

REPORT

In the matter of the May 7, 2020 police-involved shooting in Silver Spring, Maryland.

Pursuant to an agreement between the Montgomery County State's Attorney's Office and the Howard County State's Attorney's Office, the Montgomery County State's Attorney's Office is providing this summary detailing the investigation and conclusions regarding a police-involved shooting that occurred on May 7, 2020 in Silver Spring, Maryland.

Timeline of Investigation

On the afternoon of Thursday, May 7, 2020, Howard County Deputy State's Attorney (DSA) Chris Sandmann received a phone call from a Detective with the Montgomery County Police Department – Homicide Section. The Detective informed DSA Sandmann that he and other detectives were at the scene of a police-involved shooting in Silver Spring, Maryland. The call was then handed over to the lead investigator, Detective Eric Glass, who provided DSA Sandmann with all the preliminary information detectives had at that time.

The initial information Detective Glass provided was that a 911 call came in at approximately 2:13 p.m. The caller told the 911 dispatcher that a rock was thrown through the front window of his house. When the caller went outside to investigate he was met by a neighbor who was holding a large kitchen knife. The neighbor told the caller that he was the one who threw the rock and he advised the caller to call the police. Police units were dispatched and arrived on the scene less than ten minutes after the initial call. The first unit to arrive was a single officer in full uniform driving a marked patrol vehicle. Upon exiting his vehicle, he activated his body worn camera and immediately observed an adult, male subject holding a knife. The officer withdrew his firearm and gave instructions to put the knife down. At this time the subject attempted to charge at the officer, but then backed off. The officer continued to give commands to put down the weapon, but the subject refused. During the encounter the subject never said a single word. This encounter went on for about a minute at which time the subject charged at the officer with the knife in his hand. As the subject got close, the officer fired approximately five shots at the subject. The subject was transported to the hospital, but ultimately succumbed to his injuries in the Emergency Room.

On May 7, 2020, Montgomery County Police Department crime lab technicians deployed a FARO laser scanner to accurately measure distances at the crime scene (i.e. how far apart the officer and the subject were at the time the first shot was fired until the subject fell to the ground).

On May 7, 2020, K.M., a resident of Hadden Manor Court, was interviewed by a Montgomery County Police Detective with the Homicide Division. M.E., a resident of Hadden Manor Court was interviewed by a Montgomery County Police Detective with the Homicide

Division. A.H., a resident of Hadden Manor Court was interviewed by a Montgomery County Police Detective with the Homicide Division. M.A., a resident of Hadden Manor Court was interviewed by a Montgomery County Police Detective with the Homicide Division. S.E., a resident of Hadden Manor Court was interviewed by a Montgomery County Police Detective with the Homicide Division. A.H., a resident of Hadden Manor Court was interviewed by a Montgomery County Police Detective with the Homicide Division. J.B., a resident of Hadden Manor Court was interviewed by a Montgomery County Police Detective with the Homicide Division. Interviewees are being identified by their initials to protect their privacy.

On May 8, 2020, Detective Glass emailed a copy of the body-worn camera footage from the officer who was involved. The recording captured the incident in its entirety. The video was just over nine minutes long and DSA Sandmann reviewed it several times.

On May 8, 2020, Detective Glass emailed a copy of the initial 911 call made by the resident whose window was broken by a rock.

On May 8, 2020, Detective Glass sent a copy of a cell phone video taken by a witness that captured part of incident. The cell phone video was taken from inside the house with the broken window on Hadden Manor Court. It showed the subjects encounter with the police as well as part of the shooting, however a tree in the front yard as well as some parked cars obscured some of the viewing. DSA Sandmann compared the cell phone footage with the body worn camera footage to see if they were consistent.

On May 9, 2020, Detective Glass provided a brief update to DSA Sandmann. Glass stated that the subject with the knife was identified as Finan Berhe. Berhe was a 30-year-old black male who lived at 1506 Hadden Manor Court with his parents.

On May 13, 2020, Detective Glass spoke with A.A., Finan Berhe's family member who was the last person Berhe contacted before his death. According to phone records, Berhe made the call at 10:11 a.m. A.A. stated that Berhe called him because he wanted to come over. A.A. said there was nothing unusual about the call. The last time he had seen Berhe was approximately 2 weeks prior.

