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Via Hand Delivery

August 3, 2015

RE: *Salt Lake City Police Sgt. Steven Wooldridge's Use of
Deadly Force*

Incident Location: 205 S. Rio Grande St., Salt Lake City, UT
Incident Date: June 20, 2015
UPD Case No.: 15-101357
SLCPD Case No.: 15-111912
D.A. Case No.: 2015-1349

Dear Sheriff Winder and Chief Brown:

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 Salt Lake City Police Department (SLCPD) Sgt. Steven Wooldridge's use of deadly force was "justified" under Utah State law.

On June 20, 2015, Sgt. Wooldridge saw Mr. Kuot Garang Akol Ayat threaten Ms. Virginia Louise Bywater-Spencer with a knife. Sgt. Wooldridge ordered Mr. Ayat to drop the

knife, but Mr. Ayat came at Sgt. Wooldridge with the knife. Sgt. Wooldridge fired two shots which hit Mr. Ayat; Mr. Ayat was transported to the hospital and survived his injuries.

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.

By operation of agreement and pursuant to the D. A.’s Office to screen potential criminal charges against persons who may have violated the law, the D.A.’s Office also reviews the use of deadly force which did not cause a person’s death. This use of deadly force, whether resulting in the death of another or not, is the subject of recent legislation enacted in Utah and is discussed in more detail below.

One legal defense to potential criminal charges available to police officers who used deadly force (whether or not the deadly force 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. The legal defense of “justification” could apply to any potential criminal charge; some of the potential criminal charges a police officer could face through an improper use of deadly force could include attempted criminal homicide, murder; aggravated assault; or other violations set forth in the criminal code. The legal defense of “justification” is applicable to any potential criminal charge.

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.*

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

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 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 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 and in conformity with recently enacted legislation governing investigations of OICI events. The OICI investigation protocol strives to establish an investigation methodology and process that provides the D. A.'s Office with the evidence needed to review the investigation 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 applicable 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

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."

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 Sgt. Wooldridge'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 and we will not file criminal charges against Sgt. Wooldridge related to his use of deadly force.

INVESTIGATION

During the 2015 Utah State Legislature's General Session, the legislature enacted U.C.A. 76-2-408 which sets forth in relevant part the following provisions governing the investigation of peace officers' use of deadly force:

76-2-408 Peace officer use of force -- Investigations.

(1) As used in this section:

- (a) "Dangerous weapon" is a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury.
- (b) "Investigating agency" is a law enforcement agency, the county or district attorney's office, or an interagency task force composed of officers from multiple law enforcement agencies.
- (c) "Officer" is a law enforcement officer as defined in Section 53-13-103.
- (d) "Officer-involved critical incident" is any of the following:
 - (i) the use of a dangerous weapon by an officer against a person that causes injury to any person;
 - ...

(2) When an officer-involved critical incident occurs:

- (a) upon receiving notice of the officer-involved critical incident, the law enforcement agency having jurisdiction where the incident occurred shall, as soon as practical, notify the county or district attorney having jurisdiction where the incident occurred; and
- (b) the chief executive of the law enforcement agency and the county or district attorney having jurisdiction where the incident occurred shall:
 - (i) jointly designate an investigating agency for the officer-involved critical incident; and

(ii) designate which agency is the lead investigative agency if the officer-involved critical incident involves multiple investigations.

(3) The investigating agency under Subsection (2) may not be the law enforcement agency employing the officer who is alleged to have caused or contributed to the officer-involved critical incident.

...

To comply with state law requiring an outside agency to investigate an OICI, immediately after the OICI occurred, SLCPD asked the Unified Police Department of Greater Salt Lake ("UPD") and the D.A.'s Office to investigate the OICI.

On July 9, 2015, UPD and D.A.'s Office investigators presented the investigation's findings to the District Attorney for subsequent review and this opinion letter. During the presentation of the investigation findings, both UPD and D.A.'s Office investigators reported that SLCPD was helpful and accommodating with the investigation's needs, but did not perform any investigation of the OICI itself.

