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Report of Officer Involved Critical Incident

Date of Incident: April 19, 2022
Date the Investigation Was Turned Over to the County Attorney: June 8, 2022
Report Date: October 27, 2022

The Officer-Involved Critical Incident

On April 19, 2022, Isaac Washakie, a convicted felon out on parole, walked into a home in Wellsville, Utah, carrying a loaded Ruger AR-556 rifle and demanded car keys. Earlier in the day while driving in Box Elder County, Washakie had fired shots through the windshield of his own car at another motorist. After demanding car keys of the people in the Wellsville home, Washakie took the keys to a 2011 Toyota Sienna van from a purse in the home and then used the van to lead law enforcement on a high-speed chase to the town of Paradise on the south end of Cache County.

Eventually, Washakie drove down a private road leading to a home east of Paradise. When the road dead-ended at the home's driveway, Washakie lunged out of the van, carrying the Ruger AR-556 rifle, and turned toward Sergeant Timothy Ramirez of the Cache County Sheriff's Office, who was pulling up behind him. Sergeant Ramirez stopped and fired 7 rounds at Washakie, hitting him twice. Washakie survived and is now in the Utah State Penitentiary.

Under Utah law, an "officer-involved critical incident" is defined as, among other things, an incident where a law enforcement officer uses "deadly force."¹ "Deadly force" means a force that creates or is likely to create, or that the individual using the force intends to create, a substantial likelihood of death or serious bodily injury to an individual."² Under this definition, the foregoing incident that began in Wellsville and ended near Paradise qualifies as an officer-involved critical incident.

¹ Utah Code § 76-2-408(1)(f).

² Utah Code § 76-2-408(1)(b).

Procedural Background

“When an officer-involved critical incident occurs . . . , the law enforcement agency having jurisdiction where the incident occurred [must] . . . notify the county or district attorney having jurisdiction where the incident occurred.”³ “[T]he chief executive of the law enforcement agency and the county or district attorney having jurisdiction where the incident occurred [must then] . . . jointly designate an investigating agency for the officer-involved critical incident.”⁴ “The investigating agency . . . may not be the law enforcement agency employing the officer who is alleged to have caused or contributed to the officer-involved critical incident.”⁵

Law enforcement agencies are required to adopt policies and procedures for “select[ing] the investigating agency if an officer-involved critical incident occurs in the agency’s jurisdiction and one of the agency’s officers is alleged to have caused or contributed to the officer-involved incident.”⁶ They must also adopt “protocols . . . to ensure that any investigation of officer-involved incidents occurring in the agency’s jurisdiction are conducted professionally, thoroughly, and impartially.”⁷ To fulfill these statutory obligations and to provide mutual assistance among neighboring agencies, the sheriffs’ offices, police departments, and county attorneys’ offices in Cache, Rich, and Box Elder Counties have, through a memorandum of understanding, created the Northern Utah Critical Incident Investigative Team and adopted a Protocol to be followed in the event of an officer-involved critical incident.⁸

Under the Protocol, the fulltime investigator employed by the Cache County Attorney’s Office becomes the Operations Section Chief for any investigation of an officer-involved critical incident.⁹ Then the Operations Section Chief, the county attorney having jurisdiction where the incident occurred, the chief executive of the law enforcement agency having jurisdiction where the incident occurred, and the chief executive of the law enforcement agency employing the officer who is alleged to have caused or contributed to the officer-involved critical incident together select a Lead Investigator.¹⁰ The Operations Section Chief and Lead Investigator then provide first-line management of the investigation of the officer-involved critical incident.¹¹ When the investigation is complete, the Operations Section Chief and Lead Investigator turn the investigation over to the county attorney with jurisdiction.¹²

The foregoing procedures were followed in this case.

Role of the County Attorney

Once the Operations Section Chief and Lead Investigator turn the investigation over to the county attorney with jurisdiction, the county attorney has 180 days to complete and publish his or her “findings or analyses into the officer’s use of force.”¹³

³ Utah Code § 76-2-408(2)(a).

⁴ Utah Code § 76-2-408(2)(b)(i).

⁵ Utah Code § 76-2-408(3).

⁶ Utah Code § 76-2-408(5)(a).

⁷ Utah Code § 76-2-408(5)(b).

⁸ See Northern Utah Critical Incident Investigating Team Protocol Memorandum of Understanding, attached hereto as Attachment 1.

⁹ See *id.* at Exhibit B pp. 3, 4.

¹⁰ See *id.* at Exhibit B pp. 2, 4.

¹¹ See *id.* at Exhibit B pp. 4.

¹² See Utah Code § 76-2-408(6).

