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September 20, 2022

RE: Criminal Review of Officer Involved Shooting

This incident began on the late hours of February 16 and concluded on February 17, 2022. The events began in the City of Mount Vernon. A Nissan Pathfinder was traveling on College Way when he came to the attention of Officer Ely of the Mount Vernon Police Department. The officer had probable cause to stop the Nissan Pathfinder as the license plates did not match the vehicle and he activated his emergency equipment. When the officer attempted to stop the Nissan Pathfinder it proceeded to enter I-5 north bound and accelerated at a high rate of speed. Due to the legislation passed in the last legislative session the officer allowed the driver to continue northbound and abandoned his pursuit and turned off all of his emergency equipment. It should be noted that the officer was in full uniform and driving a fully marked Mount Vernon Police Department car.

When the abandoned pursuit came out over the radio Deputy Vincent of the Skagit County Sheriff's Office was on a side road in Burlington and saw what he believed to be the vehicle that had sped away from the MVPD unit. It came over the radio that the vehicle had no spare tire and possibly stolen plates. The Deputy got on I-5 northbound and got off the freeway at Burlington. He saw the vehicle but lost sight of him after it had gone westbound on Rio vista and then turned eastbound on Peterson Rd. Deputy Vincent then heard from Deputy Moses that he was behind the vehicle at Fairhaven and Burlington Blvd.

Deputy Moses and Deputy Vincent decided to follow but not turn on any emergency equipment and wait for the car to stop. The Nissan Pathfinder proceeded to go to Highway 20 and proceed eastbound towards Sedro Woolley. When the vehicle reached Gardner Road it took a left turn towards Cook Road which is north of Highway 20. Deputy Moses was able to get a license number which was an exempt plate #06868D. This plate came back to the City of Hamilton.

The Nissan then got to Cook Road it proceeded into the eastbound lanes of travel still northbound but then made an erratic left turn and headed westbound on Cook Road. The vehicle then proceeded to Old Highway 99 where it turned right and proceeded northbound. Deputy Moses at this point stopped following and Deputy Vincent continued to follow the Nissan. The Deputy

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momentarily lost sight of the Nissan until he reached the top of the railroad bridge on Old Highway 99 just north of Cook Road and then saw the vehicle make a right turn onto Kelleher Road. The deputy closed distance and saw the vehicle in the distance just past the Humane Society.

The Nissan then made a right turn onto F & S Grade Rd without stopping for the stop sign. Sedro-Woolley PD advised that they would try to spotlight the vehicle to see if they could ID the driver. When they spotlighted the vehicle, the driver ducked down and turned his head and they were unable to ID him. Sedro-Woolley PD then pulled in front of Deputy Vincent as the Nissan appeared to be heading into Sedro -Woolley.

The vehicle made a left turn on to Garden of Eden Road and at this time the Sedro-Woolley police vehicles were within a couple of car lengths of the Nissan. The vehicles were then on East Jones Road where the Nissan passed a pickup truck. The vehicles then continued on Garden of Eden Road until it reached Bassett Road. While on Bassett Road Sgt. Eaton of the SWPD attempted to spotlight the vehicle to attempt to identify the driver again but was also unsuccessful.

As they reached Highway 9 Sedro-Woolley PD advised they would no longer participate due to the Nissan leaving the City of Sedro-Woolley but advised they would try to deploy spike strips to stop the vehicle if it returned to Sedro-Woolley.

Deputy Vincent continued to follow the car and watched it turn on to Kalloch Road. The vehicle then made a right turn southbound onto North Fruitdale Road again without stopping at a stop sign, which brought it back into the city limits of Sedro-Woolley. Deputy Vincent then advised SWPD that he was passing the Northern State entrance and was told that Sedro-Woolley PD would attempt to deploy spike strips at Fruitdale Road and McGarigle Road. As Vincent passed Portobello Road he could see two SWPD cars on the west side of McGarigle facing east. Vincent believed he saw spike strips in the roadway.

The roadway on Fruitdale Road is a two laned county road that generally runs north and south. There is a double yellow line dividing the north and south lanes. At the intersection of McGarigle and Fruitdale roads there are crosswalks crossing both streets. There is a streetlight at the intersection which helps illuminate the intersection. McGarigle Road forms a T intersection with Fruitdale Road and generally runs in an east and west direction. On the night of the incident the roadway was dry, and it was approximately 44 degrees. There is a curb and sidewalk on the west side of Fruitdale Road.

The Nissan Pathfinder left the roadway by going up on the curb and sidewalk and eventually struck Sgt. Eaton's police car which was 168 feet from where the Nissan had left the roadway. From the time the vehicle left the roadway and went up onto the curb and sidewalk till it struck Sgt Eaton's vehicle the time was 9 seconds. The average speed of the Nissan after it left the roadway and went up onto the curb until it hit Sgt. Eaton's vehicle was approximately 12.73 mph as determined by the accident scene analysis done by Detective Lancaster. This was done by use of the Body Worn Cameras and visual observations on the scene.

There was evidence of braking by the Nissan vehicle on both Fruitdale Road and the sidewalk as shown by 21.79 ft of tire marks on these surfaces. There is no evidence of further braking prior to striking Sgt. Eaton's patrol car. This distance is 146.21 feet.

A determination of speed was made of the speed of the Nissan Pathfinder prior to hitting the curb. This is determined by using the coefficient of friction and the distance between leaving the roadway and going up on the curb. This is done by combining speed loss and the average speed over the 168 feet. Two coefficient of friction numbers were utilized, 0.70 and 0.35. Using these it was determined that the Pathfinder was traveling between 19mph and 25 mph prior to going up on the curb and leaving the roadway.

