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M E M O R A N D U M

To: District Attorney Nathan Vasquez
From: Ryan Solomon
cc: First Assistant Kirsten Snowden; Chief Deputy Todd Jackson
Date: February 18, 2026
Subject: PPB# 26-35341 / 26-30193 – Death Investigation

Introduction

On February 5, 2026, during the service of a judicially authorized warrant, Portland Police Detective Charles Asheim and Officer Dustin Barth used deadly force against Erik Sherrer that resulted in Mr. Sherrer's death. Immediately following the use of force and Mr. Sherrer's death, Portland Police Bureau's Homicide Unit responded to the scene to investigate the force used by the officers. Detective Calvin Goldring was the lead investigator, and Detective Eric McDaniel was the secondary investigator. I also responded to the scene to review the investigation relating to the use of force. What follows is a summary of the relevant facts related to the use of force incident and the applicable Oregon law. Following a thorough review of the facts, I have concluded that the use of force by Detective Asheim and Officer Barth was justified under Oregon law and non-criminal.

This conclusion in no way diminishes the impact of this tragic loss of life. Incidents involving the use of deadly force by law enforcement officers have tremendous impacts on families, communities, and the involved officers. The Multnomah County District Attorney's Office is committed to transparency, accountability, and ensuring the community receives clear and timely answers.

Factual Summary

A. Basis of the Warrant

On January 31, 2026, at approximately 1304 hours, Portland Police Bureau Officer Aguilar responded the Safeway store located at 1303 NW Lovejoy Street, Portland, following

reports of a man pulling a gun on security guards. Officer Aguilar spoke with the involved security guards, Mailau Penitani and Misael Rodriguez. Penitani reported the following: that an unknown white male, later identified as Erik Sherrer (hereinafter referred to as “Mr. Sherrer”), walked up to Penitani while Penitani was working. Mr. Sherrer identified himself as Secret Service and said that he was there looking for fake security guards. Mr. Sherrer pulled out his passport, which Penitani noted was not Secret Service identification. Mr. Sherrer put his passport away and then drew a handgun from his pocket. Penitani reported that Mr. Sherrer pointed the handgun at Penitani and appeared to pull the trigger, but the gun did not fire. Penitani said that he was in fear for his life. Penitani immediately grabbed Mr. Sherrer’s arm that was holding the gun and there was a scuffle. Penitani reported that Mr. Sherrer ran from the store, but as he ran he dropped a soft guitar case. Penitani opened the guitar case and found a shotgun inside. Officer Aguilar reports that he took possession of the guitar case dropped by Mr. Sherrer and confirmed that the case contained a 12-gauge Mossberg shotgun. Officer Aguilar reports that the shotgun was loaded, and that the shells removed from the gun contained red handwriting that stated “Trump is deadmeat.”



Photo of shotgun shells recovered.



Photo of recovered Mossberg shotgun.

Detective Brian Dale received a trace report on the shotgun and learned that the gun had been purchased by Mr. Sherrer on January 28, 2026, and that Mr. Sherrer listed his address as 1620 NW 14th Avenue, Apartment 1005, Portland. Detective Dale confirmed that Mr. Sherrer’s DMV information listed the same address.

Detective Dale received security video and still images from a location near the Safeway where the incident occurred. Below are two still images from the security video. In the first, Mr. Sherrer is seen carrying the guitar case prior to the incident in the Safeway. In the second, Mr. Sherrer is aiming the handgun at a security guard and appears to be holding a knife in his right hand.



Sherrer Arriving with Guitar Case



Sherrer Aiming Firearm at Security Guard

Detective Dale reports that he also obtained security video from the apartment complex where Mr. Sherrer lived, located at 1620 NW 14th Avenue. The apartment building had several cameras, including a camera located in the hallway that captured the entry door to Mr. Sherrer's apartment. Detective Dale reviewed the security video, which showed Mr. Sherrer leaving his apartment on January 31, 2026, with the black guitar case on his back. Security video also showed Mr. Sherrer returning to his apartment on January 31, 2026, at approximately 12:54 PM without the black guitar case. Detective Dale reports that the video shows Mr. Sherrer walking towards his apartment door while holding the black handgun in front of him. Mr. Sherrer appears to check the stairwell located near his door still armed with the handgun. Mr. Sherrer then unlocked his door and pushed the door open with his foot and again appeared to use the handgun to "clear" his apartment as he entered.

