



NEWS RELEASE  
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August 5, 2014

FOR IMMEDIATE RELEASE

DEPUTIES AND OFFICERS JUSTIFIED IN USE OF DEADLY FORCE

SPRINGFIELD, Mo. – Dan Patterson, Greene County Prosecuting Attorney, announced today his finding that Greene County Sergeant Robert Pounds, Greene County Deputy Justin Adamson, Springfield Police Officer Marc Stevens, and Springfield Police Officer Jason Bohannon's use of deadly force on May 13, 2014, in shooting Tracey Lynn Liniger was legally justified. Attached is the letter sent to Sheriff Jim Arnott and Chief Paul Williams detailing the facts and legal analysis that formed the basis for this conclusion.

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Sheriff Jim Arnott  
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Chief Paul Williams  
Springfield Police Department  
321 E. Chestnut Expressway  
Springfield, Missouri 65802

Subject: Use of deadly force on May 13, 2014, by Greene County Sergeant Robert Pounds, Greene County Deputy Justin Adamson, Springfield Police Officer Marc Stevens, and Springfield Police Officer Jason Bohannon.

Dear Sheriff Arnott and Chief Williams,

The use of deadly force by Greene County Sheriff's Deputies and Springfield Police Officers in response to Ms. Tracey Lynn Liniger (DOB: 06-07-1963), an armed suspect, at 2745 S. Maple Leaf Lane on May 13, 2014, was a justified use of force by law enforcement officers. This conclusion was reached after a thorough investigation by the Springfield Police Department's Criminal Investigation Division and a review of that investigation including an examination of the facts in light of applicable Missouri law. This letter outlines my legal analysis as well as the facts upon which I based that analysis.

Any circumstance in which a law enforcement officer uses his or her firearm is appropriately the subject of close scrutiny. At the same time, we all recognize that the use of deadly force by a law enforcement officer invites second-guessing of difficult officer decisions that must be made in a split-second during the most trying of circumstances. The facts of each case must be kept firmly in mind as we judge the reasonableness of an officer's actions. An officer's conduct in these situations cannot be fairly evaluated by hindsight speculations. The sole responsibility of the Prosecuting Attorney in this case is to determine whether the officers committed a criminal act by using deadly force or whether the officers justifiably used deadly force and, therefore, did not commit a criminal violation under the law of this State.

There are two separate legal theories that I considered. First, was the officers' use of

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deadly force permissible under the law of self-defense and defense of others? Second, was the officers' use of deadly force permissible during the apprehension of an armed felon?

The first analysis is based upon the general law of self-defense and defense of others. Any person, including a law enforcement officer, is entitled to use deadly force in self-defense or defense of others when certain prerequisite facts are established. The first factor to consider is whether the individual using deadly force is an initial aggressor in the confrontation. Under Missouri law, an officer making an arrest does not have a duty to retreat. Prior to and after their arrival officers were informed by dispatch and by two victims that Ms. Liniger had displayed a firearm in an angry or threatening manner and that she had fired the gun. The officers, therefore, were acting in a lawful manner when they arrived on scene and began the process of taking Ms. Liniger into custody.

The second factor to consider in a self-defense analysis is whether the officers' use of deadly force was reasonable. The test to be utilized in determining the reasonableness of the officers' actions can be stated as follows: If the officer reasonably believed he or she or another person was in imminent danger of death or serious physical injury from the acts of the deceased and the officer reasonably believed the use of deadly force was necessary to defend himself, herself or the other person, then he or she acted in lawful self defense or defense of another. (See Missouri Approved Criminal Instruction Numbers 306.06 and 306.08). On more than one occasion Ms. Liniger refused to follow the officers' commands to surrender. Instead, Ms. Liniger knowingly raised her firearm and pointed it toward the officers. At that time, the officers reasonably believed that they were in imminent danger of death or serious physical injury. The officers' use of deadly force in response to Ms. Liniger's hostile act involving the threat of imminent death or serious physical injury was reasonable. Therefore, the officers' use of deadly force was legally justified self-defense.

