July 3, 2025

Chief Ken Wallentine

West Jordan Police Department

8040 S. Redwood Road

West Jordan, UT 84088

Chief Jeff Carr

South Jordan Police Department

10655 S. Redwood Road

South Jordan, UT 84095

RE: SJPD Officer Jace Tanaka’s and Officer Aaron Bass’s Use of Deadly Force

Incident Location: 4600 West Skye Drive, South Jordan, Utah

Incident Date: June 15, 2024

WJPD Case No.: 24-28865

SJPD Case No.: 24-16508

DA Case No.: DAINV-2024-945

Dear Chiefs Wallentine and Carr:

This letter addresses the June 15, 2024, use of deadly force by South Jordan Police Department (“SJPD”) Officers Jace Tanaka and Aaron Bass against Marcelo Josue Gutierrez.

Officer Tanaka’s and Officer Bass’s discharge of their firearms 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 West Jordan Police Department (“WJPD”) protocol team and comprised of law enforcement officers employed by agencies other than SJPD. After the investigation, on July 23, 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]](#footnote-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.

On the morning of June 15, 2024, SJPD Officers Bass and Tanaka responded to a report of a suspicious male looking into vehicle windows at the Glenmoor Baseball Park, located at 4600 West Skye Drive in South Jordan.[[2]](#footnote-2) Officers Bass and Tanaka located a male, who was later identified as Marcelo Josue Gutierrez, in a baseball dugout and made verbal contact. Mr. Gutierrez then stood up holding a knife—a fixed-blade Gerber knife with a 5-inch blade.[[3]](#footnote-3) The officers immediately began giving commands to put the knife down as they drew their handguns and began retreating. Mr. Gutierrez did not comply and instead advanced towards the officers, exiting the dugout with the knife. As Mr. Gutierrez continued to advance and not comply with commands, Officer Bass deployed his taser, but it had no effect.[[4]](#footnote-4)

In the parking lot, Officer Tanaka also deployed his taser, which again had no effect. Mr. Gutierrez then stabbed one of the tires on Officer Bass’s marked patrol vehicle with the knife, deflating it, before continuing to advance towards the officers as they retreated across the parking lot while continuing commands. After crossing the parking lot, Officer Bass deployed his taser a second time. After yelling to not tase him, Mr. Gutierrez accelerates towards Officer Tanaka. Both officers fired their weapons,[[5]](#footnote-5) after which Mr. Gutierrez went across the street, still with the knife in his hand, and additional officers began arriving on scene.

Despite being visibly injured, Mr. Gutierrez continued to not drop the knife. After a couple minutes, Mr. Gutierrez sat down on a large rock next to a paved walkway, and, after getting up from the rock and walking, Mr. Gutierrez went to the ground. After some time, officers deployed less-lethal rounds in an attempt to get him to drop the knife, but Mr. Gutierrez continued to not drop the knife. Eventually, about 22 minutes after shots were fired, a team of officers moved up to Mr. Gutierrez and went hands-on, pinning Mr. Gutierrez’s arm down with a ballistic shield. Officers removed the knife from him, took him into custody, and began to render aid. Emergency medical responders quickly arrived and transported Mr. Gutierrez to a hospital, however, he ultimately succumbed to his injuries.[[6]](#footnote-6)

During the protocol investigation, Officers Tanaka and Bass refused to be interviewed, as is their constitutional right.[[7]](#footnote-7) Protocol investigators also documented the scene and examined physical evidence, reviewed 911 calls, reviewed dispatch radio recordings and call logs, reviewed body-worn camera recordings, reviewed cell phone recordings, examined the involved officers’ weapons, and reviewed the autopsy findings.

As we discuss in more detail below, we believe the facts of this matter, taken together with the reasonable inferences derived from those facts, support a conclusion that if a criminal charge was filed against Officer Tanaka and/or Officer Bass for their use of deadly force, and a jury (or other finder of fact) was called upon to determine whether their use of deadly force constituted a criminal act, a jury would likely determine that they reasonably believed 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.” Utah Code § 76-2-404(2)(c). Consequently, we believe that Officer Tanaka’s and Officer Bass’s use of deadly force would likely be subject to the affirmative legal defense of justification under Utah law,[[8]](#footnote-8) and we decline to file a criminal charge against them.

**RELEVANT LEGAL STANDARDS**

As relevant here,[[9]](#footnote-9) law enforcement officers are legally justified in using deadly force when:

1. effecting an arrest or preventing an escape from custody following an arrest, if:
2. the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and
3. (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

1. 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[[[10]](#footnote-10)] 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 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.[[11]](#footnote-11) 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.