¹³ *Id.*

State code refers to an investigation of an officer-involved critical incident as a “criminal investigation,”¹⁴ and the county attorney’s findings and analyses regarding the officer-involved critical incident should address whether criminal charges against the officer are warranted or whether the officer’s use of deadly force was justified, thus precluding any criminal liability.¹⁵

I am the county attorney with jurisdiction in this case. This report contains my findings and analysis regarding this officer-involved critical incident.

Findings of Fact

At 1:01 p.m. on April 19, 2022, Cache County dispatch broadcast radio traffic notifying officers that an aggravated burglary had just occurred in Wellsville, saying: “Any available unit Cache to head towards Wellsville. We just had an agg burg. Male came out of the house with automatic gun.”

Over the next two minutes, multiple officers, including Sergeant Timothy Ramirez of the Cache County Sheriff’s Office, radioed in that they were en route toward Wellsville. At 1:03 p.m., dispatch told officers that the burglary suspect “came into the house saying he needed keys, grabbed a female’s purse, and left.” Then, in response to an inquiry from Sergeant Ramirez, dispatch confirmed that the suspect was driving a white, 2011 Toyota Sienna van.

At 1:05 p.m., Deputy Skyler Jensen radioed: “I’ve got a white Toyota Sienna driving very recklessly 3200 South 1200 West eastbound.” Then Deputy Jensen radioed that the “van [had] passed cars in oncoming lanes” in a construction area. As the van approached State Road 165, Deputy Jensen reported that the suspect was moving at a “high rate of speed.” At about 1:07 p.m., Deputy Jensen radioed that the suspect had “[run] the red light” as he turned southbound from 3200 South onto State Road 165.

The suspect continued southbound on State Road 165 with multiple law enforcement vehicles pursuing him. Seconds before 1:09 p.m., Deputy Jensen radioed that the suspect was “approaching main street Hyrum.” Sergeant Ramirez, who had traveled eastbound on Main Street in Hyrum to reach State Road 165, radioed that he was now “directly behind the vehicle” and would “take lead.” He then asked for “a minimum of 4 [officers] to stay in the pursuit.”

At 1:09 p.m., Deputy Mike Richardson of the Cache County Sheriff’s Office radioed that he was “number 2” behind Sergeant Ramirez and that they were “passing 1100 South State Road 165” at “speeds [of] 95 miles per hour.” Seconds later at 1:10 p.m., Deputy Richardson radioed that they were then passing 7400 South “headed into Paradise; speeds 95 to 100” miles per hour.

As Sergeant Ramirez and Deputy Richardson followed the suspect into Paradise, Deputy Richardson radioed that at 8600 South the suspect’s speed was “upper 60’s” and that at 8800 South the suspect was “passing into oncoming traffic.”

At 1:12 p.m., Deputy Kyran Merkley, who by this time had been to the burglary scene in Wellsville, radioed: “This individual is unknown to the family. Dark – dark skinned Hispanic. Just walked into the home with the gun. One thinks it’s fake; one thinks it’s real.” Sergeant Ramirez responded: “10-4. Confirming aggravated home invasion robbery. One male suspect. Hispanic.”

¹⁴ Utah Code § 76-2-408(6).

¹⁵ See Utah Code § 76-2-404.

Sergeant Ramirez then radioed a request that his supervisor, Lieutenant Bartschi, be notified of the unfolding events. Lieutenant Bartschi immediately responded that he was already on the radio and listening. Deputy Richardson then radioed that they were on “9100 South, just passed 300 East” – a residential area – and travelling “70 miles per hour.”

Sergeant Ramirez asked Lieutenant Bartschi: “Do you approve ramming if we need to?” Lieutenant Bartschi replied: “I’ll leave that determination to you guys on scene. This is an aggravated home robbery. Suspect’s armed with an automatic weapon from what we understand.”

By 1:13 p.m., the suspect was quickly approaching a two-pronged fork in the road, which led, alternatively, down either of two dirt roads. The dirt roads each respectively provided access to a single home. Sergeant Ramirez knew the area and radioed Deputy Richardson: “[H]e’s going to get himself pinned in back here. He’s not going to be able to get out. Get out this address really good.” Deputy Richardson then radioed: “We’re at 9300 South 300 East on dirt road. We’re about ready to head eastbound. Speeds 30.” Sergeant Ramirez then radioed: “Don’t let [the suspect] get in one of these homes.”

The suspect then led Sergeant Ramirez and Deputy Richardson nearly a half mile down the fork in the road known as 9400 South. At the road’s end was a paved, oval turnaround. Each side of the oval was roughly 200 feet long. The right side of the oval went down in front of a home. The left side stayed on higher ground and led toward a shed.

