



John Hummel District Attorney

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TO: Residents of Deschutes County

FROM: John Hummel, Deschutes County District Attorney

DATE: July 17, 2018

RE: Decision in June 20, 2018 Officer Involved Shooting

INTRODUCTION

On June 20, 2018, at approximately 6:44 P.M. at a campsite located on Forest Service Road 4610 a short distance off of Century Drive between Inn of the Seventh Mountain and Mount Bachelor, Deschutes County Sheriff's Deputy Randy Zilk shot Jesse Wayde Powell one time. This shot killed Powell. Zilk's decision to shoot Powell was legally justified; thus I will not initiate criminal charges against Zilk.

FACTS

During the early evening of June 20, 2018, Lori and Eric Anderson were walking their dogs on Forest Service Road 4610. While walking they saw a U-Haul van pulling a travel trailer parked approximately ¼ mile from Century Drive that was located in what they thought was an odd location. There was a motorcycle parked alongside the trailer. They also saw a dark colored pickup pulling an enclosed cargo trailer. When they were approximately 200 yards from the vehicles, they heard gunshots (approximately 10 in quick succession). After a few minutes they heard the voice of a female they felt was in distress followed by a male's voice. Although they couldn't make out what was said, Lori Anderson stated it didn't sound "good." Lori Anderson described the woman as "screaming" and the male as "yelling." Lori Anderson stated she was sure the woman was scared for her life. The Andersons then heard another volley of gunshots. At 6:23 PM Lori Anderson called 911 to report the incident and then she and her husband loaded their dogs in their car and left.

Deschutes County Sheriff's Deputy Randy Zilk responded to the call and arrived on scene at 6:38 PM. At 6:39 PM Zilk requested a records check on the license plate of the travel trailer and after the check came back clear he knocked on the door of the travel trailer. No one answered his knock. He then saw condensation on the window of the U-Haul truck so he approached it. When he peered in the passenger side window he saw what appeared to be a person under a blanket lying across the passenger and driver seats. This turned out to indeed be a person and the person was Jesse Wayde Powell.

Deputy Zilk then knocked on the passenger window and said: "Sheriff's office. We got a call for disturbance. Can you open the door? Can you open the door and show me your hands?" Deputy Zilk reports that Powell "Looked around. He was just looking around and didn't respond. I said again, 'Show me your hands.' Again, he didn't respond." At this point Deputy Zilk opened the passenger door and again said: "Show me your

hands.” Deputy Zilk reports that Powell was moving his hands under the blanket. Zilk thought Powell was manipulating something under the blanket while persisting in refusing to comply with Zilk’s orders to show his hands. Eventually Powell did reveal his hands and Zilk immediately saw what looked to him like an injury on Powell’s right thumb and what appeared to be blood on the rest of his hand.

At this point, because of Powell’s furtive hand movements, his lack of cooperation, the injury to his hand, and the report of gunshots, Deputy Zilk asked Powell to step out of the U-Haul. Deputy Zilk made this request so he could initiate a domestic violence investigation and also to ensure Zilk’s safety. At the time of his request to Powell to exit the U-Haul Zilk felt that Powell was scanning the scene in a manner that Zilk took to be Powell looking to see if Zilk was alone or with other officers. Zilk felt Powell may be under the influence of drugs.

Powell complied with Deputy Zilk’s request to exit the U-Haul. Once Powell’s feet hit the ground Deputy Zilk instructed him to turn and face the truck and to put his hands up against the truck’s cargo section. Powell complied. Zilk’s plan was to move closer to Powell, touch his back, have Powell spread his legs, and then handcuff and detain him. However, immediately after Deputy Zilk touched Powell’s back, Powell dove into the cab of the U-Haul. Deputy Zilk yelled “stop!” and grabbed Powell from behind, but Powell persisted in his efforts to get into that cab. In spite of Deputy Zilk’s shouted order to “stop!” Powell frantically moved his hands around the floor of the passenger side of the U-Haul.

Deputy Zilk drew his gun and placed it in Powell’s back as he continued to yell “stop” and Powell continued to disobey the order and desperately search for something with his hands. Deputy Zilk then saw a large metal bar on the floor of the U-Haul near where Powell was grabbing. Deputy Zilk felt that his life was in danger. Deputy Zilk felt that Powell was trying to retrieve the metal bar in order to attack Deputy Zilk. Deputy Zilk fired one shot into Powell’s back. Powell’s limp body then slid out of the truck to the ground. A loaded Glock 30 .45 caliber handgun¹ was discovered on the floor of the U-Haul near the metal bar Zilk thought Powell was grabbing for.

Deputy Zilk then radioed that he fired a shot. Moments after the shot was fired Deschutes County Sheriff’s Deputy Liam Klatt arrived on the scene. Deputy Zilk radioed for medical assistance and then began performing CPR on Powell while Deputy Klatt provided cover protection (because it was unknown if other people were in the travel trailer or elsewhere in the campground).

