

DANIEL P. RUBINSTEIN
DISTRICT ATTORNEY



TWENTY-FIRST JUDICIAL DISTRICT ATTORNEY'S OFFICE
Mesa County Justice Center ~ P.O.Box 20,000 - Dept. 5031 Grand Junction, CO 81502-5001 (970) 244-1730

October 7, 2016

Investigator Lissah Norcross
Lead Investigator
Mesa County Sheriff's Office
215 Rice Street
Grand Junction, CO 81501

Inv. Norcross:

This letter shall serve as notification to the Critical Incident Response Team, Chief John Camper, and Corporal Ryan Piotrowski of the decision not to file charges in the matter of the officer involved shooting on September 4, 2016.

Of significance to my determination of the facts were interviews of the four officers on scene, Officers Mike Smith, Cindy Cohn, Chris Wilson, and Corporal Ryan Piotrowski, as well as the Kayla Gomez, and her children L.L. and D.L., ages 9 and 6 respectively. These are the witnesses with more direct knowledge of the shooting and/or firsthand knowledge of the events immediately before the shooting. Interviews of additional witnesses were conducted. While those interviews provide context to the situation which unfolded on the date in question and further lead to the conclusion that the threats were real, the information from the above named individuals forms the basis of the justification to utilize deadly force.

Factual background

At about 1550 hrs. on Sunday, 09/04/2016, GJPD Officers M. Smith and C. Cohn were dispatched to an in-progress Code 5 (possible mental subject) person at Shamrock Trailer Park, located at 2845 North Avenue, unit #4, Grand Junction, Colorado. Dispatch provided information that the reporting person, Ms. Kayla Gomez (Kayla), was at a neighbor's house stating her husband, Simon Gomez (Simon), was "on something," had been drinking all day, had 3 knives, had been breaking stuff all day, and thought someone was in their house. Officers were advised Kayla had just left trailer #4 and was waiting for officers in trailer #6. Officers were also advised that Kayla said her two kids, L.L. and D.L., were still in the house with Simon and she did not know if he would hurt them. Dispatch provided prior history, stating there had been two recent verbal domestic disturbance type calls for the home.

Officers Cohn and Smith were the first to arrive and gather information. Smith met with Kayla who confirmed the above dispatch information, and further reported the following: Simon had physically blocked her from leaving; Simon had barricaded parts of the house; she felt Simon was "not in his right mind;" he had been up all night plus she thought he might be under the influence of meth; Simon had a history of recent previous methamphetamine use, but she did not know if he used on this date; Simon had not threatened them with the knives; Simon said they would "all burn in hell"; and, Simon had previously been in prison. Kayla further relayed that Simon was being "extremely paranoid about someone being in the trailer and had made a statement something along the lines of he was going to die." Cohn expressed her thoughts in her report as, "My grave concern for [L.L.] and [D.L.] was due to the report of Simon having several deadly weapons (report of 3 knives), his potential of recent methamphetamine use and Simon's paranoia and potential delusions."

Cpl. Piotrowski responded to the scene and the three discussed options as calls by Smith to Simon went straight to voicemail. In Piotrowski's interview, he explained that he started to think of ways to solve the problem since Simon was not communicating with officers and Piotrowski's concern was the welfare of the children due to the reported erratic behavior by Simon. Piotrowski met with Cohn and Smith. Piotrowski said Officer Cox also arrived on scene, so he had Cox stay outside and watch the back (north) of the trailer during this entire incident. Piotrowski stated he spoke with Smith and Cohn and learned basically Smith had tried to call Simon several times with no answer and they were at a standstill outside the trailer. Piotrowski explained Smith obtain consent from Kayla to enter the home if needed, and Kayla also stated she was "almost absolutely certain" there were no firearms in the residence. Piotrowski explained they discussed options, but he ultimately decided they would respond to the front door and knock to try and establish communication.

