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February 7, 2025

Chief Jason Mazuran
Unified Police Dept. of Greater Salt Lake
1330 E Chambers Ave, Suite 220
Millcreek, Utah 84106

Chief Brady Cottam
Taylorsville Police Department
2600 W. Taylorsville Blvd.
Taylorsville, UT 84129

RE: TVPD Sergeant Evan Keller’s, Officer Nicklaus Rogers’s, and
Officer Justin Mecham’s Use of Deadly Force
Incident Location: 3954 West 5820 South, Taylorsville, Utah
Incident Date: March 17, 2024
UPD Case No.: 24-24381
TVPD Case No.: 24-7592
DA Case No.: DAINV-2024-144

Dear Chiefs Mazuran and Cottam:

This letter addresses the March 17, 2024, use of deadly force by Taylorsville Police Department (“TVPD”) Sergeant Evan Keller, Officer Nicklaus Rogers, and Officer Justin Mecham against Foueti Tupou Afeaki.

Sergeant Keller’s, Officer Rogers’s, and Officer Mecham’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 Unified Police Department of Greater Salt Lake (“UPD”) protocol team and comprised of law enforcement officers employed by agencies other than TVPD. After the investigation, on April 9, 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

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 March 17, 2024, at about 11:11 a.m., a male who we refer to as “S. A.” called 911 and advised that the call was ongoing from the night before, that he and his family were away from home as it was dangerous, that he needed help from TVPD to pick up his son, and that his son was threatening to kill the family. TVPD Officer Mecham was dispatched to the call, and after speaking with S. A. about his son, Officers Rogers and Fullwood were also dispatched.

At 11:58 a.m., Officers Mecham, Rogers, and Fullwood approached S. A.’s residence and made contact with the son, Foueti Tupou Afeaki, who was sitting in a chair towards the back of the residence’s half-open garage. From the garage door opening, Officers Mecham, Rogers, and Fullwood talked with Mr. Afeaki about what was going on. At 12:13 p.m., officers were able to enter the garage and continued to speak with Mr. Afeaki. Eventually, after Mr. Afeaki continued to insist that he wasn’t going anywhere, Officer Mecham exited the garage and spoke with Sergeant Keller and Officer Cluff, who had also arrived on scene, and the decision was made to arrest Mr. Afeaki on misdemeanor warrants.

At 12:34 p.m., Officer Mecham stepped back into garage, followed by Sergeant Keller and Officer Cluff. Mr. Afeaki stated, “There’s too many of you guys in here,” and then repeated his statement; meanwhile, Sergeant Keller gave a signal to arrest to the other officers. As officers moved towards Mr. Afeaki and Officer Rogers asked him to stand up, Mr. Afeaki quickly reached his right hand out to the side and retrieved a handgun from behind a blanket, and then started to present it towards the officers. Officer Rogers, Officer Mecham, and Sergeant Keller fired their weapons.²

After shots were fired, officers held their weapons on Mr. Afeaki until they determined it was safe to approach. Emergency medical responders arrived on scene, and before approaching, officers observed that the firearm—a loaded Mossberg MC2 9mm handgun—had fallen to the ground to Mr. Afeaki’s right side. Emergency medical responders began rendering aid and then transported Mr. Afeaki to a hospital where he was ultimately declared deceased.

During the protocol investigation, investigators interviewed Officer Fullwood and Officer Cluff about the incident; however, Sergeant Keller, Officer Rogers, and Officer Mecham refused

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).

² Protocol investigators determined that Sergeant Keller, Officer Mecham, and Officer Rogers likely collectively fired 15 9mm rounds during the incident—Sergeant Keller likely fired five rounds, Officer Rogers likely fired eight rounds, and Officer Mecham likely fired two rounds.

to be interviewed, as is their constitutional right.³ 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 surveillance video, examined Mr. Afeaki's cellphone, 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 Sergeant Keller, Officer Rogers, and/or Officer Mecham 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 Sergeant Keller's, Officer Rogers's, and Officer Mecham's use of deadly force would likely be subject to the affirmative legal defense of justification under Utah law,⁴ and we decline to file a criminal charge against them.

RELEVANT LEGAL STANDARDS

As relevant here,⁵ 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

³ Sergeant Keller, Officer Rogers, and Officer Mecham each have a constitutional right to remain silent and to be presumed innocent of any wrongdoing.

⁴ 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.

⁵ 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...

(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 injury⁶ 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).

⁶ “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).

