

Utah County Attorney

Criminal Division



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February 23, 2010

Sheriff James O. Tracy
Utah County Sheriff
3075 North Main Street
Spanish Fork, UT 84660

Re: November 3, 2009 Deputy Involved Shooting Near Lincoln Beach

Dear Sheriff Tracy:

As you know, pursuant to Utah Code Section 26-4-6, I am charged and authorized to investigate Utah County deaths that occur, among other reasons, as a result of violence or gunshot, or while the decedent was in police custody (Section 26-4-7). Further, I am to "determine if the decedent died by unlawful means and . . . if criminal prosecution shall be instituted" (Section 26-4-21).

The Utah County Law Enforcement Officer Involved Incident Protocol Task Force has concluded its investigation into the November 3, 2009 deputy involved shooting that occurred near Lincoln Beach. After reviewing the results of that investigation and the pertinent statutes, I conclude that Utah County Sheriff Detective Zachary Adams and Deputy Corey King were legally justified in their use of deadly force against the decedent, Mr. Todd Hainsworth, and I determine that no criminal prosecution will be instituted against Detective Adams or Deputy King.

The following is a brief factual summary of what I believe occurred and a short analysis of how I arrived at my legal conclusions:

FACTS

In November of 2009, Mr. Todd Hainsworth was fifty years old and a resident of Orem. Mr. Hainsworth was, as of July of 2009, separated from his wife of approximately twenty years, and there was a protective order preventing Mr. Hainsworth from contacting his wife or their children, and from going to his home in Orem. Mr. Hainsworth was laid off from his employment on about August 1st. On August 18th, Mr. Hainsworth overdosed on prescription drugs. On August 19th, Mr. Hainsworth's sister called the Spanish Fork Police Department and reported that Mr. Hainsworth was suicidal. In late September Mr. Hainsworth lost a job he had recently obtained in Duchesne, Utah and was served with divorce papers. Also in late September, while still in Duchesne, Mr. Hainsworth called a work friend to tell her he was going to kill himself. That friend and her brother drove to Duchesne, talked him out of killing himself and arranged for him to have contact with a mental health therapist. On October 31st, Mr. Hainsworth violated the court protective order by going to his Orem home and tearing up the grass with his truck tires. On November 1st, Mr. Hainsworth left four messages on his wife's cell phone, and in one of those messages he told her he "would shoot any police [officer]" that made contact with him. Also on November 1st, Mr. Hainsworth called a female friend, told her he had taken some pills and was going to end his life. This friend located Mr. Hainsworth in his truck near Lincoln Beach (near the south end of Utah Lake), but he refused to speak to her and he drove off, driving erratically. On November 2nd, Mr. Hainsworth visited a family friend in Orem. Mr. Hainsworth indicated to his friend that he believed there was a warrant outstanding

for his arrest (for violating the protective order), and according to the friend, Mr. Hainsworth appeared depressed and suicidal.

In the early morning of November 3rd, Mr. Hainsworth sent his wife a text message asserting that their divorce should not happen. Later in the morning, between 9:00 and 9:30 a.m., Mr. Hainsworth left his wife a text message indicating that he had done something “really bad.” At 9:33 a.m., Mr. Hainsworth called 911 and hung up or was disconnected. This call was routed to Provo City Police Dispatch and the assigned dispatcher immediately returned Mr. Hainsworth’s call. Mr. Hainsworth informed the dispatcher that he had taken sixty Clonazepam pills and just wanted to go to sleep. He asked the dispatcher to call his wife and tell her that he loved her. The dispatcher asked for his location and he told her that he was at the south end of Utah Lake. She asked him if he was at Lincoln Beach and he responded that he did not know. Mr. Hainsworth gave her a description of his truck. The Provo dispatcher then transferred the call to Utah Valley Central Dispatch, since the dispatcher believed that Mr. Hainsworth was located within the jurisdiction of the Utah County Sheriff’s Office.

Utah Valley Central Dispatch received the transferred call at 9:35 a.m. The Utah Valley dispatcher ultimately spoke with Mr. Hainsworth for one hour and thirty-eight minutes, and during the conversation Mr. Hainsworth told the dispatcher he had taken sixty Clonazepam and was distraught over his pending divorce from his wife of twenty years. The Utah Valley dispatcher spoke with Mr. Hainsworth until he either fell asleep or passed out.

