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WINNEBAGO COUNTY STATE'S ATTORNEY

DATE: July 19, 2024
TO: The People of Winnebago County
FROM: J. Hanley, State's Attorney 

POLICE INVOLVED SHOOTING DECISION MEMORANDUM
INJURED PARTY: Malik Trotter

I. Introduction

The Winnebago-Boone County Integrity Task Force (“Task Force”) conducted the investigation of Rockford Police Officer Vargas’ use of deadly force. During the course of their investigation, investigators interviewed civilian witnesses and reviewed body worn and “dash” camera video footage, photographs of the scene, and police reports. The Task Force provided the Office of the Winnebago County State’s Attorney its final report of investigation.

The purpose of this memorandum is to provide the community with an explanation of the facts of the incident, the legal principles involved, and this Office’s decision as to whether Officer Vargas should be charged criminally for his actions that day.

As detailed below, I find that Officer Vargas’s use of force was justified as he acted reasonably and lawfully. Therefore, no criminal charges are warranted.

II. Review of Officer Involved Shootings

When an officer-involved shooting occurs in Winnebago County, the Task Force is called in to investigate. The Task Force is comprised of all law enforcement agencies in Winnebago and Boone County. The Task Force is headed by a commander from the Illinois State Police. The sheriffs and police chiefs maintain authority to activate the Task Force when an officer involved shooting or other use of deadly force occurs. If the law enforcement agency has an officer that is the subject of the investigation, that agency’s officers are excluded from participating in the investigation. As with all criminal cases, it is the primary responsibility of the investigating agency to collect all available evidence of a potential crime so that a determination of the facts can be made. The State’s Attorney then reviews the evidence and makes the decision of whether criminal charges should be brought against the officer involved. The State’s Attorney does not make any determinations regarding whether an officer may have violated police department policy or civil (non-criminal) laws.

III. Prosecutorial Standard for Filing Criminal Charges

A. Generally

In making a charging decision, the State's Attorney makes a determination of whether there is sufficient admissible evidence to prove each element of an offense beyond a reasonable doubt. This analysis is consistent with the American Bar Association Criminal Justice Standard 3-4.3 which provides: "A prosecutor should seek or file criminal charges only if the prosecutor reasonably believes that the charges are supported by probable cause, that admissible evidence will be sufficient to support conviction beyond a reasonable doubt, and that the decision to charge is in the interest of justice."

This is the same standard that the Winnebago County State's Attorney's Office applies to all criminal prosecutions. This analysis also requires the State's Attorney to evaluate whether there is sufficient evidence to overcome any affirmative defense that the accused is likely to raise.

B. Use of Force

In most cases involving an officer's use of force, whether lethal or not, the primary question to be decided is whether the officer was justified in the use of the force employed. As with any citizen, an officer may use force in defense of himself or another from bodily harm. The Illinois Use of Force in Defense of Person statute provides in relevant part:

A person is justified in the use of force against another when and to the extent that he reasonably believes that such conduct is necessary to defend himself or another against such other's imminent use of unlawful force. However, he is justified in the use of force which is intended or likely to cause death or great bodily harm only if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or another, or the commission of a forcible felony.

720 ILCS 5/7-1 (a).¹

In the context of defense of person, Illinois law is well-established that "[j]ustifiable use of force is a defense in a murder prosecution when the person's belief is reasonable even if it is mistaken." *People v. Lockett*, 82 Ill. 2d 546, 550 (1980). "Consequently, the law does not charge a person, when he has reasonable grounds to believe himself in apparent danger of losing his life or suffering great bodily injury, to use inerrable judgment. It would be unreasonable to require such an exacting decision to be made in the space of a few seconds while one is fearful and under great stress." *People v. White*, 87 Ill. App. 3d 321, 323 (1st Dist. 1980) (citing *People v. Motuzas*, 352 Ill. 340, 346 (1933)). See also *People v. Keefe*, 209 Ill. App. 3d 744, 751 (1st Dist.

¹ The elements justifying the use of force in defense of person are that (1) force is threatened against a person; (2) that the person threatened is not the aggressor; (3) that the danger of harm is imminent; (4) that the force threatened is unlawful; (5) that the person threatened must actually believe that a danger exists; (6) that the use of force is necessary to avert the danger; (7) that the kind and amount of force which he uses is necessary; and (8) that such beliefs are reasonable. *People v. Everette*, 141 Ill. 2d 147 (1990); *People v. Belpedio*, 212 Ill. App. 3d 155 (2nd Dist. 1991); *People v. Swanson*, 211 Ill. App. 3d 510 (1st Dist. 1991).