Based on the above information, Detective Dale applied for and Judge Jeffrey Auxier authorized a warrant to arrest of Mr. Sherrer for the crimes of Attempted Assault in the First Degree with a Firearm; Unlawful Use of a Weapon with a Firearm; and Menacing with a Firearm. Detective Dale also obtained a warrant to search Mr. Sherrer's residence, 1620 NW 14th Avenue, Apartment 1005, for evidence of the crimes listed above.

B. Summary of Use of Force

On February 5, 2026, members of PPB's Special Emergency Reaction Team (SERT) went to Mr. Sherrer's apartment to arrest Mr. Sherrer pursuant to the arrest warrant. SERT is a specialized unit that provides tactical support during high-risk operations. Also present were members of the Crisis Negotiation Team (CNT) and the Enhanced Community Safety Team (ECST), a specialty unit that focuses on investigation of shooting incidents. Mr. Sherrer's apartment was located on the 10th floor, near the end of a hallway and adjacent to a fire-exit stairwell.

Prior to the incident, a plan had been approved for Mr. Sherrer's arrest. During a morning briefing, SERT members discussed the nature of the warrant, including the details of the incident at Safeway. They also discussed the video showing Mr. Sherrer returning to his apartment and using the firearm to tactically clear areas. As part of the arrest plan, SERT members were located in the 10th floor hallway behind a mobile shield, and additional SERT members were located in the stairwell adjacent to Mr. Sherrer's apartment. The door to the stairwell had been barricaded with a painter's pole and secured with several handcuffs connected together and attached to a railing to prevent Mr. Sherrer from exiting through the stairwell. Detective Charles Asheim was located in the hallway behind the mobile shield. Officer Dustin Barth was located in the stairway. Additional SERT members were located in the apartment adjacent to Mr. Sherrer's apartment.

At approximately 5:18 AM, Officer Matthew Wells made a "knock and announce" at Mr. Sherrer's door, stating "Portland Police, search warrant, step away from the door." After the knock and announce, Officer Faris initiated a breach charge placed on the exterior of Mr. Sherrer's apartment door, which was partially successful and took the door off the hinges. However, the door remained in place, either because it was barricaded or due to the center swing arm. After the door breach, officers continued to attempt to communicate with Mr. Sherrer by hailing him and instructing him to come out and unarmed. The officers announced numerous

times that they were Portland Police, that they had a warrant for his arrest, and to come out with his hands up. Officer Chase Bryson, who had previously worked in the Behavioral Health Unit, was the primary officer attempting to speak with Mr. Sherrer. Mr. Sherrer did not respond to any of the attempts to communicate with him. Officer Aaron Rizzo, a member of the Crisis Negotiation Team, attempted to call Mr. Sherrer on all known phone numbers, but ultimately was not successful in reaching him because each attempted number was disconnected or was unanswered.

At approximately 5:26AM, PPB officers were still unable to communicate with Mr. Sherrer despite numerous attempts. To gain more information regarding what was happening in Mr. Sherrer's apartment, officers stationed in the adjacent apartment used "viewport charges" to create "viewports" through the shared wall with Mr. Sherrer's apartment. Officers continued to attempt to communicate with Mr. Sherrer by announcing their presence and instructing him to come out or call 911, but Mr. Sherrer continued not to communicate with the officers. At approximately 5:28AM, Officers attempted to fly an unmanned drone (UAS) equipped with cameras into Mr. Sherrer's apartment, but Mr. Sherrer knocked it out of the air and rendered it inoperable almost immediately. Mr. Sherrer remained unresponsive and non-communicative with the officers. Officers announced that tear gas may be used if Mr. Sherrer did not come out. Officers announced that they believed he was armed with a gun.

Officers started contacting other residents on the floor and evacuating them to a safe location. During this time, officers continued to loud-hail Mr. Sherrer, stating they were Portland Police, that they had a search warrant, and that he was under arrest. Mr. Sherrer remained non-responsive, but officers positioned outside the apartment reported seeing movement inside the apartment. At approximately 5:55AM, officers deployed cannisters of CS Gas and OC vapor through the viewports into Mr. Sherrer's apartment to try to compel him to exit. Officers also attempted to insert a pole camera through the viewports to get more information regarding what Mr. Sherrer was doing and what was blocking the door.

