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March 14, 2025

Chief Brian Redd
Salt Lake City Police Department
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Salt Lake City, UT 84114

Chief Jason Mazuran
Unified Police Dept. of Greater Salt Lake
3365 South 900 West
Salt Lake City, UT 84119

RE: SLCPD Officer Mitchell Bailey's Use of Deadly Force
Incident Location: ~5750 W. 700 S., Salt Lake City, Utah
Incident Date: June 29, 2024
UPD Case No.: 24-60332
SLCPD Case No.: 24-143908

Dear Chiefs Redd and Mazuran:

This letter addresses the June 29, 2024, use of deadly force by Salt Lake City Police Department ("SLCPD") Officer Mitchell Bailey against Bobby Joe Caster.

Officer Bailey's discharge of his firearm constitutes the "use of a 'dangerous weapon,'" which is defined under Utah law as "a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury to a person." Utah Code § 76-2-408(1)(a), (f). As a result, pursuant to Utah State law and an agreement among participating law enforcement agencies called the "Officer Involved Critical Incident" ("OICI") Investigative Protocol (*see* Utah Code § 76-2-408(2)-(3)), an investigative task force was called in to investigate the use of deadly force. The investigative task force was led by the Unified Police Department ("UPD") protocol team and comprised of law enforcement officers employed by agencies other than SLCPD. After the investigation, on August 15, 2024, the investigative task force's findings were presented to the Salt Lake County District Attorney's Office ("DA's Office"), which has the constitutional and statutory mandate to screen such matters for possible criminal charges.¹

¹ Utah Const. Art. VIII, section 16; Utah Code §§ 17-18a-203; *see also id.* at § 77-2-2(4) (defining "screening" as the "process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted"). "Commencement of prosecution" is further defined as "the filing of an information or an indictment." *Id.* at § 77-2-2(1).

SUMMARY OF FACTS AND FINDINGS

The following summary of facts was developed from the OICI protocol investigation. Should additional or different facts subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

Shortly after midnight on June 29, 2024, UHP Trooper Auger observed a white Dodge Ram pulling a flatbed trailer speeding and with a headlight out while traveling westbound on 700 South near 5600 West in Salt Lake City. Trooper Auger attempted to effectuate a traffic stop, but the vehicle fled. Trooper Auger then located the vehicle—later confirmed to be stolen—abandoned on 700 South. UHP troopers began looking for the occupants of the truck, and, after hearing loud rustling in tall grass, UHP requested a tracking canine from SLCPD. SLCPD K9 Officer Val Brown and SLCPD Officer Mitchell Bailey were dispatched to assist.

After searching with his canine for about nine minutes, K9 Officer Brown followed his canine into a very tall and thick area of grass, located a male laying on the ground, and began yelling commands. Officer Bailey quickly drew his handgun and fired, before bringing it fully up.² As captured by body-worn camera recordings, Officer Bailey fired while facing the very tall and thick area of grass that Officer Brown had entered, within two seconds of commands beginning, and at a downward angle; notably, just before firing, Officer Bailey turned off a flashlight he was holding with his left hand. As a result of the shot, the male—who was later identified as Bobby Joe Caster—sustained serious injury to his left ring finger.

Officers took Mr. Caster into custody, escorted him out of the grass, and began to provide emergency medical aid. Meanwhile, officers continued to search the area and located one additional suspect, who was also taken into custody. Mr. Caster was subsequently transported via ambulance to a hospital where he received additional medical treatment.

During the protocol investigation, investigators interviewed witnesses, documented the scene and examined physical evidence, reviewed SLCPD's dispatch recording and call log, reviewed body-worn and in-car camera recordings, and examined Officer Bailey's weapon. Notably, Officers Bailey refused to interview, as is his constitutional right.³

As we discuss in more detail below, the facts of this case as currently known do not satisfy the elements of a justified use of deadly force, and we cannot conclude that Officer Bailey is entitled to the affirmative legal defense of justification. However, as we outline below, we do not believe the facts of this case support a criminal charge against Officer Bailey because we do not believe they are sufficient to prove, beyond a reasonable doubt, that Officer Bailey acted with criminal intent—a necessary element to satisfy for a conviction. Where we believe the evidence gives rise to a reasonable doubt whether the facts meet the elements of a criminal offense, our ethical obligations require us to decline to file charges.

² Officer Bailey fired his weapon at 12:40 a.m.

³ Officers Bailey has a constitutional right to remain silent and to be presumed innocent of any wrongdoing.

RELEVANT LEGAL STANDARDS

As relevant here,⁴ law enforcement officers are legally justified in using deadly force when:

- (b) effecting an arrest or preventing an escape from custody following an arrest, if:
 - (i) the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and
 - (ii) (A) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or
(B) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to an individual other than the suspect if apprehension is delayed; or
- (c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or an individual other than the suspect.

Utah Code § 76-2-404(2) (emphasis added).

