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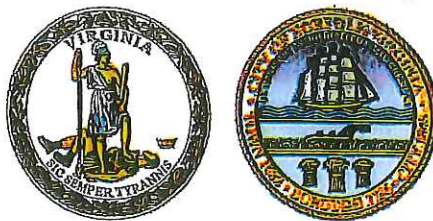
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January 18, 2017

Chief Larry D. Boone
Norfolk Police Department
100 Brooke Avenue
Norfolk, VA 23510

RE: Legal Review of Use of Force
March 19, 2016
Norfolk Police Officer/Investigator Brandon Goins
Norfolk Police Officer/Investigator Payton Wosk

Dear Chief Boone:

I write today to inform you my legal review is now concluded of the March 19, 2016 officer-involved shooting which resulted in the death of a woman in the 9500 block of Shore Drive in Norfolk and this Office will not initiate a criminal charge/prosecution in the matter. The evidence demonstrates the use of force by Investigator Brandon Goins and Investigator Payton Wosk, who each fired his service weapon during an attempt to interdict India Beaty, was an appropriate and necessary use of force in response to Beaty's own actions. Beaty, who had a replica handgun in her possession, was using it to threaten an unarmed male civilian and the investigators reacted to protect the man and other potential victims, including their fellow officers.

Incident Summary

On March 19, 2016 at approximately 1:00 a.m., investigators with the Norfolk Police Department's Vice and Narcotics Division were undercover in an unmarked white van in the parking lot of the shopping center in the 9500 block of Shore Drive in Norfolk. The investigators were waiting for a narcotics dealer to arrive at that location to make a drug

transaction. The investigators in the van were wearing plainclothes with tactical vests marked with POLICE on the front and back of the vests.

While the investigators were waiting for the suspected drug dealer to arrive in the parking lot, the investigators looked out the windows of the van and observed two men in an apparent verbal argument. While the two men were arguing, a third person (later identified as the decedent, India Beaty) exited a car and aggressively approached one of the two men while holding an apparent handgun in her hand and had it pointed at the man. The investigators seated in the van observed one of the two men intercede with Beaty and try to push her away and back toward the car. (Investigators later learned the man who interceded had come to the shopping center with Beaty. He indicated Beaty picked him up on Pretty Lake Avenue and they had gone to Mona Lisa's Pizza in the shopping center to have a few drinks. He said Beaty left the restaurant shortly before he did and went to the parking lot.)

The investigators in the van watched Beaty struggle with and get around the man trying to restrain her and then move again toward the first man at whom she had earlier pointed the apparent handgun. Having observed Beaty earlier aggressively engage that man only being stopped through the actions of the man she knew and now moving to reengage the other man, the investigators abandoned their undercover operation to act to protect the object of Beaty's apparent armed aggression.

Investigators Goins and Wosk along with other investigators got out of their surveillance van and gave Beaty verbal commands of "Police" and "Show me Your Hands." Beaty, who was standing with her back and right side exposed toward the police officers, did not get down on the ground (as the man who she was approaching had done) nor did she put her hands up. The investigators said Beaty turned toward the approaching police officers, looked at them, and then pulled the apparent handgun out of her waist area in direct contravention of the police instructions.

At approximately 1:18 a.m. on March 19, 2016, the first radio traffic to the Emergency Operations Center confirmed shots had been fired as Investigator Goins and Wosk discharged their service weapons striking Beaty on her right side. The investigators immediately rushed to Beaty and tried to render first aid. Norfolk Fire-Rescue emergency personnel responded. Paramedics declared Beaty dead at 1:29 a.m. on March 19, 2016.

The following photograph documents the location of the shooting in the parking lot of the 9500 block of Shore Drive in Norfolk with the white van from which the investigators were maintaining surveillance pictured on the right.



The location of India Beaty when she was shot was the left front (driver's side) area of the red sport utility vehicle (SUV) pictured on the left side of the above photograph. Beaty was described as falling backwards several feet in front of the red SUV near the driver's side.

The replica handgun brandished by Beaty was recovered near the left front (driver's side) area of the red SUV. The photograph below depicts the recovery location. DNA consistent with Beaty's DNA profile was identified on the replica handgun.



The man who Investigators Goins and Wosk observed Beaty approach initially with her apparent handgun drawn and then re-approach after being pushed away by the other man remained on scene and described the incident to investigators. He confirmed the woman (later identified as India Beaty) had without provocation jumped out of a car and

approached him as he was talking to Beaty's male friend. The man confirmed Beaty appeared angry and said to him, "What are you doing to my bro." The man further said he tried to tell Beaty he had no disagreement with either Beaty or her male friend.

The man confirmed even after Beaty was pushed away by her male friend and put back in the car she jumped out re-approaching him with one of her hands concealed to her side and behind her back. The man who was the target of Beaty's aggression concluded Beaty was holding a gun and told investigators – "100 percent I believe she had a gun" and "She was mad like she was going to shoot me."

