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May 23, 2024

Chief Colleen Jacobs
West Valley City Police Department
3577 South Market Street
West Valley City, UT 84119

Chief Mike Brown
Salt Lake City Police Department
475 South 300 East
Salt Lake City, UT 84111

RE:	WVCPD Det. Tyler Thompson's Use of Deadly Force
Incident Location:	3852 W. Ridgecrest Drive, Taylorsville, Utah
Incident Date:	October 5, 2023
SLCPD Case No.:	23-224682
WVCPD Case No.:	23-85820
DA Case No.:	DA-INV-2023-2059

Dear Chiefs Jacobs and Brown:

This letter addresses the October 5, 2023, use of deadly force by West Valley City Police Department ("WVCPD") Det. Tyler Thompson against Joseph Nicholas Potts.

Det. Thompson's discharge of his firearm constitutes the "use of a 'dangerous weapon,'" which is defined under Utah law as "a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury to a person." Utah Code § 76-2-408(1)(a), (f). As a result, pursuant to Utah State law and an agreement among participating law enforcement agencies called the "Officer Involved Critical Incident" ("OICI") Investigative Protocol (*see* Utah Code § 76-2-408(2)-(3)), an investigative task force was called in to investigate the use of deadly force. The investigative task force was led by the Salt Lake City Police Department ("SLCPD") protocol team and comprised of law enforcement officers employed by agencies other than WVCPD. After the investigation, on November 15, 2023, the investigative task force's findings were presented to the Salt Lake County District Attorney's Office ("DA's Office"), which has the constitutional and statutory mandate to screen such matters for possible criminal charges.¹

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

SUMMARY OF FACTS AND FINDINGS

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

In the evening of October 4, 2023, Taylorsville City Police Department (“TVPD”) was dispatched to a residence after a female, who we refer to as “R. B.,” called 911 and reported that her husband, Joseph Nicholas Potts, was drunk, she had just wrestled a gun from him, and he was trying to shoot himself.² While R. B. was knocking on the neighbor’s door to the west,³ Mr. Potts began firing an AR. TVPD requested outside agency assistance and resources, including an armored vehicle.

As officers began arriving at the staging location, WVCPD Special Weapons and Tactics (“SWAT”) Operator Det. Tyler Thompson deployed as a sniper, and WVCPD Det. Grant Mawhinney deployed as his cover officer. Eventually, Det. Thompson and Det. Mawhinney positioned themselves on the roof of the residence directly south of the Potts residence where they continued to conduct surveillance. At about midnight, WVCPD SWAT Operator Det. Christian Zullo joined them on the roof.

About two hours after R. B. first called 911, and before SWAT executed a plan to extract the family from the neighboring residence, the officers on the roof observed “an intermittently flashing light,” which they determined to be IR (infrared). Det. Thompson, who was watching the front of the house, observed the front door open and Mr. Potts exit the residence and walk to the west side of the driveway—wearing a ballistic plate carrier on his torso and armed with a rifle. Mr. Potts then crouched down towards the ground on the west side of the driveway, between a parked vehicle and a fence on the west property line, and, as later described by Det. Thompson, appeared to drop an IR chem light and drop something on the ground next to it. Mr. Potts then laid in a prone position with his head and rifle pointed directly south—in the direction of the three officers who were positioned on the roof across the street. As he did so, Det. Thompson whispered, “That’s an IR chem light,” “And mags,” and then “He’s aiming at us,” and then fired his rifle four times at Mr. Potts from his position approximately 38 yards from Mr. Potts’s body.⁴

The officers called out “shots fired” over the radio and that the suspect was down. After SWAT approached in an armored vehicle, they observed that Mr. Potts was deceased and lying face-down with his head and both arms pointing in a southward direction, with his right hand on the grip of a Springfield Armory Saint AR-15 rifle which was on the driveway and pointed in a southward direction, and with his index finger inside of the weapon’s trigger guard.

² Dispatch first received a call from R. B. at 10:17 p.m. Officers were dispatched to the residence, located at 3852 W. Ridgecrest Drive in Taylorsville, at 10:19 p.m.

³ R. B. sought shelter at the neighbor’s house directly west of the Potts residence, at 3862 W. Ridgecrest Drive.

⁴ Det. Thompson fired at 12:23 a.m., less than 50 seconds after he first stated that the front door was open.

During the protocol investigation, investigators interviewed Det. Mawhinney and Det. Zullo, as well as Officer Albrecht, who was operating a drone when the incident occurred. However, Det. Thompson refused to interview.⁵ In addition, investigators documented the scene and examined physical evidence, reviewed 911 calls and the dispatch call log and radio recording, reviewed body-worn camera recordings and drone recordings, examined Det. Thompson's weapons, and reviewed the autopsy findings.

