

Report of the State's Attorney for the Judicial District of Hartford Concerning the Use of Deadly Force Resulting in the Death of Joseph H. Bak on March 3, 2008

Legal Authority of the Report

Connecticut General Statutes (rev. to 2007) § 51-277a provided:

(a) Whenever a peace officer in the performance of his duties, uses deadly physical force upon another person and such person dies as a result thereof, the Division of Criminal Justice shall cause an investigation to be made and shall have the responsibility of determining whether the use of deadly force by the peace officer was appropriate under section 53a-22. The division shall request the appropriate law enforcement agency to provide such assistance as is necessary to determine the circumstances of the incident.

This State's Attorney is mindful of the policy enacted by the Council of State's Attorney, whereby a State's Attorney other than the State's Attorney for the jurisdiction where the use of deadly force incident occurred would be responsible for such investigations. However, as this incident occurred prior to the policy change, the undersigned State's Attorney remained responsible for filing a report with the Chief State's Attorney containing (1) the circumstances of the incident, (2) a determination of whether the use of deadly physical force by the peace officer was appropriate under section 53a-22, and (3) any future action to be taken by the Division of Criminal Justice as a result of the incident.

These investigations are complex and require extensive investigation on the part of the Connecticut State Police and intensive review and legal analysis on the part of the State's Attorney. The completion of the State Police phase of the process can take as long as two years. Nonetheless, the State's Attorney acknowledges the undue delay in the completion of this report. I extend my sympathy to the loved ones of the deceased and apologize for the time it has taken to complete this report and will make myself available to them should they wish to further discuss the matter.

Circumstances of the Incident:

On Sunday March 2, 2008, at approximately 1:00 p.m., West Hartford Police were dispatched to a Geneva Avenue home to speak with a local resident who complained of being sexually assaulted by her ex-boyfriend Joseph Bak¹. The complainant reported that Bak spent the previous two nights at her home, and that she awoke to find him tying her feet together with rope. He continued to tie her hands behind her back and then used scissors to cut her clothing off, before violently sexually assaulting her vaginally and anally. When she asked him why he was doing that to her, he responded that he wanted to kill himself, and tried to do so by overdosing on heroin, but that it didn't work. The complaint stated that Bak left her home at approximately 11:00 a.m., taking her Green Honda Civic, Connecticut registration 934PZG; her credit card and a knife from her kitchen. He further told her

¹ In accordance with Connecticut General Statutes §54-86e, the complainant's identity will not be disclosed, and she will be referred to as Jane Doe.

that he was going to buy a gun. West Hartford Police entered her vehicle in the National Crime Information Center database, and entered a "BOLO" for Joseph Bak.

The complainant contacted West Hartford Police again at 3:33 a.m. on March 3, 2008, and stated that Bak called her at 3:00 a.m. to apologize to her. He told her that he wanted to rob a bank, but couldn't because it was Sunday. She believed that he was calling from his aunt's home. He told her that he tried to get a gun from his uncle, but was unable to do so; and that he wanted to kill himself. He told her that he wasn't going back to jail, and "would do whatever [he] had to do, not to go to jail."

On March 3, 2008, at approximately 4:04 a.m., West Hartford Police received a call from Joseph Bak's aunt that Bak left her home 15 minutes prior to her call, and stated that he wanted to kill himself. Police responded to her home where she stated that she believed that Bak had attempted suicide in the past, and that on this evening, Bak asked if there was a gun in the house. When his uncle went upstairs, Bak became concerned that his uncle was calling the police. He told his aunt that he had a knife and threatened to use it on himself or the police. At one point, his aunt saw a knife on the floor, which Bak picked up and put into his pants pocket. She later identified a photograph of the knife as resembling the knife she had seen Bak put into his pocket. His aunt stated that while he was at her home, Bak called his girlfriend and spoke to her for a while. She (his aunt) gave him \$20.00 and he left, driving a green Honda. Bak's aunt gave police a description of Bak and the clothing that he was wearing, and told them that Bak's father lived in Newington. West Hartford Police found contact information for his father, who stated that he last saw his son 1 ½ - 2 months prior, when Joseph overdosed on heroin in his garage.

