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Sent via Electronic Mail

Chief Avery Moore
Tacoma Police Department
3701 S. Pine Street
Tacoma WA 98409

Re: Officer Involved Use of Force Investigation
Pierce County Force Investigation Team Number: 2102301794
Prosecutor Case Number: 202101235

This case involves Tacoma police officers who were unlawfully restrained and attacked in their patrol cars by a violent mob while on duty. As one of the patrol cars drove away from the attackers, individuals who were blocking his car were knocked down and one person appears to have been run over by a tire. We will not file criminal charges against any of the involved officers, nor would we file charges against anyone, police officer or not, who had been similarly unlawfully restrained and attacked by a violent mob.

On January 23, 2021, numerous cars and a crowd consisting of over 100 spectators blocked the intersection of South 9th St. and Pacific Ave. for an illegal street racing meet. Emergency dispatchers received multiple reports of the activity and Tacoma Police Department patrol units responded. Police Patrol Officer (PPO) Khanh Phan operated the first vehicle to arrive near the scene, with PPO Christopher Bain close behind him in another patrol car. As those first two police patrol cars slowly approached the intersection on 9th St., they had emergency lights and sirens activated. A spectator, Anthony Huff-McKay, began waving his arms and shouting, "Block the cops," which he shouted numerous times. Huff-McKay also shouted, "Get the fuck over here," and "Let's go." The spectator crowd responded and swarmed around the lead patrol car driven by PPO Phan. A crowd surrounded his patrol car beating on the windows, kicking the car, rocking the car and yelling profanities at the officer. The crowd effectively blocked the patrol car, enabling the street racing cars to flee the scene westbound on 9th St.

While surrounded, PPO Phan's car was struck by a bottle of liquid that had been thrown against the window. PPO Phan tried to back up his patrol vehicle but was unable, as the crowd had moved behind it. PPO Phan believed there was a small opening in front of his patrol car and he drove forward slowly, which knocked down several pedestrians that were near his car.



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One pedestrian, Huff-McKay, ended up under the vehicle and may have been struck or was run over by PPO Phan's rear tire.

A couple of audio/video recordings of PPO Phan's car advancing through the crowd were widely distributed and/or aired on news and social media. Those clips include the sound of an aggressively revving engine that was mistakenly assumed to be the patrol car. The revving engine was not the patrol car. It was one of the street racing vehicles and the loud exhaust is heard on the recording as the vehicle fled from the scene westbound on 9th St.

Investigation

Generally, use of a slow-moving motor vehicle is unlikely to be considered deadly force.¹ Nonetheless, an independent investigation was conducted by the Pierce County Force Investigation Team (PCFIT).² RCW 10.114.011 provides as follows:

Except as required by federal consent decree, federal settlement agreement, or federal court order, where the use of deadly force by a peace officer results in death, substantial bodily harm, or great bodily harm, an independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established in RCW 9A.16.040 and satisfied other applicable laws and policies. The investigation must be completely independent of the agency whose officer was involved in the use of deadly force in accordance with chapter 43.102 RCW. Any rules adopted by the criminal justice training commission must be consistent with chapter 43.102 RCW.

The Criminal Justice Training Commission has adopted rules for independent investigations, specifically WAC 139-12-030. The PCFIT investigation in this case complied with RCW 10.114.011 and WAC 139-12-030. In this case, PCFIT was made up of investigators from Puyallup, Milton, and Bonney Lake police departments. The PCFIT investigators completed conflicts checks, set up family liaisons, and communicated with two community representatives. The investigation was conducted without influence from the Tacoma Police Department.

Summary of Facts

Earlier in the evening, at 5:19 p.m., a complaint came into South Sound 911 of street racers at the intersection of Portland Ave. and East 11th St. When police patrol units arrived at the scene, the vehicles had left the area. The street racers and a crowd of spectators had moved to the intersection of 9th St. and Pacific Ave. in downtown Tacoma. South Sound 911 started receiving calls about vehicles "doing donuts" at that location.