Piotrowski explained the three respond to the front door (south side of trailer) and knock numerous times until an incoherent voice from inside responded. Piotrowski stated it was hard to hear as communication was through a window that was covered with a blanket so he could not see inside the home. Piotrowski said he yelled back "Hey Simon, Grand Junction Police Department, We're just here to make sure everybody's all right. Just need to talk to you for a minute." Piotrowski reported a male voice yelled back, stating there were people outside. Piotrowski stated he told the male, presumably Simon, that they just wanted to make sure everyone was alright. Piotrowski explained he asked Simon to open the door, which he refused to do. Piotrowski stated Simon made paranoid comments and at times would yell things Piotrowski could not hear. Piotrowski stated they went several cycles of Simon talking, then not talking, then talking, but ultimately Simon did not open the door and come outside as requested. Piotrowski stated he asked several times how the kids were doing and Simon never acknowledged the kids. Piotrowski explained due to his hostage rescue type training, he's aware that when a subject won't acknowledge the hostages, that can be a serious concern for the welfare of the hostages. Piotrowski estimated he inquired about the kids approximately four times, but also reported that Simon never acknowledged the kids.

Piotrowski explained Simon stopped communicating and they could hear what sounded like a crash and commotion and breaking items inside the home, but they never heard the kids crying or screaming. Piotrowski explained he then decided they needed to make exigent entry into the

home because all of the information he had received thus far raised “red flags” as to whether or not Simon had already harmed the children or was going to harm the children. Piotrowski retrieved the breaching tool from his supervisor’s vehicle. Piotrowski explained in that short walk, he mentally went back over the information he had to confirm in his mind that the exigency to enter was solid. Piotrowski said he explained the plan to “breach and delay” the front door, then wait and assess if the kids were close by and/or could simply be removed from the home, or alternatively, if entry was needed.

Piotrowski explained he rammed the front door and it eventually opened as Cohn and Smith provided lethal coverage with their handguns drawn. Piotrowski explained no one was close to the door or visible once the door was open, so all three officers entered the home. Piotrowski explained the front door lead into the living room on the right side and a kitchen/dining room on the left. Piotrowski recalled there was a bedroom east (right) of the living room which was found empty. Piotrowski recalled noticing there were large kitchen chairs piled up down the hallway as a barricade. Piotrowski stated they had to move the chairs to make their way down the hallway. Piotrowski said he could not recall the kids’ names, but at the time of the entry he knew the names and while moving chairs he was calling out to the kids by name. Piotrowski explained there was a bedroom with an open door at the west end of the hallway and a door on the south side of the trailer with the door closed. Piotrowski explained he briefly looked into the bedroom and did not find any persons.

Piotrowski explained that around the same time he heard “...whimpering, obviously kids whimpering. Not yelling for help but not able to do anything other than whimper and cry...” and “...I hear a male’s voice yell ‘Don’t make me do this.’” Piotrowski said he yelled something to the effect “Hey, you don’t have to do anything. It’s all right.” Piotrowski said they were still moving chairs to make room in the hallway and he hears the male make similar statements 3-4 times. Piotrowski states due to being in many previous trailers, he knows the room behind the closed door was likely a bathroom. Piotrowski explained how he and Wilson then entered the room armed with their handguns. Piotrowski explained he stayed to the left (east) side of the room as Wilson stayed to the right (west) side of the room. Piotrowski explained the room was well lighted by a window on the south wall. Piotrowski explained there was a bathtub along the south wall with opaque shower doors and described this was a typical small sized mobile home bathroom. Piotrowski explained he could see silhouettes behind the doors and it appeared the bigger silhouette was on the left (east) side. Piotrowski described holding his handgun with one hand and using the other hand to slide the left (east) side shower door open.

Piotrowski explained he saw “an adult male, um, and he was sitting more towards the left side I was on and , uh, he had his arms around both, both kids’ necks but kind of in headlocks to control them.” Piotrowski explained he saw the male with two knives, he thought kitchen type knives, one 6-7 inches. Piotrowski described seeing the male’s right arm around one child with the tip of the knife pressed against the jaw/neck area of the child. Piotrowski described seeing the male’s left arm around another child, and although the male couldn’t reach as far around the second child, he still had the second knife pressed against the kid’s neck. Piotrowski said “...so within that split second of seeing that-that threat, and realizing that there’s that imminent threat of death, in my opinion, you know if he misses, it’s serious injury-injury by all intent and purposes, it seems he’s intent on, uh killing his kids.” Piotrowski explained he fired his handgun

at the male to stop the threat to the children's' lives. Piotrowski said he believes he shot 4 times, but was unsure, stating he was very conscious of his shot placement due to the close proximity of the children. Piotrowski stated he believes he shot the male twice and noticed the male moved but still had his knives and arms around the kids. Piotrowski stated he believes he shot two more times at which time the male's arms fell away from the children so Piotrowski did not shoot further as "the threat was over." Piotrowski said he then holstered his weapon, opened the opposing shower door, and had Wilson and Cohn get the kids out of the bathroom. Piotrowski was uncertain where the knives would be, stating he thinks he saw one fall out onto the floor.

