

**GRAND FORKS COUNTY
STATES ATTORNEY
DAVID T. JONES
GRAND FORKS COUNTY COURTHOUSE**

Jodi A. Bass
Brittney A. Blake
Andrew C. Eyre
Jacqueline A. Gaddie
Faye A. Jasmer
Meredith H. Larson

M. Jason McCarthy
Carmell F. Mattison
Dale Rivard
Haley L. Wamstad
Nancy D. Yon

Chief Eric Plummer
UND Police Department
PO Box 9035
Grand Forks, ND 58202

RE: David Elliott Investigation
BCI #150120
GFPD #201501332
GFSO #201520271
SA#133976

Chief Plummer:

A request has been made for an opinion as to whether or not the actions of Officer Jerad Braaten of the University of North Dakota Police Department were appropriate and within the recognized parameters of use of force by a law enforcement officer in the course of executing his duties in the above-referenced matter. I have had the opportunity to review reports of investigation, supplemental reports, audio statements, photographic evidence, in-car videos, and PSAP recordings, all relating to the underlying investigations. I have also reviewed the pertinent law as would relate to use of force, to include the federal case of Graham v. Connor, 490 U.S., 386, 388 (1989), as well as other federal and state cases relating to use of force. I have also taken the opportunity to review the State of North Dakota Peace Officers Standards and Training Board Manual for the use of force.

The United States Supreme Court has held that all claims that law enforcement officers have used excessive force (deadly or not) in the course of an arrest, investigatory stop, or other "seizure" of a citizen are properly analyzed utilizing an objective reasonableness standard under the Fourth Amendment. Graham v. Connor, 490 U.S. at 388. This reasonableness inquiry in whether or not the officers actions were objectively reasonable in light of the facts and circumstances known to him, and must be judged from the perspective of the officer on the scene. The courts recognize that peace officers are often forced to make split second decisions about the amount of force necessary in a particular situation, and that it is a real time decision, not one made with the benefit of hindsight.

My analysis of the circumstances surrounding this matter leads me to the conclusion that Officer Jerad Braaten's actions were objectively reasonable in light of the circumstances he was confronted with. A review of the evidence leads to a conclusion that Officer Braaten was concerned for the safety of others, to

include the general public and the many law enforcement officers involved in this matter. Several prior efforts had been made to secure Mr. Elliott and his use of the vehicle he was operating, without success.

On Friday, February 27, 2015, Grand Forks Police Department Officer Harvala observed a traffic violation involving a black Silverado pickup, later determined to be operated by Mr. David Elliott. The vehicle failed to stop at a stop sign and when Officer Harvala attempted to initiate a traffic stop a pursuit ensued. This pursuit included traveling at speeds within the City of Grand Forks between 70 and 80 miles per hour and extended to Interstate Highway 29 with speeds at or near 100 miles per hour. The Grand Forks Police Department discontinued that pursuit south of the City of Grand Forks, near the City of Thompson, due to public safety concerns.

A PSAP conversation took place between David Elliott and Officer Bullinger of the Grand Forks Police Department, and concerns were raised that Mr. Elliott meant to do harm to himself.

Sometime after midnight on the morning of February 28th, North Dakota Highway Patrol Trooper Matthew Peschong observed the vehicle operated by Mr. Elliott near the Oslo, Minnesota exit of Interstate Highway 29. Trooper Peschong and Grand Forks Sheriff's Sgt. Schneider then followed Mr. Elliott southbound on Interstate Highway 29, observing erratic driving behavior. Officers made an attempt to have Mr. Elliott come to a halt and meet with Altru Ambulance Staff at the North Washington Street exit to the City of Grand Forks, as there were concerns raised due to his apparent condition. Mr. Elliott declined to stop at the North Washington exit.