The second legal theory applicable to the facts in this case is the use of deadly force to apprehend a dangerous felon. Missouri Revised Statutes Section 563.046 and Supreme Court cases interpreting the United States Constitution allow a law enforcement officer to use deadly force to make an arrest when the law enforcement officer reasonably believes that the individual has committed a felony, and that individual is attempting to escape by use of a deadly weapon, or may otherwise endanger life or inflict serious physical injury unless arrested without delay. The test to determine if the officer's arrest using deadly force is within the law is found in the Missouri Approved Criminal Instruction Number 306.14. It states in pertinent part:

A law enforcement officer can lawfully use force to make an arrest or to prevent escape if he is making a lawful arrest or an arrest which he reasonably believes to be lawful. An arrest is lawful if the officer had reasonable grounds to believe that the person being arrested had committed or was committing a crime.

In making a lawful arrest or preventing escape after such an arrest, a law

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enforcement officer is entitled to use such force as reasonably appears necessary to effect the arrest or prevent the escape.

A law enforcement officer in making an arrest need not retreat or desist from his efforts because of resistance or threatened resistance of the person being arrested. But in making an arrest or preventing escape a law enforcement officer is not entitled to use deadly force, that is, force which he knows will create a substantial risk of causing death or serious physical injury, unless he reasonably believes that the person being arrested is attempting to escape by use of a deadly weapon or that the person may endanger the life or inflict serious physical injury unless arrested without delay.

Officers were dispatched to this scene after Ms. Liniger confronted Mr. Terry L. Hester and Mr. Daniel W. Birkenfeld with a gun and shot at their vehicle. As officers arrived on scene, dispatch was providing information about what had occurred. Based upon this information, all of the officers on scene had reasonable grounds to believe that a felony had been committed and that Ms. Liniger might endanger the life or inflict serious physical injury unless arrested without delay. Additionally, when the officers confronted Ms. Liniger, she refused to comply with their lawful commands to surrender. Instead, she raised her firearm toward the officers in an apparent attempt to engage them in a gun fight and avoid being taken into custody. Therefore, the officers' use of deadly force was a lawful use of force in the apprehension of a felon.

The pertinent facts to my analysis in this case are as follows:

At approximately 2:15 p.m. on May 13, 2014, Mr. Daniel Birkenfeld and Mr. Tracy Hester went to check Birkenfeld's RV at A & A Mini Storage, 2745 S. Maple Leaf, Springfield, Greene County, Missouri. When they arrived, the gate was open and they drove directly into the complex to the location where the RV was stored. The owner, Mark Netzer came by their location and spoke with them briefly. Approximately five minutes later, Birkenfeld and Hester tried to leave the complex. When they arrived at the front entrance/exit, the gate was shut.

Birkenfeld honked his horn in an attempt to get the office worker to open the gate. As Birkenfeld was waiting for the gate to open, Liniger exited the office and began walking toward Birkenfeld's vehicle. Liniger appeared angry, agitated, and intoxicated. Liniger walked up to the driver's door open window and asked Birkenfeld for a hug. Birkenfeld tried to ignore her, but she reached into the vehicle and began grabbing Birkenfeld by the neck. Birkenfeld pleaded with Liniger to just open the gate and let them go. Liniger stopped the assault and walked back to the office.

Hester exited the vehicle and tried to open the gate. When this did not work,

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Hester walked to the office door and knocked. When Liniger answered, Hester asked her to open the gate. At Liniger's request, Hester hugged her and then walked away.

A few seconds later, Liniger exited the office with a handgun. Liniger was waiving the gun around and demanded a hug from Birkenfeld. Birkenfeld exited his vehicle and gave Liniger a hug. As he hugged Liniger, she put the gun near his head.

Hester was able to get Liniger's attention and she quit hugging Birkenfeld. Birkenfeld attempted to call 911 with his cell phone. This angered Liniger and she shot the tire on Birkenfeld's vehicle. Liniger then randomly began shooting rounds in the air and on the ground around them.

Birkenfeld ran away from Liniger, climbed over the barbed wire fence, and fled to the KADI radio station. When he arrived, a station employee called 911.