Officer Matthew Wells reported during his interview that just prior to the shooting (which occurred at approximately 6:00AM), he could hear noise like something falling or crashing from the front door to Mr. Sherrer's apartment, and Officer Wells believed Mr. Sherrer was possibly removing something that had been blocking the door. At this point in the Body Worn Camera (BWC), Detective Asheim can be heard stating "Erik let me see your hands"

several times. Officer Wells, who was positioned behind Detective Asheim, reported that he then saw a gun in the frame of the door pointed directly at Detective Asheim and himself. Officer Wells said that the gun was upright and pointed at them, not down or by a person's side. Detective Asheim, who was stationed at the shield in the hallway, fired four times in quick succession. On the BWC, Detective Asheim can be heard stating, "He pointed a gun at me. He pointed a gun at me." Officer Wells stated that immediately after Detective Asheim shot, the gun disappeared back inside Mr. Sherrer's apartment. At this point, it was unclear if Mr. Sherrer had been shot.

BWC from Sgt. Frankus shows that just after the first shots, and prior to the second set of shots, Sgt. Frankus reported over radio, "Got a gun in his hand, shots away. Got a gun in his hand, shots away." During his interview, Sgt. Frankus explained that "shots away" is a term used by SERT to describe when members of SERT are shooting. Whereas "shots fired" is used to describe when the subject is firing at the police.

Officer Wells estimated that Mr. Sherrer was inside his apartment for approximately 10-15 seconds before he exited a second time. Officers Wells stated that Mr. Sherrer exited his apartment and immediately attempted to enter the stairwell door, where additional officers were stationed. Officer Wells stated that he saw that Mr. Sherrer still had the gun, but believed Mr. Sherrer was now holding the gun in his left hand. In his interview, Officer Wells stated that he was concerned about what Mr. Sherrer would do if he got to the stairwell. Officer Wells stated that Mr. Sherrer had already attempted to shoot security guards days before; and further that Mr. Sherrer knew the officers present were with Portland Police and Mr. Sherrer had ample opportunity to surrender, but instead Mr. Sherrer had armed himself and aimed the gun at the officers. Officer Wells explained that he believed that Mr. Sherrer's intention was to remain armed and to fight and have a shootout with the officers. As Mr. Sherrer attempted to open the stairwell door, Detective Asheim fired four additional shots. Officer Wells stated that Mr. Sherrer was hit and fell to the floor. Officer Wells stated that at this point, the gas from inside the apartment started to fill the hallway, obstructing their view.

Officer Wells stated he could see a black handgun on the ground next to Mr. Sherrer's leg. Officer Wells stated that he was concerned that Mr. Sherrer may have a second gun because Officer Wells believed the first gun he saw had a tan slide, whereas the gun on the ground was all black. Officer Bryson also reported that he saw a flicker of light, which he believed could

have been a second firearm with a tac-light. Officer Wells stated that because Mr. Sherrer was moving and possibly still armed, the officers attempted to give him instructions and attempted to use a K9 unit to move him to ensure he was not armed. Once the officers confirmed that Mr. Sherrer was not armed, which took approximately 10 minutes, a medic who had been staged nearby approached to render aid. The medic confirmed that Mr. Sherrer was deceased.

Photographs from the scene show that Mr. Sherrer was lying in the hallway, just outside his apartment door and next to the doorway to the fire-exit stairwell. Mr. Sherrer is lying on his stomach, with his head closer to the stairwell. A black semi-automatic handgun is on the ground next to Mr. Sherrer's right leg / foot. The firearm was later recovered and determined to be a Smith & Wesson .380, with a loaded magazine and a round in the chamber. The handgun had damage to the trigger guard, which likely was due to the shots fired that struck Mr. Sherrer's right hand. A second loaded magazine was located under Mr. Sherrer's left shoulder, and a third loaded magazine was located just inside the doorway to Mr. Sherrer's apartment. A black flashlight was located under Mr. Sherrer's torso on his left side.