As we discuss in more detail below, we believe the facts of this matter, taken together with reasonable inferences derived from those facts, support a conclusion that if a criminal charge was filed against Det. Thompson for his use of deadly force, and a jury (or other finder of fact) was called upon to determine whether his use of deadly force constituted a criminal act, a jury would likely determine that he 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 Det. Thompson's use of deadly force would likely be subject to the affirmative legal defense of justification under Utah law,⁶ and we decline to file a criminal charge against him.

RELEVANT LEGAL STANDARDS

As relevant here,⁷ 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

⁵ Det. Thompson has a constitutional right to remain silent and to be presumed innocent of any wrongdoing.

⁶ 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.

⁷ 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 injury⁸ 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. Connor*, 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).

⁸ “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.⁹ 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, SLCPD led an investigative task force of law enforcement officers who conducted the investigation of Det. Thompson's use of deadly force, and the protocol investigation's findings were presented on November 15, 2023, 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.

In the evening of October 4, 2023, Taylorsville City Police Department ("TVPD") was dispatched to a residence in Taylorsville after a female, who we refer to as "R. B.," called 911 and reported that her husband, Joseph Nicholas Potts, was drunk, she had just wrestled a gun

⁹ 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. P. 4(c). In making that determination, the DA's Office must evaluate all evidence that will be legally admissible for or against the accused but may disregard evidence that likely will not be admissible at trial (*e.g.,* a coerced confession).

from him, and he trying to shoot himself.¹⁰ R. B. also reported that Mr. Potts was outside with an AR, and, while knocking on the neighbor's door to the west (while holding her infant child),¹¹ Mr. Potts began firing multiple rounds. TVPD requested outside agency assistance and resources, including an armored vehicle.¹²

As officers began arriving at the staging location, WVCPD SWAT Operator Det. Tyler Thompson deployed as a sniper, and WVCPD Det. Grant Mawhinney deployed as his cover officer.¹³ As Det. Thompson and Det. Mawhinney surveilled the Potts residence, Det. Thompson reported seeing Mr. Potts step out of the front door and fire another shot and then hearing additional shots fired,¹⁴ and also seeing Mr. Potts exit the front door with an AR-15 and shut the lights off, go back inside, and then seeing him pacing back and forth right just inside the front door.¹⁵

Eventually, Det. Thompson and Det. Mawhinney repositioned themselves on the roof of the residence directly south of the Potts residence and got "eyes" on the front of the residence.¹⁶ While on the roof, Det. Thompson reported hearing more shots fired,¹⁷ and that he could see the suspect inside the front door with an AR-15 in his hand and "bulky clothing or maybe a vest on."¹⁸ At about midnight, WVCPD SWAT Operator Det. Christian Zullo joined Det. Thompson and Det. Mawhinney on the roof and all three officers continued to watch the residence.

After switching to SWAT's radio channel, Det. Thompson whispered that SWAT was going to extract the family from the house to the west.¹⁹ Several minutes later, before the extraction plan was carried out, the officers observed "an intermittently flashing light" to the left of the front door, which Det. Thompson then reported seeing over the radio.²⁰ Det. Thompson then reported that he was peeking out one of the front windows. The officers determined that the

¹⁰ Dispatch first received a call from R. B. at 10:17 p.m. Officers were dispatched to the residence, located at 3852 W. Ridgecrest Drive in Taylorsville, at 10:19 p.m.

¹¹ During the incident, R. B. remained sheltered inside the neighbor's house at 3862 W. Ridgecrest Drive.

¹² Outside agency assistance was requested at 10:22 p.m. R. B. continued to speak with dispatch and advised that Mr. Potts was 300 pounds, ex-military, and had several rifles in the house.

¹³ Det. Thompson's body-worn camera recording begins at 10:52 p.m., at which time he was already deployed. Det. Mawhinney's recording begins shortly after, at about 10:56 p.m.

¹⁴ Det. Thompson reported hearing shots at 10:52-10:53 p.m. Det. Mawhinney also told investigators that before moving to their final position, he observed the subject approach the front door and fired a round upwards in the air (he saw the flash from the muzzle of the rifle).

¹⁵ Det. Thompson reported seeing Mr. Potts with an AR at 11:01-11:02 p.m.

¹⁶ Det. Thompson repositioned himself to the roof at about 11:09 p.m. Shortly after, at 11:15 p.m., WVCPD SWAT was called out.

¹⁷ Det. Thompson reported hearing additional shots at about 11:15 p.m., 11:19 p.m., and 11:20 p.m. Meanwhile, at about 11:16 p.m., dispatch relayed over the radio that Mr. Potts had just told R. B. that he had the house lined up with explosives, that R. B. did not know if that was an accurate threat, that they were buried in the yard, and that R. B. was wanting to go over to the house but they were trying to have her keep sheltered in the neighbor's.

¹⁸ Det. Thompson reported again seeing Mr. Potts with an AR-15 at 11:35 p.m. At about 11:35 p.m., it was relayed over the radio that he would shoot at them.

¹⁹ Det. Thompson relayed SWAT's plan at 12:10 a.m. on October 5, 2023.

