

POLICE CIVILIAN REVIEW BOARD

Investigation Report

Internal Affairs Case Number S 2015-0015

Complainant: (Race/Gender)	C- Robert Berger (H/M) (Deceased)
Alleged Policy Violation:	Unreasonable Use of Force: OIS
Subject Officer: (Race/Gender)	S- Off. Benjamin Hone (W/M)
Subject Officer's Years of Service:	S- 9 years
Date of Alleged Incident:	9/23/15
Date Investigation Requested:	9/23/15
Date Filed with Internal Affairs	9/23/15
Date Investigation Completed:	11/4/15
Panel Members:	Brandon Myers Kevin Parke Tyson Carbaugh-Mason Gregg Bambo
Date of Panel Meeting:	11/18/15
Interviews Conducted:	10

It should be noted that the narratives contained in this report are summaries that have been paraphrased from interviews. They should not be interpreted as verbatim transcripts. The narrative is intended to accurately communicate the substance of the major points in each interview.

Synopsis:

The following was taken from the SL County District Attorney's Office official report on this incident. The matter was investigated by the SLCo DA's office in conjunction with investigators from the Unified Police Department. This letter has been made public and so the names were not redacted:

In the middle of the night on September 22, 2015, Robert Berger broke in to two Salt Lake City homes near one another. In the second burglary, he assault two women, Breann and Kylie Lasley. Mr. Burger then stabbed Breann repeatedly while her sister Kylie ran outside and screamed for help. SLCPD Officer Hone arrived in the area having been dispatched to the first

burglary when he encountered Kylie's cries for help. Officer Hone ran into the home and downstairs into the basement. He saw Breann, bloody from stabbing injuries, being held by Mr. Berger who also held a knife in his hand. When Mr. Berger did not comply with Officer Hone's commands to drop the knife, Officer Hone fired once, hitting Mr. Berger in the head, killing him.

Robert Berger, herein referred to as C, died as a result of this encounter:

C died due to the single gunshot wound he suffered and therefore did not provide any information to this investigation.

Off. Robert Berger, herein referred to as S, is the subject of this matter and provided the following:

S stated in his interview that he was aware that C was inflicting injuries to the body of the homeowner, by stabbing her, and he used "Deadly Force" in order to stop that life threatening attack. His interview was recorded and can be used in the future, if needed.

Evidence:

Photographs: pictures of the autopsy of C were made, crime scene photographs were made, and photographs of the stab wounds suffered by Kylie were also made.

Firearms Training Records: SLCPD firearm training records were made and they show that S was current on his qualifications.

Allegations:

Due to this case being an OIS, an automatic review is triggered with the central question being: was S's decision use of "Deadly Force", within, or not within, SLCPD policy.

Definitions

Unfounded: The reported incident did not occur.

Exonerated: The employee's actions were reasonable under the circumstances.

No determination is possible: There is insufficient evidence to support a conclusion as to whether or not the employee violated policy.

Sustained: The employee's action(s) are in violation of the policy or procedure of the Police department.

Analysis and Recommendation:

The following is also contained within the DA's report and reflects the State Law on use of "Deadly Force":

76-2-404. Peace officer's use of deadly force.

- (1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:
- (a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(3) or (4);
 - (b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and
 - (i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or
 - (ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or
 - (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.

Additional guidance on this matter, as cited by the DA is:

In addition to the use of deadly force in defense of self or others, a peace officer's use of deadly force is "justified" when:

"effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or 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." U.C.A. 76-2-404.

In reviewing the facts of this case, it is apparent that C had forcibly entered the home of two female citizens and was in the process of attacking one of them with a knife. The evidence is overwhelming that C had stabbed one of them multiple times and there is no indication that when C was confronted by S, who told him to put down the knife and to surrender, that C was going to stop his attack on Kylie. The facts seem clear that S was faced with the option of using "Deadly Force" in defense of Kylie or to not act, thereby allowing C's unprovoked attack to continue. S, believing Kylie's life was in danger fired his weapon one time, striking and killing C and stopping the attack on Kylie.

Panel Findings:

As to the allegation that S used “Deadly Force”, the Panel makes a finding of Within Policy.

The Panel makes a finding that this matter is in the public eye and therefore recommends that this report be made public.

Kevin Parke
Panel Chair

11/18/15