Hester attempted to talk with Liniger and calm her down. Liniger was asking Hester to kill her. She offered him \$1,000.00 to kill her. Liniger became increasingly mad and shot at the vehicle again. Hester offered to give her another hug. While giving her a hug, Hester was able to snatch the gun from her hand. Hester threw the gun over the fence and told Liniger he could hear the sirens of the police who were on their way. Liniger stated she had other guns. She then went to the fence and was able to maneuver through the fence and retrieve the gun. At this time, Hester ran away into the complex seeking cover.

At 2:44 p.m. Officer Brad Eddy with the Springfield Police Department begins driving to the scene.

At 2:50 p.m. Officer Eddy is the first officer to arrive on scene. The gate is still shut so he parks his patrol car outside of the fence in such a way that the entire interaction between Liniger and police is captured on video. When he arrives, Liniger is in the office and cannot be seen. Springfield Police Officers and Greene County Deputies begin arriving on scene and taking up positions around the storage complex.

At 2:53 p.m. Liniger exits the office. An officer yells to "Drop the gun." Liniger quickly goes back into the office.

At 3:02 p.m. Liniger opens and immediately shuts the office door.

During this time, dispatch is updating officers on the information being provided by witnesses. This includes more specific information regarding Liniger's

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shooting at the victims' vehicle, Liniger's request to be killed, Liniger's potential mental issues, and Liniger's access to an additional gun inside of the office.

At 3:07 p.m. Springfield Police Lieutenant Todd Revell made phone contact with Liniger in an attempt to deescalate the situation. Liniger's speech was slurred and difficult to understand. Liniger was enraged, yelled profanities, and hung up the phone.

At 3:08 p.m. Lt. Revell called Liniger back. When Lt. Revell asked if anyone else was inside, Liniger stated "Yes" then "No" then "You figure it out." Liniger hung up the phone shortly thereafter.

At 3:10 p.m. Lt. Revell called Liniger back. Liniger did not answer. Lt. Revell leaves a message talking for several seconds in the event that Liniger could hear the message being left.

At 3:10 p.m. Liniger opens the office door and steps outside. Officers yell for her to "Drop the weapon!" and "Put your hands up!" Liniger goes back inside after a few seconds.

At 3:11 p.m. Lt. Revell called Liniger back. Again, Liniger does not answer. Lt. Revell leaves a message.

At 3:13 p.m. Lt. Revell called Liniger back. Liniger answered this call. Lt. Revell attempted to explain that he was calling to try to work out the situation. Liniger continued yelling at Lt. Revell and made comments indicating that someone else may possibly be inside the office.

At 3:14 p.m. Liniger opens the office door. Liniger steps out and has a gun in her right hand. Liniger bends down and appears to pick up the magazine for the gun. At least seven times, officers can be heard yelling "Drop the gun!" She appears to place the magazine in the gun, raises her right arm, and points the gun at the officers. At that time, Greene County Sergeant Robert Pounds, Greene County Deputy Justin Adamson, Springfield Police Officer Marc Stevens, and Springfield Police Officer Jason Bohannon all fired their weapons at Liniger and Ms. Liniger fell to the ground.

According to the Greene County Medical Examiner, Ms. Liniger died as a result of gunshot wounds to the torso.

The witness statements and evidence are inconclusive as to whether Ms. Liniger was able to fire any shots toward the officers before being struck. However, this unknown fact does

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not change the legal analysis in this case. Law enforcement officers are not required to allow a suspect to actually shoot the firearm at them before returning fire. In this case, the totality of the circumstances clearly indicate that the officers reasonably believed that Ms. Liniger's actions posed an imminent threat of death or serious physical injury to the officers.

Based upon the above facts, it is my opinion that the law enforcement officers' use of deadly force was justified under both the law of self-defense and the law applicable to the apprehension of an armed and dangerous felon.

There will be no further action by this office with regard to the conduct of the officers in this case.

A handwritten signature in black ink that reads "Dan Patterson". The signature is written in a cursive, flowing style.

Dan Patterson  
Prosecuting Attorney