Photos from the scene document multiple gunshot holes to the area of Mr. Sherrer's apartment door and frame. The photos also show additional bullet holes in the door to the fire exit stairwell, with some holes appearing to be from outside the stairwell fired inward (consistent with being shot by Detective Asheim), and some fired from inside the stairwell going outward (consistent with being fired by Officer Barth).

During a round count, officers confirmed that Detective Ashim fired a total of eight shots, and Officer Barth fired a total of four shots. This was consistent with the bodycam and shell casings located in the apartment building.

Medical Examiner Dr. Philip Bennett performed the autopsy on February 6, 2026. During the autopsy, Dr. Bennett observed 5-6 gunshot wounds to Mr. Sherrer, including a shot to Mr. Sherrer's right hand, chest, back, and side. Dr. Bennett opined that Mr. Sherrer died of multiple gunshot wounds, and that the manner of death was a homicide.

C. Detective Asheim's BWC and Report

Detective Asheim's BWC video shows that prior to the shooting, Detective Asheim was located behind the mobile shield in the hallway. The video is almost entirely obstructed by the mobile shield. Audio from the video captures that at approximately 6:00AM, noises can be

heard and Detective Asheim gives instructions of “Erik let me see your hands, Erik let me see your hands, come out with your” Detective Asheim then appears to react to something and fires four times. Detective Asheim immediately states “He pointed a gun at me. He pointed a gun at me.” After approximately 12 seconds, Detective Asheim fires four additional shots. Detective Asheim can then be heard stating repeatedly, “Drop the gun Erik,” and that the gun is under his left side. Detective Asheim states that he also saw a tac light on his left side. Detective Asheim then states, “It looked like a Glock. It was like a black semi-auto pointed right at me.” Another officer responds, “Yes I saw it.” Officers state that Mr. Sherrer started to move his arms, and Detective Asheim states “Eric, put your hands out in front of you, let go of the gun so we can give you medical aid. I know you’re hurt. We want to help you.” Detective Asheim continued to give instructions until he was removed from the front and returned downstairs.

In his report, Detective Asheim describes his role with SERT and his knowledge of the facts that supported the warrant for Mr. Sherrer’s arrest. Detective Asheim notes that due to the video showing Mr. Sherrer returning to his apartment while armed and using the handgun, officers believed that he remained armed and may have had access to additional weapons. Detective Asheim reports that for the warrant service, he was assigned as lethal cover and stationed at the shield in the hallway leading to Mr. Sherrer’s apartment. Detective Asheim reports that while at the shield, he had a full view of Mr. Sherrer’s apartment door. After the breach charges were detonated, Detective Asheim reports that he could see that the door had not fallen down as anticipated, which meant that the door was possibly barricaded. Detective Asheim reports that he opened the wings to the shield, but there were still gaps between the shield and the wall, and there remained a risk that the officers could be shot through the gaps in the shield. Detective Asheim reports that Officer Bryson made numerous attempts to contact Mr. Sherrer and warned of the possible force used by police if he did not cooperate. Approximately seven minutes later, the officers used the viewport charges from within Unit 1004 with the goal of seeing what was occurring in Mr. Sherrer’s apartment. Detective Asheim notes that the officers in Unit 1004 did not have the same type of shielding as he did in the hallway.

Just prior to the shooting, Detective Asheim reports that the chemical irritants were deployed in Mr. Sherrer’s room. Detective Asheim reports that he then heard noises from the area of Mr. Sherrer’s door and thought it was the sound of a barricade being moved. Detective Asheim saw the door handle move and the door opened partly. Detective Asheim reports that he

could not see into the apartment, just a dark void. Detective Asheim began giving instructions. Detective Asheim reports that suddenly and without warning, a black semi-automatic pistol appeared from the dark. Detective Asheim reports that he was looking right down the barrel, and the gun was pointed at him and the other officers. Detective Asheim reports that he fired shots “in hopes of stopping SHERRER from killing me or other officers.” Detective Asheim reports that he fired at the gun and the door frame where Mr. Sherrer was standing. The gun was pulled back into the apartment, and Detective Asheim stopped shooting to reassess. Detective Asheim reported to other officers that a gun had been pointed at him.

