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STATE OF VERMONT
OFFICE OF THE WASHINGTON COUNTY STATE'S ATTORNEY

September 18, 2019

Det. Sgt. Angela Baker
Vermont State Police – Major Crime Unit
45 State Drive
Waterbury, VT 05671

In re: Case No. 19A303828 / 19MP006253

Dear Det. Sgt. Baker,

Upon thorough review of the submitted case and exhibits, and my office's own collateral investigation, the State declines to file criminal charges in this matter. Declination to prosecute is made independent of the Office of the Attorney General and does not impact the Attorney General's authority to decline or pursue charges as he or his designee deems appropriate.

The evidence presented supports the conclusion that when Cpl. Chad Bean opened fire upon Mark Johnson, the decedent, he did so justifiably under the circumstances and consistent with the basis for justifiable homicide set forth under 13 V.S.A. § 2305(2)¹:

- The statements, conduct, and non-compliance with law enforcement directives exhibited by the decedent would, to a reasonable individual under the circumstances, lead to the conclusion that he intended to attempt to commit murder.
- The decedent's statements and behavior, culminating in aiming what appeared to be a firearm at Cpl. Bean, supported the use of deadly force under the totality of the circumstances.

Review of the evidence indicates that the decedent was armed with a bb/pellet gun that was visually indistinguishable from a standard caliber pistol. The lack of lethality does not impact this analysis, as the officers on scene could not distinguish the true nature of the firearm based on the distance and lighting conditions at the time. The decedent, despite his almost certain knowledge that he did not possess a standard caliber firearm, acted in a manner indicative of possessing a standard caliber firearm (e.g. 9mm), which credibly supports the assessment of the

¹ There may be an additional basis for justification under 13 V.S.A. § 2305(3), as the law enforcement officer was likely situated as a "civil officer ... suppressing opposition against him or her in the just and necessary discharge of his or her duty." No further analysis is presented for purposes of this declination analysis.

officers on scene of the risk presented by the decedent.

In reviewing the evidence, I did not identify meaningful opportunities for employment of less than lethal means of incapacitating the decedent, based upon the lack of cover or concealment in proximity to his location, unavailability of back up, the risk presented by disengaging from the scene to secure less lethal means, and the assessed risk presented by the decedent. The officers clearly attempted to maintain communication with the decedent, and made reasonable efforts to de-escalate the situation through engagement, changing the tone of their voices, and offering to help the decedent. I further conclude a lack of malice, based on the conduct of the officers and their immediate attempts at performing life saving measures on the decedent.

Additionally, based on the Vermont State Police's declination to interview either officer involved in this matter, my office initiated an inquest pursuant to 13 V.S.A. § 5131. On August 30, 2019, by agreement with their counsel, I conducted depositions in lieu of compelled testimony of Cpl. Chad Bean and Off. Christopher Quesnel. The transcripts of these depositions are available to the Major Crime Unit and Office of the Attorney General upon request. The testimony of the officers is consistent with the facts derived from the investigation and supports the determination to decline prosecution.

In summation, there is an insufficient basis to pursue criminal prosecution of any officer under 13 V.S.A. ch. 53, and my office declines to initiate criminal charges in this matter. Thank you.

Very respectfully,



Rory T. Thibault
State's Attorney

cc: Domenica Padula, Esq.
Chief, Criminal Division
Office of the Attorney General