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Via Hand Delivery

April 10, 2015

RE: *Salt Lake City Police Officer Trevor Hansen's Use of
Deadly Force*
Incident Location: 1125 South State St., Salt Lake City, UT
Incident Date: March 3, 2015
SLCPD Case No.: 15-37903
DA Case No.: 2015-490

Dear Chief Burbank:

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) Officer Trevor Hansen's use of deadly force was "justified" under Utah State law.

On March 3, 2015, SLCPD officers stopped a vehicle driven by Salvador Flores. Officers asked Mr. Flores to exit the vehicle. As he stepped out of his truck, Mr. Flores drew a handgun and pointed it at SLCPD Officer Ruff who yelled, "gun!" SLCPD Officer Hansen drew and fired three shots at Mr. Flores, hitting him twice. Mr. Flores 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.

One legal defense to potential criminal charges available to police officers who used deadly force and 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.

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.*

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

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 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.”

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. The OICI investigation protocol strives to establish an investigation methodology and process that provides the District Attorney with the evidence needed 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 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 Hansen'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 Officer Hansen related to his use of deadly force.

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.

In the early morning, pre-dawn hours of March 3, 2015, a witness at a 7-11 store said he saw a male and a female in a white pickup truck acting what he thought was suspiciously. He called the police to report that, in his words, the truck's occupants were "casing" the 7-11.

SLCPD officers were in the area and responded to the call. SLCPD Officers Michael Ruff and Trevor Hansen were in one patrol car; Officers Daniel Carlson and Tyler Tracy were in another patrol car. Both cars were close to the 7-11 and started to head in that direction.

A few blocks away from the 7-11, the officers encountered the white pickup truck in the area of 1700 South and State Street. The truck drove northbound on State Street and the officers followed the truck for a few blocks. Officers Ruff and Hansen activated their vehicle's overhead lights and performed a traffic stop at about 1125 South State Street.

Police Officer Interviews

Officers Ruff and Hansen were subsequently interviewed by OICI protocol investigators. Officer Hansen said he approached the driver's side of the truck and Officer Ruff approached the passenger side. Officer Hansen said he saw a male driver later identified as Salvador Flores³, and a female passenger later identified as Amal Hourieh. Officer Ruff said he asked Ms. Hourieh if she and Mr. Flores had been to the 7-11; she replied that they had.

Officer Hansen said he noticed an item on the truck's floor that caught his attention. Officer Ruff said he saw it, too; he said the object on the truck's floor resembled a shotgun with a pistol grip. The item appeared to be wrapped with something dark, so it was difficult to discern what the item was. At this point, Officers Carlson and Tracy had arrived at the traffic stop. Officer Ruff asked Officer Carlson to look at the item on the floorboard. Officer Carlson said he thought it looked like a weapon said that he believed it would be safer for everyone to have the vehicle's occupants step out and further investigate the 7-11 matters, as well as the item in the truck. Officer Carlson said he asked Ms. Hourieh to step out of the truck; she promptly complied with the request.

Officer Carlson said he asked Mr. Flores to exit the truck; Mr. Flores asked why he was being asked to leave the truck. Officer Carlson explained his request to Mr. Flores. Officer Ruff said he walked around to the driver's side to assist Officer Hansen. Officer Tracy said it looked like Mr. Flores was "frustrated" and thinking about whether to get out of the truck; in any event, Mr. Flores hesitated and then opened the truck door and got out. Officer Hansen took a step

³ Mr. Flores was interviewed by OICI protocol investigators. Because Mr. Flores has been charged with criminal offenses in connection with this OICI, Mr. Flores' statements to protocol investigators will not be included here to protect Mr. Flores' constitutional rights. Nothing in Mr. Flores' statements to protocol investigators was inconsistent with the findings and conclusions of the investigation or this review.

back from the truck; at this point, Officer Ruff was standing next to Mr. Flores near the driver's door. Officers Carlson and Tracy were standing near the passenger's door on the other side of the truck.

As Mr. Flores turned to get out of the truck, the coat he was wearing lifted up and exposed a holster on Mr. Flores' right hip. Officer Carlson saw the holster and mentioned Mr. Flores' hip to the other officers present. Officer Ruff, who was standing next to Mr. Flores, said he heard Officer Carlson say "watch his hip." Officer Ruff saw Mr. Flores' holster and put out his arm to sweep Mr. Flores' side and hold Mr. Flores' arm while Officer Ruff assessed Mr. Flores' holster.

As Officer Ruff held Mr. Flores' right arm, Mr. Flores turned and pulled away from Officer Ruff and Mr. Flores drew another handgun from his waistband with his left hand. Officer Ruff yelled: "Gun!" As Mr. Flores pulled away from Officer Ruff, Officer Ruff moved away from Mr. Flores and while he moved, Officer Ruff lost his balance and fell down.