On March 3, 2008, at approximately 10:37 am, West Hartford Police received a report of a bank robbery at the People's Bank, located at 1232 Farmington Avenue, West Hartford. Police responded to the bank, where they were told that a white male entered the bank and presented a teller with a People's Bank deposit slip on which he had written, "put all 50's and 100's in an envelope. You have 30 seconds until..." The teller opened her drawer and complied with his demand. He then fled.

Officers viewed photographs and video from the bank's surveillance system, which depicted a white male with short, shaved black hair and full beard and mustache approaching the teller's station and then fleeing out the door. Police believed the male was Joseph Bak.

Connecticut State Police Trooper Chick Bistany stated that he was working on March 2, 2008, at approximately 10:00 p.m. when he heard West Hartford Police issue a broadcast for Joseph Bak, wanted in connection with a sexual assault. He was reported to be operating a green Honda and was armed with a knife and attempting to get a gun. He was also believed to be suicidal. The following day, on March 3, 2008, at approximately 10:30 am, Trooper Bistany was on patrol of the 1-91 corridor from Exit 34 to Exit 49. He was near Exit 33 in Hartford when he heard the broadcast of the bank robbery. The getaway car's description matched that of the car stolen during the earlier sexual assault. He positioned his cruiser at the Sisson Avenue exit near Exit 46 on Interstate 84 in Hartford when he heard Trooper Steve Orlowski report that he was behind the suspect vehicle on Main Street in Newington. Trooper Bistany listened to the transmissions of the pursuit into Newington and then Hartford.

Trooper First Class Orlowski reported that he had information that Bak was known to hang out on Berlin Turnpike in Newington. He traveled down Main Street from Newington Center towards New Britain Avenue in West Hartford. He observed a vehicle matching the description of the stolen motor vehicle and confirmed the license plate. He began to follow the vehicle at approximately 35 mph, the posted speed limit, at the intersection of Main Street and Hartford Avenue. As Trooper First Class Orlowski provided updates on his movements, a marked Newington Police cruiser came from the opposite direction with its lights and siren activated, at which point the suspect vehicle increased its speed up to 60 mph. The vehicle traveled from Hartford Road, heading towards New Britain Avenue in Hartford; before traveling back towards West Hartford, then in the direction of White and Fairfield Avenue, in Hartford's south end. The suspect's vehicle collided with a black SUV on Fairfield Avenue, and began to accelerate, heading north on Fairfield Avenue. From Fairfield Avenue they turned onto Zion Street towards Park Street; to Broad Street in Hartford. The suspect turned left onto Broad Street, heading towards Capitol Avenue.

Trooper First Class Bistany was at the intersection of Broad and Russ streets traveling southbound at 5-10 M.P.H., when he observed the green Honda traveling north on Broad Street in his direction. Trooper Orlowski was traveling behind it. The operator of the Honda was travelling at 10-15 miles per hour when it collided with Trooper Bistany's cruiser. Trooper First Class Orlowski blocked the Honda with his cruiser. Trooper Bistany described the operator as a white male in his early 20's with brown hair and facial hair. The male was identified as Joseph Bak. Bak exited the car appearing angry and gritting his teeth. He ran north on Broad Street past the passenger side of Bistany's cruiser. Trooper Bistany drew his service pistol and ran on the driver's side of his cruiser also in northerly direction. Trooper Orlowski joined in the foot pursuit. Both Trooper Bistany and Orlowski were attired in official Connecticut State Police uniforms and thus clearly identifiable as police officers.

Trooper First Class Steven F. Orlowski

Trooper First Class Orlowski was interviewed by Eastern District Major Crimes detectives on March 12, 2008, and provided a sworn statement recounting pertinent events. As Orlowski chased Bak on foot across Broad Street's intersection with Russ Street, he observed him "fumbling, and reaching for something in his pants pocket" after which he observed a knife with a silver blade in Bak's right hand. Orlowski drew his sidearm and came to within seven to ten feet of Bak when Bak swung the knife back at Orlowski at about waist level. Orlowski slowed his pace and yelled several times, "Drop the knife." As Bak continued to attempt to flee, he again slowed and slashed the knife back at Orlowski at waist level in a threatening manner. Bistany eventually came to be positioned between Orlowski and Bak. Bak stopped abruptly and turned, raised the knife to approximately shoulder height and lunged forward toward Bistany, coming to within a little more than arm's length from the trooper. Orlowski heard what sounded like two shots from Bistany's gun, but Bak remained upright and continued moving in the direction of Bistany. Fearing for Bistany's safety, Orlowski raised his gun and fired two shots at Bak, who "was swinging the knife towards" Bistany. When Bak fell to the ground, Orlowski saw him reach for and grasp the knife with his right hand. Orlowski kicked the knife away. Bak was handcuffed and attended to by other officers who were at the scene.

