

**COMMONWEALTH OF PENNSYLVANIA  
COUNTY OF YORK**

**Tom Kearney**  
DISTRICT ATTORNEY



YORK COUNTY  
JUDICIAL CENTER  
45 NORTH GEORGE ST.  
YORK, PA. 17401  
(717) 771-9600 Office  
(717) 771-9738 Fax

**MEMORANDUM**

**TO:** Tpr. Christopher J. Colarusso  
Pennsylvania State Police

**TO:** Thomas H. Hyers  
Chief of Springettsbury Township Police Department

**CC:** Press

**FROM:** Tom Kearney  
District Attorney of York County

**DATE:** April 16, 2013

**RE:** Police Shooting Investigation: Todd William Shultz  
Date of incident: December 29, 2012 at approximately 6:53 pm  
Location: K-Mart Retail Store, 1094 Haines Rd., Springettsbury  
Township, York County, PA  
PSP Incident #: H07-2175013

I am in receipt of the Pennsylvania State Police incident report H07-2175013 hereafter referred to as Report, concerning the above referenced matter. The investigation was commenced as a matter of routine after members of their department discharged service firearms while on duty, causing death to Todd William Shultz. It should be noted that the author visited the scene of the shooting for about an hour shortly after it occurred and while the investigation was ongoing.

After reviewing the Report along with supplemental materials including, but not limited to, witness statements of the police officers involved, 22 written statements of civilians taken the evening of the shooting, 18 civilian witness interviews taken by the Pennsylvania State Police, inside as well as outside video surveillance maintained by K-

Mart, Patrol Vehicle video with audio, records of York County Control, Taser Data and Video Downloads, the Autopsy and toxicology Reports of Mr. Shultz, scene diagrams and photographs, physical evidence, the District Attorney's office makes the following findings and recommendations:

### **SUMMARY OF THE FACTS**

The nature of the incident and circumstances related thereto are best set forth in the synopsis of the Report as completed by Trooper Christopher J. Colarusso of the Pennsylvania State Police which follows:

"This investigation originates from a police-involved shooting where officers from the Springettsbury Township Police Department shot and killed Todd William SHULTZ. Due to the nature of the incident involving police officers, the York County District Attorney's Office requested that the Pennsylvania State Police respond to, and investigate, the shooting. It should be noted that the shooting was captured and recorded in both audio and video by the MVR of a Springettsbury Township PD unit.

The incident began on Saturday, 12/29/12, at approx. 1853 hours, when SHULTZ appeared at the K Mart retail store located at 1094 Haines Road, Springettsbury Township, York County. SHULTZ was observed by store employees and customers attempting to pry open a jewelry kiosk located inside the store. Store employees contacted 911 and Springettsbury Police Officers were dispatched. Cpl. Gregory HADFIELD and Officer Travis STOTELMYER arrived at the scene within a few minutes and met with store employees, who identified SHULTZ as the subject attempting to steal merchandise. Cpl. HADFIELD and Officer STOTELMYER confronted SHULTZ inside the store near the front exit. SHULTZ was non-compliant, ignored the officer's commands, and attempted to flee the store. Cpl. HADFIELD and Officer STOTELMYER deployed their Tasers in attempt to gain compliance and control over SHULTZ, but SHULTZ appeared unaffected and continued to struggle with the officers.

SHULTZ ran out of the store attempted to run through the parking lot, but the responding officers surrounded SHULTZ and contained him to the sidewalk area in front of the store, where officers continued their attempt to take SHULTZ into custody. Officer STOTELMYER deployed his Taser, causing SHULTZ to fall to the ground. While on the ground, SHULTZ continued to ignore verbal commands to surrender, and he produced a knife and scissors and made several stabbing and swiping motions toward the officers. Officers gave SHULTZ multiple verbal commands to drop the knife, which SHULTZ ignored.

Officer James MILLER arrived at the scene to assist. Officer MILLER deployed his metal baton in attempt to gain compliance and control from SHULTZ, but SHULTZ did not respond with compliance to the baton strike. SHULTZ stood up with the knife in his hand and moved toward the officers and the entrance of the store. SHULTZ continued to swipe and stab at the officers while ignoring verbal commands to drop the knife.

Prior to SHULTZ reaching the store's entrance, Cpl. HADFIELD and Officer MILLER fired multiple rounds at SHULTZ from their issued police firearms. SHULTZ was struck multiple times and fell to the ground. SHULTZ was transported by ambulance to York Hospital, where he was pronounced deceased."

#### **K-Mart Video surveillance-Inside**

Inside surveillance shows the deceased at two different jewelry kiosks prior to police arrival. Mr. Shultz attempts to forcibly gain access to the kiosks located at the front of the store, and at a jewelry counter near the center of the store. He looks around and steps away on several occasions, apparently trying to avoid suspicion. This conduct continued for approximately 5 minutes until he is finally successful and appears to steal several items from inside the lock boxes. It is noted that 10 pairs of earrings belonging to K-Mart were later recovered from Mr. Shultz's right front jacket pocket.

