



**PROSECUTING ATTORNEY
BONNEVILLE COUNTY, IDAHO**
CRIMINAL DIVISION

RANDY NEAL
Prosecuting Attorney

JEFFREY L. THOMASON, JR.
Acting Chief, Criminal Division

MEMORANDUM

April 24, 2024

*RE: Review of Potential Criminal Liability Related to
Officer Involved Shooting, April 8, 2024, at 1448 W Broadway St, Idaho Falls
(Robert Alan Flores, Jr.)*

TO: Officer Shayden Nagle, Idaho Falls Police Department
Officer Mitchall Bierma, Idaho Falls Police Department

CC: Bryce Johnson, Chief of Police, Idaho Falls Police Department

FROM: Randolph B. Neal, Prosecuting Attorney, Bonneville County, Idaho

On April 8, 2024, at 1448 W Broadway St, in Idaho Falls, Idaho, an officer of the Idaho Falls Police Department, while on duty and in the lawful exercise of his duties, discharged his firearm striking an individual two times. The individual survived and is currently recovering from his injuries. Another officer also while on duty and in the lawful exercise of his duties, discharged his firearm, striking areas near this individual.

It is my duty as Prosecuting Attorney for Bonneville County, Idaho, in which jurisdiction the incident took place, to determine if this action was justified as an act of self-defense and whether the officers should be criminally prosecuted. I am not responsible for providing civil advice or defense to the City of Idaho Falls, and I do not administratively supervise their police department. It would therefore not be appropriate for a prosecutor to comment as to matters of policy or civil liability. Additionally, I am responsible solely to review the officer's actual decisions and actions in this specific case, and it is not within my purview to comment on any possible alternative actions the officer may have chosen to take.

I have reviewed videos, the scene, and the interviews conducted in the independent investigation of an Eastern Idaho Critical Incident Task Force into the incident referenced above for the purpose of determining whether any criminal laws were violated by Officers Shayden Nagle and Mitchall Bierma who are employed by the Idaho Falls Police Department. For the reasons described below, I find no evidence to suggest that either officer committed a criminal offense in relation to the incident described below, and further find their actions were **JUSTIFIED** as an act of self-defense and/or the defense of others.

Other officers were involved, but did not discharge their weapons. The only other use of force was when the suspect (Robert Alan Flores, Jr.) was taken into custody. I have found nothing in the actions of these officers which would require my review for

determining violations of criminal law, and that their actions fell with reasonable use of force for the purposes of effectuating a lawful arrest of the suspect.

STANDARD OF CRIMINAL REVIEW

Pursuant to Idaho Code § 18-109, “a crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, [an enumerated] punishment.” Pursuant to Idaho Code §§ 19-505 and 19-506, in order to charge a crime, there must be sufficient facts which tend to establish there is probable cause to believe that an offense has been committed and that the defendant committed it. In other words, there must be both a prohibited act and sufficient evidence to establish probable cause to believe that an individual violated a law, which requires or proscribes an act, and provides for a punishment for committing or omitting the act.

STATEMENT OF FACTS

1. At 1:16 p.m. on April 8, 2024, hotel staff at the EconoLodge on West Broadway Street called Idaho Falls Police dispatch and requested Idaho Falls Police Officers respond to assist with removing two tenants who had stayed past check out time and would not leave.

2. Officers, who were not immediately available, responded to the hotel around 3:00 p.m.

3. Hotel staff identified the occupants of the room as Robert Flores and another woman.

4. Throughout the incident, officers believed that a woman was in the room with Flores.

5. However, no one else was found in the hotel room, and it is believed no one else except Mr. Flores was involved with the incident.

6. Mr. Flores was well known to police through past interactions with law enforcement and seven police officers responded.

7. Six Idaho Falls Police officers eventually entered the hotel.

8. Officer Shayden Nagle was equipped with a ballistic shield.

9. Officer Mitchall Bierma had a police K9 partner named Argo.

10. Officers started trying to contact Mr. Flores through the hotel room door at about 3:20 p.m.

11. Officers knocked on the exterior door of the hotel room and announced that they were Idaho Falls Police Officers.

12. Officers called the two names of the registered guests and stated multiple times that the two were not under arrest, that they did not have warrants, but that they did need to leave the hotel.