The reason Sergeant Ramirez was familiar with the home and turnaround was because he had photographed the home in connection with a medical incident some time before. Because he knew the suspect’s vehicle would be trapped at the end of the road, Sergeant Ramirez began thinking about the suspect’s “most plausible escape [route]” and concluded that it “would be to the front door of the home.” Sergeant Ramirez reached this conclusion because he “knew that the front door of that home was [a] big, huge, open doorway.” Thus, Sergeant Ramirez’s “main concern” as he followed the suspect down 9400 South was “for the people living in that home.”

As he travelled down 9400 South, Sergeant Ramirez “could barely see [the suspect’s] vehicle because it was kicking up so much dirt, and [he] thought about backing off.” Ultimately he did not, however, because he “was concerned that if [he] wasn’t close enough . . . , [the suspect] would be able to get into the house.”

Sergeant Ramirez then began “mapping out in [his] head the layout . . . of the house, and the layout of the porch, and how [they] could best block [the suspect] from getting into the home.” As they came to the end of the road, the suspect’s vehicle “started to slow, and [Sergeant Ramirez] started to let him get a little bit of distance because [he] was trying to judge and get just the right amount of distance where [he] could keep [the suspect] from harming others but yet be enough [distance] that [he would have] a tactical advantage.”

The suspect pulled down the left-hand, upper side of the oval turnaround, followed by Sergeant Ramirez. Deputy Richardson pulled down the right-hand side of the oval, in front of the home and between the suspect’s van and the home. Before the suspect’s van came to a complete stop, the driver’s door “came flinging open,” and the suspect “lunged from the vehicle,” carrying a loaded Ruger AR-556 rifle. The suspect immediately turned toward Ramirez, who was still coming to a stop. The suspect then ran toward Sergeant Ramirez, around the rear end of his own vehicle and toward the home and Deputy Richardson. Finally, the suspect ran toward the front of the van, where he might have found cover.

When the suspect lunged from the van, Sergeant Ramirez could see that the gun he was carrying “had a legitimate scope” and a “magazine loaded in it.” In under 6 seconds, Sergeant Ramirez grabbed his own rifle, “jammed” his vehicle into park, removed his seatbelt, opened the door, “came out over the A-pillar,” and fired five rounds at the suspect. Seeing that the suspect was still running, Sergeant Ramirez “paus[ed] for just a split second” and then fired twice more.

Sergeant Ramirez immediately radioed: “Shots fired.” He then assisted in disarming and providing medical care to the suspect, who had fallen to the ground and was later identified as Isaac Washakie. Washakie received one bullet wound to his hip and another bullet wound to the surface of his chest and armpit area. He survived those wounds and, as previously noted, is presently incarcerated.

Analysis

Relevant Law

Utah law provides: “The defense of justification applies to the use of deadly force by an officer . . . when . . . the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or an individual other than the suspect. . . . If feasible, a verbal warning should be given by the officer prior to any use of deadly force.” Utah Code § 76-2-404(2)(c) & (3).

The foregoing Utah statutory defense of justification is a codification of the United States Supreme Court’s holding in *Tennessee v. Garner*, 471 U.S. 1 (1985), regarding the limits that the Fourth Amendment places on a police officer’s use of deadly force. *See id.* at 11-12 (“Where the officer has probable cause to believe that the suspect poses a threat of serious physical harm, either to the officer or to others, it is not constitutionally unreasonable to prevent escape by using deadly force. Thus, if the suspect threatens the officer with a weapon . . . , deadly force may be used if necessary to prevent escape, and if, where feasible, some warning has been given.”).

Because Utah’s statutory defense of justification is a codification of the United States Supreme Court’s constitutional test for permissible police use of deadly force under the Fourth Amendment, the United States Supreme Court’s elaboration on that constitutional test in *Graham v. Connor*, 490 U.S. 386 (1989), is helpful in interpreting the Utah statutory defense. In *Graham*, the Court explained that “[t]he reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396. It also explained that “the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation,” *id.* at 397, and that “[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation,” *id.* at 396-97.