PPO Phan and PPO Bain headed toward 9th St. and Pacific Ave. northbound on Pacific, but the roadway was blocked. PPO Phan turned east on 10th St. then north on A St. PPO Phan

¹ Motor vehicles are not *per se* classified as deadly weapons. See Analysis section below.

² The Office of Independent Investigations created by RCW 43.102 is not yet operational.

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turned westbound on 9th St. to approach the intersection and he could see that PPO Bain was behind him. PPO Phan continued westbound past Court A traveling in the eastbound lane of 9th St. as the westbound lane was blocked by vehicles. PPO Phan had his emergency lights and siren activated. PPO Phan also used his airhorn in an effort to get the crowd to disperse. PPO Bain arrived northbound on A St. and he turned westbound onto South 9th St. behind PPO Phan's patrol car in the eastbound lane. PPO Bain stopped short of Court A.

Both PPO Phan and PPO Bain heard tires squealing and the crowd yelling. PPO Phan saw a white car with spinning tires "drifting" in the intersection. PPO Bain saw a huge smoke cloud around the intersection and he saw a crowd of pedestrians quickly surround PPO Phan's car, which was in front of him. Both patrol cars were using emergency lights and sirens. PPO Phan continued using his air horn. The crowd started violently attacking PPO Phan's patrol car by aggressively punching the windows and kicking the body of the vehicle. PPO Bain saw PPO Phan's vehicle slowly inching forward again through the crowd, but the movement of the car seemed to increase the crowd's hostility. He saw PPO Phan slowly back up, but there were people behind PPO Phan's patrol car. Some of the attackers were taking a step back away from the car in order to achieve more momentum to kick the patrol car. PPO Bain saw PPO Phan's patrol car rocking on its suspension as a result of the crowd's attack.

PPO Bain was trying to formulate a rescue plan because he was fearful for the safety of PPO Phan and fearful for his own safety. Then he watched PPO Phan's vehicle move forward and people from the crowd falling to the side as PPO Phan's patrol car moved forward. When PPO Bain saw PPO Phan drive westbound, the crowd immediately moved toward his own patrol car. He was able to speed away southbound on Court A. PPO Bain heard radio traffic about Molotov cocktails, but he did not see any.³

PPO Rader Cockle heard PPO Phan over the radio report that his car was being kicked and punched. He responded to the intersection southbound on Pacific Ave. He could see the intersection at 9th St. was blocked by vehicles and there were about 100 spectators in the intersection and more on the sidewalks. PPO Cockle had activated his overhead emergency lights and siren and was also using his airhorn trying to disperse the crowd. He saw a disturbance on the west side of the intersection and then saw PPO Phan's patrol car drive through the intersection and up 9th toward Commerce St. Immediately, several adult males sprinted toward his car and started trying to open the driver's door and striking the driver-side of his car. More of the crowd surrounded his car and he heard people screaming "Fuck you," "Get him," "Pull him out," "Drag him out," and "Kill that cop." PPO Cockle saw someone lying in the street and thought it might be PPO Phan, but he got close enough to see it was someone else who needed medical aid. He used his radio to call for every available unit to respond. He tried to make his way in his patrol car diagonally across the intersection but vehicles moved to box him in, so his patrol car was stationary. The crowd continued to

³ Molotov cocktail is a hand-thrown incendiary device constructed with a container filled with a flammable substance and a fuse.

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surround him and the attack on his car intensified. He heard what sounded like hard metal hitting the passenger side of his car. He put his car into reverse but immediately realized he had no visibility. He saw and heard his rear window shatter. He feared that with the window gone someone in the crowd would be able to access his loaded rifle, and the crowd was still yelling that they were going to kill him.

He used his public address loudspeaker to issue warnings to the crowd, which seemed to further enrage them. He announced that he would ram the vehicles blocking him, which caused one of the vehicles to move and allowed PPO Cockle to drive southbound on Pacific Ave. and away from the mob.

PPOs Phan, Bain, and Cockle all expressed fear that they would be dragged from their cars and killed by the mob. PPO Phan described his past experience with street racers, specifically that arriving with lights and sirens would disperse the crowd. The crowd on January 23 responded much differently than PPO Phan's past experience. PPO Phan waited for PPO Bain to arrive before moving forward slowly in an attempt to disperse the crowd – he was using his lights, sirens and air horn. The crowd suddenly turned toward him and quickly surrounded his patrol car. He described the crowd as “extremely hostile, yelling and cussing at me,” with statements such as “Fuck you” and “Get the fuck out of here.”