Trooper First Class Chick J. Bistany

Trooper First Class Bistany was aware of the reports that Bak was suspected of the sexual assault and the bank robbery in West Hartford earlier that morning and the day before, as well as that he was reportedly using the stolen Honda and that he was potentially suicidal. This fact had been broadcast by Troop H.

Trooper First Class Bistany was interviewed by Eastern District Major Crime detectives on March 12, 2008, and provided a sworn statement recounting pertinent events. As Bistany chased Bak on foot on Broad Street, he observed him reach into the right side pocket of his cargo pants as he was running. As Bak struggled, eventually using both hands to free something from his pants' pocket, Bistany called out, "You are all done," meaning that "it was over and that [Bak] was caught." Bak continued to flee and produced a knife, which he slashed and thrust in Bistany's direction. Bak was visibly angry. Bistany heard Orlowski, who was behind him, loudly and clearly yell, "'Drop the knife'" several times. Bak ignored these commands, abruptly stopped, and spun around to face Bistany, who was attempting to "slow down from [his] full blown sprint" Bak held the knife "ice pick style" and without warning advanced toward Bistany with the "knife raised up high" as if to thrust it downward. Fearing imminent bodily harm or death to himself or Orlowski, Bistany fired his gun at Bak. He then heard what he believed was Orlowski's gun being fired. Bak eventually fell to the ground where he was handcuffed and attended to by other officers who were at the scene.

Other Witnesses

Kalonnie K. Batchelor

Kalonnie Batchelor, a resident of Broad Street, was interviewed by Connecticut State Police detectives on March 3, 2008, and provided a sworn statement recounting her observations. She heard sirens and looked out the window of her apartment giving her a clear view of the street below. She saw three police officers, two of whom were white, chasing a man she described as "Spanish" in the area of Broad and Russ streets. Batchelor saw the man being chased stop all of a sudden and turn around. He had a knife in his right hand. The cops all yelled something at him. They were all about five feet or so from him. The man held the knife up in the air by his shoulder and she heard gun shots. She reported hearing three shots and the man fell onto his side on the ground. Batchelor saw an officer kick at the suspect near the area of his shoulder and back. She described the knife as "like the size of a steak knife."

Nelson J. Blanco

Nelson Blanco, who was seated in a vehicle on Broad Street at the time of the incident, was interviewed by Connecticut State Police detectives on March 7, 2008, and provided a sworn statement recounting his observations. He observed two uniformed, white police officers chasing a white male on Broad Street in his direction. As the suspect was running, Blanco observed him "reaching for something in his pants with his right hand." The police officers appeared to be yelling at the man because Blanco could see their mouths moving. As the suspect neared Blanco's position, Blanco saw him pull out something silver from his pants and suddenly turn and spin toward the police officers.

He could not tell if the silver object was a knife or gun at that point. He then saw the white male lift the silver object over his head as though he were making a threatening gesture towards the police officers. He then heard at least two gunshots and the white male went right down onto the ground.

Augustin Delgado

Augustin Delgado, who had been working on the third floor of a home on Broad Street at the time of the incident, was interviewed by Connecticut State Police detectives on March 3, 2008, and provided a statement recounting his observations. Delgado observed six or seven police officers chasing “a guy” on the sidewalk. The suspect had a knife in his right hand and Delgado heard the police yelling, “stop, stop.” He observed the suspect point the knife at the police officers who had their guns out and then heard three shots, and observed the suspect fall to the ground.

