

Ralph Chamness
Chief Deputy
Civil Division



Jeffrey William Hall
Chief Deputy
Justice Division

Blake Nakamura
Chief Deputy
Justice Division

DISTRICT ATTORNEY
SALT LAKE COUNTY
SIM GILL

HAND DELIVER

February 28, 2013

Chris Burbank
Chief of Police
Salt Lake City Police Department
315 East 200 South
Salt Lake City, UT 84111

Re: Officer Involved Critical Incident – January 9th, 2013

Dear Chief Burbank:

After working in conjunction with the Salt Lake City Police Department, the Salt Lake County District Attorney's Office has completed its review of the investigation concerning the use of deadly force against Kelly Simons by Detective Joe Sutera (Sutera) of the South Salt Lake Police Department. The incident occurred on January 9th, 2013, at the intersection of South Lake Street and Belmont Avenue in Salt Lake City. The purpose of the review is to determine whether the force employed was lawful under Utah law.

Between December 2012 and January 2013 a series of armed robberies occurred along 2100 south between 1300 East and 2200 East and in surrounding neighborhoods. The reports on the robberies reflect that the perpetrator of the robberies were similar in description as well as the methods that were used to commit the robberies.

On January 5, 2013, an armed robbery was reported to have occurred at a Murray restaurant. Shortly after the report, a patrol officer with the Murray Police Department observed a subject near the robbery that matched the suspect description. After a short pursuit, the subject and the officer exchanged gun fire as the subject was attempting to enter a waiting vehicle that contained another occupant in the driver seat. The vehicle apparently failed to start and two subjects fled on foot into the nearby neighborhood where they are alleged to have taken a vehicle from a resident at gun point.

In the days following the incident in Murray, the Joint Criminal Apprehension Team (JCAT) became involved in efforts to locate the subjects. JCAT is made up of officers selected from multiple agencies and is tasked with the apprehension of known criminal suspects at large. Sutera was a member of this team and for purposes of this operation, Sutera considered Deputy U.S. Marshall Jim Phelps (Phelps) his superior officer.

111 East Broadway, Suite 400 Salt Lake City, Utah 84111-0000
Telephone (801) 363-7900 Fax (801) 531-4168 www.districtattorney.slco.org



Phelps gathered and briefed officers on the history of the suspects, the series of crimes for which they were wanted, including the use of a firearm during the robberies and the shooting with the Murray City officer on January 5th. Phelps then set up a plan for tracking and apprehension. Among the officers assembled and briefed were Sutera, and Det. Darren Carr, South Salt Lake PD (Carr). Officers were instructed to consider the suspects to be armed and dangerous. Photos of the suspects and basic bio information were also distributed. The suspects were identified as Kelly Simons (Simons) and Sandra Chotia-Thompson (Chotia). Simons was identified as the shooter in the January 5th incident with the Murray Police officer and as the principal perpetrator in most of the robberies. Thompson was identified as the getaway driver in the robberies.

On Wednesday, January 9th, at around 11:30 AM, Sutera and Carr overheard Phelps on the radio that the vehicle that Simons was believed to be operating was moving and efforts were underway to apprehend her. Sutera radioed Phelps to see if their assistance was needed and Phelps requested their involvement. Sutera and Carr proceeded to the area of 10th South and 9th East as instructed by Phelps. Per instruction of Phelps, Sutera drove by the suspect vehicle, checked the plates and confirmed that the vehicle, a Mazda truck, was the vehicle that Simons was believed to be operating.

Phelps instructed Sutera to position east of the intersection of Belmont Avenue and Lake Street in a location that would allow them to view the Mazda. Phelps maintained a mobile position in the area and other officers were responding to the location. Phelps indicated that the plan was for officers to wait until the Mazda moved, confirm the occupant(s) as the suspect(s), allow the Mazda to distance itself from the house and then to stop the Mazda and apprehend the suspect(s).

During the subsequent investigation of the incident, Sutera expressed that he was concerned about how the incident would unfold. Based on the information he received about the subjects, Sutera did not feel that these suspects were ready to give up considering the number of robberies they were suspected of being involved in and the latest incident with Murray Police where gun fire was exchanged with an officer as they fled. Sutera was also concerned that Simons would exit her vehicle and exchange gun fire in a residential neighborhood.

While watching the Mazda, Sutera observed an individual enter the vehicle who began to drive the vehicle toward his position proceeding westbound. The vehicle was proceeding slowly and he was able to see the individual. He recognized the individual as Simons from photographs of her that he was provided in briefings. Upon recognizing her, he radioed Phelps and informed him that Simons, the only occupant, was operating the Mazda.

The Mazda passed Sutera's position and turned north on Lake Street. Sutera began to back his vehicle with the intention of following the Mazda. Unbeknownst to Sutera at the time, Phelps was driving his vehicle south on Lake Street and Sutera next heard an impact and realized that Phelps impacted the Mazda and blocked Simons from continuing northbound.

