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DISTRICT ATTORNEY
SALT LAKE COUNTY
SIM GILL

FOR IMMEDIATE RELEASE: October 31, 2013

Contact Sim Gill: sgill@slco.org 801-230-1209

SALT LAKE CITY, UT – After conducting a routine Officer Involved Critical Incident (OICI) investigation, The Salt Lake County District Attorney’s Office has determined that the July 14th use of deadly force by a Utah Highway Patrol Trooper was legally justified.

The Salt Lake County District Attorney’s Office is required by Utah State law to perform joint investigations and independent reviews of OICIs, including police officers’ use of deadly (including potentially deadly) force used in the scope of police officers’ official duties.

See the attached letter to UHP’s Maj. Mike Keen and South Salt Lake Police Department Chief, Chris Snyder, for further details.

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PO Box 141100
Salt Lake City, Utah 84114

Chief Chris Snyder
South Salt Lake PD
2835 S Main St.
South Salt Lake, UT 84115

October 28, 2013

RE: *Investigation of UHP Trp. Mitch Sullivan's Use of Deadly Force*
Incident Date: July 14, 2013
Incident Location: 50 West, 2400 South, Salt South Lake City, Utah
Our Case No.: 2013-2057
UHP: 13-SL-05021
SSLPD Case No.: 13G004611

Dear Gentlemen:

As you know, the Office of the Salt Lake County District Attorney's Office, Sim Gill, Salt Lake County District Attorney, ("DA's Office") is required by Utah State law, and operates pursuant to an agreement with participating law enforcement agencies and consistent with established protocols and applicable law, to perform joint investigations and independent reviews of officer involved critical incidents ("OICI") including police officers' use of deadly (including potentially deadly) force used in the scope of police officers' official duties.

On July 14, 2013, Utah Highway Patrol ("UHP") Trooper Mitch Sullivan fired seven rounds at Kody Sturgeon; Sturgeon was struck by a bullet in his leg and a bullet in his hand.

After working in conjunction with the South Salt Lake Police Department ("SSLPD") and the UHP, the DA's Office has completed its review of the investigation concerning Trooper Sullivan's use of deadly force against Sturgeon. The purpose of the review was to determine whether the force employed was lawful and justified under Utah law. As set forth more fully

herein, we have concluded that Trooper Sullivan's use of deadly force was justified under Utah law.

The opinions and conclusions set forth in this letter are based upon facts obtained from the investigation as set forth in investigation materials presented to the DA's Office. Should additional or different facts subsequently come to light, the opinions and conclusions contained herein may be materially different.

FACTS

During the very early hours of July 14, 2013, on Interstate 15, UHP Trooper Nathan Haynes pulled over a vehicle driven by Kody Scott Sturgeon for lane travel violations. Britannia Jean Watson was a passenger in Sturgeon's vehicle. When Trooper Haynes asked Sturgeon for his driver's license, Sturgeon claimed he did not have his driver's license and provided a false name and false social security number. Unbeknownst to Trooper Haynes at the time, Sturgeon had absconded from and violated the terms of his parole from the Utah State prison. Also unbeknownst to Trooper Haynes at the time, Sturgeon had smoked a significant amount of methamphetamine earlier in the day.

Trooper Haynes tried to verify the information Sturgeon provided. During his discussion with Sturgeon, Trooper Haynes observed a drug pipe in plain view inside the vehicle and seized it. A short time later, passenger Watson stepped out of the vehicle because Sturgeon told Watson he was going to flee from the traffic stop.

While Trooper Haynes talked with Watson outside the vehicle, Sturgeon did in fact flee from the traffic stop and traveled southbound on Interstate 15 at a high rate of speed. Trooper Haynes had Watson enter his vehicle and he followed¹ Sturgeon, though not as a pursuit. Trooper Haynes notified dispatch that Sturgeon had fled the traffic stop and he was following. Trooper Haynes saw Sturgeon turn onto the collector road for eastbound Interstate 80 and saw Sturgeon subsequently exit at the State Street off ramp.

Although Trooper Haynes lost sight of Sturgeon's vehicle, Trooper Haynes drove around the area and found the vehicle a short time later. Sturgeon had abandoned the vehicle. So Trooper Haynes called for K-9 assistance to help locate Sturgeon. Salt Lake City Police K-9 Officer Lowe arrived with his bloodhound and began tracking Sturgeon. Additional UHP troopers arrived in the area and established containment posts.

Meanwhile, Sturgeon had climbed over fences and saw a storage unit door open with a man inside. Sturgeon approached Brent Michael Welker, ordered Welker into the storage unit, showed Welker his gun, and told Welker that he was running from the police.

From his containment position, UHP Trooper Sullivan observed two men in the storage unit, one of which matched the physical description of the suspect who fled from Trooper

¹ Trooper Haynes did not activate his overhead emergency lights nor drive at a particularly high rate of speed.

