



Utah County Attorney

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March 2, 2018

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

Chief Steve Adams
Spanish Fork City Police Department
789 W Center Street
Spanish Fork, UT 84660

Re: December 20, 2017 Officer Involved Shooting

Dear Sheriff Tracy and Chief Adams:

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 20, 2017 Officer Involved Shooting wherein Mr. Arturo Ray Gallemore-Jimenez ("Gallemore") was shot and arrested. This incident included two separate shootings by officers: The first occurred on I-15 in Springville City; shots were fired by Utah County Sheriff Deputies Roger Lowe, Michael Graf, (Sergeant) Zach Adams, and (Sergeant) John Luke, and Spanish Fork City Police Department Officer Clint Petersen. The second occurred on I-15 in Orem City; shots were fired by Utah County Sheriff Deputy (Sergeant) John Luke. After reviewing the results of the investigation and the pertinent statutes

and case law, I find that the deputies and officer were legally justified in their use of deadly force against Gallemore. Therefore, this office will not institute a criminal prosecution of any of the deputies or the officer.

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 December 19, 2017, police officers in Aurora, Colorado responded to a shooting. A victim was located with several gunshot wounds to the back. The subsequent investigation identified Gallemore as the suspect. Colorado officers issued an attempt to locate (“ATL”) on Gallemore’s vehicle, a white Chevy S-10 pickup with Kansas plates.

On December 20, 2017, right before 6:00 p.m., police officers from Nephi, Utah were dispatched to the Flying J fuel station located just off I-15, south of Nephi City. Officers responded to a call about someone shooting out his own car window in the Flying J parking lot. The officers determined that the driver shot out his window to gain entrance to his truck because he had locked the keys inside. Because the driver/suspect had left Flying J prior to the officers’ arrival and was travelling northbound on I-15, the Nephi officers issued an ATL on Gallemore’s truck.

About thirty minutes later, Utah County Sheriff Deputy Lowe observed a white Chevy S-10 pickup travelling northbound on I-15 south of the Spanish Fork Main Street exit. The pickup was missing the driver’s side rear window and appeared to be the subject of the ATL from Nephi (Utah police officers were not yet aware of Colorado’s ATL). Deputy Lowe, knowing the suspect had recently shot his window out and was likely still armed, elected to conduct a felony/high risk stop on Gallemore’s truck.

Utah County Sheriff deputies, along with a Spanish Fork City police officer, initiated a felony/high risk traffic stop on northbound I-15, just north of the 400 South Springville interchange. Shortly after the officers initiated the traffic stop, Gallemore, the driver, pulled his truck over to the right shoulder of I-15. The officers gave verbal commands to Gallemore to “show his hands” and “get out of the vehicle.” Within seconds, Gallemore put his hands outside the driver’s side window and held them out of the truck for a short time. Gallemore then pulled his hands back into the truck and quickly thereafter extended his right hand out of the truck holding a handgun which he pointed at the officers. Gallemore immediately fired three rounds at the officers. Upon receiving gunfire, the officers returned fire at Gallemore and his truck. As the officers were shooting, Gallemore accelerated rapidly and merged back onto northbound I-15. The officers pursued Gallemore northbound on I-15, albeit at relatively slow speeds because the rear tires of Gallemore’s truck were shot out and going flat.

As some officers pursued Gallemore, Deputy Luke passed Gallemore and set up a position at the Orem University Parkway exit. The officers had determined that Gallemore was a risk to public safety and decided they could not let him into populated areas. Deputy Luke therefore positioned himself on the University Parkway off-ramp in a manner to protect himself from Gallemore if Gallemore elected to exit I-15 and enter Orem City.

Gallemore, in fact, attempted to exit I-15 at the University Parkway exit. As Gallemore approached Deputy Luke and his patrol car, Deputy Luke fired his rifle at Gallemore. Gallemore then lost control of his truck and it crashed into a fence off the right shoulder of the off-ramp.

The officers removed Gallemore from his truck and placed him under arrest. Officers and emergency medical technicians provided medical care to Gallemore, and an ambulance transported him to Utah Valley Regional Medical Center with non-life-threatening gunshot injuries.

Though not pertinent to this analysis, it is interesting to note that the hospital released Gallemore two days later and Sheriff deputies transported him to the Utah County Sheriff's Office. Gallemore admitted to detectives that he was involved in the above-referenced shooting in Colorado and that he shot at the officers during the traffic stop in Springville. Gallemore also stated that if only one officer had approached his truck at the traffic stop in Springville he would have killed that officer. Gallemore indicated that because no officer approached his truck during the initial traffic stop in Springville, he decided to fire three rounds in the officers' direction with the intent of making the officers "take him [(Gallemore)] out."