Detective Asheim reports that seconds later, Mr. Sherrer exited the apartment and was still armed with the black semi-automatic handgun, which was in his left hand. Detective Asheim reports that Mr. Sherrer moved for the stairwell door, which Detective Asheim knew was where additional officers were stationed. Mr. Sherrer attempted to open the door while still armed with the gun, so Detective Asheim shot Mr. Sherrer again “to stop SHERRER from seriously injuring or killing anyone.” Detective Asheim reports that he stopped shooting as soon as Mr. Sherrer fell to the floor. Detective Asheim continued to aim his firearm at Mr. Sherrer because Mr. Sherrer had fallen on top of the gun that he had been possessing. Detective Asheim gave instructions for Mr. Sherrer to roll over and show his hands, but he did not comply. Detective Asheim reports that he was then removed from his position and sent downstairs. Detective Asheim reports:

In summary, based on the totality of the circumstances at the time I fired my rifle, I believed that SHERRER presented an immediate threat of death or serious physical injury. A judge had issued a warrant authorizing the arrest of SHERRER for the crimes of Attempt Assault I, Unlawful Use of a Weapon, and Menacing. SHERRER was reported to be armed with a handgun and investigators believed he was possibly preparing to carry out an active shooter vent in the community. It was our intent and our hope to detain SHERRER safely and place him in custody on the warrant. Multiple de-escalation techniques were utilized. SHERRER had plenty of time and opportunity to peacefully surrender. Instead, he brandished a handgun which he pointed at myself and other officers from mere feet away. While still armed with that handgun he then attempted to enter a stairwell where he would have access to more officers and possibly members of the public. I had no other reasonable responses but to defend and protect myself and other officers by using deadly force. I stopped

firing as soon as the immediate threat was no longer evidence. Medical aid was provided to SHERRER as soon as it was deemed safe.

D. Officer Barth's BWC and Report

Officer Barth's BWC shows that prior to the shooting, he was located in the stairwell, standing on a landing between the 10th and 11th floors. From Officer Barth's position, he could see the door to the 10th floor. The stairwell door had a small window through which Officer Barth could see into the 10th floor hallway and the door to Mr. Sherrer's apartment. Three additional officers were located next to Officer Barth. At approximately 6:00AM, audio from the BWC captures officers in the hallway giving commands, and Barth says, "door door door." The audio then captures the four shots fired by Detective Asheim. One of the officers next to Officer Barth says, "Is he shooting," and Officer Barth answer "Yes, he's shooting." Approximately 12 seconds after the first set of shots, video from Officer Barth's BWC shows Mr. Sherrer opening the door to the stairwell, and Officer Barth fires four shots at the door. Officer Precup, who was to Officer Barth's right, then threw a flash-bang down the stairwell near the door that Mr. Sherrer had tried to exit.

In his written report, Officer Barth writes that prior to the incident, he reviewed the Safeway video which showed Mr. Sherrer point and attempt to shoot a handgun at the uniformed security guards. Officer Barth contacted Detective Dale, who stated that they had identified Mr. Sherrer as the suspect based on the registration information for the recovered shotgun.

On February 5, 2026, Officer Barth was a member of SERT and was assigned to assist with containment during the warrant service on Mr. Sherrer's apartment. Officer Barth attended the morning briefing, during which he learned of the security video showing Mr. Sherrer returning to his apartment armed and using the handgun to "clear" areas of his apartment. Due to the risks involved, Officer Barth notes that the plan involved containment of Mr. Sherrer to the 10th floor of the apartment, with the goal of taking him into custody.

During the warrant service, Officer Barth reports that he was stationed in the stairwell on a landing between the 10th and 11th floors. He had a view of Mr. Sherrer's apartment through the window of the stairwell door. Officer Barth notes that after the door breach charges detonated, the painter pole that had been used to secure the stairwell door fell, making it less effective. Officer Barth reports that he could hear officers in the hallway hailing Mr. Sherrer, stating that force may be used if he did not comply. Officer Barth reports that he did not hear Mr. Sherrer

give any response. Officer Barth reports that he heard the viewport charges detonate, and he heard over radio that Mr. Sherrer had disabled the drone flown into Mr. Sherrer's apartment through the viewports. Officer Barth reports at one point he heard yelling that he believed was from Mr. Sherrer, but he could not tell what he was saying.