13. After several attempts to communicate with Mr. Flores without response, officers stated the two were now under arrest for trespassing and needed to come to the door.

14. Officers used a key card provided by hotel staff to access the room, but had to kick the door to break a security chain.

15. The bathroom door was closed when officers entered the room.

16. Officers checked the rest of the room and finding no occupants, focused on the bathroom.

17. Officers again tried to communicate with Mr. Flores through the bathroom door but did not receive any response.
18. Idaho Falls Police K9 Officer Bierma moved into a position outside the bathroom door with his K9 partner Argo and prepared to send the K9 into the bathroom.
19. Two officers were standing near Officer Bierma on the north side of the bathroom door.
20. Idaho Falls Police Officer Shayden Nagle was holding a ballistic shield and standing on the south side of the bathroom door with two other officers.
21. Officer Bierma made announcements for anyone inside the bathroom to come out or police would send in a dog and they would get bit.
22. As an officer began to turn the handle to the bathroom door, Flores fired a single shot through the bathroom door.
23. This shot struck the center of the ballistic shield being held by Officer Nagle.
24. Unable to see the interior of the bathroom and determine how many occupants were inside, none of the officers returned fire at that point.
25. Officer Bierma, Argo, and the two other officers who had been on the north side of the bathroom door retreated into the hallway.
26. During the confusion immediately following the gunshot, the police K9 bit one of the police officers on the arm.
27. Officer Nagle and the other two officers with him retreated further into the hotel room taking cover behind the ballistic shield.
28. Just as Officer Nagle and the two officers with him inside the room were getting the shield in place, Mr. Flores reached out of the bathroom with a Glock model 44 held in both hands and pointed it towards the officers in the room.
29. In rapid succession, Mr. Flores shot twice, missing the officers, and Officer Nagle fired three rounds from his service weapon through the drywall into the bathroom.
30. Two rounds from Officer Nagle's firearm struck Mr. Flores.
31. Officer Bierma also fired two rounds toward Mr. Flores from the hallway, but neither round struck Mr. Flores.
32. No other officers fired their weapons.
33. The three officers inside the room stayed behind the shield in the corner of the room for 23 minutes until they were able to exit through the exterior window.
34. Although officers could hear Mr. Flores moving, coughing, and making other sounds, he otherwise did not respond to the officers.
35. Specialty teams including the IFPD SWAT team, the Unmanned Aerial Systems (drone) team, Crisis Negotiators, and others were also activated to respond to the location.
36. Various visuals provided by drones and robots showed that Mr. Flores was still alive and moving.
37. IFPD used several different methods to try to communicate with Mr. Flores with no response.
38. Around 5:30 p.m., Idaho Falls SWAT officers utilized a flash bang and made entry into the room and took Mr. Flores into custody.
39. SWAT officers carried Mr. Flores out to Idaho Falls Fire Tactical Medics, staged just outside the hotel, who began medical treatment and transported Mr. Flores to the hospital.
40. Mr. Flores received medical treatment and survived his gunshot wounds.

41. Robert Flores was charged with six counts of Felony Aggravated Assault on a Police Officer (with deadly weapon enhancement), Felony Unlawful Possession of a Firearm, Misdemeanor Resisting and Obstructing, and Misdemeanor Trespassing.

42. Mr. Flores is currently being held on a \$1,000,000 bond.

STATEMENT OF THE LAW

An otherwise violent act is justifiable if a person was acting in self-defense and/or the defense of another.¹ In this case, it appears conclusively from the available evidence that at the time of the shooting there was an apparent, imminent threat toward Idaho Falls Police Officers, including Officers Nagle and Bierma.

If an act involving asserted self-defense results in death, the analysis proceeds under Idaho Code § 18-4009, which states in pertinent part, “Homicide is justifiable when committed by any person when resisting any attempt to murder any person, or to commit a felony, or to do some great bodily injury upon any person.”² Essentially this permits self-defense with a deadly weapon only where one has reasonable cause to believe, and does believe, he (or a third person) is in danger of great bodily injury or death.³

When the act involving asserted self-defense does not result in death, the analysis proceeds under Idaho Code § 19-202, which states in pertinent part, “Resistance sufficient to prevent [a public] offense may be made by the person about to be injured to prevent an offense against his person.” I.C. § 19-202 gives one the right to use resistance sufficient to prevent the offense.