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.

Sgt. Wooldridge's Interview

OICI protocol investigators interviewed Sgt. Wooldridge with his legal representative present. Sgt. Wooldridge said that late in the evening on June 20, 2015, his shift was ending in about an hour. Sgt. Wooldridge said he was in the area of the Road Home³ at 210 S. Rio Grande Street in Salt Lake City, Utah. Sgt. Wooldridge said since he was close to completing his shift for the day, he was uploading his body camera to his laptop in his patrol car. Sgt. Wooldridge said he was driving back to his office at the police station and drove past the Road Home on Rio Grande Street. Sgt. Wooldridge said both his front windows in his patrol car were down.

Sgt. Wooldridge said he turned the corner on 200 south and Rio Grande Street and saw a white female being followed or pursued by a black male. Sgt. Wooldridge said he heard someone say: "get away from me with that knife."

Sgt. Wooldridge said he stopped his patrol car and got out. He said he saw that the male had a knife in his hands. Sgt. Wooldridge said he ordered the male to drop the knife, but the

³ According to their website, the Road Home is a "private non-profit social services agency that assists individuals and families experiencing homelessness in Salt Lake County and along the Wasatch Front. The Road Home provides emergency shelter and personalized case management to help people identify and overcome the obstacles that have led them to becoming homeless."

male stopped, looked at Sgt. Wooldridge, and put his hands behind his back. Sgt. Wooldridge said the male did not comply with his order to drop the knife. Sgt. Wooldridge said he believed the male was trying to hide the knife from Sgt. Wooldridge. Sgt. Wooldridge said the male made a facial grimace and turned again towards the female. Sgt. Wooldridge said the male still had the knife in his hand.

Sgt. Wooldridge said he feared the male was going to harm the female again with the knife or perhaps someone else on the crowded sidewalk. Sgt. Wooldridge said the male was still not following Sgt. Wooldridge's order to drop the knife. Sgt. Wooldridge said he again ordered the male to drop the knife, but again the male did not comply. Sgt. Wooldridge said this time, the male started walking towards him. Sgt. Wooldridge said he could still see the knife in the male's hand. Sgt. Wooldridge said the male was about seven to nine feet away from Sgt. Wooldridge. Sgt. Wooldridge said he was watching the male's hands and could still see the knife in male's hands. Sgt. Wooldridge unholstered and drew his duty weapon in case he needed to use deadly force.

Sgt. Wooldridge said he has been trained to understand that a suspect can cover and close a distance of twenty-one feet in less time than another person can perceive the action, decide to react and perform a reaction (*e.g.*, firing a gun) in response to the action. In other words, Sgt. Wooldridge said he believed that the male with the knife was within a distance that the male posed a threat of death or serious bodily injury to Sgt. Wooldridge.

Sgt. Wooldridge said he saw the male move towards him. Sgt. Wooldridge said he felt threatened by the male holding a knife moving towards him. Sgt. Wooldridge said he believed the male intended to use the knife against him. Sgt. Wooldridge said as soon as he perceived the male moving towards him, Sgt. Wooldridge fired his gun twice at the male.

Sgt. Wooldridge said he saw the male go down. Sgt. Wooldridge said he called out "shots fired" on the radio, and went to go secure the knife and the suspect. Shortly thereafter, other police officers and medical personnel arrived to secure the scene and treat the male.

Virginia Louise Bywater-Spencer's Interview

Protocol investigators interviewed Virginia Louise Bywater-Spencer. Ms. Bywater-Spencer said she knows the male subsequently identified at Mr. Ayat by the nickname "Corn Chip." She said she did not know his real name. She said she believes that Mr. Ayat had a drinking problem and said that when Mr. Ayat has been drinking, he gets a glazed look in his eyes.

