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CRITICAL INCIDENT TASK FORCE MEMORANDUM

DATE: January 3, 2020
TO: Franklin County Sheriff David Fryar and Chief Dan McCammon
FROM: Vic A Pearson, Franklin County Prosecuting Attorney
RE: CITF Investigation November 19, 2019 incident

This Memorandum reviews the use of deadly force by Deputy Kelly Biggs against Raul Antonio Menjivar-Saabedra on November 19, 2019. The Critical Incident Task Force (CITF) investigated this incident with the Pocatello Police Department as lead agency. The investigation was presented to the Franklin County Prosecutor's Office on December 18, 2019 for review. At this time my Office has reviewed all evidence presented in the case including witness statements, video and audio evidence, and other physical evidence. These are my findings.

The Parameters of this Decision:

This analysis is limited simply to this question: Whether there exists any criminal liability as result of the events of November 19, 2019. More particularly, was the use of deadly force by Deputy Kelly Biggs justified? It is beyond the scope of this review to comment on any civil matters such as compliance with departmental policy or the like, as those matters are entirely within the province of the incident agency and outside the scope of this Office's review.

Pertinent Facts:

On November 19, 2019 at approximately 8:37 p.m., the Franklin County Dispatch Center received a call from Stokes Marketplace regarding a suspicious male inside the store. Preston Police Officer Tuyen Nguyen responded and made contact with Raul Antonio Menjivar-Saabedra (hereinafter "Saabedra"). Officer Nguyen had difficulty communicating with Saabedra due to the fact that Saabedra did not speak English and so Franklin County Deputy Dustin Olsen responded to assist since he is fluent in Spanish.

Deputy Olsen began speaking with Saabedra and it became immediately apparent that he was mentally unstable and was stating that he was going to be tortured and killed by unknown individuals

from the Grace, Idaho area associated with the church because he had sinned. Saabedra produced a thirteen (13) inch kitchen knife that was taken from Stokes that was concealed in his jacket. Officer Olsen was able to convince Saabedra to place the knife inside a plastic bag in a shopping cart that had some of his other personal items. Saabedra continued to show signs of paranoia demonstrated throughout the encounter including pointing to shoppers in the store stating those people were there to kill him. Saabedra during the discussion inside Stokes stated to Officer Olson in Spanish "I prefer that you guys kill me because you are Police Officers instead of them, because they are going to torture me." Officer Olsen advised Saabedra that we are not going to do that to which he states "I want you guys to kill me." Saabedra continued on several occasions to state he wanted law enforcement to kill him to which each time Officer Olsen stated we aren't going to do that.

Deputy Olsen tried to convince Saabedra to leave Stokes, but he refused to leave without the knife. It was later discovered that Saabedra had just been released from a Behavioral Health Unit in Logan, Utah for suicidal ideations and had been there for approximately one (1) week. An ecclesiastical leader of Saabedra arrived at Stokes and stated he would drive him back to the hospital for treatment if he would go with him. Saabedra refused to go to the facility with his church leader. At this point, Officer Nguyen and Olsen advised Saabedra that he had to exit the store and was escorted to the register to pay for his items (including the kitchen knife). While inside the store Saabedra stated approximately twenty-five (25) times that people were going to kill him because of the sins he had committed and requested law enforcement kill him approximately eight (8) times so he wouldn't be tortured and killed by the other people. Saabedra exits the store at approximately 9:30 p.m.

Officers continued to speak with Saabedra outside and tried to convince him to leave with his ecclesiastical leader. While speaking with officers Saabedra pulled the knife out of the bag and held it during the remainder of the encounter with them. Officers tried to get him to put the knife down, but he refused because he felt he needed it for protection from the people that were going to torture and kill him. Officers repeatedly requested Saabedra to put the knife down but he refused and stated he would rather die by police bullets than be tortured by the people who were after him. At this point, Saabedra began to pray and Deputy Olsen advised the other officers to be ready because he felt something was going to happen.

Saabedra with the knife still in his hand took several steps toward Deputy Olsen and Chief Dan McCammon and then stopped. Shortly thereafter, he turned and headed toward Deputy Kelly Biggs who had arrived on the scene. Deputy Biggs told Saabedra to "stop right there" on three occasions but he continued to move towards him aggressively with the knife in his hand. Deputy Biggs, Deputy Olsen and Officer Nguyen all deployed their duty tasers toward Saabedra with no effect (it is believed that the clothes Saabedra was wearing prevented the taser prongs from attaching properly). However, the tasers were effective in stopping the immediate approach of Saabedra towards Deputy Biggs and the entrance to Stokes Market as Saabedra turned and fled with the knife still in hand towards V-1 Propane, located to the South of Stokes Market. Chief McCammon rushed to his vehicle to try and obtain additional taser cartridges while the other three officers pursued Saabedra.

