

Grand Jury: Use of Force Justifiable in Linville Shooting

by Bend Weekly News Sources

District Attorney Michael Dugan announced Friday, October 6, that the Deschutes County Grand Jury has determined that the police officers' use of deadly physical force which resulted in the death of Devon Linville was justifiable under Oregon law.

Dugan also released a district attorney report which summarizes the investigatory material assembled by the Major Incident Response Team investigators. That report appears below, in its entirety.

The Major Incident Response Team is comprised of officers from the Oregon State Police, Redmond Police, Deschutes County Sheriff's Office, the Deschutes County District Attorney and the City of Bend Police Department. Bend Police Department was the lead agency in the investigation.

The Deschutes County Grand Jury heard testimony of witnesses and investigators this week. The conclusion of their investigation is the first step in a multi-phase process of investigation and review. The law enforcement agencies are continuing to internally review the actions of the officers for policy, procedures and training considerations.

It is expected that the internal review will be completed within the next three weeks. Upon the completion of that review process, the police reports and investigatory material will be made available for public inspection.

District Attorney's Report

Devon Linville Use of Force Investigation

October 6, 2006

Summary

September 15, 2006 at approximately 6:29 p.m., officers from the Deschutes County Sheriff's Office and Oregon State Police were dispatched to 52476 Lost Ponderosa, Lapine, in response to a 911 call for assistance from Glenda Linville, mother of Devon Linville, who reported that her 35 year old son was out of control and that she had been assaulted. She also said that her son was bi-polar and off his medications.

Police contacted Glenda Linville outside of her residence and she confirmed that Devon Linville had strangled her and that she was afraid and wanted him removed from the residence. The police contacted Linville at the residence and he admitted strangling Glenda Linville and threatened to kill her if she returned to the residence. The police also observed that Linville was armed with a knife and threatened to use the knife to kill both the police and his mother. The police also heard Linville making delusional statements during the contact.

Police spent approximately an hour trying to convince Linville to cooperate and come out of the residence. The police were required by Oregon law to arrest Linville due to the domestic assault against his mother. The police felt that based on Linville's behavior and threats that he was a danger to others and to himself. The police entered the residence with the intent to use less than lethal force to arrest him. Upon entry into the residence, Linville attacked the police with a knife. Linville was repeatedly ordered to drop the knife and police fired less lethal bean bag rounds. Despite being struck with three bean bag rounds, Linville did not drop the knife. Linville attacked one of the officers and started striking at the officer's head and neck with his knife. The deputy being struck acted in self-defense and the other deputies and the Trooper believing that Linville was going to kill or seriously injured the deputy being attacked resorted to using their firearms and Linville was struck by four bullets and fatally wounded. Despite medics being called immediately, Linville was pronounced deceased at the scene.

Pursuant to Deschutes County law enforcement practice, the Major Incident Team, a multi-agency law enforcement team from Deschutes County, including detectives from the cities of Bend and Redmond, the Deschutes County Sheriff's Office, the Oregon State Police and the Oregon State Police Crime Lab, and Deschutes County District Attorney's Office, responded to the scene and conducted the investigation and collection of evidence.

An autopsy of Linville was conducted by the State Medical Examiner's Office on September 18, 2006. The autopsy found that Linville had been struck by three bean bag rounds and four bullets. The autopsy also confirmed that Linville died as a result of being shot by the police on September 15, 2006.

Conclusion

Oregon Revised Statute 161.219 defines the limitation for the use of deadly physical force. This statute applies to police officers and citizens alike. A person can use deadly physical force upon another person when that person reasonably believes that the other person is using or about to use unlawful deadly physical force against a person.

The conclusion of the Deschutes County District Attorney is that the use of deadly physical force in this case was lawful and justified under Oregon law.

The Deschutes County Grand Jury heard testimony of the officers involved, investigators from the Major Incident Team, and witnesses, on the 2nd, 4th, and 6th of October 2006. The Deschutes County Grand Jury found that the use of deadly physical force in this case was lawful and justified under Oregon law.

Facts and Investigation

(The following is a summary by the Deschutes County District Attorney's Office of the reports and the investigation.)

