



Utah County Attorney

Criminal Division

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April 14, 2017

Chief Darren Falslev
American Fork Police Department
75 East 80 North
American Fork, UT 84003

Chief Darren Paul
Lehi Police Department
580 West State Street
Lehi, UT 84043

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

Re: December 4, 2016 Officer Involved Shooting of Mr. James Dean Smith

Dear Chiefs and Sheriff:

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 December 4, 2016 Officer Involved Shooting of Mr. James Dean Smith by American Fork Police Officer Donald Johnson, Lehi Police Officer Daniel McCarter and Utah County Sheriff Deputy Skyler Zobell. After reviewing the results of that

investigation and the pertinent statutes and case law, I find that the officers and deputy were legally justified in their use of deadly force against Mr. Smith. Therefore, this office will not institute a criminal prosecution of Officer Johnson, Officer McCarter, or of Deputy Zobell.

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

FACTS

James Dean Smith, age 33, and Sue Ann Sands, age 39, lived together as boyfriend/girlfriend in Mr. Smith's parents' basement apartment in Orem, Utah for a number of months in 2016. Mr. Smith and Ms. Sands had a tumultuous relationship and Mr. Smith was distraught when Ms. Sands ended their relationship and moved out in September of 2016. It is apparent that by December of 2016, the date of the incident at issue, Mr. Smith was angry with Ms. Sands for issues related to their prior relationship.

On December 4, 2016, at about 7:25 p.m., Ms. Sands left her place of employment, a Del Taco in Lehi, driving her green Volkswagen Beetle ("VW"), for a lunch/dinner break. The sequence of events immediately after Ms. Sands left the Del Taco is unknown, but what is known is that at some point Mr. Smith began pursuing Ms. Sands in his silver Chevrolet Tahoe ("SUV") as she drove on an access road near the Lehi Costco.- It appears that at some point Mr. Smith pulled up alongside Ms. Sands, probably in the Costco parking lot, and fired an unknown number of shots at her.

Ms. Sands fled, driving her car at a high rate of speed while Mr. Smith pursued her. -As Ms. Sands drove through the American Fork Walmart parking lot (about one-fourth of a mile from the Costco parking lot), Mr. Smith rammed the front of his SUV into the passenger side of Ms. Sands' VW, pushing the VW into a curb. Mr. Smith's SUV was then perpendicular to the VW with the front of Mr. Smith's SUV facing Ms. Sands' passenger side window.

(It is likely that at this point Ms. Sands called 911, but the dispatcher was unable to immediately locate her or determine what was happening because Ms. Sands was so panic-stricken she was unable to communicate much information.)

Mr. Smith, while seated in his driver's seat, then fired five rounds through his windshield into the passenger side of the VW, striking Ms. Sands twice, once in the arm and once in her hand (neither shot was fatal).- Mr. Smith then got out of his SUV, walked around to the driver's side of Ms. Sands' vehicle, and fired one round into Ms. Sands' head. This last shot killed Ms. Sands.

Mr. Smith immediately fled the Walmart parking lot in his SUV. -Utah Valley Dispatch, the recipient of Ms. Sands' 911 call, dispatched officers to the American Fork Walmart area because Ms. Sands call had been abruptly terminated.

A short time later, police officers located Mr. Smith's SUV in Gordmans' parking lot in American Fork (about one half mile from the Walmart) and they pursued Mr. Smith for a short distance. Mr. Smith drove into the Cinemark Theaters parking lot and abruptly stopped his SUV in front of the theater. Lehi Officer Daniel McCarter, American Fork Officer Donald Johnson, and Utah County Sheriff Deputy Skyler Zobell were first on scene. In fact, Deputy Zobell's marked sheriff vehicle was first in pursuit of and immediately behind Mr. Smith as his SUV entered the parking lot, followed by Officer Johnson and then Officer McCarter. All three officers were in the immediate vicinity of where Mr. Smith stopped his vehicle.

After stopping, Mr. Smith immediately got out of the driver's side of his SUV and, facing the officers, raised a silver handgun to the right side of his head. -With the handgun to his head, he began slowly walking backward toward the theater. Officer Johnson yelled at Mr. Smith multiple time to "drop the gun." However, Mr. Smith continued to hold the gun to his head. Mr. Smith then fired a single round into the right temple area of his head, later determined to be the fatal round. Almost instantaneously, Officers McCarter and Johnson and Deputy Zobell fired a total of twelve rounds at Mr. Smith. Three of those rounds hit Mr. Smith causing superficial, non life-threatening wounds.

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

The officers and deputy were justified in using deadly force against Mr. Smith 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 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, immediately prior to stopping Mr. Smith, the officers and deputy were aware that Mr. Smith had shot and killed someone and was fleeing from the murder scene. When Mr. Smith stopped his SUV, he got out with a handgun in his hand. Though it is true that Mr. Smith was holding the gun to his own head, it is also inarguable that with almost no warning or effort he could have turned and fired his weapon at the police officers or deputy. This threat to

the officers was enhanced because Mr. Smith was clearly willing to shoot and kill a person (evidenced by his murder of Ms. Sands) and the officers and deputy were aware of that fact.

Additionally, as noted above, Officer Johnson yelled at Mr. Smith to “drop his gun,” substantially complying 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)”).

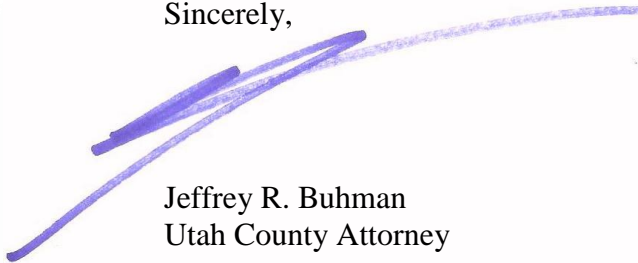
Because Mr. Smith had recently murdered Ms. Sands and had fired a handgun in the immediate vicinity of police officers after receiving verbal orders to drop the gun, I find that the officers and deputy had a reasonable and justifiable belief that Mr. Smith intended to use imminent and unlawful deadly force against them. I further find that the officers’ and deputy’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 American Fork Police Officer Donald Johnson, Lehi Police Officer Daniel McCarter, and Utah County Sheriff Deputy Skyler Zobell were legally justified under Utah Code Sections 76-2-402 and -404 in their use of deadly force against Mr. James Dean Smith. 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 Officer Johnson, Officer McCarter, or Deputy Zobell.

Please call me if you have any concerns or questions.

Sincerely,



Jeffrey R. Buhman
Utah County Attorney

cc: Officer Donald Johnson, Officer Daniel McCarter, Deputy Skyler Zobell