Homicide is justifiable when committed by public officers when reasonably necessary in overcoming actual resistance in the discharge of any legal duty including preserving the peace. Use of deadly force is justified in overcoming actual resistance when the officer has probable cause to believe that the resistance poses a threat of death or serious physical injury to the officer or others.⁴

In order to find that a person acted in self-defense, all of the following conditions must be found to have been in existence at the time of the use of deadly force:

1. A person must have believed that they were in imminent danger of death or great bodily harm.

2. In addition to that belief, a person must have believed that the action they took was necessary to save themselves from the danger presented.

3. The circumstances must have been such that a reasonable person, under similar circumstances, would have believed that they were in imminent danger of death or great bodily injury and believed that the action taken was necessary.

4. A person must have acted only in response to that danger and not for some other motivation.

5. When there is no longer any reasonable appearance of danger, the right of self-defense ends.⁵

In deciding upon the reasonableness of a person's beliefs, it should be determined what an ordinary and reasonable person might have concluded from all the facts and circumstances which existed at that time, and not with the benefit of hindsight.⁶

The danger must have been present and imminent, or must have so appeared to a reasonable person under the circumstances. A bare fear of death or great bodily injury is not sufficient to justify a homicide or use of deadly force. The person must have acted under the influence of fears that only a reasonable person would have had in a similar position.⁷

Under the law of self-defense, a person has the right to defend himself from "the infliction of great bodily injury," but "the exercise of that right must be grounded upon a reasonable apprehension of imminent harm, and a reasonable belief that the killing is necessary to protect against such injury."⁸

The kind and degree of force which a person may lawfully use in self-defense is limited by what a reasonable person in the same situation, seeing what that person sees and knowing what that person knows, would believe to be necessary at that time. Any use of force beyond what is necessary is regarded by the law as excessive. Although a person may believe that they are acting, and may act, in self-defense, a person is not justified in using a degree of force clearly in excess of that apparently and reasonably necessary under the existing facts and circumstances.⁹

Bare fear alone is not a legally sufficient reason to act in self-defense. In addition to one's perception of the situation, there must be circumstances sufficient to excite the fears of "a reasonable man."¹⁰ The Idaho rule of self-defense is not premised upon a subjective test. It is grounded in the objective concept of the actions of a "reasonable person."¹¹

The defense of self or of another does not require a person to wait until he or she ascertains whether the danger is apparent or real. A person confronted with such danger has a clear right to act upon appearances such as would influence the action of a reasonable person.¹²

In Idaho, no person shall be placed in legal jeopardy of any kind whatsoever for protecting himself by reasonable means necessary, from becoming the victim of aggravated assault, robbery, rape, murder or other heinous crime.¹³

In the exercise of the right of self-defense or defense of another, a person need not retreat from any place that person has a right to be. A person may stand his ground and defend himself or another person by the use of all force and means which would appear to be necessary to a reasonable person in a similar situation and with similar knowledge without the benefit of hindsight.¹⁴ This law applies even though the person

being attacked might more easily have gained safety by flight or by withdrawing from the scene.¹⁵

The idea of a requirement of “retreating to the wall” or “retreating as far as he can, or disabling his adversary without killing him, if it be in his power” has never been the law of the land. A person placed under an apparently threatening and menacing danger is only expected to act as a reasonably prudent person would act under similar circumstances and surroundings. “Under such circumstances they ordinarily have but a moment for deliberation and decision. It might so happen that as a matter of fact they could have done any one of a number of other things, and thereby have avoided the danger and refrained from committing the homicide. After they have acted, they cannot be judged from the theoretical standpoint of the man who is resting in both apparent and real safety, confronted by no danger, and menaced by no threats or demonstrations of sudden violence and felonious import. He must act quickly. He must act as a reasonable and prudent man would be likely to act under similar conditions and circumstances, and this is all the law, reason, or justice demands.”¹⁶

