

Utah County Attorney

Administration



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June 23, 2015

Chief John King
Provo City Police Department
48 South 300 West
Provo, UT 84603

Sheriff Jim Tracy
Utah County Sheriff's Office
3075 North Main
Spanish Fork, UT 84660

Re: February 15, 2015 Officer Involved Shooting of Cody Jeremy Evans

Dear Chief King and Sheriff Tracy:

As you know, pursuant to Utah Code Section 17-18a-401, I am charged and authorized to "conduct, on behalf of the state, all prosecutions for a public offense committed within [the] county." Pursuant to Utah Code Sections 26-4-6, -7 and -21, I investigate Utah County deaths that occur, among other reasons, as a result of violence, gunshot, or accident, and I am to "determine if the decedent died by unlawful means," and I am to "determine if criminal prosecution shall be instituted." Additionally, pursuant to Section III(A)(11)(c)(3) of the Utah County Officer Involved Incident Protocol (the "Protocol"), I will, after the completion of a criminal investigation involving an officer's "intentional or accidental use of any other dangerous or deadly weapon against another person," "analyze the facts of the incident as well as the relevant law to determine if criminal laws have been broken." See also Protocol Sections I(A)(1) and (2). If I find the officer has violated criminal laws, I am to "prosecute as appropriate or arrange for a special prosecutor." Protocol Section III(A)(11)(c)(3).

The Utah County Law Enforcement Officer Involved Incident Protocol Task Force has concluded its investigation involving the February 15, 2015 shooting of Mr. Cody Jeremy Evans by Provo City Police Officer Zachary Lazenby and Utah County Sheriff Deputy Chris Bagley. After reviewing the results of that investigation and the pertinent statutes and case law, I find that Officer Lazenby and Deputy Bagley were legally justified in their use of deadly force against Mr. Evans, and this office will therefore not institute a criminal prosecution against Officer Lazenby or Deputy Bagley.

The following is a brief factual summary of what I believe occurred and a short analysis of how I arrived at my findings and decision.

FACTS

The pertinent facts are fairly simple and corroborated by multiple witnesses. On the night of February 14, 2015 and in the early morning hours of February 15, 2015, the decedent, Cody Evans, partied and drank alcohol with friends in an apartment located over a garage at 1815 West 600 South in Provo. Mr. Evans left the party sometime after 4:00 or 5:00 a.m. At approximately 6:30 a.m., Mr. Evans went to the Provo residence of his estranged spouse, Joana Evans, and apparently arrived heavily intoxicated. After arriving, Mr. Evans told his spouse that he wanted to kill himself and was going to commit "suicide by cop." Mr. Evans had in his possession an airsoft rifle that he had altered to look like a real firearm and told his spouse that he planned to wave it at officers, inducing them to shoot him. Joana Evans took truck keys from Mr. Evans because she believed he was too intoxicated to drive.

At some point, Mr. Evans either went to sleep or passed out on the bathroom floor. His spouse roused him and told him to lay down on the couch or bed. Mr. Evans got upset and assaulted her. In fact, Joana Evans stated that Mr. Evans threw her to the floor and pinned his forearm to her throat to the point where she almost passed out. Joana Evans then gave the truck keys back to Mr. Evans (so he would leave) and Mr. Evans left the residence in his white Nissan Titan. Ms. Evans called the Provo Police Department to report the assault.

Provo police officers responded to the area of Ms. Evans' home and found Mr. Evans nearby in his truck. As they attempted to detain Mr. Evans, he got into the truck's driver's seat, started the ignition, and held a rifle out the driver's side window. Over a loudspeaker the officers commanded Mr. Evans to turn off the truck's ignition and drop the rifle out the window, but Mr. Evans did not comply. Mr. Evans then held the rifle out the truck window a second time and "racked" the slide, emitting an audible metal-on-metal sound. Mr. Evans also threatened to shoot himself in the head.

After a few minutes, Mr. Evans took off in his truck, evading the officers and driving at a high rate of speed including over a house's front lawn (to avoid officer-emplaced obstacles). As he drove away, Mr. Evans drove directly at one of the officer's vehicles (with the officer in the driver's seat), narrowly avoiding a head-on collision. Mr. Evans also ran a stop sign and a stop light; so, for public safety reasons, the Provo Police Department called off the pursuit.

In an effort to locate and, eventually, arrest Mr. Evans for assaulting his spouse and evading the police, officers initiated a "ping" of Mr. Evans' cell phone to determine his approximate location. That ping determined that Mr. Evans was in the vicinity of a home at 1815 West 600 South, Provo.

Provo police officers and Utah County sheriff deputies arrived at 1815 West 600 South at about 9:30 a.m. and found Mr. Evan's unoccupied truck parked behind a residence. The officers, on foot, started to search the property for Mr. Evans.

Mr. Evans, in fact, was inside of the apartment type residence at the back of the property at 1815 West 600 South, the same location where he had partied with friends the night before. He was in the apartment with his friend, Mr. Sammy Andrews. At some point Mr. Andrews stepped outside of the apartment and observed a police vehicle in the driveway. He went back into the apartment and told Mr. Evans that the police were outside.

Sometime after 9:00 a.m. and presumably after 9:30 a.m., Mr. Evans called his spouse and told her there were police officers outside of his location, to give the kids kisses, and that he

was "going to end it." He told Mr. Andrews that he had "done something stupid" and admitted he had pulled out a rifle earlier and pointed it at the police. After this phone conversation Mr. Evans handed Mr. Andrews the keys to his truck and walked outside of the apartment toward his truck. Mr. Andrews observed that Mr. Evans was wearing a military or tactical type vest. At this point the police officers were still not aware of Mr. Evan's precise location.