PPO Phan saw crowd members' angry faces inches from his own as they yelled, with clenched fists and middle fingers displayed. People were pounding their fists on his patrol car windows to the point he feared they would break the glass. He described the situation as a “mob frenzy,” with the crowd striking and rocking his car as they also blocked his view out of the vehicle's windows. PPO Phan saw and heard what appeared to be a glass bottle with liquid breaking against and running down his left rear passenger window. He recalled thinking the bottle was a Molotov cocktail that would ignite and cause his fuel tank to catch fire.

His hearing and vision were obstructed by the sounds and presence of the crowd and he described sheer terror and fright and felt he was seconds away from dying at the hands of the angry crowd. PPO Phan believed that the crowd intended to pull him out of the patrol car or set his vehicle on fire with him inside of it. PPO Phan knew that PPO Bain was behind him and he thought PPO Bain's vehicle was similarly surrounded.

PPO Phan recalled a safety bulletin about “street racers” being armed and he thought about a Seattle incident in which officer was attacked with fire while in a patrol vehicle. PPO Phan considered his options: using a firearm or backing up. Neither option seemed feasible. He tried and was unable to use the rear camera. He thought he had a momentary gap in front of him and he slightly accelerated his patrol car to make it through the gap before it closed again. He felt as though his car struck one or more people as he tried to escape the crowd. He drove westbound on 9th and made a U-turn at Commerce St. with the intention of returning to check for injured people. A silver truck was backing rapidly toward him with the crowd chasing, and he retreated by turning northbound onto Commerce St. He staged at 7th and Commerce.

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PPO Cockle also recalled seeing a safety bulletin about armed "street racers" and feared he would be shot. As the crowd was trying to open his door, he felt at any moment that his driver-side window or door latch would fail and he would be drug out of the vehicle and beat to death as it was live-streamed on social media. PPO Cockle tried to back up, but he had no rear visibility because of the crowd.

PPO Cockle heard radio traffic about Molotov cocktails and he thought they were being thrown at his vehicle. PPO Cockle used his public address system to warn a vehicle blocking traffic that he was going to ram it. When the blocking vehicle moved out of the way, PPO Cockle drove southbound on Pacific Ave. away from the attackers. Later he joined the contact team who entered the scene on foot to render aid to Mr. Huff-McKay.

PPO Travis Waddell, who was in a two-person unit with PPO Eddy Batres, relayed that as they were arriving in the area, he believed there was a Molotov cocktail being thrown by a member of the crowd. He described the object as a cylindrical object, reflective, possibly a bottle, that had a light colored object on it, possibly a towel or rag. The object was thrown at the southbound patrol car in the intersection, which would have been PPO Cockle's patrol car. PPO Waddell announced over the air, "Baker 3-1-4, I thought I saw somebody throw a Molotov cocktail at 9th and Pacific."

About two minutes later, PPOs Waddell, Batres, Cockle and Bain joined together as a "contact team" and approached the injured party, Huff-McKay, to render aid. PPO Waddell recalled seeing broken glass in the same area he'd witnessed the possible Molotov cocktail being thrown. By 6:33 p.m. the scene was safe for Fire personnel and an ambulance crew to tend to Mr. Huff-McKay and transport him from the scene.

The patrol cars of PPOs Phan and Cockle were both damaged. PPO Phan's car had significant damage to the driver's door, and the operation of the door itself was hindered. There was body damage to both sides of the vehicle near the front doors from apparent impacts. There was evidence of multiple impacts to the vehicle, including hand and footprints, but no discernable fingerprints. There was evidence of a liquid substance running down the rear passenger door.

PPO Cockle's car had the rear window shattered near where he stowed a loaded rifle. The interior bars were bent, the rear passenger window was pulled out of the track, and there was body damage from impacts and dents to the vehicle from being struck or kicked, including footprints on the vehicle.

