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May 13, 2025

Chief Bishop
Payson City Police Department
405 West Utah Avenue
Payson, UT 84651057

OICI Case No. 24CI01

Incident information	
Date of incident:	March 16, 2024
Location of incident:	450 N. Main Street, Payson, Utah
Subject of incident:	Octavio Salas (d.o.b. 07/19/2023)
Officers involved:	Sgt. Jay Hurst (Payson P.D.) Officer Tanner Gille (Payson P.D.)
Investigation information	
OICI Team:	Team 1
OICI Commander:	Lt. Nick Patterson, Provo P.D.
OICI Case Officer:	Detective Cam Nelson, Provo, P.D.

This case involves the shooting of 20-year-old Octavio Salas by Sgt. Hurst on March 16, 2024. The shooting occurred during an attempt by Sgt. Hurst and Officer Gille to detain Salas and as Salas attacked Sgt. Hurst with a knife. State law required an “officer-involved-critical-incident” (OICI) investigation because Salas suffered serious bodily injury from Sgt. Hurst’s use of deadly force as the two officers tried to gain physical control of Salas. *See* Utah Code § 76-2-408(1)(f)(iii) (2022). On June 20, 2024, the OICI case officer—Provo City police Detective Cam Nelson—submitted the results of the investigation to me, Jeff Gray, the Utah County Attorney.

* * *

The question before me is whether, under Utah law, Sgt. Hurst’s use of deadly force against Salas was legally justified. By statute, the use of deadly force is justified if “the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or an individual other than the suspect.” Utah Code § 76-2-404(2)(c) (2024). I conclude that Sgt. Hurst was legally justified in using deadly force against Salas. Accordingly, the Utah County Attorney’s Office will not file criminal charges against Sgt. Hurst.



FACTUAL SUMMARY¹

At 5:41 p.m. on March 16, 2024, the manager at Payson Market (located at 586 North Main Street) called 911, reporting that a man had just “walked out” of the store “with a full tray of sushi.” On further questioning from the 911 operator, the store manager reported that the thief left the store on foot walking south and that he was wearing a ski mask, a heavy jacket, and shorts. The dispatch operator then conveyed that information to officers on patrol.

At 5:45:27 p.m.—just four minutes after the 911 call—Sgt. Hurst spotted Salas, wearing clothes that matched the description of the store thief. Salas was walking south on the east sidewalk along Main Street, having just crossed 400 North Street. Sgt. Hurst advised dispatch of the suspect's location, parked in a partially-paved, empty lot Salas was walking by, exited his cruiser, and asked, “*Hey man, come talk to me for a second?*” But when Salas turned his head away and continued walking south, Sgt. Hurst demanded, “*Come talk to me for a second!*”

Salas then faced the officer and said something back but continued to retreat, now walking backwards along the sidewalk. By this time, Officer Gille had joined the effort to gain Salas's compliance, walking behind and at the side of Sgt. Hurst. As Sgt. Hurst approached Salas, Salas held up a socket wrench extension in his right hand and, unbeknownst to Sgt. Hurst, a steak knife in his left hand. Then, as Sgt. Hurst narrowed the gap between them, Sgt. Hurst demanded, “*Stop. I'm telling you, stop, man! Turn around.*” Salas refused to comply. Instead, he responded, “No, sir,” and quickened his backward retreat while slightly raising the knife behind him.

Realizing now that Salas had a knife, Officer Gille drew his taser and Sgt. Hurst drew his firearm, both drawing their aim on Salas. As Sgt. Hurst repeatedly demanded that Salas put the knife down, Salas not only refused, but twice asked the officer to shoot him:

Sgt. Hurst: *Put the knife down.*

Salas: *No, sir.*

Sgt. Hurst: *Put the knife down now!*

Salas: *Shoot me.*

Sgt. Hurst: *Put the knife down.*

Salas: *Shoot me.*

¹ This factual summary is based on a review of video footage from the body cameras of Sgt. Hurst and Officer Gille, video footage from a surveillance camera at a nearby residence, and witness statements from Officer Gille and some passersby who witnessed the event. Sgt. Hurst did not provide a statement as was his right under the Fifth Amendment to the U.S. Constitution.