Paramedics from Bend Fire Department arrived on scene and took over CPR. At approximately 7:00 PM they declared Mr. Powell deceased and ceased lifesaving efforts.

The autopsy conducted by the Oregon State Medical Examiner found one bullet wound on Powell’s upper back. The bullet was lodged just below the skin on Powell’s left chest. The bullet went through Powell’s pulmonary artery, left lung, pericardial sac, and heart. The toxicology tests conducted on Powell by the Medical Examiner returned positive results for methamphetamine, THC, opiates, and amphetamines.

¹ This gun was stolen, along with three others, in a residential burglary in Lane County on April 27, 2018.

LEGAL ANALYSIS

Oregon Revised Statute 161.219 is Oregon's law regarding the use of deadly physical force. This law applies equally to law enforcement and the general public. This statute authorizes a person to use deadly physical force against another person if they reasonably believe that the other person is about to use unlawful deadly physical force against them or that the other person is attempting to commit a violent felony against them.

Deputy Zilk says that when Powell dove into the floorboard area of the U-Haul and disobeyed his orders to stop that he thought Powell was trying to grab the metal bar to assault him. Deputy Zilk says his belief was based on the totality of the circumstances, including the report of shots fired, the fact Powell had made numerous concerning hand movements under the blanket when he was first encountered, the fact Powell seemed to be surveying the scene for back-up officers, Powell's brazen dive onto the floorboard of the U-Haul when Deputy Zilk was trying to detain him, and most significantly, Powell's continual frantic hand movements on the floor of the truck in spite of Deputy Zilk's orders to stop.

Based on all the available evidence, Deputy Zilk's belief that Powell was about to use deadly physical force against him is objectively reasonable. Because of this, Deputy Zilk's decision to use deadly physical force against Powell was authorized by Oregon law. Consequently, I will not initiate criminal charges against Deputy Zilk. In fact, Deputy Zilk's decision to use deadly physical force likely saved his life and may have saved the lives of other deputies about to arrive on scene.

WHY?

Why did Jesse Wayde Powell dive into the U-Haul, search with his hands for something, and disobey Deputy Zilk's orders to stop? In many cases the motivations of people who lose their lives in encounters with law enforcement are too speculative to fairly warrant discussion. This is not one of those cases.

Jesse Wayde Powell had recently been released after serving a 15-year federal prison sentence for a conviction of felon in possession of a firearm. In addition to this felon in possession of a firearm conviction Mr. Powell had 15 other criminal convictions.

The campsite where Deputy Zilk encountered Powell was chock full of stolen items. The U-Haul, the travel trailer, the cargo trailer, motorcycles, and literally hundreds of items in the trailers, were all stolen. Powell no doubt knew that because of his criminal record, and because of the gun and the stolen items in his possession, that he would serve a significant prison sentence if he allowed Deputy Zilk to arrest him. And he was correct: a conservative estimate is that Powell had exposure to a sentence of more than 25 years in prison based on the evidence at that campsite.²

² The Glock handgun exposed Powell to a 15-year mandatory minimum federal prison sentence under the Federal Armed Career Criminal Act (18 U.S.C. sections 922 (g) and 924 (e)(1)). Two burglaries in the First Degree (one in Deschutes County and one in Lane County) exposed him to a sentence of six years in prison under the Oregon Sentencing Guidelines for the burglaries. Three unauthorized use of vehicle charges would have triggered Oregon's repeat property crime offender statute (ORS 137.717) for a total of four and a half years in prison. Aggravated theft in the first degree (trailers, tools and personal property stolen) exposed him to two and a half years in prison. And the criminal enterprise he was operating qualified as racketeering activity under Oregon law with a potential sentence of ten years in prison.

In addition, Powell had recently told his friend Jason Dalebout that he was keeping the Glock with him because he: “wasn’t going back to prison.”

It is clear that Jesse Wayde Powell chose to continue to support himself by stealing, was determined to not return to prison, was prepared to fight any law enforcement officer that tried to arrest him, and did just that when Deputy Zilk encountered him.

CONCLUSION

My thoughts are with Deputy Randy Zilk and his family as they carry with them the trauma inherent with taking a human life, regardless of the legality of the shooting.

My thoughts are also with the family of Jesse Wayde Powell as they grieve the loss of someone they loved.

The Tri-County Major Incident Team, led in this investigation by the Bend Police Department and Detectives Tim Knea and Josh Spano, conducted a thorough and professional investigation. Agencies contributing to the team were the Oregon State Police, the Oregon State Police Forensic Services Division, Redmond Police Department, Black Butte Ranch Police Department, the Oregon Medical Examiner’s Office and the Deschutes County Sheriff’s Office.

Chief Deputy District Attorney Steve Gunnels assisted me in my review and his experience and insight were invaluable.

Please contact me if you have questions about my decision.