STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

July 29, 2016

VIA EMAIL: MWFaulks@hotmail.com

Matthew W. Faulks
Adams County Prosecuting Attorney
P.O. Box 47
Council, ID 83612

Re: November 1, 2015 Officer-Involved Shooting of Jack Yantis

Dear Prosecutor Faulks:

In November of 2015, your office requested that the Idaho Attorney General's Office ("OAG") serve as special prosecutor in the above-referenced matter. Per the agreement letter you signed on November 9, 2015, we accepted prosecutorial responsibility and authority for this case. You then filed a Petition for Appointment of Special Prosecutor and we were formally appointed Special Prosecutor by an Order of Appointment dated November 18, 2015. Prior to review by the OAG, the Idaho State Police conducted a thorough and comprehensive investigation of this tragic incident. This investigation was completed on March 10, 2016, at which point the OAG commenced its prosecutorial review.

The OAG's review included examination of Idaho law, the facts gathered by the investigation, including more than 5,300 pages of documents, 590 photographs and 30 hours of audio and video recordings. The OAG, including Attorney General Lawrence Wasden, also attended a reconstruction of the events and a site visit as part of its review. The written documents generated by the investigation and the OAG's review (excluding items and information exempt from disclosure per Idaho's Public Records Law) may be accessed on our website at http://www.ag.idaho.gov/AdamsCountyShooting.

The charge of the OAG, as special prosecutor, was to review this matter for the sole purpose of determining whether criminal charges should be filed against the two Adams County Sheriff's Office employees involved in the shooting of Jack Yantis. The OAG's duty in conducting that review did not include determining whether any person or entity should be held liable in a civil action, nor did it include an evaluation of whether the officers involved followed best practices or conducted themselves in compliance with departmental policies. Further, the OAG was not charged with determining whether

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departmental policies were appropriate or in accordance with best practices or other standards that might apply to law enforcement agencies. In light of the OAG's limited and specific role in this matter, the OAG has fully reviewed the results of the investigation under applicable Idaho law. As explained in greater detail below, this letter sets forth the OAG's factual findings, their application under Idaho law, and concludes that the OAG would not be able to overcome the requirement that a criminal charge against these deputies could overcome the prosecutorial standard of "reasonable doubt." As explained in greater detail below, the OAG declines to bring criminal charges against the deputies involved.

Summary

Jack Yantis was killed in a confrontation with Adams County Sheriff's Deputies Cody Roland and Brian Wood. Jack received twelve (12) gunshot wounds to his chest, upper extremities and abdomen, and the fatal .223 bullet entered Jack's chest on the right side and traveled upward and to the left through both lungs, fragmented the aorta and lodged in the back. There were four (4) primary witnesses to the shooting of Mr. Yantis by Deputies Roland and Wood. Their conflicting statements create sufficient doubt to prevent a jury from holding anyone criminally responsible for this extremely unfortunate fatality.

ABA Prosecution Standard 3-4.3(a), which outlines the Minimum Requirements for Filing a Criminal Charge, requires that "[a] prosecutor should seek or file criminal charges only if the prosecutor reasonably believes . . . that admissible evidence will be sufficient to support conviction beyond a reasonable doubt . . . ." Idaho's "Justifiable Homicide by Officer" statute, Idaho Code §18-4011, dictates that the ultimate question in this case will be whether the use of deadly force was "reasonably necessary." (A copy of this statute and its corresponding jury instruction, ICJI 1515, are attached). The burden of proof on this ultimate issue would require the State to prove beyond a reasonable doubt that the homicide was <u>not</u> justifiable. The evidence is not sufficient to overcome the sizeable burden of proving this negative, and thus, the evidence is not sufficient to support conviction beyond a reasonable doubt. Accordingly, based on the facts as revealed in the investigation and on the OAG's ethical duty as the Prosecutor in this matter, the OAG is declining to file any criminal charges.

