



Ralph Chamness
Chief Deputy
Civil Division

SIM GILL
DISTRICT ATTORNEY

Jeffrey William Hall
Chief Deputy
Justice Division

Lisa Ashman
Administrative
Operations

Blake Nakamura
Chief Deputy
Justice Division

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

Salt Lake County District Attorney's Office Finds Officer Involved Shooting Legally Justified

Salt Lake City, UT -- After conducting a routine Officer Involved Critical Incident (OICI) review, the Salt Lake County District Attorney's Office has determined that the July 17, 2014 Use of Deadly Force by Unified Police Department Officer Olzack and West Valley Police Department Officer Bias was legally justified.

The Salt Lake County District Attorney'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 including police officers' use of deadly (including potentially deadly) force used in the scope of police officers' official duties.

See the attached letter to Salt Lake County Sheriff Winder and West Valley Police Chief Russo for more information.

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Chief Lee W. Russo
West Valley City Police Department
3575 Market St.
West Valley City, UT 84119

Sheriff James M. Winder
Unified Police Department
3365 South 900 West
Salt Lake City, Utah 84119

September 8, 2014

RE: *West Valley Police Officer Shaun Bias' and Unified Police Officer
Dustin Olzack's Use of Deadly Force*

Incident Location: 1780 West and Bowling Ave. Taylorsville, Utah
Incident Date: July 17, 2014
WVPD Case No.: 14i032850
UPD Case No.: CO14-108715
Our Case No.: 2014-1662

Dear Chief Russo and Sheriff Winder:

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 above referenced OICI was "justified." As outlined more fully below, the D.A.'s Office determined Officers Bias' and Olzack's use of deadly force was "justified" under Utah State law.

On July 17, 2014, West Valley Police Department (WVPD) Officer Shawn Bias and Unified Police Department (UPD) Officer Dustin Olzack fired their weapons at Ramon S. Franco. Franco was hit and survived.

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.

FACTS

On July 11, 2014, two male suspects committed an aggravated robbery at the Kmart located at 1770 West, 4100 South in West Valley City, Utah. According to police who investigated the aggravated robbery, the suspects attempted to leave Kmart without paying for concealed items. Loss prevention security confronted the suspects. At least one of the suspects produced a firearm and fired three rounds inside the store. After shooting, both suspects fled to a vehicle in the parking lot. One of the suspects fired at a loss prevention security officer who was following to obtain suspect vehicle information. The round missed the loss prevention officer and hit the store above the front door over the heads of multiple customers.

Over the next few days, detectives investigating the Kmart aggravated robbery developed information about potential suspects. On July 16, 2014, detectives organized a surveillance operation to try to obtain more information. Officers in unmarked police cars conducted surveillance in the area of 900 South, 100 West in Salt Lake City.

WVPD Sgt. R Shane Hamilton was part of the surveillance operation. Sgt. Hamilton was interviewed by OICI investigation team members. He said that during the operation, a gray Toyota Camry pulled up alongside his vehicle and blocked his driver's side door. Sgt. Hamilton said someone inside the Camry shined a flashlight inside his vehicle. Sgt. Hamilton called for assistance from other police officers. Sgt. Hamilton said a police car pulled up behind the Camry and activated the emergency lights. Sgt. Hamilton said the Camry accelerated and officers initiated a pursuit. The pursuit traveled through Salt Lake City, West Valley, Kearns and Taylorsville where it terminated at 1780 West and Bowling Ave. Taylorsville, Utah.

Utah Department of Public Safety (DPS) Agent Tim Leak was interviewed by OICI investigation team members. Agent Leak said he was working in South Salt Lake when he was advised of a pursuit in progress. Agent Leak said he responded to the area of 4700 South and 2600 West in Taylorsville. Agent Leak said as he traveled west on 4700 South, he observed one marked police car pursuing the suspect vehicle eastbound on 4700 South. Agent Leak said as he was turning to go east on 4700 South, a marked WVPD vehicle passed him. Agent Leak said both marked patrol vehicles had their lights and sirens activated. Agent Leak joined the pursuit as the third vehicle.

Agent Leak said he observed sparks coming from one the suspect vehicle's wheels. Agent Leak said after the suspect turned into a neighborhood, an officer reported over the radio that someone in the suspect vehicle was firing shots. Agent Leak said after the pursuit terminated at 1780 West Bowling Ave., he parked his vehicle further down the road on Bowling Ave. for cover.

