



OFFICE OF THE COMMONWEALTH'S ATTORNEY – CITY OF RICHMOND

REVIEW OF
USE OF FORCE INVESTIGATION AND ANALYSIS
INTERSTATE 95 SHOOTING – MAY 14, 2018

For Public Release

REVIEW OF ANALYSIS

The purpose of this report is to review the evidence, law and conclusions contained in the “*Use of Force Investigation and Analysis, Interstate 95 Shooting-May 14, 2018*” (“*Analysis*”) released to the public by the Richmond Commonwealth’s Attorney’s Office on August 31, 2018, and to determine whether a criminal offense occurred. The Analysis is available on the Commonwealth’s Attorney’s page on the City of Richmond website at rva.gov. The video from the officer’s body worn camera is available on various media platforms.

I have reviewed all the evidentiary items listed in the Analysis. In addition, I met with the Virginia State Trooper who was trying to cross I-95 at the time of the shooting and we travelled to the scene so that he could give me his first-hand observations. I also met with two of the family members of Marcus-David Peters. In response to questions that have been raised, the Office requested and obtained the following new, additional items:

- Consultation with Mr. Kelly Furgurson, Director of Access and Emergency Services, CIT Coordinator, Richmond Behavioral Health Authority;
- Analysis of BWC and Taser Pulse Graph, by Sgt. Jean-Guy Legouffe, Conducted Electrical Weapon Instructor, Richmond Police Department;
- Certificate of Analysis FS Lab #C20-10242, dated September 30, 2020, Commonwealth of Virginia Department of Forensic Analysis.

I. FACTUAL SUMMARY

The Factual Summary contained in the Analysis is accurate and is included below, in italics, for convenience. NOTE: In order to correspond with the chronology of events, the section concerning Mr. Peter’s behavior at the Jefferson Hotel has been placed in front of the section describing his encounter with the officer.

A. *The Jefferson Hotel*

In addition to his position at Essex High School, Mr. Peters was employed part-time at the Jefferson Hotel located at 101 Franklin Street in the City of Richmond. According to W1, Mr. Peters arrived home from work at Essex High School at approximately 4:30 p.m. on May 14, 2018. That same witness advised that Mr. Peters changed clothes, and that they smoked some marijuana before he left to see a co-worker at the Jefferson Hotel. The witness recalled that Mr. Peters left his apartment at approximately 5:00 p.m. and planned to return by 7:00 p.m. Cell phone analysis of Mr. Peters' iPhone 7 revealed he was last auto-connected to his home Wi-Fi at 4:46 p.m.

Surveillance footage at the Jefferson Hotel captured Mr. Peters' arrival in the blue Grand Marquis at approximately 5:22 p.m. This is corroborated by cell phone records which showed he last auto-connected to the Jefferson Hotel's Wi-Fi at 5:22 p.m. The arrival footage is unremarkable, as he appeared to exit the vehicle and walk calmly into the hotel. Once inside, however, he removed his shirt in the main lobby, dropped it on the floor and walked around topless before going downstairs to the security office.

Surveillance footage at the security office showed him topless talking to someone behind a counter, but then engaging in what appeared to be a brief but tense exchange with another employee who backed away. Other witnesses advised that he went into the employee locker room where he could be heard yelling. He appeared to exit the hotel onto the Jefferson Street side. Mr. Peters is next seen running nude and yelling on W. Franklin Street before getting into his vehicle and driving away from the hotel. VCU surveillance footage showed him traveling west on Main Street, then left on Belvidere Street, and finally rear ending the first of three vehicles. We regard all of this behavior as abnormal and consistent with a compromised or deteriorating mental state.

B. *Encounter Between the Officer and Peters*

At approximately 5:30 p.m. the officer observed a Mercury Grand Marquis strike a vehicle near the intersection of N. Belvidere Street and W. Franklin Street. The impact was strong enough to force the struck vehicle off the road and into a tree and sign post. The Grand Marquis did not stop at the scene of the crash; instead, it continued northbound on N. Belvidere Street. The officer activated his lights in pursuit to make a felony traffic stop for hit and run, and possibly other charges. The suspect vehicle continued northbound driving recklessly and

swerving around other vehicles. It exited N. Belvidere Street onto the on-ramp of Interstate 95 North, struck two additional vehicles, veered off of the roadway and came to rest in a tree lined area in the center of the ramp.