As Mr. Evans left the apartment, he raised his arms and pointed toward the police officers in a shooting manner, as if he held a handgun. The officers quickly took cover and yelled a number of commands at him, including "stop," "police," and "don't move." Mr. Evans nonetheless ran to this truck, opened the driver's side door, and took out what appeared to be an AR-15 type rifle. The officers continued to yell commands, including "put the gun down" and "drop the gun." Mr. Evans ignored all of those commands. At this point, Officer Lazenby and Deputy Bagley had taken cover behind a vehicle approximately 100 feet from Mr. Evans.

Mr. Evans then turned toward the police officers, raised the rifle, and pointed it toward them. Officer Lazenby shot one round with his shotgun and Deputy Bagley shot one round with his AR-15. Mr. Evans fell to the ground but then appeared to reach for his fallen rifle. Officer Lazenby then shot an additional round from his shotgun.

Mr. Evans was struck in the right side of his neck with one shotgun round, in the right lower abdomen with a .223 round, and in the left forearm with a pellet from a shotgun round. Utah County Sheriff Deputy Wabel immediately approached Mr. Evans and determined that his wounds were obviously fatal, but nonetheless called for emergency medical services to respond. Mr. Evans was deceased before medical services arrived.

The officers later determined that Mr. Evans' rifle was, in fact, an airsoft rifle. However, the orange tip had been previously removed and in all visible respects the rifle appeared to be an authentic AR-15.

LAW

The pertinent sections of law are Utah Code Sections 76-2-402 and -404. Section 76-2-404 states:

(1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when: . . . (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.

Section 76-2-404(2) also states that, "[i]f feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (1)(b) or (1)(c)." Similarly, Utah Code Section 76-2-402(1) states:

A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that force is necessary to defend himself or a third person against such other's imminent use of unlawful force. However, that person is justified in using force intended or likely to cause death or serious bodily injury only if he or she reasonably believes that force is necessary to prevent death or serious bodily injury to himself or a third person as a result of the other's imminent use of unlawful force, or to prevent the commission of a forcible felony.

And 76-2-402(5) states:

In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors: (a) the nature of the danger; (b) the immediacy of the danger; (c) the probability that the unlawful force would result in death or serious bodily injury; (d) the other's prior violent acts or violent propensities; and (e) any patterns of abuse or violence in the parties' relationship.

ANALYSIS

The officers were justified in using deadly force against Mr. Evans if they reasonably believed "that the use of deadly force [was] necessary to prevent death or serious bodily injury to the officer or another person," or they reasonably believed that "force [was] necessary to defend [themselves] or a third person against such other's imminent use of unlawful force."

As noted above, Provo police officers and Utah County sheriff deputies were at the residence of 1815 West 600 South to detain Mr. Evans for his previous conduct, but at the time of the shooting they had not yet taken any action to detain him. Mr. Evans left the apartment type residence, made threatening physical motions, ran to his truck and pulled out what appeared to be an assault rifle. The police officers yelled multiple commands which, in context, were warnings intended to provide notice to Mr. Evans of the officer's possible use of deadly force under Section 76-2-404(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)").

Notwithstanding these commands, Mr. Evans positioned his body in a manner appearing as preparation to aim his rifle at the officers. He then, in fact, aimed or pointed the rifle at them. Officer Lazenby and Deputy Bagley immediately shot Mr. Evans because they believed their use of deadly force was necessary to prevent death or serious bodily injury to themselves and to other officers. They also believed that the danger posed by Mr. Evans aiming what appeared to be an AR-15 at them and other officers posed an immediate danger that was highly probable to cause death or serious bodily injury. See Section 76-2-402(5).

Because Mr. Evans had previously assaulted his spouse, had previously threatened to commit "suicide by cop," had previously and deliberately swerved his vehicle at an officer, had previously brandished a rifle at officers, was wearing a military type tactical vest, and had retrieved and pointed a rifle at police officers after ignoring multiple commands from the officers, I find that Officer Lazenby's and Deputy Bagley's belief that Mr. Evans intended to use imminent and unlawful deadly force against them and other officers was reasonable and justified. I further find that Officer Lazenby's and Deputy Bagley's use of deadly force was reasonable and necessary "to prevent death or serious bodily injury to the officer or another person," and was "necessary to prevent death or serious bodily injury to himself or a third person as a result of the other's imminent use of unlawful force." See Sections 76-2-402(1) and -404(1).

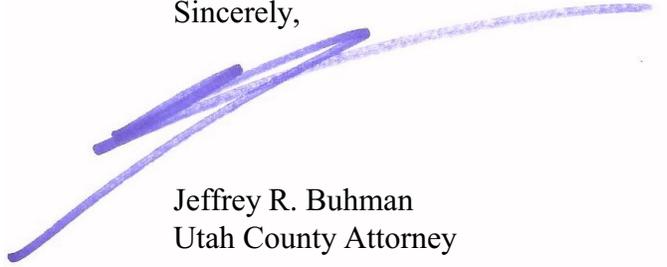
CONCLUSION

For reasons stated above, I conclude that Provo Police Department Officer Lazenby and Utah County Sheriff Deputy Bagley were legally justified under Utah Code Sections 76-2-402 and -404 in their use of deadly force against Mr. Cody Jeremy Evans. Pursuant to Utah Code Section 17-18-1 and the Utah County Law Enforcement Officer Involved Incident Protocol, I

determine that this office will not institute a criminal prosecution against Officer Lazenby or Deputy Bagley.

Please call me if you have any concerns or questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey R. Buhman", is written over a light blue horizontal line. The signature is slanted upwards from left to right.

Jeffrey R. Buhman
Utah County Attorney

cc: Officer Lazenby
Deputy Bagley

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