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June 2, 2021

RECEIVED

JUN 04 2021

STATE OF VERMONT
ATTORNEY GENERAL'S OFFICE

Joshua Diamond
Deputy Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

Re: Record Request for Michael Goodnough
1 V.S.A. § 318(c) Appeal of Denial of Public Records Act Request

Dear Mr. Diamond:

This office represents Mr. Michael Goodnough regarding an officer-involved shooting on July 8, 2020 and the events leading thereto. We write to appeal, pursuant to 1 V.S.A. § 318(c), from the decision to deny access to public records regarding investigation of the shooting.

In an email dated April 12, 2021, we requested that the Office of the Attorney General produce, in accordance with the Vermont Public Records Act, “a copy of the report from the Vermont Attorney’s General’s review of an investigation regarding Mr. Goodnough’s shooting.” *See* email attached hereto and marked Exhibit 1. We learned of this investigation through the Attorney General’s press release dated November 24, 2020, which stated that Office of the Attorney General had conducted a review regarding the shooting. *See* press release attached hereto and marked Exhibit 2.

In a letter dated April 22, 2021, Assistant Attorney General Ultan Doyle denied our request, citing 1 V.S.A. §§ 317(c)(3), 317(c)(4), (317(c)(5)(A)(i), and 317(c)(5)(A)(ii) as exceptions to the Public Records Act. *See* letter dated April 22, 2021 attached hereto and marked Exhibit 3. We write now to contest the decision, as the cited statutory exceptions do not apply.

The requested records will not interfere with investigation of a crime, nor deprive a person of a right to a fair trial or an impartial adjudication. The report we requested was, according to the Attorney General’s press release, for determining the lawfulness of the officer’s shooting; in other words, the investigation was for the purpose of evaluation and analyzing a State employee’s actions. *See* Exhibit 2. Since the Attorney General declined to press charges against the officer subject to the investigation, the resulting report cannot “reasonably be expected to interfere with enforcement proceedings.” 1 V.S.A. § 317(c)(5)(A)(i).

Proceedings against our client will also not be impacted by the release of the requested record, because the State has already released information about Mr. Goodnough by disclosing that he allegedly was involved in a drug deal, then fled from police. Further, any privileged

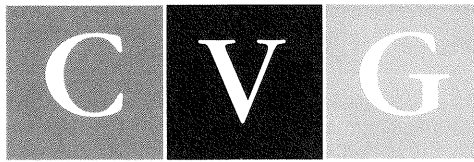
Contact

PO Box 483
Brattleboro, VT 05302
802-257-5533 (phone)
802-257-4289 (fax)

Locations

51 Putney Road, Brattleboro (HQ)
136 Western Ave., Brattleboro
148B VT Rte. 100, West Dover
241 State Forest Rd., Townshend

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information contained in the records from the investigation into the shooting should be subject to redaction under 1 V.S.A. § 318(e), not total nondisclosure.

Similarly, because the officers were subject to the investigation and not charged, the report investigating their involvement will not deprive a person of a right to a fair trial pursuant to § 317(c)(5)(A)(ii). The officer who was involved will not have a trial; whereas our client, the subject of the report, will potentially be denied a fair trial if the requested record is *not* released, since the press release stated that the officer would not be charged, conveying to the public already that our client was involved in life threatening, criminal conduct.

Because the requested records are not related to an ongoing criminal investigation of the officer, the exemptions under §§ 317(c)(3) and 317(c)(4) are not applicable.

Finally, the Vermont Supreme Court has noted that the Public Records Act must be “construed liberally” and agencies should err on the side of disclosure. *Oblak v. Univ. of Vt. Police Servs.*, 2019 VT 56, ¶ 13, 210 Vt. 550; *Norman v. Vt. Office of Court Adm’r*, 2004 VT 13, ¶ 4, 176 Vt. 593. The record requested concerns a matter of high public concern, as police shootings of civilians has been a particular matter of public concern, inquiry, and protest within the past year. The public interest in the records far outweighs any governmental interest in nondisclosure; but regardless, by statute the records are public and should be released.

Therefore, the denial of our request for public records regarding the officer-involved shooting of Mr. Goodnough on July 8, 2020 should be reversed, and the requested records should be produced.

Thank you for your consideration.

