



Pierce County

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March 29, 2023

Sent via Electronic and U.S. Mail

Chief Avery Moore
Tacoma Police Department
3701 S. Pine Street
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Re: Officer Involved Fatal Incident – Michael R. Mercado
PCFIT #2207501387
TPD #2207501342
Date of Incident: March 16, 2022

Dear Chief Moore:

We have reviewed the investigations stemming from the officer involved shooting death of Michael R. Mercado on March 16, 2022, in the City of Tacoma. The two involved officers were Erika Haberzettl and Jared Levitt. An independent post-shooting investigation was conducted by an Independent Investigation Team (IIT), the Pierce County Force Investigation Team (PCFIT), in compliance with RCW 10.114.011, as well as the Investigative Services Unit (ISU) of the Pierce County Prosecuting Attorney's Office, and the Pierce County Medical Examiner's Office. After reviewing the circumstances of this shooting, we conclude that the use of deadly force by the two officers was justified and lawful.

SUMMARY OF FACTS

The following is a summary of the salient facts. It is not intended to be a complete restatement of the facts as set forth in the investigative reports. The majority of the information related to the observations and actions of Police Patrol Officer (PPO) Haberzettl and PPO Levitt, to include any quoted material, is taken directly from their written statements and body-worn camera footage.

Officer Erika Haberzettl

PPO Haberzettl is a 20-year veteran of the Tacoma Police Department. On the date of this incident, she was assigned to Patrol Operations, and was driving a fully marked police patrol SUV. She was in full uniform, and was carrying her department issued duty weapon, a Glock 17 9mm handgun.



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This incident occurred on March 16, 2022, beginning at approximately 1525 hours. As described below, this incident evolved rapidly. PPO Haberzettl was on duty and had just finished responding to an unrelated call at the Tacoma Mall Nordstrom store. She was leaving the mall via South 45th Street to exit onto Pine Street. As she traveled down the hill, westbound on South 45th Street, she observed a dark colored car heading up the hill that was occupied by a male driver and female passenger. The male driver, Chandler Muncha, and the female passenger, Thalia Crispin, were "frantically waving" to get her attention. She stopped her patrol SUV approximately halfway down the hill on South 45th Street and exited her vehicle to contact them. The two reported that someone had hit their car, and they asked PPO Haberzettl to "go get him." The two were distraught, upset, and talking at the same time, making it difficult to understand what they were saying, but the officer understood that someone had run into their car as well as other cars.

While speaking to Mr. Muncha and Ms. Crispin, PPO Haberzettl heard a revving engine and a screeching sound. She looked uphill and saw a red Saab vehicle approaching her location at a high rate of speed. The officer noted that the car was being driven recklessly, and it appeared to almost lose control before briefly coming to a stop. Mr. Muncha and Ms. Crispin immediately stated, "That's him, that's him!"

The driver of the red Saab, Michael Mercado, stopped his car momentarily and quickly exited his car while it was still running, leaving the driver's side door open, and leaving the car in "Drive." The Saab began rolling downhill shortly after he exited. He immediately began approaching PPO Haberzettl on foot and did not comply with her commands to get back into the car. Instead, Mr. Mercado moved towards the officer in a manner that she and others described as being aggressive. PPO Haberzettl saw that he was holding what appeared to her to be a dark colored handgun as he advanced on her. As described more fully below, the object that Mr. Mercado was holding was later determined to be a fixed blade knife, still in its black plastic sheath, that was shaped like a gun. Mr. Mercado was holding the knife in the same manner that someone would hold a handgun.

At the same time that Mr. Mercado began advancing on PPO Haberzettl, his vehicle began moving downhill, which immediately caught the officer's attention. PPO Haberzettl yelled at him to stop his car, but Mr. Mercado failed to comply with her command. Instead, he raised his arms and brought his weapon into a "shooting position." As he pointed the weapon directly at PPO Haberzettl, she backed up, drew her service weapon, and gave commands to him to "drop it." Mr. Mercado ignored the officer's commands and continued advancing on her position while wielding the knife in a manner that made it look like he was brandishing a firearm. He also challenged the officer to "pull that shit!, pull that shit!" (Apparently referring to her weapon).

Believing that she was about to be shot, the officer fired two rounds at Mr. Mercado with her duty weapon while also trying to back away from him. PPO Haberzettl later reported that she fired at Mr. Mercado to "try and stop him from killing" her, and to stop him from "putting the citizens at risk of serious injury or death." At the time of this incident, there

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were citizens walking and driving in the area, all of whom would have been at risk if Mr. Mercado had actually been in possession of a gun that he started firing.

