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DISTRICT ATTORNEY
SALT LAKE COUNTY
SIM GILL

Sheriff James M. Winder
Unified Police Dept.
3365 South 900 W
Salt Lake City, UT 84119

Via hand delivery

April 9, 2013

RE: *Investigation of Officer Daniel Knigge's Use of Deadly Force*
Our Case No.: 13-743
Your Case No.: CO13-40049
Incident Date: March 17, 2013
Incident Location: 7950 South Allen St., Midvale, UT

Dear Sheriff Winder:

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 above referenced OICI was "justified." As outlined more fully below, D.A.'s Office has determined that Officer Knigge's use of force was justified under Utah State law.

On March 17, 2013, Unified Police Department ("UPD") Officer Daniel Knigge was on patrol in Midvale Precinct as part of his official duties. Officer Knigge stopped a vehicle for expired registration and no insurance. During the traffic stop the passenger, Sergio Garcia, Jr. got out of the car with a sawed-off shotgun and pointed it at Officer Knigge. Officer Knigge drew his weapon and fired five shots at Garcia and the vehicle. Garcia fled on foot and was apprehended a short time later.

The opinions and conclusions contained in this letter are based upon facts obtained from the joint investigation as presented to the D.A.'s Office on Thursday, April 4, 2013. Should additional or different circumstances or facts subsequently become known, the opinions and conclusions contained herein are subject to change based upon that additional information.

UTAH STATE LAW

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.

FACTS

In the early morning hours of March 17, 2013, Officer Daniel Knigge was on routine patrol in Midvale Precinct. He was in a marked police vehicle and in uniform. Officer Knigge was carrying his department issued Smith & Wesson 9mm firearm and taser among other weapons.

While in the area of Lennox and Allen Streets in Midvale, Officer Knigge notified dispatch he was stopping a vehicle. The vehicle was a 1995 Jeep Grand Cherokee and Officer Knigge observed the registration was expired. Rene Guerrero was driving the Jeep; Sergio Garcia was a passenger in the front seat.

Rather than responding to Officer Knigge's overhead emergency lights by stopping, Guerrero continued driving several blocks at normal speed. Eventually, Guerrero turned into an apartment complex at about 7950 South Allen St. and stopped. Officer Knigge approached the Jeep to speak with the driver. While talking to Guerrero, Officer Knigge called dispatch on his radio and requested a backup officer assist him with the traffic stop.

Before a backup officer arrived, Garcia got out of the Jeep's passenger side door. Knigge saw Garcia leave and drew his taser. Garcia moved around the Jeep's door and raised and pointed a shotgun at Knigge. Knigge dropped his taser, drew his firearm and fired two rounds at Garcia. Garcia ducked behind a nearby parked car, but reappeared and pointed his shotgun again at Knigge.

Garcia got back into the Jeep and Guerrero started to turn the vehicle around to flee. The Jeep stopped momentarily as Guerrero left the driver position and ducked into the rear seat while Garcia assumed the driver position. The Jeep began to move again, now under the control of Garcia. Garcia backed into a parked car and then moved forward hitting a retaining wall while attempting to turn the Jeep around. Knigge fired three more shots during Garcia's flee attempt, apparently causing Garcia to abandon the vehicle and flee on foot. Garcia ran into the neighborhood where he was tracked, located and arrested by canine officers. Garcia was subsequently interviewed about the shooting.

Garcia was searched subsequent to arrest. Among other items in his possession, Garcia had a twelve gauge shotgun shell, similar to those found at the shooting scene and in the Jeep.

INTERVIEWS, STATEMENTS

Officer Gleue

On March 17, 2013, UPD Officer Kyle Gleue was interviewed about the OICI. Officer Gleue said he was on patrol in Midvale Precinct in the area of 7500 South and 700 East when he heard Officer Knigge call in a traffic stop over the radio. Officer Gleue said he realized the vehicle was not stopping as quickly as it should have. Officer Gleue heard Officer Knigge call over the radio for additional units to assist him and then heard Officer Knigge requesting them to expedite their arrival.

Officer Gleue said after a very short period he heard Knigge calling "shots fired, shots fired" on the radio. After another short period, Officer Knigge repeated the radio call "shots fired, shots fired." Officer Gleue then heard Officer Knigge saying he had one person held at gunpoint.

Officer Gleue was en route to assist Officer Knigge. When he arrived, he assisted Officer Knigge and took Guerrero into custody. While he was securing Guerrero, Officer Gleue said Guerrero made spontaneous statements such as: "he kept telling me to drive...I didn't know he was going to do this...."

Rene Guerrero

On March 17, 2013, Guerrero was interviewed about the OICI. Guerrero said that when he first saw the officer, he recognized the officer as the one who had previously stopped Garcia¹. Guerrero stated the officer followed him and Guerrero knew the plates were expired. Guerrero said he could see Garcia acting nervously. Guerrero said when he stopped, the officer approached and told them to put their hands on the dashboard several times and asked for their names. Guerrero said Garcia did not comply.

