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BREMER COUNTY ATTORNEY REVIEW OF OFFICER INVOLVED SHOOTING ON JANUARY 17, 2018

Material Reviewed

The investigation into this shooting was conducted by the Division of Criminal Investigation (DCI) of the State of Iowa at the request of Bremer County Sheriff Dan Pickett. The agencies involved in the incident included: Nashua Police Department, Chickasaw County Sheriff's Office, Iowa State Patrol, and Bremer County Sheriff's Office. All departments and offices were cooperative with the DCI investigation.

Under consideration were numerous pieces of evidence gathered by the DCI. Information reviewed included: recorded statements from the officers, statement narratives from civil witnesses, narrative reports from the DCI investigators. Numerous photographs, in car camera recordings, and body camera recordings were reviewed as well.

Several attempts were made to interview Beverly Merrick, believed to be the mother of Mr. Merrick, without success.

Review of Evidence

On January 17, 2018 at approximately 8:30 p.m. a young woman and her father were at Love's truck stop off of Highway 218 in Floyd County near the City of Floyd. Upon entering the store the woman observed an individual, later identified as Jihad Merrick, in the parking area inside a dark colored car on his cell phone. After exiting the business she observed Mr. Merrick outside his vehicle holding a handgun to his head with his right hand; a cell phone in his left hand.

The woman and her father finished attending to their car and entered their vehicle. The woman reported her observations to her father. He denied observing Mr. Merrick. The woman and her father exited the parking lot of Love's truck stop and the father pulled to the shoulder on highway 218 facing west. They parked in front of the Fuel Express convenience store located on the same highway as Love's. They called 911.

As the woman called 911 she continued to observe Mr. Merrick in the parking lot of Love's. Mr. Merrick entered his vehicle and moved his car to a different parking spot in the same Love's lot. Mr. Merrick stayed a short time in the new parking spot. He then left the Love's parking lot entering highway 218 traveling west, the same direction (west) the woman and her father were parked on the shoulder.

Mr. Merrick stopped in the travel portion of Highway 218 right next to the woman and her father. Mr. Merrick held a handgun to his head. They believe he remained stopped for approximately 30 seconds. Mr. Merrick then proceeded to the stop sign where he turned left on to the Highway 218/27 expressway at a rapid rate of speed. The father turned

right on the same expressway (18/27) and they made no further observations of Mr. Merrick.

Upon questioning the woman and her father, they observed that Mr. Merrick was the only person in his vehicle and that the passenger windows were up and intact.

Mr. Merrick was next observed by Nashua Police Officer Ben Scholl. Officer Scholl was unaware of the reported incident in Floyd County. Officer Scholl was running radar at exit 220 and clocked Mr. Merrick traveling southbound at 104 mph in a 65 mph speed zone. Officer Scholl engaged his lights and pursued Mr. Merrick's vehicle. Mr. Merrick slowed and stopped south of exit 212 at Plainfield, Iowa in Bremer County. Officer Scholl called in the stop to dispatch at approximately 8:52 p.m. The vehicle was identified as a 2016 Black Ford Fusion sedan registered to Jihad Mustafa Merrick.

Officer Scholl positioned his patrol vehicle behind Mr. Merrick's vehicle. Officer Scholl engaged his spotlight and illuminated the interior of Mr. Merrick's vehicle. Officer Scholl saw Mr. Merrick holding a handgun to his head and again he called dispatch to report his observation.

The radio communication drew assistance from other law enforcement agencies; the Iowa State Patrol (Troopers Nathaniel Miller, Chris Forsyth, and Ken Haut); the Bremer County Sheriff's Office (Deputy Glenn Beenblossom); the Chickasaw County Sheriff's Office (Deputy Adam Hanson); and the Nashua Police Department (Chief Travis Marvin).