1991) (“The privilege of using deadly force to protect oneself from another, if one reasonably believes he is in imminent danger of death or great bodily harm, exists even where one is mistaken or the danger is only apparent.”)

Accordingly, “it is the [person]’s perception of the danger, and not the actual danger, which is dispositive” (*People v. Sawyer*, 115 Ill. 2d 184, 193 (1986) (citing *People v. Johnson*, 2 Ill. 2d 165, 171 (1954)), and the “test is what the defendant, as a reasonable man, believed under the circumstances.” *People v. Willis*, 217 Ill. App. 3d 909, 922 (1st Dist. 1991); see also *People v. Rodriguez*, 187 Ill. App. 3d 484, 489 (1st Dist. 1989).

In addition to defense of person, a determination must also be made as to whether the officer’s actions were justified under 720 ILCS 5/7-5. That statute provides in pertinent part:

(a) A peace officer, or any person whom he has summoned or directed to assist him, need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes, based on the totality of the circumstances, to be necessary to effect the arrest and of any force which he reasonably believes, based on the totality of the circumstances, to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when: (i) he reasonably believes, based on the totality of the circumstances, that such force is necessary to prevent death or great bodily harm to himself or such other person; or (ii) when he reasonably believes, based on the totality of the circumstances, both that: (1) Such force is necessary to prevent the arrest from being defeated by resistance or escape and the officer reasonably believes that the person to be arrested is likely to cause great bodily harm to another; and (2) The person to be arrested committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

720 ILCS 5/7-5(a). See also, *Tennessee v. Garner*, 471 U.S. 1, 11 (1985) (“[I]f the suspect threatens the officer with a weapon, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”)

Moreover, “[t]he ‘reasonableness’ of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight. . . . The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation.” *Graham v. Connor*, 490 U.S. 386, 396-7 (1989). See also 720 ILCS 5/7-5(f). In evaluating whether an officer’s actions were reasonable, the Supreme Court has stated courts must pay “careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Graham* at 396.

IV. Facts

Unless otherwise noted, the following recitation of the facts is derived primarily from reports of law enforcement officers involved in the incident, video footage, and witness interviews.

On Sunday, January 28, 2024, at approximately 1:46 p.m., City of Rockford Police Officers responded to the 3000 block of Jacqueline Drive to investigate a reported domestic violence incident and discharge of a firearm. Upon arrival, officers met with a victim who told officers that her and Trotter had gotten into an argument. She stated that she and Trotter, who is also known as "Sonic," were hanging out in Chicago the night before where Trotter had been drinking Lean (a liquid mixture of codeine cough syrup and soda), ecstasy, and smoking weed. The victim believed that Trotter was still "high" during the argument, which occurred at her apartment.

After and during the argument, Trotter began taking shoes and other items from the victim's apartment and putting them in a garbage bag. He also took approximately \$600 from the victim's purse and took her cell phone when he left the apartment. The victim's son walked out of the apartment to confront Trotter. The victim's son was yelling "Sonic" and saw Trotter in an area behind the apartment. Trotter raised a pistol up and fired three rounds. Later, officers located some of the items taken from the victim's apartment in a yard behind her apartment.

The victim told officers that she could "ping" her phone (through Life360) which was believed to be in Trotter's possession. Officers asked her to call 911 if she was able to locate her phone. At approximately 3:17 PM, dispatch received a call from the victim who said her cell phone was pinging in the area of BJ's Place located at 2842 11th Street in Rockford.

At approximately 3:21 PM, Officer Vargas located who he believed to be Trotter in the backyard of 2926 11th Street. Officer Vargas, accompanied by his K9 Nyx, attempted to speak with Trotter; however, Trotter fled eastbound through the backyard and scaled a wooden privacy fence. One of Trotter's three backpacks became stuck in the fence and was left behind. This backpack was later searched, and a loaded Ruger handgun was found inside.

RPD K9 Nyx scaled the fence and gave chase. Trotter ran southeast, towards the south side of 2929 Kinsey Street, with Nyx quickly closing the distance.

Officer Vargas scaled the same fence and ran in the same direction as K9 Nyx. Shortly after scaling the fence, Officer Vargas heard gunshots coming from K9 Nyx's last known location. Officer Vargas reported the shots fired to dispatch and proceeded in the direction of the shots.

Officer Vargas located K9 Nyx lying near the southeast corner of 2929 Kinsey Street and saw Trotter now running eastbound across the roadway with a handgun in his left hand. He yelled at Trotter to drop the gun. Trotter, while running east and his back facing me, pointed the firearm at Officer Vargas and fired in his direction. As detailed below, Officer Vargas returned fire.

