



Maricopa County Attorney

ALLISTER ADEL

Statement by Maricopa County Allister Adel on the Charging Decision in the Death of Ryan Whitaker

Facts of the Case

The events of May 21, 2020 can only be described as a tragedy. On that evening, Mr. Ryan Whitaker was in his apartment with his girlfriend. Around 9:30 PM that night, an upstairs neighbor heard what he believed was an argument between a man and woman in the apartment below. At 10:18 PM he called 911 reporting a domestic dispute. In his description to the 911 operator, he said, "I can tell they are just at each other's throats down there." He called 911 a second time at 10:44 PM, asking the police to expedite their response. At that point the dispatcher elevated the call from a Priority 2 call to Priority 1.

During the eventual investigation, there was no evidence of any physical altercation between Mr. Whitaker and his girlfriend. His girlfriend told police there was no fight going on, but they were being loud while playing a video game. She also told police that she informed Mr. Whitaker that she would not be taking a weekend trip they had been preparing for and had been discussing earlier in the evening. She acknowledged that someone may have perceived an argument was occurring, but that there was no domestic dispute.

Phoenix Police Officers John Ferragamo and Jeff Cooke responded to this call. They arrived at Mr. Whitaker's door at approximately 10:52 PM. Officer Ferragamo knocked on the door and announced, "Phoenix Police." Not knowing exactly what the situation was inside the apartment, both officers took positions on opposite sides of the door, which is common practice for officer safety.

Inside his apartment, Mr. Whitaker grabbed his gun and removed it from its holster. Leaving the holster on the floor, he moved quickly toward the door. Approximately 12 seconds after Officer Ferragamo knocked on the door, Mr. Whitaker opened the door and immediately stepped out of the doorway with his gun in his hand. Now facing Officer Ferragamo, Officer Ferragamo illuminated Mr. Whitaker's face with his flashlight and saw a gun in Mr. Whitaker's hand. Officer Ferragamo drew his firearm while taking a step back and preparing to fire.

Officer Cooke was behind Mr. Whitaker. He also saw the gun in Mr. Whitaker's hand. He saw the gun being moved from behind Mr. Whitaker to the side and believed that Mr. Whitaker was moving the gun to point it at Officer Ferragamo. Protecting his partner from what he saw as an immediate deadly threat, Officer Cooke fired his weapon and Mr. Whitaker died from his wounds.

The Evidence and Review

As with every critical incident, which includes all officer involved shootings, the investigating agency, in this case the Phoenix Police Department, conducted a full investigation into the facts of this case. That investigation, including all reports and body worn camera video, was provided to the Maricopa County Attorney's Office for a review to determine whether criminal charges were warranted.

The complete investigation was carefully reviewed by me in addition to members of our Critical Incident Review Committee. This committee includes numerous senior prosecutors from this office, in addition to newly added

community members to provide a different, non-prosecutor's perspective of the evidence. After reviewing the materials, the committee met and discussed the facts, evidence, and the law. They then made a recommendation to me regarding whether there was a reasonable likelihood of conviction for any crime.

I then asked an outside expert on use of force issues to review the case and provide his opinions regarding the legality of the use of force in this incident. Then, considering all the evidence and recommendations, I made this decision.

As part of the review process, the body worn camera videos were closely reviewed by everyone who considered this case. The Phoenix Police Department created side by side views of both Officer Ferragamo's and Officer Cooke's cameras. The videos were reviewed side by side and frame by frame. The Phoenix Police Department retained an outside video expert to analyze the recordings and determine what the officers would have actually seen given the limitations of body worn camera systems.

When reviewing body worn camera evidence it is always important to realize that while the evidence is extremely useful in determining what happened, due to the placement of the camera on the officer, how the camera works, and how recorded data is compressed, these systems cannot provide us with the actual experience of the officer living the event. I note all of this because I want to be clear that this case was closely analyzed and studied.

With the benefit of frame by frame analysis and having time to review and re-review the videos, it appears that Mr. Whitaker was moving his gun to put it down and put his hands up.