Prior to their arrival Mr. Merrick got out of the driver's side of his vehicle with a handgun pointed to his own head and he faced Officer Scholl. Officer Scholl told Mr. Merrick to calm down and drop his handgun and draw his own handgun. Mr. Merrick got back in his vehicle within moments failing to comply with the command. Officer Scholl also told Mr. Merrick to put the handgun down so they could talk. Officer Scholl recalled Mr. Merrick's reply as; "I can't do that right now".

When the other officers arrived all vehicles were parked behind Mr. Merrick's vehicle at various offsets and lights were engaged. Officers do observed that the front passenger window was broken out. It did not appear to have occurred at the site of this stop.

Iowa State Patrol requested a negotiator. The negotiator left his home in Cresco, Iowa but the shooting occurred before his arrival. Officers continued to try to engage Mr. Merrick. Trooper Ken Haut, a senior officer, was the primary negotiator. Mr. Merrick responses were relatively non responsive. He did not comply with the commands to put the handgun down. He complained about the officers' lights and in response Trooper Haut ordered one the officer's vehicles lights off but the spotlight remained on. Mr. Merrick continued to complain about the lights. Mr. Merrick also appeared to be talking on a cell phone as he held the handgun to his head. One officer believed he heard the word "mom."

During the more than 28 minute negotiation Mr. Merrick was asked how many weapons he possessed, the officers heard "five." Mr. Merrick continued to complain about the lights and stated that he could not comply with the officers' commands or requests right now. Officers responded that they turned off some lights but could not comply with his request any further until he puts the handgun down. Mr. Merrick stepped out the driver's door of his car with the handgun to his head on two more occasions for a total of three times during the engagement with the officers. The officers could also see throughout the incident that even when Mr. Merrick was seated in the driver's seat he still held the handgun to his head.

The last time Mr. Merrick exited his vehicle he was again ordered to drop the handgun he held to his head. Mr. Merrick responded saying "why should he do what they (officers) want when you won't do what I say by turning off the lights" (paraphrasing). Mr. Merrick returned to his car and after about one minute a shot is fired at approximately 9:21 p.m. The shot came from inside Mr. Merrick's vehicle. Uncertain of Mr. Merrick's condition, the officers approached the vehicle and observed Mr. Merrick alive with his hands empty. Officers continued to approach the vehicle. Trooper Haut sets his rifle on the trunk of Mr. Merrick's vehicle and approached the driver side door. As he approached he told Officer Scholl to holster his handgun. Officers who approached the vehicle on the driver's side include: Deputy Adam Hanson positioned at the front driver's side fender with his rifle, Officer Ben Scholl at the driver's window, Trooper Ken Haut at the driver's window, and Chief Travis Marvin with his rifle at the driver's side of the vehicle.

Trooper Haut tried to open the driver's door to extricate Mr. Merrick; the door was locked. Trooper Haut asked for something to break the driver's window and received an ASP. On the second attempt the window was broken. Mr. Merrick turned toward the passenger seat; as Trooper Haut tried to secure Mr. Merrick's hands he saw a gun on the passenger seat and called out to the other officers to get the gun. Trooper Nathaniel Miller was able to retrieve the gun through the broken front passenger window.

Chief Travis Marvin was able to grasp the left wrist of Mr. Merrick. Trooper Haut and Officer Scholl attempted to grasp the right hand or wrist. Mr. Merrick struggled and fended off officer's attempts to gain control to extricate him from the vehicle. The officers have the right wrist in their grasp at times but Mr. Merrick continued to struggle and freed right hand.

Officers gave commands as the struggle continued. Mr. Merrick was non-compliant and got his right hand free. This time Mr. Merrick put his car in gear and accelerated the vehicle. Deputy Beenblossom was able to gain entry into the unlocked back driver's side passenger door in an effort to assist in gaining control of Mr. Merrick only fractions of seconds before Mr. Merrick accelerated the car. Deputy Beenblossom was not completely in the car when Mr. Merrick accelerated. Deputy Beenblossom's leg and foot were caught by the car which caused a great deal of pain. Simultaneously, Trooper Haut, in fear of being run over, at the drivers' window shouted to shoot Mr. Merrick. Deputy Beenblossom removed his handgun from his holster and shot eight rounds until the threat was over. Deputy Adam Hanson fired one round from his rifle.

