a weapon to kill Deputy Boyle<sup>47</sup>. Because of position, Deputy Troupe is also unable to reach her Taser<sup>48</sup>. Deputy Troupe heard Deputy Boyle warn Mr. Donald he was going to be shot, felt the car moving, and heard the gunshots, two gunshots<sup>49</sup>.

### **B. Deputy Agar<sup>50</sup>**

Deputy Agar, in his statement, indicated Deputy Boyle’s traffic stop was related to the call they were responding to<sup>51</sup>. Deputy Boyle asked Deputy Agar to remain at the scene of the stop<sup>52</sup>. Deputy Agar moved his vehicle, exited, and as he approached Deputy Boyle’s vehicle, the struggle had already begun<sup>53</sup>. During the struggle, Deputy Agar was attempting to help with little success given the limited space in the driver’s side door<sup>54</sup>.

As Deputy Agar was attempting to draw his Taser, he heard the vehicle start and Mr. Donald “...had Deputy Boyle’s (unintelligible).<sup>55</sup>” Deputy Agar believed, based upon the circumstances, the Taser was no longer a viable option<sup>56</sup>. Deputy Agar heard warnings being given to Mr. Donald that he would be shot<sup>57</sup>. As Deputy Agar

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<sup>42</sup> WAPA-2021-1/496.

<sup>43</sup> WAPA-2021-1/500.

<sup>44</sup> *Id.*

<sup>45</sup> WAPA-2021-1/501-502.

<sup>46</sup> *Id.* The commands Deputy Troupe indicated she gave are more detailed and numerous than were heard/recalled by Deputy Boyle,

<sup>47</sup> WAPA-2021-1/502-505.

<sup>48</sup> WAPA-2021-1/505.

<sup>49</sup> WAPA-2021-1/505-506.

<sup>50</sup> Deputy Agar was interviewed less than two (2) days after the shooting.

<sup>51</sup> WAPA-2021-1/634.

<sup>52</sup> WAPA-2021-1/635.

<sup>53</sup> WAPA-2021-1/635-636.

<sup>54</sup> WAPA-2021-1/635-638.

<sup>55</sup> WAPA-2021-1/638. Based upon Deputy Boyle’s statement, it appears Deputy Agar is referring to Deputy Boyle’s vest.

<sup>56</sup> *Id.*

<sup>57</sup> WAPA-2021-1/647.



transitioned to his firearm, he heard/saw two (2) gunshots<sup>58</sup>. Deputy Agar did indicate that, before the gun shots, he felt Mr. Donald's car "...lurch forward<sup>59</sup>."

### ANALYSIS

The ultimate question surrounding the shooting of Mr. Donald is: "was the use of deadly force by Deputy Boyle done in 'good faith?'" "[G]ood 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."<sup>60</sup>

As part of that analysis, it must be determined if Deputy Boyle "...[had] probable cause to believe that the suspect, if not apprehended, pose[d] a threat of serious physical harm to the officer..."<sup>61</sup> If the suspect "...threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening..."<sup>62</sup> or "...the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm..."<sup>63</sup> the use of deadly force will be considered justified.

Although it appears Mr. Donald had, at his disposal, potential weapons (metal spike, pliers), there is no evidence that the presence of these items were communicated to Deputy Boyle by Deputy Troupe. By starting the vehicle, putting it in gear, and maintaining a grip on Deputy Boyle, the vehicle, as used by Mr. Donald in this matter, could constitute a "weapon" under RCW 9A.16.040(2)(a). These facts are verified by the other Deputies on scene. The actions taken by Mr. Donald also appear to constitute the crime of Assault in the Third Degree, RCW 9A.36.031(1)(g), at a minimum. As a result, Deputy Boyle's actions were legally justifiable under RCW 9A.16.040(1)(c)(i).

Because RCW 9A.16.040(2)(a) is satisfied, there is no need to review the applicability of RCW 9A.16.040(2)(b). Even assuming for the sake of argument RCW 9A.16.040(2)(a) did not apply, RCW 9A.16.040(2)(b) has also been satisfied under the facts presented here. By starting his vehicle and attempting to leave the scene while refusing to release Deputy Boyle, Mr. Donald's actions "...threatened infliction of serious physical harm."<sup>64</sup>

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<sup>58</sup> WAPA-2021-1/639; WAPA-2021-1/646.

<sup>59</sup> WAPA-2021-1/639.

<sup>60</sup> See RCW 9A.16.040(4).

<sup>61</sup> See RCW 9A.16.040(2).

<sup>62</sup> See RCW 9A.16.040(2)(a).

<sup>63</sup> See RCW 9A.16.040(2)(b).

<sup>64</sup> See RCW 9A.16.040(2)(b).

## CONCLUSION

Any use of force employed by law enforcement must be taken seriously and reviewed carefully. What started as a “simple” traffic stop for a defective taillight, quickly escalated. The reviewing members cannot say the outcome would have been different, but it does not appear Mr. Donald was ever *asked* to step out of the vehicle, or had it explained to him *why* the request was being made.

The command to exit the vehicle appears to have been lawful (officer safety). Mr. Donald’s refusal to exit the vehicle quickly escalated and Deputy Boyle, unable to reach his Taser, drew his weapon and shot Mr. Donald to protect himself and other deputies. Likewise, Deputy Troupe was unable to reach her Taser and Deputy Agar was in the process of drawing his firearm when the fatal shots were fired.

The reviewing members from WAPA are in agreement the use of force in this instance by Deputy Boyle was done in “good faith” as outlined in RCW 9A.16.040(4).

If any questions arise, or if any additional information is obtained, do not hesitate to contact the Washington Association of Prosecuting Attorneys.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'J. Meyer', is written over a light gray dotted signature line.

JONATHAN L. MEYER  
Prosecuting Attorney

JLM;BB