

**LAW ENFORCEMENT EXPERT REVIEW OF APRIL 21, 2021, SEARCH WARRANT SERVICE AT 421 PERRY STREET ELIZABETH CITY, NORTH CAROLINA FOR SHERIFF TOMMY WOOTEN II, PASQUOTANK COUNTY, NORTH CAROLINA SHERIFF'S OFFICE**

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This report is offered at the request of Sheriff Tommy Wooten II, Pasquotank County, North Carolina Sheriff's Office. I, Paul R. Ohl, have no personal relationship with Sheriff Wooten nor any employee of the Pasquotank County Sheriff's Office (PCSO) and this review is offered as an expert in law enforcement policy, procedure and tactics.

In this report I will analyze the search warrant service, arrest warrant service and use of deadly force by Sheriff's Deputies of the PCSO on April 21, 2021, at 421 Perry St., Elizabeth City, NC. I will offer an opinion, as an expert in law enforcement policy, procedure and tactics, relative to the actions of the personnel of the PCSO involved in the mission at 421 Perry St. This review was conducted prior to the completion of any opinions or rulings by the Pasquotank County District Attorney. My expert opinion will be based on a review of material facts as a law enforcement expert with focus on the following areas:

1. Policies and procedures of the PCSO applicable to the events which transpired at 421 Perry St.
2. Preparation of the PCSO personnel prior to the law enforcement action taken at 421 Perry St.
3. Law enforcement special operations tactics applied during the law enforcement action at 421 Perry St.

4. The events leading up to the deadly use of force and use of deadly force by PCSO personnel at 421 Perry St.

### **Statement of Qualifications**

I have served as a law enforcement professional in Columbus, Ohio, for over 33 years. Twenty-five years of my law enforcement career have been at a supervisory level. Nineteen years have been as a police lieutenant. I have served in the patrol subdivision, investigative units, the Internal Affairs Bureau, and the Special Weapons and Tactics section. As a police supervisor I have investigated or reviewed over 2,500 incidents involving police use of force, forced entry into homes and private businesses, and complaints made by citizens against police officers alleging violations of law, policy and procedure.

As the Special Weapons and Tactics team commander I have supervised over 1,000 missions involving the tactical police response to high-risk incidents resulting in the investigative detention of citizens, forced entry into citizens' homes, police use of force, and police use of deadly force. All of my actions, during these missions, have been reviewed by my superiors and found to be lawful and within policy. No court action has ever been brought against me while employed as a police officer.

I have served as a subject matter expert for the development of police policy and procedures on numerous occasions. I led an initiative to rewrite the police policy and procedure for the Columbus Division of Police regarding Active Threat Response. I led a group of subject matter experts who developed the training to implement the new policy and procedure. The initiative led to the training of approximately 2,000 police

officers and 1,500 fire-fighters in the newly approved policies and procedures. I have also reviewed and rewritten the Columbus Division of Police, Standard Operating Procedure Manual during my tenure as the SWAT Team Commander.

I have completed numerous law enforcement training courses dealing with legal concepts, and liability and risk management for law enforcement officers. I have served as the tactical command section chair on the staff of the Ohio Tactical Officers Association (OTOA) and also as a trainer for OTOA. I graduated in 1988 with a Bachelor of Arts in Criminology from the Ohio State University.

### **Review of Materials**

I have reviewed and analyzed the following materials in determining the facts of the law enforcement operations of PCSO personnel on April 21, 2021, at 421 Perry St.:

1. Body worn camera (BWC) of Deputy Dwayne Morgan, Deputy Aaron Lewellyn, Sergeant Mitchell Bishop, and Sergeant Michael Swindell.
2. Patrol vehicle camera video of Deputy Mitchell Bishop.
3. The search warrant for 421 Perry St.
4. PCSO Policy 4.04 Special Operations and Tactics
5. PCSO Policy 300 Use of Force
6. PCSO Special Operations and Tactics (SOAT) Operation Plan for 421 Perry St.
7. PCSO Internal Affairs Investigation (IAI) Summary
8. IAI audio interviews of Deputy Aaron Lewellyn, Deputy Dwayne Morgan, and Investigator Ryan Meads, Sergeant Joel Lunsford, Sergeant Mitchell Bishop, Sergeant Michael Swindell, and Lieutenant Steven Judd