Human reaction time and perception response is recognized as 1.5 seconds. This is the accepted and recognized perception response time in accident reconstruction. Depending on the situation it may be slower or faster depending on the situation and individual involved. Using the average response time, it would mean that the driver made the decision to leave the roadway between 41.77 and 54.97 feet before he actually went up on the curb. This would have placed him 141-152 feet from the end of the centerline.

A visibility study was conducted later when the next full moon came about. It was raining intermittently, and visibility was somewhat diminished as compared to visibility on February 16, 2022. From the 41.77 and 54.97 feet (where he went up on the curb) and 141-152 feet to the end of the centerline the two police cars as well as the silhouettes of two officers were visible from those distances.

As the Nissan Pathfinder was moving southbound on Fruitdale Road Officer Rosser and Sgt Eaton are deploying spike strips on the roadway 180 feet south of the Nissan. Rosser is observed moving westbound after putting out the spikes and as he moves off the roadway and onto the grass the Nissan leaves the roadway and appears to also move west. After the vehicle moves off the roadway and heads in a westerly direction Rosser moves to the east. This takes place 1.3 seconds after the curb strike. The vehicle then appears to change direction and head in an easterly direction. This movement by the Nissan causes Rosser to move once again in a westerly direction. At this time, he switches the spike strip to his left hand and begins to draw his firearm. At this point the Nissan has traveled 52.79 feet in 2.94 seconds from when it struck the curb.

When Officer Rosser draws his firearm, the mounted light is activated, and it appears that the Nissan is approaching him head on. When the first shot is fired the Nissan is approximately 6.28 feet away. The Nissan has traveled 82.1 feet in 4.41 seconds from the time it hit the curb. Officer Rosser fires 9 rounds while moving in a southeast direction. The time the shooting took place is somewhere between 1.61 and 2 seconds. The fastest shot was 0.17 secs and the slowest was 0.23 and the analysis used the figure of 0.2 secs between each shot. The placement of the vehicle was determined for each shot based on its path of travel. It was determined the vehicle traveled 3.72 feet every 0.2 seconds (the average time between the shots fired). This was based on an approximate speed of 12.73 mph.

To determine when Officer Rosser saw a reason to start and stop shooting two different perception/response times were used. Although average response time is 1.5 seconds a time of 1.0 seconds is also used to take into account various factors such as age and training.

Using a 1 second perception response time, this would mean Rosser made the decision to fire approximately 1 second before the first shot was fired. The Pathfinder is moved back 18.66 feet from the location of the first shot. Based on ground measurements this would place the Pathfinder approximately 23.53 feet away from Rosser one second before the first shot is fired. These locations can also be seen in the image captured from Eaton's BWC.

The decision to stop shooting, using the 1 second perception time would mean that he would have been at approximately his 5th shot with 4 more remaining. Using the 1.5 perception time would have meant would have meant that 1.5 seconds before his last trigger pull or 0.5 seconds after the first trigger pull, he made the decision to stop firing. He would have fired 3 shots with 6 remaining at the time he made the decision to stop firing.

Mr. Babcock is removed from the vehicle, transported to a Bellingham hospital where he passed away. The cause of death was a single gunshot wound to the back of the head.

CONCLUSION:

The Statute covering this situation is RCW 9A.16.040 and more specifically section (4) which states; 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.

In this situation David Babcock refused to stop in Mount Vernon for a traffic violation but instead sped away from the Mount Vernon Police Department. He was followed by officers from the Skagit County Sheriff's office and the Sedro-Woolley Police Department for a distance of over 20 miles meandering on State highways, county and city roads. It appears that no one was able to identify the individual as David Babcock until he had suffered gunshot wounds and his car had been stopped. At no time did law enforcement, after the initial attempt to stop the vehicle, ever attempt to stop the vehicle by use of lights and sirens but merely followed to keep track of him.

The Sedro Woolley Police were aware of him when he returned to the City of Sedro-Woolley and they attempted to set up spike strips on the corner of Fruitdale Road and McGarigle Street in Sedro-Woolley. As Mr. Babcock proceeded southbound on Fruitdale Road it appears that he was able to see the two police officers and two patrol cars, pointed eastbound on McGarigle and could see them placing spike strips on the road. It appears the Nissan left the roadway to avoid the spike strips and headed directly at Officer Rosser who was on the west side of the light pole. Officer Rosser then moves west and the Nissan steers towards the Officer who then drops his spike strips and draws

his firearm. Officer Rosser then fires his firearm 9 times in approximately 2 seconds. The Nissan crashes into Sgt Eaton patrol car, spins around and comes to rest against telephone pole.

Based on the science regarding perception response time, I believe Officer Rosser's decision to shoot was a direct reaction to the vehicle coming straight at him and that his firearm tracked that deadly threat as he fired his weapon

It is my decision that Officer Rosser acted in "good faith" in using deadly force. With the objective facts known to him at the time of Mr. Babcock jumped the curb and making moves to come straight at Officer Rosser, with a motor vehicle, and changing directions several times in a short distance it is my opinion and decision that a similarly situated officer would have made the same decision. The use of force in this case was justifiable.

Sincerely,

A handwritten signature in black ink, appearing to read 'Richard A. Weyrich', written in a cursive style.

Richard A. Weyrich
Skagit County Prosecuting Attorney