

Utah County Attorney

Criminal Division



Jeffrey R. Buhman, County Attorney
Timothy L. Taylor, Chief Deputy

100 East Center Street, Suite 2100
Provo, UT 84606
Telephone (801) 851-8026
Facsimile (801) 851-8051

Sherry Ragan
Mariane O'Bryant
David S. Sturgill
Chris Yannelli
Curtis L. Larson
Guy Probert

Donna M. Kelly
Randy M. Kennard
Alexander M. Ludlow
Douglas W. Finch
Chad E. Grunander
Julia Thomas
Ryan V. Peters

Craig Johnson
Jared Perkins
John J. Nielsen
Rhonda Gividen
Nicole M. Myers
Samuel S. Peard
Ryan McBride

February 12, 2013

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

Re: November 19, 2012 Officer Involved Shooting at 454 South 900 East, Provo

Dear Sheriff Tracy:

As you know, pursuant to Utah Code Section 17-18-1, I am charged and authorized to “conduct on behalf of the state all prosecutions for public offenses committed within the county.” Additionally, pursuant to the Utah County Law Enforcement Officer Involved Incident Protocol, when an officer is involved in “any intentional or accidental shooting, whether or not a fatality results,” I am to, “[u]pon the completion of the criminal investigation, analyze the facts of the incident as well as the relevant law to determine if criminal laws have been broken . . . [and,] prosecute as appropriate.” Protocol Sections I(A)(1), III(A)(11).

The Utah County Law Enforcement Officer Involved Incident Protocol Task Force has concluded its investigation into the November 19, 2012 officer involved shooting at 454 South 900 East, Provo. After reviewing the results of that investigation and the pertinent statutes, I conclude that Utah County Sheriff Deputies Jeff Robinson and Tyler Collett were legally justified in their use of deadly force against the tenant of that duplex, Mr. Alex Opmanis, and I determine that this office will not bring criminal charges against Deputy Robinson or Deputy Collett.

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

Utah County Sheriff Deputy Sean Bell received information from a confidential informant that on November 17, 2012 the informant had seen approximately two pounds of marijuana, an assault rifle and two other handguns in Alex Opmanis' duplex at 454 South 900 East, Provo. The informant also told Deputy Bell that Mr. Opmanis was selling marijuana and that Mr. Opmanis possessed the weapons in order to protect his marijuana.

On November 17, 2012, Deputy Bell applied for and obtained a nighttime, no-knock

search warrant for Mr. Opmanis' residence. On November 19, 2012, at approximately 6:25 p.m., Utah County sheriff deputies served that search warrant.

The entry team included Deputy Jeff Robinson, Deputy Sean Bell, Sgt. Wayne Keith, Deputy Jason Phillippi, Deputy Tyler Collet, Deputy Phillip Crawford, and Deputy Collin Gordon. In the rear of the duplex was a perimeter security team comprised of Sgt. Shaun Bufton, Detective John Luke, and Detective Justin Gordon. When the entry team arrived at the duplex's front door, Deputy Bell opened the storm door, tried the doorknob, and discovered that the door was locked. Deputy Bell, Deputy Keith and other deputies began yelling "Police! Search Warrant!" Deputy Robinson stood on the left side of the door and struck it with a ram. The door flexed and the ram punched a large hole in the door, but the door did not open (the deputies were unaware that the door had a secondary lock high on the door and that the door was not an exterior door, but an interior hollow core door). Deputy Robinson rammed the door three times, but it still did not open.

Deputy Keith then attempted to open the door by kicking it. As Deputy Keith was in front of the door, deputies heard gunfire and firearm rounds came through the door. Mr. Opmanis, from inside the duplex and with a .22 caliber revolver, had fired four rounds at the front door entry team, including two rounds of "snake shot," one solid metal round, and then another round of snake shot. Pellets from the snake shot rounds struck Deputies Keith, Phillippi, and Bell. The solid metal .22 round struck Deputy Collet's shoulder microphone which was positioned on the front of his left shoulder near his collar bone.