Body worn camera (BWC) footage of the incident site creates the illusion that the area is larger than it, in fact, is. That said, the footage revealed that the officer exited his police vehicle and approached the stalled vehicle on foot. With his service weapon drawn, he commanded the driver, later identified as Mr. Peters, to remain inside of the vehicle. Mr. Peters can be seen and heard yelling, flailing his arms around, and moving his head fervently from side to side. He was so active that his movements caused the vehicle to rock from side to side. In his interview, the officer explained that he feared that Mr. Peters might be reaching for a weapon because he could see him reaching to the passenger side of the cabin. The officer radioed the Department of Emergency Communications (DEC) that the subject inside of the vehicle appeared to be mentally unstable. [The officer had previously undergone Crisis Intervention Training] The officer appeared to move away from Mr. Peters' vehicle and reposition himself closer to his police vehicle. He later explained that this was a precaution against potential gunfire because he could not safely observe inside the vehicle.

Despite the officer's commands, Mr. Peters exited his vehicle on his stomach, feet first, and through the driver side window. [The front driver's side door was later found to be operable.] He did not acknowledge the officer's presence; instead, he ran completely nude toward Interstate 95 during heavy rush hour traffic. He entered the right travel lane and was struck by a car. The officer explained that it appeared to him that Mr. Peters tucked his shoulder, as if bracing for impact. He considered that Mr. Peters may have been trying to kill himself. [We could not confirm this observation in our review of the footage.] After being struck by the car, Mr. Peters got up immediately, but then laid back down in the travel lane for several seconds where he repeatedly rolled over in a tumbling motion. He then moved to the shoulder of the roadway, where he again laid on the ground moving his arms and legs as if making snow angels. Mr. Peters can be heard talking to himself while he thrashed and rolled on the shoulder of the travel lane. For several seconds, he rolled and tumbled on the pavement. At one point he stopped, laid flat on his back, then sat up suddenly and said "I figured it out – I'm living the dream." By this point, the officer had already notified DEC that Mr. Peters had been struck, and he had again requested additional units. In his interview, the officer explained that Mr. Peters seemed unaffected by the vehicle

impact or the abrasive conditions of the roadway.

The officer further explained that he holstered his firearm and drew his yellow Taser as he moved closer to observe and check on Mr. Peters. Suddenly, Mr. Peters stood and faced the officer who was standing some feet away. He appeared agitated and yelled at the officer to “Back the fuck up.” The officer backed up as Mr. Peters advanced. He explained to us that he was attempting to maintain distance between them and to stall in hopes that other units would arrive. Mr. Peters then yelled “Put that Taser down or I’ll kill you.” The officer warned that he would deploy the Taser, but Mr. Peters continued to advance on the officer while yelling, “Die motherfucker.” The officer deployed his Taser striking Peters with one prong, but it had no effect.

Nude and unarmed, Mr. Peters advanced closer and lunged at the officer with his arms extended in what appeared to be an effort to grab him. In his interview, the officer acknowledged that Mr. Peters was unarmed, but he indicated that by this point, it was “an all-out fight between the two” of them to gain control over his firearm. The officer further explained that he was wary of engaging hand to hand with Mr. Peters because of his erratic behavior, his unresponsiveness to pain, and fear that Mr. Peters might land on top of him. Using his left arm to repel him, the officer explained that he “bladed” his body to shield his firearm from Mr. Peters. As Mr. Peters continued to charge in apparent attack, the officer fired at least twice. It is unclear whether Mr. Peters actually made contact before the shots were fired; although, in the footage he was certainly well within arm’s length.

The final autopsy report issued by the OCME indicated that Peters suffered three gunshot wounds – two penetrating wounds to the abdomen, from which two bullets were recovered, and one perforating wound to the left forearm. No bullet was recovered from the left forearm because the wound was through and through. We believe a round traveled through his forearm and into his abdomen.

Mr. Peters collapsed, and the officer notified DEC that shots had been fired. BWC showed the Taser in the officer’s left hand and his service weapon drawn in his right hand. Within seconds, a Virginia State Trooper and several other RPD officers arrived on scene. Mr. Peters continued to behave erratically as he lay on the ground saying strange things such as “I’ll kill you,” and trying to grab or strike one of the officers as they attempted to secure him. Once he was secured, the Richmond Ambulance Authority (RAA) responded and transported him to Virginia Commonwealth University Medical Center (VCUMC) where he

succumbed to his injuries.

