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February 25, 2025

Chief Ken Wallentine
West Jordan Police Department
8040 S. Redwood Road
West Jordan, UT 84088

Chief Cameron Paul
American Fork Police Department
75 East 80 North
American Fork, UT 84003

RE: AFPD Sergeant Quinn Adamson's, AFPD Detective Ron Bibeau's, and AFFD Captain Darren Cooper's Use of Deadly Force

Incident Location: 820 W. Timbercreek Way, Apartment #2201, Salt Lake, Utah

Incident Date: February 7, 2024

WJPD Case No.: WJ24-6013

AFPD Case No.: 24AF01049

DA Case No.: DAINV-2024-240

Dear Chiefs Wallentine and Paul:

This letter addresses the February 7, 2024, use of deadly force against Kevin Mitchell Ballew by American Fork Police Department (“AFPD”) SWAT Team Sergeant Quinn Adamson, Detective Ron Bibeau, and Medic Darren Cooper.¹

Sergeant Adamson's, Detective Bibeau's, and Medic Cooper's discharge of their firearms constitutes the "use of a 'dangerous weapon,'" which is defined under Utah law as "a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury to a person." Utah Code § 76-2-408(1)(a), (f). As a result, pursuant to Utah State law and an agreement among participating law enforcement agencies called the "Officer Involved Critical Incident" ("OICI") Investigative Protocol (*see* Utah Code § 76-2-408(2)-(3)), an investigative task force was called in to investigate the use of deadly force. The investigative task force was led by the West Jordan Police Department ("WJPD") protocol team and comprised of law enforcement officers employed by agencies other than AFPD. After the investigation, on April 23, 2024, the investigative task force's findings were presented to the Salt

¹ Medic Cooper is employed by American Fork Fire & Rescue Department (“AFFD”) and is certified as a Special Function Officer by the Utah Peace Officer Standards and Training (“POST”).

Lake County District Attorney's Office ("DA's Office"), which has the constitutional and statutory mandate to screen such matters for possible criminal charges.²

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 February 6, 2024, AFPD detectives began looking for a male suspect, Kevin Mitchell Ballew, who they believed burglarized the office building of a tow lot in American Fork and stolen keys, fired 20 9mm rounds into the lock of the tow yard's gate, stole his impounded vehicle from the tow yard, and was armed with a 9mm handgun.

The next evening, on February 7, 2024, detectives pinged Mr. Ballew's phone and located Mr. Ballew inside the stolen vehicle at the Eight20 Apartment complex in South Salt Lake. As detectives conducted surveillance on Mr. Ballew, the AFPD SWAT Team responded to a nearby location and made a plan to take Mr. Ballew into custody. At 8:01 p.m., before the plan was put into effect, Mr. Ballew exited his vehicle and walked into the apartment complex.³ SWAT then moved in and attempted to locate Mr. Ballew, who fled and evaded officers inside the apartment complex.

At 8:09 p.m., officers located Mr. Ballew in front of an apartment door. Officers immediately challenged Mr. Ballew at gunpoint, commanding him to drop the gun. Mr. Ballew raised the gun he was holding in his right hand, and Sergeant Adamson, Detective Bibeau, and Medic Cooper fired their handguns, and Detective Konecny also fired a less lethal (40 mm) round (K-9 Officer Manis did not fire a weapon).⁴

Officers held their weapons on Mr. Ballew as they gave additional commands and then approached with a shield and immediately began to provide emergency medical aid⁵. Officers observed Mr. Ballew's handgun—a loaded black Taurus G3c 9mm pistol—on the ground between his legs. Eventually, emergency medical responders arrived and transported Mr. Ballew to a hospital, where he received treatment for his injuries.⁶

² 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).

³ The detective conducting surveillance observed Mr. Ballew exit the vehicle at about 8:01 p.m.

⁴ Shots were fired at 8:09 p.m.

⁵ The AFPD SWAT team included two medics who, as part of the SWAT team were ready and available to provide instantaneous, life-saving medical treatment.

⁶ Investigators determined that Mr. Ballew was struck approximately eight times and sustained serious injuries as a result of the incident.