Agent Leak said he went towards the location of the pursuit's termination and saw UPD Officer Dustin Olzack outside of his patrol vehicle firing his handgun¹ in the direction of where the pursuit terminated. Agent Leak said as he got closer he saw a suspect on the ground lying on

¹ OICI investigators found that Officer Olzack's weapon was down three rounds and three shell casings from his weapon were found at the scene.

his back. Agent Leak said he remained with the suspect until he was transported to an area hospital.

UPD Officer Colton Jensen was interviewed by members of the OICI investigation team. Officer Jensen said he heard the pursuit on the radio and responded to the area. Officer Jensen said he heard over the radio that the suspect was firing at pursuing officers. Officer Jensen said at the point of the pursuit's termination, he saw two police officers firing their weapons. Officer Jensen said as the officers approached the suspect they were giving him commands and asking the suspect where his firearm was located. Officer Jensen said he heard the suspect say he threw it.

WVPD Officer Shawn Bias was interviewed about his involvement in the OICI. Officer Bias said he was working a DUI shift and overheard radio traffic about officers involved in a pursuit in Salt Lake City. Officer Bias said he heard the pursuit traveling south and decided to get into a position to hold an intersection. Officer Bias said when he arrived at 4700 South, 3200 West to hold traffic, he observed the suspect vehicle travel eastbound on 4700 South. The vehicle was being pursued by one UPD patrol vehicle.

Officer Bias said his emergency lights were already activated because he was set up to block traffic at the intersection. Officer Bias said he couldn't see any additional police units coming. Officer Bias said he joined the pursuit and became the second officer in line. Officer Bias said he heard Sgt. Hamilton transmit over the radio this suspect was wanted in an aggravated robbery and was known to be armed. Officer Bias said that, based on the information from Sgt. Hamilton, he believed² the suspect in this pursuit may be related to the previous Kmart aggravated robbery.

Officer Bias said the suspect vehicle turned off 4700 South into a neighborhood and stopped abruptly. Officer Bias said he heard what sounded like gunfire and heard a UPD Officer on the radio stating the suspect was firing at him. Officer Bias said as he rounded a corner he observed the suspect vehicle begin to flee. Officer Bias said the suspect vehicle turned to east on Bowling Ave. Officer Bias said he heard what sounded like more gunfire from the suspect vehicle.

Officer Bias said it appeared the suspect had lost the right front tire because he could see sparks coming from underneath the vehicle. Officer Bias said the suspect turned from Bowling Ave. onto 1780 West which is a dead end road. Officer Bias said the UPD patrol vehicle pulled in behind the suspect vehicle. Officer Bias said he parked on Bowling Ave. because he was concerned the suspect may make a U-turn on 1780 West and get back onto Bowling Ave. Officer Bias said he was concerned if the suspect were able to get back onto Bowling Ave. and go west, he would encounter several responding officers. Officer Bias said he was concerned because the suspect had already been firing rounds from his vehicle and believed other responding officers would be in harm's way.

² Officer Bias said he was the initial reporting officer on the Kmart aggravated robbery. Officer Bias said he knew the Kmart suspects had fired weapons during the aggravated robbery and believed the suspects would be armed.

Officer Bias said two suspects got out of the vehicle and ran northwest. Officer Bias said he saw the UPD officer get out of his vehicle to give chase. Officer Bias said he didn't feel comfortable leaving the UPD officer alone with someone who had already been firing rounds at him. Officer Bias said as the male and female suspects were running he saw the male suspect turn around and fire rounds³ at the UPD officer. Officer Bias said he didn't have a shot at that instant because the female suspect was blocking his view. Officer Bias said it was apparent the male suspect was going to shoot someone in order to get away. Officer Bias said he saw the male suspect point a firearm and fire towards where he and the UPD officer were standing. Officer Bias said he fired one shot⁴ and the male suspect fell to the ground. Officer Bias said the female suspect fled through a gate leading to Salt Lake Community College property. Officer Bias said he feared for his life and the lives of others.

UPD Officer Olzack provided a statement about his involvement in the OICI. Officer Olzack said that he was pursuing a vehicle that failed to stop for his lights and siren. Officer Olzack said he saw a suspect firing a gun at him from the vehicle he was pursuing. Officer Olzack said he could hear gunshots and thought he heard rounds hitting the pavement around him. Officer Olzack said he heard and felt a bullet hit his police vehicle during the pursuit.

Officer Olzack said when the pursuit terminated, the suspects ran from their vehicle and Officer Olzack got out of his vehicle and ran after them. Officer Olzack said as he pursued the suspects, the male suspect turned and fired his gun at Officer Olzack. Officer Olzack said he feared for his life and the lives of others. Officer Olzack said he fired his weapon at the male suspect, taking care to try to avoid hitting the female suspect who at times was in his line of fire.