Facts/Procedural Background

During the early evening hours of November 1, 2015, medical and law enforcement personnel responded to a report of a motor vehicle that had collided with a bull on Highway 95, at mile post 142, just north of Council, Idaho. The collision occurred near the home of the bull's owner, Jack Yantis ("Jack"), and the car involved came to rest in the northbound lane of the highway, south of the driveway to the Yantis residence. While the responding medics extricated and attended to the vehicle's occupants, Adams County Sheriff's Deputies Cody Roland ("Roland") and Brian Wood ("Wood") located the

bull which was injured, but still alive. At 7:22 p.m., Deputy Roland radioed dispatch and asked them to call the owner of the livestock as the bull was getting more agitated. At 7:27 p.m., Deputy Roland issued a "shots fired, owner has been shot" call to dispatch and, at the same time, Wood radioed dispatch that "we need all units now, owner has been shot."

The OAG's assessment of any potential criminal liability focuses on what transpired during the five (5) minutes between those calls.

While Jack and his wife Donna ("Donna") were having dinner with the Yantis's nephew, Rowdy Paradis ("Rowdy"), and a friend, Joe Rumsey, they received a call from dispatch that the bull had been struck by a car. The Yantis party retrieved a .204 bolt action rifle so that Jack could euthanize the bull and proceeded to the scene. Both Deputies Roland and Wood told investigators that the practice of allowing a rancher to euthanize cattle involved in traffic accidents was relatively common in Adams County.

At the scene, Roland was armed with a .45 Glock pistol. Wood was armed with a .40 Glock pistol and a .223 caliber AR-type rifle. Wood used only his rifle during the course of events described in the investigation. While waiting for the Yantis party to arrive, Wood fired several shots with his .223 rifle at the bull in response to the bull's aggressive movements and his perception that it was a danger. The bull was still alive, but it came to rest on the ground near the front wheel of a vehicle parked on the northbound shoulder of the highway, north of the Yantis driveway. Roland did not fire at the bull. Shortly thereafter, the Yantis family arrived on the scene via a four-wheeler and a skid-loader (which Rowdy had driven to the scene to provide light and remove the bull's carcass). At this point, vehicles on the north side of the scene traveling southbound on Highway 95 pulled through to a turn-out just past the "bull scene" but before reaching the site of the crashed vehicle and medical personnel. As a result, only semi- trucks that could not pass through or turn around remained to the north.

After arriving at the scene, Donna handed Jack his rifle and Jack moved toward the bull while loading his gun. This was expected by the officers so Jack could put down the bull. Roland and Wood claim that Jack gruffly stated "get that piece of shit away from my animal" or "put that piece of shit away" as Jack passed near Wood while walking toward the bull and they both believed Jack was referring to Wood's rifle, which he had used to shoot, but not kill, the bull. A volunteer firefighter that was directing traffic, Sam McConnell, generally corroborates that Jack made such a statement and observed Jack to be extremely upset at the situation. Neither Donna nor Rowdy heard Jack make the statement regarding Wood's gun.

Jack then walked up to the bull and lined up to shoot it in a southerly direction (as opposed to a northerly direction toward where the traffic had been removed). Roland and Wood both stated that at this point, they became concerned for the safety of the many persons to the south of the scene, in the direction they say that Jack would have

been shooting. Rowdy and Donna, on the other hand, stated that the position of the bull was such that the trajectory of Jack's aim would not have harmed anyone. Roland and Wood both claim they issued verbal commands to Jack by stating "no, no, no," "whoa, whoa, stop, hang on" or "we're not doing this." Most of the witnesses agree Wood also moved toward Jack at this time.

The accounts of the interaction between Wood and Jack and the parties' resulting actions contain significant discrepancies. Each of those accounts is summarized in the following four paragraphs.

First, Donna, from her viewpoint near the four-wheeler, initially indicated that Wood grabbed Jack's arm and jerked him back almost off his feet across to the other side of the highway. She also stated that Roland then pulled his handgun from his holster and opened fire. In a subsequent interview, Donna named Roland as the officer that grabbed Jack from behind. Donna also believes Roland said "I'm hit, I'm hit" and she stated that she never saw Jack point his rifle at the officers.

Second, Rowdy, from his viewpoint near the skid-loader, stated that he saw Jack readying to fire at the bull with his finger on the trigger, and that while he does not know what may have been said between the officers and Jack, the officer with the handgun grabbed Jack by the vest, pulled him toward the centerline, pushed him away and both officers fired. Roland was the officer with the handgun, and thus, Rowdy claims Roland, instead of Wood, physically interacted with Jack. Rowdy also claims the last shot was fired at Jack when he was on the ground and not moving. Rowdy claimed the deputies had what he described as a smug, celebratory moment after the shooting.