After firing two rounds at Mr. Mercado, PPO Haberzettl got on her radio and announced "shots fired" while also moving to cover on the passenger side of her vehicle that was still parked in the middle of the roadway. At approximately the same time that PPO Haberzettl was calling out shots fired, Mr. Mercado's unoccupied vehicle struck the officer as it rolled past her location. It appears that it was the open door of the vehicle that struck her. The Saab eventually crashed into another vehicle at the bottom of the hill that was being driven by witness Velita Grant.

PPO Haberzettl again ordered Mr. Mercado to put his gun down, but he still did not comply with her commands despite being shot at. The officer moved around to the rear of her patrol SUV while Mr. Mercado moved to the front of her vehicle. She peered around the passenger side of her SUV in what was likely an attempt to see where Mr. Mercado was at, and again commanded him to "Put the gun down." Mr. Mercado then pointed his weapon at PPO Haberzettl a second time as he also moved towards the passenger side of her vehicle. Fearing again that she was about to be shot, the officer fired two additional rounds at Mr. Mercado, striking him, and causing him to drop to the ground a few feet to the north of the front of her vehicle.

PPO Haberzettl eventually found cover on the south side of an unoccupied black vehicle that was parked on the side of the road (previously occupied by Mr. Muncha and Ms. Crispin). The officer kept her eyes on Mr. Mercado as she began to move forward while still keeping in cover. She wrote in her statement that she intended to try and secure the scene, as well as to provide medical aid to Mr. Mercado. She also reported to dispatch that one person was down and requested priority medical aid.

As PPO Haberzettl approached Mr. Mercado, he rolled to his right side and pointed his finger at her, almost mimicking holding a firearm. He then picked up his weapon again, which he brandished in the officer's direction. PPO Haberzettl retreated to cover behind the unoccupied vehicle. It was at approximately this time that she saw PPO Levitt arriving on scene. PPO Levitt stopped his patrol car just west of where Mr. Mercado was lying. During this time, PPO Haberzettl told Mr. Mercado several times to keep his hands away from the weapon. She also said to PPO Levitt as he got out of his patrol car, "He's got something black in his hand, looks like a firearm."

PPO Haberzettl heard PPO Levitt yell, "Drop it, drop it" and saw Mr. Mercado turn his attention towards PPO Levitt who was standing behind the driver's side door of his patrol car in an almost direct line from where Mr. Mercado was lying. Mr. Mercado did not comply with the commands to drop the weapon. At that time PPO Levitt fired his handgun two times at Mr. Mercado and PPO Haberzettl again yelled at Mr. Mercado, "Put it down!"

PPO Levitt moved to the passenger side of his patrol car, yelled out "Drop it," and then fired four additional rounds at Mr. Mercado. PPO Haberzettl, fearing that Mr. Mercado was going

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to shoot PPO Levitt, fired one additional round at approximately the same time. The officers fired their weapons only after Mr. Mercado repeatedly ignored their commands to drop his weapon. Mr. Mercado lowered his weapon at that point, and no additional shots were fired by either officer. PPO Haberzettl advised that Mr. Mercado still had the weapon in his right hand. Additional officers arrived at that time, and several officers can be heard on body-worn camera footage telling Mr. Mercado to "roll away from the gun."

Subsequent investigation confirmed that PPO Haberzettl fired a total of five rounds from her handgun and PPO Levitt fired a total of six rounds from his handgun.

Despite life-saving medical intervention initiated by Tacoma Police Department officers once Mr. Mercado was safely detained, he was pronounced deceased at the scene. A medicolegal death investigator with the Pierce County Medical Examiner's Office responded to the scene and conducted a scene investigation. Mr. Mercado's body was then transported to the Medical Examiner's Office. The autopsy was conducted by Dr. Karen Cline-Parhamovich, who determined that Mr. Mercado had been shot five times. He had gunshot wounds to his right chest, right forearm, right groin, and left posterior upper arm. His cause of death was determined to be multiple gunshot wounds. His toxicology results were positive for amphetamine, methamphetamine, and THC.