## **Statement of Facts**

The substantive portion of the law enforcement action which is the focus of my review begins when PCSO Deputies arrive at 421 Perry St., Elizabeth City, NC, on April 21, 2021, at 08:23:21. This time is established through review of BWC utilized by Deputy Morgan, Deputy Lewellyn, Deputy Bishop, and Sergeant Swindell. While the entirety of all BWC video was reviewed, the focus of my review ends following the use of deadly force by PCSO personnel and the commencement of the administering of live saving measures by PCSO personnel and Dare County Sherriff's personnel at 08:24:20.

While specifics of the BWC footage will not be released in this report until the Pasquotank County Superior Court order restricting the release of the BWC video is lifted, a general summary of my analysis of the reviewed materials will be offered.

The entire event from the time Mr. Brown begins backing the vehicle striking Deputy Lunsford and Sgt. Swindell and driving forward at Deputies Lunsford and Sgt. Swindell resulting in Investigator Meads, Deputy Morgan and Deputy Lewellyn to discharge their firearms at Mr. Brown is approximately 11 seconds. The actual discharge of firearms by all involved PCSO personnel occurs in approximately 4 seconds and begins as the vehicle being driven by Mr. Brown accelerates toward Sgt. Lunsford and strikes Sgt. Lunsford a second time. I also observe all PCSO personnel attempting to take evasive action to evade the path of the vehicle as the vehicle is being operated without due regard for the safety of persons.

Individually, I observe Investigator Meads fires on Mr. Brown for approximately three seconds, Deputy Morgan fires on Mr. Brown for approximately three to four

seconds and Deputy Lewellyn fires on Mr. Brown for approximately two seconds. The IAI statement made by Investigator Meads reveals that he fired because Mr. Brown drove his vehicle directly at Joel Lunsford and Investigator Meads stopped firing when he knew there was no longer a threat. The IAI statement made by Deputy Morgan reveals that he fired because Mr. Brown drove his vehicle directly at Joel Lunsford and Ryan Meads and then again towards Sgt. Swindell. Deputy Morgan stated he shot until he believed the vehicle was no longer a threat. The IAI statement made by Deputy Lewellyn reveals that he fired because he believed Joel Lunsford's life was in danger from the vehicle driven by Mr. Brown and had struck Sergeant Lunsford twice. Deputy Lewellyn stated he stopped shooting when the vehicle was no longer a threat and no one else was in danger.

IAI interview of all PCSO personnel reveals that Mr. Brown never complied with numerous orders by PCSO personnel to stop his vehicle and show his hands. Interviews of all PCSO personnel reveal that Mr. Brown drove his vehicle in wanton disregard for the safety of others. BWC video corroborates the statement made by PCSO personnel.

When evaluating the timeline of the use of force one must take into consideration perception-reaction time. Perception-reaction time can best be described as the time which it takes a person to perceive an action as a threat and undertake an action to respond to the threat. The person must then go through the cycle a second time to perceive that a threat no longer exists and respond by stopping the action selected to respond to the threat. A single cycle of perception reaction time is identified as taking between .7-1.5 seconds. (Why So Many Shots Fired? Understanding Police Officer Reaction Time to Stop Shooting, Jason Helfer, July 25, 2018)

[lexipol.com/resources/blog/understanding-police-officer-reaction-time-to-stop-shooting/](http://lexipol.com/resources/blog/understanding-police-officer-reaction-time-to-stop-shooting/)),

in a best case scenario with a single stimulus an officer begins to take action within .7 seconds of receiving a threat stimulus carries out the action until he or she receives a stop stimulus and then stops his or her actions within .7 seconds of receiving the stop stimulus. The total perception reaction time alone is 1.4 seconds. To this must be added a probable space in time between perception of threat and perception of stop signal, or mitigation of threat. On the higher end of the perception-reaction time spectrum an officer would have 1.5 seconds to start a response from a threat stimulus and 1.5 seconds to stop the action once perceiving a stop stimulus. This is a total of 3.0 seconds of perception reaction time alone. Utilizing these ranges in time it is conceivable that the actions of Investigator Meads, Deputy Morgan and Deputy Lewellyn are consistent with this model as their application of deadly force commenced and ceased within a reasonable time frame of their first perception of Mr. Brown's actions of striking deputies when backing his vehicle and then accelerating his vehicle toward deputies, thus posing a threat of imminent serious physical harm to Sergeant Lunsford, Sergeant Swindell, and Investigator Meads.