Officer Barth heard over radio of the plan to introduce gas into Mr. Sherrer's apartment to force him to come out. Officer Barth reports that he and the other officers with him in the stairwell (Officers Precup and Perry) made a plan on how to take Mr. Sherrer safely into custody, and at this point they attempted to secure the stairwell door by linking handcuffs around the doorknob and the handrail. Officer Barth reports that at approximately 5:55AM, he heard the gas deployed into Mr. Sherrer's apartment. He reports that he heard officers continue to hail Mr. Sherrer to surrender and provided force warnings.

Officer Barth reports that at approximately 6:00AM, he observed the door to Mr. Sherrer's apartment fall, and he believed that Mr. Sherrer must have removed whatever was behind the door and was preparing to come out. Officer Barth reports that he could see movement at the door and observed Mr. Sherrer emerge from his apartment. Officer Barth reports that he saw Mr. Sherrer was holding a black handgun in his right hand, and the gun was pointed down the hallway in the direction of the officers in the hallway. Officer Barth reports that he was scared that Mr. Sherrer was going to seriously injure or kill the officers in the hallway. Officer Barth reports that he heard four shots and it appeared that Mr. Sherrer's hand had recoiled, as if he was shooting the gun. Mr. Sherrer then retreated into the apartment. Seconds later, Mr. Sherrer re-emerged from the apartment and was still holding the handgun. Officer Barth saw Mr. Sherrer open the stairwell door. Officer Barth reports:

I immediately feared for my safety, the safety of the other officers in the stairwell, the residence on other floors if SHERRER got access to the stairwell as well as the safety of the officers in the hallway. I believed SHERRER intended to kill or seriously injure someone based on his decision to re-emerge from his apartment holding a handgun when he knew officers were there to serve a warrant and arrest him. I believed based on SHERRER's actions he would use the handgun he was holding to avoid being taken into custody. I fired 3-4 rounds from my Colt M4 as SHERRER's chest to stop SHERRER from killing or seriously injuring anyone. I stopped firing as soon as SHERRER fell to the ground and no longer appeared to be an imminent threat of death or serious physical injury to myself or the other officers.

D. Additional Information Learned After the Shooting

After the shooting, officers entered Mr. Sherrer's apartment both to review the scene as part of the Officer Involved Shooting investigation, and to execute the warrant that authorized a search of Mr. Sherrer's residence. Mr. Sherrer's apartment was a single-bedroom apartment with a bathroom, kitchen, and common area. The walls and cabinets throughout the apartment were covered with printed photos of various celebrity women. A single cot was set up in the common area, and it appears this is where Mr. Sherrer slept. Under the cot were boxes for the Mossberg shotgun (which was dropped at the Safeway) and the Smith and Wesson .380. Also in the apartment were various items indicating Mr. Sherrer's hostile attitude towards President Trump and others, such as a paper discussing killing President Trump and his supporters, task lists that included killing, and a small model guillotine with a beheaded doll on it labeled "Trump". The bedroom to the apartment was mostly empty. During a search of the apartment, officers found additional ammunition for both the firearms, a coat consistent with the coat Mr. Sherrer wore during the incident at Safeway, and a backpack with additional shotgun shells.

Detective Pontius interviewed Devon Mitchell, who reported that she worked at the apartment building and knew Mr. Sherrer. Ms. Mitchell reported that she had observed Mr. Sherrer many times and believed that he had some form of significant and untreated mental health issues. Among other things, Ms. Mitchell described that Mr. Sherrer would talk to himself, would make threatening statements about the president or women, and that he would scream in his apartment. Ms. Mitchell described that two days prior to the incident, she observed Mr. Sherrer talking with another employee (Kody), and that Kody believed Mr. Sherrer had a handgun concealed on his person during the conversation due to the way Mr. Sherrer was acting.

Detective Broughton interviewed Kody Barnett, who also worked at the apartment where Mr. Sherrer lived. Mr. Barnett described his interaction with Mr. Sherrer two days prior, and said that Mr. Sherrer talked about a news story relating to Russia attempting to assassinate President Trump, and that Mr. Sherrer spoke of being excited to see Mr. Trump dead. Mr. Barnett described that during the conversation, Mr. Sherrer was holding his arm / hand and indexing as though he had a concealed firearm.