Based on this statute, the legal defense of justification, then, may be available where a law enforcement officer “reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury^[5] to the officer or an individual other than the suspect.” Utah Code § 76-2-404(2)(c). That affirmative defense may also be available where a law enforcement officer “reasonably believes that deadly force is necessary” to prevent a suspect’s escape and the officer had probable cause to believe the suspect posed “a threat of death or serious bodily injury to the officer or to others if apprehension is delayed.” Utah Code § 76-2-404(2)(b). In determining whether the use of deadly force was “justified” under Utah law, several factors may

⁴ Also relevant, but less so given the officer’s status as a law enforcement officer, is the articulation of “justification” in Utah State law that applies to individuals more generally, including civilians, as provided in Utah Code § 76-2-402(2):

- (a) An individual is justified in threatening or using force against another individual when and to the extent that the individual reasonably believes that force or a threat of force is necessary to defend the individual or another individual against the imminent use of unlawful force.
- (b) An individual is justified in using force intended or likely to cause death or serious bodily injury [*i.e.*, deadly force] only if the individual reasonably believes that force is necessary to prevent death or serious bodily injury to the individual or another individual as a result of imminent use of unlawful force, or to prevent the commission of a forcible felony...

⁵ “Serious bodily injury” is defined, in turn, as “bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.” Utah Code § 76-1-101.5(17).

be considered, including: (i) the nature of the danger; (ii) the immediacy of the danger; and (iii) the probability that the unlawful force would result in death or serious bodily injury. *See* Utah Code § 76-2-402(5).

Although Utah statutory law does not fully differentiate standards of “reasonableness” as between law enforcement officers and civilians (*compare* Utah Code § 76-2-402 (universal application), *with* Utah Code § 76-2-404 (application to law enforcement officers only)), the United States Supreme Court did in *Graham v. Conner*, 490 U.S. 386 (1989). In *Graham*, the Supreme Court instructed that “reasonableness” for law enforcement officers must be assessed in light of a “reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396 (internal citations omitted). The Supreme Court held that this determination “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests . . . against the countervailing governmental interests at stake.” *Id.* Finally, the *Graham* court instructed:

Because “[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,” . . . Its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.

Id. (citations omitted and emphasis added).

RELEVANT ETHICAL STANDARDS

The DA’s Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing.⁶ Honoring ethical standards ensures that everyone affected by the criminal justice system—suspects, defendants, victims, the community, and the system itself—is treated fairly, honorably, and respectfully.

Among the ethical standards considered before the DA’s Office will commence a case is whether there is a reasonable likelihood of success at trial. *See* American Bar Association Criminal Justice Standards, Prosecution Function 3-4.3. It is not enough that the technical elements of crime may be met if, when presenting those facts to a jury, the prosecution strongly believes no reasonable jury would unanimously convict the defendant based on those facts. Accordingly, any screening decision by the DA’s Office includes careful consideration of the various factors a jury may consider when weighing testimony, evaluating evidence, applying the law, and rendering a verdict.

⁶ Among the legal rules a prosecutor must follow is the requirement that “probable cause” must exist to believe an offense (i) was committed and (ii) was committed by the accused. *See, e.g.,* Utah R. Crim. Pro. 4(c). In making that determination, the DA’s Office must evaluate all evidence that will be legally admissible for or against the accused but may disregard evidence that likely will not be admissible at trial (*e.g.,* a coerced confession).

In addition to the ethical standards for filing and maintaining criminal charges, the DA's Office must also consider the unique procedural hurdles of a Utah prosecution, particularly where a defense includes a claim of a justified use of force, a claim of self-defense, or defense of others. In the 2021 General Session of the Utah State Legislature, legislators enacted a new pretrial justification process available to defendants who are charged with a crime involving the use or threatened use of force. If a defendant makes a *prima facie* claim of justification, the prosecution must disprove the justification claim by clear and convincing evidence or the case will be dismissed with prejudice. *See* Utah Code § 76-2-309. If an officer who used deadly force has a colorable claim of justification, the DA's Office has an ethical obligation to evaluate whether that claim can be disproven by clear and convincing evidence to a judge at a justification hearing and then disproven again beyond a reasonable doubt to a jury at trial.

FACTS DEVELOPED DURING OICI INVESTIGATION

The following facts were developed from the protocol investigation of the matter. As noted previously, UPD led an investigative task force of law enforcement officers who conducted the investigation of Officer Bailey's use of deadly force, and the protocol investigation's findings were presented on August 15, 2024, to the DA's Office to screen for possible criminal charges. Should additional or different facts subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

Shortly after midnight on June 29, 2024, UHP Trooper Auger observed a white Dodge Ram pulling a flatbed trailer speeding and with a headlight out while traveling westbound on 700 South near 5600 West in Salt Lake City. Trooper Auger attempted to effectuate a traffic stop, but the vehicle fled. At 12:10 a.m., Trooper Auger advised over the radio of the "fleeing." After additional troopers arrived, Trooper Auger moved up and located the vehicle abandoned in the middle of 700 South, facing west, with both doors open.⁷

UHP troopers began looking for the occupants of the truck, and a few minutes later, heard loud rustling in tall grass to the south of the roadway (west of the abandoned truck) and began yelling commands to come out.⁸ UHP requested a tracking canine and held on the area as they waited for it to arrive.⁹ SLCPD K9 Officer Val Brown, who had a tracking canine, and SLCPD Officer Mitchell Bailey, as his backing officer, were dispatched to assist.¹⁰

At 12:31 a.m., K9 Officer Brown arrived on scene, deployed his canine, and began to track, with UHP Trooper Grant backing him. Officer Bailey then arrived on scene, moved up to back Officer Brown, and made contact with Trooper Grant, who advised that the truck had fled from a trooper, the trooper found it abandoned with both doors open "like two minutes later,"

⁷ Trooper Auger located the vehicle at 12:16 a.m. at approximately 5750 West 700 South. Officers later discovered that the keys were still in the ignition, that the license plate did not match the vehicle, and that the vehicle had been reported stolen two days earlier in West Valley.

