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October 30, 2018

Lt. Carl Hendrickson
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Sgt. James Moore
Yakima Police Department
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Yakima, WA 98901

***RE.: Possible Officer Involved Assault
Yakima County Sheriff's Deputy Sergeant Boyer
July 7, 2018
YPD Case No. 18Y027793***

The following decision regarding the possible officer involved assault involving a motor vehicle as indicated above is based upon the reports and documents that I have received from the Yakima Police Department, as well as assistance from a two other local law enforcement agencies - Yakama Tribal and the Yakima County Sheriff's Office. I have received these reports after the completion of their investigation surrounding this incident involving YSO Sgt. Boyer and his patrol vehicle that took place on the property located at 3960 Barkes Road, Harrah, WA. The Yakima County Prosecuting Attorney's Office has now completed its review of the reports and witness statements created during that investigation.

This incident involves the potential use by YSO Sgt. Boyer of his car to stop and apprehend the suspect/injured party, in this case a juvenile by the name of [REDACTED]. The relevant statute pertaining to an officer involved use of deadly force here in the state of Washington is **RCW 9A.16.040 – Justifiable homicide or use of deadly force by public officer, peace officer, person aiding**. The specific sections in the Revised Code of Washington are RCW 9A.16.040(1)(b) and RCW 9A.16.040(1)(c)(i). In addition, RCW 9A.16.040(2) delineates how deadly force is to be used under subsection (1)(c). RCW 9A.16.040(1)(b) provides, in part, that the use of deadly force by a law enforcement officer is justified when necessarily used by a peace officer 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*.

Additionally, RCW 9A.16.040(1)(c)(i) permits the use of deadly force if necessarily used by a peace officer *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.*

In such a situation, the officer must have probable cause to believe the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Circumstances which may be considered by peace officers as a “threat of serious physical harm” include the situation where *the suspect threatens the officer with a weapon or displays a weapon in a manner that could be reasonably construed as threatening* or 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.

Finally, the key statutory provision involving the use of deadly force committed by a law enforcement officer is **RCW 9A.16.040 (3)** which provides the standard that must be used to hold a law enforcement officer culpable for the unlawful use of deadly force. This statute states the following:

A public officer or peace officer shall not be held criminally liable for using deadly force without malice and with a good faith belief that such act is justifiable pursuant to this section.

INVESTIGATION

The following facts are relevant to my decision determining whether this incident involving Sgt Boyer and his vehicle was the use of force to apprehend [REDACTED] or not based upon the investigation performed by the law enforcement agencies as noted above.

Critical to my review was Yakama Tribal Officer Pena and his report as submitted. Officer Pena indicates that on Saturday, 07/07/2018, at approximately 4:12 a.m., he was called out, while working and in full uniform, to 11610 Branch Road, Harrah, WA for a suspected home invasion robbery. Yakima County Sheriff officers were already enroute. This address is within the exterior boundaries of the Yakama Nation Reservation. His report indicates that there were four male suspects in their late teens, one Native American and three Caucasians. According to the report, one was allegedly armed with a knife and the other three had firearms. The alleged victim provided a full statement as to the home invasion robbery in which the victim reported \$3,000 taken from her purse. The victim also was able to describe the suspects to law enforcement. Officer Pena believed that the individuals residing at 3960 Barkes Road, not far from the alleged victim’s home, could possibly be involved.

Officer Pena headed in that direction and noticed that Sgt. Boyer had come in behind him. Officer Pena started traveling down the long driveway with Sgt. Boyer following. At that point, Officer Pena saw [REDACTED] on the property and as he saw the patrol vehicle he started running away. He matched the description provided by the victim of one of the suspects in the robbery. The suspect tried to hide behind some tall grass off the driveway. The grass was 2-3 feet tall and about 4-5 feet in width. Pena lost sight of the suspect and stopped his vehicle and headed out on foot. The suspect was still hiding in the field. Sgt. Boyer flanked to Pena’s right and continued off the driveway into the open field of freshly cut hay. Sgt. Boyer eventually stopped. Pena indicates that he eventually saw [REDACTED] lying behind tall grass, face down. He appeared to be in pain. Officer Pena saw Sgt. Boyer exit his vehicle and states in his report that Boyer “seemed oblivious to what had just occurred.” Pena told him that he believed he ran over the suspect and then he states that Boyer “looked in disbelief.” Boyer called aid immediately and said he thought the suspect had continued running west.

Further investigation revealed that Sgt. Boyer had traveled into the field and into the cut alfalfa. Boyer saw the suspect running into the field but lost sight of him. Boyer drove west to set up containment. He drove over the uneven terrain to try to prevent the suspect from escaping. The first time Boyer found out anything was wrong was when he got out of his vehicle and heard Officer Pena yelling.

Analysis was made by the Yakima Police Department of the travel path Boyer took and the tire marks on the gravel driveway and in the field. Boyer indicated that he was traveling 15 to 20 mph over the uneven terrain just before entering the field. Analysis of GPS and of Boyer's vehicle show that Boyer had a maximum sustained speed on the driveway of 31 mph and that dropped to 12 mph shortly after entering the field, approximately within 250 feet. Additionally, the physical inspection of Boyer's vehicle showed that the suspect was struck by the underside of the patrol vehicle. There was no indication that the impact occurred with the front of the car. Evidence would show that the front overhang under the vehicle travelled over [REDACTED] and as the car went down a slope, he was carried for about 10 feet before coming to rest.

CONCLUSION

Based upon the foregoing and examining the remaining evidence, statements and description of the scene, it appears that Sgt. Boyer entered the driveway, slowed down entering the field and then lost sight of the suspect. However, he believed at that time he was trying to contain a fleeing suspect and accidentally ran over [REDACTED] in that effort. No evidence points to the contrary. To criminally charge Sgt. Boyer with an assault in this situation, the evidence would need to show that he intentionally, unreasonably and with malice ran over the fleeing suspect. Discounting the malice analysis, I would still find that this was simply a tragic accident in which a law enforcement officer was performing his law enforcement duties as required and as he had been trained. No evidence shows he turned into the suspect sharply or braked suddenly to hit him on purpose. Sgt. Boyer did not use his vehicle as a weapon and entered the field in good faith to try to contain a suspect who was attempting to flee law enforcement.

Sgt. Boyer will not face any criminal charges for this incident involving [REDACTED].

If you have any questions or concerns, please do not hesitate to contact me at your earliest convenience.

Sincerely,



Joseph A. Brusick
Yakima County Prosecutor
Yakima, WA