The man confirmed the people in the white van jumped out at that moment and said, "Drop it. Drop it", "Get on the ground", "Drop it", and "Put the gun down" to which he immediately responded by getting on the ground. He confirmed Beaty did not get down and turned. The man indicated he "knew it was the (expletive) police" although Beaty was in between him and the white van so he could not clearly see the police officers. The man later reported his thought at the time was that if the police had not jumped out "She (Beaty) would have shot me."

Witnesses who were positioned on the raised patio of Mona Lisa's Pizza described even from that distance they could hear stern commands and that the men giving the commands they could later see to be police officers in plainclothes wearing vests that said "Police" on them.

The Vice and Narcotics Division's surveillance of the parking lot included not only the team of investigators in the white van but other cars positioned containing investigators. Two investigators positioned in unmarked cars on opposite sides of the parking lot described that when they each from their respective positions saw the team of investigators exit the white van, they each heard multiple members of the team announcing "Police" and "Police, Get down of the ground" – confirming the loudness with which these commands were given.

Investigator Goins specifically reported he watched the woman (Beaty) insert herself into the apparent argument between the two men the first time and pull what appeared to be a handgun in the process. Investigator Goins, from inside the van, watched as Beaty was pushed back by one of the two men only to then see Beaty struggle around that man and move back toward the other man. Fearing the woman (Beaty), who had just brandished an apparent handgun, would shoot the other man, Investigators Wosk and Goins and their fellow officers in the van jumped out. Each wore a tactical vest marked with POLICE on the front and back. (Photos provided below.)



Tactical vests worn by investigators March 19, 2016.

Investigator Goins said commands were repeatedly being given to Beaty – “Police, hands up” – but as the officers started to move, Beaty failed to comply instead reaching down and lifting her shirt with her left hand starting to pull out the apparent handgun with her right hand. Fearing for his safety and the safety of those around him, Investigator Goins said he fired his service weapon two or three times. Investigator Goins said he was aware at the same time at least one other officer also fired his weapon. When Beaty fell to the ground, the officers approached and immediately started to provide first aid for her wounds.

One of the investigators who exited the van with Investigators Goins and Wosk (when asked why he took action when Beaty tried to go toward the man she had earlier threatened with the apparent handgun) said, “... me seeing, as a police officer, seeing her actions going towards that male, I feared for his life.” That same investigator when he exited the van announced loudly, “Norfolk Police, Show me your hands” three or four times before Beaty lifted her shirt with her left hand and then grabbed the apparent handgun in her waist with her right hand.

Prior to getting out of the white van, Investigator Wosk observed Beaty displaying aggressive behavior toward the one male and then pull an apparent handgun. When Beaty started to go back a second time at the man after being separated once already, Investigator Wosk reported he and the other investigators exited the van and he circled to his right toward the side of Beaty. He announced he was the “Police” and instructed Beaty to “Show me your hands; Get on the ground.” Investigator Wosk was wearing a tactical vest with “POLICE” emblazoned on it in white and he confirmed that this incident occurred almost directly under a street light in the parking lot.

When India Beaty contrary to the police commands lifted her shirt and started to grab the apparent handgun, Investigator Wosk stated he fired his service weapon as he was afraid Beaty could fire her weapon at one of the other police officers who might not realize Beaty was pulling her handgun. Investigator Wosk stated that the two men who had been part of the incident with Beaty were laying on the ground as previously instructed by the

officers. Investigator Wosk gave his trauma kit to another narcotics investigator who immediately began to perform first aid on Beaty prior to the arrival of the paramedics.

Forensic Evidence/Scientific Analysis

Report of Autopsy

On March 19, 2016 the Office of the Chief Medical Examiner performed an autopsy on India Beaty (Report of Autopsy #T-139-16) which was finalized and issued on or about June 17, 2016. The Medical Examiner determined Beaty died as a result of five gunshot wounds all to her right side (right shoulder, right arm, right chest, right hip, and right thigh). The autopsy did not identify the presence of any factors which would be indicative of a close gunshot wound.

As part of the autopsy protocol, the Medical Examiner obtained a blood sample from the decedent to test for the presence of drugs or alcohol. On June 17, 2016, the Office of the Chief Medical Examiner issued a Certificate of Analysis (FS Lab #T16-1987) which confirmed the presence of Cocaine, Benzoylcegonine (a metabolite of previously ingested cocaine) and Ethanol in Beaty's body.

