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THE POLICE SHOOTING OF JOSEPH SANTOS: A PRELIMINARY ANALYSIS

On Thursday, Joseph Santos was shot and killed in a hail of bullets by Providence and State Police after a high speed chase, precipitated by the belief that the car had a connection to the stealing of a state police cruiser earlier that morning by an escaped suspect, Donald Morgan. At this point, no connection between the two incidents has been established. Although the investigation is ongoing, both the Colonel of the Rhode Island State Police (RISP) and the Providence Commissioner of Public Safety have expressed full confidence that their officers acted properly at all times.

The ACLU appreciates the difficult job that police officers have in protecting the public and in the split-second decisions that often must be made in determining when and how to use force. At the same time, whenever deadly force is used, and particularly in situations where it results in the death of an unarmed civilian, it is crucial that the situation and the circumstances be scrutinized with care.

In the case of Thursday's shooting of Mr. Santos, the ACLU has reviewed the comments of numerous state and local police officials and news reports of the circumstances leading to the deadly shooting. We understand that this remains a matter under investigation and that some questions remain unanswered. That is why we are concerned about the seeming swiftness with which police officials have determined that everything was done in accordance with all appropriate protocols. Perhaps that is so, but we believe that, based on the preliminary information that has been released thus far on the incident, at least some observations, questions and comments are warranted that suggest caution before jumping to conclusions one way or the other.

THE HIGH SPEED CHASE

While most of the focus has been on the use of deadly force by State and Providence police after Santos's car was pinned in by them, attention also needs to be paid to the circumstances that led to this: a dangerous high speed chase, which is also a hazardous use of force.

Academics and law enforcement agencies themselves have long recognized that police high-speed pursuits are extremely dangerous for everybody –innocent civilians, police, and

drivers and passengers of the pursued vehicle – and that they should only be engaged in under very limited circumstances.¹ These chases not only put innocent lives at risk but, as counter-intuitive as it may seem, the evidence indicates that most drivers who lead police on high speed chases (including, as it turns out, Santos) are not in fact dangerous criminals. Instead, it is the police initiation of a high-speed chase itself that creates the most danger.

We cannot speak to RISP’s high-speed pursuit policy, since it is not readily available, although we assume it is similar to the policy of the Providence Police Department (PPD).² It is therefore worth reviewing Providence’s policy, because it suggests that a high-speed pursuit of Santos may not have been proper in the first place.

The only reference we could find in news stories as to why Santos’s car was initially pulled over by a Cranston police officer was because it was driving “erratically.” None of the public comments we have seen, however, have stated or suggested that the car was presenting a truly serious danger on the highway before it was pulled over. It was only after the car was pulled over that the vehicle abruptly sped off and generated a chase that was truly dangerous to the public.

However, PPD policy allows a high-speed pursuit only if (1) the person is being sought for crimes that “threaten the health, life or safety” of others (a standard that would not appear to apply to Morgan), or (2) the operator has “committed flagrant motor vehicle violations which have endangered the lives and safety of others,”³ something that was not true until the police gave chase.

Furthermore, under PPD policy, and in recognition of the danger of these chases, *no more than two cars* are generally allowed to be engaged in a pursuit without permission of a supervisor. The record is clear that many police cars were involved in the chase, though we do not know how many were PPD vehicles and how many were those of state troopers. If more than two PPD cars participated in the pursuit, though, it is worth knowing whether that was officially approved. If so, we believe it is further worth knowing why, under all the circumstances, approval was given. The RIDOT camera footage that has been released clearly shows how extremely dangerous this chase was for the motoring public, which would be a reason to limit, not expand, the number of cars involved in the pursuit.

Indeed, according to the PPD policy, “any doubt concerning the reasonableness of a pursuit should be resolved in favor of the safety of officers and the public,” and a pursuit “*will be terminated* whenever ... there is an unreasonable danger to the officer(s) or the public which is created by the pursuit.” (emphasis added)

¹ See fn. 2. See also, e.g., “High Speed Chases Have Killed Thousands of Innocent Bystanders,” Thomas Frank, USA Today, <https://www.usatoday.com/story/news/2015/07/30/police-pursuits-fatal-injuries/30187827/>; “The Case for Banning High Speed Chases,” <https://priceconomics.com/the-case-for-banning-high-speed-police-chases/>.

² It is worth pointing out that state law has long recognized the utility of having a statewide policy governing high-speed pursuits, R.I.G.L. §31-12-6(b), and that such chases should be conducted only under limited circumstances and with procedures in place similar to those of the PPD. R.I.G.L. §31-27-4.2.

³ <http://www.providenceri.com/sites/default/files/ppd-directives/330.02%20-%20Vehicular%20Pursuits.pdf>

In light of these questions, which we believe deserve explication, it is also imperative that RISP promptly release its own high-speed pursuit policy so that the conduct of RISP troopers can be compared to the procedures that are formally in place.

USE OF DEADLY FORCE

At its news conference, the PPD emphasized numerous times, in similar formulations, that the suspect posed “an imminent threat of death or serious physical injury” – the standard for using deadly force – by ramming the cars in front and behind in order to get away. But this argument would seem to prove too much. The suspect was trying to get away from the police-initiated chase, not intentionally seeking to cause harm. Under the PPD’s reasoning, deadly force would therefore seem to be justified in any instance of a high-speed pursuit, even where the police chase itself was what led to the danger.