 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, WJPD led an investigative task force of law enforcement officers who conducted the investigation of Officer Tanaka’s and Officer Bass’s use of deadly force, and the protocol investigation’s findings were presented on July 23, 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.

On the morning of June 15, 2024, SJPD Officers Bass and Tanaka responded to a report of a suspicious male looking into vehicle windows at the Glenmoor Baseball Park, located at 4600 West Skye Drive in South Jordan.[[12]](#footnote-12) At about 8:58 a.m., officers observed a large male, who was later identified as Marcelo Josue Gutierrez, sitting on a bench in a fenced dugout of the baseball diamond, where a children’s baseball team was beginning practice.[[13]](#footnote-13) Officers approached the dugout and made verbal contact, and Mr. Gutierrez told them that he lost his car keys.[[14]](#footnote-14)

Mr. Gutierrez then stood up, holding a knife—a fixed-blade Gerber knife with a 5-inch blade—in his left hand. The officers immediately began commanding him to put the knife down, drew their handguns, and began retreating.[[15]](#footnote-15) Mr. Gutierrez did not comply and instead advanced towards the officers, exiting the dugout with the knife in his right hand.[[16]](#footnote-16) As Mr. Gutierrez continued to advance, Officer Bass deployed his taser on him, but it did not appear to have an effect and Mr. Gutierrez continued to advance towards officers.[[17]](#footnote-17) The officers continued to give commands as they backed up into the parking lot nearest the baseball diamond.

Mr. Gutierrez then walked towards Officer Bass’s marked patrol vehicle, which was parked in the lot near the restrooms. As Mr. Gutierrez continued to not comply with any commands, Officer Tanaka deployed his taser, which again appeared to have no effect.[[18]](#footnote-18) Mr. Gutierrez then walked to the front driver’s side tire of the patrol vehicle and stabbed it with the knife, deflating it.[[19]](#footnote-19) Mr. Gutierrez then again advanced towards the officers as they retreated across the length of the parking lot while continuing to give commands.

At 9:01 a.m., as Mr. Gutierrez headed across the parking lot entrance towards Officer Tanaka, who was backing up on the sidewalk (which ended behind him), Officer Bass deployed his taser a second time (for a third taser deployment) from inside the parking lot.[[20]](#footnote-20) After yelling to not tase him, Mr. Gutierrez then accelerates towards Officer Tanaka, and both officers fired their weapons at Mr. Gutierrez.[[21]](#footnote-21)

After shots were fired, Mr. Gutierrez walked across the street, still with the knife in his hand, as the officers continued to give commands and attempt to negotiate with him to drop the knife so that they could get him medical attention. Additional officers began arriving on scene, and Mr. Gutierrez went across a parking lot on the other side of the street and sat down on a large rock next to a paved walkway, still holding the knife.[[22]](#footnote-22) Mr. Gutierrez gave officers his name, however, he continued to refuse to drop the knife, despite being visibly injured and despite numerous commands and efforts to negotiate with him to get him medical help.[[23]](#footnote-23) After several minutes, Mr. Gutierrez stood up, walked, and then went to the ground, still holding the knife.[[24]](#footnote-24) At 9:20 a.m., after efforts to get Mr. Gutierrez to drop the knife continued to be unsuccessful, Officer Bass deployed two 40mm foam baton rounds at him in an attempt to get him to drop the knife.[[25]](#footnote-25) Mr. Gutierrez continued to not let go of the knife.

At 9:25 a.m., a team of officers moved up to Mr. Gutierrez and went hands-on, pinning his arm down with a ballistic shield, after which Mr. Gutierrez said he’d let go of the knife. Officers removed the knife from him, placed him in handcuffs, and began to provide emergency medical aid.[[26]](#footnote-26) Emergency medical responders quickly arrived and transported Mr. Gutierrez to a hospital, however, he ultimately succumbed to his injuries.[[27]](#footnote-27)

During the investigation, protocol investigators determined that when shots were fired, Mr. Gutierrez was approximately 17.7 feet from Officer Tanaka and 25.9 feet from Officer Bass. Investigators further determined that Officer Tanaka likely fired six 9mm rounds and Officer Bass likely fired eight 9mm rounds.