Guerrero stated the officer recognized them and Garcia was complaining about being stopped. Guerrero stated that Garcia then got "a look on his face" and exited the car. Guerrero stated the officer was standing next to the car when Garcia got out. Guerrero stated he saw Garcia point the shotgun near where the officer was standing but he did not hear Garcia shoot. Guerrero then saw the officer run and pull out his gun. Guerrero said he ducked and thought Garcia had shot at the officer. Guerrero said Garcia got back into the car and Guerrero tried to drive away; Guerrero said he stopped and got into the back seat and ducked. Guerrero stated Garcia then tried to drive but hit something. Guerrero said Garcia got out of the Jeep and ran.

Sergio Garcia, Jr.

On March 17, 2013, Garcia was interviewed about the OICI. Garcia acknowledged he knew the vehicle behind them was a police car and the person in it was a police officer; Garcia stated there was "no doubt" in his mind. Garcia said the officer told them to put his hands on the dash. Garcia said he recognized the officer; Garcia said that Officer Knigge had pulled him over recently and as a result, Garcia had his car impounded and lost his "dad's rent money." Because of this, Garcia said he was upset at Knigge. Garcia stated he began to argue with the officer and when he saw the officer get on his radio, Garcia stated he couldn't "take it" anymore and got out of the car with the shotgun. Garcia also acknowledged being in control of the Jeep before fleeing on foot.

Garcia acknowledged he got out of the vehicle with the shotgun but claimed he "threw it right away, but [the officer] just seen (*sic*) it and ran and turned around and started shooting." Garcia claimed the gun was wrapped around his shoe and he was trying to get it off his shoe to get rid of the weapon. Garcia claimed he did not point the shotgun at Knigge.

¹ Officer Knigge had assisted another officer who had stopped Garcia and Guerrero in Garcia's vehicle about a week prior to the OICI for traffic violations; this stop resulted in Garcia's arrest.

SCENE PHOTOGRAPHS AND VIDEO

As mentioned above, the incident occurred in the apartment building parking lot. During the OICI and afterwards, Officer Knigge's in-car video camera recorded the action. The video depicts Officer Knigge next to the Jeep interacting with the driver when the passenger exits the vehicle. The recording clearly shows Garcia raise and point the shotgun at Knigge, and shows Knigge firing at Garcia. The video documents that Garcia ducked behind another parked car when Knigge fired, and shows Garcia return from behind cover to again aim the shotgun at Knigge. The video shows Garcia trying to flee in the Jeep. During the attempt to turn the Jeep around, the front end of the Jeep briefly leaves the camera's field of view, and then the front of the Jeep reappears in the camera field of view as it is traveling in reverse without a driver. The Jeep hit another parked car which stopped it's travel.

Photographs from the OICI scene corroborate the factual account set forth above.

DISCUSSION

1. Defense of Self or Others

As set forth in Utah Code Annotated 76-2-404(c), a police officer "is justified in using deadly force when ... 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." *Id.*

In this matter, Officer Knigge was confronted with a person aiming a shotgun at him at close range. Garcia's unlawful presentation of deadly force against Officer Knigge justified Officer Knigge's use of deadly force by firing at Garcia.

2. Necessary to Effect an Arrest

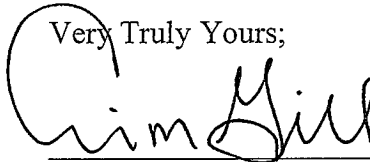
A peace officer is also justified in using deadly force "when effecting an arrest" if the officer has "probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or others if apprehension is delayed." U.C.A. 76-2-404(b).

In this matter, Garcia fled after he confronted Office Knigge with deadly force—Garcia aimed his shotgun at Officer Knigge at least twice. Garcia appeared to have committed an aggravated assault on Officer Knigge if not an attempted capital murder against Officer Knigge—both felony offenses involving the infliction or threatened infliction of death or serious bodily injury. Furthermore, when Officer Knigge used deadly force against Garcia, Officer Knigge was trying to arrest Garcia and prevent Garcia from potentially continuing to use deadly force against Office Knigge, other officers and/or other members of the community. Officer Knigge was justified in using deadly force against Garcia when effecting an arrest as Garcia tried to flee in the Jeep.

OICI CONCLUSIONS

Sergio Garcia, Jr. unlawfully presented deadly force against Officer Knigge and then fled. Officer Knigge was justified in his use of deadly force against Garcia because Officer Knigge reasonably believed that the use of deadly force was necessary to prevent death or serious bodily injury to Knigge and/or another person, and because Officer Knigge was effecting an arrest and Garcia committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury. Furthermore, Officer Knigge had probable cause to believe Garcia posed a threat of death or serious bodily injury to the Knigge and/or others if Garcia's apprehension was delayed. As such, Officer Knigge's use of deadly force was justified under Utah law.

Very Truly Yours;

A handwritten signature in black ink that reads "Sim Gill". The signature is written in a cursive style with a large, looped initial "S".

Sim Gill,
Salt Lake County District Attorney

SG/JWH/jh