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**RE: Officer Involved Fatal Incident
Kevin Peterson, Jr.**

Dear Prosecuting Attorney Golik:

On October 29, 2020, officers with the Clark-Vancouver Drug Task Force planned a controlled buy undercover drug investigation. The suspect was the deceased, Kevin Peterson, Jr. Through an informant, the task force developed information that Mr. Peterson was illegally selling prescription drugs. The task force arranged for the informant to order alprazolam for delivery at a hotel. The transaction was arranged via Snapchat and delivery was scheduled for October 29, 2020.

Communications between the informant and Mr. Peterson before the delivery included images and text in which Mr. Peterson articulated his intent or willingness to use gun violence against police.

A text from Mr. Peterson to the informant stated, "Crackers catch me n act then ima feed the law..." This statement was followed by picture illustrations of: (1) a uniformed police officer, (2) followed by an explosion, and (3) followed by an image of a gun with the muzzle pointed at the image of the police officer.

At approximately 5:50 p.m., Mr. Peterson arrived at the Hazel Dell Quality Inn parking lot driving a Mercedes-Benz sedan. The arrest team officers activated the emergency lights on their vehicles and attempted to detain him. Mr. Peterson exited his vehicle and fled on foot. He took with him what proved to be a loaded .40 caliber Glock 23 handgun. Containment officers intercepted Mr. Peterson in the parking lot of a nearby bank. Three officers, Clark



County Sheriff's Deputy John Feller and task force detectives Robert Anderson and Jeremy Brown, discharged their service weapons which resulted in a total of four gunshot wounds. Mr. Peterson was pronounced deceased at the scene.

Surveillance video footage and audio captured part of the events. The video system from the bank captured images of Mr. Peterson's movements and actions in the moments leading up to the discharge of the officers' weapons. They include images of Mr. Peterson with the .40 caliber handgun in his hand. The gun was found near Mr. Peterson. Analysis of the available ballistic evidence indicated that it likely was not fired.

On December 1, 2020, you appointed me and any deputy prosecutor I assigned as special deputy prosecutors to review the investigation of Mr. Peterson's death. The investigation was conducted pursuant to RCW 10.114.011. Based upon that investigation, we conclude that the use of force was justified and lawful.

Independent Investigation

At the time of this incident, RCW 10.114.011 required an independent investigation. The specific statutory requirement is that "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." Rules adopted by the Criminal Justice Training Commission established the criteria of independence for such investigations. WAC 139-12-030.

In this case, at the insistence of the Clark County Prosecuting Attorney, extraordinary measures were taken to adhere to the statutory and rule-based independence requirements. First, the investigation was originally assigned to the Southwest Washington Independent Investigative Response Team (SWIRT). Second, during the investigation when it was determined that there could be a perceived lack of independence on the part of several commanders and investigators, they were replaced by personnel from the Lower Columbia Major Crimes Team. In addition, although it would have been natural for Vancouver Police Department to provide perimeter security, the decision was made to exclude that department because a Vancouver officer was a witness.

Our review of this incident indicates that material measures were taken to comply with RCW 10.114.011, and that there were no deviations that would call into question the independence or integrity of the investigation.

Facts and Evidence

This discussion of the facts and evidence will include discussion of both law enforcement and civilian accounts of the events that resulted in the death of Mr. Peterson. These reports will be discussed in separate sections. Other types of evidence from this comprehensive and

thorough investigation – to include video, ballistic, forensic, and forensic pathology evidence – will also be discussed separately. Where statements or evidence are in conflict or include uncertainty, we will discuss the legal implications of such evidence in the analysis section of this letter.

a. The Controlled Buy Investigation

The controlled buy investigation was led by Jeremiah Fields, a detective assigned to the task force. Fields was also a witness to the start of the incident at the Quality Inn. His role in the controlled buy was to assist with the arrest of Mr. Peterson.

The controlled buy investigation was conducted with an informant. The informant was not at the scene and did not witness the events either at the Quality Inn or the U.S. Bank. Their participation was limited to ordering prescription alprazolam for delivery at the Quality Inn. During communications setting up the transaction, Mr. Peterson repeatedly asked if the informant was police. Mr. Peterson also sent the text and pictures that displayed hostile intent toward police. Detective Fields was privy to the communications between the informant and Mr. Peterson and was therefore aware of the text and pictogram threat of gun violence toward police. He disseminated that information to the drug investigation team, including each of the task force witness and involved officers.

The key roles assigned to task force officers included participation in the arrest, surveillance, and containment. Two witness officers, Bill Sofianos and Rodrigo Osorio, were assigned to make contact with Mr. Peterson and take him into custody. Other officers were assigned to be close by in a surveillance or containment role, namely the case officer Detective Fields, and Eric Zimmerman, Jeremiah Brown, and Robert Anderson. Of the foregoing task force officers, Brown and Anderson were involved officers who fired shots. All of the others were witness officers to either the events at the Quality Inn or at the U.S. Bank, or both.

Evidence was recovered by the scene investigators related to the controlled buy investigation. A search warrant was obtained for Mr. Peterson's vehicle. He was the registered owner. Officers found the following between the driver's seat and the door: a pill container with 17 ½ round blue pills with "30" and "M" markings; a bag with 10 ½ blue bars stamped "B707"; and a bag with 9 green bars stamped "S 903." Near the driver's-side seatbelt assembly was a red and white pill. Additional drug evidence was recovered along the flight path that Mr. Peterson took from the Quality Inn. The evidence consisted of drug cannisters and makeshift foil containers that were found near the Quality Inn and at the car lot next door.