PPO Jared Levitt

PPO Levitt had been with the Tacoma Police Department for over four years at the time of this incident and has prior service with the Seattle Police Department. He reported that he was on duty and working traffic enforcement on the day of this incident. He was driving a fully marked police patrol car and was in full department issued uniform. He recalled that at approximately 1530 hours on March 16, 2022, he was at Tacoma Police Department headquarters on South Pine when he heard a "chaotic" radio transmission from PPO Haberzettl who stated that shots had been fired. The message was repeated along with the location of the shooting near the Nordstrom side of the Tacoma Mall. PPO Levitt also recalled hearing PPO Haberzettl broadcast that the subject was armed with a gun.

PPO Levitt ran to his patrol car and responded with emergency lights and siren activated. He activated his body-worn camera as he drove to the shooting location. As he attempted to turn into the Tacoma Mall complex, he saw a red sedan and a silver SUV at the bottom of South 45th street, which is steeply graded. The red car was Mr. Mercado's Saab, which had collided into Velita Grant's silver SUV. The officer then saw PPO Haberzettl's patrol SUV parked on South 45th Street, facing west towards Pine Street. He also saw Mr. Mercado lying in the middle of the roadway in front of the patrol SUV. PPO Levitt observed PPO Haberzettl standing behind a vehicle on the south side of the roadway. Her gun was drawn, and she was focused on Mr. Mercado.

PPO Levitt stopped his patrol car approximately 20 yards west of where Mr. Mercado was lying on the ground. As he began to exit his vehicle, he heard PPO Haberzettl shout out a warning to him that Mr. Mercado either had a gun or had pointed a gun. PPO Levitt stepped out of his vehicle while drawing his department issued pistol. He then saw Mr. Mercado

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"fumbling" for what he described was a black object that was lying on the ground along Mr. Mercado's right side, nearest to PPO Levitt. Mr. Mercado took hold of the object and looked directly at PPO Levitt. He then rolled towards PPO Levitt as he grasped the object "as one would grasp a pistol with both hands, raised it to eye level, and drove the object forward" as he pointed it at PPO Levitt. The officer focused all of his attention on the object that Mr. Mercado was holding and believed it was some type of handgun. Fearing that he was about to be shot, PPO Levitt yelled at Mr. Mercado to drop the weapon. Because Mr. Mercado did not comply, PPO Levitt thought that Mr. Mercado posed an immediate threat to his life. Believing that he had no reasonably effective alternative, PPO Levitt fired two rounds at Mr. Mercado from his department issued Glock 17 9mm handgun, and then moved to better cover behind his patrol car. The officer noted in his written statement that when he fired the first two rounds, the only thing between him and the "armed male" was the driver's door of his vehicle. He knew from his training and experience that bullets can easily penetrate the thin sheet metal of a door, as well as the glass. He viewed Mr. Mercado as an "immediate threat" to his life. He also stated that there was "no other reasonably effective alternative" to protecting his life than "utilizing [his] firearm to stop the threat."

PPO Levitt moved to the passenger side of his patrol vehicle to reassess the situation. He noted the presence of vehicles behind him, which were in the general direction of where Mr. Mercado was pointing his weapon. He also noted that PPO Haberzettl had limited cover because the car that she was standing behind offered limited protection due to its low clearance. He feared both for the life of Officer Haberzettl and the citizens behind him. He also noted that Mr. Mercado had traced his movements and his focus was still on him. The officer saw that Mr. Mercado was still alert, and still had his weapon pointing in his direction. At that time, Officer Levitt believed that Mr. Mercado still posed a deadly threat to his life, and the lives of everyone around him, if he did not immediately address the threat.

PPO Levitt yelled out "Drop it" at approximately the same time that Officer Haberzettl yelled out "Put it down!" He then fired four rounds at Mr. Mercado and PPO Haberzettl fired one round. PPO Levitt broadcast shortly thereafter, "Additional shots fired, subject down, start fire." No additional rounds were fired by either officer after that broadcast. PPO Levitt saw that Mr. Mercado lost his grip on the weapon and appeared to be incapacitated and was therefore no longer an active threat. At this time, other officers began arriving on scene. As the other officers arrived, they can be heard telling Mr. Mercado, who is still moving, to roll away from the gun because they wanted to help him.

PPO Haberzettl's Body-Worn Camera Footage

This officer's body-worn camera caught the entire incident, to include the shots fired by PPO Levitt, therefore a detailed summary of what was shown, as well as relevant timestamps, helps to explain how quickly this incident evolved. The body-worn camera footage also clearly shows why both officers reasonably believed that Michael Mercado had a gun in his hands and therefore posed a threat to their lives and the lives of nearby civilians:

1) When the video begins at 15:26:11 hours, Mr. Mercado had already exited his car, leaving the driver's side car door open, and he was standing just uphill from PPO Haberzettl's

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position. He was standing in a "semi-bladed" position and was moving his right hand in manner that would be identical to drawing a firearm. He then can be seen holding an object in a manner that mimicked holding a firearm. He was focused on PPO Haberzettl.

