

Utah County Attorney

Criminal Division



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August 16, 2016

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

Re: April 30, 2016, Officer Involved Shooting of Mr. Mark Bess

Dear Sheriff Tracy:

As you know, pursuant to Utah Code Section 17-18a-401, I am charged and authorized to "conduct, on behalf of the state, all prosecutions for a public offense committed within [the] county." Pursuant to Utah Code Sections 26-4-6, -7 and -21, I investigate Utah County deaths that occur, among other reasons, as a result of violence, gunshot, or accident. I am to "determine if the decedent died by unlawful means" and I am to "determine if criminal prosecution shall be instituted." Additionally, pursuant to Section III(A)(11)(c)(3) of the Utah County Officer Involved Incident Protocol (the "Protocol"), I will, after the completion of a criminal investigation involving an officer's "intentional or accidental use of any other dangerous or deadly weapon against another person," "analyze the facts of the incident as well as the relevant law to determine if criminal laws have been broken." See also Protocol Sections I(A)(1) and (2). If I find the officer has violated criminal laws, I am to "prosecute as appropriate or arrange for a special prosecutor." Protocol Section III(A)(11)(c)(3).

The Utah County Law Enforcement Officer Involved Incident Protocol Task Force has concluded its investigation involving the April 30, 2016, Officer Involved Shooting of Mr. Mark Bess by Utah County Sheriff Deputy Sean Peterson. After reviewing the results of that investigation and the pertinent statutes and case law, I find that Deputy Peterson was legally justified in his use of deadly force against Mr. Bess. Therefore, this office will not institute a criminal prosecution against Deputy Peterson.

The following is a brief factual summary of what I believe occurred and a short analysis of how I arrived at my decision.

FACTS

On and before April 30, 2016, Utah County Sheriff deputies were searching for Mr. Bess because Mr. Bess had three outstanding arrest warrants. On the morning of April 30th, a Saturday, Deputy Peterson and Utah County Sheriff Deputy Justin Gordon stopped at the Bess residence in the Lakeshore/Palmyra area (4934 South 3200 West) and spoke with Kris Bess, Mr. Bess' mother. She told the deputies that Mr. Bess was not there and that she had not seen him since the previous weekend (this information was later determined to be not truthful). She also indicated she did not have a current address for Mr. Bess.

Later that morning, at about 11:30 a.m., as Deputy Peterson drove past the Bess residence on his way to an unrelated call, he observed Kris Bess pulling out of her driveway with a male seated in the passenger seat who looked like Mr. Mark Bess. Kris Bess traveled two houses north to the Vance residence, pulled into the driveway and got out of her car. Kris knocked on the Vance's front door and then returned to her car when no one answered. As she pulled out of the driveway and headed toward her home, Deputy Peterson observed that the male in the passenger seat was no longer there, leading him to believe that Mr. Bess may have gotten out of the car at the Vance residence.

Deputy Peterson then stopped at the Vance residence and talked with Wayne and Cindi Vance, who said that Mr. Bess was not at their residence. Cindi Vance suggested to Deputy Peterson that he check around the house.

As Deputy Peterson started walking along the south side of the Vance's residence, an unidentified girl in a truck that was in close proximity to the Vance residence yelled to Deputy Peterson that there was someone running across the field behind the Coombs' residence, a house located directly south of the Vance's home. Deputy Peterson ran toward the Coombs' residence but could not see Mr. Bess. As he ran around the Coombs' residence, Deputy Peterson encountered Steven Coombs working in his backyard. Mr. Coombs told Deputy Peterson that he had not seen anyone, so Deputy Peterson searched the area around the barns behind the Coombs' residence, calling out repeatedly to Mr. Bess that he was with the Sheriff's Office and needed to talk with him.

Deputy Peterson ran down a pathway south of the Coombs' barn, leading into a field, and saw an individual "pop up" out in the field approximately 100-150 feet from his location. Peterson called out to the person to "put his hands in the air" and asked him who he was, though he quickly was able to identify him as Mr. Bess. Peterson repeatedly commanded him to "lay down, get on the ground, and don't move." It appears that at this time Mr. Bess may have told Deputy Peterson that he had a knife, and in response Deputy Peterson told Mr. Bess to "not put his hands in his pockets."