²⁰ Det. Thompson stated he was seeing a light at 12:19 a.m.

light they were seeing was IR (infrared), and Det. Thompson then reported that the light sourced appeared to be IR and that Mr. Potts “may have access to IR night vision.”

Det. Thompson then whispered, “Front door’s open,” and reported on the radio, “Front door’s open. Suspect has exited.”²¹ Mr. Potts, wearing a ballistic plate carrier on his torso and armed with an AR-15 rifle, walked across the top of the driveway, and then to the west side of the driveway, between a Ford Fusion and a fence on the west property line.²² As he did so, Det. Thompson reported, “Suspect is walking up the front porch,” whispered, “Don’t let him exit the property line,” and then stated, “He’s walking towards the house to the west.” On the driver side of the Ford Fusion, Mr. Potts crouched down towards the ground and, as later explained by Det. Thompson to other officers, appeared to drop an IR chem light and drop something on the ground next to it,²³ and then laid in a prone position with his head and rifle pointed directly south—in the direction of the three officers who were positioned on the roof across the street. Meanwhile, Det. Thompson whispered, “That’s an IR chem light,” “And mags,” and then “He’s aiming at us,” and then fired his rifle four times at Mr. Potts from his position approximately 38 yards away.²⁴

The officers called out “shots fired” over the radio and that the suspect was down on the west side of the driveway. After SWAT approached in an armored vehicle, SWAT officers observed that Mr. Potts was deceased and lying face-down with his head and both arms pointing in a southward direction, with his right hand on the grip of a Springfield Armory Saint AR-15 5.56 rifle which was on the driveway and pointed in a southward direction, and with his index finger inside of the weapon’s trigger guard. Investigators later determined that Mr. Potts had four additional loaded 30-round AR-15 magazines on his person.²⁵

Witness Statements

Det. Tyler Thompson (WVCPD)

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

Det. Grant Mawhinney (WVCPD)

²¹ Det. Thompson stated that the door was open at about 12:22 a.m.

²² A drone recording captured Mr. Potts as he walked across the driveway, went to the side of the Ford Fusion, crouched down, and then laid down in a prone position.

²³ Similarly, Det. Mawhinney later told investigators that Mr. Potts appeared to crack a glow stick or chem light—which he could not see without his night vision—and set it on the ground. While protocol investigators did not locate any IR device or chem light, they did locate two cell phones which they believed were likely the source of the light signature the officers saw.

²⁴ Det. Thompson fired at 12:23 a.m., less than 50 seconds after he first stated that the front door was open.

²⁵ Investigators located three loaded AR-15 magazines in the ballistic vest and the fourth in a shorts’ pocket.

Protocol investigators interviewed Det. Mawhinney who is a Street Crimes detective with WVCPD. Det. Mawhinney said he learned that TVPD was dealing with a man armed with a rifle and responded to a call-out requesting outside agency assistance. Det. Mawhinney said he went to the staging location, put his equipment on, spoke with another Street Crimes detective about what was going on, and his supervisor arrived and requested that he be part of an IA team. Det. Mawhinney said that Det. Thompson arrived on scene with his SWAT sniper equipment, a plan was developed for him to deploy as a sniper asset to get eyes on the residence, and so that Det. Thompson wasn't alone, he went with him.

Det. Mawhinney said that they initially tried to set up surveillance on a house to the southwest, and eventually got onto the roof of the house directly across the street to the south and got set up with eyes on the front of the suspect's residence. Det. Mawhinney said he was using night vision on his helmet and believed Det. Thompson had night vision equipment as well. Det. Mawhinney explained that throughout the time they were maneuvering to the house they ended up at, they heard multiple shots coming from the area of the target residence, most of which sounded interior to the home. Det. Mawhinney also said that before moving to the final house, he saw the subject approach the front door and fire a round into the air, somewhat to the south, but directed upwards, from what appeared to be a longer rifle (he saw the flash from the muzzle).

Det. Mawhinney said that after they got set up at the final house, he was monitoring the regional channel and believed Det. Thompson and Det. Zullo—once he joined them on the roof—were both monitoring the SWAT channel. Det. Mawhinney explained that the original plan was to swap him out (he was not SWAT), and by the time Det. Zullo got on the roof, Det. Thompson said he needed help covering the two-side of the house (the side that faces to the west, to the neighbor's house) and so he decided to stay until more SWAT assets could replace him.

Det. Mawhinney explained that there was an extrication plan set up for SWAT to take the occupants of the house directly west of the target house out to safety and explained that they believed that the subject might try to go over there. Det. Mawhinney said that before that process was initiated, he observed the suspect walk out, appearing to be wearing some sort of vest (it appeared to be some kind of load-carrying vest), and carrying an item in both hands (he could not tell what he had in his hands because of the distance and with the night vision). Det. Mawhinney said the suspect exited the front door, moved to the driveway to the west, and went to the driver's side of a black sedan.