Yelitza Mulero

Yelitza Mulero, who was a resident of Broad Street at the time of the incident, was interviewed by Connecticut State Police detectives on March 3, 2008, and provided a statement recounting her observations. She heard sirens and then several voices yelling, “Put down the knife ... Put down the knife ... Put down the knife.” As she approached her bedroom window overlooking Broad and Russ streets, she heard three shots. When she got to the window and looked out she observed what appeared to be a light-skinned Hispanic man lying on the ground.

Anthony E. McCrorey

Anthony McCrorey, who was a resident of Russ Street at the time of the incident, was interviewed by Connecticut State Police detectives on March 3, 2008, and provided a sworn statement recounting his observations. When he heard a car skidding and sirens, he looked out the window. He observed a “Spanish guy” who had his right hand inside his coat/shirt as a trooper yelled, “Stop!” The suspect turned toward the trooper, who fired his gun at least three times. McCrorey heard a total of five gunshots. As the suspect fell, McCrorey observed him drop something silver and black.

Rachel L. Rosado

Rachel Rosado, who was a resident of Russ Street at the time of the incident, was interviewed by Connecticut State Police detectives on March 3, 2008, and provided a sworn statement recounting her observations. She heard sirens and looked out a window that faced Broad Street. She saw a white man running across Russ Street. His arms “were swinging back and forth” and he was “carrying something shiny in his right hand. Three police officers were chasing the man, loudly yelling at him to do something, which she could not make out because the window was closed. She heard three or four gunshots.

Video Surveillance

On the day of the shooting, Connecticut State Police detectives obtained video surveillance footage captured by a camera mounted on the building at 559 Broad Street, a community center. Consistent

with the above eyewitness accounts, the footage obtained from one of the surveillance cameras shows the suspect (upper right corner of the frame, wearing a white shirt), stop, turn around to confront and move in the direction of the troopers and then fall to the ground.

Physical Evidence

A J.A. Henckels steak knife with a black handle and a silver blade approximately three inches in length was located on the ground near Bak and seized by Connecticut State Police detectives. The sexual assault victim's stolen credit card and the proceeds of the People's Bank robbery (\$850 in \$50 dollar bills) were found in the Honda and seized by detectives.

Orlowski and Bistany surrendered their .40 caliber, Sig Sauer police service sidearms to detectives. Detectives located and seized six .40 caliber spent cartridge casings from the immediate vicinity of the shooting. An examination and subsequent analysis revealed the following: Orlowski's weapon contained ten live cartridges in its magazine and one live cartridge in its chamber. Bistany's weapon contained eight live cartridges in its magazine and one live cartridge in its chamber. The "12 + 1" total capacity of the magazine and chamber indicated that Orlowski had fired his weapon twice and that Bistany had fired his weapon four times. Two of the recovered spent casings were ballistically matched to Orlowski's weapon and the four others were ballistically matched to Bistany's weapon.

An autopsy of Bak was performed on March 4, 2008, by Chief Medical Examiner Dr. H. Wayne Carver II, which led to Bak's positive identification. The cause of Bak's death was determined to be multiple gunshot wounds to his torso and the manner of the death was classified as a homicide. Connecticut State Police detectives seized a number of bullets and bullet fragments that had been removed from Bak during the autopsy. Of the five bullets that were capable of comparison, three were matched to Bistany's weapon and two were matched to Orlowski's weapon.

Joseph Bak

At the time of this incident, Joseph Bak was 23 years old. State Police spoke with his mother, father, grandfather and aunt, each of whom reported that Bak battled depression, and had attempted suicide on at least three occasions. His mother stated that she had seen her son three days prior to his death, when he stopped by her house. She further stated that West Hartford Police came to her home on March 2, 2008, looking for him in regards to what she believed was a domestic violence incident.

Joseph Bak's maternal grandfather was interviewed by State Police on March 11, 2008. He and his wife raised Bak in their home from age 5, until he turned 17 years old. He reported that his grandson experimented with illegal drugs, and battled depression, which led to at least two suicide attempts. He believed that his grandson finally received treatment for his depression while in prison. He also reported that Bak had several negative experiences with police, leaving indelible marks upon him.

Criminal records revealed that Joseph Bak had convictions for Robbery in the First Degree, Violation of Probation; Failure to Appear; and Interfering with an Officer.