Our review of the controlled buy investigation does not indicate that it was unlawful or undertaken in an unlawful manner. The task force officers followed a written operations plan and deconflicted the investigation with other law enforcement agencies. Drug investigations are a legal duty of law enforcement officers assigned to such investigations. Where there is

probable cause to support a detention or arrest of a drug suspect, arrest or apprehension of such a suspect is a lawful law enforcement function.

b. Events at the Quality Inn

The involved and witness officers gave voluntary statements concerning the events at both the Quality Inn and the U.S. Bank. We have analyzed these statements in light of the key factual issues that would be considered by the trier of fact if charges were to be filed in this case against any of the involved officers. In reviewing the facts, it is crucial to bear in mind that due process and the use of force and self-defense statutes allocate the burden of proof to the prosecution in any criminal prosecution stemming from an officer's use of deadly force.

The task force arrest and surveillance officers all reported that Mr. Peterson appeared to be armed with a handgun when he fled from the Mercedes at the Quality Inn. They also all reported that emergency lights and the positioning of police vehicles conveyed the unmistakable message that Mr. Peterson was being detained by law enforcement. All of the officers wore outer clothing that prominently displayed their affiliation with law enforcement agencies and the police vehicles were equipped with emergency equipment consisting of emergency lights and/or sirens. Furthermore, the task force and surveillance officers all reported that commands consistent with police detention and arrest were verbally shouted at Mr. Peterson as he exited his car and fled from the Quality Inn parking lot.

It is important to take note that the accounts from the witness and surveillance officers were not identical. The witness officers gave statements a short time after the incident while the involved officers' statements were delayed until November 5, 6, and 9. Review of the statements from both categories of officers do not reveal indications of collusion. Examples of differences among the officers' accounts that support credibility include that the task force witness officers admitted being less than certain about whether Mr. Peterson fled from the vehicle with the handgun. For example, Detective Fields' interview included this statement about seeing the gun:

And so I'm probably 30 to 50 feet. I mean, I know that's a big gap but that's kinda what I feel that's about how far I was away from him. And I'm running after him. And I see him drop something black. Um, to me, it looks like a gun. Can I say 100% sure? No, probably not. But when I see it happening in front of me, I start yelling at him, "Don't reach for the gun. Don't go for the gun. Don't go for the gun," and he does.

Other witness officers also gave statements that also included elements of uncertainty. Detective Zimmerman stated that when he first saw Mr. Peterson outside of the Mercedes, he could see a bulky object in Mr. Peterson's pocket and believed it could be a gun but did not

actually see the gun. Later, Zimmerman actually saw the gun from his surveillance position during the foot chase. In contrast, Sergeant Sofianos stated clearly that he saw the gun in Mr. Peterson's hand as Mr. Peterson ran south from the Quality Inn in the direction of the U.S. Bank.

These are examples of variance on a key factual issue that weigh in favor of the officers' credibility concerning a key question, namely, whether Mr. Peterson was armed with a handgun and ignored commands during the attempt to detain and arrest him. It is important to bear in mind that civilian witnesses who were unaffiliated with the police agencies or any of the officers were identified by canvassing detectives and gave statements. A number of them either heard or saw the events at the U.S. Bank but none were aware of or witnessed the events at the Quality Inn. It is further important to bear in mind that a loaded handgun was found and taken into evidence a short distance from Mr. Peterson's body, and one of the civilian witnesses saw Mr. Peterson point it at the involved officers during the events at the U.S. Bank.

c. Events at the U.S. Bank – Officer Accounts

The events at the U.S. Bank included Mr. Peterson moving south through the back of the bank property south of a car lot known then as Hot Wheels. At roughly the same time containment officers were positioned and entered the south parking lot of the bank. The containment officers in police vehicles intercepted Mr. Peterson as he moved through the back of the bank property adjacent to the bank's drive-through teller facilities.

Two witness officers were at the bank and saw what happened: Vancouver Police Officer Osorio and Clark County Sheriff's Sergeant Sofianos. Both had also been at the Quality Inn, where they were assigned as surveillance and containment officers. Both also drove south toward the U.S. Bank and were there to witness part of the shooting events. Neither of them fired their own weapons.

Officer Osorio was in a better position to see the shooting than Sergeant Sofianos. Sergeant Sofianos heard the shooting but could not tell where it came from. He saw Mr. Peterson go to the ground but did not see what led up to the shooting.

Officer Osorio was in his vehicle pulling into the bank parking lot at the time of the shooting. He saw Mr. Peterson on foot reverse course as he encountered the containment officers and move back in a northbound direction. Officer Osorio reported that Mr. Peterson had a gun in his right hand that was raised and pointed at the containment officers. He observed the officers shooting at Mr. Peterson but thought that they were missing because the bullets appeared to be kicking up dirt. Mr. Peterson still had the gun in his hand when he went to the ground. Officer Osorio did not fire his own weapon but stated that he would have if he had been in a position to do so.

The other officers who were at the U.S. Bank were the involved officers who all fired shots and gave statements in which they described what happened and their specific reasons for having used deadly force. The first of the involved officers was Clark County Detective Brown. He was assigned as containment and positioned at the bank during the controlled buy. Through radio traffic he heard what was happening during the attempted detention and foot chase, including that Mr. Peterson was armed. A short time later he saw Mr. Peterson running southbound. Detective Brown reported that Detective Anderson arrived at the parking lot and began to approach Mr. Peterson on foot. Detective Brown could see that Mr. Peterson had a cell phone in his hand and thought he might be filming.