Sutera exited his vehicle, drew his weapon, and moved toward the Mazda, shouting for Simons to surrender. At this time Phelps had his red and blue police take down lights on. As Sutera approached the Mazda he saw Simons turn around and make eye contact with him. He

yelled at Simons to stop or he would shoot while he had his firearm drawn on her. He saw the reverse lights of the Mazda go on, heard the Mazda tires squeal and the vehicle accelerated at a high rate of speed in reverse.

Sutera moved to the side of the Mazda and as it was moving Sutera recalled firing four rounds – likely two to the back of the vehicle and two to the front. The Mazda passed him going about 25-30 mph in reverse. He could hear the engine until the vehicle crashed into a parked vehicle a short distance south of his position. Sutera stopped firing when the Mazda was around 10 -15 feet away from him. After it crashed he approached to inspect the vehicle, noticed it was no longer a threat and began to contain the area.

Phelps was interviewed and corroborates Sutera's recollection of the incident. As he reached for his radio, he heard shooting but was not sure who was doing the shooting.

Carr received the same JCAT briefings as Sutera and believed that Simons had been involved in the Murray shooting. Carr was also interviewed after the incident and generally corroborated Sutera's account of the incident. However, he did not recall whether Phelps had his red and blue police lights on. He did recall hearing Sutera yelling - identifying himself as an officer and commanding the subject to stop - but could not see Sutera at that moment because his view was blocked by their vehicle that he was behind. Carr heard tires squeal, three gun shots and ducked down. As he came to the back of their vehicle he saw the Mazda backing up at a high rate of speed – about 15-20 mph. He saw the driver slumped to the right as the Mazda passed, then saw it crash into a parked vehicle. After it crashed, he approached the Mazda and determined that the driver was deceased.

Other officers were arriving at the scene as the shooting occurred, but did not hear or see any shooting.

After the incident, officers canvassed the neighborhood to obtain interviews from witnesses. Witnesses reported hearing shots and some reported hearing yelling and tires squealing. None of their statements contradicted the physical evidence or the statements of the officers involved. One witness, two houses down from the shooting, indicated that she heard yelling and tires squealing about three to four seconds before she heard shots.

Six shell casings marked S&W 40 Speer were found in a rough semi-circular pattern north and west of the rear of the vehicle Sutera and Carr were operating. Sutera was assigned a Glock 22, Generation 4, .40 caliber firearm, serial SBE034. The down count on Sutera's weapon revealed nine rounds remained in the magazine and one in the chamber. All rounds were marked S&W 40 Speer. This corresponds with six matching shell casings found at the scene. Sutera regularly keeps 15 rounds in his magazine and one in the chamber. An examination of weapons assigned to Phelps and Carr showed no evidence to indicate that any of these weapons were fired during this incident.

An examination of the Mazda showed evidence consistent with six bullet strikes. The estimated trajectory of all penetration evidence is consistent with one bullet entering the rear of the vehicle toward the driver seat, one possible round through the passenger window toward the driver seat, and four rounds entering the front of the vehicle in the direction of the driver's seat.

Simons' body was found in the driver's seat of the Mazda, slumped over to the right. An autopsy revealed that she suffered from two bullet strikes, one in the upper torso and one in the head.

The Utah Code addresses the use of deadly force by a peace officer as follows:

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.

(2) If feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (1)(b) or (1)(c).

In this incident, Sutera had a reasonable basis to believe that deadly force was necessary to defeat Simons' escape from arrest and he had probable cause to believe that Simons was a suspect in the commission of a felony involving the threat of death or serious bodily injury. Similarly, Sutera had probable cause to believe that Simons posed a threat of death or serious bodily injury to others if her apprehension was delayed.

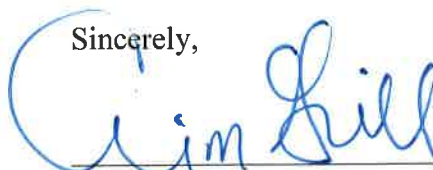
Sutera observed Simons operating the Mazda in a manner that reflected her intent to flee from authorities when she was confronted by Phelps' police vehicle. Sutera was previously advised that she was involved in multiple armed robberies where she used a firearm against those she was robbing thereby threatening those victims with death or serious bodily injury. In the latest incident four days earlier, Sutera was informed that she actually discharged the firearm against a police officer who was attempting to arrest her. All that information gave Sutera reason to believe that she may be armed with a firearm on this occasion, that she would use it against him or the other officers as she was attempting to flee, and that Simons continued to pose a threat of death or serious bodily injury to others if she was not immediately apprehended.

Therefore, Sutera was legally justified in using deadly force against Kelly Simons pursuant to Utah Code Ann. § 76-2-404 (1)(b)(i) and (ii), by virtue of his belief of Simons previous felony use of deadly force and her evident unwillingness to submit to arrest.

February 28, 2013

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.

Sincerely,



SIM GILL,
Salt Lake County District Attorney

SG/ns/bn

c. Chief Chris Snyder, South Salt Lake Police
James Thompson, U.S. Marshall