On May 16, 2020, detectives recovered NEST camera video footage from 1500 Hadden Manor Court. Although the event cannot be seen on the video, you can hear Sgt. Cohen giving commands to Berhe. The video also captured the sounds of 5 gunshots.

On May 28, 2020, Detective Glass sent an email to DSA Sandmann requesting two subpoenas. Subpoena 1 was directed to Montgomery County Fire and Rescue for their incident reports and Subpoena 2 was directed to MedStar Washington Hospital Center for the medical records of Berhe.

On Saturday, May 30, 2020, DSA Sandmann and another Howard County Assistant State's Attorney spoke with Detective Glass on a conference call regarding a status report update. Glass advised that detectives had conducted multiple interviews with neighbors that witnessed the event as well as Finan Berhe's father. During the interviews, detectives learned from neighbors that Berhe had recently been in a fist fight with his father approximately one

week before the shooting and the father may have moved out of the house because he feared his son. Based on this information, Glass was going to attempt to get in touch with Berhe's family members to attempt to ascertain any information as to why Berhe would have behaved in this manner. DSA Sandmann asked for copies of all the interviews to review them ASAP.

On June 3, 2020, Glass provided a status update on the case. Glass advised that he had been unable to make contact with Berhe's family members and that he would try again next week. Glass was also unable to get back to the scene to conduct follow-up using a FARO laser scanner to help accurately measure and document the scene. During the discussion DSA Sandmann asked that a copy of the crime sketch be forwarded to him.

On June 8, 2020, Montgomery County Police Detectives responded to 1506 Hadden Manor Court to ask Berhe Haile, Finan's father, some follow-up questions based on what they learned during interviews of the neighbors. Glass stated that when asked about the fist fight with Finan, the father denied that it ever occurred. This is contradicted by other witnesses who gave statements advising they had personally witnessed the fight. Finan's father was asked if Finan might be suffering from possible mental health issues or depression and he stated that there were no mental health issues.

Evidence Reviewed

DSA Chris Sandmann reviewed the following evidence:

- Body Worn Camera
 - Sgt. David Cohen
- Witness Cell Phone Video
 - M. E.
- 911 Call
- Computer Aided Dispatch (CAD) Reports
- Videotaped Interviews
 - K.M.
 - M.E.
 - B.H.
- Audio-only Interviews
 - A.H. Jr.
 - A.H. Sr.
 - M.A.
 - S.E.
 - J.B.
- Crime Scene Photographs
- Crime Scene Sketch
- Nest Camera Audio
 - J.B.

- Ring Video
 - 1500 Hadden Manor Court
- Patrol Vehicle Video
 - Officer C.
- Montgomery County Fire and Rescue
 - Incident Reports
 - EMS Reports
- Office of the Chief Medical Examiner
 - Autopsy Report
 - Photos
- Search and Seizure Warrants
 - 1506 Hadden Manor Court
 - Google – victim’s personal email account
- Google Reports
 - Email re: Takoma Therapy appointment
- Use of Force Report (Lt. M. E.)
- FARO Measurements (approximate distances when shots fired)
- Police Reports
- Officers Notes
- Detectives Notes
- Officers Statements
- Handgun Qualifications
 - Sgt. D. C.
- Training certification
 - Sgt. D. C.
- Cell phone Internet History
 - Finan Berhe
- MCPD General Order – Use of Force
- MCPD General Order – Body Worn Camera System
- Firearms Examination Unit Reports
- Crime Scene Unit
 - Sgt. Cohen Report, Photos and Notes
 - Sgt. Cohen Evidence Collection Log
 - Victim Report, Photos and Notes
 - Victim Collection Log
 - Vehicle Report, Photos and Notes
 - Vehicle Collection Log
 - Metal Detector Report, Photos and Notes
 - FARO Scans

Summary of Facts

On May 7, 2020, at approximately 2:13 p.m., K.M. called 911 to report that his next-door neighbor had just thrown a rock through his window. K.M. stated that he was sitting in his room on the 2nd floor when he heard a loud crash from the front of his house. He then proceeded downstairs where he observed a rock that had broken through his front living room window. K.M. then proceeded outside to investigate. As K. M. came outside, another neighbor, A.H. Sr., also exited his house with his younger son, A.H. Jr., after A.H. Jr. told him he just heard something shatter. As K.M. and A.H. Sr. began to discuss what happened with each other, they both observed their neighbor, Finan Berhe (Berhe), exit his house at 1505 Hadden Manor Court. Berhe immediately admitted that he was the one who threw the rock through the window and asked K.M. to go inside and call the police. During this conversation, K.M. and A.H. Sr. both noticed that Berhe was holding a large kitchen knife in his hand. As K.M. went inside to call the police, A.H. Sr. attempted to talk with Berhe about why he would do such a thing. At this time, Berhe told A.H. Sr., "I'm just ready to go."