Detective Brown stated that he could not see a gun when he first moved to confront Mr. Peterson. He heard Detective Anderson yelling to drop the gun. He then heard shots from the direction of Detective Anderson but it appeared that Detective Anderson was missing. The detective also heard shots coming from the direction of Deputy Feller. He had not at that time fired any shots even though two fellow officers had already done so. He explained: "I've been doing this job, for, you know, 13, maybe a little bit over 13 years. And this whole time I've decided I will not pull the trigger unless I absolutely have to, I mean, absolutely have to. So I'm hearing - I'm hearing shots but I'm not seeing why I should be shooting at this point..."

During the shooting events Detective Brown eventually did fire shots. This was when he saw Mr. Peterson with a gun that was pointed in his direction. The two were roughly 30 yards apart. Detective Brown feared that he was "way behind the curve" and that he may have already been shot with his adrenaline masking the pain. The detective then fired a series of shots at Mr. Peterson. He explained: "Until he pointed the gun at me, I wasn't comfortable pulling the trigger. And I only did what I felt was necessary to stop him from shooting or killing me." It was determined during the investigation that Detective Brown had fired eight rounds.

Detective Anderson was the first of the involved officers to confront Mr. Peterson. At the Quality Inn, after hearing via the radio that Mr. Peterson had a gun, Detective Anderson gave instructions to give up the foot chase and initiate a patrol search. He moved in the direction of the U.S. Bank and saw Mr. Peterson running southbound in the direction of the bank. He pulled into the lot and began to approach Mr. Peterson on foot. He could see that Mr. Peterson had a cell phone out but did not see a gun. He thought that Mr. Peterson may have tossed the gun. He instructed Mr. Peterson, "don't move" and "show me your hands."

Mr. Peterson was somewhat cornered because of a retaining wall that ran along the east and south sides of the bank parking lot. Detective Anderson stated that Mr. Peterson then reached into his hoodie pocket and pulled out a handgun. The detective was approximately 15 to 20 feet away from him. He was wearing a black ballistic vest emblazoned with large block letters with the word "Sheriff." Mr. Peterson did not comply with the commands. He turned and

started jogging northbound with the gun in his hand. This was after being confronted by two officers with their guns drawn.

After Mr. Peterson brought the gun out, Detective Anderson repeatedly yelled, "Drop the gun or I'll shoot." He explained that he knew there was at least one other officer in the lot, and Mr. Peterson was headed back in the direction of containment officers who would be coming from the area of the hotel. Mr. Peterson ignored repeated opportunities to get rid of the gun and gave no indication of complying with commands. Detective Anderson felt that Mr. Peterson posed an imminent threat to Anderson and other officers. He stated, "So at that point, I kinda just drew the line in the sand and I was - I said, 'I've given suspect enough commands. If he takes another step, I'm gonna shoot him.' Um, he continued to run. I started shooting."

Detective Anderson believed his first "volley of shots" missed entirely because Mr. Peterson continued to run northbound. He heard shots fired by someone else, and then saw Mr. Peterson fall to the ground. Mr. Peterson then sat up and raised the gun. Detective Anderson believed he was taking aim at Detective Brown. He heard a "pop" and thought that Mr. Peterson had shot at Detective Brown. Detective Anderson then fired additional shots until Mr. Peterson fell back to the ground. Detective Anderson's service weapon was a Sig Sauer P320 9mm semi-automatic and it was determined during the investigation that he had fired a total of 18 rounds during the incident.

The third involved officer, Deputy Feller, was a patrol officer who responded upon hearing radio traffic from the task force officers. He was in uniform and driving a patrol vehicle. He responded from approximately eight blocks north of the hotel. He had been aware of the task force investigation and responded when he heard that they needed a "code 3 cover marked unit" which meant an "officer needs assistance immediately-needs help" and is an emergency code "[t]hat takes precedence over everything." Deputy Feller already had his emergency lights and sirens activated because he had been responding to another call. He diverted to the task force call because of the code 3.

Deputy Feller saw task force vehicles and pulled into the bank parking lot in time to see Mr. Peterson moving south in the lot. Mr. Peterson had his left hand up to his ear and his right arm was swinging with a gun in his right hand. The deputy exited his patrol car with gun drawn and gave commands to Mr. Peterson to drop the gun and get on the ground. Mr. Peterson ignored the commands. The deputy was approximately 50 feet away when he heard shots from south of his position. Deputy Feller saw Mr. Peterson turn toward him. Mr. Peterson's gun was at waist-level and pointed at the deputy. The deputy thought that Mr. Peterson was firing although he did not see muzzle flash from Peterson's gun. Deputy Feller feared that he was going to get shot. He also feared that Mr. Peterson was about to go behind the bank building where sight would be lost and that he would run into officers coming from the north. The deputy then fired a series of shots and saw Mr. Peterson sit down on the ground before laying

down. Deputy Feller's service weapon was a Glock 17 9mm and it was later determined that he had fired 9 rounds during the incident.

d. Events at the U.S. Bank – Civilian Accounts

There were a number of non-police witnesses in the area of the shooting. None of them had advance notice of the drug investigation and thus were not on the lookout for police activity or Mr. Peterson. They began to pay attention at different times and witnessed the events from different locations. It is useful to describe the observations of the civilian witnesses by grouping them by location.

i. Passing Motorists

The witnesses closest to the U.S. Bank were in vehicles being driven northbound on the highway adjacent to the bank. The roadway is two lanes in each direction with a center turn lane. The entrance to the bank's parking lot is from the highway. There were two passing vehicles; one was in front of the other by an unknown distance. The occupants of each vehicle did not have any prior relationship and happened to be in the area at the same time.