2) As Mr. Mercado's Saab begins rolling downhill, Officer Haberzettl immediately yelled at Mr. Mercado to stop his car as she backed up to the front of her parked SUV to gain cover.

3) Mr. Mercado continued to approach the officer while holding a black object in a manner that would make any reasonable officer in a similar situation believe that he was holding a pistol.

4) At the 15:26:12 timestamp, PPO Haberzettl had reached the front of her patrol car while repeatedly ordering Mr. Mercado to stop his car. She then moved to the passenger side of her patrol SUV, which put her between her vehicle and Mr. Mercado's car as it travelled downhill, striking the officer with what she described as a "glancing blow."

5) Mr. Mercado followed PPO Haberzettl's path around the front of her patrol car, but her patrol car blocked the view from her body-worn camera as to his actions. (As described below, a video provided by a citizen gives an overhead view of the incident that clearly shows his actions). It is clear that Mr. Mercado was still moving toward the officer, and she was rapidly backing up. At the 15:26:14 timestamp, the officer fired two rounds at Mr. Mercado.

6) PPO Haberzettl used her radio to call out "shots fired" at the 15:26:19 time stamp. By that time, she had moved to a position behind her patrol SUV. Rather than continuing behind the vehicle, she moved along the passenger side towards the front of her vehicle, while continuing to use her vehicle as cover.

7) At approximately 15:26:20, the officer started to back up at the same time that Mr. Mercado can be heard groaning or yelling out. He was at the front of her patrol SUV at that time. The officer yelled at him to put the gun down as she raised her firearm and backed up again. She yelled out to him to "Put the gun down" and then fired two more rounds when Mr. Mercado did not comply. By this time, Officer Haberzettl had moved behind her patrol SUV. The body-worn camera footage also shows Mr. Mercado's unoccupied vehicle rolling downhill and striking Velita Grant's vehicle at the bottom of the hill.

8) The officer moved away from her patrol SUV to gain cover behind an unoccupied black sedan that was parked on the side of the street, on the driver's side of her patrol car. She again called out "shots fired" and began to move down the side of the black sedan to get a better view of Mr. Mercado. At that time, she reported her location and advised that she had "one down."

9) At the 15:26:40 timestamp, PPO Haberzettl moved around the rear of the black sedan and began to approach Mr. Mercado as he was lying on his back on the pavement. He initially appeared motionless, with his right arm extended and his left hand on his chest. Officer

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Haberzettl advanced on his position with her gun pointed at Mr. Mercado and she ordered him to "stay right there." The black object that Mr. Mercado had been holding was lying next to him on his right side.

10) At the 15:26:57 time stamp, Mr. Mercado lifted his head and pointed his right hand/finger at the officer as if he was holding a gun and trying to fire it. PPO Haberzettl ordered him to stay where he was at as he rolled to his right side, almost in a fetal position. Mr. Mercado continued to move, and the officer again ordered him to stay where he was at.

11) At the 15:27:20 timestamp, Mr. Mercado grasped the black weapon and pointed it at the officer, who continued to use her patrol SUV as cover. She ordered him several times to move his hands away, but he did not comply.

12) At the 15:27:25 time stamp, a civilian can be seen walking on the east side of Pine Street, walking across South 45th Street from the north side. That citizen would have been in the direct line of fire if Mr. Mercado did have a gun that he began firing.

13) At 15:27:34, the officer again advised dispatch of her location, and stated that Mr. Mercado had something in his hands that looked like a firearm.

14) At the 15:27:37 time stamp, Mr. Mercado jerked his head up and grasped the weapon again, causing the officer to move to her right to keep her vehicle between her and Mr. Mercado. She repeatedly yelled at Mr. Mercado to move his hands away. She can also be heard telling dispatch that he had something black in his hands that looked like a firearm.

15) At the 15:27:40 time stamp, PPO Levitt is seen turning onto South 45th, as PPO Haberzettl moved to the cover of the black sedan. She can be heard telling Officer Levitt, "Watch out, he pulled it back up, watch out, watch out." She then clarified that he "pointed it back up at me" as she moved along the passenger side of the black sedan while keeping Mr. Mercado at gunpoint.