At approximately 2:21p.m., Sgt. David Cohen (Cohen) of the Montgomery County Police Department arrived on the scene in full uniform and a marked police vehicle. Upon arriving at the scene, Cohen activated his body-worn camera system which appears to have captured the entire incident (*It should be noted that Sgt. Cohen's body-worn camera was the only body-worn camera that captured any part of this incident). As soon as Cohen exited his vehicle he encountered Berhe, who was still holding a large kitchen knife in his right hand. Immediately, Berhe began running at Cohen, who withdrew his gun, pointed it directly at Berhe, and began giving commands ("put the knife down!") to Berhe. These commands appeared to be loud and clear and Berhe seemed to understand them as he quickly stopped running at the officer. Cohen then relayed over his radio that he has confronted Berhe and that he is refusing to obey his commands. Cohen then proceeded to give commands over and over ("get on the ground") to Berhe who refused to comply and continued to back up from the street to the sidewalk where the townhomes are located. During this entire encounter Berhe was totally uncommunicative. At approximately, 2:22 p.m., Cohen could be heard telling others in the area to get back inside. (*This is likely directed at A.H. Sr. who had advised in a later interview that he remained outside and witnessed the entire incident). At approximately 2:22 and 31 seconds (according to the body worn camera time), Cohen issued his last command of "get on the ground. I don't want to shoot you." Immediately after this last statement Berhe charged Cohen with the knife. Cohen can be seen attempting to retreat backwards for a couple of steps before ultimately firing 5 shots at Berhe. Cohen's first shot was fired when Berhe was approximately 14 feet away and he fired the last shot when Berhe was less than 10 feet away. At that point, Berhe fell to the ground. (*a voice -presumably A.H. Sr. can be heard in the background saying, "damn Fin, he told you to.....down" and "no Fin, why'd you do it?") Cohen immediately got on the radio and told dispatch that shots had been fired and that the officer was okay. After this, Cohen approached Berhe and began to render first aid as other officers began to arrive on the scene and assist. Ultimately, Berhe was transported by ambulance to MedStar Washington Hospital Center where his death was pronounced at 3:04 p.m.

On May 8, 2020, the Office of the Chief Medical Examiner for the District of Columbia (OCME) conducted a forensic autopsy on Berhe. The examining pathologist ruled Berhe's death a homicide due to multiple gunshot wounds. According to the autopsy report, Berhe suffered gunshot wounds to the right shoulder, right base of the neck and right hip. There was no evidence of alcohol or drugs in his system.

Throughout this investigation, several witnesses were identified and interviewed. At least five of the witnesses confirmed that Berhe was in possession of a large kitchen knife during this time. Additionally, witnesses A.H. Sr. and A.H. Jr. both recall hearing Berhe tell A.H. Sr. to "call the police" and that he (Berhe) was "ready to go." When asked during his interview what this phrase might mean, A.H. Sr. stated that he believed that Berhe wanted to be killed by the police. A.H. Sr. went on to say that he believed that Berhe was depressed and having significant issues with his father. When asked to elaborate, A.H. Sr. stated that just the week prior to this shooting, A.H. Sr. had to break up a fight in which Berhe was chasing his father around the neighborhood and punching him in the face. He also stated that Berhe's father had expressed to A.H. Sr. that he was afraid of his son. Near the end of his interview, A.H. Sr. said that he witnessed the entire encounter and didn't believe the officer wanted to shoot Berhe. Interviews with K.M. and M.E. confirmed they also believed that Berhe wanted the police to shoot him. Additionally, M.E. recorded the shooting on his cell phone while he was looking out the window of a home located on Hadden Manor Court. It should be noted that this cell phone video is entirely consistent with the body-worn camera video of Sgt. Cohen.