The northernmost vehicle was driven by Mr. U and his wife, Ms. U. They did not remain at the scene and did not give statements the day of the incident. Investigators learned of them as potential witnesses based on the following post under Mr. U's Facebook profile:

I don't think he shot first. We were there. Pulled over in front of the bank. I saw the guy running. Turned scared as pop on his face. Hands in pockets near the fence then gunshots while his hands were still in his damn pockets. I will never get that image out of my head. He was so scared. Cops pulled in and in less than 5 seconds they opened fire. No way the man could react when that scared...I'm normally the biggest police supporter. But me and my family after seeing this. And now hearing he shot first. No. No no no no no.

Mr. U was the driver and Ms. U was in the front passenger seat. During a subsequent interview with Mr. U, he told the investigators that he and Ms. U were driving northbound on Highway 99 when they saw a vehicle with emergency lights headed southbound so they pulled over just to the west of the bank lot and just past the U.S. Bank sign, which is itself just north of the end of the bank building. Mr. U stated that he saw a male who appeared terrified pacing in the southeast corner of the parking lot. He then turned his attention to the front of his vehicle because he intended to merge back into traffic. He was thus not looking in the direction of Mr. Peterson and the police officers when gunfire erupted. He drove away northbound to get away from the gunfire. Mr. U contradicted his Facebook post in his investigative interview when he denied seeing what the male was doing when the shooting happened. Mr. U's passenger, Ms. U, reported that she too saw the male pacing and looking

around with his hands in his pockets. She also saw multiple officers with their guns drawn. When asked what the subject was doing when the gunfire happened, Ms. U responded, "He was facing them, and I believe his hands were in his pocket."

The vehicle behind Mr. and Ms. U was driven by Mr. H. His wife, Ms. H, was in the front passenger seat. Ms. H saw the arrival of two of the police vehicles and began paying attention because it was an unmarked unit with emergency lights and she thought it was impersonating a police vehicle. Ms. H saw the shooting. Her investigative statement included the following account of what she saw:

[Ms. H] advised she was driving northbound on Hwy 99 with her family. She stated she was in the front passenger seat and her husband, [Mr. H], was driving the vehicle. Ms. H said she saw what she believed to be an unmarked vehicle, pretending to be a police vehicle, which had red and blue lights flashing. She said she then saw a marked police vehicle behind this unmarked unit and believed the marked unit was attempting to pull over the unmarked unit. She said she told her husband to stop the vehicle and she was pointing out to the children in the back that police were pulling over someone pretending to be a police vehicle. She said the unmarked and marked unit turned into the U.S. Bank parking lot. She said this is when she noticed an unmarked police truck at the driveway to U.S. Bank and realized that the driver was a police officer. She said she could see that the driver of the truck was wearing police clothing and watched as the vehicle reversed into the parking lot.

Ms. H advised that she then saw a black male walking towards the police vehicle with his cell phone being held up in one hand. She stated that she believed the male was recording the police and possibly live streaming whatever was going on by the way he was holding the phone. She said she then realized that the police were actually trying to stop the male who was holding his cell phone. She said she viewed the officers exit their vehicles and the black male began to run southeast. She said that as he was running she was able to see what she believed to be a weapon in one hand and a cell phone in his other. She stated that she viewed the black male raise both of his hands to the point where he was pointing both the cell phone and the weapon he had in his second hand at the officers in the parking lot. She said she was able to view the male then begin to run northbound, and stated that he was running with his body almost turned towards the officers and that the male was clearly watching what the officers were doing. She said the male then fell to the ground. She said she is hard of hearing so she wasn't able to make out exact gun shots that occurred. She stated that the officer's [sic] hadn't just jumped

out of their vehicles and started shooting this male. She said it appeared they were trying to talk to him before he pointed the gun at them.

The interviewing officer requested that Ms. H. provide a written or recorded statement of her account. She declined to do so, expressing concern about publicity and fear of retaliation.

The officer also spoke with Ms. H's husband, Mr. H. He declined to provide a witness statement. He did however state that Ms. H's account could be corroborated by surveillance video that would show their red SUV on the road stopped next to the bank at the time of the incident. The investigators recovered surveillance video from Bavarian Autoworks which showed a red SUV traveling northbound on Highway 99 that stopped in front of the U.S. Bank just prior to the shooting.

ii. True Tech Automotive and Ultimate Window Tinting

There were several witnesses at two businesses across the highway from the U.S. Bank. Mr. C was in his car in the lot of True Tech Automotive on the west side of Highway 99, which looks across the highway to the U.S. Bank. Compared to the passing motorist witnesses, his positioning was behind, or further to the west, and across the five-lane highway. Mr. C reported that he observed someone in a dark-colored shirt walking along the fence line of the bank. He was a long distance away and did not pay close attention. He saw two police vehicles come squealing into the bank lot and that the officers had firearms drawn on the subject who was then positioned at the southeast corner of the bank parking lot. Mr. C's car windows were up so he could not hear if the officers were giving the subject commands. However, he believed the officers were possibly giving commands for the subject to get on the ground due to their body language. The subject then quickly went back north towards the bank and Mr. C. lost sight of him. He then saw the officers fire what he believed were two volleys of shots after the subject moved out of sight.