At 9:35 a.m. Utah Valley Dispatch initiated an attempt to locate Mr. Hainsworth, assigning Utah County Sheriff deputies and Utah Lake State Park rangers to assist. The Sheriff’s Office also launched its airplane to assist in the search.

At 10:09., the Utah Valley dispatcher heard Mr. Hainsworth shoot his handgun twice, and the dispatcher heard him shoot a third time at approximately 10:10. Mr. Hainsworth reported to the dispatcher that he shot his mirror and was reloading his weapon. At approximately 10:18, Mr. Hainsworth became non-verbal (refusing to speak), but his cell phone line remained open with dispatch.

At 10:27, the Sheriff's airplane spotted Mr. Hainsworth's truck, which was approximately two to three miles northwest of Lincoln Beach. Sheriff deputies began to drive towards Mr. Hainsworth's location. Because Mr. Hainsworth was armed, shooting and possibly suicidal, the Sheriff's Office also dispatched its armored van (which has similar markings and emergency lights as a marked police vehicle). The Sheriff's Office dispatched the van because it permits deputies to communicate and deal with armed persons from a position of relative safety.

The driver of the van, Utah County Sheriff Sgt. Bufton, observed Mr. Hainsworth's truck parked in a gravel pull off. Sgt. Bufton drove the van to within about fifteen yards behind Mr. Hainsworth's truck and observed Mr. Hainsworth in the driver's seat. From within the van, Utah County Sheriff Lieutenant Brower attempted to communicate with Mr. Hainsworth using the van's public address system (PA). After identifying himself as being with the Sheriff's Office, Lt. Brower told Mr. Hainsworth, "we're here to help you . . . we don't want to hurt you . . . just show us your hands." At one point, Mr. Hainsworth put one of his hands out the truck window but refused to show both of his hands.

After Lt. Brower attempted to communicate with him, Mr. Hainsworth started moving his truck backwards. Sgt. Bufton moved the van forward in an attempt to block Mr. Hainsworth's egress. Mr. Hainsworth backed into the front bumper of the van and then drove forward, which

allowed Sgt. Bufton to drive the front bumper of the van into the side of Mr. Hainsworth's truck, behind the driver's door. This momentarily pinned the truck against a berm. However, Mr. Hainsworth's truck was able to get traction and he drove away.

During this initial encounter between the van and Mr. Hainsworth's truck, additional Utah County Sheriff deputies arrived and positioned their marked vehicles (with activated emergency lights) on the paved road (Lincoln Beach Road) near where Mr. Hainsworth was located. After escaping from the armored van, Mr. Hainsworth drove his truck at a fairly high rate of speed down a dirt road and onto Lincoln Beach Road where the Sheriff vehicles were stationed.

One of these deputies deployed tire spikes on Lincoln Beach Road and three of the deputies drew their weapons and yelled out commands to stop to Mr. Hainsworth. Mr. Hainsworth maneuvered his truck between two Sheriff vehicles, slightly striking one as he drove past, and drove over the tire spikes, thereby damaging the driver's side front and rear tires of his truck. He was nonetheless able to get past the deputies and drive east down Lincoln Beach Road towards Lincoln Beach.

Sheriff deputies pursued Mr. Hainsworth and observed him driving erratically and on the wrong side of the road. After driving about a mile, Mr. Hainsworth abruptly drove off of the paved road, through a barbed wire fence, and headed toward the lake, bouncing violently through through the dirt and sagebrush. His truck finally came to a stop approximately 360 feet from where he left the pavement of Lincoln Beach Road.

Sgt. Bufton drove the armored van down a dirt road access near Mr. Hainsworth's location and stopped the van to within fifteen or twenty yards of Mr. Hainsworth's truck. As the

van approached the truck, Lt. Brower stated over the PA, "we're coming down . . . don't be alarmed . . . we're coming down to make sure you're okay." Mr. Hainsworth started his truck and attempted to drive off, but it was apparently unable to move.

Over the PA, Lt. Brower informed Mr. Hainsworth that an ambulance was available to help him. Lt. Brower also asked Mr. Hainsworth to put both hands out the window/door so that they could get him some help. Mr. Hainsworth did not comply with Lt. Brower's request.