Third, Wood states that as Jack prepared to shoot the bull, he approached Jack to try to stop him from shooting. Wood states that as he neared Jack, he reached forward with his left hand, but he didn't think he'd have to grab Jack's rifle because he thought Jack would stop before shooting. Wood claims Jack then stepped back and swung the muzzle of his rifle across Wood's belly and, as a result, Wood twice commanded Jack to point his rifle down. Wood believes Roland issued a command at this point as well, but he does not recall the specifics of that. Wood recalled that Jack then shoved his rifle forward and toward Roland's chest. Wood heard a gunshot and believed it was Jack's rifle (because of Jack's motion). Wood then fired into Jack as fast as he could. Wood was not positive Jack fired first and is not sure of distances. Wood engaged with lethal force because he was in fear for Roland. He thought Roland was shot or was going to be, so he returned fire to stop the threat. Wood is the only one (1) of the four (4) primary witnesses that does not recall some sort of physical altercation or touching between Jack and an officer.

Finally, Roland recounted that Wood approached Jack and reached toward Jack with his left hand, but he couldn't tell if Wood actually grabbed or pushed Jack's gun. Roland states that Jack then shoved Wood sideways and that Wood's left leg was in the

air and Wood hopped to the side on his right foot. As a result of Wood losing control of Jack's loaded gun, Roland reached to un-holster his pistol. Roland says Jack then pulled up and fired from the hip toward him (Roland) while moving to the north and west. Roland stated that the acts of him drawing his pistol and Jack facing him with his (Jack's) rifle occurred almost simultaneously. Roland also believes Jack fired first, but he concedes that his first shot may have been simultaneous. Roland believes he fired three (3) to four (4) shots, and claims to have seen and felt the muzzle blast from Jack's rifle. Extensive lab testing of Roland's clothing and gear could not confirm a bullet strike or muzzle blast. Roland said that during the shooting he had what he described as tunnel vision, was zeroed in on Jack's rifle and didn't recall anything peripheral (including whether Wood had fired his weapon).

The accounts of other witnesses provide little, if any, clarity regarding the interaction between Jack and the officers. To varying degrees, these other witnesses had poorer viewpoints than Roland, Wood, Rowdy and Donna. However, it is important to note that the accounts of the officers being smug or celebratory after the shooting are contradicted by several witnesses. Also, a person that was flagging traffic corroborates Roland's and Wood's assertions that Jack was angry, and a fire cadet on the scene claims to have heard an officer direct Jack to "put your weapon down and get on the ground." Finally, Rowdy admitted that Jack had been drinking beer throughout the day and that Jack had a beer at dinner. Testing of Jack's blood revealed that his blood alcohol content was .104%.

Sixteen (16) spent .223 shell casings and four (4) spent .45 shell casings were recovered at the scene. These casings indicate twenty (20) shots were fired by the officers. In addition, the chamber of Jack's rifle contained a spent shell casing. This is likely the most critical piece of physical evidence since it indicates that Jack actually fired his weapon and, at least to some extent, corroborates the officers' stories. Finally, a .20 caliber bullet was found on the scene. While this bullet could have come from Jack's .204, the FBI expert who tested the bullet will not testify to that fact conclusively. There is no solid explanation as to how that bullet, if fired from Jack's gun, came to rest in the middle of the scene.