***Witness Statements***

**Officer Tanaka**

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

**Officer Bass**

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

**C. M.**

Protocol investigators interviewed a male who we refer to as “C. M.” who said that when he pulled into the baseball field parking lot for his son’s practice, he noticed two SJPD police officers parked in the parking lot, he saw them approach the other coaches, and he noticed a large man wearing multiple layers of clothing, slumped over in the dugout. C. M. said he got out of his truck with his son and were headed to the dugout as the officers approached the man in the dugout. C. M. said he saw the man stand up and he heard both officers yell, “Put the knife down. Don’t fucking do this. Put that knife down.” C. M. clarified that he never actually saw the knife, but he did see the man pull and hold something out at the officers as he continued to walk towards them. C. M. said the officers continued repeating commands, he yelled for his son to get in the truck, they were probably 20-30 feet from the man, the man looked at him and his son, and he split to his truck and jumped in.

C. M. said he started to back out and the man continued to walk towards the officers with his knife out and the officers kept backing up and continued to yell commands. C. M. said he pulled up the street, had his window down, and was listening. C. M. said that when the man got to the middle of the parking lot and the officers tried to tase him, but it didn’t do anything and the man pulled the tasers off and threw them on the ground. C. M. said he couldn’t recall if the officers tased him multiple times, but they continually repeated commands. C. M. said that the man continued to approach the officers and followed them to the bottom of the sidewalk in the parking lot. C. M. said he heard four shots and the man still didn’t go down. C. M. said the man continued to cross the street and that everything the officers did was not having any effect.

C. M. explained that he had pulled up to the top of the street and watched it from the top of the hill. C. M. explained that as the man crossed the main road, other officers started showing up and helping out. C. M. said that then the man crossed into the north parking lot, the officers were still giving commands, and he believed he heard four more shots and the man still didn’t go down.[[28]](#footnote-28) C. M. said the man made his way up to the back side where he couldn’t see as much. C. M. said that one of the officers ran back to their car and reloaded their gun and then ran back out and he could hear some more shots. C. M. said that they watched as other officers showed up and they had the man on a gurney and took him.

**R. H.**

A male who we refer to as “R. H.” said he was in his backyard when he saw two police officers with drawn weapons tell the suspect to drop the knife. R. H. said that the suspect with the knife would not comply to the request of the officers. R. H. said that trees blocked most of his view, but he heard a popping noise several times followed by what sounded like gunshots. R. H. also explained that the officers tasered the suspect a couple of times and then they got real tense and he heard a number of quick shots. R. H. also clarified that he could see the officers shooting but the suspect was behind a big tree on the street.

R. H. said that the suspect was told repeatedly to drop the knife by the officers, the suspect kept advancing towards the officers, and they then came down the path towards his house when officers told him to get in the house. R. H. explained that he started taking cell phone videos after he heard the shots. R. H. said that before the shots, when the suspect was in the parking lot, coming across the street, all he heard was the officers giving constant commands to put the knife down. R. H. said he did not see the suspect holding anything.

**Additional Witnesses**

 Protocol investigators interviewed witnesses about the events surrounding the incident, including witnesses who heard the officers give commands and heard—but did not see—shots fired. They are mentioned here for the purpose of completeness.

***Physical Evidence***

Protocol investigators inspected and documented the OICI scene, reviewed 911 calls, reviewed dispatch radio recordings and call logs, reviewed body-worn camera recordings, reviewed cell phone video recordings, downloaded the involved officers’ weapons, and reviewed the autopsy findings.

**OICI Scene**

Protocol investigators inspected the OICI scene at the Glenmoor Baseball Field located at 4600 West Skye Drive in South Jordan. The scene included the baseball field, the parking lot next to the baseball field, a portion of the Bingham Creek Trail that runs next to the baseball parking lot on the south side of Skye Drive, the roadway, the Bingham Creek Trailhead parking lot on the north side of Skye Drive, the Bingham Creek Trailhead also on the north side of Skye Drive, and the area surrounding the trailhead.

In the parking lot next to the baseball field, investigators observed several vehicles, including two marked South Jordan Police patrol vehicles (white Dodge Chargers).[[29]](#footnote-29) One of the vehicles (Officer Bass’s) was parked in close proximity to the baseball field restroom building (not in a parking stall) and had a defect to the front driver’s side tire wall, causing the tire to be flat. The other police vehicle (Officer Tanaka’s) was backed into a parking stall nearby. Investigators also located a gold 4-door Buick Rainier CXL (Mr. Gutierrez’s), which was crookedly backed into the parking stall west of Officer Tanaka’s vehicle (southeast of Officer Bass’s vehicle).

Investigators located multiple taser ejector pieces (next to the baseball restroom building, in front of Officer Bass’s vehicle, in the baseball field parking lot east driveway, and in the Skye Drive westbound road bike lane), taser dart pieces (near the baseball field parking lot east driveway, in the middle of the Bingham Creek Trailhead parking lot, and attached to the black Reebok jacket), and taser wires (next to the baseball restroom building, on the Bingham Creek Trail, and attached by a dart to a black Reebok jacket).

