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Chief Chris Burbank
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Via Hand Delivery

February 23, 2015

RE: *Salt Lake City Police Officer Matthew Taylor's Use of
Deadly Force*
Incident Location: 88 I Street, Salt Lake City, Utah
Incident Date: January 8, 2015
SLCPD Case No.: 15-4061

Dear Chief Burbank:

The Salt Lake County District Attorney's Office ("D.A.'s Office") operates under Utah State law and pursuant to an agreement between the D.A.'s Office and participating law enforcement agencies to perform joint investigations and independent reviews of officer involved critical incidents ("OICI") including police officers' use of deadly force while in the scope of their official duties. Pursuant to the agreement between the D.A.'s Office and participating law enforcement agencies, the D.A.'s Office has reviewed the above referenced matter to determine whether, and if so why, the use of deadly force in the above referenced OICI was "justified." As outlined more fully below, the D.A.'s Office determined Officer Taylor's use of deadly force was "justified" under Utah State law.

On January 8, 2015, Salt Lake City Police Department ("SLCPD") Officer Matthew Taylor responded on suspicious person call. As outlined in more detail below, Officer Taylor encountered James Dudley Barker. After a brief discussion, Mr. Barker hit Officer Taylor with a snow shovel and knocked him to the ground. A struggle ensued and Mr. Barker attempted to get Officer Taylor's handgun. Officer Taylor fired three rounds at Mr. Barker and killed him.

UTAH STATE LAW

As part of the review and “justification” determination, the D.A.’s Office relied in part upon the following statutory provisions for the legal analysis:

76-2-401. Justification as defense -- When allowed.

(1) Conduct which is justified is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:

(a) when the actor's conduct is in defense of persons or property under the circumstances described in Sections 76-2-402 through 76-2-406 of this part;

(b) when the actor's conduct is reasonable and in fulfillment of his duties as a governmental officer or employee;

76-2-404. Peace officer's use of deadly force.

(1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

(a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(3) or (4);

(b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and

(i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or

(ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or

(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.

Use of Deadly Force and “Justification as Defense” in Utah

Reviewing a use of deadly force that results in a person’s death falls within the statutory obligation imposed on the District Attorney to determine whether a decedent died by unlawful means.¹ The District Attorney also determines whether acts causing a person’s death warrant prosecution. A District Attorney determination considers whether a person who caused the death of another nevertheless has a legal defense to prosecution. If a person who caused the death of another has a legal defense to ostensible criminal charges related thereto, no charges can be brought against that person.

One legal defense to potential criminal charges available to police officers who used deadly force and caused the death of a person is the legal defense of “justification.” This legal defense is found in Utah State Code set forth above and operates in conjunction with other legal authority.

A person’s use of deadly force (including but not limited to use of deadly force by peace officers) is “justified” when the use of deadly force conformed to the statutes referenced above. Persons may lawfully defend themselves under circumstances outlined by law, and are afforded the legal defense of “justification” for the lawful use of deadly force in accordance with statutes. Utah Code Ann. 76-2-402 states that a “person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person's imminent use of unlawful force.” *Id.* This section also states: “A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person’s imminent use of unlawful force, or to prevent the commission of a forcible felony².” *Id.*

In addition to the use of deadly force in defense of self or others, a peace officer’s use of deadly force is “justified” when:

“effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the

1 U.C.A. 26-4-21. Authority of county attorney or district attorney to subpoena witnesses and compel testimony--Determination if decedent died by unlawful means.

...
(2) Upon review of all facts and testimony taken concerning the death of a person, the district attorney or county attorney having criminal jurisdiction shall determine if the decedent died by unlawful means and shall also determine if criminal prosecution shall be instituted.

2 U.C.A. 76-2-402(4)(a): “For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76, Chapter 6, Offenses Against Property.”

officer or to others if apprehension is delayed; or 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." U.C.A. 76-2-404.