Legal Authority

Idaho Code §18-4001 criminalizes murder, which is defined as the unlawful killing of a human being with "malice aforethought." Murder may be in the first degree if committed to execute vengeance or if willful, deliberate, and premeditated. Idaho Code §18-4003. Second degree murder is any murder that is not first degree murder. *Id.*

Idaho Code §18-4006 criminalizes manslaughter, which is defined as an unlawful killing without malice. Voluntary manslaughter occurs when the unlawful killing is "upon a sudden quarrel or heat of passion." *Id.* Involuntary manslaughter, as potentially applicable to this case, occurs when the unlawful killing is: (i) without due caution and

circumspection during the commission of a lawful act which might produce death, or (ii) in the operation of any firearm or deadly weapon in a reckless, careless or negligent manner. *Id.*

Idaho law sets forth several defenses potentially applicable to this case. *See* Idaho Code §18-4009 (Justifiable Homicide by Any Person), Idaho Code §18-4012 (Excusable Homicide) and Idaho Criminal Jury Instruction 1517 (Self-Defense). These defenses thrust the burden upon the prosecution to prove beyond a reasonable doubt that the homicide was <u>not</u> justifiable, excusable or in self-defense. Although these defenses undoubtedly provide additional protections for the officers, the specific applicability of Idaho Code §18-4011 (Justifiable Homicide by Officer) dictates a focus on its language.

The particularly relevant law stated in §18-4011 provides that a homicide committed by a public officer is justified "[w]hen reasonably necessary in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty including . . . keeping and preserving the peace." *Id.* If deadly force is used to overcome actual resistance, the officer must have "probable cause to believe that the resistance poses a threat of death or serious physical injury to the officer or other persons." *Id.* Most important to the charging decision in this case, the jury instruction for this defense requires that "[t]he burden is on the prosecution to prove beyond a reasonable doubt that the homicide was not justifiable [and] [i]f there is a reasonable doubt whether the homicide was justifiable, [the jury] must find the defendant not guilty." *Id.*

Finally, in reference to officer-involved shooting cases, the United States Supreme Court has explained that "the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation," *Graham v. Connor*, 490 U.S. 386, 396-397 (1989), and that "if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." *Plumhoff v. Rickard*, 134 S. Ct. 2012, 2016 (2014).

<u>Analysis</u>

Since the Justifiable Homicide by Officer statute is ultimately dispositive, the OAG's analysis does not address whether the killing of Jack Yantis was with malice aforethought (murder), upon a sudden quarrel or heat of passion (voluntary manslaughter) or the result of reckless, careless or negligent operation of a firearm (involuntary manslaughter). The lack of any truly persuasive physical evidence dictates that a jury would have to rely primarily on the differing accounts of the four (4) primary witnesses. On the one hand, Rowdy and Donna claim the officers fired upon Jack without provocation or justification. On the other hand, Wood and Roland claim they

fired upon Jack in response to what they believed was a threat of death or serious bodily injury. The ultimate question is whether, when weighing these contradictory accounts, a jury would have reasonable doubt as to whether the officers' use of deadly force was not "reasonably necessary?"

While it could be argued the officers fired in a fit of recklessness, or that Wood escalated the situation because he was upset with Jack's slight of his prized weapon, the officers' explanations that Jack pointed his gun at Roland create reasonable doubt undermining those arguments. A capable defense attorney would highlight the basis for doubt by contrasting the observations of Rowdy and Donna with those of Wood and Roland. The defense would also be able to contrast the observations of Joe Rumsey and Rowdy, that the officers were celebratory after the shooting, with those of several other witnesses who observed the officers to be distraught or shaken up. Finally, the defense would draw attention to the contrast between Donna's account that Wood grabbed Jack by the arm and Rowdy's belief that Roland, the officer with the handgun, grabbed Jack by the vest.

While the officers' stories are not identical with each other in every detail, there is sufficient consistency between them to create, at a minimum, reasonable doubt regarding whether their actions were not justified. While there is difference between Roland's account that Jack pushed Wood and Wood's account that he was not pushed, their accounts are otherwise substantially similar. They both claim Jack pointed his rifle toward Roland and that they fired in response to that threat. While it is unclear who fired the first shot, the fact Jack fired a shot is unquestioned, as supported by the presence of a spent shell casing in the rifle he had just loaded. Finally, Wood and Roland were in the best position to view Jack's actions and were specifically focused on what he was doing during those critical moments.

