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August 6, 2018

Chief Jackson Ames
Enoch City Police Department
900 East Midvalley Road
Enoch, UT 84721

RE: Investigation of Corporal Jeremy Dunn's Use of Force
Incident Case No. 18-01767
Incident Date: June 28, 2018
Incident Location: 1130 North 100 West, Parowan, Utah 84761

Dear Chief Ames:

After independently reviewing Incident Report 18-01767, as well as audio and video footage of the incident, the Iron County Attorney's Office has completed its review regarding Enoch City Police Corporal Jeremy Dunn's use of force against Ivonne Casimiro on June 28, 2018, in Parowan, Utah.

The opinions and conclusions set forth in this letter are based upon the following facts obtained from the Critical Incident Task Force as the investigating agency. Should additional or different materials or facts subsequently come to light, the opinions and conclusions contained herein may be materially different.

STATEMENT OF MATERIAL FACTS

On June 28, 2018, at approximately 11:34 a.m., Cedar Dispatch received a call from the T/A truck stop in Parowan, Utah, about multiple suspects actively breaking into vehicles. At 11:41 a.m., Cedar Dispatch made contact with Parowan City Police Sergeant Mike Berg, and he stated that he was en route to the T/A truck stop.

At 11:44 a.m., Sergeant Berg arrived at the T/A truck stop. At 11:47 a.m., Sergeant Berg notified dispatch that he had one individual held at gunpoint. At 11:49 a.m., Sergeant Berg stated

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to Dispatch that a female subject had a screwdriver and came after him, but that he was able to hold her off until other officers could get there. Sergeant Berg later confirmed in an interview that the female suspect, Ivonne Casimiro (hereinafter referred to as "Casimiro") had taken a swipe at him twice with a screwdriver when he had approached her and asked her to take her hands out of her jacket. Casimiro did not hit Sergeant Berg with the screwdriver, and Sergeant Berg was able to back up and place some distance between himself and the suspect while drawing his service weapon. Casimiro did not advance toward Sergeant Berg again. She did not make any furtive movements with the screwdriver or come at Sergeant Berg. Casimiro was belligerent and not making a lot of sense as she talked with Sergeant Berg. Even though Casimiro had swiped at him a couple of times, Sergeant Berg believed he was in good shape as he was conversing with the suspect and waiting for backup. In fact, Sergeant Berg stated that he went from being fully drawn with his weapon to dropping to the low-ready position and that he felt the situation was manageable.

At 11:41 a.m., Enoch City Police Corporal Jeremy Dunn notified Cedar Dispatch that he was en route to the T/A truck stop to assist. At 11:49 a.m., Corporal Dunn arrived at the T/A truck stop. At 11:50 a.m., Corporal Dunn informed Dispatch that one additional suspect was inside. At 11:52 a.m., Corporal Dunn notified Dispatch that shots had been fired and that EMS was needed.

The shooting was captured on Corporal Dunn's body camera. The scene depicts Corporal Dunn arriving on scene and being advised of the suspects' locations. Corporal Dunn told Dispatch that one suspect was still inside, and then he proceeded to where the other two suspects were located.

From the video, two (2) suspects can be seen in the parking lot of the T/A truck stop. Sergeant Berg is present, standing behind the door of his truck as the door is open. He appears to be ten (10) to fifteen (15) feet away from the suspects. As Corporal Dunn approaches the suspects, it appears that Sergeant Berg has his gun drawn but is not pointing it at the suspects. Sergeant Berg's gun appears to be in the low-ready position. Sergeant Berg explains to Corporal Dunn that Casimiro won't drop the screwdriver.

Corporal Dunn immediately engages Casimiro in conversation and tells her that it would be a good idea to put down the screwdriver. At this time, Corporal Dunn has his gun drawn and also is in the low-ready position. Corporal Dunn is asking the male suspect to move away from Casimiro. Casimiro is defiant and telling Corporal Dunn that he (the male suspect) is not going anywhere. Casimiro turns to talk to the male suspect, and Corporal Dunn takes a step forward and draws his weapon towards Casimiro telling her that she is not free to leave. At this point, Casimiro turns and takes a couple of steps towards Corporal Dunn, with her left arm extended away from Corporal Dunn, holding the screwdriver, and tells him to "go ahead and blow." Corporal Dunn tells Casimiro that if she comes at him with the knife, he guarantees he will "smoke her." During this time, Sergeant Berg is positioned to the right of Corporal Dunn and also holding Casimiro at gunpoint.