In essence, the analysis for the use of deadly force to prevent death or serious bodily injury (whether by individuals or peace officers) turns on similar elements. Use of deadly force by *individuals*: "A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force" U.C.A. 76-2-402(1)(a),(b). Use of deadly force by *peace officers*: "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," or to effect an arrest under circumstances set forth in law. See, U.C.A. 76-2-404. A peace officer's use of deadly force is "justified" when that the officer "reasonably believes" that the use of deadly force is "necessary to prevent" the threat of "death or serious bodily injury."

This OICI investigation and our review that followed was conducted in accordance with an OICI investigation protocol previously established. The OICI investigation protocol strives to establish an investigation methodology and process that provides the District Attorney with the evidence needed to determine whether a police officer's use of deadly force conformed to the above referenced statutes. If the use of deadly force conformed to the statutes, the use of deadly force is "justified," and the legal defense of "justification" is available to the officer such that criminal charges cannot be filed against the officer and the criminal investigation into the actions of the officer is concluded.

If the use of deadly force does not conform to the statutes above, the use of deadly force may not be "justified," and the legal defense of "justification" may not be available to the officer. In other words, if the use of deadly force failed to conform to the statutes, the law does not afford the officer the legal defense of "justification." Further investigation may be needed to determine whether, and if so which criminal charges can and should be filed against the officer if any. Just because the legal defense of "justification" may not be available (because the use of deadly force did not conform to the statutes) does not therefore necessarily mean that criminal charges should be filed against the officer. For instance, the evidence available to the District Attorney may not support criminal charges, the case may not have a reasonable likelihood of success at trial, or other reasons may preclude a prosecution. Again, further investigation and consideration may be required to determine whether the use of deadly force warrants criminal charges.

As laid out in more detail below, because we conclude that Officer Taylor's use of deadly force conformed to the relevant statutes outlined above, we therefore conclude that the legal defense of "justification" applies to the facts set forth herein.

FACTS

The following facts were developed from the OICI protocol investigation. Should additional or different facts subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

On Monday, January 5, 2015, a resident who lived in the area of 2nd Avenue and I Street in Salt Lake City, Utah saw a person who he described as “suspicious.” Complainant R. H. called the Salt Lake City Police Department and said he saw a male looking into parked cars. In a subsequent interview with OICI protocol investigators, R. H. said the male came over to R.H.’s residence and knocked on his window. The police arrived in the area a short time later but did not see anyone in the area.

On Thursday, January 8, 2015, R. H. said he saw the same male person as before, this time with a snow shovel walking east on 2nd Avenue. R. H. said that the male went to R. H.’s neighbor’s door; R. H. asked the male if he could help him. R. H. said the male replied that he was shoveling snow off walkways. R. H. said he told the male that the residents shovel their own sidewalks. R. H. said the male walked away. R. H. called the police and told them he was “ninety-five percent sure” that the male to whom he just talked was the same person about whom he called police three days earlier.

Officer Taylor Interview

On January 8, 2015, SLCPD Officer Taylor³ was on duty working patrol in his police car and wearing his police uniform. In a subsequent interview with OICI protocol investigators, Officer Taylor said he saw a dispatch assignment on his mobile computer. The dispatch log shows that R. H. had called about a “male walking around [possibly] the same guy who was looking on [*sic*] cars the other day.” Officer Taylor said he took the assignment and arrived in the area of 88 I Street.

Officer Taylor said he made contact with R. H. who pointed to the male across the street who was standing on the front porch of the home at 88 I Street. Officer Taylor said he walked across I Street and made contact with the person. Officer Taylor said he approached the individual subsequently identified as James Dudley Barker. Officer Taylor asked Mr. Barker what he was doing in the area. Officer Taylor said Mr. Barker had a snow shovel and explained he was shoveling snow in the area.