⁸ Troopers began yelling commands to come out at 12:20 a.m.

⁹ UHP requested a canine from SLCPD at 12:25 a.m. and also a drone at 12:29 a.m.

¹⁰ Officers Brown and Bailey were dispatched at 12:25 a.m. to 5750 West 700 South in Salt Lake City.

and they probably had two outstanding suspects.¹¹ Officer Bailey and Trooper Grant continued to back Officer Brown as he and his canine searched west of the abandoned truck in a wide strip of tall grass on the south side of the road.

At 12:40 p.m., after following his canine into a very tall and thick area of grass near the fence line on the south side of the strip, Officer Brown located a male laying down in the grass and began yelling commands to get out and show his hands. Officer Bailey drew his handgun and before bringing it fully up, fired one time, and then exclaimed, “Oh shit!” As Officer Brown continued to give commands, the male—who was later identified as Bobby Joe Caster—is heard saying, “he shot me,” “he shot me in the hand,” and “he blew my hand off.” As captured by body-worn camera recordings, Officer Bailey fired while facing the very tall and thick area of grass that Officer Brown had entered, within two seconds of commands beginning, and at a downward angle; notably, just before Officer Bailey fired, he turned off a flashlight he was holding in his left hand.

Officers placed handcuffs on Mr. Caster, observed that his left ring finger was seriously injured, escorted him out of the grass, and began providing emergency medical aid until an ambulance arrived.¹² Meanwhile, other officers continued searching for additional suspects. Notably, at 12:46 a.m., Officer Brown located and began yelling commands to a second male. The second male—who we refer to as “J. C.”—was taken into custody without incident and told officers that there had been three of them in the truck. Officers continued to search the area—with the assistance of canines, drones, and a helicopter—but were unable to locate any additional suspects.

Notably, we were unaware of any evidence which would have indicated that Mr. Caster was armed, or appeared to be armed, with any weapon or object during the incident. Moreover, based on the body-worn camera recordings and the officers’ statements to investigators, we believe it reasonable to conclude that when the shot was fired, Officer Bailey could not see into the thick grass where Mr. Caster was laying on the ground hiding.

Witness Statements

K9 Officer Mitchell Bailey

Officer Bailey refused to be interviewed by protocol investigators or make a statement about his use of deadly force. Officer Bailey has a constitutional right to remain silent and is presumed innocent of any wrongdoing.

UHP Trooper James Grant

¹¹ Officer Bailey arrived at 12:32 a.m. and made contact with Trooper Grant at 12:33 p.m.

¹² Mr. Caster was transported via ambulance to a hospital where he received additional medical care, including surgery for his left ring finger.

Protocol investigators interviewed Trooper Grant who said he heard Trooper Auger call out that a vehicle was fleeing from him in the area and so he decided to head that way. Trooper Grant said that as he got there, Trooper Auger had lost sight of the vehicle and then found it again abandoned. Trooper Grant later clarified that initially, Trooper Auger just put out a call notifying dispatch that a vehicle had fled from him, and then maybe a minute or two later, some other units had come into the area and Trooper Auger got back on the radio and said, "Hey, I think this is the truck over here. It's abandoned in the middle of the road."

Trooper Grant said that when he arrived, the suspect vehicle—a white Dodge pickup truck pulling a flatbed trailer—was already empty and both doors were open. Trooper Grant said he took up a position behind the vehicle, several other officers were already on scene, and the sergeant on scene told him to stay with the truck. Trooper Grant said that when a SLCPD track dog showed up, he started running with the dog.

Trooper Grant said that it was him, the K9 handler SLCPD Officer Brown, and then after a short moment, another SLCPD officer arrived, and so there were the three of them. Trooper Grant stated:

We tracked for a little while through the grass. And then after a little bit we had gone west some distance. I heard the handler start yelling at somebody like, "Show me your hands," that kind of stuff. **So I went to go draw my pistol and I heard one shot to my right.** The handler kept yelling, "Show me your hands," all that kind of stuff. I could hear the suspect now saying, "Ah, you shot me," you know, those kinds of things. Then I moved in and took custody, put cuffs on him.

Trooper Grant further explained that he was there as kind of a third backup because he had started running with the dog, and then the other SLCPD officer showed up and they were running together, but he stuck with them because the grass was really tall. Trooper Grant explained that **when they made contact with the suspect, he couldn't see the suspect**, but the handler could and they could hear him making his callouts.

Trooper Grant clarified that he didn't see the shooting, but explained:

[T]he shot came from my right. I was looking towards the sound of where the suspect was. I couldn't see the other officer. He was just outside my periphery. But I could hear it. It was clearly from, you know, him probably. It was a single shot. And then there was injury to the guy's left hand.

