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November 27, 2019

BY HAND DELIVERY

Chief Darin M. Adams
Cedar City Police Department
10 N Main Street
Cedar City, UT 84720

RE: Investigation of Officer Zachary Banz's Use of Deadly Force
CCPD Case No. C19-03846
Incident Date: November 11, 2019
Incident Location: 97 W. Sunset Dr., Cedar City, Utah

Dear Chief Adams:

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." Additionally, pursuant to the Iron/Garfield/Beaver Critical Incident Task Force Protocol (hereinafter referred to as the "Protocol"), after completion of the Protocol investigation, I will "analyze the facts of the Incident as well as relevant law to determine if violations of criminal law exist." *Protocol Section (8)(a)(2)*

After independently reviewing the Iron/Garfield/Beaver County Critical Incident Task Force (CITF) investigation, I have completed my review regarding Cedar City Police Officer Zachary Banz's use of deadly force against James Wilson Aubrey (hereinafter referred to as "the suspect") on November 11, 2019, in Cedar City, Utah. After reviewing the results of the investigation and the pertinent statutes and case law, I find that Officer Banz was legally justified in his use of deadly force against James Aubrey and therefore, this office will not institute a criminal prosecution against him.

The opinions and conclusions set forth in this letter are based upon the following facts obtained from the investigation conducted by the CITF. The following is a factual summary of what I believe occurred and an analysis of how I arrived at my findings and decision.

STATEMENT OF MATERIAL FACTS

On November 11, 2019 at approximately 1:17 p.m., Cedar Dispatch received a call relaying information that suspect James Aubrey (DOB 07/20/1963) was making death threats toward his immediate family members. Law enforcement officers responded to 97 W. Sunset Dr., Cedar City, Utah.

Sgt. David Bulloch, a 23-year veteran of the Cedar City Police Department, was first on scene and initially made contact with the suspect's wife, Cheryl Aubrey, and their 25-year-old son, James Aubrey Jr. This initial contact took place about a block away from the residence. Sgt. Bulloch learned that Ms. Aubrey and her son were afraid the suspect was going to kill them, that the suspect had made threats to kill law enforcement officers, and that the suspect may have firearms in his possession. With this information, Sgt. Bulloch called for additional units to respond.

Officer Zachary Banz, an 8-year veteran of the Cedar City Police Department, responded to 97 W. Sunset Drive, to assist. Officer Banz was familiar with the address and the suspect from an earlier encounter approximately one week prior when the suspect had made threats to kill individuals in California. Once on scene, Officer Banz contacted Sgt. Bulloch and followed him to the Aubrey residence in an effort to collect property for Ms. Aubrey and her son. Corporal Kirk Lovell and Officer Patrick McCoy had also arrived on scene at this time. Bulloch and Banz knocked and announced their presence at the front door of the basement apartment and requested that the suspect come to the door. Officers could hear movement in the home, but there was no answer. Shortly thereafter, the suspect's son, James Aubrey Jr., came down the stairs leading to the basement apartment and opened the front door for the officers, giving them permission to enter. Officer Banz again called out for the suspect to come to the door. This time the suspect replied, "No!"

With the front door open, officers were able to view the living room and determine that the area was clear. Officer Banz announced to the suspect that they wanted to make sure everything was ok, and that he and Sgt. Bulloch were entering the home. Due to the nature of the call and the surrounding facts, Officer Banz entered the residence with his department-issued Glock 22, .40 caliber handgun at the low-ready position. Sgt. Bulloch entered the residence with a taser in hand. Sgt. Bulloch gave commands for the suspect to come out and show his hands. In his interview with CITF investigators, Sgt. Bulloch stated that immediately after making the command for the suspect to show his hands, the suspect appeared from around a corner with a gun (later identified as a .32 caliber semi-automatic handgun, loaded with one (1) round in the chamber). Officer Banz also told CITF investigators that as soon as the command was given for the suspect to come out and show his hands, the suspect quickly appeared, moving toward the officers with his finger on the trigger while pointing a gun directly at him. Officer Banz fired three (3) shots and each shot struck the suspect. Officer Banz told CITF investigators that he believed the suspect was going to shoot him and that he feared for his life, as well as the lives of other officers. The suspect fell to the floor and landed on his back. Despite immediate lifesaving efforts by officers, the suspect was pronounced dead at the scene by paramedics.

RELEVANT LAW

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

Utah Code Section 76-2-402(2) states: “An individual is justified in threatening or using force against another when and to the extent that the individual reasonably believes that force or a threat of force is necessary to defend the individual or another individual against the imminent use of unlawful force. However, an individual is justified in using force intended or likely to cause death or serious bodily injury only if the individual reasonably believes that force is necessary to prevent death or serious bodily injury to the individual or another individual as a result of imminent use of unlawful force, or to prevent the commission of a forcible felony.” *Utah Code Ann. 76-2-402(2)(b)*.

Utah Code 76-2-402(5) states: “In determining imminence or reasonableness under Subsection (2), the trier of fact may consider 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; (e) any patterns of abuse or violence in the parties' relationship; and (f) any other relevant factors.

ANALYSIS

Officer Banz fired three (3) times with his department-issued Glock 22, .40 caliber handgun. This use of deadly force was justified only if, due to the suspect's imminent use of unlawful force or commission of a forcible felony, Officer Banz reasonably believed that doing so was necessary to prevent death or serious bodily injury to himself, or another person. A review of the facts would lead to the conclusion that Officer Banz was reasonable in that belief.

Officer Banz encountered grave and immediate danger when the suspect moved toward him and Sgt. Bulloch while pointing a loaded handgun directly at him, with his finger on the trigger. This created an immediate danger of death or serious injury to Officer Banz and Sgt. Bulloch. Officer Banz knew going into the situation that the suspect had made prior threats to kill both his family and law enforcement officers, and Officer Banz had responded to this same residence before when the suspect made threats to kill other individuals. Officer Banz reasonably feared for his life, and the life of Sgt. Bulloch. Therefore, his use of deadly force was a necessary response to prevent death or serious bodily injury and was justified.

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CONCLUSION

I find that Cedar City Police Officer Zachary Banz was justified in the use of deadly force against James Aubrey on November 11, 2019, because it was reasonable and necessary to prevent death or serious bodily injury to himself and other officers. Accordingly, and pursuant to Utah Code Section 17-18-1 and the Iron/Garfield/Beaver Critical Incident Task Force Protocol, this office will not institute a criminal prosecution against Officer Banz. Please contact me if you have any concerns or questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Chad E Dotson", with a stylized flourish at the end.

Chad E Dotson
Iron County Attorney