#### **K-Mart Video surveillance-Outside**

The outdoor surveillance is of poor quality, but shows Springettsbury officers engaging the deceased while a crowd of civilians gathers outside. The video has no sound.

#### **York County Control Records:**

6:51 PM: YCC dispatches a retail theft in progress, including a suspect description of a w/m, approx. 400 lbs., wearing a grey t shirt and blk jacket with hood. The suspect is described as having 2 screwdrivers and a knife.

6:56 PM: STPD Unit arrives on scene

6:59 PM STP requests EMS, Class 1

7:01 PM STPD advises shots fired and subject is down

7:04 PM EMS arrives on scene

#### **Tazer Data and Video Downloads:**

Two of the officers attempted to use tazers to subdue Mr. Shultz. The video download of one shows M. Shultz exiting the K-Mart and being tazed outside the store on the sidewalk. It shows Mr. Shultz sit up and attempt to stand up each time he is tazed. The video also shows him taking swipes with a knife with his right hand. The video of the other tazer used appeared to malfunction and was not viewable.

#### **Autopsy and toxicology Reports:**

The Autopsy report, prepared by Forensic Pathology Associates in Allentown, Pennsylvania, lists the cause of death as "multiple gunshot wounds" and the manner of death as "homicide."

Of note is the toxicology report which indicates the presence of Ethanol (.02%), Cocaine (372 ng/ml) and Benzoylcegonine (3075 ng/ml). Benzoylcegonine is formed in the liver by the metabolism of cocaine and ultimately excreted in the urine.

The Pennsylvania Bulletin periodically publishes the minimum levels of Controlled Substances or their metabolites in blood necessary to establish presence of controlled substances for purposed of the Driving Under the Influence Statute. In 43 Pa.B. 103 (published Saturday January 5, 2013) the minimum level for cocaine was 4 ng/ml and for Benzoylcegonine, the minimum level was 1 ng/ml.

In the opinion of the forensic pathologist who did the autopsy (obtained by this author through a telephone conference), Mr. Shultz was very clearly under the influence of Cocaine at the time of his death.

#### **Interview of Mr. Shultz's girlfriend:**

She and the deceased had been residing together for a period of about 7 years. They have no children together. Mr Shultz was described as a likeable individual but one who struggled with substance, particularly crack cocaine. She described him as having health issues which caused him great pain. She stated in the past year these issues caused him to talk about committing suicide. Approximately 2 months prior to his death she described him as intentionally overdosing on prescription medication in an attempt to do so. Other issues which may have contributed to his depressive state were legal and financial in nature. The day of his death at approximately 4:00 p.m., Mr. Shultz learned he was the subject of active arrest warrant for unpaid funds. He left his home between 5:00 p.m. and 5:30:pm which was the last time he was seen by his girlfriend.

#### **Civilian Witnesses:**

As frequently happens when there are a large number of witnesses to an event, not all persons saw all that occurred. There was, however, a commonality to the interviews and statements. Mr. Shultz was stealing jewelry from K-Mart. When police arrived they attempted to take him into custody and he resisted. During that resistance he was tazed inside the store. It appeared to have little or no effect as Mr. Shultz escaped from the officers and ran to the outside of the store where the officers again attempted to take him into custody and in doing so again applied the tazer. This too had little effect upon Mr. Shultz who produced and started swinging a knife. The police demanded that Mr. Shultz drop the knife. Instead, Mr. Shultz advanced towards the officers, civilians nearby, and the doorway entrance to the K-Mart.

One witness described Mr. Shultz as "charging towards the police and pedestrians w/ what I thought was a knife, and the police officers had no choice but to shoot the man."

Another stated "he got up and took out a knife. They yelled put it down and he refused and he walked to the store doors until the police shot the thief. The thief refused and tried to endanger others."

K-Mart's Loss Prevention officer related in his interview what happened outside the store: "The officers chased the subject outside the store and were able to contain the subject to the sidewalk area in front of the store. One of the officers deployed his tazer again, and this time the subject fell to the ground. The officers ordered the subject to roll on to his belly, but the subject refused and reached into his pockets and produced what appeared what appeared to be a knife. He heard an officer yell "knife". Customers were outside the store within close proximity to the subject, as well as customers standing just inside the store's front entry door. (I) was trying to usher customers inside the store and out of harm's way. The subject walked toward the officers and the front of the store with a knife in his hand. The officers gave the subject multiple verbal commands to stop. The subject continued to approach the officers and the front of the store, and the officers shot the subject. After being shot the subject initially stumbled but continued to move forward toward the officers and the front entrance of the store. The officers fired additional shots and the subject fell to the ground."

Another stated: "The deceased was getting up from his last tazing, and he pulled out a knife. At least ten or fifteen times the police begged the deceased to stop. They [the police] were even respectful about it. They gave him every opportunity to do what they asked. The deceased began walking towards a crowd of people with his weapon. Before the police had a chance to use less than lethal force, they had to shoot him. These police officers definitely did the best job in the world. Several people could have been injured or killed, and they saved a lot of people. They absolutely did the right thing. There was no way that this guy [the deceased] was stopping, and in a second he could have killed somebody."