Trooper Grant said that the suspect was compliant and immediately was like, "You shot my hand off," and said, "You blew my hand off for no reason." Trooper Grant explained that the round hit the suspect in the left ring finger. Trooper Grant said he put the suspect in cuffs and then they moved him out of the grass and he also applied a bandage. Trooper Grant explained that from the joint up, it was just soft tissue left, and the bone was pretty much gone. Trooper

Grant recalled hearing the other officer's voice after the shooting, but did not recall specifically what he said.

Trooper Grant said that once the suspect was in handcuffs, he and other officers stood him up and walked him out of the grass and to the road, which was probably 25 feet away. Trooper Grant said the suspect was complaining of his arm or his hand, it wasn't bleeding terribly bad, and they could see a major injury to his finger. Trooper Grant said they laid him down and he was still conscious. Trooper Grant said he got some bandage material and wrapped the suspect's hand up, and that the bleeding was well-controlled. Trooper Grant said that once he had it bandaged up, the suspect lost consciousness for a little while (he believed due to shock from the pain and stress) but never stopped breathing. Trooper Grant said they kept a close monitor on him. Trooper Grant said that after a short while—there was a continued manhunt for additional suspects—one additional suspect was apprehended. Trooper Grant said that there was word that there may have been a third suspect. Trooper Grant said that after the second suspect was apprehended, a few moments later, they cleared for medical to come up and then firefighters and paramedics took over care of the injured party.

Trooper Grant explained that **when he first heard the suspect say he got shot, the grass was really thick, tall, and you couldn't really see through it.** Trooper Grant further explained that **he couldn't see the suspect or the dog or the handler at all from where he was until he parted the grass to come through and help take the suspect into custody**, at which time the suspect was laying on the ground on his back.

SLCPD K9 Officer Val Brown

Protocol investigators interviewed SLCPD K9 Officer Brown who said he heard a call from UHP that requested a canine for a track. Officer Brown said that he has a tracking dog, so he decided to go and see if he could help. Officer Brown said that once he got on scene, he noticed the truck that looked like it was pulling a trailer, both the doors were open, and officers said that they believed at least two people had fled from the vehicle and went westbound and that they heard some wrestling in the tule area there.

Officer Brown said he deployed his canine and started tracking to the southwest side there. **Officer Brown explained that there was a smaller layer of tules and then it got taller, that he came in contact with that first suspect where the tules got taller and thicker, and the suspect was laying in the tule up against the fence lane area.** Officer Brown explained:

So when I encountered him, I drew out with my duty weapon, started giving commands. I can only see like the left side of his body. 'Cause he was kind of leaning on an angle, so I couldn't see his full body. I started giving commands and he acted like he didn't—I don't know if he didn't hear me or he acted—he just, what I saw, he just was laying there. I couldn't see, like I said, I could only see one portion of his body. . . [S]o shortly after that, I don't know if exactly when it happened, but then I heard the one shot that went off. Then the

guy started talking like, "Hey, you just shot me" or "shot in the hand" or something. And then officers got in and took him into custody.

Officer Brown said he did not know how many officers were around. Officer Brown explained that his dog was deployed so he was more focused on his dog, but watching the suspect. Officer Brown said he couldn't see anything because **"they're so thick, all I could see is the left portion of the dude's body."** Officer Brown said he couldn't see the other officers and he didn't know where they were.

Officer Brown said that after the shooting, officers were able to get the suspect and get him out, and then he kind of came out with them and the UHP sergeant said that they believed there was still another suspect in there. Officer Brown said he went back in and ended up finding the second suspect a little bit further down to the west.

Officer Brown clarified that he did not see any weapons and clarified that he could only see a portion of the dude's body, he didn't know what the suspect was doing, and he could only see the left side and it looked like his left arm was just up against his body. Officer Brown said that from what he could see, the suspect wasn't moving and that he was just there. Officer Brown explained that he was also involved in the apprehension of the second suspect and that he kind of did the same thing. Officer Brown said he didn't know how many officers were with him on the first guy, but there were more officers with him for the second guy and they got in on him fairly quick and arrested him with no problems.

Officer Brown explained that he had told Officer Bailey to come run with him because he was the only SLCPD guy that was out there.

UHP Trooper James Auger

Protocol investigators interviewed UHP Trooper Auger who said he was on 5600 West and that as he was going eastbound on 700 South, he saw a truck coming towards him fast, that the speed limit was 30 or 35 in that area, and he radared the truck at 51 mph and the headlights were out as well. Trooper Auger said he pulled over to the right, the truck came by, and he hit his lights, flipped on the truck, and started speeding up to the truck to pull it over for speeding and headlight. Trooper Auger said that he realized he was speeding up and not catching up, and he called out that it was fleeing. Trooper Auger said he pulled over into the center lane and stopped, and he could see that the truck was going around the curve so fast that there were sparks flying from the trailer. Trooper Auger said he stopped and call it out, that it was fleeing westbound towards 5600 and on 700 South, and he deactivated everything. Trooper Auger explained that the truck blew the red at the intersection and hauled westbound. Trooper Auger said he asked for more units and held on 700 South because he knew there were only two ways into that area and two ways out.