RELEVANT ETHICAL STANDARDS

The DA's Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing.⁷ 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, UPD led an investigative task force of law enforcement officers who conducted the investigation of Sergeant Keller's, Officer Rogers's, and Officer Mecham's use of deadly force, and the protocol investigation's findings were presented on April 9, 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 March 17, 2024, at about 11:11 a.m., a male who we refer to as "S. A." called 911 and advised that the call was ongoing from the night before, that he and his family were away

⁷ 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).

from home as it was dangerous, that he needed help from TVPD to pick up his son, and that his son had threatened to kill the family.⁸ TVPD Officer Mecham was dispatched to the call, and, after speaking with S. A. about his son, Officers Rogers and Fullwood were also dispatched.⁹

At 11:58 a.m., Officers Mecham, Rogers, and Fullwood approached S. A.'s residence and made contact with the son, Foueti Tupou Afeaki, who was sitting in a chair towards the back of the residence's half-open garage. From the garage door opening, Officers Mecham, Rogers, and Fullwood talked with Mr. Afeaki about what was going on.¹⁰ At 12:13 p.m., officers were able to enter the garage and continued to speak with Mr. Afeaki.¹¹ Eventually, after Mr. Afeaki continued to insist that he wasn't going anywhere and wanted to be left alone, Officer Mecham exited the garage and spoke with Sergeant Keller and Officer Cluff, who had also arrived on scene, and the decision was made to arrest Mr. Afeaki on misdemeanor warrants.¹²

At 12:34 p.m., Officer Mecham stepped back into garage, followed by Sergeant Keller and Officer Cluff. Mr. Afeaki stated, "There's too many of you guys in here," and then repeated his statement; meanwhile, Sergeant Keller gave a signal to arrest to the other officers. As officers moved towards Mr. Afeaki and Officer Rogers asked him to stand up, Mr. Afeaki quickly reached his right hand out to the side and retrieved a handgun from behind a blanket, and then started to present it towards the officers. Officer Rogers, Officer Mecham, and Sergeant Keller fired their weapons.

Officer Fullwood later described to investigators:¹³

[A]nd then he reached under the blanket on this object that was sitting beside him, there was a blanket draped over it. Reached into it, **pulled out a black pistol, started to present it towards us.** I drew my weapon, bladed to the right—my

⁸ The evening prior, on March 16, 2024, at about 9:59 p.m., a neighbor contacted 911 and reported a family argument at S. A.'s residence. TVPD officers responded to the residence and made contact with S. A., who advised that Mr. Afeaki had already left the residence. Officers advised S. A. to contact them if Mr. Afeaki returned and was still acting erratically and they needed police assistance. In the early morning hours of March 17, 2024, S. A. called dispatch back multiple times, beginning at about 12:31 a.m.—when he reported that he was away from his house, his son was back, and he wanted the police to take him to jail—and through about 1:12 a.m.—when he reported that his son had left the house in a truck, was dangerous, and requested officers. Importantly, none of the officers who responded the night prior were involved in the shooting incident.

⁹ Officer Mecham was dispatched at 11:15 a.m. Officer Mecham spoke with S. A. from about 11:36 a.m. to 11:46 a.m. Officers Rogers and Fullwood were then dispatched at 11:46 a.m.

¹⁰ Notably, Officer Mecham asked Mr. Afeaki about weapons at 11:59 a.m.; Mr. Afeaki stated that there is nobody else inside the house at 12:04 p.m.; and Mr. Afeaki said his family was scared because he told his parents he was going to kill them for not bringing his kids at 12:05 p.m.

¹¹ After officers entered the garage (to bring him cigarettes), Mr. Afeaki spoke to his family on the phone (from 12:14 to 12:17). Meanwhile, at 12:09 p.m., Officer Mecham left the garage opening to facilitate Mr. Afeaki's family calling him, and also briefed Officer Cluff and Sergeant Keller, who had just arrived, on the situation. Officer Mecham returned to the garage at 12:14 p.m.

¹² Notably, at 12:23 p.m., after Officer Rogers stepped further back in the garage, Mr. Afeaki asked him to move out forward. Officer Mecham left the garage at 12:29 p.m. and then spoke with family members (from 12:29 to 12:32 p.m.) before speaking with Sergeant Keller and Officer Cluff.

¹³ Quotations have been lightly edited for concision and readability.

right, suspect's left—to get off the angle. . . Shouts for “Gun,” “Drop the gun.” **And as he presented the weapon upward, pointing out towards the officers, multiple rounds were fired, striking the suspect.** As I bladed to the right, I pointed my weapon directly at his head and to engage and to squeeze the trigger. By that point, he started to slump forward, and I felt the threat was done.