Sgt. Hurst quickly radioed dispatch, notifying the operator that Salas had a knife. Then, as Sgt. Hurst instructed Officer Gille to deploy his taser, Officer Gille twice again ordered Salas to put the knife down:

Officer Gille: *Put it down, bud.*

Sgt. Hurst: *Hear, tase him.*

Officer Gille: *Put it down!*

Sgt. Hurst: *Tase him.*

After Salas ignored these repeated demands, Officer Gille twice deployed his taser—first from about 15 feet away, and then from about 5 feet away. The taser probes, however, did not penetrate Salas's heavy coat. Despite the continuous rattle of the tasers, Salas ceased his retreat and began walking toward the officers as they repeatedly ordered him to drop his weapon:

Sgt. Hurst: *Put the gun down.*

Officer Gille: *Put it down, bud!*

Sgt. Hurst: *Put the gun down!*

Officer Gille: *Put it down!*

Sgt. Hurst: *Don't! Put the, put the gun down!²*

Still holding his firearm in his right hand, Sgt. Hurst drew his taser with his left hand. While demanding that Salas "*put the gun down*," Sgt. Hurst deployed his taser in a last-ditch effort to subdue Salas. But again, the taser barbs did not penetrate Salas's coat.

Unfazed, Salas ran at Sgt. Hurst, ignoring yet another demand from the officer to "*put it down!*" Then, as Salas lunged toward him, Sgt. Hurst stepped back and to the side to avoid Salas's assault. And as he did, Sgt. Hurst fired two rounds from his gun. At about this same time, or immediately after, Officer Gille also drew his gun but never fired. One of the bullets from Sgt. Hurst's gun struck Salas near the right shoulder (in the right, upper pectoral muscle) and he fell to the ground—just 37 seconds after Sgt. Hurst's first contact with him. Sgt. Hurst immediately reported to dispatch, "*Shots fired. Shots fired. Suspect's down!*" Then, before assisting Officer Gille in securing Salas, Sgt. Hurst directed dispatch to "*get medical coming.*"

Although shot, Salas resisted the officers' attempts to secure him. It took almost one minute to secure Salas in handcuffs—after a direct-contact taser deployment from Sgt. Hurst and the assistance of a third officer. While Salas was being handcuffed, Sgt. Hurst again asked dispatch for an "*ambulance, expedite.*"

² As explained below, Sgt. Hurst mistakenly referred to Salas's weapon as a gun rather than a knife.



As Officer Gille prepared to render first aid, he repeatedly urged Salas to “stay with us.” In an obvious state of shock, Salas finally responded to the officers, asking, “*Why am I not dead? Why am I not dead? Why am I not dead?*” When Officer Gille asked where he was shot, Salas responded, “*I don’t know. It felt good, though.*” Salas was taken to the hospital, where he was successfully treated for the gunshot wound.

At the hospital, Salas remained combative, showed signs of psychosis, and tested positive for cannabis. This was not the Payson Police Department’s first encounter with Salas, who was a known cannabis user. Earlier that very day, officers responded to Salas’s apartment on a welfare check after a roommate reported unusual behavior—Salas was yelling at non-existent people and jumped out of his bedroom window. Responding officers never located Salas. A few months before, Salas also begged police to shoot him when they confronted him in response to an intoxicated-person report.

ANALYSIS

The question in this case is whether Sgt. Hurst “reasonably believe[d] that the use of deadly force [was] necessary to prevent [his] death or serious bodily injury.” Utah Code § 76-2-404(2)(c). Although Sgt. Hurst did not make a statement, the facts before me (in particular, the body cam videos of both officers) demonstrate that Sgt. Hurst had reason to believe that he would be seriously injured, if not killed, if he did not shoot Salas.

A. The officers’ attempt to stop and question Salas was justified under the Fourth Amendment.

The authority of a police officer to stop and question an individual is governed by the Fourth Amendment to the United States Constitution, which guarantees “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.” U.S. Const. amend. IV. By its express terms, the Fourth Amendment “forbids ... not all searches and seizures, but *unreasonable searches and seizures.*” *Terry v. Ohio*, 392 U.S. 1, 9 (1968) (emphasis added).