Officer Taylor said the encounter with Mr. Barker “went south” as Mr. Barker began to yell at him. Officer Taylor said he called for back-up officers to assist him. Officer Taylor said the encounter went from “zero to one hundred” as Mr. Barker yelled at him and stuck his finger in Officer Taylor’s face. Officer Taylor said he was surprised that Mr. Barker got “so upset” by Officer Taylor asking who Mr. Barker was and what he was doing in the area. Officer Taylor

³ Officer Taylor is a Crisis Intervention Trained (“CIT”) police officer.

said he was going to go “hands on⁴” with Mr. Barker and Mr. Barker backed up. Officer Taylor said Mr. Barker took a “batter’s stance” with the snow shovel. Officer Taylor said as he (Officer Taylor) went to run off the porch, Mr. Barker hit him with the snow shovel.

Officer Taylor said he only felt one strike from the snow shovel⁵. Officer Taylor said he fell off the porch and landed on his right side. Officer Taylor said that when he was on the ground on his side, he “knew something was wrong with his right arm” and that he was in a lot of pain. Officer Taylor said that he saw Mr. Barker come off the porch at him.

Officer Taylor said he grabbed his Taser, but feared it wouldn’t work “with his clothing but it was all [Officer Taylor] had available” because of the condition of Officer Taylor’s arm and Officer Taylor lying on his right side. Officer Taylor said Mr. Barker jumped on him and hit Officer Taylor’s Taser out of his hand. Officer Taylor said that when Mr. Barker knocked the Taser out of Officer Taylor’s hand, Officer Taylor “knew [he] was in a lot of trouble.”

Officer Taylor said he was especially concerned that Mr. Barker continued to fight with Officer Taylor. Officer Taylor said he had been in physical altercations in his career before, but suspects had fought with him to get away. Officer Taylor said that Mr. Barker did not flee after he hit Officer Taylor, but rather continued to fight Officer Taylor. Officer Taylor said he believed Mr. Barker didn’t want to escape

Officer Taylor said he felt Mr. Barker grab his “gun or holster at least twice.” Officer Taylor said: “I know if he gets my gun he’s going to kill me.” Officer Taylor said Mr. Baker: “had knocked my Taser out, still coming at me, and anybody attacking me that hard, ... like I said, I’ve had guys fight me but they run away—when I got knocked off he had plenty of time to run away; he’s still coming, he grabbing for my gun his one goal was to try and kill me.”

Officer Taylor said that he pushed Mr. Barker off of him and drew his firearm. Officer Taylor estimated that Mr. Barker was a couple of feet away. Officer Taylor said he fired three shots and saw Mr. Barker go down. Officer Taylor said he evaluated Mr. Barker to make sure Mr. Barker stayed down. Officer Taylor called “shots fired” on the radio. Officer Taylor said he handcuffed Mr. Barker and retrieved his Taser. Officer Taylor said other police officers arrived as well as medical units who evaluated Mr. Barker and pronounced Mr. Barker deceased.

Officer Taylor described the injuries he sustained in the incident. Officer Taylor said he suffered a radial head fracture in his right arm at the elbow where the joint meets. Officer Taylor said his left foot was broken and tendon or ligament pulled in his left foot. He said his left arm was bruised from where he was hit with the shovel.

⁴ Officer Taylor said he planned on “just getting [Mr. Barker] in cuffs” after Mr. Barker started yelling and put his finger in Officer Taylor’s face. Officer Taylor said he was continuing his investigation for Mr. Barker failing to give Officer Taylor his name. Officer Taylor said he was going to put Mr. Barker in “handcuffs because he was getting so agitated.”

⁵ The statements of other witnesses and physical evidence recovered from the scene tend to indicate that Mr. Barker struck Officer Taylor numerous times with the snow shovel, as outlined in more detail below.