PCFIT interviewed over 20 other witnesses to these events. The interviews constitute hours of recorded statements. Six witnesses identified themselves as victims of PPO Phan. Four of them were interviewed.

Tavon Williams, age 43, did not call police, but he was interviewed by local news media claiming that he had leg pain and was no longer able to perform his work as a barber. The

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interviews included his attorney. PCFIT investigators contacted Mr. Williams and he agreed to be interviewed with his attorney present. He told police he was unexpectedly struck from behind while he was using his own cell phone to video record events. He said he did not see or hear the police. PCFIT investigators had a search warrant for Mr. Williams' cell phone to review video footage, but when shown the warrant, Mr. Williams and his attorney refused to provide the cell phone to investigators.

PCFIT investigators were able to identify Mr. Williams in video recordings from the scene as he was wearing a distinctive jacket. Recordings showed that Williams stood at the street corner of South 9th St. and Pacific Ave. for over thirty minutes after the incident, did not identify himself to an officer when he and other subjects were asked if they were witnesses, and he appeared to be walking normally when he eventually left the scene on foot. Investigators learned that Mr. Williams was released from the hospital with no scheduled follow-up care.

Ian Leach, age 18, called South Sound 911 the night of the event and reported that he had knee pain. Investigators interviewed Mr. Leach in the days following the event. He was released from the hospital with no scheduled follow-up. He gave a very detailed account of standing near the front fender of PPO Phan's patrol car. He heard someone shouting, "Block the cops." He watched as the patrol car backed up while people were standing behind it. He said he did not follow the patrol car as it went backwards, but others in the crowd did. Mr. Leach denied seeing any street racing activity, hearing any street racing, or knowing about a street racing event. PCFIT investigators were not able to identify Mr. Leach in video footage from the scene, but noted there were several individuals whose faces were concealed by hooded sweatshirts who were in the general areas as described by Mr. Leach.

Tavian Jordan-Layacan, age 22, called police that evening to report that he had been injured. PCFIT investigators interviewed him at the hospital. Mr. Jordan-Layacan's injuries consisted of abrasions and leg/ankle pain. He reported that he had been downtown taking pictures with friends when he happened across the street racer event. He said he was starting to record the arriving police car with his phone, standing about fifteen feet away in a cross walk when he saw others being hit by the hood of the patrol car. He turned his back and was struck from behind.

The PCFIT investigators were able to review various video and audio recordings from the event. The video evidence conflicts with Mr. Jordan-Layacan's statements to the investigators. Mr. Jordan-Layacan can be seen in the video recordings wearing a Seattle Sonics jersey. He was enthusiastically participating in both of the street racing events, at times sitting in the window frames of the vehicles as they performed "donuts." Mr. Jordan-Layacan was also on foot in the intersection, apparently "hyping" and "vibing" for the crowd. He was using hand/arm gestures and dance-like movements for the cameras recording his activity. At the time of the incident involving PPO Phan's patrol vehicle, Mr. Jordan-Layacan could be seen quickly moving to the area of the front push bumper of the patrol car. Just prior to being struck,

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Mr. Jordan-Layacan turned his back to the patrol car, appeared to be leaning against the hood and/or push bumper, and was "vibing" toward the rest of the crowd.

Anthony Huff-McKay, age 21, was transported by ambulance from the scene to the hospital. He had a partially collapsed lung, leg pain and general pain. It was relayed to investigators that he was driving around and coincidentally found the street racing "meet" and was videotaping from the sidewalk. His cell phone was seized pursuant to a search warrant. Mr. Huff-McKay described how the crowd had swarmed PPO Phan's patrol car with "everyone attacking it" as he was video recording it because it was "crazy to me," and that he was standing in the crosswalk when he was run over by the patrol SUV. Mr. Huff-McKay claimed no affiliation with the "street racers" at the incident and relayed that he was just at the wrong place at the wrong time.

