



Utah County Attorney

Criminal Division

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December 13, 2018

Chief Gary Giles
Orem City Police Department
95 East Center Street
Orem, UT 84057

Re: October 12, 2018 Officer Involved Shooting of [REDACTED]

Dear Chief Giles:

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, and 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 October 12, 2018 shooting of Mr. [REDACTED] by Orem City Police Officers Chad Black and Joshua Hansen. After reviewing the results of that investigation and the pertinent statutes and case law, I find that Officers Black and Hansen were legally justified in their use of deadly force against [REDACTED] and this office will therefore not institute a criminal prosecution against any officer.

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

FACTS

On October 12th, 2018, Orem Dispatch received a call for service at approximately at about 2:45 p.m. The caller, Ms. Azucena Albrethsen, stated her son, a 17-year-old named [REDACTED] was inside their home and all the doors were locked. She requested that police

officers respond to help her check on her son's welfare. Corporal Chad Black and Officer Joshua Hansen responded to Ms. Albrethsen's home at [REDACTED]. Corporal Black was the first to arrive and spoke with Ms. Albrethsen. She told Corporal Black her son was the only person home and must have locked the doors from inside the house. She told Corporal Black she suspected her son was using drugs, possibly methamphetamine. She also informed Corporal Black her son had not been going to school for the past three weeks.

With Ms. Albrethsen's consent, Corporal Black and Officer Hansen were able to gain access to the home by reaching through the pet access door of a garage entrance door and unlocking it from the inside. Corporal Black confirmed with Ms. Albrethsen that she wanted them to enter the home and check on her son—which she did.

Officer Hansen and Corporal Black entered the home and went to the room which was described to them by Ms. Albrethsen as [REDACTED] room, but he was not in the room. While the officers were in [REDACTED] bedroom, they heard Ms. Albrethsen, who had followed them into the home, calling to [REDACTED] in the next bedroom. Officer Hansen and Corporal Black walked to the bedroom where they heard Ms. Albrethsen. Officer Hansen moved Ms. Albrethsen and placed her behind him.

Officer Hansen looked into the room's closet and saw [REDACTED] hiding in it and also saw that [REDACTED] had a knife in his hand (later measured at over nine inches long). Officer Hansen yelled "he's got a knife." Officer Hansen, multiple times, identified himself as a police officer and commanded [REDACTED] to "put down the knife." [REDACTED] disregarded those commands and attempted to get out of the closet with knife in hand. Officer Hansen used the closet door to keep [REDACTED] in the closet because he still had the knife in his hand.

As [REDACTED] struggled to get out of the closet, Corporal Black drew his Taser and discharged it at [REDACTED]. The Taser apparently did not make contact and [REDACTED] then lunged out of the closet toward Corporal Black with the knife in his hand. Officer Hansen fired one shot at Albrethsen. [REDACTED] fell back into the closet and the officers again commanded [REDACTED] to put the knife down, but he nonetheless attempted to get up and remove the closet door from between him and the officers, so Officer Hansen fired another round. [REDACTED] then lunged over the closet door toward Officer Hansen, with knife still in hand. Both officers then fired additional rounds at [REDACTED]. [REDACTED] collapsed on the floor and, despite live saving efforts by the officers, died shortly after collapsing (the officers could not feel a pulse when they initially assessed his condition and he was formally pronounced dead while at the hospital).

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

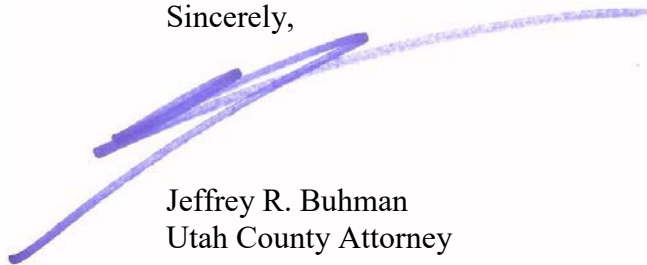
The officers were justified in using deadly force against [REDACTED] if they reasonably believed "that the use of deadly force [was] necessary to prevent death or serious bodily injury to the officer or another person," or they reasonably believed that "force [was] necessary to defend [themselves] or a third person against such other's imminent use of unlawful force." As noted above, Orem police officers were at Ms. Albrethesen's residence at her request to check on [REDACTED] well-being. When the officers found [REDACTED] hiding in a closet, they immediately observed that he had a knife in his hand. Multiple times they identified themselves as police officers and ordered him to put down the knife. [REDACTED] disregarded those orders and attempted to get out of the closet with knife in hand. In fact, [REDACTED] eventually lunged out of the closet and attempted to stab Officer Black. Officer Hansen was therefore legally justified to use deadly force to prevent the death of or serious bodily injury to Officer Black. Further, after [REDACTED] fell into the closet, he attempted again to get out of the closet, this time lunging with the knife toward Officer Hansen. The officers, again, were therefore legally justified to use deadly force to prevent their death or serious injury. The nature and immediacy of the danger posed by [REDACTED] and the extremely high probability that [REDACTED] actions would lead to their death or serious injury, were facts obvious to the officers. In fact, they had little to no choice in how to respond.

CONCLUSION

I therefore find that Orem Police Officers Hansen's and Black's use of deadly force against [REDACTED] [REDACTED] on October 12, 2018 was reasonable and necessary to prevent their own death or serious bodily injury. Accordingly, and pursuant to Utah Code Section 17-18-1 and the Utah County Law Enforcement Officer Involved Incident Protocol, this office will not institute a criminal prosecution against either officer.

Please call me if you have any concerns or questions.

Sincerely,



Jeffrey R. Buhman
Utah County Attorney

cc: Officer Black
Officer Hansen

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