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August 10, 2016

Dominic Rizzi, Jr.
Chief of Police
Yakima Police Department
200 South 3rd Street
Yakima, WA 98901

RE.: Officer Involved Shooting
YPD Officer Bradley J. Althausen
June 10, 2016
YPD Case No. 16Y024922

The following decision regarding the officer involved shooting as indicated above is based upon the reports and documents that I have received from the Yakima Police Department after the completion of their full investigation surrounding this shooting of Juan Briseno-Ortega on June 10th, 2016 at 2125 S. 68th Avenue, Yakima, WA. The Yakima County Prosecuting Attorney's Office has now completed its review of the reports, videos, recordings and various statements created during that investigation.

The relevant statute pertaining to an officer involved shooting 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 a justifiable homicide by a law enforcement officer is **RCW 9A.16.040(3)** which 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 homicide was justifiable or not based upon the investigation performed by the Yakima Police Department.

On June 10, 2016, Yakima Police Officer Bradley Althausser was working his assigned C-Blue Shift as a uniformed patrol officer which had begun at 4 pm. He was working the western most district in the city limits of Yakima. Althausser was responding to a domestic incident in another district when he heard the call regarding a possible physical confrontation at 2125 S. 68th Avenue. This incident was in his district so he responded from S. 40th and W. Nob Hill Blvd. This call involved two males inside of a garage arguing based upon neighbors in the area. When he arrived at the scene, he observed two garage doors facing the street and the left one appeared to be damaged and pushed out as if a car had attempted to drive through it while it was closed. Sgt. Ryan Wisner also was headed to the scene as was YPD Officer Graves.

Officer Althausser parked and heard two male voices arguing in the damaged garage. He heard a smacking sound along with the yelling. The garage was dark but he could see about a foot or two inside. A man was sitting in a wheelchair near the opening of the garage that had been damaged. The man in the wheelchair was taking a defensive posture and the officer could hear something being swung at him. The officer clearly heard assault sounds coming from inside the garage. Off. Althausser pounded on the garage door and announced his presence. Sensing a serious assault was taking place and seeing and hearing the altercation, Althausser grabbed the broken panel and pulled it back so he could enter. He drew his pistol.

There were two cars parked in the garage. The officer observed a man standing a few feet from the man in the wheelchair that the officer believed was being assaulted. Sgt. Wisner was now at the scene and had approached the garage as well. Althausser was approximately five to eight feet away from Mr. Briseno-Ortega. He moved in front of the victim and observed the decedent's angry face as he yelled at the officer. Althausser pointed his pistol at Briseno-Ortega and told him to "show me your hands!" As Briseno-Ortega yelled at the officer, he lifted his shirt and looked down. The officer could clearly see a visible pistol in the front of his waist band. The officer observed it to be a revolver. Althausser, in his written statement, then indicated the following:

As he lowered his shirt he brought his hands down to his side, in close proximity to the gun. I yelled at him telling him to turn away from me and put his hands up. I was within four to five feet of him. He did not comply with my orders. I then grabbed at his hands with my left hand, attempting to keep him from reaching for the gun in his waistband. He pulled away from me. I kept myself in a bladed stance with my gun drawn to my right armpit, furthest away from the suspect. I grabbed him by the arm and threw him into the SUV on the right side of the garage.

Althausser yelled at Sgt. Wisner that the suspect had a gun. Once again, the officer threw his left shoulder into the suspect pushing him into the SUV. Once again, he yelled at the suspect to put his hands up. The suspect continued to resist and did not comply with the commands. He was yelling at the officer and would not face away. At this juncture, the officer attempted to move the suspects' hands while continuing to point his weapon at him. The officer then felt the suspects' hands "move towards his waist line." The officer stepped back and was attempting to get between the victim in the wheelchair and the suspect fearing, at that moment, that the suspect was going to shoot the victim or him, Officer Althausser. The officer then fired two shots at the suspect which struck him in the chest. Briseno-Ortega fell face first to the ground with Officer Althausser following him down. When down, the officer removed the suspect's gun. It had a five inch barrel and appeared to be loaded. Officer Graves took the gun from Althausser. Both Officers Althausser and Wisner attempted to provide medical aid until medical units arrived. The suspect died at approximately 5:30 pm from two gunshot wounds to the chest. Cause of death per the Forensic Pathologist's report was a 0.40 caliber gunshot wound to the heart which caused instant cardiac pump failure.