Medical records verified Mr. Huff-McKay's injuries to include general abrasions, and leg and general pain. A CT scan showed "a tiny LEFT apical pneumothorax, incompletely visualized," but it was not visualized in a subsequent radiograph. He was discharged after being held for observation with no scheduled follow-up care aside from pain management measures. Investigators found that he had active arrest warrants out of Kent for street racing violations, and he had been arrested by Tacoma Police in December of 2020 for participating in a street racing event. Conflicting with his recorded statement to investigators, video footage from his mobile device more accurately depicted his role in the events.

Based on review of hours of video evidence, it is clear Mr. Huff-McKay was participating as a spectator at both the Portland Ave. and Pacific Ave. events that evening. Mr. Huff-McKay was video recording the cars doing "donuts" as he dodged the cars and attempted to touch their back bumpers as they sped past. He also video recorded the incident involving PPO Phan's patrol vehicle, documenting how he had quickly moved in front of the arriving patrol car and was repeatedly shouting "Block the cops!" and "Get the fuck over here!" to others in the crowd. His final exclamation directed toward PPO Phan's patrol car prior to the patrol car running over him was, "What's up, bitch!?"

Terence Martin, a 20-year-old male, called law enforcement the day after the incident to report that he had been injured. He was hesitant when investigators contacted him to provide a statement, even after being offered the opportunity to provide one via video conferencing. After many attempts to contact him, Mr. Martin would not respond to investigators. Mr. Martin's father told investigators that Terence was not injured and had not sought medical treatment. His father said that Terence's concern was whether the incident may have exacerbated a prior unrelated knee surgery. He agreed to contact investigators if he learned anything else from his son.

Matthew Herrington, a 31-year-old male, called South Sound 911 to report his injuries following the incident. In the recorded call to 911, Mr. Herrington stated that he had been run over by the patrol car. When asked for his location so law enforcement could obtain his

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statement, Mr. Herrington told the call receiver that he did not wish to meet with law enforcement and was "scared." He agreed to provide his phone number. When called by investigators, Mr. Herrington declined to provide a statement and referred investigators to his personal injury attorney's law firm. After confirming that Mr. Herrington was their client, the attorney also refused to provide a statement or provide a clothing description to investigators so he could be identified in video footage. Mr. Herrington's photo was posted by online media sources, who cited Mr. Herrington's Facebook posts as their news source. One of the photos depicted Mr. Herrington with a bump to his head. It was possible that Mr. Herrington's reluctance to meet with law enforcement was related to the fact he had multiple outstanding felony warrants for his arrest.

The scene, intersection of 9th and Pacific, was photographed and scanned by the MCRT (Major Collision Response Team). Although the mention of potential Molotov cocktails was known to the PCFIT investigators at the time of their activation, the specific locations of suspected devices could not be identified until officer statements were obtained days later. As a result, the photos and scans did not provide enough resolution to verify evidence of these devices at the scene. During the processing of the intersection scene and the two damaged Tacoma Police vehicles, none of the investigators or other staff relayed detecting odors of accelerants typical of these types of incendiary devices. Also as a result of the delayed statements, the intersection crime scene was cordoned off only in the immediate area of South 9th St. and Pacific Ave. This scene did not encompass the area of South 9th St. and Commerce, where it was later discovered that a member of the crowd threw at least one object at a patrol vehicle.

Video Evidence

The case involved a large amount of audio/video media.⁴ Much of the video footage had been distributed to social and news media outlets before PCFIT first responded. Sources of the video footage included various entities such as participants at the event, businesses, police body-worn cameras, and uninvolved witnesses. The handling and review of event video was assigned to one member of PCFIT, and subsequently the team requested the help of the FBI to best process this evidence for the case. A multiplexed, stabilized, time-synchronized, slow-motion video compilation created by the FBI technicians served as one of the most comprehensive representations of the many hours of footage of the event. This compilation included video from the perspective of one of the victims, footage from witnesses amongst the surrounding crowd, and an overview from a neighboring business.

An audio/video clip of PPO Phan's car advancing through the crowd was aired on local news and social media. The clip includes audio of an aggressively revving engine which may have been assumed to be emanating from the patrol car. From a review of the video clips, it is apparent the revving sound did not come from the patrol car; the sound came from a street racing vehicle with loud exhaust. The vehicle fled the scene westbound on 9th St.

