



Ralph Chamness
Chief Deputy
Civil Division

Lisa Ashman
Administrative
Operations

SIM GILL
DISTRICT ATTORNEY

Jeffrey William Hall
Chief Deputy
Justice Division

Blake Nakamura
Chief Deputy
Justice Division

Chief Kevin Thacker
Sandy City Police Department
10000 Centennial Pkwy
Sandy, UT 84070

Chief Craig Burnett
Murray City Police Department
5025 South State St., Ste. 206
Murray, UT 84107

Via Hand Delivery

September 4, 2015

RE: *Murray Police Officer Jimmy Haas' Use of Deadly Force*
Incident Location: Southwood Park, Murray, Utah
Incident Date: August 9, 2015
Sandy PD Case No.: SY2015-36336
Murray PD Case No.: 15CO14559
D.A. Case No.: 2015-1772

Dear Chief Thacker and Chief Burnett:

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 Murray City Police Department (MPD) Officer Jimmy Haas' use of deadly force was "justified" under Utah State law.

On August 9, 2015, Officer Haas was looking for a suspect in a recently reported burglary. Officer Haas encountered the suspect, subsequently identified as Joby Romano, coming out of a restroom in a city park. During the encounter with Officer Haas, Mr. Romano drew what appeared to Officer Haas to be a firearm and pointed it at Officer Haas. Officer Haas

shot at Mr. Romano and hit him in the face. Mr. Romano 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 Officer Haas' 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 Officer Haas 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, Murray Police Department asked Sandy City Police Department and the D.A.'s Office to investigate the OICI.

On August 28, 2015, Sandy Police Department and D.A.'s Office investigators presented the investigation's findings to the District Attorney for review and this opinion letter. During the presentation of the investigation findings, both Sandy Police Department and D.A.'s Office investigators reported that Murray Police Department 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.

At 9:58 a.m., Sunday morning on August 9, 2015, a witness who lived on Oxford Hollow Court in Murray, Utah called police to report a suspicious person in the neighborhood. The caller told police dispatchers that a male had been walking through yards in the neighborhood for some time that morning. The caller provided a description of the male. The caller's spouse got in a car and followed the male as he walked through the neighborhood. The driver found the suspicious male walking southbound on 725 East near 5900 South in Murray. The caller relayed this information to police dispatchers who assigned Murray City Police Officers Haas and Christian Catalan to respond.

While Officers Haas and Catalan were en route to the area, a second person called police dispatch and reported that a suspicious male was in their neighborhood and broke into a trailer. The caller said the male was not wearing a shirt when he entered the trailer, but had exited the trailer wearing a white shirt and dark hat. The caller also reported that the male was carrying a coat and an unknown item. The caller reported that the male was at Southwood Park in Murray.

As Officer Haas arrived in the area of Southwood Park, the caller met Officer Haas and told him that she saw the male enter the men's restroom in the park.

Officer Haas' Interview

OICI protocol investigators interviewed Officer Haas with his legal counsel present. Officer Haas said he arrived in the area of Southwood Park and the caller told him she had seen the male enter the restroom at Southwood Park. Officer Haas said he exited his patrol vehicle and approached the restroom area. Officer Haas said there were several people in the park playing tennis and a couple of people at a nearby pavilion. Officer Haas said he walked around the restroom to make sure there were no other exits. Officer Haas said he believed the male was still in the men's restroom. Officer Haas said that as he approached the door to the restroom, the male, subsequently identified as Joby Romano, opened the door and stepped out of the restroom.

Officer Haas said he told Mr. Romano to come over to him and that he had a few questions. Officer Haas said Mr. Romano didn't move but just stared at him. Officer Haas said that Mr. Romano was still in the doorway, holding the door open. Officer Haas said Mr. Romano lifted the front of his shirt with his left hand and exposed a black handgun in his waistband. Officer Haas said that Mr. Romano reached for the gun with his right hand.

Officer Haas said he quickly drew his own weapon, but Mr. Romano was quicker than he and had already brought the gun up and pointed it at Officer Haas' face. Officer Haas said he believed Mr. Romano was going to shoot him. Officer Haas said he raised his own weapon and pointed it at Mr. Romano. Officer Haas said he pressed the trigger but the weapon did not fire. Officer Haas said he immediately identified and remedied the malfunction and made the weapon ready to fire. Officer Haas said that during these moments, Mr. Romano continued to point his weapon at Officer Haas. Officer Haas said he continued to feel threatened for his life.