Yours truly,

Zoe Cunningham-Cook

Law Clerk

cunninghamcook@cvglawoffice.com

Contact

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Brattleboro, VT 05302
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241 State Forest Rd., Townshend

EXHIBIT 1

From: cunninghamcook@cvglawoffice.com
To: ["ago.info@vermont.gov"](mailto:ago.info@vermont.gov)
Subject: Public Records Request - Officer-Involved Shooting of Michael Goodnough
Date: Monday, April 12, 2021 10:54:00 AM

Dear Ms. Jessica Mishaan:

We have been retained to represent Mr. Michal Goodnough regarding the office-involved shooting on July 8, 2020 and the events leading thereto.

Please forward to this office a copy of the report from the Vermont Attorney's General's review of an investigation regarding Mr. Goodnough's shooting. For purposes of the Vermont Public Records Act, please consider this our formal request for the report.

Thank you for your cooperation. Please do not hesitate to contact this office should you have any questions.

Sincerely,
Zoe Cunningham-Cook



Zoe Cunningham-Cook
Law Clerk
Costello, Valente & Gentry, P.C.
51 Putney Road
PO Box 483
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EXHIBIT 2

Rutland City Police Officer Will Not Be Prosecuted For Non-Fatal Officer-Involved Shooting

NOVEMBER 24, 2020

Use of force analyzed under both current Vermont law and new statute

RUTLAND – Attorney General T.J. Donovan today announced that his office concluded its review of the officer-involved shooting that occurred on July 8, 2020, in Rutland, Vermont. The Attorney General's Office is declining to prosecute Rutland City Police Department Officer Tyler Billings, who was responsible for the non-fatal shooting of Michael Goodnough, 45, Rutland, Vermont. Based on the facts and circumstances, and consistent with Vermont law, the Attorney General's Office has concluded that the actions of Officer Billings were justified. In anticipation of Vermont's new statute addressing use of force by police officers, the lawfulness of this shooting was also analyzed under Act 165, which goes into effect on July 1, 2021 and was modeled after a California statute. Under the new statute, the use of force would also have been justified because, based on the totality of the circumstances, it was both reasonable and necessary to protect Officer Nathan Harvey from an imminent threat of death or serious bodily injury.

In reaching today's decision, the Attorney General's Office reviewed all the materials provided by the Vermont State Police, who conducted the investigation. These materials included statements of the officers involved and civilian witnesses, video footage, and a ballistics examination of the weapon used to carry out the shooting.

On July 7, 2020, the Rutland City Police Department's Street Crimes Unit, which consisted of Sgt. Adam Lucia, Cpl. Elias Anderson, and Officer Billings, received information that Robert Vandriel was selling drugs out of the Travel Inn in Rutland. Sgt. Lucia ran Mr. Vandriel's name through a police database and determined that he had a prior arrest as well as other interactions with law enforcement. Sgt. Lucia also obtained a photo of Mr. Vandriel. Sgt. Lucia then reached out to Mr. Vandriel via Facebook Messenger. Using an alias, Sgt. Lucia arranged to buy a gram of crack cocaine from Mr. Vandriel later that night at the Tops parking lot in at the intersection of Terrill Street and South Main Street in Rutland.

Sgt. Lucia contacted Rutland County Deputy State's Attorney Ian Sullivan and sought his advice about buying crack cocaine from Mr. Vandriel. Deputy State's Attorney Sullivan said that based on the information the police had, they were close to being able to successfully apply for a search warrant if the drug sale did not happen as planned. The officers then came up with a plan that if Mr. Vandriel arrived alone, they would talk to him to see if he would cooperate. If he did not arrive alone, the plan was to call in two uniformed police officers, Officer Nathan Harvey and Officer Elizha Heter, who would be stationed nearby. The officers would then detain Mr. Vandriel, seize the vehicle, and apply for a search warrant. The unit had no information that Mr. Vandriel possessed weapons, that there would be anyone else with him, or that he would be armed.

That night, Sgt. Lucia, Cpl. Anderson, and Officer Billings went to the Terrill Street lot in a white Ford pickup truck and waited. Officer Billings was in the driver's seat and Cpl. Anderson and Sgt. Lucia were in the back. Sgt. Lucia and Cpl. Anderson were wearing vests with the word "POLICE" clearly written on front and back. Officer Billings was in plain clothes. No one was wearing a body camera. The plan was to have Officer Billings approach Mr. Vandriel to do the drug deal when he arrived. At around 11:30 pm, just when the Street Crimes Unit was about to end the operation, Mr. Vandriel contacted Sgt. Lucia and said he was on his way. Shortly after midnight, a vehicle with Mr. Vandriel and another occupant arrived and circled the lot. Because there was more than one person in the car, the officers decided to call in the patrol units.