Saabedra proceeded into the middle of Highway 91 by V-1 Propane and raised the knife up several times at the officers that had followed him. Officer Nguyen and Deputy Olsen told Saabedra multiple times to put the knife down and “don’t do it.”

At this point, Saabedra stepped slowly towards Deputy Biggs with a few small steps and then sprinted towards him with the knife and Deputy Biggs discharged one shot from his duty weapon. Saabedra stopped briefly after being struck in the shoulder area and then continued to rush towards Deputy Biggs with the knife raised up and Deputy Biggs discharged two additional shots from his duty weapon and Saabedra fell to the ground. Saabedra landed on his stomach and was then rolled over by Officer Nguyen and the knife was removed from his hand. Saabedra was placed onto his side into a recovery type position to clear his airway and attempt life saving measures and an ambulance was requested and responded to the scene. This occurred at approximately 10:26 p.m. which was almost two (2) hours after law enforcement had arrived at Stokes Market and began negotiating with him. Saabedra was thereafter pronounced dead.

Deputy Biggs described Saabedra coming at him with the knife in his right hand at approximately shoulder level. He stated the tip of the blade was pointed in an upward direction and aggressive manner and felt that if he did not take some kind of action, he would not have gone home that night. Officer Nguyen stated that when Saabedra brought the knife up and rushed towards Deputy Biggs he did not fire his weapon because there was a vehicle in the line of fire behind where Saabedra was located. Deputy Olsen stated that when Saabedra rushed towards Deputy Biggs he feared Deputy Biggs could be killed by Saabedra.

Analysis Synopsis:

After reading the reports, conferring with the CITF investigators, reviewing evidence from the incident, and considering all relevant information, including the facts related above, I have concluded that there is no evidence to support a criminal charge against Deputy Kelly Biggs for the shooting death of Saabedra. The facts in this case reveal that Saabedra made himself a clear and immediate danger to Deputy Biggs who was engaged in the lawful performance of his duties.

The actions of Deputy Biggs, therefore, were justified under Idaho Codes 18-4009 (a), (c), & (d) and 18-4011 and do not form the basis of a criminal prosecution. The analysis below pertains specifically to when homicide is justifiable by any citizen and specifically to justifiable homicide by a law enforcement officer.

Detailed Analysis:

I. Under Idaho Code 18-4009, homicide is “justifiable” when committed by any person in any of the following cases:

“(a) When resisting any attempt to murder any person, *or to commit a felony, or to do some great bodily injury upon any person*; or,

(c) *When committed in the lawful defense of such person ... when there is reasonable*

ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished; or,

(d) When necessarily committed in attempting, by lawful ways and means, to apprehend any person for any felony committed...”

Based on the facts of this case, Deputy Biggs was justified to use deadly force under Idaho Code 19-4009 because:

--he was resisting Saabedra’s attempt *to commit a felony, or to do some great bodily injury upon any person;*

-- he was lawfully defending himself where there is *reasonable ground to apprehend a design to commit a felony or to do some great bodily injury, and imminent danger of such design being accomplished;*

--or he was attempting *by lawful ways and means, to apprehend any person for any felony committed.*

II. Deputy Biggs’ fear of great bodily harm or death by Saabedra was reasonable.

This entire incident was covered by a great deal of camera coverage. Stokes Market had extensive video coverage of Saabedra inside the store both prior to law enforcement’s arrival and after. Stokes video surveillance also covered the majority of the incident outside of their store; however, the actual shooting was not on their video due to the fact it was in the parking lot of V-1 Propane. All of the Stokes video surveillance does not have sound as it is primarily for the purpose of theft prevention. In addition to the Stokes video footage, both Deputy Biggs and Deputy Olsen had body cameras attached to their uniforms which record both video and sound.