After shots were fired, officers gave commands to drop the gun, advised of “shots fired” over the radio, and then observed that they didn't see the gun in his hands. Officers held their weapons on Mr. Afeaki until they determined it was safe to approach. Emergency medical responders arrived on scene, and, before approaching, officers observed that the firearm—a loaded Mossberg MC2 9mm handgun—was on the ground to Mr. Afeaki's right side. Emergency medical responders began rendering aid and then transported Mr. Afeaki to a hospital where he was ultimately declared deceased.¹⁴

During the investigation, investigators determined that Sergeant Keller, Officer Mecham, and Officer Rogers likely collectively fired 15 9mm rounds during the incident.¹⁵ Investigators determined that Mr. Afeaki's weapon fell to the ground to his right side during the incident, and did not find any evidence that it was fired.

Witness Statements

Sergeant Keller

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

Officer Rogers

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

Officer Mecham

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

Officer Fullwood

¹⁴ Emergency medical responders entered the garage at 12:41 p.m. Mr. Afeaki was declared deceased at 1:14 p.m.

¹⁵ Based on the weapons downloads, as well as the casings recovered on scene, investigators determined that Sergeant Keller likely fired five rounds, Officer Rogers likely fired eight rounds, and Officer Mecham likely fired two rounds.

Protocol investigators interviewed Officer Fullwood, who said that Officer Mecham radioed for assistance in going into a neighborhood to locate and arrest a male with warrants. Officer Fullwood said he arrived with Officer Rogers (the other backing officer) and asked Officer Mecham what they were for, and he said that it was an adult Polynesian male that had threatened to kill his father, had a violent history, had felony warrants, that the family had all left the house and gone to a hotel because the son had arrived home, and that there was altercation where he threatened to kill the family and so the family left. Officer Fullwood said that Officer Mecham had said he had been on the phone with the father, who had expressed how unpredictable and violent his son was, asked that they go get him, and explained that he was unstable.

Officer Fullwood said that they walked up to the house, the garage was half open (about a four-foot opening), and they encountered the male in the garage, sitting in a lawn chair toward the back of the garage. Officer Fullwood said that the man was agitated but they were able to have a conversation with him. Officer Fullwood said that a lot of the statements the male was making led him to believe that the male was also suffering from a potential psychological break (*e.g.*, he was talking a lot about self-harm).

Officer Fullwood said that at one point, the male asked for the cigarettes out of his car, he told the male he'd get them for him, and he got them and took that as an opportunity to step into the garage to hand them to him because he did not want to get off the chair. Officer Fullwood said he stepped into the garage with the male, and Officer Mecham and Officer Rogers followed after him, and he gave the male his cigarettes. Officer Fullwood said that the male wanted his space, and so he stepped back several feet and continued to talk with him. Officer Fullwood explained that the male would emotionally cycle up and cycle back down. Officer Fullwood said that at one point, the male took a phone call his mother and talked to his kids, and it seemed like a normal conversation. Officer Fullwood said that the male admitted he had threatened to kill his family and kill his father, particularly. Officer Fullwood said they told him that they needed to deal with those things and that they couldn't leave. Officer Fullwood said the male wanted them to leave and that he would deal with it himself. Officer Fullwood explained that they continued to talk with him, and that the male continued to cycle up emotionally, they'd bring him back down, and he'd cycle back up, and they'd bring him back down. Officer Fullwood estimated that the conversation was in excess of 30 minutes.

Officer Fullwood explained that he was seeing that the male wasn't going to cooperate and didn't want to go with them, and that they had called for additional backup (he had radioed for their sergeant prior to making entry in the garage and the sergeant had gotten there by that point). Officer Fullwood explained that the male was a large male, and that the sergeant had radioed for additional officers. Officer Fullwood explained that if it were to become a physical altercation, they wanted to make sure they could handle it (they were in a garage setting and there were multiple potential weapons surrounding them). Officer Fullwood explained that he would try to step closer to talk to the male, the male would ask him to back up, he would, and Officer Rogers had also tried to step closer, the male had asked him to back up, and Officer Rogers did.