Det. Mawhinney said that it looked like the suspect cracked a glow stick chem light, and explained that he could only see it with his night vision so he assumed it was an infrared chem light (he'd also received information over the radio that lead him to believe that it was an infrared chem light). Det. Mawhinney said he believed it was possible that the suspect also had access to night vision, which meant that their position was not as advantageous as it would be with somebody just trying to see them in the dark (he explained that they were back lit by the night and that with night vision, it would be very easy to see people sitting on a roof).

Det. Mawhinney said that the suspect bent down, cracked that chem light, and set it down on the ground to the left of the vehicle, and then it looked like he slid something underneath the car or got close to putting something underneath the car. Det. Mawhinney said that then the suspect looked like he took up a fighting position in the prone—he got down into a prone position, with his head facing to the south directly to the house that they were on top of and with his legs behind him to the north. Det. Mawhinney said that at that point, he could not tell what the suspect was doing other than getting in the prone, so he asked Det. Thompson what he was doing. Det. Mawhinney said that Det. Thompson replied something to the effect of, “He’s aiming at us,” and then shots were fired by the police.

Det. Mawhinney said he got on the regional radio channel, said, “Shots fired by police,” and then maintained security on the suspect on the ground from his position on the roof (he activated his infrared laser illuminator to illuminate the area around the suspect). Det. Mawhinney said that SWAT pulled up an armored vehicle, they got out and began giving callouts, and Det. Thompson notified SWAT over the radio that the suspect potentially put something under the vehicle and so they might want a bomb asset to assess the area. Det. Mawhinney further explained that he believed there might potentially be some sort of explosive in the yard and that the suspect potentially could have been doing something underneath the car because at some point he had heard on the radio that the suspect had made threats to somebody that he had booby-trapped the front yard and that if he saw cops he would shoot them.

Det. Mawhinney said that SWAT eventually approached the suspect on the ground and then began to maneuver around to the porch area. Det. Mawhinney said that their SWAT commander came around to the back of the house, began talking to Det. Thompson, and shortly after, he was told that he could get off the roof.

Det. Mawhinney explained that he, Det. Thompson, and Det. Zullo were positioned in that order, left to right, looking at the suspect house to the north, that he was mainly in the prone on the roof, that they were kind of bladed off the apex of the roof which ran east to west, and that they could see the door.

Det. Christian Zullo (WVCPD)

Protocol investigators interviewed Det. Zullo who is a Street Crimes detective with WVCPD and on their SWAT team. Det. Zullo said he was with another SWAT operator, Det. Thompson, at their storage facility where they keep their SWAT vehicles and heard over the radio that TVPD had a barricaded subject with a firearm and was requesting some of their armor to come down there. Det. Zullo said that Det. Thompson took off to the scene and he got the armored vehicle ready and then drove it down there. Det. Zullo said that when he got there, they loaded a team in the armored vehicle, waited on scene, the SWAT page went out, and he remained with the vehicle as driver until some other SWAT officers arrived, at which point he deployed as a sniper with Det. Thompson.

Det. Zullo said he went on foot to where Det. Thompson and Det. Mawhinney (another Street Crimes detective) were, got on the roof, and started conducting surveillance with them. Det. Zullo said that after a little while, they started seeing what looked like some IR signature coming from inside the house, which they called out [on the radio]. Det. Zullo said that a few minutes later, they saw the front door open and saw a male exiting. Det. Zullo said he kept focus on the front door while the other guys started following the male. Det. Zullo explained, "a few moments later, I could see that he was getting down crouching, almost like he was laying on the ground. I couldn't identify exactly what he was doing. And then, I don't know, maybe 30 seconds after that, I heard, 'He's pointing his gun at us,' and then a couple shots went out."

Det. Zullo explained that Det. Thompson and Det. Mawhinney had originally deployed up on the roof together, they were waiting for other operators to get up there and relieve Det. Mawhinney with one of their other snipers, and that after he met up with Det. Thompson, Det. Mawhinney remained on scene. Det. Zullo explained that he could hear Det. Thompson and Det. Mawhinney communicating but couldn't make out exactly what was being said, and Det. Thompson informed him to keep his focus on the front door. Det. Zullo explained that they were positioned up on the roof across the street, facing north, and were peeking over the ridge of the pitchfork roof. Det. Zullo said that he was basically right in the middle of the roof of the house directly across the street, Det. Thompson was just off his left shoulder, and Det. Mawhinney was just off Det. Thompson's left shoulder.

Det. Zullo explained that when he saw the IR signature, he believed both he and Det. Thompson were "on gun," and described that it looked like the infrared signature kept flashing on and off, almost like someone was trying to look outside and see what was going on out there, and it was just to the left of the front door at a bay window. Det. Zullo said that it took a few times of seeing the flashing light until he figured out that he could only see it with his night vision and figured out it was infrared. Det. Zullo explained that he saw the light keep flashing for maybe three or four minutes, and then the front door opened fairly quickly after that.

