

Utah County Attorney

Criminal Division



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August 20, 2010

Chief Craig Geslison
Provo Police Department
48 South 300 West
P.O. Box 1849
Provo, UT 84603

Re: May 8, 2010 Officer Involved Shooting at Provo Smith's

Dear Chief Geslison:

As you know, pursuant to Utah Code Ann. § 26-4-6 (West Supp. 2009), 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. Utah Code Ann. § 26-4-7 (West 2004). Further, I am to "determine if the decedent died by unlawful means and . . . if criminal prosecution shall be instituted." Utah Code Ann. § 26-4-21 (West 2004).

The Utah County Law Enforcement Officer Involved Incident Protocol Task Force has concluded its investigation into the May 8, 2010, officer involved shooting that occurred at the Smith's located at about 350 North Freedom Boulevard in Provo. After reviewing the results of that investigation and the pertinent statutes, I conclude that Provo City Police Department Officers Chris Chambers and Troy Cook were legally justified in their use of deadly force against the decedent, Mr. Ronald John Ethington, and I determine that this office will not bring criminal charges against Officer Chambers or Officer Cook.

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

On the evening of May 8, 2010, Ronald John Ethington walked into the Smith's store located at 350 North Freedom Boulevard in downtown Provo. Sometime after 8:30 p.m., a Smith's employee, Mr. Steffensen, observed Mr. Ethington carrying a six-pack of beer in his hand and a satchel or bag at his side. A short time later, Mr. Steffensen observed that Mr. Ethington was no longer holding the beer, but that his satchel was full. As Mr. Ethington walked through the checkout area, Mr. Steffensen stopped Mr. Ethington and asked him about the beer in his satchel. Mr. Steffensen asked Mr. Ethington questions and told him to put the beer back, but Mr. Ethington did not coherently respond. Mr. Steffensen then asked Mr. Ethington to walk with him to the area of the store called "Customer Care," but Mr. Ethington then attempted to flee. Mr. Steffensen put Mr. Ethington into a headlock, pulled him over to Customer Care, and put him on the ground. Another Smith's employee, Mr. Allen, helped Mr. Steffensen move Mr. Ethington to a back room, and a cashier called 911.

Once in the back room, one of the Smith's employees told Mr. Ethington to empty his bag and Mr. Ethington pulled out a six-pack plus about six individual cans of beer. The employee also told Mr. Ethington that the police would be called. As Mr. Ethington was emptying his bag, Mr. Steffensen observed the handle of a gun in the bag and it appeared to him that Mr. Ethington was attempting to take the gun out of a holster. Mr. Steffensen grabbed the gun as Mr. Ethington was holding it, yelled out, "He has a gun!" and ended up holding the gun from behind Mr. Ethington. Mr. Allen then got behind both Mr. Ethington and Mr. Steffensen

also in an attempt to get the gun away from Mr. Ethington. Mr. Allen and Mr. Steffensen began hitting and wrestling with Mr. Ethington in an attempt to get him to drop the gun. In fact, they repeatedly yelled at Mr. Ethington to, "Let go of the gun!" but Mr. Ethington would not comply. Mr. Allen and Mr. Steffensen wrestled with Mr. Ethington for approximately two minutes, until police officers arrived.

At 8:41 p.m., Provo Police dispatched officers to Smith's. Officer Cook arrived first at 8:43 p.m. Officers Chambers and Harris arrived at 8:44 p.m. Officer Cook entered the back room and observed three men standing in the back area of the room to his right. All three looked at him and the one closest to him and the one furthest from him yelled, "He has a gun!" Officer Cook looked at their hands and could see the barrel of a gun. At about that time, Officer Chambers entered and crossed the room with his gun drawn. Because Officer Cook was standing in the doorway, Officer Harris was unable to enter the room. Both Officer Cook and Officer Chambers began yelling at Mr. Ethington, Mr. Steffensen, and Mr. Allen to, "Drop the gun! Drop the gun!" and "Show me your hands!" When Mr. Steffensen and Mr. Allen looked up at the officers, Mr. Ethington yanked the gun away from them. Mr. Allen dropped to the floor and Mr. Steffensen moved away from Mr. Ethington.

