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TWIN FALLS COUNTY PROSECUTING ATTORNEY

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MEMO

DATE: March 7, 2018

TO: Daniel Clark, Bonneville Prosecuting Attorney

FROM: Grant Loebs, Twin Falls County Prosecuting Attorney

RE: CITF Investigation: Shane McVey

Pursuant to request from Bonneville County Prosecuting Attorney Daniel Clark, I have reviewed the CITF investigation into the January 23, 2018, law enforcement-involved shooting of Shane McVey.

The Parameters of this Decision:

Under the terms of the request made of me by Bonneville Prosecuting Attorney Daniel Clark, I am undertaking in this case to decide one thing: Should any law enforcement officer be charged with a crime based on the events of January 23, 2018 relating to the shooting death of Shane McVey? It is beyond my jurisdiction to comment on any matters such as compliance with departmental policy, as those matters are entirely within the province of the Idaho Falls Police Department.

Pertinent Facts:

Shane McVey was shot and killed by gunfire at approximately 2:17 p.m. on January 23, 2018. Medical reports show that Shane McVey received one gunshot wound, which caused his death.

The shot was fired by Officer Earl Laughter of the Idaho Falls Police Department after Idaho Falls Police responded to a report of suspicious activity in the lot behind the Common Cents convenience store located at 1003 S. Boulevard, Idaho Falls, Bonneville County, Idaho.

Shortly after 2:00 p.m. on January 23, 2018, police were informed that a person was trying to start a fire behind the convenience store. Officer Laughter was the first to arrive at the scene and drove his patrol vehicle to the back of the building where the incident had been reported. Officer Laughter saw a blue Ford pickup truck and a man who appeared to be working on the truck. Officer Laughter asked dispatch for a description of the suspicious man and realized that the man he saw working on the truck was likely the subject of the call.

Officer Laughter parked behind the truck and saw that the man appeared to be changing a tire. Officer Laughter saw that the truck's rear driver's side tire was low. The man was holding a tire iron and there were tools all about. The man walked north, turned left, and walked around the side of the building out of Officer Laughter's view. Officer Laughter and gave dispatch the license plate of the truck.

Officer Laughter investigated the vehicle. Officer Laughter did not see anything that indicated a fire was being started. The license plate on the truck showed the registered owner to be Shane McVey. Officer Laughter ran McVey on his computer and obtained a photograph of McVey.

Officer Laughter learned from dispatch that McVey had numerous warrants. McVey had active arrest warrants for Felony Grand Theft with a Persistent Violator Enhancement, issued out of Bingham County on 9/29/2017, and a warrant for Misdemeanor Driving Without Privileges, Possession of Drug Paraphernalia, and Failure to Appear out of Bonneville County, issued on 1/4/2018. Officer Laughter never dealt with McVey but knew about McVey from other law enforcement officers who had. McVey was known to be a fighter, violent with law enforcement officers, and uncooperative.

Officer Laughter began to search for McVey because of the numerous warrants for his arrest and to continue the investigation of the suspicious activity behind the Common Cents.

From witnesses, Officer Laughter learned that McVey had left the area on foot. Officer Laughter returned to his patrol vehicle and drove to where McVey was last seen. Officer Laughter broadcast this information over the police radio.

Officer Laughter saw fresh tracks in the snow going southbound which led into a carport between two buildings. Officer Laughter saw a gathering of footprints in front of a door leading to a basement. The door had been knocked off its hinges. Officer Laughter requested another officer to respond via police radio. Officer Laughter heard rustling sounds and movement coming from behind the door. Officer Laughter opened the door, which led to stairs going down into a basement. There were no lights in the basement and it was relatively dark. Officer Laughter shined his flashlight down the stairs. Officer Laughter identified himself as a police officer and called into the basement ordering whoever was there to show himself. A man, later identified as McVey, came out of the basement area with one hand behind his back and his other hand holding an object.

Sergeant McKenna soon arrived. Sergeant McKenna could see Officer Laughter in the breezeway near the doorway to the basement, which was open at the time. Officer Laughter had his service pistol out and was standing in the open doorway in front of the door, giving verbal commands.

Due to Officer Laughter having his pistol out and his assumption that the police officers would not be immediately pursuing the suspect into the basement, Sergeant McKenna decided to un-holster his Taser.