We must also take into consideration "Limited Attentional Capacity." Humans have a limited capacity to pay attention to multiple stimuli. The multiple stimuli compete for the attention of humans. When multiple stimuli compete for the attention of a human being, such as a suspect being non-compliant, multiple commands being yelled at a suspect, a vehicle accelerating directly at another human by the suspect, a vehicle striking a human, mud being flung from the tires of the vehicle due to the rate of acceleration, gun fire, and movement of multiple persons around the human processing

this information will cause competition for attention. This competition for attention can cause a decrease in the ability of human to respond to a single stimuli, as the human must filter through the different stimuli resulting in diminished performance. (The Seven Laws of Attention, Marc Green Phd., [www.visualexpert.com/Resources/lawsattention.html](http://www.visualexpert.com/Resources/lawsattention.html)).

### **CONCLUSION**

On April 21, 2021, the PCSO SOAT team wearing tactical uniforms with Sheriff's Office markings arrived at 421 Perry St. in a marked Sheriff's Office pickup truck with emergency lights activated. PCSO personnel attempted the service of a search warrant at 421 Perry St. and also attempted the service of two felony arrest warrants for Andrew Brown. PCSO personnel came in contact with Mr. Brown who was in the driver's seat of his motor vehicle. PCSO personnel gave Mr. Brown commands to show his hands and attempted to open the driver side door of Mr. Brown's vehicle. Mr. Brown was non-compliant and rapidly backed his vehicle toward the back of the house, striking the leg of Sgt. Joel Lunsford and knocking him off balance. The backing action of Mr. Brown also caused Sgt. Michael Swindell to take evasive action so as not to be struck by Mr. Brown's vehicle. Sgt. Swindell's hand was struck by the vehicle as it was being backed.

PCSO personnel then attempted to take positions in a semi -circle around the vehicle, which had stopped for approximately one second at the rear driveway side of the house Commands were issued for Mr. Brown to stop, with which he refused to comply. Mr. Brown chose to accelerate his vehicle at Sgt. Lunsford, Investigator Meads, and Sgt. Michael Swindell. Investigator Meads, Deputy Dwayne Morgan and

Deputy Aaron Lewellyn discharged their firearms at Mr. Brown to stop the imminent threat of serious physical harm posed by the vehicle driven by Mr. Brown. Investigator Meads, Deputy Morgan and Deputy Lewellyn stated they stopped firing at Mr. Brown once they believed the vehicle he was driving was no longer a threat. The entire use of deadly force by PCSO personnel lasted approximately four seconds. When evaluating the reasonableness of the application of deadly force by PCSO personnel, consideration should be given to perception-reaction time and the impact of limited attentional capacity in relation to human performance as noted in this review.

### **RECOMMENDATIONS**

All tactical operations should be reviewed to reinforce strengths and identify weaknesses for corrective action. The primary focus of corrective action is generally through training. In some instances, if mistakes were made which violate clearly established policy or procedure discipline may be warranted. In some instances, operations may reveal the need for changes in policies, procedures and/or training. No tactical environment is stagnant and most tactical missions are fluid, requiring flexibility in operations and leadership.

While it is my opinion that the use of deadly force by PCSO personnel was in direct response to the imminent threat of serious physical harm to persons caused by Mr. Brown's wanton and reckless operation of his motor vehicle, I also see the need for an evaluation of tactics used to serve search warrants, arrest warrants, and perform vehicle take-downs and vehicle assaults. I also recommend an increase in the

documentation of pre-mission threat assessments and briefings. The tactical arena of law enforcement is ever changing, and a constant assessment of an agency's policies, procedures, resources and training is a necessity in order to maximize safety for citizens, law enforcement personnel and enhance organizational professionalism.