

Utah County Attorney

Criminal Division



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June 11, 2009

Sheriff James O. Tracy
Utah County Sheriff
3075 North Main Street
Spanish Fork, UT 84660

Chief Tom Runyon
Payson City Police Department
405 West Utah Avenue
Payson, UT 84651

Chief Dennis Howard
Santaquin-Genola City Police Department
45 West 100 South
P.O. Box 486
Santaquin, UT 84655

Re: April 19, 2009 Santaquin City Officer Involved Shooting

Dear Sheriff Tracy, Chief Runyon and Chief Howard:

As you know, pursuant to Utah Code Section 26-4-6, I am charged and authorized to investigate Utah County deaths that occur, among other reasons, as a result of violence or gunshot, or while the decedent was in police custody (Section 26-4-7). Further, I am to "determine if the decedent died by unlawful means and . . . if criminal prosecution shall be instituted" (Section 26-4-21).

The Utah County Law Enforcement Officer Involved Incident Protocol Task Force has concluded its investigation into the April 19, 2009 officer involved shooting in Santaquin. After reviewing the results of that investigation and the pertinent statutes, I conclude that Utah County Sheriff Deputy Zachary Adams and Payson City Police Detective Douglas Howell were legally justified in their use of deadly force against the decedent, Mr. Michael Batchelor, and I determine that no criminal prosecution will be instituted against Deputy Adams or Detective Howell.

The following is a brief factual summary of what I believe occurred and a short analysis of how I arrived at my legal conclusions:

FACTS

On April 19, 2009, at around 8:50 p.m., Ms. Dena Ekins called 911 to request police assistance. Ms. Ekins was so frantic that the dispatcher could understand very little of what she said; however, it was apparent that Ms. Ekins said “he shot himself.” On that same call a neighbor took the phone and reported that Mr. Michael Batchelor, 33 years of age, was in his house at 237 East 200 North in Santaquin “locked up,” and that Mr. Batchelor may have intentionally shot himself. Neither Ms. Ekins or the neighbor was aware whether Mr. Batchelor was conscious. The dispatcher immediately sent police officers to Mr. Batchelor’s house. Santaquin Police Officer Jake Stika was the first to arrive and Santaquin Police Sergeant Kris Johnson arrived shortly thereafter. Upon arriving at the house, the officers found Ms. Ekins outside of the house, crying hysterically. The officers were informed by bystanders that “he locked all the doors and shot himself.” Ms. Ekins reported that the house was her brother Michael Batchelor’s residence and that she had heard him fire what she believed was a round

from a shotgun. Ms. Ekins believed that Mr. Batchelor had intentionally shot himself--and she had therefore called 911.

Sergeant Johnson, Officer Stika and a Santaquin emergency medical services worker entered into Mr. Batchelor's house through the front door. They quickly found that Mr. Batchelor was alive and located in the back of the house in a laundry room. They informed Mr. Batchelor that they were police officers and they tried to find out if Mr. Batchelor was hurt and needed medical attention. From his location in the laundry room, Mr. Batchelor told the officers (multiple times) to "get the [deleted] out of my house." The officers remained in the house and tried without success to calm and reassure Mr. Batchelor. During their conversations with Mr. Batchelor he made several comments indicating he was suicidal: He told Officer Stika that either he (Batchelor) was going to "do it," or he would have Stika "do it," and "the only way he was leaving was in a body bag." Because Mr. Batchelor had already discharged a shotgun in the house, appeared suicidal and out of control, and because there were many people outside of the house who could be harmed by Mr. Batchelor, Sergeant Johnson requested that SWAT respond.

A team from Utah County Metro SWAT began assembling near the house beginning at approximately 9:15 p.m. After the team had deployed around the house, it had Sergeant Johnson and Officer Stika leave the house. Several SWAT entry team members, designated as the "Alpha" team, positioned themselves at the front of the house on both sides of the front porch. SWAT also positioned an armored van directly in front of the house. This van was equipped with a spotlight that SWAT used to light up the interior of the house. Through the front door SWAT officers observed that Mr. Batchelor was holding a shotgun. At some point they also saw him angrily drive the butt of the gun several times into the ceiling.