In its landmark decision in *Terry v. Ohio*, the U.S. Supreme Court explained that under the Fourth Amendment, a police officer may stop and question an individual if, under the facts and circumstances known to the police, it is reasonable to believe “that criminal activity may be afoot.” 392 U.S. at 30. So long as this “reasonable suspicion” standard is satisfied, officers may briefly detain (seize) a person for questioning “to confirm or dispel their suspicions.” *United States v. Sharpe*, 470 U.S. 675, 686 (1985). Here, the facts and circumstances known to the Payson police were more than enough to justify Salas’s detention.

Several facts, when considered together, supported a reasonable belief that Salas may have shoplifted from Payson Market: (1) the Payson Market manager reported that a man walked out of Payson Market with a sushi plate without paying for it; (2) the manager reported that after leaving the store, the thief walked south; (3) the manager reported that the thief was wearing a ski mask, heavy jacket, and shorts; (4) just four minutes after receiving the 911 call, officers spotted Salas walking south on the very street Payson Market is located (Main Street); (5) when spotted, Salas was some two blocks from the store; and (6) Salas was wearing a ski



mask, a heavy jacket, and shorts. These circumstances, considered together, provided *at least* reasonable suspicion to detain Salas on suspicion of retail theft, a violation of Utah Code § 76-6-404 (2023).³

—A Point of Law, Reason, and Safety—

Although the officers correctly determined that they had legal cause to stop and question Salas, I feel it important to emphasize that even if they had been mistaken—which *they were not*—Salas would still have been required to submit to their authority. There has been a disturbing trend in our nation for some to resist an officer's attempt to detain, arrest, or search them based on their personal assessment that legal cause is lacking. But disputes about the law are resolved in the courtroom, not in the streets. Were it otherwise, we would lose our streets and the peace enjoyed in a nation of laws. The Utah Supreme Court said it well:

The law prefers judicial settlement of disputes over street brawls and altercations, even when the lawfulness of police conduct is in question. Suspects should not be the judges of the lawfulness of police action, and redress of an unlawful search or seizure, e.g., an arrest not supported by probable cause or a detention not supported by a reasonable, articulable suspicion of criminal activity, is to be obtained in a court of law.

State v. Trane, 2002 UT 97, ¶ 35, 57 P.3d 1052. A contrary rule would only “lead to [more] violence and serious physical injury.” *State v. Gardiner*, 814 P.2d 568, 572 (Utah 1991) (quotation marks and citations omitted). What is more—and critically for all involved—resistance to an officer's authority only serves to escalate the confrontational nature of citizen-police encounters, introducing a multitude of changing and unknown variables. This, in turn, greatly increases the risk of violence and mistakes in judgment. For this reason, when officers are acting within the scope of their duties, the law provides no legal defense for a person's resistance to his or her detention, arrest, or search. The law reasonably expects individuals “to submit peaceably” and thereafter “take recourse in [available] legal remedies.” *Id.* (quotation marks and citation omitted).

If any reason once existed to recognize a resistance defense to stops not supported by the facts, that reason no longer exists. *See id.* “An arrestee now has the benefits of liberal bonding policies, appointed counsel in the case of indigency, and the opportunity to be taken before a magistrate for ... arraignment and preliminary hearing.” *Id.* (quotation marks and citations omitted). What is more, with the advent of dash cams and body cams, courts by and

³ Although the colors of Salas's clothing did not precisely match the colors reported by the store manager, the description was reasonably accurate—Salas's ski mask was dark gray, not black; his shorts were dark blue, not black; and his jacket was a shade of darker gray, not brown—though in some body cam shots it did appear dark brown. In any event, the other descriptors—ski mask, shorts, and heavy jacket—were very accurate and outweighed any differences in the color descriptors. Also of note, though not relevant to a reasonable suspicion analysis, police found an abandoned Sushi plate on the sidewalk between Payson Market and the shooting.



large are no longer restricted to a choice between competing stories. Courts may now consider the recordings of the encounter.⁴

In sum, the place to resolve disputes about the lawfulness of an officer's detention, arrest, or search is in the courtroom—not the street. And given the widespread use of dash cams and body cams, the public can take confidence that courts can fairly and equitably resolve disputed matters.⁵

B. Consistent with department policy, the officers first attempted to control Salas through non-lethal means, including repeated use of a taser.