16) PPO Levitt exited his patrol car and can be heard yelling out, "Drop it, drop it!" at the 15:27:51 time stamp on PPO Haberzettl's body-worn camera. PPO Levitt was standing on the driver's side of his patrol vehicle and was using the open door as cover. PPO Haberzettl also yelled out "Drop it!" At that time PPO Levitt fired two rounds at Mr. Mercado. A review of PPO Levitt's body-worn camera confirms that Mr. Mercado was lying on his side, looking at PPO Levitt with his head up, and was holding his hands in a manner that resembled holding a gun prior to the officer yelling at him to "Drop it" and then then firing two rounds.

17) Both officers continued to yell at Mr. Mercado to drop his weapon/put it down, but he refused to comply. PPO Levitt moved to the passenger side of his vehicle and fired four more times at the 15:27:56 time stamp on PPO Habertzettle's body-worn camera footage. PPO Haberzettl also fired one time. PPO Levitt fired when Mr. Mercado rolled over on his side and again pointed the weapon at the officer. No additional shots were fired after this,

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and once the situation was rendered safe, other officers moved in and began providing critical medical care to Mr. Mercado, to include applying tourniquets and giving him CPR.

Anonymous Witness Video

PCFIT investigators later obtained cell phone video footage from a civilian who wished to remain anonymous. The footage provided an overhead view of the shooting, and it began after Officer Haberzettl had already fired the first two rounds. When the video starts, Officer Haberzettl had moved behind her patrol SUV, and Mr. Mercado was standing in front of it, closer to the south side of the street. He appears to be limping, likely having been hit by at least one of the officer's initial rounds. He moves across the front of the patrol SUV towards passenger side while Officer Haberzettl is also moving toward the front from the passenger side. Mr. Mercado can be seen holding his hands as if he is holding a weapon. He is still focused on Officer Haberzettl, and he is moving towards her. At approximately the same time that he reaches the passenger side of her vehicle, Officer Haberzettl was in clear view of him on the passenger side. Officer Haberzettl at that point would have been in his direct line of fire if he had possessed a firearm. She can be heard yelling and then firing two rounds. Mr. Mercado dropped to the ground and Officer Haberzettl moved to cover behind her patrol SUV.

The video shows Mr. Mercado lying in the street a few feet north of the front of the patrol SUV. Officer Haberzettl then moved to cover behind the black BMW parked on the south side of the street. Mr. Mercado is still moving at this point. This video also shows a civilian standing in the open in the street on South 45th, just down the hill from where Mr. Mercado is lying.

The Witnesses

Chandler Muncha and Thalia Crispin provided cellphone video footage to investigators documenting their attempts to follow Mr. Mercado to get his license plate number after he struck their vehicle, and they gave interviews describing their initial interaction with him. The two reported that they first saw Mr. Mercado's red Saab approaching their vehicle as they were stopped at a red light on 48th Street. They said that Mr. Mercado swerved in front of them, and then quickly backed up and intentionally struck their vehicle. Mr. Mercado then drove forward against the red light. Mr. Muncha began to follow Mr. Mercado in an attempt to get his license plate. During that time, Ms. Crispin began recording the event with her cellphone. It appears that their interaction with Mr. Mercado began after he sideswiped another vehicle belonging to witness J.K. (16 years old).

The cellphone video begins as the two witnesses are following Mr. Mercado in his Saab. When the cellphone video starts, Mr. Mercado is driving at a "significant speed and erratically swerving wildly"¹ across the center turn lane into the oncoming lane of traffic. He failed to stop at a red light, nearly striking a pedestrian in the crosswalk. He continued on and made several lane changes and ran a stop sign as he turned west into a large parking lot at the Tacoma Mall. After turning into the parking lot, he weaved his way through the lot

¹ See report of Detective Jeff Martin dated 3/25/2022 (PCFIT 2207501387.14 supplemental report)

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that was filled with vehicle and foot traffic, and then turned westbound on South 45th Street. He momentarily lost traction at the top of the intersection, but maintained control as he proceeded down the hill to the intersection of South Pine Street. He then made a complete U-turn in the intersection and drove back on South 45th Street. Mr. Muncha cut left around a stopped car and nearly struck Mr. Mercado's car, which is when the video ended. Mr. Muncha did attempt to continue to follow him, but it was at that time that they observed Officer Haberzettl driving towards them on South 45th Street, so they stopped to contact her.