Casimiro switches the screwdriver to her right hand and is talking to the officers as she waives her right hand around. She is not pointing the screwdriver at the officers, nor does she appear to be threatening them, although she is defiant and combative. Casimiro refuses to drop the screwdriver and appears to be telling the officers to go ahead and shoot her. She then turns towards the male suspect with her back towards the officers and says something to him. The male suspect then begins to retreat to the background. Sergeant Berg tells Corporal Dunn that the suspects are 10-96 (which is code for mental health issues). Corporal Dunn can then be heard saying "I can take her out like last time. Do you want me to take her out like last time?" Corporal Dunn appears to be talking to Sergeant Berg when making these statements, and both Sergeant Berg and Corporal Dunn later confirm in an interview that Corporal Dunn is referring to an officer-involved shooting in 2012 which involved both officers. In that shooting, Corporal Dunn shot a male suspect in the knee who was advancing on him with knives in each hand.

In the video, it appears that Sergeant Berg responds to this question from Corporal Dunn by telling him to try his taser. Corporal Dunn confirms in his interview that Sergeant Berg had suggested he try his taser and that he had failed to think of the taser option prior to that time. Corporal Dunn then deploys his taser on Casimiro, but it is ineffective. Corporal Dunn reported that the first shot with the taser was center mass on Casimiro. The second taser shot was at Casimiro's upper leg. After the taser was deployed, Casimiro comments that the taser did not work and appears to be pulling on the taser wires as though she is trying to coil them. Corporal Dunn can be heard saying "that is all I got for taser." Casimiro can be seen pulling one of the taser probes from her pant leg. She then brings the screwdriver up to her chest and says to the officers, "What's up?" By this time, Corporal Dunn has already pointed his firearm at Casimiro, and he then fires three (3) shots, hitting her twice in the right knee. Corporal Dunn is approximately eight (8) to ten (10) feet away when he shoots, according to officer testimony. Casimiro immediately goes to the ground, dropping the screwdriver. Corporal Dunn approaches and then kicks the female to make sure that she is not able to retrieve the screwdriver. At this point, EMS is paged, and Corporal Dunn begins to work on Casimiro and applies a tourniquet to help stop the bleeding.

The male suspect was standing behind and to the right of Casimiro at the time of the shooting and was immediately taken into custody by Sergeant Berg after the shots were fired.

Corporal Dunn confirmed in an interview that he believed both Casimiro and the male suspect were mentally compromised and that Casimiro was suffering from what he described as a "God-complex." Corporal Dunn described a "God-complex" as a feeling of invincibility or an idea that she could not be harmed. Corporal Dunn also confirmed that he intentionally targeted Casimiro's knee in what he described as a last effort to save her life. Corporal Dunn believed that the situation was escalating and Casimiro was just about to make the officers shoot her. According to Corporal Dunn, he wanted to give Casimiro one more chance at life, so he shot her in the knee to save her life. Corporal Dunn confirmed that this type of shooting is inconsistent with his training and that he would not recommend that others take this kind of a shot. However, he felt that he was

skilled enough to make this shot as he had done it before. Corporal Dunn stated that the likelihood of death with a knee shot is much lower and that the risk to the public goes to zero if a suspect is not mobile. Corporal Dunn fired three (3) shots, hitting the suspect in the knee twice.

In his interview, Corporal Dunn stated that he feared for his life, as well as the lives of Sergeant Berg, the male suspect, and innocent bystanders who were at the T/A truck stop. Corporal Dunn stated that he had “mentally purchased” the idea that he would have to shoot Casimiro when he first arrived on scene as he had been informed that she was armed, combative, and had taken a swipe with a screwdriver at Sergeant Berg.

RELEVANT LAW

The relevant statute is U.C.A §76-2-404, a Peace Officer’s Use of Deadly Force, which states in relevant part:

- (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.

ANALYSIS

Courts review Fourth Amendment excessive force claims under a standard of objective reasonableness, judged from the perspective of a reasonable officer on the scene. Tenorio v. Pitzer, 802 F.3d 1160, 1162 (10th Cir. 2015) (citing Graham v. Connor, 490 U.S. 386, 396-97, 109 S. Ct. 1865, 104 L. Ed. 2d 443 [1989]). In excessive force claims, the question is “whether the officer’s actions are objectively reasonable in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” Thomson v. Salt Lake City, 584 F.3d 1304, 1313 (10th Cir. 2009) (quoting Graham, 490 U.S. at 397). Determining reasonableness requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the countervailing governmental interest at stake. Graham, 490 U.S. 396. Indeed, this balancing test “requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” Id.