Officer Laughter gave verbal commands for McVey to stop and show his hands. McVey refused the commands. McVey began to ascend the stairs towards Officer Laughter in a threatening manner. Officer Laughter again gave verbal commands for McVey to stop and show his hands. Again McVey refused to comply.

Sergeant McKenna took up a position next to Officer Laughter and saw that McVey was about five steps from the top of the stairwell. McVey suddenly charged towards the officers, covering the last few stairs very quickly. McVey brought his right hand up, aimed at Officer Laughter and fired a stream of pepper spray¹ at Officer Laughter. Officer Laughter feared that he would be incapacitated by the pepper spray and that McVey would overtake him and try to take his gun, which was already out of the holster.

Officer Laughter fired one round from his department issued Glock 17, 9mm pistol, striking McVey.

More Idaho Falls Police Officers and Idaho Falls Fire Department medical personnel were called to assist. Idaho Falls Police Officers performed CPR on McVey until relieved by the Idaho Falls medical personnel. McVey was transported by ambulance to the Eastern Idaho Regional Medical Center (EIRMC) where he was pronounced dead. An autopsy of McVey showed that he died from a single gunshot wound. Toxicology reports indicated the presence of methamphetamine and amphetamine in his blood. A search of McVey's truck uncovered a syringe from the driver's door pouch, and two syringes, one with dark liquid that tested presumptively positive for methamphetamine, found inside a backpack. Officers at the emergency room also found that there were needle tracks on McVey's arms.

The investigation also found that McVey had sent a three-page hand-written letter, signed "Shane McVey" to the Bingham County Prosecuting Attorney complaining about a recent Grand Theft charge. McVey concludes this letter with:

"I've been in jail and I'm not going back. I've led a good life except the last year and a half. I gotta file bankruptcy and start all over at age 54. I'm at that (sic) that I don't give a fuck. [unreadable] and you now have my address. I'm not going to jail again over this. So know this Sir, when your boys in blue come to get me you ask yourself if this bullshit charge is worth my life, cuz I swear to my dear GOD all mighty I'm gonna make them shoot me. If I have to choss (sic) between jail or going to my maker, I'm going to the grave. Sincerely Shane McVey"

¹ At the time of this memo, we are still awaiting testing results as to the exact substance McVey sprayed at Officer Laughter.

Analysis Synopsis:

After reading the reports, conferring with the CITF investigators, reviewing evidence from the incident, and considering the all relevant information, including the facts related above, I have concluded that there is not sufficient evidence to support a criminal charge against Officer Laughter for the shooting of Shane McVey. The facts in this case reveal that Mr. McVey, through his unlawful acts, made himself a clear and immediate danger to law enforcement officers who were engaged in the lawful performance of their duties, and a potential danger to the public at large. The actions of Officer Laughter, therefore, were justified under Idaho Codes 18-4009 (1), (3), & (4), Idaho Code 18-4010, and 18-4011(2) and do not form the basis of a criminal prosecution.

Detailed Analysis:

I. Under Idaho Code 18-4009, homicide is “justifiable” when committed by any person in any of the following cases:

“1. When resisting any attempt to murder any person, *or to commit a felony, or to do some great bodily injury upon any person*; or, ...

3. *When committed in the lawful defense of such person ... when there is reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished...*

4. *When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed...*”

Based on the facts of this case, Officer Laughter was justified to use deadly force under Idaho Code 19-4009 because:

--he was resisting McVey’s attempt *to commit a felony, or to do some great bodily injury upon any person* (to wit: a violation of Idaho Code 18-915. “ASSAULT OR BATTERY UPON CERTAIN PERSONNEL — PUNISHMENT (FELONY).”²)

--he was lawfully defending himself where there is *reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished*;

² (1) Any person who commits a crime provided for in this chapter against or upon a ... peace officer, ... the punishment shall be as follows: (a) For committing battery with intent to commit a serious felony the punishment shall be imprisonment in the state prison not to exceed twenty-five (25) years... (3) For committing a violation of the provisions of section 18-903², Idaho Code, except unlawful touching as described in section 18-903(b), Idaho Code, against the person of a former or present peace officer, sheriff or police officer: (a) *Because of the exercise of official duty or because of the victim’s former or present official status*; or (b) *While the victim is engaged in the performance of his duties and the person committing the offense knows or reasonably should know that such victim is a peace officer, sheriff or police officer; the offense shall be a felony* punishable by imprisonment in a correctional facility for a period of not more than five (5) years, and said sentence shall be served consecutively to any sentence being currently served.”);

--or he was attempting *by lawful ways and means, to apprehend any person for any felony committed* (to wit: apprehending a suspect wanted for a felony warrant).