On September 15, 2006, at approximately 6:00 p.m., Jamie Carroll arrived at the Linville residence at 52476 Lost Ponderosa, Lapine, to pick up eleven year old Kenneth Linville, the son Jamie Carroll had with Devon Linville, per a standing visitation agreement for her weekend visitation with her son Kenneth. On this day, Carroll's arrival angered Devon Linville, and despite the already understood weekend visitation agreement, he burst out of his room and yelled at his mother that he was God and that Glenda Linville could not make any decisions for him, any visitation by Jamie Carroll was to go through him.

Devon Linville put both hands around his mother's throat and started strangling her. Devon Linville's face was a few inches from his mother's and he told her that he was going to kill her. Jamie Carroll tried to pull Devon Linville off of his mother and he then put his hand on Carroll's throat and pushed Carroll against a wall. Both women were able to leave the residence.

Glenda Linville left the residence and went to a neighbor and called 911 at 6:28 p.m., this call was disconnected, and she called again at 6:29 p.m. reporting that Devon Linville was out of control and had assaulted her. She also told 911 dispatch that Devon was bi-polar and had not been taking his medication. Jamie Carroll left the residence with Kenneth Linville and drove to Wickiup Junction where she called 911 at 6:40 p.m., reporting that she had been choked at the Lost Ponderosa address. Glenda Linville again called 911 at 6:46 p.m., repeating her request for an officer and expressing her concern that the police had not yet arrived.

Oregon State Trooper William Duran and Deschutes County Sheriff's Deputy Tory Flory arrived at the residence at 6:50 p.m., met with Glenda Linville at a residence two doors south of Linville's address. Glenda Linville told Deputy Flory that Devon Linville had grabbed her around the throat and had threatened to kill her in this dispute. Deputy Flory observed that Glenda Linville was angry, afraid and upset and wanted Devon Linville out of her house. She also told Deputy Flory that she wanted Devon Linville hospitalized; she felt he would become violent and dangerous without intervention. Deputy Flory observed red marks on Glenda Linville's throat that were consistent with her description of her son strangling her.

Deputy Flory and Trooper Duran contacted Devon Linville, who was inside the residence, from outside through the windows. Both officers observed that Linville was extremely agitated; he was making bizarre, threatening statements, and refused to speak to the officers outside and told them to leave his property. Linville brandished a knife at the officers and threatened to cut off their heads and kill them. Deputy Flory observed this knife to be a double edged fixed blade knife, about 8 inches in total length. Linville admitted that he had grabbed Glenda Linville and that he would kill her by cutting off her head. Linville continued to make bizarre statements, saying that he was God, that he had stolen the officers' souls, and that they were already dead.

At one point, Linville left the residence via the back door and went to the northeast corner of the house where Deputy Flory continued to try to convince Linville to cooperate. Linville continued to threaten Deputy Flory and continued to make delusional statements. A neighbor to the north came outside to warn the officers of Linville's mental health issues and of the dogs kept on the property; Deputy Flory, fearing for the safety of the neighbor, told the neighbor to get inside of his house and he did. Linville ended up going back inside of his house and locked the back door.

Deputy Flory and Trooper Duran made a conscious decision to keep their guns holstered at the start of the contact, as they felt that any display of weapons would increase Linville's agitation. Deputy Flory used techniques learned from his training in negotiations to try to calm Linville down.

Deputy Flory had probable cause to arrest Devon Linville for crimes against Glenda Linville, based on her statements, Flory's observations of the red marks on Glenda Linville's throat, and Devon Linville's admission that he had strangled her. Deputy Flory was obligated to arrest Linville for a domestic violence assault against Glenda Linville, which under Oregon Revised Statute 133.055 requires police officers who have probable cause to believe a domestic violence crime has been committed, to arrest and to take into custody domestic violence assailants.

Deputy Flory also believed that Linville posed a threat to his own safety and to the safety of others, based on Linville's delusional statements, extremely agitated state, brandishing of the knife, and threats against Glenda Linville and the officers, and that Linville should be evaluated to address these mental health concerns.

Knowing that Oregon Law required that Linville be taken into custody, Deputy Flory, who witnessed the uncooperative and delusional state of Linville, and Linville's threats towards the officers, requested that backup deputies with bean bag shotguns respond to the Linville residence. The bean bag rounds are classified as less lethal impact weapons and are intended to gain compliance without causing serious injury or death.