The other officers' recounts were very similar. Officer Cohn described that the three officers approached and knocked on the front door. According to Cohn, after numerous knocks, a male voice said something to the effect "get the fuck out of here." Cohn explained Piotrowski started dialogue with the male, calling him by the name Simon, through the window opening where the A/C unit was located. Cohn advised she could not hear most of the communication from inside the home, but it "sounded angry in tone." Cohn noted Piotrowski asked about the kids; however she did not hear a response. Cohn specifically noted that she did not hear a child's voice, and thus, her level of concern for the children's safety increased. Cohn noted they lost, regained, and then again lost communication with Simon over time. Cohn did not note the time frame, but did note near the end she heard noises like something being thrown inside the trailer.

Cohn explained the officers decided the front door would be breached due to their concerns for the safety of the children. Cohn said officers entered the home as she had her gun unholstered and at a "low ready" position. Cohn said she and Piotrowski found several large wooden chairs blocking the hallway towards the back (west) bedroom and started to remove them to gain access to the back of the house as they called out "L.L." and "D.L." by name. Cohn explained the back bedroom door was open, but a doorway before that was closed and it sounded like crying was coming from behind the closed door.

Wilson stated that his weapon had been drawn and was in his hands. Wilson advised he turned the door handle and opened the door. Wilson said as soon as the door was open, he heard a male voice say "Get out, I'll kill them."

Cohn described that Piotrowski, Wilson, and then she, entered the bathroom in that order. Cohn "observed a bathtub with sliding doors and could see human outlines behind the doors on the bathtub." Cohn said the left door was opened at which point she saw "an adult male holding a silver bladed knife, a young male child in very close proximity to the adult male." Cohn stated based on her observations "there was an immediate, imminent threat to the lives of L.L. and D.L.". Cohn said she heard Piotrowski yell "drop the knife, drop the knife" and then heard/saw Piotrowski fire several shots at the adult male.

Smith reported that Piotrowski, Wilson, and Cohn entered the bathroom and Smith was more in the hallway as he was 4th in line in the small bathroom. Smith explained he saw Piotrowski open the shower door and from Smith's blocked view he could only see a glimpse of a dark haired male in a red shirt inside the bathtub. Smith said he heard the male say "I'll kill him" but Smith could not see what the male was referring to. Smith explained Piotrowski then fired his handgun multiple times, but due to his blocked view Smith was unable to see what caused Piotrowski to

fire his weapon. Smith said he then saw Wilson grab a boy, Cohn grab a girl, and then both officers quickly exited the bathroom with the children.

The two children were interviewed at the Western Slope Center for Children. Both children refer to Simon as their dad, even though he is not their biological father and they have a different last name. L.L. explained she had been at the home with her family the entire day. L.L. said her dad was holding knives and acting crazy. L.L. said her mom told her that they were leaving after she and her brother ate. L.L. explained her dad then locked the door and told them they weren't going anywhere and started pointing knives at them. L.L. explained her dad was acting drunk and thought someone was in their home. L.L. said after threatening her mother with a knife, he pushed her mother out the front door. L.L. explained after barricading the front door, she and her brother D.L. were sitting on the couch as her dad broke glass by throwing it towards her room. L.L. explained she heard the officers next to the window by the front door and she heard them repeatedly tell her dad that they were there to help him. L.L. explained her dad then made she and D.L. get on their knees on the living room floor. L.L. said her dad then grabbed her around her throat choking her slightly as he held a knife to her chest as he told the cops to go away. L.L. said her dad then told her and D.L. to go to the bathroom and made them get on their knees inside the shower with him. L.L. said her dad then grabbed D.L. by his neck and held the knife up to his chest as the shower doors were closed. L.L. said she could hear the officers through the bathroom window stating they were there to help. L.L. said her dad told them to go away, stabbed the window, and threatened to cut D.L.. L.L. said the officers "broke in" and 2 entered the bathroom. L.L. said the cops told her dad to put the knives down and then they shot him. L.L. said the cops then grabbed D.L. and her, and got them out of the house.

