

DA: Officer-involved fatal shooting lawful, justified

by Bend_Weekly_News_Sources

BEND, Ore. — Deschutes County District Attorney Mike Dugan has announced the findings of his investigation into the fatal shooting of Refugio Cruz-Fuentes by a Bend Police detective earlier this month: lawful and justified.

Detective Tom Brown, a 14-year veteran of the Bend Police Department who was assigned to the Central Oregon Drug Enforcement team at the time of the shooting, has been absolved of all wrong-doing in connection with deadly physical force that resulted in the death of Cruz-Fuentes during execution of a search warrant on May 2 as part of an investigation into an alleged statewide methamphetamine trafficking operation.

Dugan cited numerous facts taken into consideration, including the position of Cruz-Fuentes' shoulders, which were rolled forward — in a manner in which he appeared to be hiding something; his expression was — ready to fight; his physical position was described as a — low ready — stance - a tactical position taken by a shooter; he appeared to be reaching across his chest for something in his coat which Detective Brown believed to be a gun; and Brown believed Cruz-Fuentes was going to shoot Prineville Police Detective Jeff Frickey.

The District Attorney's findings are included below in their entirety:

-----May 14, 2008

I have determined that Detective Tom Brown's use of deadly physical force was lawful and justified.

The following was important to me in reaching that conclusion:

The tri-county law enforcement agencies of Crook County, Deschutes County and Jefferson County created a Major Incident Response Team in the early 1990s. This team has been called upon whenever there has been a major criminal incident or other event that required immediate investigation and a substantial amount of investigative resources. Each agency has assigned one or more officers as a member of the Major Incident Response Team. Deschutes County has used this Major Incident Response Team in the past when deadly physical force has been used by a police officer. The primary goal in an officer involved use of deadly physical force investigation is to assure that the investigation is conducted fairly, impartially and openly with the participation of police investigators who are not employed by the agency whose officer used deadly physical force.

In 2007 the Oregon Legislature passed Senate Bill 111, now codified in ORS 181.781 to 181.799. This law requires law enforcement agencies to develop protocols to follow when investigating the police use of deadly physical. It further required the creation of a Deschutes County Deadly Force Planning Authority to create, approve and adopt a plan to follow when a police officer is involved in the use of deadly physical force.

The Planning Authority of Deschutes County adopted the plan on January 31, 2008 which was followed by

the approval of the governing bodies within the county during February. Our plan was approved by the Attorney General of the State of Oregon on April 14, 2008. This plan incorporated the Major Incident Response Team protocols as the primary investigative resource. We have followed that plan in this investigation.

Particular thanks needs to be given to the members of that Planning Authority; Co-Chair and Sheriff Larry Blanton; Redmond Chief of Police Ron Roberts; Oregon State Police Sergeant Tom Kipp; Bend Police Detective Mike Tabor; and citizen member Tom York.

The Deschutes County Deadly Physical Force Plan sets forth the role of the District Attorney. In connection with the protocols, the District Attorney has participated in and consulted with the Bend Police Department and the members of the Major Incident Response Team concerning the investigation and the implementation of the plan during this investigation.

Pursuant to the adopted plan it is my responsibility to determine the legality of the officer's use of deadly physical force under the conditions and circumstances that existed at the time of its use. Before I could make a determination I needed to be able to review all of the investigative reports, including the statements made by the officer and witnesses involved in the event.

I take particular note of the following facts:

1. The Central Oregon Drug Enforcement (CODE) team was involved in an investigation of a statewide methamphetamine trafficking operation;
2. Information received from the Jackson County drug enforcement investigators provided probable cause to arrest Anthony Cossette;

3. The arrest of Mr. Cossette lead to the issuance of a search warrant to search the residence of Mr. Cossette at 1811 Wichita Street, Bend, Oregon;

4. Mr. Cossette provided information about the person from whom he acquired the methamphetamine;

5. Mr. Cossette provided information that his supplier had a handgun and often times carried that handgun;

6. Mr. Cossette arranged for his supplier to deliver more methamphetamine to his residence;

7. CODE detectives were executing a search warrant at the Wichita Street address when the information provided by Mr. Cossette, including the information about the handgun, was provided to them;

8. During the search of the Wichita Street address two rifles, including an assault rifle and handgun ammunition, were discovered;

9. Detective Tom Brown of the Bend Police Department was assigned to the CODE team and was part of the team executing the search warrant at Mr. Cossette's residence;

10. Detective Brown has 14 years experience with Bend Police and has worked as a drug enforcement officer in the past;

11. Detective Brown was aware of the items located during the search and knew that Mr. Cossette's drug supplier, who often times carried a handgun, was coming to the residence to deliver more methamphetamine;