Officer Hansen was standing behind Officer Ruff. Officer Hansen said he heard Officer Ruff yell "gun!" and saw Mr. Flores draw and point a weapon at Officer Ruff. Officer Hansen said he drew his duty weapon, pointed at Mr. Flores and fired three times. Officer Hansen said he fired his weapon at Mr. Flores because he believed Officer Ruff's life was in danger. Two of the shots hit Mr. Flores and he went down. Officer Hansen said he saw Mr. Flores down in the street with the gun still in his hand. Officer Hansen said he covered Mr. Flores with his weapon while other officers went to Mr. Flores.

Officers Ruff and Carlson saw Mr. Flores was injured from the gunshots. Officer Ruff handcuffed Mr. Flores. Officer Carlson retrieved his medical bag from his car and went to Mr. Flores and he and other officers performed life-saving measures on Mr. Flores. Officer Carlson searched Mr. Flores and found a Colt model 1911 .45 ACP caliber handgun in Mr. Flores' holster. Officer Carlson removed the weapon and placed it on the ground. Officer Ruff informed police dispatchers that shots had been fired and requested medical assistance. Medical personnel arrived and transported Mr. Flores to the hospital; he survived his injuries.

Amal Hourieh Interview

Ms. Hourieh was interviewed by OICI protocol investigators. She said she was with Mr. Flores at the 7-11 earlier. She said they couldn't sleep that night and Mr. Flores needed to be at work early that morning. She said they went to the 7-11 and she tried to buy items, but the credit card was declined. She said she went in and out of the store, and tried to talk with the clerk to entice him to give her free items. Ms. Hourieh said she noticed a man in the store on his phone talking to the police. She said they left the 7-11 and drove away in the truck.

Ms. Hourieh said she and Mr. Flores saw the police cars. She said Mr. Flores said: "Shit, I have my dad's gun on me." Ms. Hourieh said the police pulled them over and asked her and Mr. Flores to step out of the truck. She said Mr. Flores hesitated to leave the truck, and when he did, she could see the holster on his hip. Ms. Hourieh said she heard Officer Carlson tell the

other officers about the holster. Ms. Hourieh said she saw Mr. Flores turn away from Officer Ruff but couldn't see his hands. Ms. Hourieh said she heard the gunshots and was ordered down on the ground by an officer.

Ms. Hourieh said that Mr. Flores had his father's gun for "the last couple of days." Ms. Hourieh said Mr. Flores carries "fake" guns and said she saw Mr. Flores burn the orange tip off a replica firearm and spray paint it black. Ms. Hourieh said Mr. Flores made the object on truck's floor about a month ago. Ms. Hourieh said Mr. Flores said: "Looks like a real shotgun, huh?"

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 two weapons lying in the street. The investigation revealed that Mr. Flores' holstered firearm was a Colt 1911 model .45ACP caliber handgun. Investigators also discovered that the handgun Mr. Flores drew from his waistband and pointed at Officer Ruff was actually a pellet-gun or Airsoft-style pistol which very closely resembled a full-size frame, semi-automatic handgun. OICI protocol investigators did not realize this weapon was not a firearm until closely inspecting the weapon after it was recovered from the street. The weapon did not have an orange tip and had apparently been painted black to make it more closely resemble a firearm.

All four officers were wearing body cameras. The cameras worn by Officers Ruff, Carlson and Tracy captured audio and video of the incident and the events shortly prior thereto. OICI protocol investigators reviewed the recordings. Officer Hansen's body camera did not record the incident; in his subsequent interview, Officer Hansen said he neglected to activate his camera prior to the incident.

DISCUSSION AND CONCLUSIONS

Officer Hansen Reasonably Believed Deadly Force was Necessary.

During their investigation of matters at the 7-11, as well as the ostensible weapon in the truck, the officers lawfully required Mr. Flores and Ms. Hourieh to leave the vehicle. As Mr. Flores got out of the truck, officers became aware he was apparently armed with an otherwise concealed handgun in a holster. Mr. Flores turned and pulled away from Officer Ruff and drew and pointed a weapon at Officer Ruff. Officer Hansen saw this and reasonably believed that Mr. Flores was unlawfully threatening Officer Ruff—and potentially the other officers at the scene—with serious bodily injury or death. Mr. Flores' unlawful use of his weapon against Officer Ruff caused Officer Hansen to reasonably fear for Officer Ruff's safety and the safety of the other officers, Ms. Hourieh and other people in the immediate proximity.

We believe Officer Hansen's use of deadly force against Mr. Flores was reasonably necessary to prevent the officers' death or serious bodily injury as a result of Mr. Flores' imminent use of unlawful force against the officers. Mr. Flores' apparent imminent, unlawful threat of death or serious bodily injury to the officers made Officer Hansen's belief that deadly force was

necessary to prevent death or serious bodily injury reasonable. As such, Officer Hansen's use of deadly force was "justified" under Utah State law, and provides Officer Hansen 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 Hansen.

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