Officer Fullwood explained that he had positioned himself on the right side of the officers in the garage, that the male was sitting directly in front of them and slightly to the left, and that the male was sitting right next to the end of a large object. Officer Fullwood recalled:

Then as we're talking with him, and as additional officers got there, without any warning he started saying that he isn't going to go anywhere. He— and then he reached under the blanket on this object that was sitting beside him, there was a blanket draped over it. Reached into it, **pulled out a black pistol, started to present it towards us.** I drew my weapon, bladed to the right—my right, suspect's left—to get off the angle. . . Shouts for “Gun,” “Drop the gun.” **And as he presented the weapon upward, pointing out towards the officers, multiple rounds were fired, striking the suspect.** As I bladed to the right, I pointed my weapon directly at his head and to engage and to squeeze the trigger. By that point, he started to slump forward, and I felt the threat was done. And shortly thereafter, the weapon dropped out of his hand to his right. I held the suspect at gunpoint.

Officer Fullwood said that the time for the suspect presenting the weapon, the gunfire, and to him holding on the suspect was a matter of a couple seconds. Officer Fullwood said that the suspect continued to do short breaths, and that he and Officer Rogers continued to call to him, talk to him, and try to engage in him, that there was no response, and that he kept doing agonal breathing. Officer Fullwood said they radioed for additional officers, called out “shots fired” and “expedite medical.” Officer Fullwood said he held the scene until medical got there, and that once he knew the weapon was far enough away and it was secure, medical came in and began working the suspect (medical pulled him out of the chair and worked him on the floor of the garage) and he was taken from the garage to the ambulance. Officer Fullwood said that one of the paramedics handed him a slug and told him that it had been in the suspect's lap, and that he then placed it back onto the chair with another slug that was there. Officer Fullwood said he stood there until he was relieved, and he informed the investigative officer of the slug.

Officer Fullwood said that that was the first time that they had dealt with the suspect that day and he was not aware of any involvement in the past. Officer Fullwood explained that after the shooting, they could not locate the firearm, and that he held on the suspect until he felt confident enough to walk up and he could see his firearm had fallen to the garage floor to his right, and that at about that time, he called that it was clear for medical to come in. Officer Fullwood said he did not believe the suspect shot his weapon.

Officer Fullwood explained that his response when the suspect presented the firearm was an instinctual tactical movement—he knew officers were to his left, and so he bladed to the right to separate and give the suspect multiple options to engage instead of one large target. Officer Fullwood said he felt to move and separate, and to draw his weapon and to engage him. Officer Fullwood said that the volley of rounds hit the suspect as he moved to the right, that his sights were on the suspect's left head, and that as the suspect slumped forward, he felt that the suspect

was defeated and did not pull his trigger. Officer Fullwood explained: "I had talked to that man for 30, 45 minutes, trying to come to a peaceful resolution, trying to cooperate with him, getting him what he asked, facilitating the cigarettes, empathizing with him, encouraging him, talking to him, **and then he presented a weapon and tried to kill me.**"

Officer Fullwood said that the initial voice of contact was Officer Mecham, the man was quite agitated, and Officer Mecham did an outstanding job talking to him and trying to keep him down. Officer Fullwood said that Officer Rogers was then talking with him through the garage opening as well, Officer Mecham stepped back, and that gave him an opportunity with Officer Rogers to start talking with him. Officer Fullwood said that at about that point, the suspect started talking about needing cigarettes, he offered to get them, and that once he retrieved them, he took that as an opportunity to walk into the garage with the suspect to hand on the cigarettes. Officer Fullwood said that Officer Rogers followed him in and then they stayed with the suspect in the garage for enough time to have a good long conversation. Officer Fullwood said he understood that all the family members were gone from the house.

Officer Fullwood explained that when the suspect pulled out the firearm, he was sitting in a collapsible lawn chair, with his rear end level or a little bit lower than his knees, in that relaxed position. Officer Fullwood explained that the object that was covered with blankets kind of looked like a piano, and that "**he reached in about shoulder height, just long enough for his right hand to disappear. So that the weapon must have been right there under the crest of the blanket. Grabbed it, pulled it out, and started to extend when shots were fired.**" Officer Fullwood said that the suspect knew exactly where the weapon was at. Officer Fullwood further recalled that as they were talking with the suspect and Officer Rogers was on the right, Officer Rogers had stepped even further to the right which really agitated the suspect, and the suspect asked him to step back. Officer Fullwood said he believed, in hindsight only, that that was to keep the firearm concealed.