Trooper Auger said that as units started showing up, he went ahead to look for the truck—a Dodge Ram single cab with a black trailer. Trooper Auger said that he just got around

the curve and there was a white Dodge Ram, both doors open, abandoned. Trooper Auger said they all moved in, he blocked it, he didn't see anyone around, and he got out and took a photo of the VIN. Trooper Auger said that Trooper Morgan continued west, had his window down, and heard rustling in the large grass and told him to come over (as Trooper Auger was going back to his car to run the VIN). Trooper Auger said he then drove over to Trooper Morgan.

Trooper Auger explained that it was pretty tall grass and it was hard to see in it. Trooper Auger said they asked for additional units, started setting up containment, and started yelling commands. Trooper Auger said that no one responded to them. Trooper Auger said that the large patch of tall grass went on for maybe a little over a hundred feet, and they were walking up and down, saying stuff, and flashing their lights at it. Trooper Auger said there were moments that he heard rustling and believed there was someone right in that area. Trooper Auger said that they stood there and had perimeter on it for a while.

Trooper Auger explained that SLCPD showed up with a dog, the dog was over down by the truck, and they came closer to where he and Trooper Morgan were. Trooper Auger recalled:

[S]o they start entering like the tall grass. They keep going westbound in the grass, like near the fence line. And I'm not sure what was said first, or if there was a shot or the "Let me see your hands" happened first, but next thing you know, there's like a shot and we're just like, "What the hell?" And so I drop my Maglite and I draw my gun. I turn my light on my gun and I just rush directly.

Trooper Auger explained that he went in found the guy down on the ground, saying, "He shot my hand off." Trooper Auger said he paused for a second, had his gun out and pointed on him, and looked and scanned to make sure there were no weapons or anything nearby him.

Trooper Auger said that they then went to cuff him. Trooper Auger said he holstered his weapon and grabbed the suspect's right arm, they had him turn face down and bring his arm back, and they stood him up and headed back out from the grass, the same way he'd gone in. Trooper Auger said that they brought him out, someone grabbed their first aid bag as the male's finger was dangling, and they wrapped it. Trooper Auger described that the male was in shock and passed out, and he was still breathing but not responding. Trooper Auger explained that medical was already staged, but they waited as they were looking for other suspects (they assumed there were more than one suspect since both doors were open). Trooper Auger recalled that they searched him, the suspect laid there until medical came up, and they put him on a stretcher and took him away.

Trooper Auger said that the second male taken into custody also complained of an injury but got cleared by the hospital (he never spoke to the second male). Trooper Auger said that the suspects were not next to each other in the grass but were a little bit away, probably 25 feet.

When asked if he saw any weapons, **Trooper Auger explained that he was just focused really on the guy, he took a quick, brief look around to see if anything stood out to him**

(e.g., handguns, knives), and nothing stood out to him immediately and so he holstered up and went hands on to help get him cuffed up and out of the grass.

Trooper Auger clarified that before the canine showed up, they spread out and stood right there, looking up and down. Trooper Auger explained that a trooper was positioned further west (where he would see the suspects if they kept going west), that the suspects couldn't go southbound because there was a big fence with barbed wire, and that they had to be stuck in the grass. Trooper Auger also explained that when the shot was fired, they had already attempted a few times to try to get people like to come out, that he and Trooper Morgan had heard them and were yelling, and that one of the troopers had got on their PA and said to come out.

Additional Witnesses

Additional officers were on scene and heard the shot fired, however, none of them saw the shooting itself. They are mentioned here for the purpose of completeness. Notably, investigators did not interview either Mr. Caster or J. C., who both remained in custody following the incident.¹³

Physical Evidence

Protocol investigators inspected and documented the OICI scene, reviewed SLCPD's dispatch recording and call log, reviewed body-worn and in-car camera recordings, and downloaded Officer Bailey's weapons.

OICI Scene

Protocol investigators inspected the OICI scene located at approximately 5750 West 700 South in Salt Lake City. On 700 South, investigators located a White 2022 Dodge Ram 1500 with an attached flatbed trailer, parked in the roadway (south of an Amazon warehouse), facing west, as well as multiple police vehicles from UHP and SLCPD. Further west on 700 South (south of a Costco warehouse), were another three police vehicles, with first aid equipment on the ground, a blanket, personal items that had been taken from the two suspects, and a small amount of possible blood on the ground near the two vehicles.

A long and wide strip of tall grass/weeds was along the south side of 700 South. A chain link fence with barbed wire ran along the south side of the grass strip. Investigators searched the area for the fired casing but were unable to locate it.

Notably, investigators determined that the Dodge Ram had been reported stolen in West Valley on June 27, 2024, and that the license plate affixed to the back of the Dodge Ram did not

¹³ After being medically cleared, J. C. was transported to the jail where he was booked on warrants. Mr. Caster, who had a full extradition warrant, was released to the custody of the U.S. Marshals Service.

belong to the vehicle and was also reportedly stolen. Investigators collected items of evidence from the stolen vehicle and conducted a separate criminal investigation.¹⁴

Dispatch Recording and Call Log

Investigators reviewed SLCPD's dispatch radio traffic recording and call log relating to this incident, which provided, in relevant part, the following. On June 29, 2024, at 12:25 a.m., UHP requested a tracking K9 from SLCPD, and K9 Officer Brown was dispatched, along with Officer Bailey as a backing officer, to 5750 West 700 South in Salt Lake City.