For centuries now, it has been the law of the United States that if a person is where he has the right to be, when someone advances upon him in a threatening manner, and with a deadly weapon; and if that person did not provoke the assault, and had at the time reasonable grounds to believe, and in good faith believed, that the deceased intended to take his life, or do him great bodily harm, he was not obliged to retreat, nor to consider whether he could safely retreat, but was entitled to stand his ground, and meet any attack made upon him with a deadly weapon, in such way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life, or to protect himself from great bodily injury.¹⁷

The burden is on the prosecution to prove beyond a reasonable doubt that the asserted act of self-defense was not justifiable. If there is a reasonable doubt whether the asserted act of self-defense was justifiable, a person cannot be found guilty under the law.¹⁸

LEGAL ANALYSIS

This case is analyzed to determine whether Officers Nagle and Bierma’ actions were justified or conversely, if without justification, arise to the level of a manslaughter or murder. A primary element of either offense is that the use of force was unlawful. In this case, as an element of the criminal prosecution, the State is required to prove beyond a reasonable doubt that Officers Nagle and Bierma were not justified under principles of self-defense in shooting and/or shooting at Mr. Flores.

Justifiable Homicide v. Justifiable Assault/Battery. This case is being reviewed as a use of force that did not result in death, and thus an assault (Officer Bierma) or battery (Officer Nagle), and not a homicide. However, given the officers’ use of deadly force (force likely to produce death or serious bodily injury), the analysis has very little distinction. The standard in either case, is whether these officers were confronted with the present and imminent threat of death or serious bodily injury.¹⁹

The officers' actions were within the discharge of the officer's legal duty as a peace officer. Officers Nagle and Bierma were on duty and were responding to a call for assistance by hotel managers who sought to have holdover guests removed from the premises for trespassing. In this case, it was reasonable and within the scope of their duties to respond to this call for assistance.

The officers were in a place where he had a right to be. Officers Nagle and Bierma were in a hotel room with the permission of hotel management. As the officers had been requested to notify Mr. Flores on their behalf that they were trespassing, Mr. Flores did not have any right to exclude the officers from the hotel room where Officers Nagle and Bierma entered with the permission of hotel management. See note 20, *infra*.

The officers were resisting a public offense. Officers identified themselves as police officers several times and gave verbal notice to Mr. Flores that he was being trespassed. When he still refused to leave, Mr. Flores violated the criminal trespass statute. Pursuant to Idaho Code § 18-7008, a person commits criminal trespass when “he fails to depart immediately from the real property of another after being notified by the owner or his agent to do so.”²⁰ Officers gave Mr. Flores notice of the request of hotel management to leave the premises and advised him of the consequences of failing to depart.

Without legal provocation, Mr. Flores fired one round through the door toward an area where he heard the voices of police officers who had identified themselves as police officers. He later came through the doorway and fired in the direction of police officers. Under Idaho law, Attempted Murder is the attempt to kill a human being without legal justification or excuse and with malice aforethought.²¹ Assault is defined as, “an unlawful attempt, coupled with apparent ability, to commit a violent injury on the person of another,” or an “intentional, unlawful threat by word or act to do violence to the person of another, coupled with an apparent ability to do so, and doing some act which creates a well-founded fear in such other person that such violence is imminent.”²² An assault becomes defined as aggravated when it is committed with a deadly weapon or instrument without intent to kill; or by any means or force likely to produce great bodily harm.²³ Assault with Intent to Commit a Serious Felony is defined as an assault upon another with intent to commit murder, rape, mayhem, robbery, or lewd and lascivious conduct with a minor child.²⁴ Therefore, in this case, whether or not Mr. Flores with his actions actually intended to kill Officers Nagle, Bierma, or other officers, does not change the legal analysis of whether Officers Nagle and Bierma’s response was justified.

The officer did not provoke the threatening behavior. Officers Nagle and Bierma were attempting to enforce a valid criminal statute and effect a misdemeanor arrest for conduct occurring in their presence. The arrest was therefore lawful. Prior to Mr. Flores firing the firearm at Officers through the door, he had been advised, and undoubtedly heard the presence of the police K-9. Otherwise, the officers made no unlawful threatening or provocative statements (“fighting words”) and made no unjustifiably threatening gestures. Upon review of the video from the officers’ body worn cameras, I conclude all statements and acts by Officers Nagle and Bierma were consistent with common law enforcement training for dealing with a barricaded subject. I found nothing that Officers Nagle and Bierma said or did that would have reasonably

provoked a rational person to react in the violent and threatening manner Mr. Flores exhibited. Mr. Flores fired his weapon at Officers Nagle and Bierma without legal provocation.