Sgt. Wisner was an eyewitness to this shooting and was interviewed during the investigation. He indicated that he observed the scuffle and both doing "a lot of grabbin', a little push, pullin." He saw the suspect pull away from Officer Althausser and put his back up against the car in the garage. He then states the following"

"... his hand started moving down towards his waistline as we were yelling hands up, hands up, both Brad and I um, loudly, I mean, there's ah, no doubt in my mind that somebody outside of the garage wouldn't have heard us, we were screaming hands up. And ah, I remember Brad um, ah, shootin' the guy twice when he didn't comply with our orders and was heading downward towards his waistband where the gun was supposed to be at."

The other eyewitness to this shooting in the garage, Ruperto Briseno-Ortega, was the suspect's brother and the victim of the domestic violence assault. In interviewing Ruperto, it was determined that both he and the suspect lived at that address together. Ruperto indicated that he wanted to go to Walmart in his wheelchair and his brother refused to let him go. He then began to drive his wheelchair into the door repeatedly, damaging it. The suspect had went inside but had come back out and began assaulting his brother. Ruperto called out to a neighbor to call 9-1-1. Fifteen minutes later the officers showed up and entered the garage. One officer pushed Juan back against the van in the garage. He described his brothers' hands as "slightly rising from his body" and then the officer yelling "he's got a gun." He then stated that his brother was shot twice.

A significant piece of evidence that corroborates some of the investigation discussed above is the coban video from Sgt. Wisner's patrol vehicle. As Sgt. Wisner pulled up to the house after Off. Althausser, he pointed his vehicle and coban video at the entrance to the garage which provided critical video and audio evidence of some of the activity leading up to and including the shooting. Clearly, from the review of the video, Officer Althausser can be heard yelling "hand's up" and "he's got a gun" prior to the shooting. This independent evidence corroborates the officers and their accounts.

CONCLUSION

This was an excellent investigation by the various Yakima Police Department personnel involved. The scene was controlled immediately after the shooting and evidence was obtained. I conclude that based upon the facts as I know them from the complete investigation that was made and presented to me as well as the current applicable Washington state law, Yakima Police Department Officer Bradley Althausser was justified in his use of deadly force under the circumstances as they appeared to him at the address of 2125 S. 68th Avenue, Yakima, WA. Officer Althausser responded to this address based upon the reported allegation of a potential verbal and/or physical confrontation. When he arrived, he observed and heard this confrontation and believed it was a physical assault. With that probable cause, he entered the garage and was engaged in a physical confrontation with the suspect/decendent Juan Briseno-Ortega. He commanded the suspect to show his hands and observed a pistol in his waistband. The suspect moved his hands toward his pistol, failing to comply with the officer's directives. The officer moved in front of the assault victim and believed in good faith, at that moment, that either he or the victim were going to be shot. It is at that moment he fired two rounds into the chest of the decendent. I conclude that the officer, under these facts, had probable cause to believe that the suspect posed a threat of serious physical harm to himself, Sgt. Wisner and/or to the assault victim still remaining in the garage.

Finally, I find no evidence to show that Officer Althausser used deadly force *with malice* which is manifested through an "evil intent, wish or design to . . . injure another person." Officer Althausser tried numerous times to get the suspect to comply with his commands in an attempt to take him into custody. Additionally, Officer Althausser acted in good faith and with lawfulness of purpose. The evidence is clear that Althausser had probable cause to believe there existed a very real threat of serious physical harm to him or others and, thus, the deadly force used by him was reasonable and necessary considering all the circumstances presented at that time. Officer Althausser will not be charged with a crime and acted reasonably and prudently as he had been trained.

Please contact me at your earliest convenience if there is additional evidence that comes to light or you have any questions or concerns.

Sincerely,



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