Deputy Collet fired four rounds from his MP5 9mm rifle through the front door in the direction the shots were coming from. Deputy Robinson, who had retreated to a position of cover beneath a window to the left of the front door, knew that Deputy Collet did not have cover and was still in the line of fire. Deputy Robinson fired two rounds from his .223 rifle through a front window, in the direction of Mr. Opmanis, to provide cover fire for Collet. (Mr. Opmanis was not struck by the return fire from Deputies Collet or Robinson.)

Upon realizing that the front entry team had not been able to breach the front door and that shots had been fired from at least three different weapons, the perimeter security team at the rear of the duplex entered through the back door. Sgt. Bufton, Deputy Gordon and Deputy Luke entered and found Mr. Opmanis unarmed, lying in a prone position on the floor, apologizing for his actions (Mr. Opmanis had tossed the revolver into his bedroom before the Sgt. Bufton's team entered). The deputies took Mr. Opmanis into custody without further incident.

In Mr. Opmanis' bedroom deputies found a silver revolver on the floor behind the bedroom door, near the door jamb. The deputies also found an SKS assault rifle propped up near of the head of the bed.

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.

Additionally, regarding the deputies’ execution of the search warrant and entry into Mr. Opmanis’ residence, Section 77-23-210 states: “When a search warrant has been issued authorizing entry into any building, room, conveyance, compartment, or other enclosure, the officer executing the warrant may use such force as is reasonably necessary to enter: . . . (2) without notice of the officer's authority and purpose, if the magistrate issuing the warrant directs in the warrant that the officer need not give notice.”

ANALYSIS

The deputies were justified in using deadly force against Mr. Opmanis 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.” Additionally, the lawfulness of that use of force is predicated upon the deputies’ lawful entry into Mr. Opmanis’ home.

In this case it is clear the deputies initiated entry to Mr. Opmanis’ residence pursuant to a search warrant that authorized them to enter “without notice of . . . authority and purpose.” Notwithstanding the authority to enter without notice, and prior to ramming Mr. Opmanis’ front door, at least two deputies did in fact provide notice by yelling their identity as police officers and the purpose of their “visit.” They also continued to provide notice after the ram first struck Mr. Opmanis’ front door. This notice, yelling “Police! Search Warrant!,” was also a sufficient verbal warning of the deputies’ 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)”).

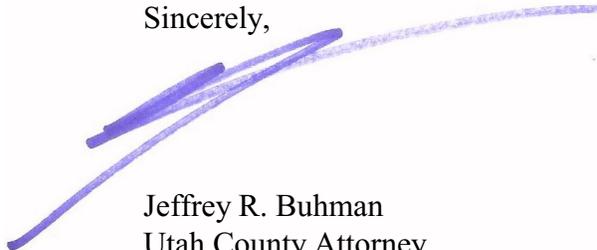
Notwithstanding this notice and verbal warning, Mr. Opmanis fired a revolver four times through his front door at the deputies entering his residence. The deputies at the front door heard

a gun discharge and firearm rounds came through the door. Deputies Robinson and Collett immediately returned fire with the intention of suppressing or degrading Mr. Opmanis' ability to shoot at them. They reasonably believed that their "use of deadly force [was] necessary to prevent death or serious bodily injury to the officer or another person." See Section 76-2-404. They also reasonably believed that the danger posed by Mr. Opmanis shooting through the front door at them posed an immediate danger that was highly probable to cause death or serious bodily injury. See Section 76-2-402(5).

CONCLUSION

For the reasons I stated above, I conclude that Utah County Sheriff Deputies Robinson and Collett were legally justified under Utah Code Sections 76-2-402 and -404 in their use of deadly force against Mr. Opmanis. Pursuant 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 Deputies Jeff Robinson or Tyler Collett.

Sincerely,



Jeffrey R. Buhman
Utah County Attorney

cc: Deputy Jeff Robinson
Deputy Tyler Collet