



INTER-OFFICE COMMUNICATION

TO: Andy Pena, Captain, Office of Professional Responsibility

FROM: Albert Rodriguez, Lieutenant, Office of Professional Responsibility

SUBJECT: Case No. OIS2009-001; Firearms Discharge & Use of Deadly Force Involving Agents Joe Cronin and John Altum

DATE: 02-16-10

Joe Cronin
Agent II
Enforcement Division
Employed: 01-05-03, Amarillo
Transferred: 02-01-04, Victoria
Transferred: 08-01-05, Austin
Advanced TCLEOSE Certification

John Alum
Agent II
Enforcement Division
Employed: 01-19-04, Amarillo
Transferred: 10-01-04, Houston
Transferred: 08-01-05, Austin
Advanced TCLEOSE Certification

In compliance with your instructions, I have investigated the above referenced shooting incident and submit this report.

SYNOPSIS

Agents Joe Cronin and John Altum were on duty and working together in the same patrol car on August 16, 2009. Agent Cronin was the driver of the patrol car. Austin Police Department (APD) initiated a pursuit of a suspect's vehicle with Agent Cronin joining the pursuit as the third patrol unit behind two APD units. At one point, APD and Agent Cronin terminated the pursuit. Agents Cronin and Altum continued looking for the suspect vehicle. The suspect's vehicle was observed and followed. Agents Cronin and Altum encountered the suspect's vehicle at the Longhorn Landing Apartments. Agents Cronin and Altum were presented with a threat of seriously bodily injury or death and used deadly force by discharging their handguns. Steven Edward Lunt, the driver of the suspect's vehicle, was killed as a result of the use of the deadly force.

INVESTIGATION

The following persons were contacted during the course of this investigation:

John Altum, Agent II, Austin District Office
Phillip Asebedo, Agent II, Austin District Office
Gregory Lewis, Agent II, Austin District Office
Joe Cronin, Agent II, Austin District Office
Sergeant James Molloy, Austin District Office

The following documents and materials were reviewed:

Austin Police Department's Investigative File of Incident including witness statements, audio and video recordings, and photographs
Texas Ranger Investigative Report
Texas Penal Code
Texas Code of Criminal Procedure
Texas Transportation Code
Texas Alcoholic Beverage Commission's Policies and Procedures

On 08-16-09, at approximately 3:00 a.m., Agents John Altum and Joe Cronin were riding in an unmarked TABC patrol unit. Agent Cronin was the driver of the patrol unit. The unmarked TABC unit was equipped with emergency lights and siren. Agents Cronin and Altum were wearing white shirts, tan cargo style pants, duty belts, and TABC badges on their shirt or duty belt. Agents Cronin and Altum were identifiable as police officers.

As Agents Altum and Cronin patrolled the Austin downtown area, they overheard via police radio that a white Ford pickup was being driven in a reckless manner and needed to be stopped. The information was reported by the Austin Police Department. Agents Altum and Cronin drove into the Twin Liquors parking lot located at Red River and 7th Street. Agent Gregory Lewis, who was working alone, also pulled into that location due to hearing the same information reference the suspect's vehicle.

Shortly thereafter, Agents Altum and Cronin observed two (2) APD units attempting to make a traffic stop on a white Ford pickup. The Ford pickup was traveling eastbound on 7th Street approaching I-35. The APD units had their emergency overhead lights activated. At one point, the Ford pickup failed to yield right of way to the APD units and commenced to evade arrest/detention. When the suspect's vehicle drove by Agents Cronin and Altum's location, Agent Altum noticed that there were at least two (2) occupants in the suspect vehicle, a driver and a passenger. Agent Altum made this observation as result of the passenger side window of the suspect's vehicle being down as it drove by their location.

Agents Cronin and Altum joined the pursuit behind two (2) APD units. The TABC patrol units' emergency lights and siren were activated. The TABC patrol unit driven by Agent

Cronin became the third unit in pursuit behind two APD units. Agent Altum reports that he and Agent Cronin decided they needed to get involved because the suspect vehicle presented a threat to public safety, the APD unit that was following at the time was a one man unit, and if it was in fact, an intoxicated driver that they might be able to get information, after the arrest, as to where the driver might have been drinking.

Agent Cronin reports that he evaluated risks in pursuing versus the need to apprehend. He believed that pursuing the suspect's vehicle was reasonable at that point in time. Agents Cronin and Altum assumed that Agent Lewis was following them, but they never observed his unit following.

The Ford pickup continued to be driven recklessly and at a high rate of speed in an eastbound direction on 7th, southbound on San Antonio, and eastbound on 6th Street. APD discontinued the pursuit of the white Ford pickup on 6th Street just a few blocks east of San Antonio Street. Agents Cronin and Altum over heard via police radio of APD terminating the pursuit. Agent Cronin also terminated his pursuit.

After terminating the pursuit and deactivating the unit's emergency equipment, Agents Cronin and Altum continued to look for the suspect's vehicle and encountered it at the intersection of Cesar Chavez and Pleasant Valley Road. The suspect's vehicle was traveling south on Pleasant Valley Road.

