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July 9, 2013

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Chief Paul Callahan
University of Akron Police Department
146 Hill St.
Akron, Ohio 44325-0402

Re: Investigation into the shooting and death of James Genda

Dear Chief Callahan:

My investigation into the May 16, 2013 use of force by Officer Aaron Burnette causing the death of James Genda is now complete.

My office has reviewed and considered the following:

1. Reports of Investigation by officers of the Akron Police Department;
2. Reports of Investigation by your officers of the University of Akron Police Department;
3. Recorded interviews with witnesses at the scene;
4. Recorded interviews with employees of the U.S. Post Office;
5. Recorded interview with Debra Snodgrass;
6. Recorded interviews with Beth Pearson and June Bogus;
7. Crime scene photographs taken by Akron Police Department's Crime Scene Unit;
8. Video of shooting incident captured by the surveillance video located on the outside of the Bureau of Motor Vehicles;
9. Recordings of radio traffic from Akron Police Department and the University of Akron Police Department at the time of the shooting;
10. Bureau of Criminal Investigation Laboratory Reports;
11. James Genda's criminal history;
12. Conversation with Dr. George Sterbenz, Medical Examiner's Office; and
13. Video and audio of the incident from Officer Burnette's personal recording device worn on his uniform.

At approximately 10:55 a.m. on May 16, 2013, Officer Aaron Burnette initiated a traffic stop of a white Pontiac Sunfire being operated by James Genda. The traffic stop was due to the fact that the license plate on Mr. Genda's car was registered to a different vehicle. Mr. Genda pulled into the driveway of the Bureau of Motor Vehicles at 688 Wolf Ledges Parkway and stopped his vehicle. Officer Burnette positioned his police cruiser directly behind Mr. Genda's car. Mr. Genda was the sole occupant of the vehicle.

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Subsequently, Officer Burnette approached Mr. Genda's vehicle on three different occasions. During the first two visits, Mr. Genda explained that he lost his wallet and provided the officer with the false name and social security number belonging to Mr. Genda's deceased uncle, Terry Pearson. While Officer Burnette was in his cruiser speaking with his department about the information provided, Mr. Genda called his sister, Debra Snodgrass, and spoke with her on his cell phone. Ms. Snodgrass works at the U.S. Post Office across the street from the BMV and she was able to see her brother's car and the police cruiser from a Post Office window.

While talking on the phone, Mr. Genda informed his sister that he was stopped by a police officer. According to Ms. Snodgrass, Mr. Genda also stated, "I'm not going back to jail" and "I'm not letting them take me . . . I got this BB gun." Ms. Snodgrass attempted to convince her brother to comply with the police officer.

The video from the BMV and the video and audio from Officer Burnette's personal recording device document exactly what occurred at the time of the shooting. When Officer Burnette approached the car for the third time, he informed Mr. Genda that the social security number came back to a person who was deceased and asked Mr. Genda to exit the vehicle. Mr. Genda asked what was wrong and Officer Burnette explained that the license plate came back to a different car and the information provided came back to a person who was deceased.

As the front door opened, Mr. Genda stated, "I hate to have to do all this," grabbed a gun with his right hand, and held it up. The gun can be seen in the video in Mr. Genda's right hand with the barrel pointed towards the open driver's side window and his thumb on the trigger. Officer Burnett responded by quickly shutting the driver's side door, backing away, and fired his gun multiple times at the driver's side area of the vehicle. Officer Burnette utilized his radio to call out the situation that shots were fired.

Officer Curtis Wright of the University of Akron Police Department and Officer Jeffrey Ludle of the Akron Police Department immediately arrived on the scene. They both observed Officer Burnette on the driver's side of his cruiser with his weapon pointed directly at the white Pontiac. When Officer Wright and Officer Ludle approached the passenger side of the car, Officer Burnette warned them that the occupant of the vehicle had a gun. Subsequently, both officers observed Mr. Genda unresponsive and slumped sideways towards the center console. Mr. Genda was declared dead on the scene as a result of multiple gunshot wounds.