Witness Velita Grant was interviewed at the scene. She reported that she was driving to Nordstrom in her Chevy Traverse when she made the left turn from South Pine Street onto South 45th Street. Immediately after making the left turn, she saw a Tacoma Police SUV stopped in the middle of the roadway facing downhill towards her, with its lights activated. She also saw a black BMW stopped on the south side of the police vehicle. Realizing that she couldn't get through to the mall on that route, she began to make a U-turn to her left. As she began her U-turn, the front end of her Chevy was struck by the red Saab, which was unoccupied and had rolled westbound down the incline after Mr. Mercado exited the car. Ms. Grant exited her vehicle and saw that the Saab was not occupied. She then walked around the back of her vehicle and looked up the incline toward the patrol vehicle. She reported that she saw a "white male, with his arm extended, running towards the police officer." Ms. Grant reported that the white male was on the left and the female police officer was on the right. Ms. Grant did not see a gun in the male's hand but saw that his arm was extended "like he was going to shoot a gun." Ms. Grant heard shots fired, so she got back into her car and put her head down. A few minutes later she heard sirens and then heard more shots. A female police officer then came to her driver's door and asked her to get out and stand behind a police vehicle. Ms. Grant saw police officers and, later, fire department personnel all rendering aid to Michael Mercado in the street. She said that when she saw the male running towards the officer with his arm extended, she "thought he (Mercado) was going to shoot her" (Officer Haberzettl).

PCFIT investigators interviewed five civilian witnesses in total. At least two of them believed that PPO Haberzettl had been fired at, and all five stated that they thought that Mr. Mercado was armed with a firearm.

Michael Mercado

Mr. Mercado was 37 years old at the time of this incident. He had extensive criminal history and law enforcement contacts. His criminal history included six felony convictions and 14 gross misdemeanors convictions. Additionally, family members who were interviewed reported that he had documented mental health concerns. As recently as February 10, 2022, Mr. Mercado was transported to Tacoma General Hospital for possible mental health reasons. While in the emergency room he armed himself with a butterfly knife and attempted to stab a nurse assistant.

Examination of the weapon that Mr. Mercado wielded in this incident revealed it to be a fixed blade knife named "The Colonel." The knife has a curved handle grip and, per the manufacturer, was "designed from the ground up for the special operations community." Of

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note is the fact that the knife was specifically designed to mirror the shape of a pistol. The purpose of that design, according to the manufacturer, was to provide the user an ability to draw the knife from concealment, and to hold it in the same way that a handgun would be drawn and held. In addition to the unique shape of the knife that made it look like a pistol, a hard plastic sheath was still attached to the knife blade while Mr. Mercado was wielding it. That sheath was long and rectangular, and was shaped in a manner that would have made it look like the barrel of a pistol. Given the manner in which Mr. Mercado was holding and brandishing the knife, the officers reasonably believed that it was a pistol. It is clear from the statements of the officers, witnesses, and the body-worn camera footage, that Mr. Mercado intended for the officers to believe that he was wielding a handgun. Any reasonable officer would have believed that he was pointing a handgun at them, and was therefore a threat to their lives, and the lives of all bystanders.

PCFIT INVESTIGATION

Investigations into police use of deadly force are governed by RCW 10.114.011, and WAC 139-12-030. RCW 10.114.011 provides that where the use of deadly force by a peace officer results in death, "[A]n independent investigation must be completed to inform any determination of whether the use of deadly force met the good faith standard established by RCW 9A.16.040 and satisfied other applicable laws and policies." WAC 139-12-030 sets forth the criteria that must be met in order to ensure that the investigation is independent, transparent, and credible.

It does appear that this investigation complied with the standards set forth in WAC 139-12-030. Investigator Dan Davis with the Investigative Services Unit of this office documented that the following key elements of the Officer Involved Fatal Incident Protocol were present:

- 1) Notification of the event occurred in a timely manner. The PCFIT activation occurred at 1538 hours, which was 11 minutes after the incident. Investigator Davis was notified of the incident within an hour after it occurred.
- 2) The scene was maintained intact and undisturbed once it was determined that Michael Mercado was deceased.
- 3) PCFIT conducted the investigation and provided Investigator Davis with full access to the scene as well as every aspect of the follow-up investigation.
- 4) No member of the Tacoma Police Department participated in the investigation beyond providing immediate medical triage to Mr. Mercado and providing scene protection until PCFIT members and forensic personnel could arrive.
- 5) Evidence items were photographed and collected at the scene by the PCFIT/Washington State Patrol (WSP) forensic team. ISU investigators were able to view the photographs as well as all evidence collected at the scene.