Agents Cronin and Altum decided to follow the suspect vehicle without the patrol unit's emergency lights and siren activated. Agents Cronin and Altum's objective was to follow the suspect vehicle and upon the suspect vehicle stopping, they planned on arresting the driver and turning him over to APD or for APD to arrive and stop the suspect vehicle.

Agents Cronin and Altum followed the suspect's vehicle south on Pleasant Valley Road and then east onto Elmont Street. The suspect's vehicle was driven slightly over the speed limit while Agents Cronin and Altum followed. Agent Altum contacted APD on the police radio and updated their location as they followed the suspect's vehicle. Agents Cronin and Altum expected APD to respond to their location as they followed the suspect vehicle and ultimately stop the suspect's vehicle.

The suspect's vehicle turned south onto Wickersham Street and then east onto the Longhorn Landing Apartment complex. Agent Altum continued to update APD as to their location. The suspect's vehicle turned towards the back of the apartment complex. Agents Cronin and Altum momentarily lost sight of the suspect's vehicle, but upon driving towards the back of the complex, the suspect's vehicle was observed pulling into a parking space.

Agent Cronin stopped the patrol unit short of the suspect's vehicle's location without the emergency lights or siren activated. Agents Cronin and Altum exited the patrol unit. Agent Altum unholstered his Glock .40 caliber, Model - 22 handgun upon exiting. Agent Altum believed there were two occupants in the suspect's vehicle. He reported to APD,

"we have two at gunpoint." Agent Cronin walked towards the driver's side rear tail light area of the suspect's vehicle and Agent Altum walked over to the passenger side of the suspect's vehicle in a semi-circle configuration keeping a parked vehicle between him and the suspect's vehicle.

Agent Cronin observed the driver, later identified as Steven Lunt, white/male, D.O.B. 01-18-84, standing outside the suspect's vehicle with the driver's side door open facing away from him. Agent Altum could hear that Agent Cronin was verbally engaged with someone. Agent Cronin yelled at the driver in a loud voice, "Stop, Police." Agent Altum also yelled "Police." Agent Altum was still located in the general area of the passenger side of the suspect's vehicle keeping a parked vehicle between him and the suspect's vehicle. Agent Altum could not see into the passenger compartment of the suspect vehicle because the passenger side window was now up and the window was tinted. Agent Altum continued to move in a forward angle direction in an attempt to look inside the passenger compartment.

Lunt did not comply with Agent Cronin's commands, rather he jumped, upper torso first, back into the suspect's vehicle and closed the driver's side door. Agent Cronin did not know what Lunt's intentions were at that time. Agent Cronin unholstered his Kimber, .45 caliber, Model - Custom TLE II handgun, but did not shoot.

Agent Cronin believed that there was enough lighting for Lunt to recognize him as a police officer because of his attire and badge. Agent Cronin approached the driver's side of the suspect's vehicle and loudly yelled, "Stop, Police, show me your hands." The driver's side window was darkly tinted thus Agent Cronin could not see into passenger compartment of the suspect's vehicle. Agent Altum from his vantage point could not see anyone else in the passenger compartment of the suspect's vehicle.

Agents Cronin and Altum heard the suspect's vehicle's engine "rev" loudly, as if the accelerator pedal was being depressed all the way down to the floor board. Agent Altum yelled at Agent Cronin something to the effect of "watch out," believing that Lunt was about to drive off and strike Agent Cronin. Agent Altum believed that Lunt was aware that they were police officers because they had announced, "Police."

Shortly thereafter, the suspect's vehicle rapidly moved rearwards with the front side of the suspect's vehicle moving to the left towards Agent Cronin. At the time, Agent Cronin was on the driver's side of the suspect's vehicle and he believed that Lunt was trying to run over him.

Agent Altum from his vantage point, feared for Agent Cronin's life due to the suspect's vehicle's movement towards Agent Cronin. With that in mind, Agent Altum believed that Agent Cronin had been killed or seriously injured by the suspect vehicle. As a result, Agent Altum fired at the suspect's vehicle's tires and into the passenger compartment in defense of Agent Cronin's life.

Agent Cronin was not struck by the suspect's vehicle, rather Agent Cronin, as the suspect's vehicle moved towards him, managed to simultaneously run backwards taking an angled direction to the front of the suspect's vehicle to keep from getting struck by the suspect's vehicle as it moved rearwards. The suspect's vehicle upon reversing at a high rate of speed rammed into a parked car. Agent Cronin upon regaining his balance noticed that the suspect's vehicle was now facing towards him after ramming the parked car. Agents Cronin and Altum describe the events as occurring very quickly.

After ramming the parked car, the suspect's vehicle accelerated forward at a high rate of speed towards Agents Cronin and Altum. Agent Altum believed that Lunt was continuing his life threatening actions and continued to shoot. Agent Cronin also fired at the suspect's vehicle in defense of his life as he ran towards his left in the direction of the apartment building. Agent Cronin believed that Lunt was attempting to run over him. Agent Cronin ceased firing when the threat de-escalated. Because Agent Altum started shooting when the suspect's vehicle first moved towards Agent Cronin and continued shooting, he emptied the magazine and the slide locked back on the handgun Agent Altum reloaded his handgun with another magazine, but did not continue to shoot because the threat had de-escalated.