Deputies Zach Neemann and Justin Alps arrived at approximately 7:25 p.m. and both loaded shotguns with less lethal bean bag ammunition. Deputy Flory and Trooper Duran briefed the arriving deputies of the situation. Deputy Flory continued to try to calm Linville and convince him to cooperate with the officers. Linville continued to threaten the officers and make delusional statements. The officers present at the scene started to discuss a plan for entry into the residence to arrest Linville.

Deschutes County Sheriff's Office Watch Supervisor, Lieutenant Myrna Homan, who had been kept apprised of the situation by radio and cell phone since the first 911 call at 6:28 p.m. from Glenda Linville, contacted Deputy Flory and requested that the officers not attempt to enter the residence until she arrived at the location. During this time Deputy Flory continued, without result, to calm Linville and convince him to cooperate. Lt. Homan arrived at Lost Ponderosa at 7:48 p.m., spoke to the deputies on scene and then made another attempt to convince Linville to cooperate with the police. She approached the residence and spoke to Linville through his bedroom window. Lt. Homan observed that Linville was extremely angry and still had a knife in his right hand; Linville threatened to kill Lt. Homan if she entered the residence. Linville told Lt. Homan that he did strangle his mother and he would kill his mother if she came back into the residence.

Having no success with convincing Linville to cooperate and exit the residence, Lt. Homan made the decision to enter the residence to take Linville into custody. Lt. Homan considered other options available and determined that Devon Linville had to be taken into custody as required by Oregon law. Lt. Homan considered a number of factors in her decision, including but not limited to the number of officers she had available, the disappearing daylight, officer and community safety, and that the Linville was a threat to himself and others.

Deputy Flory was assigned to stay at the bedroom window to talk to Linville to distract him and spray Linville with pepper spray to attempt to incapacitate Linville if he got close enough to the window to use the pepper spray. Trooper Duran was assigned to enter through a window next to the front door and then open the front door for the other officers to enter. Deputy Alps, who was armed with the less lethal bean bag shotgun, would then enter through the front door, followed by Deputy Neemann, also armed with a bean bag shotgun, and Lt. Homan. The officers would then take Linville into custody and use the bean bag shotguns if Linville did not drop the knife.

Deputy Flory, accompanied by Deputy Neemann contacted Linville at the far bedroom window as Trooper Duran entered the residence through the window near the front door but Linville heard Trooper Duran as he entered and left the bedroom and moved quickly towards the front door while holding the knife above his head and yelling at the officers to leave. Linville was not in close enough proximity for the deputies to deploy their OC spray. Deputies Flory and Neemann saw that Linville was going for the front room and Trooper Duran had his back towards Linville as he was unlocking the front door.

Deputy Alps, concerned about Trooper Duran having his back towards Linville, who was closing the distance to Trooper Duran, quickly entered as soon as the door was unlocked. Deputy Alps entered with the bean bag shotgun pointed at Linville and repeatedly yelled at Linville and to get down and drop the knife. Linville continued to charge Deputy Alps with the knife in his hand, raised over his head. Deputy Alps fired three beanbag rounds at Linville. Linville was struck by three bean bag rounds, one in the throat, another on the left side of his torso, and a penetrating wound to the left arm. Based upon the deputies training and experience with the bean bag shotgun, one round fired within that range should incapacitate a person.

Despite being hit by the bean bag rounds, Linville did not drop the knife and charged at Deputy Alps with the knife. Deputy Alps was trying to prevent Linville from injuring him and Linville was attacking Deputy Alps with the knife attempting to strike his head and neck. Deputy Alps dropped the bean bag shotgun and was able to bear hug Linville, but Linville was able to partially free his arm and slash at Deputy Alps's face and neck with the knife as the two were grappling. Deputy Alps was wearing his official campaign hat, a sturdy, laminated straw hat with a badge and a brim; and the hat and Deputy Alps's positioning deflected the knife blows from Linville.

As Deputy Alps struggled with Linville, who was striking him, Deputy Alps was unable to unholster his gun.