D.L. said "My dad made us go into the shower and hide when the cops were here" and "He had a knife behind him, and he had his knife right here" (D.L. pointing at his own upper chest area) and "He told them not to come in or else he would stab us" and "but the cops already shot him and then the blood splattered all over." Upon further questioning, D.L. discussed witnessing his dad thinking someone was in the home and his dad making them get into the shower. D.L. described his sister was to his left and his dad was to his right behind him when in the shower.

Application of the law

The law permits deadly physical force to be used against a person as defined by statute. Colorado permits deadly physical force to be used only if a person reasonably believes that a lesser degree of force is inadequate, and if the actor has reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or receiving great bodily injury. C.R.S. § 18-1-704(2). There is no special exception or permission for law enforcement officers to utilize deadly force, although the nature of the job puts them in situations more likely to present the decision process of appropriate and justifiable use of force at varying levels.

Here, Cpl. Piotrowski exercised deadly force against Simon Gomez. Such force is authorized, as described above under the commonly known term "defense of others." In Colorado, deadly force used in the defense of others has two equally important components. The first is a subjective component requiring that the actor himself actually believed that another person was in imminent danger of death or great bodily injury, and that deadly force was required. The

second component is an objective component; that the actor's actual belief was also a reasonable belief.

Here, it is clear from Cpl. Piotrowski's own statement that he actually believed that Mr. Gomez was about to kill the kids. His specific statement about when he formed that belief was "...so within that split second of seeing that-that threat, and realizing that there's that imminent threat of death, in my opinion, you know if he misses, it's serious injury-injury by all intent and purposes, it seems he's intent on, uh killing his kids." He described that he shot to save the children's lives. He further describes taking two of the shots until he saw the arms of Mr. Gomez fall away from the children, and described at that point that the "threat was over."

I now turn to the objective reasonableness of this belief. All three of the other officers on scene made references to their observations of imminent danger. Officer Cohn described that the left door was opened at which point she saw "an adult male holding a silver bladed knife, a young male child in very close proximity to the adult male." Cohn stated based on her observations "there was an immediate, imminent threat to the lives of L.L. and D.L." Officer Wilson said as soon as the door was open, he heard Mr. Gomez say "Get out, I'll kill them." Officer Smith said he heard Mr. Gomez say "I'll kill him," although he could not see who Mr. Gomez was referring to.

Further, even the children recognized the imminent danger. L.L. described Mr. Gomez as holding the knife up to D.L. As well, cuts were observed on D.L. that he attributed to being from the knife. This information coupled with the history of drug use, displays of paranoia being reported to law enforcement, and the other attendant threatening conduct, indicate that all others on scene perceived this imminent threat as well.

It is also appropriate to consider whether an officer has specialized training that would allow him to make decisions more calmly, or otherwise be able to assess threats properly without mental distortion due to stress. In that respect, Cpl. Piotrowski's own observations or opinions of the propriety of the actions can be useful in assessing the objective reasonableness.

Cpl. Piotrowski has approximately 15 years of law enforcement experience which includes collateral assignments as a Field Training Officer, SWAT team member (currently for about 10 years), SWAT sniper, SWAT team leader, investigator, and defensive tactics instructor. He was promoted to the rank of Corporal 3 years ago and was the shift supervisor for day shift on 09/04/2016. Given his training, and the consistency among the statements of the respective witnesses, it is believed that his recitation of the facts was accurate with respect to the pertinent issue of whether he had reasonable grounds to believe that L.L. and D.L. were in imminent danger of being killed.

For the reasons stated, I believe that the actions of Cpl. Piotrowski fall squarely within the defense of others justification for use of deadly force. Accordingly, a criminal prosecution of Cpl. Piotrowski is not warranted.

Respectfully,



Daniel P. Rubinstein
District Attorney