However, Lunt again drove the suspect's vehicle in reverse at a high rate of speed and rammed into Agent Cronin's patrol unit causing it to back into Agent Gregory Lewis' issued unit. The suspect's vehicle became entangled with Agent Cronin's patrol unit.

The suspect's vehicle's engine continued to "rev" at a high rate while entangled with Agent Cronin's patrol car. Agent Cronin feared that the suspect's vehicle would disentangle itself as it continued to "rev" and accelerate towards the apartments. Agent Cronin was concerned for the safety of persons occupying the apartments. Agent Cronin could not see Lunt within the suspect's vehicle and approached it. Agent Cronin reached into the suspect's vehicle and turned off the ignition. Agent Cronin noticed that there was blood in the area where Lunt was located within the suspect's vehicle's passenger compartment.

Agent Altum contacted APD and asked them to send Emergency Medical Services (EMS). EMS arrived and Lunt was transported to Brackenridge Hospital. On September 2, 2009, at 9:40 a.m., Steven Lunt was pronounced dead from gunshot wounds to the head. It was later discovered that at one point, Kyle James Phelan had been a passenger in the suspect vehicle, but exited the suspect vehicle before it was encountered by Agents Cronin and Altum at the back of the apartment complex.

Agent Altum fired a total of sixteen (16) shots and Agent Cronin fired three (3) shots. The units driven by Agents Cronin and Gregory Lewis were both damaged as result of Lunt ramming Agent Cronin's unit. The rear end of Agent Cronin's unit was rammed into the front end of Lewis' unit after it was struck by the suspect's vehicle.

CLASSIFICATION

Agent Joe Cronin's actions in pursuing, following, and using deadly force were justified.

Agent John Altum's use of deadly force was justified.

EVALUATION

Agents Joe Cronin and John Altum were very cooperative during the investigation.

Agent Joe Cronin

Agent Cronin articulates that he evaluated the risks involved in pursuing the suspect's vehicle versus the need to apprehend. He believed that the risks were such that pursuing was reasonable. Agent Cronin was performing discretionary law enforcement functions in that he was required to use his judgment and discretion in evaluating the risks in pursuing versus the need to apprehend.

Agent Cronin's actions in assisting APD by following the suspect vehicle after the termination of the pursuit, and confronting Lunt at the apartment complex was within the course and scope of his law enforcement authority pursuant to:

Texas Code of Criminal Procedures, 2 13 Duties and Powers: "(a) It is the duty of every peace officer to preserve the peace within the officer's jurisdiction. To effect this purpose, the officer shall use all lawful means. (b) The officer shall: (1) in every case authorized by the provision of this Code, interfere without warrant to prevent and suppress crime."

The damage that the suspect's vehicle driven by Lunt caused to the vehicles it struck depicts the speed in which Lunt drove the suspect's vehicle towards Agents Cronin and Altum. The evidence indicates that the suspect's vehicle driven by Lunt was driven at such a speed that if Agent Cronin would have been struck by it, he would have been serious injured or killed.

Agent Cronin's use of deadly force was objectively reasonable pursuant to:

Texas Penal Code, Section 9.32, "Deadly Force in Defense of Person: (a) A person is justified in using deadly force against another: (1) if the actor would be justified in using force against the other under Section 9.31; and (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary: (A) to protect the actor against the other's use or attempted use of unlawful deadly force; or (B) to prevent the other imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery."

Agent John Altum

Agent Altum used deadly force in defense of his and Agent Cronin's life. Agent Altum observed the manner in which Lunt drove the suspect's vehicle towards Agent Cronin and subsequently towards him. Agent Altum's use of deadly force was objectively reasonable and within the course and scope of his law enforcement authority pursuant to:

Texas Penal Code, Section 9.32, "Deadly Force in Defense of Person: (a) A person is justified in using deadly force against another: (1) if the actor would be justified in using force against the other under Section 9.31; and (2) when and to the degree the actor reasonably believes the deadly force is immediately necessary: (A) to protect the actor against the other's use or attempted use of unlawful deadly force; or (B) to prevent the other imminent commission of aggravated kidnapping, murder, sexual assault, aggravated sexual assault, robbery, or aggravated robbery."

Texas Penal Code, Section 9.33, "Defense of Third Person: A person is justified in using force or deadly force against another to protect a third person if: (a) under the circumstances as the actor reasonably believes them to be, the actor would be justified under Section 9.31 or 9.32 in using force or deadly force to protect himself against the unlawful force or unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and (2) the actor reasonably believes that his intervention is immediately necessary to protect the third person."

The circumstances created by Lunt were tense, dangerous, and rapidly evolving. Any reasonable law enforcement officer could have taken the same or similar actions that Agents Joe Cronin and John Altum took on August 16, 2009, in connection with Lunt's life threatening actions, when presented with the same or similar circumstances.

Respectfully submitted,

Albert Rodriguez
Lieutenant
Office of Professional Responsibility