Both officers repeatedly demanded that Salas drop his weapon. Four times, Sgt. Hurst demanded that Salas “put the knife down.” And four times, Officer Gille demanded that he “put it down.” When Salas refused, and at Sgt. Hurst's direction, Officer Gille twice tried to subdue Salas with his taser, but the barbs failed to penetrate Salas's coat. Although Salas was brandishing his weapon during this initial encounter, he was in retreat. Accordingly, the officers exercised sound judgment in not using deadly force to this point. And their decision to deploy a taser was consistent with department policy:

[A taser] may be used when the circumstances reasonably perceived by the officer at the time indicate that *such application reasonably appears necessary to control a person* who ... [h]as demonstrated, by words or action, *an intention to be violent or to physically resist*, and *reasonably appears to present the potential to harm officers, themselves, or others*.

Payson City PD Policy Manual, § 304.5.1 (emphasis added). In this case, Salas refused to both stop and drop his knife, despite the officers' repeated commands. And his brandishing of both the knife and tool clearly demonstrated Salas's “intention to be violent or physically resist,” making it readily apparent that he represented a “potential to harm [the] officers” as they tried to control him. For this reason, the deployment of the taser was eminently reasonable.

⁴ It is important to note here that although the digital recordings from dash cams and body cams have tremendous evidentiary value (providing a sort of third, independent witness to the events that unfolded), they cannot fully replace an officer's perceptions. Kliem, Von, *Body-worn Cameras and Memory*, Force Science News (Sep. 2020), located at <https://www.forcescience.com/2020/09/body-worn-cameras-and-memory/> (last visited April 9, 2025). For example, because of their positioning in the car or on the officer's body, dash cams and body cams do not necessarily capture what the officer saw. They may capture *both more and less* than what the officer perceived. Environmental and technological factors can also limit what a camera may capture.

⁵ Dash cams and body cams provide a second benefit apart from their evidentiary value. They act as the proverbial “angel on one's shoulder”—added incentive for officers to act reasonably and professionally because their actions will be for the world to see.



C. Salas understood that officers were ordering him to put the knife down notwithstanding Sgt. Hurst's later demands that he "put the gun down."

Unfortunately, Officer Gille's deployment of the taser was wholly ineffective. Sgt. Hurst demanded that Salas put the weapon down four more times. Rather than complying, Salas ceased his retreat and began advancing on the officers with knife and tool in hand. Again, Sgt. Hurst showed restraint. He did not immediately fire his gun. Instead, Sgt. Hurst retreated in the face of Salas's advance and deployed his taser to no effect.

Notably, after Officer Gille's taser deployment, Sgt. Hurst repeatedly demanded that Salas "put the *gun* down" rather than the knife down. But nothing in the video suggests that Salas had a gun and I received no information suggesting that either officer believed Salas had a gun. It thus appears that Sgt. Hurst simply misspoke when he repeatedly ordered Salas to put the gun, rather than the knife, down.

The evidence, however, does not suggest that Sgt. Hurst's mistake in language changed the nature of the confrontation. Salas continued to brandish both tool and knife and the officers continued to train their weapons on Salas, demanding that he put down a weapon. There was no confusion on Salas's part, only aggression. Indeed, it is more than likely that if Sgt. Hurst and Officer Gille were asked, both would believe that Sgt. Hurst again repeatedly demanded that Salas put the knife down. And it is just as likely that Salas's memory would be the same. See Joyce W. Lacy and Craig E.L. Stark, *The Neuroscience of Memory: Implications for the Courtroom*, PMC: 2014 Oct 2, located at (<https://pmc.ncbi.nlm.nih.gov/articles/PMC-4183265/#:~:text=Very%20high%20levels%20of%20stress%20during%20an,in%20humans%20can%20impair%20declarative%20memory%20formation71>). (last visited April 10, 2025) (observing that "violence and trauma tend to improve memory for the central gist of an event (e.g. witnessing a homicide) but impair memory of the peripheral details of the event (e.g. the clothing of the perpetrator)").

What is more, Sgt. Hurst's mistaken reference to a gun rather than a knife is a reasonable one given the training officers receive. "In the high-stakes world of law enforcement, decisions are often made in mere seconds, and effective training builds the foundation for these split-second decisions." Greenberg, M., FORCE SCIENCE, *Mind Over Matter: How Your Mindset Affects Performance Under Stress* (Nov. 15, 2024), located at <https://www.forcescience.com/2024/11/mind-over-matter-how-your-mindset-affects-performance-under-stress/> (last visited on April 4, 2025). To assist officers in effectively managing stressful events and making sound tactical decisions, officers undergo a significant amount of training that hones both their automatic responses to stressful events ("automaticity" or "open-loop response") and their ability to process changing feedback and adjust their actions accordingly ("closed-loop response").