Investigators located a total of ten 9mm casings on or near the Bingham Creek Trail (seven on the on the Bingham Creek Trail, next to the Bingham Creek; two in the terrain that borders the Bingham Creek bed, in close proximity to the baseball field parking lot, and one in the Skye Drive eastbound bike lane, east of the trail footpath). Investigators located three fired bullets (on the north sidewalk of the baseball field parking lot, near the Bingham Creek Trail; in the north gutter of Sky Drive, east of the trail footpath; and at the trailhead to the Bingham Creek Trail). Investigators also located three defects in a vinyl fence running adjacent to the Bingham Creek Trail at the trailhead.

Investigators observed a trail of apparent blood stains, including at the north sidewalk of the baseball field parking lot (near the marked crosswalk), across Sky Drive, along the north side of Sky Drive, and at the Bingham Creek Trailhead. In the north gutter of Skye Drive, east of the trail footpath, investigators located a Gerber belt knife sheath. In the Bingham Creek Trailhead parking lot (on the north side of the road), investigators located two eXact iMpact LE 40mm less-lethal canister casings.

On the Bingham Creek Trail at the trailhead, investigators recovered a fixed-blade gray and green Gerber knife with a 5-inch blade, a silver Gerber folding knife, articles of clothing/sandals, a set of keys, a backpack, medical items, and a blue-tipped 40mm less-lethal rubber bullet.

**911 Calls, Radio Traffic Recordings, and Call Logs**

Investigators reviewed 911 calls, dispatch radio traffic, and dispatch call logs relating to this incident. The records indicate that at 8:45 a.m., a complainant called 911, reported a suspicious person looking through vehicle windows at the Glenmoor Ball Park, and provided a description. Officers were dispatched at 8:47 a.m. and were on scene at 8:56 a.m.

At 8:58 a.m., Officer Bass advised that they were “going to be out with one male on the baseball field.” At 8:59 a.m., Officer Tanaka advised that the male had a knife and Officer Bass said to code the air. At 9:02 a.m., officers advised of shots fired and reported that the suspect still has a knife. Officers asked to start medical. Sergeant Baker then requested a shield. At 9:06 a.m., Sergeant Baker advised that it was a 30s-year-old male, conscious, breathing, and alert, and that he was sitting down; he then advised to have fire stage and they would call them in. At 9:21 a.m., Sergeant Baker advised that they were still doing commands, that the suspect still had a knife in his hand, and that the 40 (less-lethal) had been deployed. At 9:25 a.m., Sergeant Baker said that they had the knife and the suspect was disarmed, asked for Fire to be brought to them, and advised that they were going hands-on to take him into custody.

**Body-Worn Camera Recordings**

Investigators reviewed body-worn camera recordings relating to this incident, including the recordings of Officer Tanaka and Officer Bass, as well as other officers who arrived on scene after shots were fired.[[30]](#footnote-30) The collectively recordings capture, in relevant part, the following.

After speaking with some adult males at the baseball diamond, Officers Tanaka and Bass walk towards the fenced third base dugout where a large adult male, later identified as Mr. Gutierrez, is sitting on a bench. As they approach the dugout entrance, Officer Bass makes verbal contact with Mr. Gutierrez, asking “What’s going on?” and “How are you, man?” (Bass BWC at timestamp 8:58:59), and Mr. Gutierrez responds, “I lost my car keys” (Bass BWC at timestamp 8:59:05).

Officer Bass asks Mr. Gutierrez which one is his car, and before he responds, Mr. Guterrez stands up, holding a knife down to his side in his left hand and a backpack in his right hand. Officer Bass immediately says, “Hang on. Don’t— No— Put the knife down, bro,” as he begins backing up (Bass BWC at timestamp 8:59:10). Officers Bass and Tanaka begin repeating commands to put the knife down, and Mr. Gutierrez switches the knife to his right hand (Bass BWC at timestamp 8:59:14). As Officer Bass continues to repeat commands to put the knife down as he backs up, Officer Tanaka advises over the radio, “He has a knife” (Tanaka BWC at timestamp 8:59:16); the officers then yell for the civilians to get out of there.