Officer Haas said Mr. Romano turned and ran. Officer Haas said he took a couple of steps towards Mr. Romano. Officer Haas said Mr. Romano ran a short distance while looking back and pointing his weapon in Officer Haas' direction. Officer Haas said Mr. Romano stopped, turned towards Officer Haas, raised his weapon again and pointed the gun at Officer Haas.

Officer Haas said he continued to believe Mr. Romano was going to shoot him. Officer Haas said he pointed his own weapon at Mr. Romano and fired one shot. Officer Haas said he saw the gun fall out of Mr. Romano's hand and Mr. Romano fell down onto his stomach. Officer Haas said he began moving forward toward Mr. Romano and ordered him not to move. Officer Haas said he believed Mr. Romano wasn't going to move so he holstered his gun and handcuffed Mr. Romano. Officer Haas said Officers Catalan and Brad Astin arrived and joined him next to Mr. Romano. Officer Haas said Officer Astin told Officer Haas to back away, which he did.

Other Interviews

OICI protocol investigators interviewed Officer Astin. Officer Astin said he arrived at Southwood Park just as or after the shooting happened. Officer Astin said he did not see Officer Haas fire. Officer Astin said he got out of his patrol vehicle and saw Officer Haas with his gun drawn in a ready position. Officer Astin said Officer Haas was approaching a male that was

lying face down on the grass. Officer Astin said that as he got to the grass area, he saw that Officer Haas was about 10 feet from Mr. Romano and was closing the distance. Officer Astin said he saw Officer Haas holster his handgun and handcuff Mr. Romano.

Officer Astin said he walked over to Officer Haas and Mr. Romano. Officer Astin said that as he got to Officer Haas and Mr. Romano, Officer Astin noticed a black baseball hat and a black handgun on the ground just southeast of Mr. Romano.

Officer Astin said that he searched Mr. Romano for weapons and instructed Officer Haas to back away. Officer Astin said he rolled Mr. Romano onto his side and called for medical assistance. Officer Astin said fire department medics arrived and transported Mr. Romano to the hospital. Officer Astin said Officer Haas was transported to the Murray City Police Department.

OICI investigators looked for and spoke to other people present at the park when the shot was fired. None of the witnesses spoken to said they witnessed anything prior to the shot being fired. All people interviewed said they only heard one shot. Witnesses reported that they heard the officer telling the suspect not to move. Some of the witnesses in the park said they saw other officers arrive and place the suspect in handcuffs.

Mr. Romano's Interview

OICI protocol investigators interviewed Mr. Romano about the OICI. Because Mr. Romano has been charged with criminal offenses related to his alleged conduct in the incident, Mr. Romano's statements will not be included in this letter.

Physical Evidence

OICI investigators inspected and documented several items of physical evidence at the scene. Investigators inspected and documented Mr. Romano's weapon. Investigators said that they discovered that Mr. Romano's weapon was not a firearm, but rather a CO2 operated "BB" pellet gun that very closely resembled a firearm. Investigators noted that the weapon did not have an orange tip, and that in physical appearance, the weapon was indistinguishable from a firearm even at very close distance. Investigators said that only upon physically handling the weapon and closely examining it were investigators able to discern that the weapon was not a firearm but rather a "BB" gun. Investigators booked the weapon into evidence and provided photographs of Mr. Romano's weapon to the D.A.'s Office as part of the case presentation.

Investigators observed and documented several items in the men's restroom including clothing, "BB" pellets, CO2 cartridges and other items. Investigators also collected and documented the hat Mr. Romano was wearing at the time, and the "BB" gun Mr. Romano dropped after he was shot. Investigators determined that Mr. Romano stole the "BB" gun, other items associated with the gun, and several items of clothing Mr. Romano was wearing after he entered the trailer. Investigators spoke with the trailer's owner and determined the items Mr. Romano possessed had been in the trailer prior to Mr. Romano's illegal entry.

DISCUSSION AND CONCLUSION***Officer Haas Reasonably Believed Deadly Force was Necessary.***

Officer Haas said he observed what he reasonably believed and appeared to him as a deadly weapon: a handgun. Officer Haas said that Mr. Romano pointed the weapon at him twice. Officer Haas reported that he believed Mr. Romano was going to shoot and kill him.

We believe Officer Haas' use of deadly force against Mr. Romano was reasonably necessary to prevent Officer Haas' perceived death or serious bodily injury as a result of Mr. Romano's imminent use of unlawful force. Mr. Romano's apparent imminent, unlawful threat of death or serious bodily injury to Officer Haas made Officer Haas' belief that deadly force was necessary to prevent his death or serious bodily injury reasonable. As such, Officer Haas' use of deadly force was "justified" under Utah State law, and provides Officer Haas 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 Officer Haas.

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