Trooper Duran believed Linville was striking Deputy Alps with the knife. Trooper Duran was unable to assist Deputy Alps because of the closeness between Deputy Alps and Linville. Trooper Duran saw that Deputy Alps was unable to unholster his gun. Trooper Duran was right next to Deputy Alps and Linville while Linville was striking Deputy Alps with the knife. At some point during the struggle Trooper Duran had an opportunity to shoot Linville once in the left thigh without endangering Deputy Alps. Deputy Flory, who was outside at the bedroom window, got a view of Linville's right side in a position that would not endanger Deputy Alps, and shot Linville once in the right side of his torso. Deputy Alps, while still struggling with Linville, was able to get his pistol out of his holster and fire three shots at a very close distance. One shot struck Linville in the chest and went through Linville's aorta, the second went through Linville's left arm, and a third did not strike Linville.

Linville fell to the ground and Lt. Homan immediately called for fire department medics to respond to the residence.

Lt. Homan ordered the deputies to separate, go to their patrol cars and to not discuss the incident among themselves. Lt. Homan also had the residence cordoned off and took photographs of the scene before the fire medics arrived. Lt. Homan took these steps to protect the scene and to forestall criticism that the involved officers discussed the incident after the shooting and changed their versions of what happened to conform to each other.

The medics arrived eight minutes after being dispatched and confirmed that Linville was dead. Linville's body was taken by a local funeral home for transport to Portland for an autopsy at the State Medical Examiner's Office.

At approximately 8:20 p.m. Deschutes County Sheriff's Office Captain Marc Mills requested the activation of the Major Incident Team. The Major Incident Team is composed of officers from law enforcement agencies in Deschutes, Crook, and Jefferson Counties, the Oregon State Police and Crime Lab, and prosecutors from the District Attorney's Offices. The Major Incident Team provides investigative support and resources to member agencies in large and complex investigations.

Another function of the Major Crime Team is to provide detectives from an uninvolved police agency in order to maintain an objective and neutral investigation of officer involved shootings. In this case, detectives from the Bend and Redmond Police departments assumed responsibility for the investigation in coordination

with prosecutors from the Deschutes County District Attorney's Office.

The Major Incident Team members responded to the Lost Ponderosa location throughout the evening of September 15 and the early morning hours of September 16. The team prepared a search warrant to re-enter the Linville residence and this warrant was approved by Presiding Circuit Judge Michael Sullivan in the early hours of the morning on September 16. Team members, including three forensic scientists from the Oregon State Police Crime Lab in Bend, entered the residence and examined the residence and collected evidence including spent bullets and casings.

Major Incident Team detectives interviewed Deputies Alps, Neemann, Flory, Lt. Homan and Trooper Duran. Detectives also interviewed Glenda Linville, Jamie Carroll and neighbors to the Linville residence. Neighbors who were at home at the time of the incident reported that the police officers were very patient in dealing with Linville and that they could hear him yelling at the officers. One of the neighbors told the Major Incident Team detectives that after the police went inside they hear the officers yelling numerous times to "Get down" and "Put it down" before hearing the gunshots.

On September 18, 2006 Dr. Larry Lewman of the State Medical Examiner's Office conducted an autopsy on Devon Linville. Dr. Lewman examination showed that Linville was struck by three bullets, one in the throat, which fractured his trachea, one in the left side of his torso, and a third which penetrated into his left bicep.

Dr. Lewman observed that Linville had four bullet wounds. Dr. Lewman found a bullet wound on the upper left chest of Linville, and the bullet had gone through the aorta and caused Linville's death. Linville also had a bullet wound to his right side and this bullet had punctured Linville's lung. Dr. Lewman found a third bullet had gone through Linville's upper left arm and a fourth bullet had entered the front of Linville's left thigh and had exited out the back of his thigh. The bullet that struck Linville's aorta was fired at close range and caused death within seconds of the injury.

The medical examiners office reported preliminarily to the Deschutes County District Attorney's Office that Devon Linville had THC-a metabolite of Marijuana, indicative of consumption and a low level of Amphetamines in his urine; no alcohol was detected. This is consistent with information that Linville had stopped taking prescribed medication for his bi-polar condition and had been consuming Marijuana. A Marijuana grow was located at the residence; Linville had a medical marijuana card, but the Marijuana Grow

Operation was in excess of what was allowed by law.

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