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6) Witnesses were identified and interviewed, or they provided written/taped statements. ISU was provided with copies of all witness interviews and statements.

7) The two involved officers voluntarily provided written statements regarding their actions and made themselves available for follow up questions by investigators.

8) The Medical Examiner's medicolegal investigator responded to the scene and took possession of the body.

9) Witness officers provided voluntary statements and cooperated with the follow up investigation.

10) PCFIT and lead investigator, Det. Jeff Martin of the Lakewood Police Department, supplied their investigative reports, videos, photographs, evidence logs and statements to ISU, and later presented a case review to this office.

11) Investigator Davis attended the autopsy and was provided with a copy of the autopsy report, as well as all photographs taken during the autopsy.

12) PCFIT utilized two community members as citizen representatives.

13) Conflict of Interest Statements were submitted in a timely manner by each member of the IIT.

14) PCFIT utilized an investigator to act as a family liaison/contact, and that investigator obtained next-of-kin contact information for Mr. Mercado and spoke to a family member that afternoon.

15) The assigned PCFIT scene commander coordinated with the investigators to provide video footage and narrative for a media release on March 22, 2022.

LEGAL ANALYSIS

RCW 9A.16.040 sets forth the specific circumstances under which a law enforcement officer may use deadly force. For purposes of this investigation, the relevant portions of that statute read as follows:

(1) Homicide or the use of deadly force is justifiable in the following cases:

...

(b) When necessarily used by a peace officer meeting the good faith standard of this section 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; or

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(c) When necessarily used by a peace officer meeting the good faith standard of this section or person acting under the officer's command and in the officer's aid:

(i) 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;

(2) In considering whether to use deadly force under subsection (1)(c) of this section, to arrest or apprehend any person for the commission of any crime, the peace officer must have probable cause to believe that the suspect, if not apprehended, poses a threat of serious physical harm to the officer or a threat of serious physical harm to others. Among the circumstances which may be considered by peace officers as a "threat of serious physical harm" are the following:

(a) The suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening;
or

(b) There is probable cause to believe that the suspect has committed any crime involving the infliction or threatened infliction of serious physical harm.

RCW 9A.16.040.

RCW 9A.16.040(4) provides that "A peace officer shall not be held criminally liable for using deadly force in good faith, where good faith is an objective standard which shall consider all the facts, circumstances, and information known to the officer at the time to determine whether similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officer or another individual."

RCW 9A.16.040(1)(b) and (c) share the defined element of, "necessary," which is defined in RCW 9A.16.010 as follows: "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."

In this case, the officers' use of deadly force was justified under the "discharge of duty" provision of RCW 9A.16.040. PPO Habertzettl was discharging a legal duty when she stopped, while on duty, to contact two distraught citizens who waved her down. During the course of that contact, she was quickly confronted by Mr. Mercado, who recklessly drove toward her and jumped out of his car while it was still running and in gear, and then brandished a weapon at her. Mr. Mercado was intentionally brandishing his knife in a manner that seems intended to make it appear as if he was holding a firearm. His actions put

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multiple people at risk, and PPO Haberzettl attempted to get Mr. Mercado to stop his car, which had started rolling down the hill. This event happened so quickly, and Mr. Mercado approached PPO Haberzettl so aggressively, that she reasonably believed that he was brandishing a firearm and was going to shoot her. Her belief that there was no effective alternative to using deadly force was reasonable under these circumstances.

PPO Levitt was presented with similar circumstances. He was the first officer on scene after PPO Haberzettl announced that shots had been fired, and given his direction of travel, he had few options but to turn onto South 45th Street and park directly downhill from where Mr. Mercado was lying on the ground. PPO Levitt had already been advised that Mr. Mercado had a firearm, and he could see an object lying on the ground next to Mr. Mercado that looked like a gun. Despite commands from PPO Levitt to drop the weapon, as well as similar commands from PPO Haberzettl, Mr. Mercado failed to comply, and again held his hands in a manner that made it appear that he was holding a firearm. Officer Levitt was standing behind the driver's door of his patrol vehicle, which provided some concealment, but no effective cover. Believing that his life was in danger, the officer fired two rounds at Mr. Mercado after he failed to comply with commands to stay away from his weapon.