At this point, both Officer Cook and Officer Chambers were directly facing Mr. Ethington in a small, well-lit room, with only about five to ten feet between them and Mr. Ethington. Both Officer Cook and Officer Chambers were in their police uniforms, had their guns drawn (though for the initial part of this incident Officer Cook had a Taser drawn and pointed at Mr. Steffensen and Mr. Allen) and pointed toward Mr. Ethington, and were repeatedly ordering him to drop his gun. Notwithstanding their commands, Mr. Ethington turned toward the

officers (with his shoulders squared toward them) with the gun in his left hand, and he began to lift and point the gun toward the officers. Officer Chambers then shot Mr. Ethington with three to four rounds. After those shots, Mr. Ethington initially lowered his gun, but then he again raised it toward the officers despite their continued commands to lower his gun. Officer Chambers again shot Mr. Ethington with three or four rounds. Mr. Ethington then lowered his gun, but for a third time raised it toward the officers. Officer Chambers again shot three to four rounds at Mr. Ethington, who then fell to his knees, but did not drop the gun. For a fourth time and notwithstanding continued commands to drop the gun, Mr. Ethington again started to raise his gun, and both Officer Chambers and Officer Cook shot Mr. Ethington, probably with one round each.

Officer Chambers then rendered first aid to Mr. Ethington until paramedics arrived at about 8:48 p.m. When the paramedics arrived, they found Mr. Ethington deceased.

Investigators found that Mr. Ethington's gun was a Western Marshal .357 caliber revolver. Slugs had been glued into the revolver's cylinders in such a way that it appeared the gun was loaded, though it had no cartridges and the firing pin was inoperable.

In the autopsy, the Medical Examiner found that Mr. Ethington had a blood alcohol level of 0.08 grams per 100 milliliters.

LAW

The pertinent sections of law are Utah Code Ann. § 76-2-402 and -404 (West 2004).

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 police officers were justified in using deadly force against Mr. Ethington 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 straightforward and easily discerned because of store video.

Provo police officers responded to the Smith’s store on a report of an assault. When the officers entered the room where the altercation was occurring, they observed Mr. Ethington wrestling with Mr. Steffensen and Mr. Allen, they heard someone say “He has a gun,” and they observed a gun in Mr. Ethington’s hand. Shortly after the officers entered the room, Mr.

Steffensen and Mr. Allen broke off from Mr. Ethington, but remained in the room while the officers began to deal with Mr. Ethington.

Notwithstanding multiple and repeated commands to drop the gun, Mr. Ethington squared off and raised his gun toward the uniformed officers. After the officers initially shot him—and after continued commands to drop the gun, Mr. Ethington attempted at least three more times to raise the gun towards the officers.

Officers Chambers and Cook reasonably believed that deadly force was necessary to defend themselves, Mr. Steffensen, and Mr. Allen from Mr. Ethington's imminent use of unlawful deadly force. Officers Chambers and Cook also reasonably believed that the danger to themselves and to Mr. Steffensen and Mr. Allen was immediate and would almost certainly result in death or serious bodily injury.

CONCLUSION

For the reasons I stated above, I conclude that Provo City Police Department Officers Chris Chambers and Troy Cook were legally justified under Utah Code Sections 76-2-402 and -404 in their use of deadly force against the decedent, Mr. Ethington. Pursuant to Section 26-4-21, I find that Mr. Ethington died through lawful means and I determine that this office will not institute a criminal prosecution against Officer Chambers or Officer Cook.

Sincerely,

Jeffrey R. Buhman
Utah County Attorney

cc: Officer Chris Chambers
Officer Troy Cook