There were three witnesses at Ultimate Window Tinting, next door to True Tech Automotive. Ms. C (no relation to Mr. C) was inside Ultimate Window facing the highway and the U.S. Bank. She stated she noticed the arrival of police vehicles but stated that it was not unusual in the area and she looked down and continued her work. She stated that she heard three shots in succession and she then looked up to see a male fall to the ground. She did not see the male running, she only saw him fall to the ground. She then heard approximately 20 additional shots. Ms. C believed the first two shots sounded different from the remaining shots.

Mr. F and Mr. K were in the garage area of Ultimate Window Tinting. Mr. F was working on Mr. K's vehicle and Mr. K was playing games on his phone. Mr. F heard the shots but did not see what was happening during the shooting. Mr. K reported that he heard a "handful of shots" and saw someone running from his right to his left in the bank parking lot. He

heard five to six more shots and the person running fell to the ground. He then heard ten plus more shots. He noticed that there was a truck with police lights on and believed the person running was running from the truck.

iii. Jiffy Lube

Four witnesses were positioned at the Jiffy Lube located to the south of the U.S. Bank. Their perspective was approximately 300 to 390 feet from the scene of the shooting. Between the two locations there is a street and a large open lot with a chain link fence. The Jiffy Lube witnesses were looking over a vacant lot and the partial wall on the south side of the bank parking lot. One of them reported that he saw Mr. Peterson. The same witness who reported seeing Mr. Peterson knew of him because they had friends in common. This witness, Mr. B, referred to Mr. Peterson as Kevin.

Mr. B stated that he heard tires screech and looked north to see police cars pulling into the bank lot. He then saw Mr. Peterson begin running. He stated that Mr. Peterson was running away before the shots were fired. He also said that he did not see anything in Mr. Peterson's hands but that he heard officers yelling for 15 to 20 seconds before the gunfire. Mr. B also stated that the officers continued to shoot after Mr. Peterson was on the ground.

The other three Jiffy Lube witnesses also reported seeing and hearing what happened at the bank. One of them, Mr. JW, stated that he saw a person running and saw him go down. He was concerned about the safety of the people at the Jiffy Lube and told everyone to get down. The second witness, Mr. MW, stated that he could not see the person who was shot but did see the officers firing shots. He also stated that he saw one of the officers taking a defensive position at the back of a truck. The third witness was in the car bay and heard shots but was not able to see what happened.

iv. Other Civilian Witnesses

There were a number of other witnesses in the vicinity. They heard shots but did not see the shooting. These witnesses included an individual at an AAMCO business, two witnesses at an O'Reilly Auto Parts store, and a witness at a Mexican restaurant.

e. Video Evidence

The relevant video evidence includes footage of the controlled buy delivery at the Quality Inn. A motion-activated camera showed Mr. Peterson running from his car. At that time his car was blocked in front and behind by two vehicles with emergency lights activated. An officer was also in front of Mr. Peterson's vehicle with his service weapon drawn. As Mr. Peterson ran away from his vehicle, his left arm can be seen out and swinging and there appears to be nothing in his left hand. His right hand is at his side and positioned as if he was reaching into

his pocket. Two officers can be seen seconds behind and giving chase on foot before all three run out of the camera's view.

Additional footage was obtained from the U.S. Bank where the fatal confrontation occurred. As Mr. Peterson ran south from the hotel and into the bank lot, he passed along the back or east side of the bank building. There was a surveillance camera that captured images from this area, but its value was diminished because of low resolution and reduced frame rate. The video showed Mr. Peterson walking southbound with a hand out and raised in the area of his face. What he is holding, if anything, cannot be seen. Mr. Peterson then walks out of the camera's view.

The same camera captures Mr. Peterson coming back from the direction he was previously walking. This occurs approximately 28 seconds later; he reenters the camera's view and can be seen running northbound. Again, due to the diminished resolution, it cannot be discerned with certainty whether Mr. Peterson had anything in his hands at this time.

The video does show Mr. Peterson suddenly stumble to the ground. The footage also captures him pushing himself to a seated position on the ground while turning to face back in the direction he had been running from. The footage then captures him raising his arm and pointing an object that is consistent with a handgun in the direction of the south bank parking lot where the officers were. Moments later his hands drop, and his entire body falls to the ground. The video shows Mr. Peterson not moving after he fell to the ground except for a brief moment when he appears to momentarily raise his hands.

The U.S. Bank footage also captures the approach of the law enforcement officers. This occurred approximately five minutes after Mr. Peterson fell to the ground. This footage captures the officers using caution in their approach as if Mr. Peterson was armed.

The last significant video footage was from across the highway at the Bavarian Autoworks. This system had a view of the south bank parking lot where the officers first confronted Mr. Peterson. This footage is distant and of insufficient resolution to show details such as whether Mr. Peterson had anything in his hands, whether there was communication between him and the officers, or when the officers discharged their service weapons.