Trotter fell and sustained a gunshot wound to his left leg in the front-yard of 2930 Kinsey Street, which is across the street from 2929 Kinsey Street. In an interview after the incident, Trotter indicated he threw the firearm, which was later collected from the front-yard of 2938 Kinsey Street.

A. Officer Vargas' Statements

Officer Vargas had responded to the earlier incident at the Jacqueline Drive apartment and knew Trotter was a black male wearing a blue and white flannel jacket carrying bags with him. Officer Vargas understood that Trotter had left that earlier scene armed with at least one firearm. After that incident, Officer Vargas, utilizing K9 Officer Nyx, tracked for Trotter and had located Trotter's discarded jacket within the Sandy Hollow Golf Course.

Around 3:15 p.m., Officer Vargas was on patrol near the old Kmart on Sandy Hollow Street in Rockford when he was provided an updated description of Trotter, which was that he was now wearing a dark blue hoodie.

Vargas traveled to the area near BJ's place and saw a man walking southbound on the east sidewalk coming from the direction of BJ's place. The man was a black male wearing a dark beanie, dark hoodie, and light jeans carrying a large bag over his shoulder and multiple small bags. It was Trotter.

Excerpts from Officer Vargas' statement are included below:

As I was getting closer to Trotter, I observed him react to RPD Sergeant Berke pull over and he was now turning quickly heading east between houses on 11th St. I pulled my squad over in front of the residence, activated my overhead emergency lights, exited my squad and now observed the Trotter running eastbound. I ran around my squad and began warning Trotter to stop running or I would send a police dog and he would be bit. I retrieved my K9 partner Nyx from the rear passenger side of my squad and began running eastbound with her. I observed Trotter still running east and was climbing a privacy fence.

I gave K9 Nyx the pre-determined command to apprehend Trotter but he made it over the privacy fence in front of us. I had to assist K9 Nyx over the fence. I caught a glimpse of Trotter running out of view southbound after jumping the fence and I observed K9 Nyx heading in that direction so I was confident she observed him.

I had to climb over the fence and as I made it over, I began to hear gunfire nearby. I believed the gunfire came from the side of a residence to my southeast so I began to move that way with my duty weapon un-holstered. I moved slowly around the corner of the residence and observed K9 Nyx laying on the ground not moving or making any sound. I also observed Trotter now running eastbound across the roadway with a handgun in his left hand.

I yelled out to Trotter ordering him to drop the gun as I began to pursue him. Trotter, while running east and his back facing me, pointed the firearm back at me and fired a round at me.

I now kneeled down and began to discharge my firearm at Trotter to stop his deadly threat and flight. Trotter made it over a chain link fence of a residence on the eastside of the roadway when I observed him fall to the ground.

During the time I had initially discharged my weapon at Trotter he had fallen in the yard of the residence and I had to reload my firearm. While I continued to order Trotter to drop the gun and show his hands, he got up again to continue running and he still posed a threat of death or great bodily harm to me. I discharged my firearm again at which point Trotter fell again; which is when I knew he was struck because I could hear him yell that he was shot. During the time he advised he was shot he threw the firearm away from him.

I gave clear and concise commands to drop the gun if he still had it and to not reach for anything. He continued to move his hands near his body and I believed he was still attempting to reach for the firearm. He eventually threw the firearm away towards the south and advised he had been shot. Sgt. Berke arrived by my side at this time and assisted with giving orders to Trotter who I observed was now reaching towards one of the bags still attached to his body. We both yelled at him to stop reaching for anything and keep his hands up. He complied long enough for us to approach him and when we were close he continued to try and reach for a zipper of one of the bags. We again yelled at him to stop reaching and I grabbed his arms to place handcuffs on him. I was able to handcuff Trotter and observed he had an injury to one of his legs.

I went back to check on my K9 partner while Sgt. Berke remained with Trotter. I discovered she was mortally wounded and I could not find a pulse nor was she breathing.

B. Body Worn Camera Footage

The following is a summary of the footage from Officer Vargas' body worn camera during the incident.

3:21:22 p.m.: Officer Vargas parks his marked squad car near the front of 2926 11th Street. Officer Vargas exits his squad car and states: "Hey, Rockford police, if you run the dog's going to bite you." Officer Vargas proceeds to the rear passenger door, retrieves K9 Nyx and the two of them begin running eastbound, through the side-yard of 2926 11th Street.

3:21:31: Officer Vargas releases K9 Nyx.