Det. Zullo explained he saw the male exit and start moving towards the garage where all the cars were (towards the west), and they had information that his girlfriend or wife was in a house just to the west, and the big concern at that point was that he was heading that way and had already shot some rounds off. Det. Zullo said that Det. Thompson said, "He's walking to the west," which made him believe that Det. Thompson was tracking him, so he remained focused on the front door. Det. Zullo explained that he and Det. Thompson were in close proximity so he could hear Det. Thompson getting on the radio and letting their tactical team know that he was walking to the west. Det. Zullo said that at that point, he took a glance over and saw the male crouching down, and then went back to the front door and heard Det. Thompson say, "He's aiming, he's pointing his gun at us," and then the shots rang out relatively quick after that. Det. Zullo said that when he heard that the subject was pointing a gun, he attempted to transition over to see if he could get his rifle on him, but he wasn't able to by the time shots went off.

Officer Jason Albrecht (TVPD)

Protocol investigators interviewed Officer Albrecht who is a patrol officer with Taylorsville Police Department and was one of the initial officers dispatched on the call. Officer Albrecht explained that while he was on scene, he was asked to fly a drone. Officer Albrecht explained that he and another officer took turns flying drones in, and they mainly stayed above the house to the west where the victim was to maintain a visual (on the southwest corner).

Officer Albrecht said that as officers were trying to develop a plan to get a rescue in to get the wife, daughter, and neighbors, information came out that the suspect had thermal vision, and before that, that he had body armor. Officer Albrecht said that as they were maintaining a visual of the front of the house—he was just watching a screen—they were saying that they were planning on bringing the armored vehicle in. Officer Albrecht said that before they drove the armored vehicle in (it had just passed him and was already en route to pull up), he saw the suspect come out of a breezeway to the driveway, obviously in a hurry, and immediately went in between the car and the fence and proned out, and he could see that the suspect had a gun. Officer Albrecht said that as the suspect proned out on the driveway, he heard shots fired and did not see the suspect move again. Officer Albrecht described, “he knew where he was going. It was quick and deliberate from that breezeway, laid down on the driveway, and proned out.” Officer Albrecht explained that the suspect was pointed directly across the street, where the sniper units were (he believed they were positioned at 6 o’clock at 60 or 70 yards).

Officer Albrecht explained that the drone he was using had thermal imaging and he could tell how the suspect was walking. Officer Albrecht said that he started recording when he saw the suspect exit and as soon as the suspect came off the sidewalk that leads up to the door. Officer Albrecht said he did not recall whether he was zoomed in or not but explained that he could see it. Officer Albrecht explained that after the shooting, he dropped the drone down to help see if the suspect was still moving. Officer Albrecht said he could see that the suspect still had his hand on the rifle and had a plate carrier or body armor on.

Additional Witnesses

Protocol investigators interviewed R. B. (Mr. Potts’s wife and the 911 caller), as well as the neighbors to the west; however, neither they, nor any other officers, saw the events immediately preceding Det. Thompson’s use of force. They are mentioned here for the purpose of completeness.

Physical Evidence

Protocol investigators inspected and documented the OICI scene, reviewed 911 calls, reviewed the dispatch radio recording and call log, reviewed body-worn camera recordings and drone recordings, downloaded Det. Thompson’s weapons, and reviewed the autopsy findings.

OICI Scene

Protocol investigators inspected the OICI scene located at the Potts residence, located at 3852 W. Ridgecrest Drive in Taylorsville, as well as the exterior yard and roof of the single-story residence on the other side of the residential street and directly to the south, 3857 W. Ridgecrest Drive. The Potts residence faced south, had a porch on its south side with an entry/exit door to the home at the east end of the porch, and had a window near the west end of the porch. A garage-type area was at the west end of the home, with a driveway leading up to it. In the driveway, a black Ford Fusion was along the west side and an off-white Cadillac Escalade was along the east side, both facing north.

Investigators located Mr. Potts's body lying face-down along the west side of the driveway and near the front left side of the Ford Fusion, with his head pointing in a southward direction and both arms extended out in front of him in a similar direction. Mr. Potts's right hand was on the grip of a Springfield Armory Saint AR-15 5.56 rifle which was pointed in a southward direction on the driveway and equipped with iron sights and a stabilizing brace. Mr. Potts's right index finger was inside of the weapon's trigger guard, on the right-facing side of the trigger. Investigators determined that the weapon's safety was set to fire and the weapon was loaded with a round in the chamber and 15 cartridges in the inserted magazine.

Mr. Potts was wearing a camouflage body armor ballistic plate carrier on his torso (with armor plates covering his chest and back), no shirt or other clothing on his torso, shorts, and no shoes. Investigators located three loaded 30-round AR-15 magazines in the body armor and another loaded AR-15 magazine in the left front pocket of his shorts. Investigators located two cell phones on the driveway underneath Mr. Potts's body.