Officer Cluff

Protocol investigators interviewed Officer Cluff who explained that there was a call for a domestic follow-up, he heard Officer Mecham request more units, and then after officers were on scene for a few minutes, they requested a supervisor. Officer Cluff explained that after finishing the call he was on, he went over to see if they needed help. Officer Cluff said he rolled up on scene, saw a couple officers standing outside a halfway open garage, he asked them if they needed help, they told him to come, and he parked his car down the street. Officer Cluff said he walked up, Officer Rogers and Fullwood were kneeling down at the garage door and talking to the suspect, and he stood back with his supervisor and got some details. Officer Cluff said that while he was outside waiting, the male's brother showed up on scene with another female, and he chatted with him for a minute. Officer Cluff clarified that when he got there, Officers Mecham, Rogers, and Fullwood were on scene, and that Sergeant Keller got there a little after him.

Officer Cluff explained that after they had been chatting with the suspect for a good amount of time, the supervisor made the decision to take him into custody. Officer Cluff said that there were already two or three officers with the suspect in the garage, and that they got ready to go in. Officer Cluff said that he walked in the garage, ducking down after his sergeant, and the officers were at one end of the garage by the door, the male was sitting in a camping chair at the other side of the garage, closest to the house, and there was a lot of clutter in there.

Officer Cluff said that they passed the word along to approach the suspect and take him into custody. Officer Cluff said that he was kind of in the back and everyone was scattered in front of him. Officer Cluff recalled:

And as they started walking up to him, . . . **he reached over and grabbed something.** And I didn't see it, 'cuz I had people in front of me, so my line of sight was kind of obstructed. And everyone just started shooting. And as soon as I— I drew my gun and **I see that he had a gun in his hand.** And he just, it was like, it was just right here.

Officer Cluff recalled: **"I saw the barrel. Like I could, I clearly remember the barrel, like the end of the barrel just being pointed, like not directly, but where it was set, like I could see the end of the barrel."** Officer Cluff said he did not think the suspect fired any rounds. Officer Cluff agreed that it was clear that he saw the barrel pointing towards himself and towards the other officers there. Officer Cluff explained, **"I've never been that close to somebody, you know, shooting me or, you know, whatever, I don't know, pointing a gun at me like that."** Officer Cluff acknowledged that he feared for his life and also the life of the other officers that were there.

Officer Cluff said that after the shots, the male was still kind of moving around and his hands were empty, but they couldn't see the gun and so they held on him. Officer Cluff said he started noticing gunshot wounds, they held there and waited for Fire (he explained that they were trying to get a shield so that they could go up and secure him and start first aid). Officer Cluff explained that after family started showing up, he went outside to talk to them.

Additional Witnesses

Protocol investigators interviewed S. A. regarding the events surrounding the incident; he is 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 surveillance video, examined Mr. Afeaki's cellphone, downloaded the involved officers' weapons, and reviewed the autopsy findings.

OICI Scene

Protocol investigators inspected the OICI scene located at 3954 West 5820 South in Taylorsville, inside the residence's two-car garage. Near the center of the back of the garage was a collapsible camping chair, which faced south towards the garage door opening. The east side of the garage was mostly free of objects, while the west side and the back wall had objects stacked up. Near the camping chair's right (to the west) were blankets covering a table with a computer monitor.

On the ground to the camping chair's right side (to the west), investigators located a black Mossberg MC2 9mm handgun. Investigators determined that the weapon was loaded with one round in the chamber and an additional 14 rounds in the magazine, for a total of 15 9mm rounds.¹⁶ A cell phone was also on the ground, between the camping chair and the handgun. On the table and near the computer monitor, underneath the blankets, investigators located a container with a white crystal substance/rock, glass pipes with residue, and a torch. Investigators also located a scale in the garage.

Investigators located a total of 15 spent 9mm shell casings (in the garage), seven fired bullets (five in the garage, one under a bathroom sink, and one by a washing machine), multiple bullet fragments (in the garage), and numerous bullet holes. Outside the garage, under a truck in the driveway, investigators located an additional unfired FC brand 9mm round.¹⁷

911 Calls, Radio Traffic Recordings, and Call Logs

Investigators reviewed 911 calls, dispatch radio traffic, and dispatch call logs relating to this incident (as well as the events from the prior evening and the early morning).¹⁸ In relation to the call-out that day, S. A. called 911 at about 11:11 a.m., after which dispatch advised that S. A.'s son had contacted him again being threatening, that Mr. Afeaki was alone at the residence.¹⁹ The call log further indicates that Officer Mecham was dispatched at 11:15 a.m., Officers Rogers and Fullwood were dispatched at 11:46 a.m., officers were attempting contact at 11:58 p.m.,

¹⁶ Investigators determined that the Mossberg pistol had been purchased by a family member of Mr. Afeaki.