The suspect's vehicle then parked behind them and Sgt. Lucia heard someone in the truck say that Mr. Vandriel had gotten out of the car. Sgt. Lucia opened the back door of the truck and saw Mr. Vandriel standing near the front of the car. Once the marked cruisers arrived, Sgt. Lucia, Cpl. Anderson, and Officer Billings exited the truck. Mr. Vandriel had exited the car on the passenger side and Cpl. Anderson identified himself as a police officer. Mr. Vandriel then went back to the open passenger door. Cpl. Anderson thought that he was taking something out of his pants, so he yelled, "show me your hands." Sgt. Lucia also shouted, "Rutland Police. Show me your hands" and drew his weapon. Mr. Vandriel then started climbing back into the vehicle without saying anything. Cpl. Anderson then grabbed Mr. Vandriel around his waist to try to prevent him from getting back in. As Sgt. Anderson was holding Mr. Vandriel, the vehicle lurched backward, and the door hit Cpl. Anderson. Cpl. Anderson thought he had fallen down, but could not be sure. The next thing Cpl. Anderson remembered was climbing over a knee-high fence after the vehicle passed him. Cpl. Anderson then thinks he got into another struggle with Mr. Vandriel to try to get Mr. Vandriel out of the vehicle.

Meanwhile, Officer Harvey, who had arrived at the scene a few minutes earlier, and had exited his cruiser, heard a sound from the suspect's vehicle of someone turning the key in the ignition of an engine that had already started. Thinking that the driver (later identified as Michael Goodnough) was going to flee and that it would be dangerous to everyone there, Officer Harvey went to the driver's side door, opened it, and told the driver to get out of the car. Officer Harvey did not give any other commands and did not recall identifying himself as a police officer then or at any other time.

Officer Harvey then saw the driver reach for the shifter with his right hand and was concerned he was going to put the car in drive. Officer Harvey reached over the driver's back and tried to grab his right arm to prevent him from doing so. The vehicle then began to reverse really quickly. With the door open, Officer Harvey had nowhere to go. He looked behind at his cruiser and thought he had to do something so that he would not get crushed when the two cars collided. However, Officer Harvey did not remember what happened next.

The next thing Officer Harvey remembered was lying on the ground underneath what he assumed was the suspect's vehicle. Simultaneously, he heard gun shots (coming from one area), but he could not say how many he heard. Officer Harvey then crawled or rolled out from underneath the vehicle and realized that the suspect's vehicle had left. He did not

know how many shots had been fired or if the suspect's vehicle was moving when the shots were fired. He then saw the suspect's vehicle leaving the lot in the direction of Tops.

Officer Heter arrived at the scene shortly after Officer Harvey. Moments after she arrived, Officer Heter saw the suspect's vehicle (which she described as an SUV) backing up, hitting a fence, and then stopping. It took her a few seconds to realize that Officer Harvey had been entangled with the SUV as it was moving backward. Next, she saw Officer Harvey hit the windshield of his cruiser and bounce back and hit the ground. He rolled when he hit the ground, hit the fence, and then came to a rest underneath the SUV between the front and rear driver's side tires. Officer Heter thought Officer Harvey was going to get run over, but the SUV stopped.

Based on what she had seen, Officer Heter thought Officer Harvey had been killed. Then she heard three to five shots go off in rapid succession (later she said that she was not sure when exactly she heard the shots, but it must have been after Officer Harvey hit the ground). Officer Heter did not know at the time whether the person shooting was a police officer or was in the SUV.

Officer Heter thought the SUV stopped only because it hit the fence. The car then pulled out of the lot and her first instinct was to chase it. However, she instead went to check on Officer Harvey. She went over to where she expected to see him dead, but Officer Harvey was gone. She then saw Officer Harvey get into his cruiser and go after the SUV.

At the time the SUV started to back up, Officer Billings recalled seeing Officer Harvey running to the driver's side door, which was partially open, and appearing to try to rip the driver out of his seat. Officer Billings then saw the SUV reverse at a high rate of speed, and it appeared to him that Officer Harvey was stuck in the door and was being dragged backwards by the SUV. Next, Officer Billings saw the SUV and Officer Harvey hit Officer Harvey's patrol car, and then the SUV backed through a fence. At this point, Officer Billings was about 5-10 yards from the SUV at an offset. He then saw Officer Harvey lying on the ground near the front driver's side tire of the SUV and it appeared part of Officer Harvey's body was under the vehicle. Officer Billings thought that Officer Harvey had been crushed when the SUV struck his cruiser and that he had been severely injured.