Several citizen witnesses who observed the altercation confirmed that there was physical contact between the officer and Mr. Peters prior to the shooting. One witness described Mr. Peters lunging and charging the officer and then the two of them “tussling.” Another said Mr. Peters began a physical altercation with the officer. The third indicated that the officer and Mr. Peters “tussled” after the Taser had no effect. Photographs of the officer’s uniform reveal blood in the areas where Mr. Peters appeared to make contact. No witness to the shooting described the officer firing from any distance other than a close distance, and no witness characterized Mr. Peters’ behavior as other than aggressive.

II. CRISIS INTERVENTION TRAINING

The Analysis briefly noted that the officer had previously undergone Crisis Intervention Training (CIT). Questions have been raised as to whether the officer used that training and if so, whether it was used appropriately to de-escalate the volatile situation along the highway. The officer completed Crisis Intervention Training in 2011. CIT is a week-long training that is offered to all Richmond police officers and is approved by the Virginia Department of Criminal Justice. The training is conducted by the Richmond Behavioral Health Authority’s CIT Coordinator (“Coordinator”) in conjunction with clinical subject-matter experts and CIT training instructors from law enforcement. The purpose and goal of CIT, which RPD has utilized since 2010, is to provide officers with certain basic knowledge and tools to 1) recognize when an individual may be having a mental health crisis; 2) attempt to de-escalate that situation for the safety of all involved; and 3) divert the individual from the criminal justice system to a medical or psychotherapeutic system. The Coordinator reviewed the BWC video of the shooting and his conclusions are included in the following discussion.

The Coordinator opined that the officer used CIT appropriately in that he immediately recognized that Mr. Peters was “mentally unstable” even before Mr. Peters had exited his car, based upon his observation of Mr. Peter’s behavior and unintelligible comments while Mr. Peters was still in his car. The officer called for additional units to assist him. CIT officers are trained that communication and de-escalation of a volatile situation requires that the officer first establish a safe position for himself and the mentally-ill individual. In the 76 seconds that elapsed between the time that Mr. Peters climbed out of his car window and the time that

he was shot, there was no time when both the officer and Mr. Peters were in a safe position to make communication and de-escalation possible.

Contrary to the officer's directions to stay in his car, Mr. Peters ran from his car onto Interstate 95 and into the passenger side rear door of a car that was moving slowly in the right hand lane. Mr. Peters fell away from the car onto the shoulder of the road and began rolling around on the highway and making "snow angels" for approximately 60 seconds as rush-hour traffic stopped behind him. During this period, the officer holstered his firearm and drew his taser. The officer called for back-up police support and remained yards away from Mr. Peters. The officer kept a metal guardrail between himself and Mr. Peters in an attempt to both observe Mr. Peters and maintain a safe distance from him. The officer did not yell at Mr. Peters or attempt to touch Mr. Peters. At this point, there was no mutually safe place to converse with Mr. Peters.

After rolling around on the shoulder of the interstate, Mr. Peters sat up and yelled, "I figured it out, I'm living the dream." He then moved directly towards the officer, cursing at him and threatening to kill him. In the 15 seconds between Mr. Peters advancing towards the officer and being shot, there was no time for the officer to use CIT protocols because there was no time when both the officer and Mr. Peters were in a safe place, and where Mr. Peters' altered mental health allowed the officer to establish communication with him in order to de-escalate the situation. The Coordinator noted that de-escalation can only be attempted once all parties involved are able to communicate from a safe position that is free from the threat of injury or death to either party. Given the severity of Mr. Peter's altered mental state, he was incapable of the rational communication necessary for the officer to use CIT in an effective manner.

The Coordinator opined that a successful intervention might have been possible if Mr. Peters' decompensation had been able to be psychologically addressed while he was at the Jefferson Hotel. Even at that point, his behavior appeared so disordered that it is unlikely that communication could have been established with him. Ideally, the "intervenor," at that point would have been a licensed and experienced mental health professional with a Master's degree level of education. The intervenor would also have had training in crisis intervention, de-escalation and the civil commitment process. Unfortunately, the authorities were not aware of Mr. Peters' irrational behavior until the officer observed Mr.

Peters hit a car on N. Belvidere Street and leave the scene. The driver of the car that was struck was taken to the hospital for treatment.

Within the next few minutes, the officer observed Mr. Peters continue to drive erratically down N. Belvidere Street and hit two other vehicles. At this point, the officer had observed Mr. Peters commit three potential felony hit and run offenses. These crimes can result in a “high-risk” traffic stop which would lead an officer to draw his firearm until he could assess the situation. After Mr. Peters hit the third car and then crashed his own car into a wooded area off of I-95, the officer drew his firearm, maintained his distance from the suspect car until he could evaluate the situation, and directed the driver to “Stay in the car.” Once Mr. Peters ran onto the interstate and was no longer an imminent threat to the officer, the officer holstered his firearm and drew his taser.