Haynes. Trooper Sullivan notified UHP Sgt. Lucas and Officer Lowe. The three officers made contact with the men and ordered them to come to the officers' location.

As Sturgeon approached the officers, Sgt. Lucas ordered Sturgeon to show his hands. Trooper Sullivan saw Sturgeon raise a firearm and point it at the officers. Sgt. Lucas and Officer Lowe also saw Sturgeon raise and point the firearm, and heard three distinct "clicks" from the weapon. Trooper Sullivan shouted "gun" to the other officers. Sturgeon turned and ran from the officers and Trooper Sullivan gave pursuit on foot.

As Trooper Sullivan closed the distance, Sturgeon turned and pointed his gun at Trooper Sullivan while running away; Trooper Sullivan fired 4 rounds at Sturgeon. Sturgeon continued to run and crossed a roadway. Then Sturgeon turned and pointed his gun again at Trooper Sullivan; Trooper Sullivan again fired 2 rounds at Sturgeon. Sturgeon continued to run and once again turned and pointed his gun at Trooper Sullivan; Trooper Sullivan fired one more round at Sturgeon. Finally, Sturgeon dropped the weapon and was then taken into custody by the officers.

Sturgeon had been hit in the hand by a bullet and hit in the leg by another bullet. Sturgeon was treated for his injury and booked into jail.

During a subsequent interview, Sturgeon admitted that he had a weapon (a CO2 air pistol) and that he had the weapon in his hand while running from Trooper Sullivan. An examination of Sturgeon's recovered weapon revealed it to be a reproduction of and looked exactly like a firearm. Although Sturgeon denied he pointed the weapon at the officers, Sgt. Lucas, Trooper Sullivan and Officer Lowe stated they saw Sturgeon point the weapon at them.

DISCUSSION

1. Use of Deadly Force: Utah State Law

Individuals (including but not limited to peace officers) are justified in using deadly force to defend themselves under circumstances outlined by law.

The use of deadly force for reasons other than defense of self or others is also permitted as set forth in Utah State law. 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.*

² Utah Code 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."

In addition to the justifications set forth above regarding the use of deadly force, peace officers are justified in using deadly force 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 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 to individuals or peace officers) turns on similar elements: *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); *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. The justification for the use of deadly force by a peace officer requires that the officer “reasonably believe” that the use of deadly force is “necessary to prevent” the threat of “death or serious bodily injury.”

2. *Trooper Sullivan Reasonably Believed Deadly Force was Necessary.*

Trooper Sullivan believed that Sturgeon had committed a felony offense or offenses and should be arrested. In effecting an arrest, Sergeant Lucas lawfully ordered Sturgeon to come to Trooper Sullivan's location as Trooper Sullivan investigated the matter. Instead of complying with Sergeant Lucas's lawful commands, Sturgeon unlawfully raised and pointed a firearm (subsequently shown to be a facsimile thereof) at Trooper Sullivan. Sturgeon's actions reasonably caused Trooper Sullivan to fear for his life and safety and the lives and safety of the other officers, Mr. Welker and others who may have been in the area. Sturgeon's imminent use of unlawful force against Trooper Sullivan caused Trooper Sullivan to reasonably believe that deadly force was necessary to defend himself and/or others.

Similarly, during Trooper Sullivan's foot pursuit of Sturgeon, Sturgeon unlawfully posed a threat of death or serious bodily injury against Trooper Sullivan several times when Sturgeon pointed his weapon at Trooper Sullivan. Again, in each instance, Sturgeon's imminent use of unlawful force against Trooper Sullivan caused Trooper Sullivan to reasonably believe that deadly force was necessary to defend himself and/or others.

Moreover, Sturgeon committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury against the officers and repeatedly against Trooper Sullivan each time Sturgeon pointed his weapon at the officers. While Sturgeon committed these offenses, he was trying to escape by running away. Trooper Sullivan reasonably believed that deadly force was necessary to prevent Sturgeon's arrest from being defeated by escape. Also,

Trooper Sullivan had probable cause to believe that Sturgeon posed a threat of death or serious bodily injury to the officers or to others if Sturgeon's apprehension was delayed because Sturgeon was running away from the officers with a gun he had just aimed at officers pursuing him.

CONCLUSIONS

Trooper Sullivan reasonably believed that deadly force was necessary to defend himself and/or others because Sturgeon unlawfully threatened him others with death or serious bodily injury. Also, Trooper Sullivan reasonably believed that deadly force was necessary to prevent Sturgeon's arrest from being defeated by escape because Trooper Sullivan had probable cause to believe that Sturgeon posed a threat of death or serious bodily injury to the officers or to others if Sturgeon's apprehension was delayed. As such, we conclude that Trooper Sullivan'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

SG/JWH/jh