Mr. Bess did not comply with Deputy Peterson's commands, but rather slowly walked toward Deputy Peterson. When Mr. Bess was approximately 45 to 50 feet from Deputy Peterson, Mr. Bess reached his hand into his pant pocket and withdrew and opened a knife.

Deputy Peterson ordered Mr. Bess repeatedly to "drop the knife," "don't do it" and "get on the ground." Instead, Mr. Bess, with the knife in his hand, took off on a "dead run" straight toward Deputy Peterson. As Mr. Bess got to within about 25 feet of him with the open knife in his hand, Deputy Peterson fired two rounds at Mr. Bess from his handgun. Mr. Bess instantly fell to the ground.

Deputy Peterson immediately began doing CPR on Mr. Bess. Ms. Sydney Coombs (Steven Coombs' spouse and a nurse) joined him and they both administered lifesaving aid to Mr. Bess. Mr. Bess was transported by helicopter to Utah Valley Regional Medical Center but died shortly after arriving.

LAW

The pertinent sections of law are Utah Code Sections 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

Deputy Peterson was justified in using deadly force against Mr. Bess if he reasonably believed "that the use of deadly force [was] necessary to prevent death or serious bodily injury to the officer or another person" or he reasonably believed that "force [was] necessary to defend himself or a third person against such other's imminent use of unlawful force."

As noted above, Deputy Peterson was searching for Mr. Bess in order to arrest him on three active arrest warrants. When Deputy Peterson found Mr. Bess, he gave Mr. Bess multiple commands to "put his hands in the air" and "lay down, get on the ground, and don't move," and he also told him to not put his hands in his pockets. These orders from Deputy Peterson to Mr. Bess comply with the mandate in 76-2-404(2) ("If feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (1)(b) or (1)(c)").

Despite those commands, Mr. Bess took out a knife, opened the blade and took off "charging" or on a "dead run" straight toward Deputy Peterson with the knife in his hand. As Mr. Bess approached, Deputy Peterson shot Mr. Bess because Deputy Peterson believed his use of deadly force was necessary to prevent Mr. Bess from stabbing him—to prevent his own death

or from receiving serious bodily injury. Deputy Peterson also believed that the danger posed by Mr. Bess, running toward him with a knife in his hand, posed an immediate danger that was highly probable to cause death or serious bodily injury. See Section 76-2-402(5).

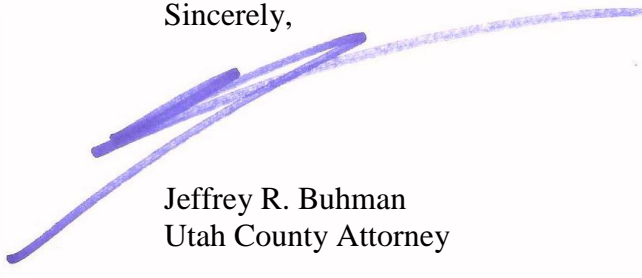
Because Mr. Bess charged toward Deputy Peterson with an open knife in his hand—after multiple warnings otherwise—I find that Deputy Peterson’s belief that Mr. Bess intended to use imminent and unlawful deadly force against him was reasonable and justified. I further find that Deputy Peterson’s use of deadly force was reasonable and necessary "to prevent death or serious bodily injury to the officer or another person" and was "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." See Sections 76-2-402(1) and -404(1).

CONCLUSION

For reasons stated above, I conclude that Utah County Sheriff Deputy Sean Peterson was legally justified under Utah Code Sections 76-2-402 and -404 in his use of deadly force against Mr. Mark Bess. Pursuant to Utah Code Section 17-18-1 and the Utah County Law Enforcement Officer Involved Incident Protocol, I determine that this office will not institute a criminal prosecution against Deputy Peterson.

Please call me if you have any concerns or questions.

Sincerely,



Jeffrey R. Buhman
Utah County Attorney

cc: Deputy Sean Peterson

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