Firearms/Ballistics Analysis

The Norfolk Police Department sent to the Virginia Department of Forensic Science for analysis the two Glock, Model 21 Gen 4, Caliber 45 auto handguns issued to Investigator Goins and Investigator Wosk as well as the five cartridge casings recovered by forensic investigators at the shooting scene. The Department of Forensic Science confirmed the Glock handgun issued to Investigator Goins fired three of the cartridge casings recovered at the scene and the Glock handgun issued to Investigator Wosk fired two of the cartridge casings recovered at the scene.

DNA Analysis

The Norfolk Police Department forwarded a known DNA sample obtained during the autopsy of India Beaty to the Virginia Department of Forensic Science and requested an examination of the swabs taken from the replica handgun for the presence of any DNA evidence. The Department of Forensic Science confirmed India Beaty's DNA profile was consistent with the major contributor to the DNA mixture on the swab taken from the replica handgun she held and displayed during the incident and was recovered at the scene. The probability of randomly selecting an unrelated individual with a DNA profile consistent with the blood stains was greater than 1 in 7.2 billion in the Caucasian, Black, and Hispanic populations.



Replica handgun recovered on ground near India Beaty on which a DNA profile consistent with India Beaty was recovered.

Legal Analysis

It is not subject to debate that civilians and law enforcement officers alike all believed the object India Beaty brandished toward a man on March 19, 2016 then concealed in her waist area when pushed away from the target of her aggression before re-approaching the man was a real handgun. The fact it is now known to be an inoperable handgun and a replica handgun under the law does not change the impact the replica handgun's appearance had on a person.

It is instructive to note that under Section 18.2-53.1 of the Code of Virginia (Use of a Firearm) should a person use a fake or replica handgun or a BB gun to commit a felony such as robbery or rape, that person could be convicted of Use of a Firearm for utilizing the fake or replica handgun to commit that crime as the Code of Virginia legally recognizes the fear in a victim that the mere appearance of a handgun produces.

Therefore, when the investigators with the Norfolk Police Department's Vice and Narcotics Division or the man who was being threatened by India Beaty, assessed the threat presented to them shortly before 1:19 a.m. on March 19, 2016, they assessed the threat of the use of an actual handgun capable of killing them. Both civilian and law enforcement witnesses alike agree the investigators, when they emerged from the van to assist the male target of Beaty's aggression, loudly announced who they were and what they wanted Beaty to do – show her hands and get on the ground. This is confirmed not only by police personnel in parked cars several rows away but also by patrons of the restaurant on the patio of the business on the far side of Beaty's location. Finally, the primary scene where the shooting occurred in the parking lot was underneath a streetlight and the officers in question clearly had POLICE emblazoned on their tactical vests.

The toxicology report from the Department of Forensic Science incorporated into the Report of Autopsy is instructive in that it informs us that in the early morning hours of March 19, 2016 India Beaty's decision making process was fueled by the recent ingestion of not only alcohol but also cocaine. The toxicology report in its finding of the presence

of Benzoylcegonine (a metabolite of previously ingested cocaine) further instructs Beaty had used cocaine long enough before this incident to metabolize in her system.

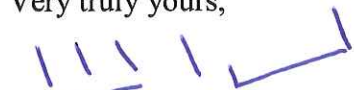
The United States Supreme Court has instructed in situations such as the death of India Beaty that the “reasonableness” of a particular reactive use of force must be judged from the perspective of a reasonable police officer at the scene and its calculus must embody an allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force necessary in a particular situation. Graham v. Connor, 490 U.S. 386 (1989)

The United States Supreme Court has further instructed that “If the suspect threatens the officer with a weapon or there is probable cause to believe that the suspect has committed a crime involving the infliction or threatened infliction of serious bodily harm, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” Tennessee v. Garner et al., 471 U.S. 1 (1985)

The United States Supreme Court gave further guidance that when considering a particular use of deadly force, “*The reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.*” Graham v. Conner et al., 490 U.S. 386, 109 S.Ct. 1865, 104 L.Ed.2d 443 (1989) The Supreme Court in Graham v. Conner et al, Id. further stated “*The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.*” The use of deadly force is therefore reasonable “when the officer has sound reason to believe that a suspect poses a threat of serious physical harm to the officer or others.” Elliot v. Levitt, 99 F.3d 640, 642 (4th Cir. 1996)

It is my conclusion the discharge by Investigators Goins and Wosk of their service weapons was a reasonable reaction to and a direct result of the appearance of imminent danger presented by India Beaty to themselves, other police officers, and civilians present in the parking lot of the 9500 block of Shore Drive in Norfolk on March 19, 2016. No charges will be sought with respect to the death of India Beaty and no further action by this Office in this matter is warranted.

Very truly yours,



Gregory D. Underwood
Commonwealth's Attorney

cc: Mr. Douglas L. Smith, Interim City Manager
Mr. Michael G. Goldsmith, Deputy City Manager
Mr. Bernard A. Pishko, City Attorney
The Honorable Kenneth C. Alexander, Mayor