As Mr. Gutierrez walks in the dugout holding the knife, Officer Bass decides to “go less-lethal” and then asks dispatch to “code the air” (Bass BWC at timestamp 8:59:28). Officer Bass draws his taser as both officers give repeated commands to put the knife down and warn that he’s going to get tased. After Officer Bass loudly yells, “Drop the knife, do it now!,” Mr. Gutierrez responds, “No” (Bass BWC at timestamp 8:59:38; Tanaka BWC at timestamp 8:59:38). The officers attempt to negotiate and continue yelling commands as Mr. Gutierrez continues walking towards them, exiting the dugout (Bass BWC at timestamp 8:59:46). The officers continue to back up while yelling commands (*e.g.*, “Don’t do it” and “Don’t make us do it”).

After announcing “Taser, taser, taser,” Officer Bass deploys his taser (Bass BWC at timestamp 8:59:54; Tanaka BWC at timestamp 8:59:54); Mr. Gutierrez appears to pull taser wires from himself and continues walking towards the officers. Officer Bass switches back to his handgun as the officers continue yelling commands, attempt to negotiate, and retreat backwards. As Mr. Gutierrez nears the restrooms, he tells them, “Give me your keys” (Bass BWC at timestamp 9:00:08). The officers continue backing up with their handguns out, past the restrooms and into the parking lot. As the officers continue retreating into the parking lot, Mr. Gutierrez walks towards Officer Bass’s patrol vehicle, which is parked near a restroom building; meanwhile, Officer Bass asks over the radio how close the next unit is and advises of “noncompliant.” Officer Tanaka advises Officer Bass to “stay lethal” and switches to his taser (Bass BWC at timestamp 9:00:34; Tanaka BWCX at 9:00:34). Officer Tanaka then deploys his taser (Bass BWC at timestamp 9:00:40; Tanaka BWC at timestamp 9:00:40). Officer Tanaka switches back to his handgun as Mr. Gutierrez walks to the patrol vehicle’s front driver’s side and then stabs the tire with his knife, with the sound of air hissing from the tire immediately heard (Bass BWC at timestamp 9:00:50; Tanaka BWC at timestamp 9:00:50). Officer Bass then advises over the radio, “He stabbed my tire.”

As officers continue giving commands and retreating across the length of the parking lot, Mr. Gutierrez continues walking towards them with the knife in his right hand and not complying with any commands. Officer Bass tells Officer Tanaka to “stay lethal” (Bass BWC at timestamp 9:01:32) as he switches back to his taser. Officer Tanaka backs up on the sidewalk in front of Mr. Gutierrez, who continues towards him on the sidewalk, crossing the parking lot entrance. After announcing “Taser, taser, taser,” Officer Bass then deploys his taser (a second time) (Bass BWC at timestamp 9:01:40), and Mr. Gutierrez says, “Stop fucking tasing me!” as he appears to pull taser wire from him. Officer Bass then advises over the radio, “Two— three taser deployments. All three, non-effective” (Bass BWC at timestamp 9:01:47) as Mr. Gutierrez walks towards Officer Tanaka, who is still retreating. Officer Bass yells, “Put it down!” (Bass BWC at timestamp 9:01:52) and switches back to his handgun, Officer Tanaka tells Mr. Gutierrez, “Dude, don’t fucking do it” (Tanaka BWC at timestamp 9:01:52), and Mr. Gutierrez quickens his pace and advance directly to Officer Tanaka. Officer Tanaka and Officer Bass both fire their handguns. (Bass BWC at timestamp 9:01:54-9:01:56; Tanaka BWC at timestamp 9:01:54-9:01:56). Both officers advise of “shots fired” over the radio (Tanaka BWC at timestamp 9:01:57; Bass BWC at timestamp 9:02:00).

Notably, after the shots, Mr. Gutierrez walks across the street, still with the knife in his hand. Additional officers begin arriving on scene. (Baker BWC at timestamp ~9:02:57). At 9:04 a.m., after going across a parking lot on the opposite side of the street, Mr. Gutierrez sits down on a large rock next to a paved walkway, still holding the knife. Eventually, after standing back up, Mr. Gutierrez goes to the ground at 9:11 a.m. After efforts to get Mr. Gutierrez to drop the knife continue to be unsuccessful, Officer Bass deploys two less-lethal rounds at 9:20 a.m. in an attempt to get Mr. Gutierrez to drop the knife, but he continues to hold the knife. At 9:25 a.m., a team of officers move up to Mr. Gutierrez and go hands-on, pinning Mr. Gutierrez’s arm down with a ballistic shield. Mr. Gutierrez says, “I’ll let go of the knife,” and then officers retrieve the knife and move it away (along with another knife that they locate on him). Officers place handcuffs on Mr. Gutierrez and begin to provide emergency medical aid. Emergency medical responders quickly arrive and begin providing medical aid.

