



Utah County Attorney

Criminal Division

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June 27, 2018

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

Re: April 9, 2018 Officer Involved Shooting

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 9, 2018 Officer Involved Shooting wherein Utah County Sheriff Deputy Roger Lowe shot and wounded Mr. Wade Willis ("Willis"). After reviewing the results of the investigation and the pertinent statutes and case law, I find that Deputy Lowe was legally justified in his use of deadly force against Willis. Therefore, this office will not institute a criminal prosecution of Deputy Lowe.

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 April 8 and 9, 2018, Willis had three different and pertinent interactions with law enforcement officers in Utah County. During Willis' third encounter, in Spanish Fork City, he was shot and eventually arrested.

The first interaction occurred on April 8th. At approximately 4:00 p.m. Lehi City Police Officers stopped a car for a traffic violation. Three passengers occupied the car, including female driver and two male passengers. During the investigation into the traffic violation, the male passenger in the rear of the car, later identified as Jeff Lombardi, got out of the car and acted as though he was suffering a seizure. The Lehi City police officer attempted to assist Mr. Lombardi and the female driver got out of her car to check on Mr. Lombardi. During this commotion, the other male passenger, who had not yet been positively identified by Lehi Police, took control of the car and drove off from the traffic stop. Lehi police officers pursued the car but the driver refused to stop--running multiple stop signs and red lights, traveling at speeds of 70 m.p.h. in a 25 m.p.h. zone, driving into oncoming traffic lanes, and showing obvious disregard for public safety or the safety of other motorists. The Lehi officers, because of the danger posed to the public by the driver's actions, terminated their pursuit.

The second interaction occurred about twenty minutes later. At about 4:20 p.m., an American Fork City Police Department patrol officer observed this same car in American Fork and observed the driver make an unlawful left-hand turn. The American Fork officer attempted to stop the car by activating his patrol vehicle's overhead emergency lights, but the driver would not stop and, rather, accelerated away from the officer. As the officer pursued the car he observed the driver disregard three stop signs and drive at speeds well above the speed limits. The officer terminated the pursuit approximately one or two minutes after it began because of the danger posed to the public by the driver's actions.

The third and most pertinent interaction began a little after 11:00 p.m. in Spanish Fork City. Spanish Fork City Police Detective Brandon Johnson located this same car parked outside of a vacant residence in Spanish Fork. Detective Johnson parked around the corner and requested other officers respond to his location. When he heard over the radio that other officers were nearby, he returned to the area where the car was parked and found it had departed. Detective Johnson and the responding officers began searching for the car. Utah County Sheriff Sergeant John Luke located the car just before 1:00 a.m. on April 9th and saw it was occupied by one person, a male, later identified as Willis.

Sgt. Luke, Detective Johnson, Utah County Sheriff Deputies Nicholas Friedrichsen and Roger Lowe made a quick plan to detain the driver. Sgt. Luke requested the officers box in the car so the driver could not again flee. Sgt. Luke pulled his vehicle's front bumper close to the car's front bumper and saw the driver was slumped over to the side, as if he was passed out. Deputy Lowe pulled his vehicle so that his front bumper was close to the driver's side of the car's rear bumper area. Deputy Friedrichsen pulled his vehicle's front bumper close to the car's front bumper near the driver's side.

The officers then approached the car with weapons drawn, flashlights illuminated and yelling "police" and "put your hands up." However, Willis (apparently) woke up, turned on the car and its headlights, and began to drive the car forward and in reverse. Deputy Lowe unsuccessfully attempted to break the car's driver side window. Sgt. Luke then hit the passenger side of the windshield with his weapon light, breaking the windshield. Willis nonetheless continued to disregard the officers' commands and began backing up. Willis drove over the street curb and onto the adjacent home's lawn, and then drove the front end of the car over Sgt. Luke's right foot and struck him with the passenger side of the car.

Deputy Friedrichsen returned to his vehicle and used his front, passenger side bumper to push the front, driver's side fender of the car, attempting to prevent Willis both from hitting officers and fleeing. Deputy Friedrichsen continued to push the car, trying to disable it against

the curb on the opposite side of the street. As Deputy Friedrichsen pushed the car across the street, it began to spin towards the passenger's side of his patrol vehicle and appeared as if it would be able to escape.

At this point Deputy Lowe was standing by the front of Deputy Friedrichsen's patrol vehicle, approaching the car with his shotgun raised. As Deputy Lowe approached, Willis began to accelerate his car toward Deputy Lowe. In fact, Deputy Lowe recalled: "He [(Willis)] looks up at me and I look at him, and I'm still yelling stop, and I see his tires rotate towards me, and he gases it . . . he went from having this unobstructed path to now he's coming right at me. . . . I thought I was dead." Deputy Lowe fired one round from his shotgun into the car and jumped out of the way. Willis' car brushed by Deputy Low and struck his left knee.

Willis headed southbound down the road, travelled a short distance and stopped, presumably because of his injuries. Officers removed Willis from the car and administered first aid. Willis was transported to the hospital for treatment of gunshot wounds to his face and right shoulder. The officers found drug paraphernalia, heroin and methamphetamine in Willis' car.

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 in this incident were justified in using deadly force against Willis 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."

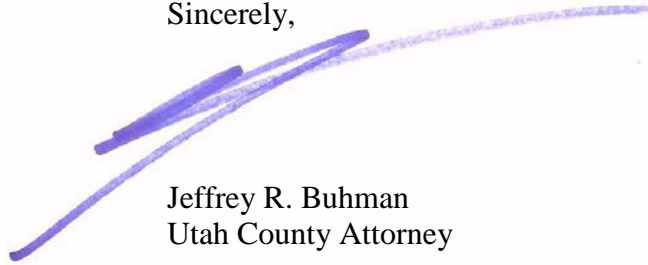
As noted above, at the relevant time Willis was basically surrounded by three police vehicles with three officers outside of those vehicles, their weapons drawn and shouting at him to stop and put up his hands. Willis was obviously aware he was being detained but nonetheless turned on his car, engaged the transmission, and then drove his vehicle over the foot of one deputy. He then accelerated directly toward another, Deputy Lowe. This conduct—accelerating and driving his car directly at Deputy Lowe (after driving over Sgt. Luke’s foot), even after multiple orders to “stop” and put up his hands, reasonably led Deputy Lowe to believe that force—even deadly force--was necessary to prevent his death or serious bodily injury.

CONCLUSION

For reasons stated above, I conclude that Utah County Sheriff Deputy Lowe was legally justified under Utah Code Sections 76-2-402 and -404 in his use of deadly force against Mr. Wade Willis. 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 Lowe.

Please call me if you have any concerns or questions.

Sincerely,



Jeffrey R. Buhman
Utah County Attorney

cc: Deputy Roger Lowe