In other words, after analyzing the videos it does not appear that Mr. Whitaker was a threat to the officers. That fact makes this case a tragedy, but it does not end the legal, criminal analysis because the law requires us to assess what Officer Cooke reasonably perceived and believed was occurring in the moment he made the decision to fire his weapon.

Law and Analysis

The facts of this particular case are clear in terms of what happened. The issue for me to decide is whether a crime occurred and, if so, whether there is a reasonable likelihood of conviction at trial.

Arizona law specifically states that even when a person commits an otherwise criminal act, if that action is justified under our laws it "does not constitute criminal or wrongful conduct." Justification defenses are specifically defined in Chapter 4 of Title 13.

In Arizona, justification defenses are not affirmative defenses. This means that a person accused of a crime has no burden to prove what they did was justified. Instead, the law requires that if any evidence of justification is presented, then the State must prove beyond a reasonable doubt that the person did not act with any legal justification. A.R.S. § 13-205(A). On these facts, the State's own evidence provides a sufficient basis to require the State to prove that Officer Cooke's actions were not justified beyond a reasonable doubt.

The applicable justification statutes here are A.R.S. §§ 13-404, 13-405, and 13-406. Taken together, those statutes allow a person to use deadly physical force when and to the extent that person reasonably believes that deadly physical force is immediately necessary to protect themselves or a third person from another's use or attempted use of unlawful deadly physical force.

In his interview, Officer Cooke explained that his decision to shoot was based on the fact that Mr. Whitaker had a gun in his hand, and he saw that gun start to move in the direction of his partner, Officer Ferragamo. He feared for Officer Ferragamo's safety and he decided to shoot to prevent Officer Ferragamo from getting shot.

There is no question that if Mr. Whitaker intended to shoot Officer Ferragamo, that shooting would have been an unlawful use of force on the part of Mr. Whitaker. Thus, Officer Cooke believed he was using deadly force necessary to protect a third person from another's use of unlawful deadly physical force. The remaining question is not whether Officer Cook's belief was correct with the benefit of hindsight, but whether it was a reasonable belief based on everything he knew and saw at that exact second.

Based on the facts and evidence, Officer Cooke was responding to what he was told was an active domestic violence call inside a home. The priority of that call had been elevated to Priority 1 increasing the severity of what was going on in Officer Cooke's mind. Soon after his partner knocked on the door and announced, "Phoenix Police," Mr. Whitaker abruptly opened the front door and came out of the home with a firearm in his hand. Officer Cooke saw the gun in Mr. Whitaker's hand move toward his partner. At the time, Officer Cooke believed he did not have the luxury of letting the scenario play out a few more seconds to see what might happen next.

Officer Cooke made a decision based on the information he had – he could do no more. Based on what he knew, I cannot prove beyond a reasonable doubt that his decision to use deadly physical force was an unreasonable one.

In our careful examination, we had the ability to slow down and rewind time. We also had the benefit of viewing the events from Officer Ferragamo's camera and placing that view beside Officer Cooke's. If Officer Cooke had been able to do those things, this horrible event would probably have been avoided.

However, because I cannot prove that Officer Cooke's decision was an unreasonable one, I will not pursue criminal charges in this matter.

Conclusion

When terrible things like this happen, we naturally want to find out who was right and who was wrong. Mr. Whitaker is dead and he shouldn't be. It is natural to try to find who is at fault; we want to assess blame.

Mr. Whitaker lawfully owned a firearm. He lawfully answered a knock on his door late at night with that firearm. His decision to come out of his home and the way he did so did not violate any laws. Likewise, the officers appropriately responded to a call of an active situation of domestic violence. They knocked at the door and announced who they were.

Following their training and experience, they appropriately positioned themselves for protection should someone inside want to harm them. They assumed those inside knew the police were at the door – they had announced their presence. When Mr. Whitaker came out the door with a gun in his hand, it was reasonable for the officers to conclude that he meant them harm.

Officer Cooke's conclusion, while inaccurate in hindsight, was not unreasonable in the moment and was, therefore, not a crime. This is precisely why this case is so heart-wrenching: while both Officer Cooke and Mr. Whitaker could have made decisions that would have avoided this terrible result, neither did anything that is prohibited by our criminal laws.