II. Also, under Idaho Code 18-4010, Officer Laughter's fear of the commission of a felony attack on him by McVey was not based on "bare fear." Instead, it appears the circumstances here would have been "sufficient to excite the fears of a reasonable person." In analyzing this it is important not just to recognize the threat posed by McVey's actions in lunging at Officer Laughter and firing pepper spray at him, but consider also what Officer Laughter knew about his assailant. Officer Laughter knew McVey had a long criminal history. Mr. McVey's history dates back to 1981. His Post-juvenile criminal history included charges for Possession of Stolen Property, Grand Theft, Possession of Controlled Substances, Possession of Drug Paraphernalia, Obscene Conduct, Theft of Vehicle parts or Accessories, Probation Violations, Failure to Appear violations where warrants were issued, Theft, Driving Without Privileges, Forgery, Obscene Conduct, Criminal Trespass, Contempt of Court, and motor vehicle offenses. Officer Laughter also knew that McVey was known to be a fighter, was violent with law enforcement officers, and that he had previous charges with the Idaho Falls Police Department for Aggravated Assault with the enhancement of Use of a Deadly Weapon in the Commission of a Felony and charges of Resisting or Obstructing Officers.

III. Finally, under Idaho Code 18-4011, "Justifiable Homicide By Officer," "homicide is justifiable *when committed by public officers* and those acting by their command in their aid and assistance...when *reasonably necessary in overcoming actual resistance to the execution of some legal process...*" The use of deadly force in such a case is justified only if "the officer has probable cause to believe that the resistance poses a threat of death or serious physical injury to the officer or to other persons." 18-4011 also justifies homicide by a peace officer "when reasonably necessary in order to prevent the escape of any person *charged with or suspected of having committed a felony*, provided the officer has probable cause to believe that ... the person suspected of or charged with the commission of a felony poses a threat of death or serious physical injury to the officer or other persons."

Here, Officer Laughter was clearly lawfully engaged in "the execution of some legal process" and it would be impossible to prove that Officer Laughter, knowing all he knew and seeing all he saw, did not have probable cause to believe McVey posed a "threat of death or serious physical injury to the officer or other persons."

Conclusion:

I have concluded after reading the reports, reviewing the evidence, and conferring with the detectives from the Idaho State Police who headed up the Critical Incident Task Force investigation, that there is insufficient evidence to support a criminal charge against any law enforcement officers for the January 23, 2018, shooting of Shane McVey.

Officers from the Idaho Falls Police Department were lawfully engaged in the apprehension of Shane Earl McVey for questioning and arrest after learning that McVey had outstanding warrants and was the subject of a suspicious person investigation possibly involving arson.

Officers are authorized to use all reasonable and necessary means to apprehend fugitives and are justified in using deadly force to overcome resistance when they have probable cause to believe the resistance poses a threat of death or serious physical injury to the officers or other persons. McVey's behavior and history of crime, violence and resisting the police provided that probable cause.

When Officer Laughter located McVey in the basement of the apartment building located at 1098 S. Boulevard, Officer Laughter was in uniform and repeatedly identified himself as a law enforcement officer. Officer Laughter was shouting lawful commands at McVey at a volume and with sufficient clarity that citizen witnesses heard them.

McVey demonstrated aggressive hostility to the officers and a refusal to comply with lawful orders designed to defuse the situation. McVey resisted Officer Laughter's commands to stop and show Officer Laughter his hands and instead attacked Officer Laughter with pepper spray, which gave Officer Laughter a reasonable fear that he and Sergeant McKenna could have been injured and that McVey could seized Officer Laughter's pistol—making McVey an even greater danger to officers and the community at large.

For these reasons, I decline to file any criminal charges against Officer Laughter or any other officers involved in this incident.

A handwritten signature in dark ink, appearing to read "Grant Rebo". The signature is fluid and cursive, with a large, stylized initial "G" and a long, sweeping underline.