The SUV then started moving forward at which time Officer Billings fired his gun (already drawn) at the driver. Officer Billings did not announce anything prior to firing and believed that he had fired approximately 5-9 times. He fired his weapon because he thought that Officer Harvey's life was in danger, adding that Officer Harvey was in danger of serious bodily injury or death. Officer Billings advised that he wanted to incapacitate the driver and stop the threat to Officer Harvey. Officer Billings stopped shooting when he believed that the driver was no longer a threat to Officer Harvey's life.

The SUV accelerated rapidly and exited the lot. Officer Billings ran after it and saw it turn onto South Main Street. He then ran back to the scene expecting to see Officer Harvey dead. Officer Billings thought Officer Harvey had been run over and killed or least seriously injured, and was confused not to see Officer Harvey there. Cpl. Anderson and Sgt. Lucia were walking around and did not immediately know where Officer Harvey had gone to.

Unbeknownst to Officer Billings, Officer Harvey had seen Officer Billings run after the suspect vehicle. Upon seeing Officer Billings pointing southbound, Officer Harvey went back to his cruiser and turned on his blue lights and siren and followed the suspect vehicle. He soon saw the suspect's vehicle crashed at the intersection of Jackson Avenue and South Main Street.

Officer Harvey grabbed his dog and exited his cruiser. He saw Mr. Vandriel, who was in the vehicle with the driver, was trying to get out of the vehicle. Officer Harvey ordered Mr. Vandriel to the ground, who complied and was handcuffed.

Shortly thereafter, Cpl. Anderson received word that the SUV had crashed at Jackson Avenue. He, Stg. Lucia, and Officer Billings got into their truck and drove there immediately. When they arrived, they saw that the SUV had crashed, and a male was in custody. They then saw Officer Harvey administering first aid to the driver until EMTs arrived at the scene. Both occupants of the SUV were taken to the Rutland Regional Medical Center. The driver had sustained a number of gunshot wounds. Mr. Vandriel was not shot, but sustained injuries in the crash. Both individuals survived.

It was later determined, based on video from the scene including two cruiser dashcam videos and footage from a nearby business, a ballistics examination, and the round count of the weapon used in the shooting, that Officer Billings had fired his weapon eight times in rapid succession as Officer Harvey was lying on the ground inches from the suspect's vehicle. There is no evidence that any of the other officers discharged their weapons.

Under Vermont law, the killing or wounding of someone is justified in order to defend the life of another person. The so-called defense of others doctrine provides that a person "is justified in using reasonable force in defense of another person, even a stranger, when he reasonably believes that the other is in immediate danger of unlawful bodily harm from his adversary and that the use of such force is necessary to avoid this danger." (Information about this doctrine may be found in the Vermont Supreme Court case, State v. Buckley, 2016 VT 59, ¶ 19, 202 Vt. 371.)

In this case, Officer Billings witnessed the driver reversing his SUV at a high rate of speed and dragging Officer Harvey by the open driver's door. Officer Billings then saw the vehicle collide with Officer Harvey's cruiser and a wooden fence, leaving Officer Harvey lying on the ground near the front tire of the SUV. Officer Billings said that it appeared to him at this time that part of Officer Harvey's body was underneath the SUV. Officer Billings then saw the SUV start to move forward. It was at that moment that Officer Billings shot into the SUV eight times, in rapid succession, targeting the driver. When Officer Billings was asked why he had shot the driver, he said he believed that Officer Harvey's life was in danger and that he was trying to incapacitate the driver in order to remove the threat to Officer Harvey.

Applying the defense of others test outlined in Buckley to these facts and circumstances, it is clear that Officer Billings' shooting of the was justified. First, at the time of the shooting, Officer Billings held a reasonable belief that Officer Harvey's life was in imminent danger from the driver. This belief was based on the fact that Officer Harvey was lying on the ground close to the front driver side tire of the suspect's vehicle as it started to move forward. It was also based on the fact that Officer Billings had just witnessed the driver drag

Officer Harvey several feet by the door of his vehicle and collide with Officer Harvey's cruiser and a fence. Second, shooting the driver was the only option Officer Billings had to incapacitate the driver. The time that elapsed from when Officer Harvey was dragged by the suspect's vehicle until Officer Billings shot him was approximately seven seconds. There was no time to try other options to remove the threat to Officer Harvey's life such as verbal commands, de-escalation tactics, or non-lethal force. Therefore, shooting the driver was proportional in light of the circumstances and the only reasonable way to try to remove the danger to Officer Harvey's life. Moreover, once Officer Billings realized that the driver was no longer a threat to Officer Harvey, he stopped shooting. Therefore, Officer Billings' shooting of the driver was justifiable. Accordingly, the State of Vermont would be unable to sustain its burden of proving aggravated assault or any other criminal charge against Officer Billings beyond a reasonable doubt. Therefore, the Attorney General's Office is declining to file charges against Officer Billings.