A further attempt was made to bring him to a halt at the Gateway Drive exit off of Interstate Highway 29. On that occasion, North Dakota Highway Patrol Officer Peschong, Sgt. Schneider, and additional Highway Patrol, and Grand Forks Police Department officers made an attempt to get Mr. Elliott to stop and exit his vehicle. At least one Grand Forks Police Officer had drawn his service weapon at that time. Mr. Elliott declined to halt, accelerated his vehicle towards Grand Forks Police and Sheriff's Officer vehicles nearly striking two vehicles and leaving that scene at a high rate of speed. Mr. Elliott subsequently proceeded eastbound on Gateway Drive then southbound on North Columbia Road. At that time officers made a second attempt to bring his vehicle to a halt. Officer Jerad Braaten of the University of North Dakota Police Department then joined the pursuit. Officer Braaten had been monitoring radio traffic concerning this matter and was aware of the circumstances presented and the public safety issues raised.

Mr. Elliott then brought his vehicle to a halt at the top of the Columbia Road overpass. North Dakota Highway Patrol Trooper Peschong and Grand Forks Police Department Officer Christopher Brown exited their vehicles with service weapons drawn, and issued commands for Mr. Elliott to stop the vehicle. UNDPD Officer Braaten also exited his vehicle and drew his service weapon. Mr. Elliott again made references to harming himself. He became agitated and proceeded southbound on North Columbia Road at a high rate of speed, again risking harm to any individuals at or near the roadway.

The Grand Forks Police Department was able to successfully deploy spike strips at the bottom of Columbia Road, flattening the tires on the vehicle operated by Mr. Elliott; however, he continued to proceed southbound and turned into the Altru Hospital Emergency Room parking lot, where another attempt was made to apprehend him.

Officers deployed their vehicles in an effort to box in Mr. Elliott's vehicle and Sgt. Ellingson of the Grand Forks Police Department made an effort to disable Mr. Elliott's vehicle by turning off the keys. At that time Mr. Elliott accelerated the vehicle at a high rate of speed thereby stopping Sgt. Ellingson's attempt to bring the matter to a conclusion and placing Sgt. Ellingson at risk of serious bodily injury.

Mr. Elliott's vehicle was aiming directly at Grand Forks Sheriff's Sgt. Schneider's vehicle and while Sgt. Schneider was taking evasive actions, Officer Braaten fired his weapon into the interior compartment of the vehicle striking Mr. Elliott six times. Mr. Elliott still refused to comply with Officers orders and resisted being taken into custody, resulting in the deployment of a taser by a Grand Forks Police Officer.

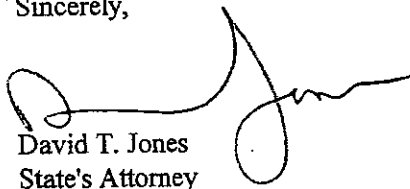
Officer Jerad Braaten has indicated that he was concerned for the immediate safety of Sgt. Ellingson, as well as the safety of others at or near the scene of the Altru parking lot. It should be noted that, in addition to the officers present, there were civilians present as well who were in the process of entering the Emergency Room. It should further be noted that Officer Braaten's line of fire was away from the Emergency Room or other occupied areas of Altru Hospital.

Multiple attempts were made by law enforcement officers to bring this matter to a safe conclusion and in each case Mr. Elliott refused to comply with law enforcement officers and Mr. Elliott's actions were such that multiple individuals, law enforcement and civilian alike, were placed in extreme danger for their life or serious bodily injury.

Mr. Elliott was operating a 2001 Chevrolet Silverado motor vehicle, weighing in excess of two tons. Mr. Elliott aimed that vehicle in the direction of law enforcement officers on two occasions, nearly striking two vehicles, and ultimately striking a third vehicle as Sgt. Schneider's efforts to avoid collision were unsuccessful. It should be pointed out that a vehicle may be considered a dangerous weapon under North Dakota law based upon how the vehicle was used. State of North Dakota v. Vetter, 2013 ND 4, ¶16. The North Dakota Supreme Court has opined that this is a question of fact of whether or not the use of the vehicle indicated a readiness to inflict serious bodily injury. Id.

My conclusion is that Officer Braaten's actions were objectively reasonable in light of the facts and circumstances confronting him, and known to him. He was forced to make a split second decision about the amount of force necessary to bring the situation under control, and it is my conclusion that his actions did meet the objective reasonableness standard.

Sincerely,



David T. Jones
State's Attorney

DTJ/ch