¹⁷ Eight casings were FC brand (consistent with the Officer Rogers's ammunition during the download) and seven casings were Speer brand (consistent with Sergeant Keller's and Officer Mecham's ammunition during the download).

¹⁸ These records indicate that on March 16, 2024, a neighbor first contacted 911 on March 16, 2024, at about 9:59 p.m., and reported a family argument, following which officers responded to the residence at 10:11 p.m. and made contact with Mr. Afeaki's family. Subsequently, Mr. Afeaki's father, S. A., called 911 multiple times in the early morning hours of March 17, 2024, including at about 12:31 a.m., when he reported that his son was back, and at 1:12 a.m., when he reported that his son had left the house. In addition, Mr. Afeaki's cousin called 911 at about 1:44 a.m. and reported that Mr. Afeaki had stolen his truck, following which officers responded to the residence at 1:50 a.m. (they were unable to contact Mr. Afeaki). Importantly, the involved officers were not privy to the 911 calls, nor were they involved in the earlier call-outs; we mention them for the purpose of completeness.

¹⁹ During the 911 call, S. A. advised that the call was ongoing from the night prior, that he and his family were away from home as it was dangerous, that he needed help from TVPD to pick up his son, and that his son had threatened the family by calling and threatening to kill.

Sergeant Keller was dispatched at 12:03 p.m., Officer Cluff was dispatched at 12:09 p.m., that brother and wife were outside at 12:28 p.m., and shots were fired at 12:35 p.m.

Body-Worn Camera Recordings

Investigators reviewed body-worn camera recordings relating to this incident, including recordings from the five officers who were on scene when shots were fired (*i.e.*, Sergeant Keller, Officer Rogers, Officer Mecham, Officer Fullwood, and Officer Cluff). The recordings depict the following.

From 11:36 a.m. to 11:46 a.m., Officer Mecham speaks to S. A. on the phone and gathers information about the situation that is going on. At 11:58 a.m., Officers Mecham, Rogers, and Fullwood approach the half-open garage of the residence and Officer Mecham makes verbal contact with Mr. Afeaki, who is sitting on a chair towards the back of the garage. Officers Mecham, Rogers, and Fullwood then talk with Mr. Afeaki about what is going on from outside the half-open garage door.²⁰ At 12:09 p.m., Officer Mecham leaves the garage door opening to facilitate Mr. Afeaki's family calling him so that he could talk to his children, and Officers Rogers and Fullwood continue to speak with him.

At this point, Officer Mecham makes contact with Officer Cluff who has just arrived in his vehicle, briefly advises him of the situation, and then calls and speaks with S. A. (from 12:10 p.m. to 12:12 p.m.). Officer Mecham then speaks with Sergeant Keller (who has just approached) about the situation before returning to the garage (at 12:14 p.m.).

Meanwhile, at 12:12 p.m., Mr. Afeaki asks officers for his cigarettes from his car, and Officer Fullwood retrieves them while Officer Rogers continues to talk with him. At 12:13 p.m., Officer Fullwood walks into the garage to bring Mr. Afeaki his cigarettes, and Officer Rogers follows. Shortly after, Mr. Afeaki asks the officers to back up and then smokes a cigarette as the officers continue talking to him about getting help and his situation. At 12:14 p.m., Mr. Afeaki answers a phone call and appears to talk to his mom and then his children (until 12:17 p.m.); meanwhile, Officer Mecham joins Officers Fullwood and Rogers inside the garage (at 12:14 p.m.). After Mr. Afeaki finishes the call, officers continue talking with him about dealing with why they're there and getting help.²¹ As the conversation continues, Mr. Afeaki insists that he isn't going anywhere and that he wants to be left alone, and officers continue to advise that they can't leave him and continue to talk to him about the situation.

At 12:29 p.m., Officer Mecham exits the garage and then speaks with some family members who are nearby (until 12:32 p.m.). Officer Mecham then talks with Officer Cluff and Sergeant Keller, and they discuss arresting him on misdemeanor warrants. At 12:34 p.m., Officer Mecham steps back into garage, followed by Sergeant Keller and Officer Cluff.

²⁰ Notably, Officer Mecham asks Mr. Afeaki about weapons at 11:59 a.m.; Mr. Afeaki states that there is nobody else inside the house at 12:04 p.m.; Mr. Afeaki said his family was scared because he told his parents he was going to kill them for not bringing his kids at 12:05 p.m.

²¹ Notably, at 12:23 p.m., after Officer Rogers stepped further back in the garage, Mr. Afeaki asked him to move out forward.