The lawfulness of this shooting was also analyzed under a new Vermont statute that addresses deadly use of force by police officers and is set to go into effect on July 1, 2021. Based on that statute, the use of deadly force was also justified because under the totality of the circumstances of this case, such force was objectively reasonable and necessary to defend Officer Harvey against an imminent threat of serious bodily injury. As noted above, when Officer Billings deployed his weapon, Officer Harvey was lying on the ground just inches away from the front wheel of the suspect's vehicle as the vehicle began to move forward. Moreover, Officer Billings had just witnessed Officer Harvey being dragged by the open door of the suspect's vehicle, which he then saw collide with Officer Harvey's cruiser, throwing him to the ground. Under the totality of these circumstances, a reasonable officer in Officer Billings' position would undoubtedly have concluded that there was an imminent threat to Officer Harvey's life and that to save his life, there was no reasonable alternative to the use of deadly force. Moreover, once the driver no longer posed a threat to Officer's Harvey's life, Officer Billing stopped deploying his weapon. Therefore, applying the standard of Act 165 would have the same conclusion: Officer Billings' use of deadly force in this case was justified.

Windham County State's Attorney Tracy Kelly Shriver, who reviewed this matter for the Rutland County State's Attorney's Office, also conducted an independent, concurrent review of the same materials and has also declined to file charges against Officer Billings.

EXHIBIT 3

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL

JOSHUA R. DIAMOND
DEPUTY ATTORNEY GENERAL

SARAH E.B. LONDON
CHIEF ASST. ATTORNEY GENERAL



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STATE OF VERMONT
OFFICE OF THE ATTORNEY GENERAL
109 STATE STREET
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05609-1001

April 22, 2021

VIA E-MAIL

To: Zoe Cunningham-Cook
Law Clerk
Costello, Valente & Gentry, P.C.
PO Box 483
Brattleboro, VT 05302

RE: April 12, 2021, Public Records Request

Dear Ms. Cunningham-Cook:

I am writing in response to your request for records, which the Vermont Attorney General's Office ("AGO") received on April 12, 2021.

Request

You have requested "a copy of the report from the Vermont Attorney's General's review of an investigation regarding Mr. Goodnough's shooting."

Response

The report that you requested is not available for inspection or disclosure pursuant to the following statutory exceptions:

1 V.S.A. § 317(c)(3) - Records which, if made public pursuant to the PRA, would cause the custodian to violate duly adopted standards of ethics or conduct for any profession regulated by the State. Please see

Rules 1.1 (Competence), 3.6 (Trial Publicity), and 3.8 (Special Responsibilities of a Prosecutor) of the Vermont Rules of Professional Conduct.

1 V.S.A. § 317(c)(4) - Records which, if made public pursuant to the PRA, would cause the custodian to violate any statutory or common law privilege other than the common law deliberative process privilege as it applies to the General Assembly and the Executive Branch agencies of the State of Vermont. Please see Rule 502 (Lawyer-Client Privilege) and Rule 510 (Waiver of Privilege and Work-Product by Disclosure) of the Vermont Rules of Evidence. Please see Rule 26(b)(4)-(6) of the Vermont Civil Rules of Procedure and Rule 16(d)(1) of the Vermont Rules of Criminal Procedure (Attorney Work-Product Privilege/Doctrine).

1 V.S.A. § 317(c)(5)(A)(i) - Records dealing with the detection and investigation of crime that could reasonably be expected to interfere with enforcement proceedings.

1 V.S.A. § 317(c)(5)(A)(ii) - Records dealing with the detection and investigation of crime that would deprive a person of a right to a fair trial or an impartial adjudication.

Please be advised that to the extent that this letter constitutes a denial of your request, you may appeal to the Deputy Attorney General. Any appeal should be in writing and addressed to:

Joshua Diamond
Deputy Attorney General
109 State Street
Montpelier, VT 05609-1001.

Sincerely,



Ultan Doyle
Assistant Attorney General