K9 Officer Brown arrived at scene at 12:31 a.m. Officer Bailey arrived shortly after at 12:32 a.m., and Officer Brown then asked Officer Bailey to come up and run with him. At 12:41 a.m., K9 Officer Brown advised of "shots fired" and requested medical. Officers advised that the suspect was shot and that it was a single gunshot wound to the hand. At 12:46 a.m., officers advised that they had taken another male into custody.

As officers contained the scene, additional resources—including a Utah Department of Public Safety Star 9 helicopter, drones, and another K9—were requested to help clear the area; however, no additional suspects were located.¹⁵

Body-Worn and In-Car Camera Recordings

Protocol investigators reviewed voluminous footage from body-worn cameras and in-car cameras relating to this incident, including body-worn camera recordings from Officer Bailey, as well as K9 Officer Brown and Trooper Grant.¹⁶ The recordings in this case collectively capture, in relevant part, the following.

At 12:33 a.m., Officer Bailey exits his vehicle and moves up to "run" with K9 Officer Brown, who has already deployed with his canine and begun tracking from the abandoned truck. As Officer Bailey moves up, he makes contact with Trooper Grant and asks him if the guy bailed on him, to which Trooper Grant responds, "So he fled from our guy. Didn't pursue, and then like two minutes later he found the truck abandoned. Like this. Both doors open." Officer Brown asks if they probably have two outstanding, to which Trooper Grant says "probably." Officer Brown and his canine, backed by Officer Bailey and Trooper Grant, continue to search west of the abandoned truck, along the roadway and in a strip of tall grass to the south of the roadway.

At 12:39 a.m., Officer Brown follows his canine off the roadway and back into tall grass and turns on a flashlight. Officer Bailey follows Officer Brown and also turns on a flashlight,

¹⁴ No charges have been filed relating to the stolen vehicle.

¹⁵ Investigators reviewed footage from the DPS Star 9 helicopter, however, as it was not requested until after the shooting incident, it is mentioned here for the purpose of completeness.

¹⁶ Officer Bailey's BWC recording begins at 00:32:43, before he arrives on scene (first thirty seconds of the recording has no audio, as is consistent with the buffering feature of an Axon-brand body-worn camera). Officer Brown's BWC recording begins at 00:32:45.

while Trooper Grant follows further behind. Officers Brown, Officer Bailey, and Trooper Grant search in the tall grass with their flashlights as they move westbound near a fence line along the south side of the grassy area. At 12:40 a.m., after following his canine into a very tall—taller than head height—and thick area of grass near the fence line, Officer Brown begins yelling commands of “Get out and show your fucking hands now.” As commands are heard, Officer Bailey draws his handgun from his holster with his right hand and immediately fires it one time, at a downward angle, before fully coming up; notably, just before firing, Officer Bailey turns off the flashlight he is holding in his left hand with his left thumb. Officer Bailey immediately exclaims, “Oh shit!” As Officer Brown continues to give commands, Mr. Caster’s is heard saying, “he shot me,” “he shot me in the hand,” and “he blew my hand off.” Officer Bailey remains in place and again utters, “Oh shit,” and, “fuck,” before moving forward into the very tall and thick grass, where other officers have already moved up to Mr. Caster, who is lying on the ground. Notably, the time from when Officer Brown begins giving commands to when the shot was fired is less than two seconds.

Officers place handcuffs on Mr. Caster—whose left ring finger appeared seriously injured—and call out “shots fired.” Officers then escort Mr. Caster out of the grassy area and to the roadway and begin providing emergency medical aid. Officers continued to attend to Mr. Caster until medical personnel arrive on scene.

Weapons Downloads

Protocol investigators examined and downloaded Officer Bailey’s Glock 17 9mm pistol, which had an inserted 17-round capacity magazine. Protocol investigators counted one round in the chamber and 16 rounds in the inserted magazine, for a total of 17 rounds.¹⁷ Presuming that Officer Bailey began with a fully loaded inserted magazine and a round in the chamber, that count indicates he likely fired one round during the incident, which is consistent with body-worn camera recordings.

LEGAL ANALYSIS

The scope of this review, and the OICI protocol investigation related to it, is narrow in its scope and purpose: to determine whether the facts of this case, when applied to the law, warrant the filing of a criminal charge against an officer who used deadly force. In considering whether to charge a criminal offense against a law enforcement officer who uses deadly force, we try to ascertain whether Utah’s broad affirmative legal defense of justification, particularly as applied to law enforcement officers, effectively precludes criminal prosecution based on the facts before us. In other words, we ask whether an officer could establish at trial that his or her use of deadly force was justified. To answer that question, we ask whether he or she reasonably believed the use of deadly force was necessary to prevent death or serious bodily injury to the officer or an individual other than the suspect. *See* Utah Code § 76-2-404(2)(c)).

¹⁷ Investigators also examined Officer Bailey’s three spare 17-round capacity magazines, which were each fully loaded with 17 rounds.