Mr. Afeaki then states, “There’s too many of you guys in here” (timestamp 12:34:29) and then repeats his statement two more times; meanwhile, Sergeant Keller gives a hand signal to the other officers (timestamp 12:34:34). As officers move towards Mr. Afeaki, Officer Rogers asks him to stand up (timestamp 12:34:43) and Mr. Afeaki quickly reaches his right hand out to the side, retrieves a handgun from behind a blanket, and then brings it back to him and holds it with both hands, presenting it outwards, towards officers. Meanwhile, officers quickly draw their handguns, and Officer Rogers, Officer Mecham, and Sergeant Keller fire their weapons (timestamp 12:34:44-12:34:49). As shots are fired, Mr. Afeaki’s firearm appears to fall to his right (timestamp 12:34:47).

After shots are fired, officers give commands to drop the gun, advise of “shots fired” over the radio, and then observe that they don’t see the gun in his hands. Officers hold their weapons on Mr. Afeaki as they appear to wait for a shield and emergency medical responders. After emergency medical responders arrive on scene (at 12:41 p.m.), they approach, begin rendering emergency medical aid, place him on the ground, and then transfer him to a stretcher and transport him.

Surveillance Video

Protocol investigators obtained video surveillance from a neighboring residence which captured the sound of multiple shots being fired, but did not depict the incident itself; we mention it for the purpose of completeness.²²

Mr. Afeaki’s Cellphone

Protocol investigators obtained and reviewed data retrieved from Mr. Afeaki’s cellphone; however, as the involved officers were not privy to it at the time of the incident, we mention it for the purpose of completeness.

Weapons Downloads

Protocol investigators examined and downloaded Sergeant Keller’s Glock 17 Gen 5 9mm pistol, which had an inserted 17-round capacity magazine, as well as two spare 17-round capacity magazines that he was carrying in his vest. Protocol investigators counted one round in the chamber of the weapon, 17 rounds in both the inserted magazine and one of the spare magazines, and 12 rounds in the other spare magazine. Presuming Sergeant Keller began with a fully-loaded inserted magazine and a round in the chamber, and that he reloaded the weapon with a spare fully-loaded magazine following the incident, that count indicates he likely fired five rounds during the incident.

Protocol investigators examined and downloaded Officer Rogers’s Glock 17 Gen 5 9mm pistol, which had an inserted 22-round extended-capacity magazine, as well as two spare 22-

²² Footage from events on both March 16 and 17, 2024 was obtained and reviewed.

round extended-capacity magazines that he was carrying. Protocol investigators counted one round in the chamber, 22 rounds in both the inserted magazine and one of the spare magazines, and 14 rounds in the other spare magazine. Presuming Officer Rogers began with a fully-loaded inserted magazine and a round in the chamber, and that he reloaded the weapon with a spare fully-loaded magazine following the incident, that count indicates he likely fired eight rounds during the incident.

Protocol investigators examined and downloaded Officer Mecham's Glock 17 Gen 5 9mm pistol, which had an inserted 17-round capacity magazine, as well as two spare magazines that he was carrying. Protocol investigators counted one round in the chamber and 15 rounds in the inserted magazine, for a total of 16 rounds; both spare magazines were fully loaded. Presuming Officer Mecham began with a fully-loaded inserted magazine and a round in the chamber, that count indicates he likely fired two rounds during the incident

Autopsy

Lily Marsden, M. D., with the Utah Office of the Medical Examiner performed an autopsy of Mr. Afeaki's body and determined that he died of multiple gunshot wounds. Dr. Marsden identified (1) one perforating gunshot wound of the head, with an entrance at the top of the left head; (2) two gunshot wounds to the left chest, one perforating and one penetrating, with intersecting pathways and entrances at the left upper lateral chest and the upper chest just left of midline (a bullet and a metal jacket were recovered); (3) one perforating gunshot wound of the right forearm, with an entrance at the right medial forearm; (4) one superficially perforating gunshot wound of the right forearm, with an entrance at the right ventral forearm/wrist; (5) one graze gunshot wound of the right index finger; (6) one penetrating gunshot wound of the left arm, with an entrance at the left lateral arm (multiple metal fragments were recovered); (7) two perforating gunshot wounds of the left forearm, with entrances at the left dorsal forearm; (8) one graze gunshot wound of the left forearm; (9) one penetrating gunshot wound of the left thigh into the abdomen/pelvis, with an entrance at the left lateral thigh (a bullet with attached metal jacket were recovered); and (10) one penetrating gunshot wound of the left leg lateral to the knee, with an entrance at the left leg lateral to the knee (a bullet with attached metal jacket were recovered).