⁴ In addition to audio and video recordings, the PCFIT investigators also reviewed radio traffic and Computer Aided Dispatch logs related to these events.

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The audio/video footage captured Mr. Huff-McKay repeatedly shouting at the crowd to "Block the cops" and "Get the fuck over here." The footage also captured the crowd that aggressively and intentionally surrounded PPO Phan's patrol car, blocking it and striking it while shouting at PPO Phan.

PCFIT identified an officer safety bulletin that was disseminated to Tacoma Police officers a couple of weeks prior to this event. The bulletin warned of street racers being armed and having been caught with handguns.

In consulting with the LETCSA De-escalation Program Manager with the Applied Skills Training Division of the Washington State Criminal Justice Training Commission (CJTC,) PCFIT investigators learned that the CJTC curriculum does not address or train officers to deal with a "crowd surrounding the patrol car" scenario.

Analysis

The statutory definition of deadly force found in RCW 9A.16.010(2) is as follows:

Deadly force means the intentional application of force through the use of firearms or any other means reasonably likely to cause death or serious physical injury.

A motor vehicle is not a *per se* deadly weapon, but can be considered to be a deadly weapon only if, in the circumstances in which it is used, it is readily capable of causing death or substantial bodily harm. RCW 9A.04.110(6). Here, PPO Phan intentionally inched his car forward and then slowly drove into pedestrians that were either touching or very near to his vehicle. PPO Phan's stated intent was to avoid hitting any persons. Given the circumstances in which his patrol car was used, it is unlikely his patrol vehicle could be considered a "deadly weapon." For purposes of this analysis, however, we will assume his intentional forward movement into pedestrians was "force likely to cause death or serious physical injury," so we will analyze his use of his vehicle under the applicable deadly force standard.

RCW 9A.16.040 governs the use of deadly force by law enforcement officers who are acting to arrest or apprehend a suspect or suppress an armed riot. Although PPO Phan was a public officer performing his legal duty when he responded to multiple reports of street racers blocking the intersection, he was not acting to arrest or apprehend a suspect or to suppress a riot when he drove forward into a crowd of people. In this situation, PPO Phan was not acting pursuant to RCW 9A.16.040.

In addition to the statutory standards defining permissible use of deadly force by law enforcement officers, law enforcement officers also have the right, like anyone else, to act in defense of themselves and others. RCW 9A.16.040, which governs the use of deadly force by

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law enforcement, specifically provides that the statute "shall not be construed as [a]ffecting the permissible use of force by a person acting under the authority of...RCW 9A.16.020."

The general self-defense statute, RCW 9A.16.020, provides as follows:

The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases:

(1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;

...

(3) Whenever used by a party about to be injured, or by another lawfully aiding him or her, in preventing or attempting to prevent an offense against his or her person, or a malicious trespass, or other malicious interference with real or personal property lawfully in his or her possession, in case the force is not more than is necessary;

"Necessary" means that no reasonably effective alternative to the use of force appeared to exist and that the amount of force used was reasonable to effect the lawful purpose intended." RCW 9A.16.010(1).

The applicable standards are found in subsection 3 of RCW 9A.16.020. Assuming PPO Phan's act of driving forward slowly was an intentional use of force, force is lawful if used by a party about to be injured to prevent an offense against their person or to prevent malicious interference with property, in case the force is not more than is necessary.

Here, there is overwhelming evidence that there was a concerted effort by a large crowd to swarm, impede, block, and damage PPO Phan's patrol car. The crowd effectively blocked his vehicle from moving forward or backward. The crowd was loud, threatening, and violent toward him. Individuals were beating on the windows such that he feared the windows would break. Individuals were issuing threats and violently attacking the vehicle, to include hitting the vehicle with a container or liquid believed by PPO Phan to be a Molotov cocktail. PPO Phan described that he felt he was seconds away from dying at the hands of the angry crowd and he believed they intended to pull him out of the patrol car or set his vehicle on fire with him inside of it. Whether or not the container of liquid was a Molotov cocktail is uncertain, but PPO Phan was aware his vehicle had been hit with a container of liquid. People are entitled to act on appearances in defending themselves, even if it might appear afterwards that they are mistaken.⁵ WPIC 16.07. PPO Phan's belief that he was in actual danger is amply supported by the evidence, and therefore reasonable.