**Cell Phone Videos/Photos**

Protocol investigators obtained cell phone videos and photos witness R. H., who was outside his residence nearby.[[31]](#footnote-31) While they captured portions of the incident, they were taken after the officers used deadly force; we mention them for the purpose of completeness.

**Weapons Downloads**

Protocol investigators examined and downloaded Officer Tanaka’s Glock 19 Gen 5 9mm pistol, which had an inserted 15-round extended-capacity magazine. Protocol investigators counted one round in the chamber and nine rounds in the inserted magazine, for a total of ten rounds.[[32]](#footnote-32) Presuming Officer Tanaka began with a fully-loaded inserted magazine and a round in the chamber, that count indicates he likely fired six rounds during the incident. Protocol investigators also examined Officer Tanaka’s Taser 7, which had one deployed cartridge and one unspent cartridge.

Protocol investigators examined and downloaded Officer Bass’s Glock 17 Gen 5 9mm pistol, which had an inserted 17-round capacity magazine. Protocol investigators counted one round in the chamber and nine rounds in the inserted magazine, for a total of ten rounds.[[33]](#footnote-33) Presuming Officer Bass began with a fully-loaded inserted magazine and a round in the chamber, that count indicates he likely fired eight rounds during the incident. Protocol investigators also examined Officer Bass’s Taser 7, which had two deployed cartridges, as well as his less-lethal 40MM GL1 launcher.

**Autopsy**

Neil G. Haycocks, M.D., Ph.D., with the Utah Office of the Medical Examiner performed an autopsy of Mr. Gutierrez’s body and determined that he died of multiple gunshot wounds.[[34]](#footnote-34) Dr. Haycocks identified (1) five penetrating and one perforating gunshot wounds of the right abdomen (five bullets were recovered); (2) a perforating gunshot wound of right forearm; (3) a graze gunshot wound of the right forearm; and (4) a perforating gunshot wound of the right thigh. Dr. Haycocks also identified abrasions of the upper right abdomen, bilateral wrists (consistent with handcuffs), the lateral left thigh, and near the left knee.

**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)).

As discussed more fully below, we believe the totality of the facts in this matter, taken together with reasonable inferences arising from those facts, would likely satisfy the elements of the affirmative legal defense of justification as applied to Officer Tanaka’s and Officer Bass’s use of deadly force. In other words, we believe that if charges were filed against them for their use of deadly force, a jury (or other finder of fact) would have a reasonable basis to conclude that they used deadly force because they reasonably believed that deadly force was necessary to prevent death or serious bodily injury to themselves and/or others. Where the facts of a case satisfy these elements of the affirmative legal defense of justification, Utah State law affords an officer a legal defense and the finder of fact is instructed to render a verdict of not guilty of the offense(s) alleged.

As noted above, Officer Tanaka and Officer Bass refused to be interviewed or provide statements explaining their use of deadly force, as is their constitutional right. Without their explanations as to their use of deadly force, we don’t know what their actual beliefs were or their reasons for their decisions to fire their weapons. We are therefore left to infer the rationale for their apparent decisions 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 Tanaka’s and Officer Bass’s actual beliefs and thus cannot say whether they “reasonably believed” deadly force was necessary, we can infer the reasonableness of a belief that deadly force was necessary from the facts of which we are aware. In this case, we know from body-worn camera recordings that when Officers Tanaka and Bass made verbal contact with Mr. Gutierrez, he stood up holding a fixed-blade Gerber knife with a 5-inch blade in his left hand and Officers Bass and Tanaka immediately began giving commands to put down the knife, drew their weapons, and began retreating. Mr. Gutierrez did not comply with any of their commands and instead advanced towards them, switching the knife to his right hand. As the officers retreated to the parking lot, Mr. Gutierrez continued to advance towards them and not comply. Eventually, Officer Bass deployed his taser, after which Mr. Gutierrez stabbed and deflated the front tire of Officer Bass’s patrol vehicle with the knife. Mr. Gutierrez then advanced towards the officers, still holding the knife, as they retreated across the length of the parking lot. As Mr. Gutierrez continued to not comply, Officer Tanaka fired his taser and Officer Bass also fired his taser a second time. With the knife in his right hand, Mr. Gutierrez then accelerated towards Officer Tanaka, who was approximately 17.7 feet away, and both officers fired their handguns.