Other Witness Statements

Witness K. M. was driving north on I Street when she heard and saw Officer Taylor and Mr. Barker fighting. In a subsequent interview with OICI protocol investigators, K. M. said she realized one of the men in the fight was a police officer when she saw his uniform. K. M. told protocol investigators that she saw the police officer being hit by multiple strikes with the snow shovel. K. M. said that the officer was being “beat down the stairs,” and that the officer ended up in a “crouched position,” with his “arm up in a defensive position.” K. M. said the male was “beating [the officer] so hard,” and estimated that the officer was hit with the shovel seven to ten times. K. M. said it looked to her like the officer “was in real trouble.” K. M. said she saw the snow shovel break during the assault. K. M. said there was a pause during the assault and she saw the police officer shoot the male. She said she heard three shots.

Witness R. G. was driving south on I Street near 2nd Ave. In a subsequent interview with OICI protocol investigators, he said he was stopped at the intersection when he saw a person jump off a porch and land about ten feet from the porch. R. G. said he saw a second person jump on top of the first and tackle him. R. G. said the second person came down on the first person and “took him right down.” R. G. said he initially didn’t realize one of the men was a police officer. R. G. said both men wrestled on the ground for about ten seconds after which he heard gun shots. R. G. said that the person he eventually recognized as a police officer was on the ground when he fired his weapon.

Physical Evidence

OICI protocol investigators inspected and photographed the scene at 88 I Street and observed a broken snow shovel with plastic blue pieces of the shovel strewn about the front yard. Some of the larger shovel pieces are depicted in the following photographs taken at the scene hours after the incident.





Officer Taylor was wearing a body camera. Officer Taylor activated the body camera during his discussion with Mr. Barker, and the video captured the moments before Officer Taylor made contact with Mr. Barker. The body camera's video recording captured the incident up until Mr. Barker struck Officer Taylor with the snow shovel. The shovel's impact knocked the battery from the camera body, disabling the camera. OICI protocol investigators recovered the camera's battery on the ground at the scene.

DISCUSSION

Officer Taylor Reasonably Believed Deadly Force was Necessary.

Officer Taylor arrived on a suspicious person call and investigated the circumstances surrounding the complainant's reports. He made contact with Mr. Barker who rapidly escalated the encounter by yelling and pointing at Officer Taylor. Then Mr. Barker struck Officer Taylor with the snow shovel. Officer Taylor went down, and Mr. Barker followed and jumped on Officer Taylor. Mr. Barker's attack on Officer Taylor caused Officer Barker to reasonably fear for his personal safety. It was reasonable for Officer Taylor to worry about Mr. Barker's intent since, rather than escaping after using force against Officer Taylor, Mr. Barker continued to fight Officer Taylor.

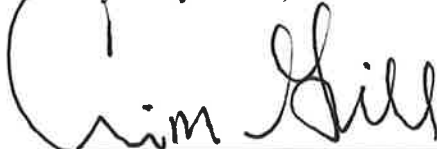
Officer Taylor tried to use his Taser as a means of less-lethal force to defend himself. After Mr. Barker knocked the Taser away, and Officer Taylor said he felt Mr. Barker pulling or tugging on his gun or his holster, it was reasonable for Officer Taylor to infer that Mr. Barker was attempting to or would kill Officer Taylor. It was therefore reasonable for Officer Taylor to believe that deadly force was necessary to prevent Officer Taylor's death or serious bodily injury as a result of Mr. Barker's imminent use of unlawful force against Officer Taylor. As such, Officer Taylor's use of deadly force was "justified" under Utah State law.

CONCLUSION

Officer Taylor was involved in a situation in which he reasonably believed his life was in danger. After Mr. Barker hit him with a snow shovel and continued to fight with Officer Taylor on the ground, knocked the Taser out of Officer Taylor's hand and pulled on Officer Taylor's gun. Mr. Barker's imminent, unlawful threat of death or serious bodily injury to Officer Taylor made Officer Taylor's belief that deadly force was necessary to prevent his death or serious bodily injury reasonable. Accordingly, Officer Taylor's use of deadly force was "justified" under Utah State law.

If you have any questions or concerns regarding the determination made in this case, or otherwise wish to discuss the matter, please feel free to contact our office to set up a personal meeting.

Very Truly Yours,



SIM GILL,
Salt Lake County District Attorney