⁵ WPIC 16.07 provides: "A person is entitled to act on appearances in defending himself if that person believes in good faith and on reasonable grounds that he is in actual danger of great personal injury, although it afterward might develop that the person was mistaken as to the extent of the danger."

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In addition to posing a threat to PPO Phan personally, the crowd was striking, kicking, and rocking the patrol car. The vehicle sustained significant damage to the driver's door and the operation of the door itself was hindered. There was body damage to both sides of the vehicle, near the front doors, from apparent multiple impacts to the vehicle. RCW 9A.16.020(3) provides that the use of force upon or toward the person of another is not unlawful if necessary to prevent malicious interference with property. Knowingly and maliciously creating a risk of interruption or impairment of service to the public by physically damaging or tampering with an emergency vehicle is a felony.⁶ The individuals in this crowd who were violently striking, kicking and rocking PPO Phan's patrol car while shouting threats were committing the felony crime of Malicious Mischief.

PPO Phan was trapped in his vehicle and surrounded by a violent mob. Individuals in the crowd who were knowingly restraining PPO Phan's vehicle were committing the felony of unlawful imprisonment.⁷ Individuals in the crowd prevented PPO Phan from carrying out his duty to identify and detain vehicles and individuals who were actively participating in the illegal street racing event. These individuals committed the crime of obstructing a law enforcement officer.⁸

PPO Phan's decision to drive forward was not done with the intent of hitting or harming any individual or member of the crowd around his car. He moved his car forward only when he thought he saw a bit of a "gap" in the crowd and tried to escape from the attack. Using his vehicle in this manner, to escape from the immediate threat he was facing, was reasonable under the circumstances. Any law enforcement officer or anyone else in a similar situation has the right to take steps to defend themselves – or remove themselves – from danger. In this case, driving forward was necessary for PPO Phan to protect and defend himself from the attacking mob.

Given the circumstances, there was no reasonably effective alternative to PPO Phan. His use of lights and siren had no effect on de-escalating or dispersing the crowd. His use of the airhorn also did not de-escalate or disperse the crowd. PPO Cockle reported that his use of the airhorn

⁶ RCW 9A.48.080 provides:

- (1) A person is guilty of malicious mischief in the second degree if he or she knowingly and maliciously:
- (a) Causes physical damage to the property of another in an amount exceeding seven hundred fifty dollars;
 - (b) Creates a substantial risk of interruption or impairment of service rendered to the public, by physically damaging or tampering with an emergency vehicle or property of the state, a political subdivision thereof, or a public utility or mode of public transportation, power, or communication; or
- (2) Malicious mischief in the second degree is a class C felony.

⁷ RCW 9A.40.040 provides:

- (1) A person is guilty of unlawful imprisonment if he or she knowingly restrains another person.

⁸ RCW 9A.76.020 provides:

- (1) A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.

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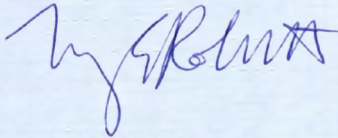
actually seemed to further enrage the crowd. Instead of de-escalating and dispersing, the crowd reacted to the directives shouted by Mr. Huff-McKay to "Block the cops." PPO Phan and other officers at the scene considered and ruled out the use of firearms or less lethal alternative means on any individuals in the crowd.

The law does not require anyone, whether a police officer or any other driver, to endure being unlawfully restrained and held captive in a motor vehicle by an unruly, threatening, and dangerous mob.

Conclusion

PPO Phan's actions were reasonable and necessary to protect himself from death or injury and to remove himself from imminent danger. He took a measured response to an unruly, aggressive, and dangerous mob. To the extent moving his vehicle forward into an unruly mob of individuals who intentionally positioned themselves in front of his vehicle constitutes intentional use of force, it is justified under these circumstances.

Sincerely,



Mary E. Robnett
Pierce County Prosecuting Attorney

cc: Captain Ryan Portmann, Puyallup Police Department
Correspondence File