Based upon the facts before us, we find that Mr. Gutierrez unlawfully presented an immediate threat of death or serious bodily injury to the officers when he produced a knife, advanced towards the officers with the knife in his hand, continued to advance with the knife in his hand even after less-lethal force was used, and ultimately accelerated towards Officer Tanaka with the knife. At no time—during the approximately 2 minutes and 44 seconds between when Mr. Gutierrez first stood up with the knife and when shots were fired—did Mr. Gutierrez demonstrate any intent to drop the knife, comply with any of the many commands given, or surrender. Rather, Mr. Gutierrez decidedly continued to advance towards the officers with the knife, with complete disregard to the officers’ numerous commands, efforts to negotiate, and pleas, and despite their multiple uses of less-lethal force. Thus, we believe the evidence in this case supports a finding that Officers Tanaka and Bass would have been reasonable in believing that deadly force against Mr. Gutierrez was necessary to prevent death or serious bodily injury to themselves (and specifically, to Officer Tanaka).

The totality of the facts in this case, taken together with reasonable inferences about Officer Tanaka’s and Officer Bass’s decision to use deadly force, would likely cause a jury to determine that their use of deadly force satisfies the elements of the affirmative legal defense of justification. Assuming their testimony in a criminal case (if any) would be consistent the facts as we believe them to be based upon the evidence produced by the protocol investigation, we believe a jury would likely conclude that they used deadly force because they reasonably believed deadly force was necessary to prevent death or serious bodily to themselves and/or the others. Such a use of deadly force, by an officer who reasonably believes the deadly force is necessary to prevent death or serious bodily injury to himself or another person, satisfies the elements of the affirmative legal defense of justification and affords the officer a legal defense to a criminal charge. Thus, in this case, we believe a jury would likely find that the facts satisfy the elements of a justified use of deadly force.

If, for the sake of discussion, we elected to file a charge against Officer Tanaka and/or Officer Bass for their use of deadly force, and they asserted the legal defense of justification, we would have to prove at trial, beyond a reasonable doubt and to the unanimous satisfaction of all jurors, that they did not reasonably believe that using deadly force against Mr. Gutierrez was necessary to prevent death or serious bodily injury to themselves and/or another person. We do not believe the facts of this matter would support an effort to disprove the justification defense. We believe Officer Tanaka and Officer Bass would likely claim successfully at trial that they reasonably believed deadly force was necessary; therefore, their use of deadly force would be found justified and they would be afforded a legal defense to a criminal charge.

Because the statutory defense of justification is an affirmative legal defense, we, as the prosecution, bear the burden of showing evidence to prove that the affirmative defense does not apply. In other words, to achieve a conviction against Officer Tanaka and/or Officer Bass for their use of deadly force, we would have to show evidence to prove, beyond a reasonable doubt, that either they did not believe they needed to use deadly force prevent death or serious bodily injury (to themselves and/or another); or, that if they did believe they needed to use deadly force, that their beliefs were unreasonable. We do not believe we have sufficient evidence to do so. Based on the evidence before us, we conclude that no reasonable jury would unanimously determine that Officer Tanaka and/or Officer Bass did not reasonably believe deadly force was necessary in this situation. We conclude that we could not refute or overcome the affirmative legal defense of justification and therefore, we believe a jury would afford Officer Tanaka and Officer Bass the legal defense.

As the United States Supreme Court instructed in *Graham*, assessing “reasonableness” in the Fourth Amendment context “requires careful attention to the facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to the safety of the officers or others.” 490 U.S. at 496 (emphasis added). The facts of this matter support a conclusion that Officer Tanaka and Officer Bass could successfully argue that they reasonably believed their use of deadly force was necessary to prevent death or serious bodily injury to themselves or another individual. In short, paying “careful attention to the facts and circumstances” of this case, and considering the totality of the evidence and reasonable inferences to be drawn therefrom, we conclude that Officer Tanaka’s and Officer Bass’s use of deadly force would likely satisfy the elements of a justified use of deadly force as set forth in Utah State law.

**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 Tanaka’s and Officer Bass’s decisions to use deadly force, would likely support a finding that they believed deadly force was necessary to prevent death or serious bodily injury to themselves and/or others. As such, we believe that a jury would likely find that the facts and reasonable inferences satisfy the elements of the affirmative legal defense of justification and therefore afford them a legal defense to a criminal charge. Accordingly, we decline to file a criminal charge in this matter.