Also instructive is the case of *Singer v. Wadman*, 745 F.2d 606 (10th Cir. 1984), in which the United States Tenth Circuit Court of Appeals relied on the 1978 version of Utah Code section 76-2-404 to conclude that a Utah police officer had acted lawfully when he shot and killed a man named Singer. Singer was shot while law enforcement officers were attempting to arrest him. *Id.* at 607. “[T]here were two outstanding warrants calling for Singer’s arrest.” *Id.* “The scene of the shooting was in front of Singer’s home.” *Id.* There was evidence that Singer “on prior occasions had stated that he would resist arrest and that any attempt to arrest would involve ‘blood shed.’” *Id.* at 609. “As Singer walked towards his mailbox, a team of ten officers on snowmobiles attempted to surround him.” *Id.* at 607. “The plan was that when confronted with a show of force Singer would surrender.” *Id.* “[H]e did not, but instead drew a

pistol from his waistband and pointed it at the authorities as he tried to run towards his house.” *Id.* A law enforcement officer then shot and killed Singer.” *Id.* Applying the statutory defense of justification for the use of deadly force by a police officer as found in the 1978 version of Utah Code section 76-2-404, the Tenth Circuit held that “[i]n such circumstances, the deputies did not have to wait for Singer to fire first; they had a right to shoot to kill.” *Id.* at 609.

Application of Relevant Law to this Case

In this case, the question is whether Sergeant Ramirez’s use of deadly force against Washakie was based on a reasonable belief that the use of deadly force was necessary to prevent death or serious bodily injury to Sergeant Ramirez, Deputy Richardson, or other individuals and, thus, was justified under Utah Code section 76-2-404(2)(c) & (3).

At the time Sergeant Ramirez used deadly force against Washakie, he had reason to believe that Washakie had committed an aggravated home invasion robbery while armed with a loaded Ruger AR-556 rifle. He had also been told, or witnessed himself, that after the armed home invasion Washakie had demonstrated a disregard for life and an intention not to be apprehended by running a red light, traveling at speeds of 95 to 100 miles per hour on a two-lane road with traffic, passing into oncoming traffic at speeds of over 60 miles per hour, and continuing through a rural residential area at 70 miles per hour. In light of those facts, Sergeant Ramirez had been given explicit permission by his supervising officer, Lieutenant Bartschi, to ram the van Washakie was driving – a maneuver that itself constitutes potentially deadly force – if Sergeant Ramirez deemed necessary,

When Washakie finally pinned himself in at the end of 9400 South, Sergeant Ramirez witnessed Washakie lunge from the van, armed with the loaded Ruger AR-556 rifle. Sergeant Ramirez then saw the armed Washakie turn to face him. In *Tennessee v. Garner*, the United State Supreme Court said, in elaborating on the holding underlying Utah’s statutory justification defense, that “if [a] suspect threatens an officer with a weapon . . . , deadly force may be used if necessary to prevent escape, . . . if, where feasible, some warning has been given.” 471 U.S. at 12. Here, by lunging from the van with a loaded Ruger AR-556 rifle and immediately turning toward Sergeant Ramirez, Washakie directly threatened Sergeant Ramirez with a weapon.


Washakie then turned past Ramirez and ran toward Deputy Richardson and the potentially occupied home at the end of 9400 South. Thereafter, he ran toward an area of potential cover. Clearly at no time did he have the intention of being peacefully apprehended. Thus, as the tense, uncertain, and rapidly evolving situation that continued to unfold, Sergeant Ramirez continued to face a split-second decision of whether to use and/or continue to use deadly force.

Moreover, given the speed at which events were unfolding and Washakie’s plain intention, demonstrated over a lengthy and high-speed chase, to not be apprehended, a verbal warning to Washakie was not only unfeasible but would almost certainly have had no effect.

In *Singer*, the suspect had stated in words “that he would resist arrest and that any attempt to arrest [him] would involve ‘blood shed.’” 745 F.2d at 609. Here, Washakie stated by his actions – an armed home invasion robbery; a prolonged high-speed chase; and an armed flight on foot, first toward Sergeant Ramirez, then toward Deputy Richardson and the home, and finally toward an area of potential cover – that he too would resist arrest and that any attempt to arrest him would likely involve bloodshed. Accordingly, just as the Tenth Circuit concluded regarding the officer in *Singer*, I conclude regarding Sergeant Ramirez: In such circumstances and under Utah law, Sergeant Ramirez did not have to wait for Washakie to fire first.

It is not clear whether Sergeant Ramirez discharged his weapon while Washakie was facing and running toward Sergeant Ramirez, while Washakie was running toward Deputy Richardson and the home, and/or while Washakie was running toward an area of potential cover. But during any or a combination of those actions by Washakie, which together took place in a matter of seconds, Sergeant Ramirez's belief that deadly force was necessary to prevent death or serious bodily injury to himself, Deputy Richardson, and/or individuals who may have been in the home was reasonable, especially in light of the circumstances leading up to Washakie's flight from the van. Accordingly, Sergeant Ramirez's use of deadly force was justified under Utah Code section 76-2-404(2)(c) & (3).

DATED this 27th day of October 2022.


John D. Luthy
Cache County Attorney