The PPD high-speed policy also requires that in using lethal force, there must be a “reasonable belief” that “the lives of innocent people will not be endangered.” The shooting of 20 or so bullets by Providence police officers (and 40 or so altogether) on a busy highway would not seem to fit that standard. In fact, despite this barrage of bullets, Col. Clements indicated that Santos was shot only “a couple of times,” and bullets hit at least one other car.

TRANSPARENCY

The PPD is to be commended for quickly releasing video of the incident as well as the limited body camera footage obtained from one of the officers. But it remains a cause of concern to the ACLU that this was purely a matter of department discretion. The ACLU has been critical of the PPD’s body camera policy because it generally allows footage to be withheld from public scrutiny until investigations are completed, if not later.⁴ If, as Commissioner Pare was quoted as saying, it will be routine policy for body camera footage of police shootings to be released promptly, the PPD’s official policy should be amended to make that explicit.

The PPD should also be commended for promptly releasing the names of its officers involved in the fatal shooting. On the other hand, the decision by RISP to withhold all troopers’ names until an investigation is completed represents a glaring and troubling lack of transparency. It also runs afoul of the Access to Public Records Act. A lawsuit that the ACLU handled ten years ago made clear that names of officers involved in shootings cannot be withheld from the public until investigations are completed.⁵

⁴ http://riaclu.org/images/uploads/Letter_to_Providence_City_Council_on_body_cameras_contract_121516.pdf

⁵ “Judge Orders Release of Central Falls Police Shooting Record,” <http://riaclu.envisionbeta.net/news/archive-post/judge-orders-release-of-central-falls-police-shooting-record>.

Finally, we commend the PPD for posting online – well in advance of this incident – its policies governing such issues as use of force and high speed pursuits. In contrast, RISP appears to have none of its relevant policies readily available for public review.

POLICE BODY CAMERAS

As Commissioner Pare noted, three Providence officers present for the shooting were equipped with body cameras, but only one of the cameras was activated. We recognize that there is a learning curve for police in using the cameras in light of the fact that this equipment has only just been introduced. At the same time, we believe this confusion is at least partly due to the PPD's own policy which, rather than provide for automatic activation of cameras when responding to calls, allows officers under certain circumstances to wait until an incident has escalated – precisely the time an officer is likely to have other things on his or her mind, and when it is too late to capture what may have led to the escalation. This is also an issue that the ACLU has raised concerns about for some time.⁶

FACTUAL QUESTIONS ABOUT THE INITIATION OF THE HIGH-SPEED CHASE

A Providence Journal story noted that:

About an hour and a half after the cruiser was stolen, according to Cranston Police Col. Michael Winqvist, a call went out across police radio channels asking officers across the state to be on the lookout for a white Ford F-150 with something “hanging out the back.” The broadcast led Winqvist to believe that Morgan might be hiding in the bed of the truck, he said.⁷

This prompts a number of factual questions about the basis for the chase that deserve answers. Depending on the answers, the justification for what led to the tragic ending of this chase might be strengthened or weakened.

Specifically, it seems crucial to know exactly what the bulletin that went out to police officers said, and what information was provided by the witness who claimed to see escapee Morgan jump in the back of a truck. When this broadcast went out, the police cruiser had been found, so the State Police were aware that the gun in the police car had been recovered. The witness had also claimed that Morgan was still handcuffed. Since both of these pieces of information would be relevant to determining the dangerousness of the person they were looking for, were police made aware of this either before engaging in the chase or while it was ongoing? Was any explanation given as to what something “hanging out the back” of the truck meant? That is, should police have been looking for a vehicle that

⁶ <http://riaclu.org/news/post/aclu-statement-on-providence-police-department-plans-to-acquire-body-camera/>

⁷ <http://www.providencejournal.com/news/20171109/man-killed-woman-wounded-when-police-fire-into-truck-on-route-95--videos-photos>

had something hanging out of it, rather than trying to stop every white Ford F-150 on the road?

Also confusing is the broadcast's apparent reference to a Ford F-150. Santos's car was an F-250. Which type of vehicle were police told to look for? We have been unable to find any clarification of this. If police believed they were looking for an F-150 at the time, why didn't anybody notice that Santos's car was a different model? Were police looking for the wrong model of car the whole time?

Answers to all these factual questions would, we submit, help provide better context in evaluating the actions by both the Providence and state police, particularly in light of the knowledge that PPD policies set appropriately strict standards for the use of both high speed chases and deadly force.

In closing, we wish to emphasize what we said at the very beginning. We fully recognize the difficulties officers face in quick-moving situations like this. It is critical to examine the totality of the circumstances before judging the actions of the police in this case. In the absence of additional information, it would be wrong to blame the police for what they did, but it is just as inappropriate for police officials to so quickly conclude that there is no fault by police for what happened either.⁸ This analysis provides no conclusions, but only questions. However, we submit that they are questions that deserve answers.

We hope that in the coming days, the questions we have raised will be addressed and more detailed explanations about the actions taken by both the city and state police will be provided, and done so in the context of all the facts and all the relevant department policies that were in effect.

November 13, 2017

⁸ The only suggested change in practices that came from the two police news conferences was a comment from State Police Colonel Assumpico that the department would look into purchasing vehicles with barriers to prevent suspects in the back seat of a police car from getting into the front.