Very Truly Yours,

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Sim Gill,

Salt Lake County District Attorney

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). [↑](#footnote-ref-1)
2. The dispatch call log indicates that the initial complainant called 911 at 8:45 a.m. [↑](#footnote-ref-2)
3. Officers Tanaka and Bass made contact with Mr. Gutierrez at 8:58 a.m. [↑](#footnote-ref-3)
4. Officer Bass deployed his taser at BWC timestamp 8:59:54 as Officer Tanaka kept lethal coverage. [↑](#footnote-ref-4)
5. Officers Tanaka and Bass fired their weapons at 9:01 a.m. Protocol investigators later determined that when shots were fired, Mr. Gutierrez was approximately 17.7 feet from Officer Tanaka and 25.9 feet from Officer Bass. [↑](#footnote-ref-5)
6. Mr. Gutierrez was declared deceased at 10:07 a.m. [↑](#footnote-ref-6)
7. Officers Tanaka and Bass both have a constitutional right to remain silent and to be presumed innocent of any wrongdoing. [↑](#footnote-ref-7)
8. A jury is instructed that if the evidence in a case supports an affirmative defense, they must find the person charged “not guilty” of the alleged offense. [↑](#footnote-ref-8)
9. 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):

	1. 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.
	2. 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… [↑](#footnote-ref-9)
10. “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). [↑](#footnote-ref-10)
11. 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 statement). [↑](#footnote-ref-11)
12. The dispatch call log indicates that the initial complainant called 911 at 8:45 a.m. Officer Bass was dispatched at 8:47 a.m. and Officer Tanaka was dispatched at 8:50 a.m. Officer Bass was on scene at 8:56 a.m. [↑](#footnote-ref-12)
13. Officer Bass advised over the radio that they were going to be out with one male on the baseball field at 8:58 a.m. [↑](#footnote-ref-13)
14. As captured by body-worn camera, Officer Bass made verbal contact at timestamp 8:58:59. [↑](#footnote-ref-14)
15. As captured by body-worn camera, Officer Bass begins reacting to the knife at timestamp ~8:59:11. At 8:59 a.m., Officer Tanaka advised over the radio that the male had a knife and Officer Bass said to code the air (timestamp 8:59:28). [↑](#footnote-ref-15)
16. After verbally refusing to drop the knife (timestamp 8:59:38), Mr. Gutierrez exited the dugout (timestamp ~8:59:46). [↑](#footnote-ref-16)
17. Officer Bass deployed his taser at timestamp 8:59:54 as Officer Tanaka kept lethal coverage. [↑](#footnote-ref-17)
18. Officer Tanaka deployed his taser at timestamp 9:00:40 as Officer Bass kept lethal coverage. [↑](#footnote-ref-18)
19. Mr. Gutierrez stabbed the tire at timestamp 9:00:50, after which Officer Bass advised of it over the radio. [↑](#footnote-ref-19)
20. Officer Bass deployed his taser a second time at timestamp 9:01:40. Officer Bass then advised over the radio of the three taser deployments and that they were all non-effective. [↑](#footnote-ref-20)
21. Tanaka BWC timestamp 9:01:54-9:01:56 and Bass BWC timestamp 9:01:54-9:01:56. After firing, the officers advised of “shots fired” over the radio. At 9:02 a.m., the officers advised that the suspect still had a knife and asked to start medical. [↑](#footnote-ref-21)
22. Sergeant Baker was first to arrive on scene (Baker BWC at timestamp ~9:02:55). After arriving, Sergeant Baker requested a ballistic shield be brought to the scene. Mr. Gutierrez sat down on the rock, at the start of the Bingham Creek Trail, at 9:04 a.m. [↑](#footnote-ref-22)
23. Mr. Gutierrez told officers his name at 9:07 a.m. [↑](#footnote-ref-23)
24. Mr. Gutierrez got up from the rock, walked around, and then went to the ground at 9:11 a.m. [↑](#footnote-ref-24)
25. Officer Bass deployed both the less-lethal rounds at the direction of Sergeant Baker. [↑](#footnote-ref-25)
26. Officers also removed a second knife which they located on Mr. Gutierrez. [↑](#footnote-ref-26)
27. Mr. Gutierrez was declared deceased at 10:07 a.m. [↑](#footnote-ref-27)
28. While body-worn camera recordings capture the deployment of two less-lethal rounds, there is no evidence of any additional shots fired. [↑](#footnote-ref-28)
29. Investigators documented four additional vehicles in the parking lot. [↑](#footnote-ref-29)
30. Officer Bass’s body-worn camera recording begins at timestamp 8:58:20 and Officer Tanaka’s body-worn camera recording begins at timestamp 8:58:26. [↑](#footnote-ref-30)
31. We refer to the witness as “R. H.” [↑](#footnote-ref-31)
32. Officer Bass was also carrying two spare 17-round capacity magazines, which were both fully loaded. [↑](#footnote-ref-32)
33. Officer Bass was also carrying two spare 17-round capacity magazines, which were both fully loaded. [↑](#footnote-ref-33)
34. Dr. Haycock’s report is dated September 13, 2024. [↑](#footnote-ref-34)