Outside the residence, in the driveway, investigators observed a skip ricochet mark just north of the right front tire of the Escalade and a bullet fragment near the left rear tire. On the front porch, investigators located a live rifle round and a loaded 30-round capacity AR-15 rifle magazine. Also in the front porch area, investigators observed a window screen with a hole in it and a section of the screen pointed away from the home (southward) and broken glass in the window area. From inside the Cadillac Escalade, investigators also recovered two pistols (a Glock 19 9mm handgun and a Springfield XDS 9mm handgun), which were both loaded with a round in the chamber and a loaded magazine.²⁶

Inside the residence, investigators observed holes/damage consistent with numerous rounds fired inside the home and located numerous rifle shell casings, three 12-gauge shotgun shells, two shotgun wads, and a bullet fragment. Throughout the residence, investigators located Tannerite powder, additional firearms, and ammunition, including several loaded 30-capacity AR-15 style magazines, many live rifle rounds, an optical rifle scope, two 12-gauge shotguns, an airsoft rifle, and two pistols.

Across the street, at 3857 West Ridgecrest Drive, investigators located a total of four .223 shell casings (one in the grass below the southwest corner of the roof, two on the south-facing slope of the roof, and one in the front yard just north of the home). Investigators determined that

²⁶ Notably, R. B. told investigators that she had taken two handguns from Mr. Potts and locked them in the vehicle.

the distance between Det. Thompson's shooting position and Mr. Potts's body was approximately 38 yards.

911 Calls, Radio Recording, and Call Log

Investigators reviewed 911 calls, radio traffic, and the dispatch call log. R. B. first called 911 on October 4, 2023, at 10:17 p.m., and shortly after, call details were provided in the dispatch call log and officers were dispatched.²⁷ The log notes the "intermittent flashing light" on October 5, 2023, at 12:20 a.m., that the "light source appears to be IR/night vision" at 12:22 a.m., and that he was "walking towards the house" and "proned out on the driveway on the side of the vehicle, and shots fired by police at 12:23 a.m."

Body-Worn Camera Recordings

Protocol investigators reviewed body-worn camera recordings relating to this incident, including from Det. Thompson and Det. Mawhinney.²⁸ The recordings did not capture video depicting the incident (due to the cameras being obscured from the officers' positioning on the roof and because it was dark outside); however, they captured audio relating to the incident which is described in part below (for the complete audio, please refer to the recording itself).

Det. Thompson's video recording begins after he has arrived on scene, over an hour and a half before the OICI occurred (timestamp 22:51:40). Notably, as he conducts surveillance with Det. Mawhinney, multiple shots are heard, and Det. Thompson is heard radioing that Mr. Potts "just stepped out the door and fired another shot" (timestamp 22:52:57), that "he just fired three more shots and counting" (timestamp 22:53:15), that "he just exited the front door with an AR-15 and shut the lights off" and "he just went back inside" (timestamp 23:01:44 and 23:02:03), and "I can see him pacing back and forth right just inside the front door" (timestamp 23:02:49).

After repositioning on the roof of the house directly south of the Potts residence (timestamp 23:09), more shots are heard, and Det. Thompson is heard radioing "we just had another shot fired from inside the home (timestamp 23:15:52), "we just had another shot fired" (timestamp 23:19:34), and "we just had two more shots fired" (timestamp 23:20:27). Det. Thompson is also heard radioing "the storm door—the one-side door—is closed but the inside door is open. I can see suspect. He's still got an AR-15 in his hand. . . he's got some kind of bulky clothing or maybe a vest on" (timestamp 23:35:43) and "we have redeployed to 6 o'clock, 70 yards" (timestamp 23:38:28). At timestamp 00:05:27, Det. Thompson tells one of the officers he's with that he wants him primarily watching the two-side [west-facing]. Det. Thompson radios that he's with [Det. Zullo] and that "we have the entire front yard and the front door. We can see part of the bay window on the one-side" (timestamp 00:06:25), after which he switches his radio channel [to the SWAT channel]. At timestamp 00:09:49, he whispers that they are going to extract the family from the house to the west, asks another officer to maintain the two-

²⁷ Importantly, because Det. Thompson was not privy to the 911 calls, we did not rely on their contents for the purpose of our screening analysis.

²⁸ Det. Zullo was not wearing a body-worn camera that night.

side, and says, "I think if anything, he'll come out the front door." He then advises Det. Zullo, "I'm not a hundred percent sure, but looked like he might've been wearing a vest of some kind earlier. Just keep that in mind" (timestamp 00:10:27).

At timestamp 00:18:06, Det. Thompson communicates to an officer he's with, "to the left of the door, I saw it earlier," and then asks if he's also seeing it just to the left of the door. Det. Thompson then radios, "Hey, we're just seeing an intermittently flashing light signature, uh, towards the center of the one-side [front] of the residence, every so often" (timestamp 00:19:57). Det. Thompson says, "He's, uh, he's peeking one of the windows on the one-side" (timestamp 00:20:20), and then confirms that one of the officers he is with has the two-side [west-facing] (timestamp 00:21:26). Det. Thompson whispers, "I think that is IR, dude. Okay. IR-disciplined. No, no lasers, no illuminators" (timestamp 00:21:43), and then radios, "That light source appears to be IR. Suspect may have access to IR night vision" (timestamp 00:22:08).