Also, Officers Wright and Ludle observed a weapon on the center console near the ashtray. Officer Ludle removed the gun, and it was determined that it was a pellet gun that resembled a large semi-automatic firearm in the style of a Beretta M9 9mm gun.

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Officer Pam Helmick of the University of Akron Police Department arrived on the scene and escorted Officer Burnette to another police cruiser. Officer Burnette advised her that when he walked back to the vehicle, the driver stated, "I'm sorry to do this" and then pulled a gun out and pointed it at him.

The Bureau of Criminal Identification & Investigation (BCI) performed DNA analysis on the pellet gun recovered from the vehicle. The DNA profile from the trigger and the handled areas was consistent with the DNA profile of James Genda.

James Genda was a 64 year old resident of Akron, Ohio. Mr. Genda's criminal history includes incarceration at the Summit County Jail and Ohio State Penitentiary on multiple occasions in the 1980's and 1990's for primarily theft related offenses.

Mr. Genda's most recent court involvement consisted of convictions for traffic offenses including Driving Under Suspension and Illegal Plates in Stow Municipal Court on December 11, 2012. As a result of that conviction, Mr. Genda was ordered to pay \$520 in fines. Due to his failure to pay these fines, a warrant was issued for his arrest on January 23, 2013. The warrant remained in effect on the day that he was shot and killed.

Additionally, Mr. Genda was ordered to the Summit County Jail by the Akron Municipal Court in 2013. He entered the jail on February 25, 2013 and was released on March 4, 2013. It was after his release from jail that family members noticed a significant change in his demeanor.

After getting out of jail and prior to the date of his death, Mr. Genda told his sister that his week in jail was the hardest of his life. He complained that younger inmates pushed him around and harassed him. Mr. Genda told his sister that he wasn't going back to jail.

In late March or early April of this year, Mr. Genda contacted his Aunt, Beth Pearson, and indicated that he was trying to get together with everyone he loved and wanted to stop by and see her. In late April, Mr. Genda visited with Beth Pearson and her mother, June Bogus. Mr. Genda indicated that he was never going back to jail and his plan was to either take over the identity of Beth Pearson's deceased husband, Terry Pearson, or Mr. Genda stated that he would commit suicide. Genda stated that he had a BB gun that looked real and if he got detained by the police, he would pull it out and force the officer to shoot him. Mr. Genda mentioned this suicide scenario multiple times during their conversation.

After learning of James Genda's shooting, Beth Pearson contacted the police with this information because she didn't want the officer to feel bad for the shooting since it was Mr. Genda's plan. June Bogus also provided a taped interview and verified all the statements attributed to Mr. Genda during that April meeting.

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Generally, under state law, an officer is not at fault in using deadly force when he has a reasonable belief that he is in imminent danger of death or serious bodily harm and the use of deadly force is the only means of escaping from the danger.

Under federal law, the issue of using deadly force is a Fourth Amendment concern. The issue is whether the officer's actions are reasonable or excessive under all the circumstances. The U.S. Supreme Court held in *Brosseau v. Haugen*, (2004), 543 U.W. 194, that when an officer has probable cause to believe that a suspect poses a threat of serious physical harm, either to an officer or to others, it is not Constitutionally unreasonable to prevent escape by using deadly force.

Based on the above information, this office concludes that no Ohio statutes were violated by Officer Burnette in the shooting death of Mr. Genda. Applicable law allows an officer to act in self-defense. An officer can use deadly force when he has probable cause to believe that a person poses a significant threat of serious physical harm to himself or to others. The facts in this case establish that on May 6, 2013, after being stopped for a traffic violation, Mr. Genda carried out his plan to avoid going back to jail and forced a police officer to kill him. Mr. Genda ignored Officer Burnette's request to exit the vehicle due to providing false information. Subsequently, Mr. Genda brandished a pellet gun that had the identical appearance of an actual firearm, and pointed it in the direction of Officer Burnette. The facts demonstrate that Officer Burnette believed that he was in imminent danger of serious bodily harm or death by Mr. Genda's actions. Thus, the use of deadly force against Mr. Genda was justified.

Thank you for your department's cooperation and assistance in this investigation and inquiry.

Sincerely,



Sherri Bevan Walsh
Prosecuting Attorney