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DISTRICT ATTORNEY
SALT LAKE COUNTY
SIM GILL

HAND DELIVERED

February 4, 2013

Chief Peter A. Fondaco
Murray City Police Department
5025 South State Street, Ste. 206
Murray, UT 84157

Re: Officer Involved Critical Incident – Sean Malouf January 5, 2013

Dear Chief Fondaco:

After working in conjunction with the Murray City Police Department, the Salt Lake County District Attorney's Office has completed its review of the investigation concerning Murray City Police Officer Sean Malouf's use of deadly force during an incident that occurred January 5, 2013 at 6200 South 1281 East in Murray, Utah. The purpose of the review is to determine whether the deadly force employed was lawful under Utah law.

Aggravated Robbery at Scaddy's Restaurant

On January 5, 2013, a cashier at Scaddy's Restaurant located at 5430 South 900 East in Salt Lake County, reported that an individual approached her with a firearm and told her to open the register. The suspect took an amount of money from the register and fled the restaurant in a grey vehicle. The suspect was described as a 20-30 year old white male, approximately 5'10" and 150 pounds wearing a grey suit coat, a top hat, fake glasses, fake nose and fake mustache. The suspect fled in the vehicle heading south on 900 East.

Location of Suspect at Family Dollar

Officer Sean Malouf responded to the call and began patrolling the area looking for the suspect at nearby businesses. In the dark, Officer Malouf observed an individual who he initially believed to be an old man dressed in a trench coat and top hat with dark black rim eyeglasses and facial hair, walking through the parking lot of the Family Dollar store at 6150 South 1300 East. Officer Malouf thought the subject was suspicious and directed his police vehicle into the parking lot and stopped his vehicle in a manner that allowed him to confront the subject. Officer Malouf, who was dressed in his police uniform, exited his police vehicle and commanded the person stop and identified himself as police. Upon getting a better look the subject, Officer Malouf realized that it was not an old man based on the facial features and the skin of the subject. Officer Malouf then believed that this was the suspect from the Scaddy's Restaurant robbery and drew his firearm, ordering the suspect to put his hands in the air.



The suspect quickly put his left hand up, but kept his right hand in the pocket of his trench coat. Officer Malouf ordered the suspect to put his hands in the air multiple more times. The suspect spoke in an altered voice, attempting to make his voice sound lower, saying, "ok, ok," but did not remove his right hand from the pocket.

The suspect then took off running east through the parking lot and then south on 1300 East. While pursuing the suspect on foot, Officer Malouf again ordered the suspect to stop and identified himself as a police officer. The suspect continued to flee on 1300 East to 6200 South. At one point during the pursuit, Officer Malouf believed he was close enough to possibly tackle the suspect, however he did not want to be in a ground fight with an armed suspect. Both the suspect and Officer Malouf continued to run until the suspect got to a parked grey-colored vehicle on the south side of 6200 South near 1300 East. The suspect opened the passenger side door of the vehicle when Officer Malouf was in front of the vehicle. Officer Malouf could not see into the vehicle, but observed a continuous red light emitting directly at him from the driver's seat area inside the vehicle. Officer Malouf stated that the red light was a dot centered in four corners, which he believed to be a laser sight on a weapon.

Officer Malouf then looked up at the suspect he was pursuing and saw the suspect pointing a gun directly at him over the top of the vehicle. Officer Malouf ordered the suspect to put the gun down as he was backing away from the vehicle. Officer Malouf stated "he was pointing it at me in such a manner I felt threatened and thought I was going to be shot." The suspect did not put the gun down as Officer Malouf yelled "no!" and retreated. As Officer Malouf retreated, he fired his weapon toward the suspect. Officer Malouf saw a muzzle flash from the suspect's weapon at about the same time that he discharged his own weapon. Officer Malouf fell backwards, hitting his head while retreating for cover and firing his weapon at the suspect. Officer Malouf also stated that he thought a second shot was fired from the suspect's weapon and was unsure initially whether he had been shot.

Officer Malouf then took cover behind a truck parked in a nearby driveway and could hear the suspects trying to start the vehicle. Officer Malouf observed a female get out of the driver's seat of the vehicle and turn towards him, again flashing a red light at him. The suspects abandoned the vehicle and fled on foot, running west on 6200 South and then south on 1280 East.

Officer Sean Malouf

Officer Sean Malouf has been employed for three (3) years with the Murray City Police Department. Officer Malouf has had training in the use of deadly force once in the last six (6) months and twice in the last twelve (12) months.

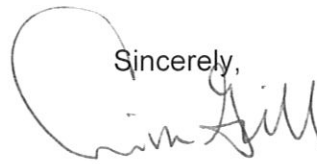
Officer Malouf carried a department issued Glock Model 19 (9 mm) handgun. It was issued to Officer Malouf new in October 2012. It carried Speer Gold Dot 115 Grade Jacketed Hollow Point bullets. The down count on the weapon performed after the shooting revealed that it discharged 16 bullets. A total of seventeen bullet holes were located in the windshield, roof and drivers side of the suspects' abandoned vehicle. The back windshield on the vehicle was shattered. Through trajectory rod placement, it appears that one bullet ricocheted off a speaker in the back window and created two bullet holes.

Neither Officer Malouf, the suspects, nor any other citizens were struck with any of the discharged bullets from either Officer Malouf or the suspect.

Conclusion

This office has concluded that the deadly force employed by Officer Malouf was legally justified under Title 76, Chapter 2, Part 4 (1953 as amended). Specifically, under 76-2-404 (1)(c), a peace 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. In this case, Officer Malouf was chasing a subject that he believed was just involved in an armed robbery involving a firearm. When the subject confronted him and pointed a firearm at him over the vehicle, Officer Malouf had the reasonable belief that the use of deadly force against the subject was necessary to prevent his death or serious bodily injury to himself or others. Consequently, Officer Malouf's use of deadly force was justified.

If you have any questions or concerns regarding the determination made in this case, or otherwise wish to discuss the matter, please feel free to contact our office to set up a personal meeting.

Sincerely,

SIM GILL

jv/bn/SG