At timestamp 00:22:52, Det. Thompson whispers, "Front door's open," and then radios, "Front door's open. Suspect has exited". Det. Thompson then radios, "Suspect is walking up the front porch", whispers, "Don't let him exit the property line", and then states, "He's walking towards the house to the west". Det. Thompson whispers, "That's an IR chem light," "And mags," and then, "He's aiming at us." Four shots are then heard (timestamp 00:23:40-00:23:42).

Detectives Zullo and Mawhinney call out "shots fired" over the radio, and Det. Thompson also radios, "Sierra one, shots fired by police, suspect is down, west side of the driveway" (timestamp 00:23:51). Det. Thompson then states, "No lights, just IR, IR only. . ." (timestamp 00:24:06). As officers are heard in the street below, Det. Thompson says to an officer he's with, "He dropped an IR chem light, did you see that?" to which the officer responds that he did (timestamp 00:25:11). As officers continue to be heard below, Det. Thompson advises on the radio:

So, for information, uh, suspect, uh, obviously had some kind of IR illuminator, laser light source. Uh, when he exited, he was crouching down, moving tactically. Uh, where he is now he dropped an IR chem light and he dropped something on the ground next to the chem light. I couldn't tell what it was. It was about the size and shape of like a maybe a 30-round AR magazine or something like that, but it could have been some kind of explosive as well, I don't know, I mean just taking him at his word (timestamp 00:27:00).

Det. Thompson is heard asking the officers he's with, "What do you guys think, do you think he dropped a magazine?" to which they respond that it looked like he put something under the car, like he was looking under the car (timestamp 00:28:28). A little while later, in reference to bomb clearance, Det. Thompson states, "So I don't know if you heard the context, but when he came out, he was crouching down, he was moving tactically. He dropped an IR chem light and uh, it sounds like a cache of ammunition" (timestamp 00:43:09).

Drone Recordings

Investigators reviewed video recordings from drones that were used during the incident. Of relevance, one recording, which is in black and white, begins after Mr. Potts has exited the residence and captures him walking in the driveway and around to the driver side of the Ford Fusion, while holding a long object. He then crouches/kneels toward the ground while moving around, and then lies down in a prone position on the side of the driveway with his head raised and facing south. About a minute into the recording, an armored vehicle is seen driving into view.

Weapons Downloads

Protocol investigators examined and downloaded Det. Thompson's BCM Rifle Company BCM4 AR-15 duty rifle, which had an inserted 20-round capacity magazine with 5-round extender. Protocol investigators counted one .223 cartridge in the chamber and 20 .223 cartridges in the inserted magazine, for a total of 21 cartridges.²⁹ Presuming Det. Thompson began with a fully loaded inserted magazine and an empty chamber, that count indicates he likely fired up to four rounds during the incident, which is consistent with the four shots captured on his body-worn camera recording and the four casings located on scene.

Autopsy

Ben Murie, D.O., with the Utah Office of the Medical Examiner performed an autopsy of Mr. Potts's body and determined that he died of gunshot wounds of the head. Dr. Murie found that gunshot trajectories were generally front to back, left to right, and downward, with indeterminate ranges of fire, and recovered multiple metal projectile fragments from his body. Dr. Murie noted that postmortem toxicology detected elevated levels of ethanol (0.20g/100mL (blood); 0.26.g/mL (vitreous)).

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)).

²⁹ Investigators also examined Det. Thompson's spare 30-round capacity rifle magazine, which was fully loaded, as well as his handgun which was not used during the incident.

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 Det. Thompson's use of deadly force. In other words, we believe that if charges were filed against him for his use of deadly force, a jury (or other finder of fact) would have a reasonable basis to conclude that he used deadly force because he 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 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 Det. Thompson's use of deadly force. In other words, we believe that if a charge was filed against him for his use of deadly force, a jury (or other finder of fact) would have a reasonable basis to conclude that he used deadly force because he reasonably believed that deadly force was necessary to prevent death or serious bodily injury to himself 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, Det. Thompson refused to be interviewed or provide a statement explaining his use of deadly force, as is his constitutional right. Without his explanation as to his use of deadly force, we don't know what his actual beliefs were or his reason(s) for his decision to fire his weapon. We are therefore left to infer the rationale for his apparent decision to use deadly force based on other evidence we received, as well as the reasonable inferences to be drawn from that evidence. In similar situations where a shooting officer has refused to answer questions or provide a statement, we have proceeded in this manner. In doing so, however, we have never strayed from the objective evidence or testimony of other witnesses, nor do we do so here. While it is the prerogative and constitutional right of an officer not to share information with investigators, an officer's refusal to explain his or her apparent decision to use deadly force does not diminish our duty to explain and account for our decisions and conclusions or absolve us of our obligations to the community to present the truth to the community about an officer's use of deadly force on a member of our community.