Objectively Reasonable Fear

The officer reacted to a reasonable appearance of danger. Mr. Flores produced a firearm and actively shot at Officer Nagle and two other officers. Indisputably, a firearm can be used to cause serious bodily injury or death. Mr. Flores was actively shooting in the officer's direction and Officers Nagle and Bierma' perception that Mr. Flores constituted an immediate threat to the police officers in the hotel room was objectively reasonable.

Mr. Flores' actions created a present and imminent danger of death or great bodily harm to the officers. Mr. Flores was within a short distance when he fired at Officer Nagle and the other officers. It was reasonable to perceive that Mr. Flores' actions created a present and imminent danger of death or great bodily harm, which undeniably accompanies shooting a firearm in the direction of others.

Objectively Reasonable force

Officers Nagle and Bierma were justified in using deadly force because the officers had probable cause to believe that Mr. Flores' actions posed a threat of death or serious physical injury to themselves and other officers. There can be no dispute that shooting a firearm at a person constitutes a threat of serious bodily injury or death. Officers Nagle and Bierma were initially within a short distance of Mr. Flores when he fired the shot in their direction through the door. The shot penetrated the door and hit the ballistic shield. The officers heard the gunshot and its nature was easily recognizable. Officers Nagle and Bierma fired their weapon only when Mr. Flores exited the bathroom with a visible firearm and fired in the direction of three police officers. Once the assailant fired a deadly weapon, Officers Nagle and Bierma had reasonable cause to believe that Mr. Flores' actions in this case posed a threat of death or serious physical injury to themselves or other officers. As a matter of law, Officers Nagle and Bierma had a right to fire their weapon at Mr. Flores when Mr. Flores aimed and fired in Officer Nagle's direction and when it appeared to Officers Nagle and Bierma that Mr. Flores was a further threat to Officers Nagle and the other officers in the area.²⁵

The officers' actions were necessary to save themselves and others from the apparent danger presented. Officers Nagle and Bierma had to act quickly to stop the threat. It was a reasonable perception by Officers Nagle and Bierma that Mr. Flores presented a continuing threat to Officers Nagle and Bierma and other officers. These threats justified the use of deadly force.

As described above, the law allows that Officers Nagle and Bierma were entitled to "meet any attack made upon him with a deadly weapon, in such way and with such force as, under all the circumstances, he, at the moment, honestly believed, and had reasonable grounds to believe, were necessary to save his own life, or to protect himself from great bodily injury."²⁶ I find no evidence that Officers Nagle and Bierma "failed to react as a reasonable and prudent man would be likely to act under similar conditions and circumstances," and "this is all the law, reason, or justice demands."²⁷ I likewise

find no reason based on the indisputable circumstances reviewed in this case to believe that any such reasonable alternatives to the use of deadly force even existed.

The officer's actions are judged on the facts and circumstances which existed at the time of the officer's actions. The facts reasonably known to the officers at the time were that Mr. Flores had the apparent (and real) ability to cause serious bodily injury or death with his firearm. These circumstances appear to have remained unchanged through subsequent investigation. The facts and circumstances are legally conclusive and difficult to dispute given the objective and irrefutable video recordings of the incident.

Final Considerations

There is no evidence that Officers Nagle and Bierma were acting with any other motivation other than self-defense. In fact, all of the officers demonstrated an extraordinary amount of restraint in their response to being fired upon by Mr. Flores.

Under Idaho law, Officers Nagle and Bierma cannot be placed in legal jeopardy of any kind whatsoever for protecting themselves by reasonable means necessary, from becoming the victim of aggravated assault or attempted murder.²⁸ As described above, I conclude that Officers Nagle and Bierma were protecting themselves and other officers from an aggravated assault and/or an attempted murder.