As we discuss in more detail below, the facts gathered by the protocol investigation as currently known, taken together with reasonable inferences arising from those facts, do not satisfy the elements of a justified use of deadly force, and we cannot conclude that Officer Bailey is entitled to the affirmative legal defense of justification. To be entitled to the legal defense of justification for his use of deadly force, Officer Bailey would have had to have (1) “reasonably believe[d] that deadly force [wa]s necessary to prevent the arrest from being defeated by escape” and had probable cause to believe the suspect either (a) had committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury or (b) “pose[d] a threat of death or serious bodily injury to the officer or to an individual other than the suspect if apprehension was delayed” (See Utah Code § 76-2-404(2)(b)); or, he would have had to have (2) “reasonably believe[d] that the use of deadly force [wa]s necessary to prevent death or serious bodily injury to the officer or an individual other than the suspect.” See Utah Code § 76-2-404(2)(c).

As noted above, Officer Bailey refused to be interviewed or provide a statement explaining his use of deadly force, as is his constitutional right. Without his explanation as to his use of deadly force, we don’t know what his actual beliefs were or his reason(s) for his decision to fire his weapon. We are therefore left to infer the rationale for his apparent decision to use deadly force based on other evidence we received, as well as the reasonable inferences to be drawn from that evidence. In similar situations where a shooting officer has refused to answer questions or provide a statement, we have proceeded in this manner. In doing so, however, we have never strayed from the objective evidence or testimony of other witnesses, nor do we do so here. While it is the prerogative and constitutional right of an officer not to share information with investigators, an officer’s refusal to explain his or her apparent decision to use deadly force does not diminish our duty to explain and account for our decisions and conclusions or absolve us of our obligations to the community to present the truth to the community about an officer’s use of deadly force on a member of our community.

While we do not know Officer Bailey’s actual beliefs and thus cannot say whether he “reasonably believed” deadly force was necessary, we are not aware of any facts in this case which would support a conclusion that deadly force was necessary. Here, Officer Bailey responded to assist in locating persons who had abandoned a truck after reportedly fleeing from UHP. At that time, neither Officer Bailey—nor any of the officers on scene—had any information that the persons who had fled the truck were armed with any weapon, had committed any felony offense against another person, or posed a threat to any person. Even when Officer Brown discovered Mr. Caster and began yelling commands, he did not call out “gun” or otherwise indicate that Mr. Caster was armed with any weapon or posed any immediate threat of harm (rather, he yelled commands of “Get out and show your fucking hands now”). Rather, Mr. Caster was unarmed as he lay on the ground, hiding in the grass and not complying with commands to come out. Additionally, we do not believe, based on the body-worn camera recordings and the officers’ statements, that Officer Bailey could Mr. Caster when he fired his

weapon, as Mr. Caster was lying on the ground, in the very tall, thick grass that he was hiding in.¹⁸

Accordingly, based on the facts before us, we do not believe that Officer Bailey would have been reasonable in believing that he had probable cause to believe either Mr. Caster either had “committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury” or “pose[d] a threat of death or serious bodily injury to the officer or to an individual other than the suspect if apprehension [was] delayed.” See Utah Code § 76-2-404(2)(b). Nor do we believe that Officer Bailey would have been reasonable in believing that “the use of deadly force [was] necessary to prevent death or serious bodily injury to the officer or an individual other than the suspect.” See Utah Code § 76-2-404(2)(c). Accordingly, we do not believe the facts in this case satisfy the elements of a justified use of force and we conclude that Officer Bailey was not justified in shooting his weapon and injuring Mr. Caster.

We then considered criminal offenses which would be available to charge Officer Bailey in this case. Importantly, where we can charge civilians with a felony for discharging a firearm, the legislature has exempted officers for any culpability for the discharge of a firearm.¹⁹ See Utah Code § 76-10-508.1. As such, the criminal offense of Felony Discharge of a Firearm is not available to us in this case.

Notably, we do not believe the evidence in this case shows that Officer Bailey acted intentionally or knowingly;²⁰ rather, there is ample evidence against such a proposition. For example, Officer Bailey appeared startled when Officer Brown’s commands to Mr. Caster began. Officer Bailey then quickly drew his weapon, and just after turning off his flashlight with his other hand, quickly fired his weapon—before fully raising his weapon and appearing ready, while Officer Brown and his canine obscured in the tall thick grass in front of him, and within two seconds of commands beginning.²¹ After firing, Officer Bailey immediately exclaimed, “Oh shit!” and he remained in place where he fired, with his weapon unholstered and scanning, as other officers moved in and made contact with Mr. Caster. Before moving forward, Officer Bailey again uttered “Oh shit” and “fuck.” Based upon these facts, we believe it reasonable to

¹⁸ Trooper Grant described to investigators that the grass was really thick and tall, he couldn’t see through it, and he couldn’t see the suspect or the dog or the handler at all until he parted the grass to come through it.

¹⁹ Utah Code Section 76-10-508.1(1) provides that “[A]n individual who discharges a firearm is guilty. . . if: (a) the actor discharges a firearm in the direction of one or more individuals, knowing or having reason to believe that any individual may be endangered by the discharge of the firearm. . .” Subsection (5) provides that it does not apply for peace officers.