3:21:32: Officer Vargas states, "Stop running or you're going to get bit."

3:21:35: a Black Targus brand backpack, which was later recovered, can be seen hanging on the fence in the backyard of 2926 11th Street.

3:21:40: Officer Vargas assists K9 Nyx over the fence. Officer Vargas climbs the fence and proceeds to run southeast, towards 2929 Kinsey Street.

3:21:53: The first of three gunshots are fired. Officer Vargas relays "Shot's fired" to the Rockford Police Department Dispatch.

3:21:58: Officer Vargas rounds the southwest corner of 2926 11th Street.

3:22:02: K9 Nyx is lying motionless on the ground, near the southeast corner of 2926 11th Street. Officer Vargas states, "Hey, drop the gun" as he raises his service pistol in the direction of Trotter. At this point, Trotter is near the roadway, in the front of 2930 Kinsey Street.

3:22:03: Officer Vargas fires 18 rounds. Officer Vargas reloaded and fired an additional three rounds.

3:22:06: Trotter falls in the front yard of 2930 Kinsey Street.

3:22:17: Trotter stands, takes a few steps east and falls again.

3:22:21: Officer Vargas fires his last shot. Officer Vargas is heard yelling at Trotter to drop a firearm several times between his first and last shot.

3:23:14: Officer Vargas and Sergeant Berke proceed on-foot to Trotter's location to take him into custody and provide medical aide.

3:23:24: Trotter tells Officer's he threw his gun. The gun can be seen on the ground, in the northwest corner of 2938 Kinsey Street. Trotter tells Officers he has been shot.

3:24:20: When questioned why he shot, Trotter stated, "I didn't shoot. The gun went off..." "If I wanted to shoot you, you would've been shot." Officer Vargas cuffs and searches Trotter.

3:25:06: Officer Vargas leaves Trotter with Sergeant Trotter and other Officers to attend to K9 Nyx.

C. Trotter's Injury

Trotter suffered a single gunshot wound to his left leg below his knee. Trotter was treated at a local hospital and released.

D. Malik Trotter's Statements

On January 29, 2024, officers from the Task Force met with Trotter and after being given his "Miranda" rights, Trotter agreed to speak with officers. In describing the incident, Trotter said

that as the K9 was biting him, Trotter was on his back and yelling at the Officer who was behind the house to tell the K9 to let go of him. Trotter said he heard the Officer tell him to put his hands up, but the K9 had a bite hold on his left hand so he retrieved a "Taurus G2C" handgun from his waistband which had "a 30 round clip" and shot the K9 approximately three times. After shooting the police K9, Trotter said he got up and ran across the street with the gun still in his hand. While running, Trotter said the gun discharged accidentally which must have been the last round because the slide had locked back (indicating the weapon was empty).

He stated further that as he ran into the yard across the street, Trotter said Officer Vargas began to shoot at him and this is when he was shot in his leg. Trotter said he attempted to get back up and continue running, but fell due to his leg being broken so he threw his gun.

When asked if he had intentionally shot at Officer Vargas at any point during the incident, Trotter adamantly denied this and said he had never shot at Officer Vargas or in his direction. Trotter further stated how if there were any shell casings in the street or yard where he was taken into custody would be from the accidental discharge from running with his finger in the trigger guard. Trotter did admit however how he still had the handgun in his hand at the time of Officer Vargas shooting at him.

With respect to the domestic incident that occurred earlier the day of the incident, Trotter said he went to a nearby house and asked to charge the phones he had. While waiting for his phones to charge, Trotter said he heard someone say his nickname – Sonic - and saw a light skinned black male with dreads approaching him. According to Trotter, he said he didn't know what this person wanted so he retrieved the handgun from his waistband with the "extended mag" and fired several shots in the air to scare them away. After firing these shots, Trotter said he heard the victim yell for her son and he took off, leaving behind one of his bags.

E. Forensic Evidence

A necropsy of K9 Nyx was completed on January 30, 2024 and her cause of death was listed as "...acute trauma and hemorrhage at the level of the brainstem and cervical cord related to the fracturing of the caudal skull and first cervical vertebrae by a high-velocity projectile (gun-shot)..." Vargas' body-worn camera reveals Trotter shot three rounds at the time of Nyx's death. Two spent casings were located near Nyx's body that matched the firearm Trotter had in his hand during the incident. The projectile recovered from K9 Nyx was not directly linked to any firearm.