At this point, there were three Sheriff deputies outside of the van (not including a number of other deputies and officers providing scene containment) and using the van as cover. One of them, Deputy Corey King, was positioned on the front driver's side fender of the van, with the van between him and Mr. Hainsworth's truck. Four deputies and one State Park ranger were inside of the van. One of them, Detective Zachary Adams, was positioned on the passenger side, toward Mr. Hainsworth's truck, deploying his rifle through a van gun port.

Again using the PA, Lt. Brower told Mr. Hainsworth to step out of his truck slowly, with his hands over his head, so that they could get him some help. Mr. Hainsworth remained seated in his truck. Mr. Hainsworth reached over onto the passenger seat and retrieved what appeared to be a beer can. A few seconds later, Mr. Hainsworth again reached over towards the passenger seat and he then got out of the truck. In his right hand he had a black handgun, which he was holding down to his side.

Utah County Sergeant Tom Hodgson, who was directly west of Mr. Hainsworth, yelled "gun." Using the PA, Lt. Brower immediately commanded Mr. Hainsworth, at least twice, to "drop the gun." Deputy King and Utah County Deputy Chris Bagley also yelled at least twice for

Mr. Hainsworth to "drop it." Mr. Hainsworth then squared off towards the van, raised the gun, and pointed it towards the front of the armored van where Deputy King was positioned.

Deputy King, whose upper body was not protected by the armored van, fired two bursts from his automatic rifle. Nearly simultaneous to Deputy King's shots, Detective Adams, from inside the armored van, fired three rounds from his rifle. Shortly thereafter deputies checked on Mr. Hainsworth and he was deceased.

LAW

The pertinent sections of the Utah Code are 76-2-402 and -404. Section 76-2-404 states:

(1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when: . . . (c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.

Section 76-2-404(2) also states that, "[i]f feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (1)(b) or (1)(c)." Similarly, Utah Code Section 76-2-402(1) states:

A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that force is necessary to defend himself or a third person against such other's imminent use of unlawful force. However, that person is justified in using force intended or likely to cause death or serious bodily injury only if he or she reasonably believes that force is necessary to prevent death or serious bodily injury to himself or a third person as a result of the other's imminent use of unlawful force, or to prevent the commission of a forcible felony.

And 76-2-402(5) states:

In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors: (a) the nature of the danger; (b) the immediacy of the danger; (c) the probability that the unlawful force would result in death or serious bodily injury; (d) the other's prior violent acts or violent propensities; and (e) any patterns of abuse or violence in the parties' relationship.

ANALYSIS

The Sheriff deputies were justified in using deadly force against Mr. Hainsworth if they reasonably believed “that the use of deadly force [was] necessary to prevent death or serious bodily injury to the officer or another person,” or they reasonably believed that “force [was] necessary to defend [themselves] or a third person against such other’s imminent use of unlawful force.” In this instance the facts are fairly straightforward: Utah County deputies (and Utah State park rangers) went to Mr. Hainsworth’s location near Lincoln Beach because he was likely suicidal, had discharged his gun, and was probably in need of medical assistance. After the deputies made contact with Mr. Hainsworth, he was unwilling to comply with their commands and he drove off after the marked armored van had intentionally pinned his truck to a berm. After Mr. Hainsworth drove away from this first contact, he struck a marked sheriff vehicle, ran over tire spikes, refused to comply with multiple deputies’ commands to stop and drove off-road in a manner that indicated his thinking was not rational.

When Mr. Hainsworth’s truck was immobile, he got out of the truck with a handgun and refused, despite multiple commands, to drop the gun. He then raised the gun and pointed it toward a Sheriff deputy.

Detective Adams and Deputy King reasonably believed that deadly force was necessary to defend Deputy King and the other deputies both inside and outside of the armored van from Mr. Hainsworth’s imminent use of unlawful deadly force. Detective Adams and Deputy King also reasonably believed that the danger to Deputy King and others was immediate and would almost certainly result in death or serious bodily injury to Deputy King or others.

CONCLUSION

For the reasons I stated above, I conclude that Utah County Sheriff Detective Zachary Adams and Deputy Corey King were legally justified under Utah Code Sections 76-2-402 and -404 in their use of deadly force against the decedent, Mr. Todd Hainsworth. I find, pursuant to Section 26-2-21, that Mr. Hainsworth died through lawful means and I determine that no criminal prosecution should be instituted against Detective Adams or Deputy King.

Sincerely,

Jeffrey R. Buhman
Utah County Attorney

cc: Deputy Cory King
Detective Zachary Adams