Officers removed Mr. Merrick from his vehicle and checked for signs of life, finding none. An ambulance is called at approximately 9:24 p.m. to evaluate Mr. Merrick. Mr. Merrick was pronounced deceased at the scene. He was eventually transported from the scene to the State Medical Examiner's Office in Ankeny, Iowa.

Seized evidence from Mr. Merrick's vehicle included, but is not limited to; a Ruger LC9 (9mm) handgun with magazine containing two rounds, which belonged to Mr. Merrick, two 9mm fired cartridge casings; eight Smith and Wesson 40 cal. fired cartridge casings from the Glock 22 handgun belonging to Deputy Beenblossom; one fired rifle cartridge casing from the rifle of Deputy Hanson (found on the road near the vehicle). Five projectiles (bullets) were found in the vehicle; four 40 cal. and one 9mm.

On Friday January 19th, 2018 an autopsy was conducted by Dr. Francis Garrity. He recovered "three 40 caliber bullets." He found; Cause of Death: "Multiple gunshot wounds;" Manner of Death: "Homicide"; and Other significant conditions: "Methamphetamine Intoxication."

Legal Analysis

Iowa laws provides that “a person is justified in the use of reasonable force when the person reasonably believes that such force is necessary to defend oneself or another from any imminent use of unlawful force.” See Iowa Code Section 704.3 “Reasonable force is that force and no more which a reasonable person, in like circumstances, would judge to be necessary to prevent an injury or loss and can include deadly force if it is reasonable to believe such force is necessary to avoid injury or risk to one’s life or safety or the life or safety of another, or it is reasonable to believe that such force is necessary to resist a like force or threat.” See Iowa Code Section 704.1. Deadly force is: force used for the purpose of causing serious injury, or; force the actor knows or reasonably should know will create a strong probability that serious injury will result, or; the discharge of a firearm is deadly force. See Iowa Code Section 704.2.

Conclusions

The use of deadly force by the officers was justified in accordance with Iowa law. There are numerous instances where Mr. Merrick’s volatile behavior put the officers and the public in general at serious risk of injury or death including: twice putting the handgun to his head in front of the young woman at Love’s truck stop who called authorities; speeding 104 mph down a public highway leading the stop by the Nashua police officer; three times stepping out of the driver’s door with the handgun to his head while facing law enforcement; and firing his handgun.

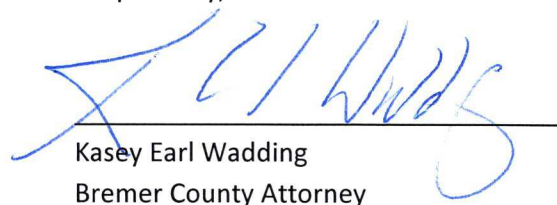
Mr. Merrick’s final act even more directly placed the officer’s in fear of their life or serious injury when he removed his right hand from the grasp of officers and placed the car in gear and accelerates. Mr. Merrick knew or reasonably should have known that the act of putting his vehicle in gear and accelerating while the officers tried to extricate him from his vehicle would create a strong probability that serious injury would result.

The officers had a reasonable belief that the use of deadly force was necessary to avoid injury or risk to their lives and was necessary to resist the like force or threat.

No evidence indicated that any officers displayed any criminal intent toward Mr. Merrick. To the contrary, the officers displayed patience, compassion, and concern for Mr. Merrick as well as the community. The firing of Mr. Merrick’s weapon escalated the situation to resolution ending in his final act of putting the officers in jeopardy and potentially the public at large.

Accordingly, as a result of my review I will not be filing criminal charges regarding this incident. I will not be requesting review by a grand jury as I believe it would serve no worthwhile purpose. I would like to thank the Iowa Division of Criminal Investigation for the thorough independent investigation of this matter. I also appreciate the cooperation of the other agencies involved.

Respectfully,



Kasey Earl Wadding
Bremer County Attorney