For example, when officers are confronted with a lethal threat, we don't want them having to think about how best to hold their gun or the mechanics of accurate shooting. We want those acts to be automatic so officers can focus instead on the changing circumstances around them and respond appropriately. If distracted by tasks that should be automatic but are not, officers are less able to focus on changing conditions and make optimal decisions based



on those changing conditions—e.g., whether to fire their weapon based on the suspect's evolving behavior.

Sgt. Hurst's repeated demands to "put the gun down" is another example of a *trained*, "open-loop response" to a high-stress situation—a pre-programmed response that does not rely on real-time feedback or adjustments based on unfolding events. This is entirely desirable. When officers are confronted with an armed suspect, we don't want them thinking about what they might say. In every instance, we want officers to automatically demand that the armed suspect put the weapon down—giving that suspect every opportunity to end the threat before it materializes. When the officer's verbal response to a lethal threat is automatic, the officer can properly focus on the suspect's changing behavior in determining what actions the officer should take in response to those changing circumstances. To hone these skills, officers undergo extensive training using either simulators or mock-ups to mimic the changing circumstances that occur in real life. In almost every instance, the threat posed in these simulations or mock-ups is an armed gunman. As a result, these trainings establish an automatic response demanding that the suspect put the gun down to a threat.

Here, when Sgt. Hurst perceived Salas's threat as minimal (holding the knife but walking backwards), he had the luxury of thinking about the words he used to try to gain compliance. But when that threat escalated with Salas's advance, it is evident that Sgt. Hurst's automatic response training kicked in, allowing him to focus on the evolving threat rather than on the words he was using. And as discussed, Salas certainly understood the officers' insistence that he submit to their authority—despite any mistaken language referring to a gun rather than a knife. Salas chose instead to assault Sgt. Hurst.

D. Sgt. Hurst's decision to fire his gun at Salas was objectively reasonable where Salas ignored repeated commands to drop his knife, then attacked Sgt. Hurst at close range with that knife.

As discussed, Sgt. Hurst repeatedly demanded that Salas put down the weapon (first referring to it as a knife, then as a gun) and Officer Gille repeatedly demanded that Salas put it down. But Salas ignored those demands each time. Both Officer Gille and Sgt. Hurst first deployed their tasers. Still, Salas refused to submit to their authority. And after first backing away from the officers, Salas began walking toward them. Still, the officers did not fire their guns. Only when Salas ran toward Sgt. Hurst with a knife in hand did Sgt. Hurst fire his gun. But even as Salas lunged forward, Sgt. Hurst did not immediately fire his gun. Instead, he tried to flee in a different direction. Only when that last attempt failed—when Sgt. Hurst was unable to put any distance between him and Salas—did Sgt. Hurst fire his gun. Having repeatedly failed to gain Salas's submission and unable to distance himself from Salas, Sgt. Hurst was left with no choice but to shoot Salas. *See, e.g., Fornuto v. Police Board of City of Chicago*, 349 N.E.2d 521 (Ill. App. 1976) (holding that police shooting was justified where "[i]t was clear from the evidence that [officer's] life was in danger when [subject] lunged at him with a knife").

As noted, Utah law expressly permits a police officer to shoot at a subject when the officer "reasonably believes that the use of deadly force is necessary to prevent death or serious

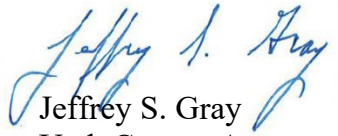


bodily injury to the officer or an individual other than the suspect.” Utah Code § 76-2-404(2)(c) (2022). Under the circumstances here, Sgt. Hurst reasonably believed that the use of deadly force against Salas was necessary to prevent Salas from seriously injuring him or even killing him.

* * *

For the above reasons, Sgt. Hurst's use of deadly force was justified and criminal charges against him are unwarranted.

Respectfully,


Jeffrey S. Gray
Utah County Attorney

cc: Lt. Nick Patterson, Det. Cam Nelson