An officer deploying deadly force in response to being fired upon, or having a loaded gun pointed in the officer's direction in a threatening manner, is undeniably acting in a manner that can be viewed as "reasonably necessary" under the circumstances. The OAG is ethically tasked with only filing criminal charges when we reasonably believe the admissible evidence is sufficient to support conviction beyond a reasonable doubt. The consistent portions of the officers' version of events, coupled with the apparent absence of any motive for them to have acted other than in response to a perceived threat, dictates that the evidence in this case is insufficient to support a conviction. Specifically, the relevant jury instruction, ICJI 1515, requires proof beyond a reasonable doubt the officers' use of deadly force was not reasonably necessary. The testimonial evidence that would undoubtedly determine the outcome of this case is insufficient to prove, beyond a reasonable doubt, that the officers' actions were not justified.

Conclusion

As stated at the outset of this letter, the OAG's charge in this matter is limited to determining whether criminal charges should be filed against Deputies Wood or Roland for the shooting of Jack Yantis. After thoroughly reviewing all the materials presented in the investigation of this matter, the evidence in this case is insufficient to support a conviction beyond a reasonable doubt of either Deputy Wood or Deputy Roland. As prosecutors, the OAG is thus ethically prohibited from pursuing any criminal charges against either of the Deputies.

The OAG's involvement in this matter is now concluded and at this point we consider it closed. I urge you to contact me directly if you have any questions.

Thank you.

Sincerely,

Jason Slade Spillman
Chief, Prosecutions Section

Attachments

Cc: Captain William Gardner, Idaho State Police (bill.gardiner@isp.idaho.gov)
Adams County Sheriff Ryan Zollman (rzollman@co.adams.id.us)
Aaron Lucoff (aaron.lucoff@usdoj.gov)
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Idaho Statutes

TITLE 18
CRIMES AND PUNISHMENTS

CHAPTER 40
HOMICIDE

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, either:

1. In obedience to any judgment of a competent court; or

2. When reasonably necessary in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty including suppression of riot or keeping and preserving the peace. Use of deadly force shall not be justified in overcoming actual resistance unless 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; or

3. When reasonably necessary in preventing rescue or escape or in retaking inmates who have been rescued or have escaped from any jail, or when reasonably necessary in order to prevent the escape of any person charged with or suspected of having committed a felony, provided the officer has probable cause to believe that the inmate, or persons assisting his escape, or the person suspected of or charged with the commission of a felony poses a threat of death or serious physical injury to the officer or other persons.

History:
[18-4011, added 1972, ch. 336, sec. 1, p. 931; am. 1986, ch. 303, sec. 2, p. 755.]

ICJI 1515 JUSTIFIABLE HOMICIDE BY OFFICER DEFENSE

INSTRUCTION NO. _____

The defendant contends as a defense in this case that the killing of the decedent was a justifiable homicide.

Homicide is justifiable when committed by public officers and those acting by their command in their aid and assistance, either:

[In obedience to any judgment of a competent court; or]

[When reasonably necessary in overcoming actual resistance to the execution of some legal process, or in the discharge of any other legal duty including suppression of riot or keeping and preserving the peace. Use of deadly force shall not be justified in overcoming actual resistance unless 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;]

[When reasonably necessary in preventing rescue or escape or in retaking inmates who have been rescued or have escaped from any jail, or when reasonably necessary in order to prevent the escape of any person charged with or suspected of having committed a felony, provided the officer has probable cause to believe that the inmate, or persons assisting his escape, or the person suspected of or charged with commission of a felony poses a threat of death or serious physical injury to the officer or other persons.]

The burden is on the prosecution to prove beyond a reasonable doubt that the homicide was not justifiable. If there is a reasonable doubt whether the homicide was justifiable, you must find the defendant not guilty.

Comment

I.C. ss 18-4011 & 18-4013.

The committee recommends that rather than instruct in the specific language of I.C. s 18-4011, the court should instruct the jury in language tailored to the facts of the case, assuming this defense applies to the case.

Idaho statutory and case law previously cast the burden upon a homicide defendant to prove that the defendant's actions were excusable, as in self-defense. However, in that particular circumstance, the underlying statute, I.C. s 19-2112, was repealed in 1977 (1977 Session Law Chapter 154 Section 6). *Martin v. Ohio*, 480 U.S. 228, 94 L.Ed. 2d 267, 108 S.Ct. 1098 (1987),

suggests that Idaho is among 48 states which no longer place such a burden on the defendant, although they would be constitutionally permitted to do so.