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.

Pertinent to this case is the law pertaining to officers shooting at a fleeing person. In a somewhat different context (civil rights claims), the U.S. Supreme Court (and other federal courts) has provided guidance on when an officer is constitutionally permitted to shoot a fleeing person. In *Tennessee v. Garner*, 471 U.S. 1 (1985), an officer encountered an individual suspected of burglarizing a home. The officer ordered the fleeing suspect to stop but the suspect refused and proceeded to climb over the fence. The officer shot the suspect even though the officer was "reasonably sure" the suspect was not armed. The officer was relying upon a Tennessee statute which stated that if, after a police officer has given notice of an intent to arrest a criminal suspect, the suspect flees or forcibly resists, 'the officer may use all the necessary

means to effect the arrest.” *Garner* at p.4. The suspect’s father sued claiming the officer violated his son’s constitutional rights by using excessive force.

The U.S. Supreme Court in *Garner* stated that the “use of deadly force to prevent the escape of all felony suspects, whatever the circumstances is constitutionally unreasonable. It is not better that all felony suspects die than they escape. Where the suspect poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force.” *Garner* at 11. However, the court continued its analysis by stating, “[w]here the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon or there is probable cause to believe that he has committed a crime involving the infliction or threatened infliction of serious bodily injury, deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.” *Id.* at 11-12. *See also, Montoute v. Carr*, 114 F.3d 181 (11th Cir. 1997), and *Ryder v. Topeka*, 814 F.2d 1412, (10th Cir. 1987).

ANALYSIS

The officers in this incident were justified in using deadly force against Gallemore 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, Gallemore, stationary on the shoulder of I-15 in Springville and knowing police officers were conducting a traffic stop, put his hands outside his truck’s window and fired three rounds from a handgun at the officers. This conduct reasonably led Utah County Sheriff Deputies Lowe, Graf, Adams, and Luke, as well as Spanish Fork City Officer Petersen, to believe that force—even deadly force--was necessary to prevent their death or serious bodily injury. The officers, accordingly, fired rounds toward Gallemore in an attempt to prevent Gallemore from firing additional rounds at them.

I note that the officers also verbally ordered Gallemore to “show his hands” and “exit the vehicle” when they first stopped him and Gallemore initially complied (partially) with their request by showing his hands. However, Gallemore’s subsequent retrieval of his handgun happened so quickly and out of the sight of officers that they did not have a reasonable opportunity to issue more verbal commands before they shot at Gallemore.

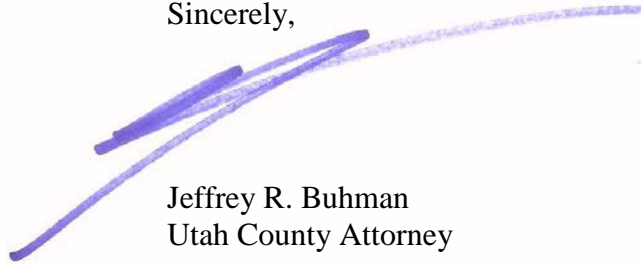
The subsequent shooting by Deputy Luke requires a slightly different analysis. By the time Deputy Luke encountered Gallemore at the Orem University Parkway exit, Gallemore was no longer actively brandishing or shooting his handgun. Gallemore was, however, fleeing towards a heavily populated retail shopping area (Orem University Parkway). In this second encounter Deputy Luke indicated that his intent when shooting at Gallemore was to prevent Gallemore from fleeing into a populated area where he could cause death or serious bodily injury to other people. Because Gallemore had shot out his truck window in Nephi and then, and without provocation, shot at police officers and refused to stop his truck when being pursued by multiple marked police cars for roughly nine miles, Deputy Luke was reasonable in his belief that force—even deadly force—was necessary to prevent Gallemore from causing death or serious bodily injury to others.

CONCLUSION

For reasons stated above, I conclude that Utah County Sheriff Deputies Lowe, Graf, Adams, and Luke, and Spanish Fork City Police Department Officer Petersen were legally justified under Utah Code Sections 76-2-402 and -404 in their use of deadly force against Mr. Arturo Ray Gallemore-Jimenez. 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 any of the deputies or the officer.

Please call me if you have any concerns or questions.

Sincerely,



Jeffrey R. Buhman
Utah County Attorney

cc:

Deputy Roger Lowe
Deputy Michael Graf
Sergeant Zach Adams
Sergeant John Luke
Officer Clint Petersen