Ramon S. Franco spoke to members of the OICI investigation team. Franco said that on the night of the incident, he saw a suburban parked in the area which he hadn't seen before. Franco said he couldn't see anyone inside of the vehicle. Franco said he pulled alongside of the Suburban to see if anyone was inside. Franco said a "caravan" pulled up behind him and activated blue and white lights. Franco said he believed it was gangsters. Franco said he had his girlfriend with him who is pregnant with their child and decided to run.

Franco admitted to having a gun and firing 3-4 shots in the air while he was being chased. Franco said after he left his vehicle he again fired 2-3 shots in the air. Franco reiterated that he didn't believe he was being pursued by the police. Franco sustained two gunshot wounds for which he was treated.

Celene J. Hernandez was interviewed by members of the OICI investigation team. Hernandez said that on the night of the incident, she saw an unknown vehicle in the area. She said her friend called Franco who was driving close to the area. Hernandez said when Franco arrived he told her to get into the car. She said Franco pulled out a handgun from the driver's side door and placed it on his lap. Hernandez said as they were driving down the street, Franco pointed to a vehicle asking if that was the one she saw in the area. She said it was.

³ The OICI investigation recovered a total of eight spent shell casings from the areas where the suspect fired his weapon.

⁴ The OICI investigation found that Officer Bias' weapon was down one round and one casing from his weapon was found at the scene.

Hernandez said Franco pulled up alongside the vehicle and used a flashlight to see if anyone was inside. Hernandez said as Franco was looking, a van when emergency lights pulled up behind them. Hernandez said that Franco took off. Hernandez stated she knew they were being chased by the police because she saw the red and blue lights and heard police sirens. Hernandez said there were a lot of police officers in the pursuit. Hernandez said Franco fired at the police officers as he started to run from the vehicle and again after he had left the vehicle. Hernandez said Franco told her to run. Hernandez said as she was running she was within an inch or two of Franco when she felt something hit her side. Hernandez sustained one gunshot wound to her right hip.

DISCUSSION

I. 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. 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 felony⁵.” *Id.*

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-

⁵ 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.”

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. *Officer Bias Reasonably Believed Deadly Force was Necessary.*

Officer Bias believed the fleeing suspects may have been involved with and/or related to the Kmart aggravated robbery that recently occurred. Officer Bias said he believed that the Kmart suspects were armed and fired weapons during the aggravated robbery. During the pursuit, Officer Bias obtained information which reasonably caused him to worry that the fleeing suspect(s) may be violent.

Officer Bias said he witnessed Franco’s dangerous conduct during the pursuit and Franco’s use of deadly force against police officers. Officer Bias said he perceived and obtained information that Franco fired a weapon at officers during the pursuit. Moreover, Officer Bias saw Franco fire his weapon at Officer Olzack after the pursuit terminated and Franco fled from his vehicle. Officer Bias witnessed Franco’s unlawful use of deadly force against officers

Officer Bias also witnessed Franco’s attempts at escape and avoiding arrest. Officer Bias knew that Franco had been engaged in a high speed pursuit and saw Franco flee on foot once the vehicle pursuit terminated. Knowing that Franco was trying to run with a weapon (that he fired while on foot) Officer Bias reasonably believed that deadly force was necessary to prevent Franco’s arrest from being defeated by escape because Officer Bias had probable cause to believe that Franco posed a threat of death or serious bodily injury to the officers or to others if Franco’s apprehension was delayed. Officer Bias’ use of deadly force was “justified” under Utah law.

3. *Officer Olzack Reasonably Believed Deadly Force was Necessary*

Officer Olzack witnessed Franco’s dangerous driving and Franco’s use of deadly force against him during the pursuit. Officer Olzack saw Franco fire his weapon at him after the pursuit terminated and Franco fled from his vehicle. Officer Olzack reasonably believed that deadly force was necessary to prevent death or serious bodily injury to himself and/or others.

Officer Olzack also witnessed Franco’s attempts at escape and avoiding arrest. Officer Olzack knew that Franco had been engaged in a high speed pursuit and saw Franco flee on foot once the vehicle pursuit terminated. Knowing that Franco was trying to run while firing his gun, Officer Olzack reasonably believed that deadly force was necessary to prevent Franco’s arrest from being defeated by escape. Officer Olzack had probable cause to believe that Franco posed a threat of death or serious bodily injury to the officers or to others if Franco’s apprehension was delayed. Officer Olzack’s use of deadly force was “justified” under Utah law.

CONCLUSIONS

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

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