12. Detective Brown's training and experience has taught him that guns are often times used or displayed during drug transactions;

13. Detective Brown was informed that the drug supplier was on the way to the Wichita address with a large quantity of methamphetamine shortly after midnight on May 2, 2008;

14. When the supplier (later identified as Jose Acuna) arrived at the Wichita address in a vehicle occupied by three people, Mr. Acuna immediately exited the vehicle and went to the front door of the Wichita address;

15. Detective Brown assisted Detective Mike Sundberg a CODE officer, assigned from the Deschutes County Sheriff's office, in arresting Mr. Jose Acuna while Detective Jeff Frickey, a CODE officer assigned from the Prineville Police Department, was shouting commands to the occupants of the vehicle;

16. Detective Frickey repeatedly yelled, "Police, get your hands up!";

17. Detective Brown believed that Detective Frickey was becoming concerned about the lack of compliance by the occupants of the vehicle;

18. Detective Sundberg told Detective Brown to assist Detective Frickey after Mr. Jose Acuna was controlled;

19. Detective Brown approached the vehicle while Detective Frickey continued to yell commands to the occupants in English and Spanish;

20. Detective Brown observed two passengers in the vehicle, the front seat passenger, who was later identified as Alaina Lehner, had her hands raised and was obeying the police commands;

21. The rear seat passenger, later identified as Refugio Cruz Fuentes, was not complying with the commands, which were being yelled in English and Spanish;

22. Detective Brown was able to observe inside the vehicle and saw that the rear seat passenger, later identified as Mr. Rufugio Cruz-Fuentes, did not raise his hands and that his shoulders were rolled forward in a manner in which he appeared to be hiding something;

23. Detective Brown observed Mr. Fuentes's expression as being ready to fight and described the position of Fuentes as a "low ready" stance, a tactical position taken by a shooter;

24. Detective Brown observed Mr. Fuentes reach across his chest for something in his coat which Officer Brown believed to be a gun;

25. Detective Brown believed that Mr. Fuentes was going to shoot Detective Frickey.

26. Detective Brown made the decision to use deadly physical force to protect Detective Frickey because he believed Mr. Fuentes was about to use deadly physical force against Detective Frickey by shooting him with a gun.

During the course of the Major Incident Response Team investigation many witnesses were contacted and interviewed. The passenger, Alaina Lehner, was interviewed. During that interview I note the following specific information that is relevant to the use of deadly physical force in this instance.

1. Ms. Lehner knew both Jose Acuna and Refugio Cruz Fuentes;
2. Mr. Fuentes had, in the past, asked her to obtain a handgun for his use;
3. Mr. Fuentes had told her that he had acquired a handgun and did not need her to get a gun for him;

4. Ms. Lehner believed that Mr. Fuentes was armed with a handgun that night;

5. Ms. Lehner told the investigating officers that Mr. Fuentes did not speak English well, but understood it and that he had previously been in situations where the police had told him to "put his hands up;"

6. While at the Wichita Street location Ms. Lehner heard the police commands to get their hands up and observed the police approach the vehicle;

7. Ms. Lehner, with her hands raised, turned toward the police who were approaching the driver's side and observed that Mr. Fuentes was not following the command;

8. Ms. Lehner observed Mr. Fuentes reaching for something in his coat or pants area and she told the police that she thought Mr. Fuentes was reaching for a gun;

9. Prior to Mr. Fuentes being shot, Ms. Lehner told Mr. Fuentes, in Spanish, to put his hands up.

Oregon Law provides that a person, including a police officer, can use deadly physical force upon another person when that person reasonably believes that the other person is using or is about to use unlawful deadly physical force against a person. ORS 161.219.

Pursuant to the Use of Deadly Force Plan as adopted by the Planning Authority, approved by the local Governing Bodies, and certified by the Attorney General of the State of Oregon, I have determined that Detective Tom Brown's use of Deadly Force was justifiable under the circumstances and conditions which existed at that time. I find that Detective Brown reasonably believed that Mr. Fuentes was about to use unlawful deadly physical force against another person. The subsequent determination that Mr. Fuentes did not in fact have a gun does not diminish the reasonable belief of Detective Brown.

Because there are underlying criminal prosecutions filed or being filed against several of the participants in the methamphetamine delivery organization, the police reports cannot be released at this time. However, my Chief Deputies, Stephen Gunnels and Darryl Nakahira have prepared a report, which I have approved, which contains and summarizes the details concerning the events of May 1-2, 2008. Copies of that report are available.

Deschutes County, Crook County and Jefferson County law enforcement agencies are fortunate to have strong leadership. The tri-county cooperation among the law enforcement agencies, their officers and their management, is a testament to the dedication they all have for public safety.

Michael T. Dugan

District Attorney

Deschutes County

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