As indicated above, circumstances that may be considered by an officer to be a threat of serious physical harm include a suspect threatening an officer with a weapon or displaying a weapon in a manner which could reasonably be construed as threatening. RCW 9A.16.040(2)(a). That circumstance was clearly present in this incident. The knife that Mr. Mercado had been wielding was shaped like a firearm, and he was wielding it in a manner that caused both PPO Haberzettl and PPO Levitt to reasonably believe that he was holding a firearm. Both officers gave Mr. Mercado multiple commands to drop his weapon. Even after he had been shot, he continued to grasp and hold the knife in a manner that appeared to be threatening.

The officers reasonably believed he was holding a firearm and he failed to comply with every command that the officers gave him. After PPO Levitt moved to the passenger side of his patrol car, he was still faced with the same threat. He reported that Mr. Mercado was tracking his movements and knew that PPO Haberzettl had limited cover from the sedan she was behind. He also knew that there were civilians at risk in the area if Mr. Mercado began firing what he thought was a firearm. After Mr. Mercado specifically grasped his weapon again despite multiple commands to stay away from it, and to drop it, both officers fired again. Officer Levitt fired four times and Officer Haberzettl fired one final time. It was only after those shots that Mr. Mercado dropped his weapon and was therefore no longer an active threat.

It is clear that both officers were justified in using deadly force against Mr. Mercado under the circumstances described above. Mr. Mercado did everything he could to make it appear as if he was holding an actual firearm. He was also aggressive in approaching Officer Haberzettl while holding the weapon in a "shooting position." Even after being shot, he continued to grasp and hold the weapon in a manner that made both officers think he was pointing a handgun at them. Both officers reasonably believed that Mr. Mercado posed a

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threat of serious physical harm to the officers and to nearby civilians. They were justified in using deadly force to stop the threat that he posed.

In addition to the use of force provisions discussed above, each officer also had a personal right of self-defense and defense of others pursuant to RCW 9A.16.050, which provides that homicide is justifiable when:

- (1) In the lawful defense of the slayer, ..., or any other person in his or her presence or company, when there is a reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer or to any such person, and there is imminent danger of such design being accomplished; or
- (2) In the actual resistance of an attempt to commit a felony upon the slayer, in his or her presence, ... "

The Washington Pattern Jury Instructions (WPIC) supplement the general justifiable homicide statute and state that one must evaluate the slayer's act by an objective standard. *See* WPIC 16.02(3). Also see WPIC 16.07 which provides:

A person is entitled to act on appearances in defending [himself][herself] [another], if that person believes in good faith and on reasonable grounds that [he] [she] [another] is in actual danger of great personal injury, although it afterwards might develop that the person was mistaken as to the extent of the danger.

Actual danger is not necessary for a homicide to be justifiable.

Each officer was presented with what appeared to them to be an imminent life-threatening situation when Mr. Mercado pointed an apparent handgun at them. He aggressively and continuously moved towards Officer Haberzettl with his arms extended while brandishing a weapon shaped like a firearm. He was holding that weapon in what was clearly a "shooting position." He left Officer Haberzettl with no choice but to fire her weapon at him to stop the threat he posed to her and to nearby civilians.

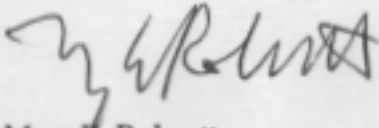
PPO Levitt immediately recognized that PPO Haberzettl had limited protection from gunshots because she was using a vehicle as cover. He was also presented with what was reasonably believed to be a direct threat to his life because Mr. Mercado grasped the weapon that had been lying next to him and pointed it directly at PPO Levitt after he exited his patrol car. Both officers had been yelling repeatedly at Mr. Mercado to stay down, and to drop his weapon. Unfortunately, Mr. Mercado did not comply with any of their commands throughout this entire incident, leaving them with no effective reasonable alternative than to fire their weapons to stop what they perceived was a threat to their lives and the lives of others.

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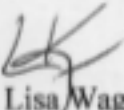
CONCLUSION

The use of deadly force by PPO Haberzettl and PPO Levitt was a justified use of deadly force by each officer. In light of all of the facts and information known to these officers at the time of the shooting, any other similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious harm to the officers, and to nearby citizens. Additionally, each officer had a personal right of self-defense and defense of others under RCW 9A.16.050. For these reasons, we conclude that the officers' use of deadly force was justified and lawful.

Sincerely,



Mary E. Robnett
Pierce County Prosecuting Attorney



Lisa Wagner
Deputy Prosecuting Attorney
Pierce County Prosecuting Attorney's Office

cc: PCFIT Detective Jeff Martin