Law Regarding the Use of Deadly Force by a Police Officer

Connecticut General Statutes (rev. to 2007) § 53a-22 provided in pertinent part:

(c) A peace officer ... is justified in using deadly physical force upon another person ... only when he or she reasonably believes such to be necessary to (1) Defend himself or herself or a third person from the use or imminent use of deadly physical force ... and if, where feasible, he or she has given warning of his intent to use deadly physical force.

Pursuant to Connecticut General Statutes (rev. to 2007) § 53a-3 (9), a “[p]eace officer’ means a member of the Division of State Police within the Department of Public Safety”

Pursuant to Connecticut General Statutes (rev. to 2007) § 53a-3 “[d]eadly physical force’ means physical force which can be reasonably expected to cause death of serious physical injury[.]”

Pursuant to Connecticut General Statutes (rev. to 2007) § 53a-3 “[s]erious physical injury’ means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ[.]”

A police officer is justified in using deadly physical force under the relevant self-defense statute, § 53a–22, only when (1) he reasonably believes such force to be necessary (2) to defend himself or a third person from the use or imminent use of deadly physical force.

(Footnote omitted.) *State v. Smith*, 73 Conn. App. 173, 184–85, cert. denied, 262 Conn. 923 (2002). The reasonableness of the officer’s belief under § 53a-22 is evaluated using the “subjective-objective” test that is used in evaluating claims of self-defense under § 53a-19. *Id.* at 185.

Under that test, [a factfinder] must first determine whether, on the basis of all the evidence, the [actor] in fact honestly believed that deadly force, rather than some lesser degree of force, was necessary to repel the victim's alleged attack. See [*State v. Prioleau*, 235 Conn. 274, 286 (1995)]. If the [factfinder] determines that the [actor] honestly believed that deadly force was necessary, it then turns to the second, or “objective,” part of the test.

State v. Smith, 73 Conn. App. at 185. Under the objective part of the test, the factfinder must measure the officer’s honest belief against the standard of a reasonable peace officer confronting the same circumstances. *Id.* at 185 & n.5. See *Graham v. Connor*, 490 U.S. 386, 396 (1989) (for fourth amendment purposes, reasonableness of particular use of force “must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight.”) Police officers especially “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.”

Determination of the Appropriateness of the Use of Deadly Force

The use of deadly physical force by Troopers Orlowski and Bistany in this case was appropriate. At the time that the troopers fired the shots that struck and killed Bak, they were confronted with an

individual who was armed with a knife, a dangerous instrument that, under the circumstances in which it was being used was capable imminently of causing death or serious physical injury to either or both troopers. Bak brandished the knife in a threatening manner by swinging it in the direction of the Troopers as he ran. When stopped, he held the knife “like an ice pick” and lunged toward the Trooper when the shots were fired. The belief expressed by each trooper that his use of deadly physical force was necessary to defend himself or the other from the use or imminent use of deadly force by Bak was reasonable under these circumstances.

Additionally, the troopers, had previously given Bak loud and clear warnings to give up and to drop the knife, which he disregarded. They were aware that he was wanted for serious felony charges including a violent sexual assault and bank robbery, and witnessed the reckless and extremely dangerous manner in which Bak had operated the Honda from the town of Newington, into West Hartford, then into Hartford. They also knew that he was suicidal.

Based on the totality of the information that is available, the use of deadly physical force by Orlowski and Bistany upon Bak was appropriate under the applicable provisions of Connecticut law and fully justified. The evidence clearly supports the Troopers’ belief that they honestly believed deadly force was required to defend themselves and the public from a potentially deadly attack. A reasonable officer, confronted with the same circumstances would have reacted similarly to protect himself, his colleague and the public. Therefore, No further action will be taken by the Division of Criminal Justice as a result of this incident.

The Hartford State’s Attorney’s Office expresses its sincere condolences to Mr. Bak’s family for this tragic loss of life. The Office also wishes to extend its thanks to the Connecticut State Police Major Crime Squad and all of the other agencies who cooperated in this investigation.

Respectfully Submitted,

Gail P. Hardy
State’s Attorney
Judicial District of Hartford

December, 2019