Legal Analysis

Under ORS 161.195, conduct which could otherwise constitute a criminal offense is justifiable and not criminal when it is authorized by law. ORS 161.209 establishes that a person

is justified in using physical force upon another person for self-defense or to defend a third person from what the person reasonably believes to be the use or imminent use of unlawful physical force, and the person may use a degree of force which the person reasonably believes to be necessary for the purpose. ORS 161.219 limits the use of deadly physical force in defense to situations in which a person reasonably believes another person is committing or attempting to commit a felony involving the use or threatened imminent use of physical force against a person, or is using or about to use unlawfully deadly physical force against a person.

For police officers, ORS 161.242 states that a peace officer may use deadly physical force upon another person only when it is objectively reasonable under the totality of the circumstances known to the peace officer, to believe that the person poses an imminent threat of death or serious physical injury to a person and the use of deadly physical force is necessary to defend the person from the imminent threat of death or serious physical injury. Prior to using deadly force upon another, if the peace officer has a reasonable opportunity to do so, the officer must consider alternative such as verbal de-escalation, waiting, using other available resources or techniques if reasonable, safe, and feasible, using a lesser degree of force, and give verbal warning to the other person that deadly force may be used and provide a reasonable time to comply.

As to the use of deadly force by Detective Asheim, the evidence summarized above demonstrates that he reasonably believed that Mr. Sherrer was an imminent deadly threat, and that Detective Asheim used force he reasonably believed necessary to defend himself and other officers from a deadly threat. As noted above, officers reasonably believed that Mr. Sherrer was armed with a firearm and dangerous. Mr. Sherrer had recently attempted to shoot a uniformed security guard without provocation or reason and had written threatening messages on shotgun shells left at the scene. After the initial knock and announce, the officers attempted at length to communicate with Mr. Sherrer, provided numerous warnings to Mr. Sherrer that force may be used if he did not comply, and attempted to de-escalate by speaking to Mr. Sherrer and asking that he contact them. Mr. Sherrer did not comply with the instructions and instead armed himself with the firearm and aimed it at Detective Asheim and others. Although the officers in the hallway were behind a shield, the shield had gaps through which Mr. Sherrer could shoot the officers. Detective Asheim did not have reasonable time to issue additional warnings or use a lower degree of force. Further, when Mr. Sherrer exited the apartment and attempted to enter the

stairwell, Mr. Sherrer continued to not comply with officers' commands, remained armed with a firearm, and was attempting to enter an area with additional officers. In that moment, it was reasonable for Detective Asheim to believe that Mr. Sherrer continued to present a threat of serious physical injury or death to the officers, and Detective Asheim did not have reasonable opportunity to consider lesser degrees of force prior to shooting. These facts demonstrate that Detective Asheim's use of deadly force against Mr. Sherrer was justified under Oregon law and not criminal.

Similarly, the facts discussed above demonstrate that Officer Barth reasonably believed that Mr. Sherrer was an imminent deadly threat, and that Officer Barth used force he reasonably believed necessary to defend himself and other officers from a deadly threat. Officer Barth was aware of the facts relating to the warrant for Mr. Sherrer's arrest and reasonably believed that Mr. Sherrer was armed with a deadly weapon and dangerous. Officer Barth was aware that Mr. Sherrer had been ordered to exit his apartment and surrender, and that Mr. Sherrer had refused to comply with all commands or engage with the officers in any way. Prior to the shooting, Officer Barth observed Mr. Sherrer point a gun at the officers in the 10th floor hallway, and during the shooting Officer Barth observed Mr. Sherrer's hand recoil as if he was shooting. When Mr. Sherrer then attempted to enter the stairwell, Officer Barth observed that Mr. Sherrer was still armed with the black handgun. When Officer Barth shot at Mr. Sherrer, Officer Barth reasonably believed that Mr. Sherrer was armed with a firearm and presented an imminent threat of serious physical injury or death to Officer Barth and the other officers. Due to the nature of the action, Officer Barth did not have time to issue additional warnings, and Mr. Sherrer had already demonstrated that he did not intend to comply with officer directions. Further, no other weapon system available to Officer Barth would have been effective at addressing the threat he reasonably believed Mr. Sherrer presented. These facts demonstrate that Officer Barth's use of deadly force against Mr. Sherrer was justified under Oregon law and not criminal.

Ryan Solomon
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