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Via Hand Delivery

April 3, 2015

RE: *West Valley City Police Officer Jason Vincent's Use of
Deadly Force*
Incident Location: 120 East Honey Berry Ct., Draper, UT 84020
Incident Date: January 14, 2015
Draper PD Case No.: 2015-000356
WVCPD Case No.: 15I002166
DA Case No.: 2015-136

Dear Chief Roberts and Chief Russo:

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 West Valley Police Officer Jason Vincent's use of deadly force was "justified" under Utah State law.

On January 8, 2015, while on his way to work, West Valley City Police Department ("WVCPD") Officer Jason Vincent saw a vehicle with a male occupant (subsequently identified as Jeffery R. Nielson) slumped over the steering wheel. Officer Vincent investigated the matter.

As outlined in more detail below, Mr. Nielson got into a fight with police officers and wielded a knife. Officer Vincent shot Mr. Nielson who died from 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, other legal defenses may be available to the officer; 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, even if conduct is not “justified,” 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 Vincent’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 Vincent 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.

On January 14, 2015, WVCPD Officer Jason Vincent was on his way to work when he observed a person in a vehicle at 120 E. Honey Berry Court in Draper, Utah. In a subsequent interview with OICI protocol investigators, Officer Vincent said that when he pulled up to the vehicle, the occupant, later identified as the decedent, Jeffery R. Nielson, did not seem to notice Officer Vincent was there. Officer Vincent said he was concerned about Mr. Nielson's ability to safely operate a motor vehicle. Officer Vincent said he decided to investigate the matter.

Officer Vincent said he stood outside Mr. Nielson's vehicle and made contact with him. Officer Vincent said he could see that Mr. Nielson had drug paraphernalia in his hand. Officer Vincent said he observed signs of habitual drug use on Mr. Nielson's body³ and believed that Mr. Nielson may have been impaired. Officer Vincent said he called for Draper Police Department's ("DPD") assistance. Officer Vincent said he asked Mr. Nielson if there were weapons in the vehicle and Mr. Nielson did not answer. Officer Vincent said that later during their discussion, Mr. Nielson told Officer Vincent there was a knife in the glove box.

DPD Officer Walter Deutsch was interviewed by OICI protocol investigations. Officer Deutsch said he arrived in Honey Berry Court to assist Officer Vincent. Officer Deutsch said he stood with Mr. Nielson outside Mr. Nielson's vehicle while Officer Vincent's K-9 "Q" performed an exterior sniff of Mr. Nielson's vehicle. Officer Deutsch said that "Q" alerted on Mr. Nielson's vehicle, indicating the possibility of the presence of drugs inside the vehicle. Officer Deutsch said that DPD Sgt. Harris and WVCPD Sgt. Lund arrived to provide assistance with the investigation.

Officer Vincent said that after "Q" alerted, he searched Mr. Nielson's vehicle and found what appeared to him to be crack cocaine. Officer Vincent advised DPD officers that he found illegal narcotics and asked DPD officers to take Mr. Nielson into custody. DPD Sgt. Harris handcuffed Mr. Nielson and searched him. During the search, officers found heroin in Mr. Nielson's pocket. Post *Miranda*, Mr. Nielson admitted being a drug user.

Officer Vincent said he was going to transport Mr. Nielson to jail and handle the arrest. Officer Deutsch said he was going to handle the vehicle impound. In order to facilitate Officer Vincent booking Mr. Nielson into jail, the officers agreed to switch handcuffs. Officer Deutsch informed Mr. Nielson that he was going to switch handcuffs. Officer Deutsch commended Mr. Nielson on being cooperative and told Mr. Nielson the handcuff switch would take place. Officer Deutsch started to remove Sgt. Harris' handcuffs to replace them with Officer Vincent's handcuffs. As Officer Deutsch removed the first pair of handcuffs Mr. Nielson ran to his vehicle.

³ Specifically, Officer Vincent said he observed what he believed were physical marks indicative of syringe use often associated with illegal drug use.