**Audio and Video recording of shooting obtained from Springettsbury Patrol vehicle:**

On the night of the event, this author reviewed the video obtained from the Springettsbury Township Police patrol vehicle. Also reviewed was the accompanying audio recording.

The vehicle was parked facing south along the curbing north of the main entrance along the front of the store and its camera was capturing what occurred to the south in the area of the entrance. Clearly visible was the conduct described above. It was on this basis and after review on scene of many of the written statements taken that evening that the undersigned preliminarily cleared the officers of criminal wrongdoing, subject of course to the full investigation being completed.

## STATEMENT OF THE LAW

To determine criminal responsibility in use of force situations, several considerations come into play, including, but not limited to, the totality of the circumstances of the individual case, the United States and Pennsylvania Constitutions, the General Principles of Justification as set forth in the Pennsylvania Crimes Code, applicable case law, and the use of force policy of the police department.

The rules governing the use of force in self-protection and protection of others are provided for in Pennsylvania Law. Generally, the use of force upon or toward another person is justifiable when the actor believes that such force is immediately necessary for the purpose of protecting himself against the use of unlawful force by such other person on the present occasion 18 PaCSA § 505(a).

The law regarding use of force for the protection of other persons is found in 18 PaCSA § 506. It permits the use of force when the actor would be justified under § 505 in using such force to protect himself against the injury he reasonably believes to be threatening another person and he believes such intervention is necessary for the protection of the other.

The Pennsylvania Crimes Code states that conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justifiable if the harm or evil sought to be avoided by such conduct is greater than that sought to be prevented by the law defining the offense charged 18 PaCSA § 503(a)(1).

There are specific provisions that relate to the use of deadly force. As stated in the Pa Crimes Code; the use of deadly force is not justifiable unless the actor believes that such force is necessary to protect himself against death or serious bodily injury, nor is it justifiable if the actor provoked the use of force against himself in the same encounter; or the actor knows that he can avoid the necessity of using such force with complete safety by retreating.

It should be noted, however that a public officer justified in using force in the performance of his duties is not obliged to desist from efforts to perform such duty, because of resistance or threatened resistance 18 PaCSA §505(b). In this context, a person employing protective force may estimate the necessity thereof under the circumstances, as he believes them to be when the force is used, without retreating.

Deadly force in law enforcement to prevent the commission of a crime is justified in cases where the actor believes there is a substantial risk that the person whom he seeks to prevent from committing a crime will cause death or serious bodily injury to another unless the commission or consummation of the crime is prevented and that the use of



such force presents no substantial risk of injury to innocent persons. 18 PaCSA §508(d)(1)(ii)(a).

The Fourth Amendment requires peace officers to use only an amount of force that is objectively reasonable in light of all the surrounding circumstances. Graham v Connor, 490 U.S. 386, 397, 109 S.Ct. 1865, 104 L.Ed.2d. 443 (1989). Assessing the level of permissible force "requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests and the countervailing governmental interests at stake." *Id.* Courts must give due regard to the fact that officers frequently make split-second judgments about the amount of force to use without the benefit of hindsight. Graham, 490 U.S. at 396-97. Indeed, a claim of justification cannot be defeated by showing that the actor used more force than was necessary so long as he reasonably believed it was immediately necessary to kill in order to protect himself against death or serious bodily harm. See Comm v. Fisher, 491 Pa 231, 420 A.2d 427 (1980).

### DISCUSSION

In the instant case, the issue is whether the deadly force that was used by the officers was reasonable under the circumstances.

With regard to the mental state of the officers as the incident developed, it is clear that they were performing their duty in apprehending an individual suspected of criminal activity. When the individual resisted, their attempt to subdue him by utilization of a tazer (non-lethal force) was appropriate.

The individual then displayed a knife and commenced advancing on the officers and in the direction of the crowd. Repeated instructions to lay the weapon down and verbal warnings as to the harm that would follow went ignored by Mr. Shultz. Instead Mr. Shultz continued to advance, prominently displaying the knife, to within feet of the police the crowd, and the entry way into the store.

The officers, and those civilians nearby, were clearly in imminent danger of immediate serious bodily injury or death at the time the officers fired their service pistols. It is also beyond question that the officers' fear of immediate serious bodily injury or death to themselves or to others was reasonable.

Accordingly, the actions of the officers in using deadly force in response to Mr. Shultz's decision to advance while displaying a deadly weapon was reasonable.

### CONCLUSION

In the instant case, the issue is whether the deadly force that was used by the officers was reasonable under the circumstances. With regard to the mental state of the officers, it would have been clear to any reasonable person that Mr. Shultz presented an imminent danger of death or serious bodily injury at the time the officers used deadly force in the discharge of their service weapons. Accordingly, the action of the

Springettsbury Township police officers use of deadly force in response to Mr. Shultz's conduct was justified and no criminal action is warranted.

The matter is now closed.