²⁰ Utah Code Section 76-2-103 provides:

A person engages in conduct:

- (1) Intentionally, or with intent or willfully with respect to the nature of his conduct or to a result of his conduct, when it is his conscious objective or desire to engage in the conduct or cause the result.
- (2) Knowingly, or with knowledge, with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

²¹ While protocol investigators considered that Officer Bailey may have unintentionally pulled the trigger because he was operating his flashlight in his left hand (*i.e.*, “contra-lateral contraction”), without any explanation by Officer Bailey, we cannot reach such a conclusion.

infer that Officer Bailey was genuinely surprised by the discharge of his firearm. Thus, we believe that the evidence is insufficient to prove that Officer Bailey intended or knew that he was firing his weapon.

Utah Code Section 76-5-112(2) defines the offense of Reckless Endangerment, a Class A Misdemeanor, as: “An actor commits reckless endangerment if, under circumstances not amounting to a felony offense, the actor **recklessly** engages in conduct that creates a substantial risk of death or serious bodily injury to another individual. (Emphasis added). Here, if we were to bring a charge against Officer Bailey for this offense, we would be required to prove that he acted recklessly.²² To do so, we would have to have sufficient evidence to prove that Officer Bailey was **“aware of but consciously disregard[ed] a substantial and unjustifiable risk that the circumstances exist or the result will occur.”** Utah Code § 76-2-103(3). In other words, a person acts “recklessly” when he is aware of a substantial and unjustifiable risk that either (1) certain circumstances exist relating to his conduct, but he consciously disregards the risk and acts anyway; or (2) his conduct will cause a particular result, but he consciously disregards the risk and acts anyway. *See* MUJI CR304A; Utah Code § 76-2-103(3). The nature and extent of the risk must be of such a magnitude that disregarding it is a gross deviation from what an ordinary person would do in that situation. *Id.*

In this case, we do not believe the facts are sufficient to prove, beyond a reasonable doubt and to the unanimous satisfaction of a jury, that Officer Bailey acted recklessly. If, hypothetically, the evidence showed that Officer Bailey was aware that he was placing his finger in the trigger guard, and he did so anyways, or that he was walking around in the weeds with his finger on the trigger, such facts might support a claim that Officer Bailey acted recklessly with regard to his use of deadly force. In this case, Officer Bailey quickly drew his weapon out of the holster and had his finger in the trigger guard as he raised it up and fired. While we do not know what Officer Bailey was thinking when he fired his weapon, as discussed above, we do not believe the evidence shows that Officer Bailey intended or knew that he was firing his weapon. Rather, it appears, based on the facts of which we are aware, that Officer Bailey did not anticipate or appreciate beforehand that he would fire his weapon; after the shot was fired, he immediately appeared genuinely surprised as he exclaimed, “Oh shit!,” and uttered, “Oh shit,” and “fuck,” and remained in place. Without some other evidence that he was aware that his finger was in the trigger guard, where the facts in this case show that Officer Bailey was surprised by the discharge of his weapon, we do not believe we could meet our prosecutorial burden of proving that he was aware of the risk that he might fire his weapon and that he acted in conscious disregard to that risk.

Where a reasonable doubt will likely lie in the minds of jurors, our ethical obligations prevent us from filing a criminal charge. In this case, although we concluded above that Officer Bailey’s discharge of his firearm was not legally justified, it does not necessarily follow that the evidence is sufficient to satisfy the elements of a criminal offense. Based on the evidence of

²² Under Utah law, a person cannot be found guilty of a criminal offense unless that person’s conduct is prohibited by law, AND at the time the conduct occurred, the defendant demonstrated a particular mental state specified by law. Utah Code § 76-2-101; MUJI CR212. “Conduct” means both an “act” or the failure to act when the law requires a person to act. Utah Code § 76-2-103(3).

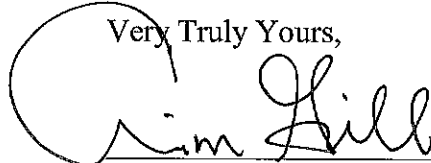
which we are aware, we do not believe we have sufficient facts to meet our prosecutorial burden of proving, beyond a reasonable doubt and the to unanimous satisfaction of the jury, that Officer Bailey acted recklessly—*i.e.*, that he was aware of but consciously disregarded a risk. While the facts of this case do not support a remedy in the criminal justice system, the proper forum for redress, if appropriate, may be found through civil remedies, or in the administrative arena; however, we express no opinion on the merits of this matter in any other forum.

CONCLUSION

As noted previously, the facts and conclusions set forth in this letter are based on the evidence of which we are currently aware. Should additional facts become available, these conclusions may change.

As outlined in more detail above, we conclude that the facts in this case, together with the reasonable inferences about Officer Bailey's decision to use deadly force, would likely not satisfy the elements to qualify for the affirmative legal defense of justification such that prosecution would be precluded. However, we do not believe the evidence is sufficient to show, beyond a reasonable doubt, that Officer Bailey acted recklessly—a necessary element to satisfy for a conviction. Although we conclude that Officer Bailey was not legally justified in his use of deadly force, we find that the evidence is insufficient to support a criminal charge and decline to file a criminal charge against him in this matter.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Sim Gill", written over a horizontal line.

Sim Gill,
Salt Lake County District Attorney