The Bavarian Autoworks video shows Mr. Peterson emerge from behind the bank walking south along the back of the south parking lot. Two vehicles with emergency lights can be seen pulling into the lot. Mr. Peterson can then be seen turning around northbound and then back southbound. He then can be seen approaching the southeast corner of the lot where the view of the camera is limited by foliage and a vehicle. After reaching the southeast corner of the parking lot, which is partially blocked by a fence or wall, Mr. Peterson can be seen turning and running northbound. Three officers can be seen on foot and move with him while keeping

space between them. Mr. Peterson can then be seen falling to the ground before disappearing behind the bank. He is not seen again on the Bavarian footage.

f. Forensic Evidence

The forensic and scene investigation was extensive and thorough. Evidence was recovered from Mr. Peterson's vehicle, which is relevant to the buy bust investigation, and from the U.S. Bank, the scene of the shooting. The forensic evidence can be summarized as follows:

i. The Mercedes

A search warrant was obtained for the Mercedes. Mr. Peterson was the registered owner. Officers found the following between the driver's seat and the door: a pill container with 17 ½ round blue pills with "30" and "M" markings; a bag with 10 ½ blue bars stamped "B707"; and a bag with 9 green bars stamped "S 903." Near the driver's-side seatbelt assembly was a red and white pill. Additional drug evidence was also recovered near the Hot Wheels lot, which was along the path that Mr. Peterson traveled on foot when he fled from the Quality Inn.

ii. Mr. Peterson's Firearm

A .40 caliber Glock 23 was found near Mr. Peterson's body. Records reflected that this firearm had been purchased by a relative of Mr. Peterson. An officer interviewed this witness, who reported that he had purchased the gun and had sold it to Mr. Peterson in August 2020.

On October 30, 2020, the Clark County Sheriff informed the media that, based on "the information I have," Mr. Peterson "reportedly fired his weapon at the deputies. The deputies returned fire and the subject was tragically killed." Forensic examination showed that Mr. Peterson's Glock had a cartridge in the chamber and the magazine contained 12 additional rounds, but no .40 caliber fired cartridge casings were found at the scene.

iii. Mr. Peterson's Cell Phone

An iPhone was found near Mr. Peterson's body. Officers reported that when they initially approached after the shooting, they could hear a voice coming from the phone. One officer discovered the phone was on an active video call. Investigators sought to recover any video of the incident that might have been taken from the phone. It is believed that Mr. Peterson was in contact on the phone with a woman with whom he had a relationship at the time of the incident. As is noted below, this witness has repeatedly declined to be interviewed. Mr. Peterson's phone was turned over to the FBI to try and bypass the phone's password; those efforts were unsuccessful. Search warrants were also authorized for Mr. Peterson's Snapchat account and several iCloud accounts. No video related to the shooting was available.

In light of Mr. Peterson having possibly been in video or audio communication with another person during the shooting, the detectives made every effort to obtain evidence from that

communication. The woman who was on the call declined requests to be interviewed. On December 15, 2020, our office sent a request to the attorneys representing her and Mr. Peterson's family. That request included the following:

Our office is committed to a thorough review of this matter. As such, we are renewing the request to interview [the witness]. In addition, we are requesting that you provide any evidence that may be relevant in assessing the officers' use of deadly force in this matter. This would include but is not limited to video evidence or statements from those who may have witnessed the incident.

This request was made a second time in June 2021. To date, the witness has not agreed to an interview. As a result of those requests, however, our office has been provided one piece of evidence, a video clip, from the civil attorneys representing Mr. Peterson's family.

The video clip is labeled as "Redacted, updated (1)." It is evident from the video that the witness was on a video call with Mr. Peterson at some time during the events at the Quality Inn and the U.S. Bank. The investigator who provided the video indicated that the footage was redacted to protect the privacy of the woman who was on the call. It includes a number of frames that are blurred and that appear to show texting or other electronic communications by one of the phones. The video consistently includes the word "paused" on the screen and the microphone icon shows that it was muted. No audio was included in the video clip. At one point, the video feed is activated for four seconds and police officers can be seen looking at the phone.

It can be inferred that Mr. Peterson's phone may have been paused and the microphone muted during the incident. However, any such conclusions should be drawn with caution considering the lack of access to the witness, and the lack of forensic information from her phone and Mr. Peterson's phone.

iv. Ballistic Evidence

Thirty-four fired cartridge cases, all 9mm, were recovered from the U.S. Bank parking lot. The state crime laboratory subsequently analyzed all of the cartridge cases, the officers' firearms, and Mr. Peterson's firearm.

Two bullets were recovered from Mr. Peterson's body during the autopsy. The crime laboratory was able to determine that one of those bullets was fired from Detective Anderson's Sig Sauer pistol. The second bullet was fired from either Deputy Feller's Glock 17 or Detective Brown's Glock 17 but could not be identified to a specific firearm.

g. Forensic Pathology Evidence

The Clark County Medical Examiner conducted Mr. Peterson's autopsy. It was determined that Mr. Peterson sustained four gunshot wounds, all from a distant range. Those gunshot wound findings can be summarized as follows:

- A gunshot that entered at the left base of the neck at the transition from the shoulder to the neck. This bullet exited through the right anterior lower neck. The gunshot wound pathway, with the body in the anatomic position, was left to right, upwards, and back to front.
- A gunshot that entered on the left side of the mid chest, lateral to the left areola. This bullet did not exit the body and was recovered from the lateral chest wall. The gunshot wound pathway, with the body in the anatomic position, was left to right, upwards, with minimal front/back deviation.
- A gunshot that entered the posterior left arm at the apex of the axillary crease with the arm adducted. This bullet then travelled into the left axilla and through the left lateral chest wall before coming to rest in the right pleural cavity where it was recovered. The gunshot wound pathway, with the body in the anatomic position, was left to right, downward, and back to front.
- A gunshot that entered the posterior medial proximal left arm and exited through the proximal medial left arm. The gunshot wound pathway, with the body in the anatomic position, was left to right, upwards, and back to front.