The Fourth Amendment permits an officer to use deadly force only if there is probable cause to believe that there is a threat of serious physical harm to the officer. In assessing the degree of threat the officer faces, courts have considered a number of non-exclusive factors that include: (1) whether the officers ordered the suspect to drop his weapon and the suspect's compliance with police commands; (2) whether any hostile motions were made with the weapon towards the officers; (3) the distance separating the officers and the suspect; and (4) the manifest intentions of the suspect. And ultimately, the primary focus of the inquiry remains on whether the officer or another was in danger at the exact moment of the threat of force. Pauly v. White, 814 F.3d 1060, 2016 U.S. App. Lexis 2184 (10th Cir. M.M., Feb. 9, 2016).

In this case, Corporal Dunn was called to a scene where it was reported that suspects were actively burglarizing vehicles. Corporal Dunn knew that one of the suspects was armed and combative. He also knew that the armed suspect had taken a swipe with the screwdriver at Sergeant Berg. Further, Corporal Dunn knew that one of the suspects was alleged to be inside of the truck stop. He was aware of the many bystanders at the truck stop and that the closest backup officer was approximately eight (8) miles away.

Upon arrival, Corporal Dunn is immediately directed to Sergeant Berg and the two (2) suspects outside the truck stop. According to Sergeant Berg, he felt that the scene was manageable at the time Corporal Dunn arrived and that he had been using de-escalation tactics until help arrived. This is supported by the video as it depicts Sergeant Berg behind the door of his pick-up truck with his firearm at the low-ready position. Sergeant Berg had created space between he and the suspects and had been attempting to communicate with the suspects to buy himself some time. Sergeant Berg stated that Casimiro had not advanced toward him after the initial swipe and was not making any furtive movements with the screwdriver.

Immediately upon approaching the suspects, Corporal Dunn draws his weapon to the low-ready position and begins issuing commands for Casimiro to drop the screwdriver and for the male suspect to move away from Casimiro so as to not get hurt. Corporal Dunn persists, and even closes the distance between he and Casimiro, as he tells her that she is not free to leave. This agitates Casimiro and she turns toward Corporal Dunn, takes a couple of steps in his direction, and tells him to "go ahead and blow." At this point, Corporal Dunn states that he will "smoke her" if she comes at him with the knife. She never advances. In fact, she retreats a few steps as they continue to converse. At Sergeant Berg's suggestion, Corporal Dunn tries his taser, but it is unsuccessful. Casimiro can be seen pulling on the taser wires and possibly removing a taser probe from her leg. She is telling Corporal Dunn that the taser did not work, and she continues to be non-compliant. However, she does not advance on the officers, nor does she make any movement toward anybody else. Furthermore, while being non-compliant, she does not ever make a verbal threat of harm to the officers or another. After the unsuccessful attempt with the taser, Corporal Dunn fires three (3) shots and hits Casimiro twice in the knee. At that point, Casimiro goes to the ground and is incapacitated.

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In analyzing the reasonableness of Corporal Dunn's actions in light of the factors set forth above, the scale tips in favor of Corporal Dunn's use of force being not justified. While the suspect was armed with a screwdriver and had been non-compliant by failing to follow officer's commands, including multiple commands to drop the screwdriver, it cannot objectively be stated that the officers or anyone else were in danger of death or serious bodily injury at the exact moment that lethal force was used.

Casimiro was not fleeing, had not made any verbal threats towards officers and there was sufficient distance between Casimiro and the officers at the time of the shooting to remove any imminent threat of harm. Likewise, there was sufficient distance between Casimiro and any bystander to remove any imminent threat of harm. Casimiro would have had to go through officers to get to any bystander. From the video and Sergeant Berg's testimony, it appears that the situation was manageable at the time Corporal Dunn arrived and it would have seemed reasonable for officers to continue de-escalation tactics until the situation could be more fully contained. Corporal Dunn was only on scene for three minutes before firing shots.

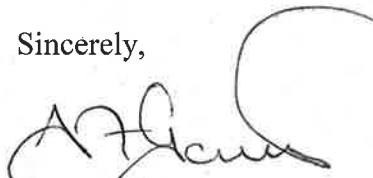
The conclusion might very well be different if Casimiro had advanced toward or rushed at officers with the screwdriver or had she been armed with a gun. But under the circumstances that existed in this case, it was not objectively reasonable for Corporal Dunn to use deadly force to prevent death or serious bodily injury to an officer or another person.

Because of that, Corporal Dunn was not justified in using deadly force against Casimiro.

Corporal Dunn will not be charged criminally. Even though the shooting was not legally justified, the State would not be able to prove the requisite criminal intent for a criminal charge.

If you have any questions or concerns regarding the foregoing, please feel free to contact me for further discussion.

Sincerely,



Scott F. Garrett
Iron County Attorney

SFG/ccm

pc: Detective Tom Byrd, Iron County Sheriff's Department