Ms. Bywater-Spencer said that prior to the events of June 20, 2015, she borrowed three dollars from Mr. Ayat and later paid him back five dollars. Ms. Bywater-Spencer said that on June 20, 2015, she was in the area of the Road Home and talking with friends when she saw Mr. Ayat. Ms. Bywater-Spencer said that Mr. Ayat approached her and asked where his money was. Ms. Bywater-Spencer said she replied to Mr. Ayat: "I put it in your boot, ho [*sic*]." Ms. Bywater-Spencer said Mr. Ayat pulled out a knife and she saw his eyes go "dark and flat."

Ms. Bywater-Spencer said she felt threatened by Mr. Ayat and she backed away from him. Ms. Bywater-Spencer said she told Mr. Ayat to get away from her with the knife, but that Mr. Ayat kept repeating that he wanted his money and was coming at her with the knife. Ms. Bywater-Spencer said she walked away.

Ms. Bywater-Spencer said it was at this time that she saw the police officer (Sgt. Wooldridge) arrive. Ms. Bywater-Spencer said she didn't say anything to the officer; she said she believed the officer could see what was happening. Ms. Bywater-Spencer said that when Sgt. Wooldridge arrived, Mr. Ayat was coming at her with Mr. Ayat's knife with the blade out. Ms. Bywater-Spencer said she heard Sgt. Wooldridge tell Mr. Ayat to drop the knife and saw that Mr. Ayat did not drop the knife. She said she saw Mr. Ayat approach Sgt. Wooldridge in an "aggressive" manner.

Ms. Bywater-Spencer said that if she were the officer, she would have shot Mr. Ayat, too. She said Mr. Ayat had a "look" in his eyes that she described as like a "bull," and that to her, it looked like Mr. Ayat was going to "charge" the officer.

Other Witness Interviews

Protocol investigators interviewed several other people at the scene. Many of those interviewed did not witness the entire episode. Some of those interviewed had varying opinions of whether Sgt. Wooldridge's fear of imminent death or serious bodily injury was reasonable to them. However, no one who was interviewed and who witnessed relevant portions of the OICI contradicted the testimonial evidence of Sgt. Wooldridge, Ms. Bywater-Spencer and/or the video recording of the OICI described below.

Physical Evidence

OICI protocol investigators inspected and photographed the scene. Investigators documented the presence and location of various items relevant to the OICI investigation, including a knife lying in the street.

Sgt. Wooldridge's body camera was not operational prior to and during the OICI; Sgt. Wooldridge said he was uploading video to his laptop when the OICI occurred. Protocol investigators inspected Sgt. Wooldridge's body camera and confirmed it did not record the OICI.

Protocol investigators obtained surveillance video from the Road Home. The surveillance video recorded the events prior to, during and after the OICI. The surveillance video corroborates the testimonial evidence of Sgt. Wooldridge and Ms. Bywater-Spencer. The video shows some of the interactions between Mr. Ayat and Ms. Bywater-Spencer; it shows all of the OICI and interactions between Sgt. Wooldridge and Mr. Ayat.

DISCUSSION AND CONCLUSION

Sgt. Wooldridge Reasonably Believed Deadly Force was Necessary.

Sgt. Wooldridge observed what reasonably appeared to him as Mr. Ayat unlawfully threatening Ms. Bywater-Spencer with a knife. It then appeared that Mr. Ayat unlawfully threatened Sgt. Wooldridge with a knife. Instead of obeying Sgt. Wooldridge's lawful commands to drop the knife, Mr. Ayat apparently chose to disregard Sgt. Wooldridge's lawful commands and threaten Sgt. Wooldridge.

We believe Sgt. Wooldridge's use of deadly force against Mr. Ayat was reasonably necessary to prevent Sgt. Wooldridge's death or serious bodily injury and/or death or seriously bodily injury to Ms. Bywater-Spencer as a result of Mr. Ayat's imminent use of unlawful force. Mr. Ayat's apparent imminent, unlawful threat of death or serious bodily injury to others made Sgt. Wooldridge's belief that deadly force was necessary to prevent death or serious bodily injury reasonable. As such, Sgt. Wooldridge's use of deadly force was "justified" under Utah State law, and provides Sgt. Wooldridge's a legal defense to a criminal prosecution. Accordingly, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Sgt. Wooldridge.

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