Toxicology testing of Mr. Peterson's blood showed the presence of THC and Carboxy-THC.

Analysis

The legal standards to be applied in this case are found in (1) RCW 9A.16.040, the statute that applied to a law enforcement officer's use of deadly force at the time of this incident, and (2) RCW 9A.16.050, the deadly force self-defense statute of general application. RCW 9A.16.040 provides:

(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...in the discharge of a legal duty; or

(c) When necessarily used by a peace officer meeting the good faith standard of this section...

(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.

In considering whether to use deadly force to arrest or apprehend under RCW 9A.16.040(1)(c), “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.” RCW 9A.16.040(2). One circumstance to be considered as a “threat of serious physical harm” is whether “[t]he suspect threatens a peace officer with a weapon or displays a weapon in a manner that could reasonably be construed as threatening.” RCW 9A.16.040(2)(a).

Under RCW 9A.16.040(1)(b) and (1)(c), the use of deadly force must, in addition, be “necessary” and must have met the “good faith standard.” “Necessary” is defined as “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.16.040(1). “Good faith” is also defined. It is an “objective standard which shall consider all the facts, circumstances, and information known to the officer at the time to determine whether a 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(4).

There can be little doubt that enforcing felony drug statutes is a legitimate function of the law enforcement officers involved in this case. Likewise, since all of the officers were general commission law enforcement officers pursuant to RCW 10.93.020, there can be no doubt that they were peace officers who would be entitled to rely on the law enforcement deadly force provisions of the self-defense statutes. In this case the task force officers utilized a lawful buy bust investigation procedure, using an undercover informant, to provide probable cause to believe that Mr. Peterson was in possession of drugs which he intended to deliver at the hotel. The investigation information included communications that could reasonably be interpreted to mean that he would be armed with a firearm that he was willing to use against law enforcement.

The informant arranged to buy drugs from Mr. Peterson at the direction of the task force investigators. The arrangements included agreement as to the date, time, and place for the delivery. Mr. Peterson arrived at the appointed time and place, and his communications left no question that he had drugs for sale and that his intent was to make a delivery to the informant at the hotel. Possession of drugs with intent to deliver is a class B felony. It is a strike offense when the possessor is also armed with a firearm.

Mr. Peterson's communications included an explicit threat to use a firearm to repel law enforcement efforts to intervene in his drug distribution activity. The images sent to the informant – which the task force officers were made aware of – constituted a specific threat against law enforcement. This information was included in the briefing before the controlled buy. Any similarly situated reasonable officer would have believed the threat would warrant extreme caution and might necessitate the need for deadly force depending on the specific actions taken by Mr. Peterson in response to the effort to arrest him.

The actual need for deadly force did not materialize in the parking lot of the hotel. The arrest team officers did not open fire when Mr. Peterson exited his vehicle and fled on foot even though they were aware that he was armed with a firearm. Although they knew he was armed and had previously expressed his willingness to shoot law enforcement, the officers did not resort to the use of deadly force until much later. The officers had probable cause to arrest Mr. Peterson and knew he was armed and fleeing but continued their forbearance until Mr. Peterson actually used the gun to threaten Detectives Anderson and Brown and Deputy Feller at the drive-through area of the bank.

When Mr. Peterson fled his car, he chose to take a gun with him that he could have left behind. The officers who pursued him on foot were aware that he was armed with a gun and conveyed that information to any containment officers who might encounter him. Mr. Peterson dropped the gun during the foot chase. He could have left it behind but did not. He ignored commands not to go for the gun but instead picked it up and continued to run. There was a considerable period of time after he picked the gun back up when he could have disarmed himself and tossed the gun. He elected not to do so. Thus, the containment officers at the bank were confronted with a drug distribution suspect who was non-compliant and armed with a handgun. In the moments in which they first confronted Mr. Peterson at the bank, the officers were confronted with a grave threat to their personal safety, but they did not immediately open fire.

No evidence, video, or witness contradicts the reports of the task force and containment officers concerning Mr. Peterson's flight from the hotel, his having dropped and picked up the gun, and his having ignored commands to stop and refrain from re-arming himself. In short, Mr. Peterson had ample opportunity to discard the gun before the confrontation in the bank parking lot. His actions coupled with his communications with the informant conveyed to the officers that he was intent on getting away and prepared to engage in armed resistance to keep from being arrested. These undisputed facts combine to justify a very reasonable fear on the part of the task force and containment officers that Mr. Peterson would shoot them if circumstances materialized that left him with no way to continue avoiding being detained and arrested.

The fatal use of deadly force occurred at the bank when Mr. Peterson's avenue to escape was cut off. As to Mr. Peterson's use of a firearm in the bank parking lot, the officers and several

civilians described an encounter consistent with Mr. Peterson following through on his threat. He had concealed the gun on his person but then pulled it out when confronted by Detective Anderson. He then ignored multiple commands to drop the gun despite warnings that he would be shot if he did not do so. It is significant that even during the first part of the encounter at the bank, the officers did not open fire immediately. As Mr. Peterson started to run back the way he had come, northbound, he was running in the direction of the officers who had pursued him from the hotel. He was doing so with a handgun in his hand. Under these circumstances, Detective Anderson reasonably believed that Mr. Peterson's action in drawing the handgun and not ridding himself of it was an action reasonably construed as threatening to any officer he would encounter. An armed drug suspect under such circumstances posed a serious threat of physical harm or death to any such officers and anyone else who happened to be in the area. Detective Anderson therefore reasonably believed that shooting at Mr. Peterson was necessary as the threat was imminent, deadly, and materialized after all efforts at de-escalation had failed. Detective Anderson's discharge of his service weapon was lawful under these circumstances.