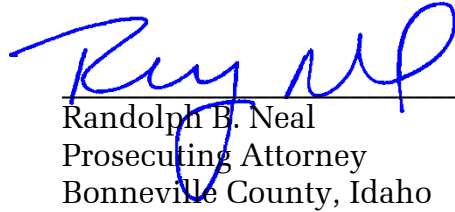
It is now the law in the United States, that the burden of proof is on the prosecution to prove beyond a reasonable doubt that an accused defendant did not act in self-defense. In this case, I conclude given the state of the evidence, that to the contrary, it is beyond a reasonable doubt that Officers Nagle and Bierma in fact acted reasonably in self-defense.

CONCLUSION

For the reasons described above, it is my conclusion that Officers Nagle and Bierma's actions at the Econo Lodge, at 1448 W Broadway St, Idaho Falls, on April 8, 2024, were **JUSTIFIED** under Idaho law as an act(s) of self-defense. Further, I conclude that Officers Nagle and Bierma were protecting themselves and others by reasonable means necessary from an aggravated assault and/or attempted murder, and thus Idaho law prohibits placing the officer in "legal jeopardy of any kind whatsoever."²⁹ Therefore, any prosecution for their actions must be **DECLINED**.

I likewise commend Officers Nagle and Bierma as well as the remaining officers for their selfless bravery and extraordinary restraint. Mr. Flores' indiscriminate shooting placed the officers in life-threatening circumstances. I believe the entire community is relieved that no harm came to Officers Nagle and Bierma or any of the other officers near the scene.

Dated: April 24, 2024.


Randolph B. Neal
Prosecuting Attorney
Bonneville County, Idaho

Endnotes

¹ Idaho Criminal Jury Instructions (“ICJI”) 1517.

² Idaho Code (“I.C.”) §18-4009.

³ *State v. Wilson*, 41 Idaho 616, 243 P. 359 (1925).

⁴ ICJI 1515.

⁵ ICJI 1517.

⁶ *Id.*

⁷ *Id.*

⁸ *State v. Carter*, 103 Idaho 917, 655 P.2d 434, 436 (Idaho 1981) (citing Idaho Code § 18–4009; *People v. Pierson*, 2 Idaho 71, 3 P. 688 (1884)).

⁹ ICJI 1518.

¹⁰ *State v. Scroggins*, 91 Idaho 847 at 849, 433 P.2d 117 (1967).

¹¹ *State v. Baker*, 103 Idaho 43, 644 P.2d 365 (Ct.App.1982); *State v. Camarillo*, 106 Idaho 310, 313, 678 P.2d 102, 105 (Ct. App. 1984); *State v. Rodriguez*, 93 Idaho 286, 291, 460 P.2d 711, 716 (1969).

¹² *Id.*

¹³ I.C. §19-202A.

¹⁴ *Id.*

¹⁵ *State v. McGreevey*, 17 Idaho 453, 466, 105 Pac. 1047 (1909); *State v. Dunlap*, 40 Idaho 630, 637, 235 Pac. 432 (1925).

¹⁶ *McGreevey*, at 1051.

¹⁷ *Beard v. United States*, 158 U.S. 550, 564, 15 S. Ct. 962, 967, 39 L. Ed. 1086 (1895)

¹⁸ ICJI 1517.

¹⁹ See Idaho Code § 18-4009.

²⁰ I.C. § 18-7008. While there is an exception for a situation involving a “landlord tenant relationship,” hotel guests do not have the same rights as a tenant. See I.C. § 39-1805.

²¹ ICJI 701, 1451.

²² I.C. § 18-901(b).

²³ I.C. §§ 18-905(a) & (b).

²⁴ I.C. § 18-909.

²⁵ See i.e., *Kessler v. Barowsky*, 129 Idaho 640, 645, 931 P.2d 634, 639 (Ct. App. 1996), *aff’d* in part, *vacated* in part, 129 Idaho 647, 931 P.2d 641 (1997) (“As a matter of law, the officers had a right to fire their weapons at [the assailant] after [he] drew his gun on them.”).

²⁶ *Beard* at 564, 967.

²⁷ See endnote 18, *supra*.

²⁸ I.C. §19-202A.

²⁹ *Id.*