SWAT officers began communicating with Mr. Batchelor, trying to calm him down and trying to convince him to put down the gun and leave the house. The officers tried unsuccessfully to persuade Mr. Batchelor to accept a cell phone. The officers also used a bull horn to try to communicate with Mr. Bachelor because, for most of the incident, Mr. Batchelor remained in the rear of the house in the laundry room, mostly out of the officers' view. For the most part of the almost hour and a half of police attempts to communicate with Mr. Batchelor, he was unresponsive and refused to comply with any of the officers' requests or orders.¹

Fairly early on in this incident two SWAT snipers, Payson City Police Detective Douglas Howell and Utah County Sheriff Deputy Zachary Adams, deployed to the south side of the house. The two snipers set up in a prone position facing north, which enabled them to see into the house through the front door opening. Through the high powered scopes on their sniper rifles Detective Howell and Deputy Adams were able to see through the front door opening (the door remained open throughout this incident) into a small portion of the laundry room where Mr. Batchelor was located. As they observed Mr. Batchelor through their scopes, the snipers were also able to see within their scope site picture the helmets of the Alpha team members as they worked to communicate with Mr. Batchelor through the front door opening.²

At approximately 10:40 p.m., after SWAT had tried unsuccessfully for about an hour and a half to calm and communicate with Mr. Batchelor, Detective Howell, Deputy Adams and the Alpha team members observed Mr. Batchelor step from the laundry room into the hallway,

¹ Not until the autopsy did the police officers find out that Mr. Batchelor was intoxicated; he had a blood alcohol level between .21 and .24.

² Indicating that the Alpha team members were positioned directly at or near the front door opening and also indicating that the snipers were within Mr. Batchelor's potential line of fire.

moving toward the front door opening. They observed Mr. Bachelor shoulder his shotgun, lower his cheek to the shotgun, close one eye and take aim at Alpha team members (who were still positioned near the front door opening, within about 17 feet of Mr. Bachelor) or at the snipers (who were also in Mr. Bachelor's line of fire, about 170 feet away). Alpha team members yelled at him "gun, drop the gun," but he did not respond. At that moment, both Detective Howell and Deputy Adams fired one round each at Mr. Bachelor. One round hit Mr. Bachelor in the head and the other round hit his shotgun and threw fragments into his head. Mr. Bachelor died at the scene from these injuries.

LAW

The pertinent sections of the Utah Code are 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 police officers were justified in using deadly force against Mr. Batchelor 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.” In this instance the facts are fairly straightforward: Santaquin police officers and SWAT team members went to Mr. Batchelor’s house because he had reportedly discharged his gun in his house, was probably in need of medical assistance and was likely suicidal. The officers remained at Mr. Batchelor’s house because, except for determining that he did not need medical assistance, the police confirmed that Mr. Batchelor was a significant danger to himself and to others in the area (neighbors, bystanders, family members, etc.)--and the police officers were unable to lower that danger level after many attempts to communicate with Mr. Batchelor.

In the midst of the officers’ efforts to calm and stabilize the situation, Mr. Batchelor, with no lawful justification and contrary to the lawful, verbal orders of the officers, Mr. Batchelor stepped from the laundry room into the hallway, moved toward the front door opening, shouldered his shotgun, lowered his cheek to the shotgun, closed one eye and took aim at the Alpha team members who were positioned near the front door. He disregarded the Alpha team members commands to “gun, drop the gun” and, by all appearances, was about to shoot a shotgun (which was later found to be loaded) at the Alpha team members who were within 17

feet of Mr. Batchelor and, possibly, at the snipers who were also within Mr. Batchelor's line of fire and approximately 170 feet away.

Accordingly, Detective Howell and Deputy Adams reasonably believed that deadly force was necessary to defend themselves and the Alpha team members from Mr. Batchelor's imminent use of unlawful deadly force. Detective Howell and Deputy Adams also reasonably believed that the danger to the Alpha team and themselves was immediate and would almost certainly result in death or serious bodily injury to themselves or Alpha team members.

CONCLUSION

For the reasons I stated above, I conclude that Payson City Detective Douglas Howell and Utah County Sheriff Deputy Zachary Adams were legally justified under Utah Code Sections 76-2-402 and -404 in their use of deadly force against the decedent, Mr. Michael Batchelor. I find, pursuant to Section 26-2-21, that Mr. Batchelor died through lawful means and I determine that no criminal prosecution should be instituted against Detective Howell or Deputy Adams.

Sincerely,

Jeffrey R. Buhman
Utah County Attorney

cc: Deputy Zachary Adams
Detective Douglas Howell
Lieutenant Shawn Chipman