A black semi-automatic Taurus handgun with an extended magazine seated in the mag-well was recovered in the front yard of 2930 Kinsey Street which was across the street from Officer Vargas and close to where Trotter was apprehended. There were five casings recovered near where Trotter had fallen and was arrested which matched the unspent rounds in the magazine of Trotter's handgun.

Two projectiles were located in one of the backpacks Trotter wore at the time of the incident. Both were matched to Officer Vargas' firearm. There were also projectiles matching Vargas' firearm which were recovered from areas near 2930 Kinsey Street.

A defect that appeared made from a projectile was located on the front side of 2929 Kinsey Street, which was the house that Officer Vargas knelt near while yelling at Trotter to stop and firing his weapon at Trotter. The angle of entry suggests the projectile was shot towards 2929 Kinsey Street, from 2930 Kinsey Street.

Officer's searched Trotter's pants and found \$532 in cash. Two backpacks and a cell phone were found near where Trotter was apprehended - the front yard of 2930 Kinsey Street.

V. Application of the Facts to the Legal Standard

A criminal prosecution for aggravated battery with a firearm or a similar charge would require proof beyond a reasonable doubt that Officer Vargas was not legally justified in using deadly force against Trotter. In other words, a judge or jury would need to conclude that Officer Vargas did not reasonably believe that he or others were in imminent danger of death or great bodily harm from the actions of Trotter.

Officer Vargas stated that Trotter, "while running east and his back facing me, pointed the firearm back at me and fired a round at me." Officer Vargas returned fire. Per Officer Vargas, after firing approximately 18 rounds, he "had to reload my firearm. While I continued to order Trotter to drop the gun and show his hands, he got up again to continue running and he still posed a threat of death or great bodily harm to me. I discharged my firearm again at which point Trotter fell again; which is when I knew he was struck."

Vargas' observation is corroborated by the physical evidence, including a defect which appeared made from a projectile located on the front side of 2929 Kinsey Street and the five shell casings found near where Trotter was apprehended. Further, Officer Vargas' observation is corroborated by his body worn camera footage. Lastly, Trotter's statements also corroborate Officer Vargas' observations. Trotter denied shooting at Officer Vargas and explained that "any shell casings in the street or yard where he was taken into custody would be from the accidental discharge from running with his finger in the trigger guard." Trotter admitted that he still had the handgun in his hand when Officer Vargas was shooting at him.

In evaluating whether Officer Vargas was justified, those facts alone would justify his use of deadly force. Officer Vargas saw Trotter point his gun at him. Once that occurred, Officer Vargas had a reasonable belief that he was in imminent danger of death or bodily harm. And after Officer Vargas' reloaded his firearm, Trotter was still running away with a firearm in his hand, which justifies Officer Vargas' continued use of deadly force. However, there are additional facts which further support Officer Vargas actions.

Before Officer Vargas began to pursue Trotter near 2938 11th Street, Vargas knew that Trotter was armed with a firearm and that he is alleged to have fired that weapon. He also knew that Trotter was ignoring his commands to stop and not to run. Then, during the pursuit, Officer Vargas heard three gunshots and then saw K9 Nyx lying on the ground. Officer Vargas then rightfully assumed that Trotter had fired the weapon at Nyx. At the time of Vargas' use of deadly

force, he knew Trotter to not only be armed but that he had fired that weapon on two separate occasions – earlier in the day and at K9 Nyx.

Based upon the totality of the circumstances, Officer Vargas's belief that shooting Trotter was necessary to protect himself from death or great bodily harm was reasonable. Certainly, Trotter posed an imminent threat of death or great bodily harm to Officer Vargas.

A second justification for Officer Vargas' use of deadly force is contained in 720 ILCS 5/7-5 which states that:

deadly force may be used when an officer reasonably believes, based on the totality of the circumstances, both that: (1) Such force is necessary to prevent the arrest from being defeated by resistance or escape and the officer reasonably believes that the person to be arrested is likely to cause great bodily harm to another; and (2) The person to be arrested committed or attempted a forcible felony which involves the infliction or threatened infliction of great bodily harm or is attempting to escape by use of a deadly weapon, or otherwise indicates that he will endanger human life or inflict great bodily harm unless arrested without delay.

Because Officer Vargas' actions were justified based upon the first justification – that he had a reasonable belief that he was in imminent danger of death or great bodily harm from Trotter's actions, this memorandum does not provide an in-depth analysis of this second justification. However, based upon the facts of the investigation, this second justification was also met and Officer Vargas' actions were justified pursuant to that standard as well.

VI. Conclusion

Based upon the evidence reviewed and the applicable legal standards, Officer Vargas's use of deadly force was justified and thus, no criminal charges will be filed in this case.