Dr. Marsden also reported toxicology results (blood) for methamphetamine (630 ng/mL), amphetamine (44 ng/mL), pseudoephedrine (66 ng/mL), and caffeine (presumptive positive).

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 Sergeant Keller's, Officer Rogers's, and Officer Mecham'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, Sergeant Keller, Officer Rogers, and Officer Mecham refused to be interviewed or provide a statement 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 Sergeant Keller's, Officer Rogers's, and Officer Mecham'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, as captured on body-worn camera, officers were on scene with Mr. Afeaki for about 36 minutes before they attempted to take him into custody. During that time, officers attempted to talk with him, reason with him, and calm him down. As the conversation continued, Mr. Afeaki insisted that he wasn't going anywhere, and the decision was made to arrest him on misdemeanor warrants. At 12:34 p.m., while Officers Rogers and Fullwood were with Mr. Afeaki in the garage, Officer Mecham stepped back into garage, and Sergeant Keller and Officer Cluff followed. Mr. Afeaki then began stating, "There's too many of you guys in here," and then Sergeant Keller gave a hand signal to the other officers to take Mr. Afeaki into custody. As officers moved towards Mr. Afeaki and Officer Rogers asked him to stand up, Mr. Afeaki quickly reached his right hand out to the side, retrieved a handgun from behind a blanket,

and then began presenting it towards the officers. As he did so, Officer Rogers, Officer Mecham, and Sergeant Keller drew their weapons and fired.

During their interviews, Officers Fullwood and Cluff both described the threat presented by Mr. Afeaki. Officer Fullwood described that Mr. Afeaki “[r]eached into [the blanket], **pulled out a black pistol, started to present it towards us.**” Officer Fullwood then recalled drawing his gun, blading to the right, and that “**as [Mr. Afeaki] presented the weapon upward, pointing out towards the officers,** multiple rounds were fired. . .” Officer Fullwood further explained that Mr. Afeaki “**reached in about shoulder height, just long enough for his right hand to disappear. So that the weapon must have been right there under the crest of the blanket. Grabbed it, pulled it out, and started to extend when shots were fired.**” Similarly, Officer Cluff recalled that Mr. Afeaki “reached over and grabbed something,” everybody started shooting, and that he drew his gun and saw a gun in Mr. Afeaki’s hand. Officer Cluff described: “**I saw the barrel. Like I could, I clearly remember the barrel, like the end of the barrel just being pointed, like not directly, but where it was set, like I could see the end of the barrel.**” Officer Cluff further described: “**I’ve never been that close to somebody, you know, shooting me or, you know, whatever, I don’t know, pointing a gun at me like that.**”

We conclude that the facts of the case support a finding that Sergeant Keller, Officer Rogers, and Officer Mecham reasonably believed they needed to use deadly force against Mr. Afeaki to prevent death or serious bodily injury to themselves and to each other. Mr. Afeaki unlawfully presented an immediate threat of death or serious bodily injury to the officers when he pulled a handgun—a loaded Mossberg MC2 9mm pistol—out from concealment and began to present it towards officers when they attempted to arrest him.

The totality of the facts in this case, taken together with reasonable inferences about Sergeant Keller’s, Officer Rogers’s, and Officer Mecham’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 Sergeant Keller, Officer Rogers, and Officer Mecham 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. Afeaki 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 Sergeant Keller, Officer Rogers, and Officer Mecham 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.

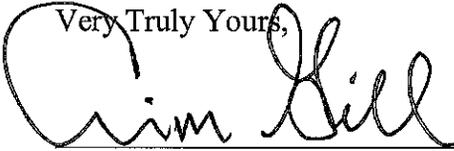
Because the statutory defense of justification is an affirmative legal defense, we, as the prosecution, bear the burden of showing evidence to prove that the affirmative defense does not apply. In other words, to achieve a conviction against Sergeant Keller, Officer Rogers, and Officer Mecham for their 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 Sergeant Keller, Officer Rogers, and Officer Mecham 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 Sergeant Keller, Officer Rogers, and Officer Mecham 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 Sergeant Keller, Officer Rogers, and Officer Mecham could successfully argue that he reasonably believed his 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 Sergeant Keller’s, Officer Rogers’s, and Officer Mecham’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 Sergeant Keller’s, Officer Rogers’s, and Officer Mecham’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,


Sim Gill,
Salt Lake County District Attorney