While we do not know Det. Thompson's actual beliefs and thus cannot say whether he "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 Det. Zullo's statement to investigators, that he and Det. Thompson—who are both SWAT Operators—were together when they first heard over the radio that TVPD had a barricaded subject with a firearm and was requesting some of their armored to come down there, and that Det. Thompson then took off to the scene. We know from Det. Mawhinney's statement to investigators that after arriving at the staging location, a plan was made for Det. Thompson to deploy as a sniper and get eyes on the residence, that he was assigned to go with him, and that

they set up surveillance on the house and eventually relocated to a position on the roof of the house directly south of the Potts's residence.

We also know, from Det. Thompson's body-worn camera recording, that he was on scene over an hour and a half before firing his weapon, and we know from his statements some of his perceptions and some of the information that he was aware of. For example, we know that before going onto the roof of the house to the south, Det. Thompson saw Mr. Potts step out of the front door and fire another shot and then heard additional shots fired, and saw Mr. Potts exit the front door with an AR-15 and shut the lights off, go back inside, and then seeing him pacing back and forth right just inside the front door." After relocating onto the roof directly south of the Potts residence, Det. Thompson heard more shots fired and saw Mr. Potts inside the front door with an AR-15 in his hand and "bulky clothing or maybe a vest on."

From his communications, we also know that after switching to SWAT's radio channel, Det. Thompson was aware of SWAT's plan to extract the family from the house to the west, and that before the extraction plan was carried out, he and the other officers observed "an intermittently flashing light" to the left of the front door and that he saw Mr. Potts was peeking out one of the front windows. We know that the officers determined that the light they were seeing was IR (infrared), which indicated to Det. Thompson that Mr. Potts "may have access to IR night vision." Det. Thompson saw the front door open, and Mr. Potts exit and walk "towards the house to the west." Det. Thompson then observed, "That's an IR chem light," "And mags," and "He's aiming at us" before firing his rifle four times. After the shooting, Det. Thompson further explained (over the radio):

So, for information, uh, suspect, uh, obviously had some kind of IR illuminator, laser light source. Uh, when he exited, he was crouching down, moving tactically. Uh, where he is now he dropped an IR chem light and he dropped something on the ground next to the chem light. I couldn't tell what it was. It was about the size and shape of like a maybe a 30-round AR magazine or something like that, but it could have been some kind of explosive as well, I don't know, I mean just taking him at his word.

Based upon the facts in this case, as outlined here, we believe that it is reasonable for us to infer that Det. Thompson believed he needed to use deadly force against Mr. Potts to prevent death or serious bodily injury to themselves and others, and that such a belief was reasonable. Mr. Potts presented an immediate threat of death or serious bodily injury to the officers on the roof when, after exiting his residence wearing a ballistic vest and armed with a rifle, he quickly moving to a crouched position to the side of the Ford Fusion and then laid down in a prone position in the driveway with his rifle pointed south, directly across the street to where the officers were positioned, "aiming at [them]." Notably, while we ultimately believe, based upon the evidence produced by the protocol investigation, that the officers were factually mistaken about Mr. Potts having IR night vision, we do not believe that Det. Thompson was unreasonable in his belief that Mr. Potts had night vision or ultimately, that he was aiming at them.

The totality of the facts in this case, taken together with reasonable inferences about Det. Thompson's decision to use deadly force, would likely cause a jury to determine that his use of deadly force satisfies the elements of the affirmative legal defense of justification. Assuming his testimony in a criminal case (if any) would be consistent with 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 he used deadly force because he reasonably believed deadly force was necessary to prevent death or serious bodily injury to himself and/or 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 Det. Thompson for his use of deadly force, and he 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 he did not reasonably believe that using deadly force against Mr. Potts was necessary to prevent death or serious bodily injury. We do not believe the facts of this matter would support an effort to disprove the justification defense. We believe Det. Thompson would likely claim successfully at trial that he reasonably believed deadly force was necessary; therefore, his use of deadly force would be found justified and he 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 Det. Thompson for his use of deadly force, we would have to show evidence to prove, beyond a reasonable doubt, that either Det. Thompson did not believe he needed to use deadly force to prevent death or serious bodily injury (to himself or another); or, that if he did believe he needed to use deadly force, that his belief was 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 Det. Thompson 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 Det. Thompson 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 Det. Thompson could successfully argue that he reasonably believed his use of deadly force was necessary to prevent death or serious bodily injury to himself 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 Det. Thompson'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 Det. Thompson's decision to use deadly force, would likely support a finding that he reasonably believed deadly force was necessary to prevent death or serious bodily injury to himself 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 him a legal defense to a criminal charge. Accordingly, we decline to file a criminal charge against Det. Thompson for his use of deadly force in this matter.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Sim Gill". The signature is written in a cursive, flowing style. It is positioned above a horizontal line that serves as a separator between the signature and the printed name below.

Sim Gill,
Salt Lake County District Attorney