The fatal use of force by Detective Brown and Deputy Feller was similarly lawful. They too were aware of the circumstances that brought Mr. Peterson to the bank parking lot. They saw Mr. Peterson level his gun at them simultaneously with Detective Anderson shooting or in the split second that followed. They too reasonably believed that shooting at Mr. Peterson was necessary as the threat that he posed to them and their fellow officers and the public was imminent, deadly, and had materialized after all efforts at de-escalation had failed. Both of the officers had a right to defend themselves, their fellow officers, and the public when Mr. Peterson pointed a gun at them and gave the unambiguous impression that he was about to shoot.

In addition to the statutory standards defining permissible use of deadly force by law enforcement officers, they also have the right like anyone else to act in self-defense and defense of others. RCW 9A.16.040, which governs the use of deadly force by 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.16.050." Under RCW 9A.16.050(1), homicide is justified:

[I]n the lawful defense of the slayer...or of any other person in his or her presence or company, when there is 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.

"Great personal injury" means "an injury that the slayer reasonably believed, in light of all the facts and circumstances known at the time, would produce severe pain and suffering, if it were inflicted upon either the slayer or another person." WPIC 2.04.01. The foregoing analysis

applies equally to this general self-defense statute. Detectives Anderson and Brown and Deputy Feller all reasonably believed there was imminent danger of Mr. Peterson shooting them or someone else in their presence. Their actions are also justified under RCW 9A.16.050.

The foregoing analysis under the use of force statutes is not based on undisputed evidence. We are mindful that certain witnesses provided their account or opinion that in their minds Mr. Peterson did not pose a threat. One civilian posted on Facebook that Mr. Peterson's hands were in his pockets when shots were fired. But the same witness later told investigators that he was not actually looking in the direction of Mr. Peterson and the officers because he was merging back into traffic. He could not see what Mr. Peterson was doing at the time of the shooting. Another civilian reported that he did not believe there was anything in Mr. Peterson's hands when he was running, but that civilian was looking at Mr. Peterson's back from 300 to 390 feet away. Both of these witnesses are contradicted by a passing civilian motorist whose attention was drawn to the activity early in the event and who had the best possible vantage point of any of the civilian witnesses. Her account of the shooting corroborated the officers' accounts of Mr. Peterson having pointed the gun at them at the time they fired shots.

It is not uncommon for witnesses in events such as this one to offer markedly different accounts of what they saw. This is true even where all witnesses are well-intentioned and truly believe what they saw and reported. Accounts vary for a host of reasons that often cannot be ascertained with confidence after the fact. Factors such as when the witness began paying attention to the events, the witness' vantage point, whether their view was even briefly impaired, whether the witness' attention was diverted even momentarily, and the stress of the event all bear on the weight and credibility of the accounts.

It is noteworthy that the claim that both of Mr. Peterson's hands were in his pockets is inconsistent with the video evidence from the bank and his own cell phone. Because he was live streaming, we know he was holding the phone. The bank video shows he also had the gun in hand. Ultimately, the one divergent account, from a civilian witness who was not looking in the direction of Mr. Peterson and the officers, does not discredit the accounts of officers and another civilian who were paying heightened attention to the events from unobstructed vantage points and reported that the shooting was precipitated by Mr. Peterson brandishing a gun.

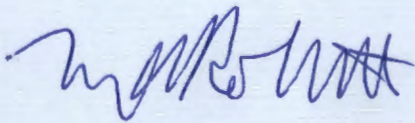
In this case, the officers' use of force complied with both RCW 9A.16.040 and RCW 9A.16.050. The officers lawfully sought to arrest Mr. Peterson. An objective and similarly situated reasonable officer would have believed that the use of deadly force was necessary to prevent death or serious physical harm to the officers. Likewise, the officers reasonably believed that Mr. Peterson intended to imminently inflict great personal injury on one or more of the officers in order to foil their attempt to arrest him.

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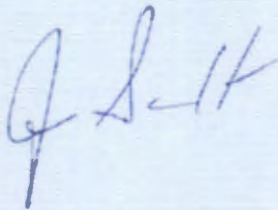
It is tragic that Mr. Peterson lost his life. But he made the regrettable decision to distribute drugs and, in the course of felony drug dealing, threaten to shoot the police. He took the gun with him when he unlawfully fled from the Mercedes, he retrieved it after dropping it despite commands to leave it where it was, and he pointed it at the containment officers who met him at the U.S. Bank. There was no legal requirement for the officers to allow Mr. Peterson to fire first before defending themselves. They did not have to wait for him to pull the trigger. Under the good faith standard, that is considering "all the facts, circumstances, and information" known to the officers, "similarly situated reasonable" police officers would uniformly "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(4).

For these reasons, we have determined that the use of deadly force by the officers in this incident was justified and lawful.

Sincerely,



Mary E. Robnett
Pierce County Prosecuting Attorney



James Schacht
Chief Criminal Deputy
Pierce County Prosecuting Attorney's Office

cc: Sheriff Chuck E. Atkins, Clark County Sheriff's Office
Chief Criminal Deputy Troy Brightbill, Cowlitz County Sheriff's Office,
Lower Columbia Major Crimes Team