The police officers ran after Mr. Nielson who by this time had entered his vehicle and put it in drive. The vehicle moved a few feet as officers struggled with Mr. Nielson. During the ensuing melee, Officer Deutsch called for someone to use their Taser on Mr. Nielson. Sgt. Lund said she tried to use her Taser but was unsuccessful. Sgt. Lund, Sgt. Harris and Officer Vincent all wrestled with Mr. Nielson to try to get him out of the vehicle and back into custody.

Mr. Nielson continued to fight with the officers. Officer Vincent said he gave distraction blows to the back of Mr. Nielson's head, but Mr. Nielson continued to fight and resist. Eventually, officers were able to extract Mr. Nielson at least partially out of the vehicle, but Mr. Nielson broke free and went back into the vehicle. The struggle with Mr. Nielson occurred in the driver's area of the vehicle and the area immediately outside the driver's door. At times, there were four people struggling during the melee, and everyone was in close quarters with each other.

At this point, Officer Vincent said he saw a knife in Mr. Nielson's hand, and it looked to Officer Vincent like Mr. Nielson was making stabbing movements at the officers struggling with Mr. Nielson. Officer Vincent yelled "knife," and was afraid that Mr. Nielson had stabbed or would stab Sgt. Harris and/or the other officers wrestling with Mr. Nielson. Officer Vincent said he feared for his life and safety and the lives and safety of the other officers wrestling with Mr. Nielson. Officer Vincent fired his weapon five times at Mr. Nielson. It was subsequently determined that all five shots hit Mr. Nielson; he stopped moving and the officers withdrew from the vehicle. Mr. Nielson was later pronounced deceased by medical personnel on scene.

Physical Evidence

OICI protocol investigators inspected and photographed the scene and vehicles at Honey Berry Court. Investigators documented the presence and location of various items relevant to the OICI investigation, including a knife found on the road next to Mr. Nielson's vehicle.

Sgt. Harris was wearing a body camera. Sgt. Harris' camera captured the interactions with Mr. Nielson prior to and during his handcuffing, during his escape from custody and much of the struggle in and around the vehicle. Because of the extremely dynamic situation during the struggle prior to and at the time of the shooting, the camera's view was sometimes obscured. However, investigators who reviewed the recording were able to corroborate witnesses' statements with the recording.

DISCUSSION

Officer Vincent Reasonably Believed Deadly Force was Necessary.

Mr. Nielson told Officer Vincent and the other police officers on scene that he had a knife in his vehicle's glove box. As mentioned, when officers wrestled with Mr. Nielson, everyone was operating in very close proximity with one another. The struggle occurred in the driver's area of the vehicle and the area immediately outside the driver's door and everyone was in close quarters with each other. Therefore, when Officer Vincent said he saw Mr. Nielson with a knife and making

stabbing motions, it was reasonable for Officer Vincent to believe that Mr. Nielson was unlawfully threatening them with serious bodily injury or death. Mr. Nielson's use of the knife caused Officer Vincent to reasonably fear for his personal safety and the safety of the other officers in the immediate proximity.

The officers tried to use less-lethal force to prevent serious bodily injury or death and to obtain Mr. Nielson's compliance and take him back into custody. But after Mr. Nielson made stabbing motions with his knife, it was reasonable for Officer Vincent to believe that Mr. Nielson was attempting to or would kill or cause serious bodily injury to the officers. It was therefore reasonable for Officer Vincent to believe that deadly force was necessary to prevent the officers' death or serious bodily injury as a result of Mr. Nielson's imminent use of unlawful force against them. As such, Officer Vincent's use of deadly force was "justified" under Utah State law.

CONCLUSION

Officer Vincent was involved in a melee with several officers and Mr. Nielson in very close quarters. When Mr. Nielson produced a knife and made stabbing motions, Officer Vincent reasonably believed his life and the lives of the other officers were in danger. Mr. Nielson's imminent, unlawful threat of death or serious bodily injury to the officers made Officer Vincent's belief that deadly force was necessary to prevent death or serious bodily injury reasonable. Accordingly, Officer Vincent'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