III. USE OF TASER

According to RPD policy, a taser is a non-lethal weapon that may be drawn and deployed only in those instances where attempts to subdue a person by verbal communication or other less lethal force has been or will likely be ineffective. The tasers used by the RPD are bright yellow and contain two cartridges. In an ideal circumstance, the taser should be deployed perpendicular to the ground, with the officer 7-15 feet from the subject. When the taser is deployed, two probes are expelled with copper wires trailing from each probe back to the taser. Both probes must make contact with the skin of the subject so that an electrical current can “make the circuit.” If the officer is within a 7-15 foot range from the subject, it is more likely that the ideal separation of 12 inches between each probe when they make contact with the subject will be achieved. If the electrical circuit has been made between the probes, the current will create a neuro-muscular incapacitation (NMI) for only five seconds. The NMI will render the subject temporarily unable to control bodily muscle movements. Contrary to television and movie portrayals, being tased does not render you unconscious, nor does it cause paralysis for any significant period of time. An individual who is sufficiently motivated by rage, drugs, or an altered mental state may recover immediately from being tased after the five second period has passed and continue the conduct that caused him to be tased.

In this instance, the officer kept his taser trained on Mr. Peters while Mr. Peters approached the officer and told the officer to “Back the fuck up. Back the

fuck up.” The officer backed away from Mr. Peters and continued to retreat while Mr. Peters aggressively continued towards him, saying, “Put that Taser down or I’ll kill you.” The officer warned, “I’ll deploy” and then deployed the taser. One probe hit Mr. Peters’ right shoulder. The other probe did not immediately make contact with Mr. Peters and he continued towards the officer. Mr. Peters yelled, “Die, motherfucker!” The officer yelled at him, “Back up, back up, back up!” as Mr. Peters re-engaged with the officer and reached for his gun. The officer then shot Mr. Peters twice, and then continued to yell “Back up, back up” as Mr. Peters finally fell away from him.

Immediately after the shooting, a Virginia State Trooper asked the officer, “You tase him?” The officer responded, “I tried to, it didn’t work,” because Mr. Peters did not seem to be affected after the taser was deployed. However, the taser did in fact work. A Pulse Log Graph is the analysis of the taser’s metadata and shows what happened after the officer deployed the taser. The Graph shows that the current did not connect for the first three seconds and then connected for only the last two seconds of the five-second period. During the two seconds that the connection was made, the BWC shows Mr. Peters’ knees buckling as the second probe finally connected with some part of his body. Mr. Peters falls away from the officer and then stumbles over to the trunk of his (Mr. Peters) car. The current then ends and Mr. Peters recovers and charges towards the officer again. The taser had no significant NMI effect on Mr. Peters because the current only lasted for two seconds (instead of five seconds) and because of Mr. Peters’ altered mental state.

Mr. Peters fell to the ground after being shot, rolled over, stood up, and continued to yell and gesture at the officer. Mr. Peters walked away towards some brush as a Virginia State Trooper arrived on the scene. Mr. Peters collapsed by the bushes and was treated by responding officers until an ambulance arrived. Mr. Peters was transported to VCU Health, operated on and given multiple blood transfusions, but tragically died shortly after midnight on May 15, 2018.

IV. STATE LAB ANALYSIS

In response to concerns raised by the Peters family, the Commonwealth of Virginia Department of Forensic Science (“DFS”) was asked to conduct an analysis to determine whether the officer’s BWC had been edited or altered. DFS compared the video file from the officer’s BWC with the video file uploaded from the original recording device to Evidence.com. Evidence.com is a cloud-based

digital evidence management system that allows law enforcement to manage, review and share digital evidence, particularly video evidence captured with Axon-branded cameras (BWC). DFS concluded that the laboratory-calculated “hash values” were identical, indicating that the officer’s BWC video was identical to the video recording file uploaded from the original recording device. Thus, the BWC video had not been edited or altered.

V. CONCLUSION

Based upon my review of the Analysis and of the evidence listed therein, the additional evidence requested and discussed above, the applicable law, and the totality of the circumstances surrounding this devastating event, the officer’s ultimate decision to use lethal force was a reasonable response to the imminent danger presented to himself and the public by Mr. Peters’ continued violent behavior due to his mental deterioration.

Colette Wallace McEachin
Commonwealth’s Attorney
November 6, 2020