This extensive footage makes it clear that Saabedra was given multiple opportunities to place his weapon on the ground. The footage also details the fact that Saabedra appeared to be suffering from a mental illness which gave him the impression that unknown individuals were going to torture and kill him. Based upon his delusional belief, he requested law enforcement kill him on numerous occasions. Saabedra even requested Deputy Olsen give his gun to him and he would shoot himself. Both the body camera footage and Stokes video surveillance clearly show Saabedra aggressively move towards Deputy Biggs in the Stokes parking lot with the knife in his hand and ordered to “stop right there” on three occasions. When he refused to comply with Deputy Biggs’ commands all three law enforcement officers deployed their tasers to no avail. Saabedra then flees onto Highway 91 near V-1 and then the clearest view of the rest of the incident can be seen from Deputy Olsen’s body camera. That footage shows Saabedra again sprint towards Deputy Biggs with the knife still in his hand when the first shot is fired and hits him in the shoulder area. Saabedra briefly stops his charge and then again charges toward Deputy Biggs still with the knife in his hand when two additional shots are fired from his duty weapon and Saabedra fell to the ground. Saabedra landed on his stomach and was then rolled over by Officer Nguyen and the knife was removed from his hand. The body camera footage of Deputy

Biggs is partially covered by his arms while he is aiming his weapon but you can see shadows of Saabedra which also confirm the footage from Deputy Olsen's body camera.

It was therefore abundantly clear that Deputy Biggs would be in fear of great bodily harm or death at the moment he fired his weapon.

III. Under Idaho Code 18-4011, "Justifiable Homicide By Officer," "homicide is justifiable *when committed by public officers* and those acting by their command in their aid and assistance...when *reasonably necessary in overcoming actual resistance to the execution of some legal process...*" The use of deadly force in such a case is justified only if "*the officer has probable cause to believe that the resistance poses a threat of death or serious physical injury to the officer or to other persons.*"

Here, Deputy Biggs was lawfully engaged in "the execution of some legal process." While engaged in that process, Saabedra posed a threat of death or physical injury to him and/or others. It is impossible to suggest that Deputy Biggs, knowing all he knew and seeing all he saw, did not have probable cause to believe Saabedra posed a "threat of death or serious physical injury to the officer or other person" based upon the fact that Saabedra charged at him with a thirteen (13) inch knife pointed towards him.

Conclusion:

I have concluded after reading the reports, reviewing the evidence, and conferring with detectives assigned to the case, that there is no evidence to support a criminal charge against Deputy Biggs for the events of November 19, 2019.

Homicide is "justifiable" when committed by any person when resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person. Clearly Saabedra's actions gave Deputy Biggs reasonable grounds to believe that Saabedra was going to do some great bodily harm or death upon him. Law enforcement tried to convince Saabedra to put the weapon down on several occasions and fired less-lethal taser cartridges at him. These efforts were ineffective against Saabedra and Saabedra's conduct continued to escalate to the point where Deputy Biggs was faced with a threat to his life.

It is also important to note that physical altercations with police sadly do occur on occasion. When these happen, police attempt to subdue or otherwise apprehend one having committed a crime or offense. In other words, police attempt to "execute some legal process" as contemplated in Idaho Code. The intent by a police officer when engaging in the physical altercation is to "stop" the person from resisting that process. When a citizen sprints at law enforcement with a deadly weapon (in this case a 13-inch knife), the intent of that person becomes quite clear with a violent design the result.

When Officer Nguyen, Deputy Olsen, and Deputy Biggs encountered Saabedra they were performing their duties as sworn law enforcement officers. They were all clearly wearing police uniforms and attempting to carry out their sworn duties to serve and protect.

This shooting incident could have been avoided through numerous options by Saabedra. First, by not causing the initial disturbance at Stokes Market which resulted in their employees calling for law enforcement help. Second, by Saabedra putting his weapon down both inside or outside the store when requested to do so by law enforcement. Third, by not charging Deputy Biggs near the store entrance with a deadly weapon when the attempt to stop his progression via taser was used. Fourth, had he surrendered when the tasers were deployed in an effort to stop his attack. Fifth, at any time after running from law enforcement he would have simply complied with commands given to him or had he simply just dropped his weapon. Sixth, had he not again charged Deputy Biggs by V-1 Propane with a deadly weapon in hand. Finally, had he stopped his attack after being struck with the first round fired rather than proceeding with his attack (roughly six seconds passed between the first round fired and the second and third round being fired). Unfortunately for all involved, Saabedra didn't do any of the above which created the scenario wherein Deputy Biggs believed, reasonably, that great bodily harm or death could result and he was forced to protect himself and others from Saabedra.

An officer is justified in using deadly force to overcome resistance when they have probable cause to believe the resistance poses a threat of death or serious physical injury to the officers or other persons. Saabedra's behavior that day provided that probable cause. This appears to be a situation where Saabedra was attempting "suicide by cop" and succeeded in his attempt.

For the reasons stated above, I find the conduct by Deputy Kelly Biggs on the day in question to be justified.



Vic A Pearson
Franklin County Prosecuting Attorney