A background investigation into Berhe revealed that he resided with both his parents at 1506 Hadden Manor Court. He was a thirty-year-old college graduate who was currently working as a "Lyft" driver. Investigators were unable to find any official history regarding Berhe's medical or mental health status. Berhe's mother and father gave statements indicating their son had no mental health issues. A search warrant executed on Berhe's cell phone revealed his web search history just prior to this incident. It appears that Berhe conducted a web browser search for "gun store in rockville md" on May 7, 2020, the same day as this incident.

A background investigation into Sgt. David Cohen showed that he has been a police officer in Montgomery County for the last seventeen years. He is currently a patrol supervisor in the Third District. On the date in question, Cohen was operating a marked police vehicle. Cohen was in full uniform, including a vest that displayed the words "POLICE" on the front. He was also using a department issued body-worn camera system. As of the date of this incident, Cohen was in compliance with all required training as set forth by the Maryland Police and Corrections Training Commission. Cohen was also in compliance with all required firearms training and qualifications. His last qualification date was December 13, 2019. On this date, a certified Glock armorer conducted an inspection of Cohen's handgun and found it to be in proper working condition. Furthermore, Cohen has no prior history of ever using his firearm in the line of duty and no history of any citizen complaints filed against him.

Analysis and Case Law

The current law pertaining to the use of deadly force is laid out in the cases of *Graham v. Connor*, 490 U.S. 386 (1989) and *Tennessee v. Garner*, 471 U.S. 1 (1985), these cases explain that “deadly force” can only be used when an officer has probable cause to believe a suspect poses a significant threat of death or serious bodily injury to the officer or others. Furthermore, “the reasonableness of a particular use of force should be judged from the perspective of a reasonable officer on the scene and must embody an allowance for the fact that police officers are often forced to make split-second decisions about the amount of force necessary in a given situation.” *Graham, supra*.

When reviewing Sgt. Cohen’s body-worn camera, it shows Berhe initially charging Cohen with a knife within the first ten seconds of Cohen’s arrival immediately upon Cohen exiting his patrol vehicle. Cohen immediately begins issuing verbal commands to drop the weapon while pointing his own weapon at Berhe. When those initial commands were given, Berhe stopped advancing on the officer. Throughout the encounter, Berhe never utters a single word in response to Cohen’s commands even though he maintains consistent eye contact with the officer. It is clear at this point that Berhe poses a threat to both Cohen and any other civilians located in the immediate vicinity. He is in possession of a large knife, he has already attempted to charge at the officer once and he is uncommunicative with respect to every command issued to him. Near the end of the encounter, Cohen tells Berhe one more time to “get on the ground” and that he does not want to shoot him. Immediately after this statement Berhe charges towards Cohen with the knife clearly visible in his right hand. Cohen’s initial response is to back pedal and gain some distance between him and Berhe, however Berhe continues to gain ground on him at which point Cohen fires his gun 5 times over the course of approximately 1-2 seconds. As soon as Berhe falls to the ground after the fifth shot, Cohen stops shooting. Just after Berhe falls to the ground, Cohen rushes over to him and begins rendering aid in an attempt to save his life.

Just before Cohen fires his first shot, Berhe is running directly toward him with a large kitchen knife in his right hand. Additionally, even after the third shot fired by Cohen, Berhe is still continuing to run towards Cohen. After the fourth shot, Berhe is still holding the knife. It’s not until after the fifth shot that Berhe ultimately falls to the ground and drops the knife. At this point, Berhe is under ten feet away from Cohen based on the FARO data measurements conducted by Det. Glass during his investigation.

Finally, independent reviewers of this incident make a point to credit Sgt. Cohen for his response immediately following the shooting and state that Sgt. Cohen’s response at the scene was a textbook example of how an officer should respond in this type of situation.

Conclusion

Based upon a thorough review of all information known at this time, it is the opinion of the Office of the State's Attorney for Howard County, that Sergeant David Cohen's actions on May 7, 2020 were reasonable under the circumstances. The threat caused by Finan Berhe running directly at Sgt. Cohen with a large kitchen knife, as well as Berhe's nonresponsive actions to Cohen's demands to put the knife down, justified the use of deadly force. The Office of the State's Attorney for Howard County declines to file any charges against Sgt. David Cohen.