During the protocol investigation, Sergeant Adamson, Detective Bibeau, and Medic Cooper refused to be interviewed, as is their constitutional right; in addition, Detective Konecny also refused to be interviewed regarding the incident or her use of less-lethal force.⁷ However, protocol investigators interviewed K-9 Officer Manis about the incident, as well as other officers and witnesses who did not see the events immediately preceding the shooting. Protocol investigators also documented the scene and examined physical evidence, reviewed the dispatch call log, reviewed body-worn camera recordings and Star 9 helicopter surveillance footage, examined the involved officers' weapons, and reviewed limited medical records for Mr. Ballew.

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 Sergeant Adamson, Detective Bibeau, and/or Medic Cooper 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 Adamson's, Detective Bibeau's, and Medic Cooper's use of deadly force would likely be subject to the affirmative legal defense of justification under Utah law,⁸ and we decline to file a criminal charge.

RELEVANT LEGAL STANDARDS

As relevant here,⁹ 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

⁷ Sergeant Keller, Officer Rogers, and Officer Mecham each have a constitutional right to remain silent and to be presumed innocent of any wrongdoing.

⁸ A jury is instructed that if the evidence in a case supports an affirmative defense, they must find the person charged "not guilty" of the alleged offense.

⁹ Also relevant, but less so given the officer's status as a law enforcement officer, is the articulation of "justification" in Utah State law that applies to individuals more generally, including civilians, as provided in Utah Code § 76-2-402(2):

- (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...

- (ii) (A) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or

(B) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to an individual other than the suspect if apprehension is delayed; or
- (c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or an individual other than the suspect.

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

Based on this statute, the legal defense of justification, then, may be available where a law enforcement officer “reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury¹⁰ 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

¹⁰ “Serious bodily injury” is defined, in turn, as “bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.” Utah Code § 76-1-101.5(17).

immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.

Id. (citations omitted and emphasis added).

RELEVANT ETHICAL STANDARDS

The DA's Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing.¹¹ Honoring ethical standards ensures that everyone affected by the criminal justice system—suspects, defendants, victims, the community, and the system itself—is treated fairly, honorably, and respectfully.

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

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

FACTS DEVELOPED DURING OICI INVESTIGATION

The following facts were developed from the protocol investigation of the matter. As noted previously, WJPD led an investigative task force of law enforcement officers who conducted the investigation of Sergeant Adamson's, Detective Bibeau's, and Medic Cooper's use of deadly force, and the protocol investigation's findings were presented on April 23, 2024, to the DA's Office to screen for possible criminal charges. Should additional or different facts

¹¹ Among the legal rules a prosecutor must follow is the requirement that "probable cause" must exist to believe an offense (i) was committed and (ii) was committed by the accused. *See, e.g.,* Utah R. Crim. Pro. 4(c). In making that determination, the DA's Office must evaluate all evidence that will be legally admissible for or against the accused but may disregard evidence that likely will not be admissible at trial (*e.g.,* a coerced statement).

subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

On February 6, 2024, AFPD detectives began looking for a male suspect, Kevin Mitchell Ballew, who they believed burglarized the office building of a tow lot in American Fork and stolen keys, fired 20 9mm rounds into the lock of the tow yard's gate, stole his impounded vehicle from the tow yard, and was armed with a 9mm handgun.¹²

The next evening, on February 7, 2024, detectives pinged Mr. Ballew's phone and located Mr. Ballew inside the stolen vehicle at the Eight20 Apartment complex in South Salt Lake.¹³ As detectives conducted surveillance on Mr. Ballew, the AFPD SWAT Team responded to a nearby location and made a plan to take Mr. Ballew into custody, which included the assistance of a Utah Department of Public Safety Star 9 helicopter. As the plan was being put into effect, detectives observed Mr. Ballew exit the vehicle and walk into the apartment complex.¹⁴ AFPD SWAT moved in, located Mr. Ballew's empty vehicle, and attempted to locate him.

At 8:05 p.m., Star 9 advised that there was a person in a common area of the complex who was walking eastbound, and then advised that the person was running westbound in the common area; meanwhile, three of the officers observed Mr. Ballew in the apartment complex walking east towards them before he took off west.¹⁵ Officers then pursued and attempted to locate Mr. Ballew in the apartment complex with the assistance of the Star 9 helicopter.

At 8:08 p.m., officers by the north parking lot—Sergeant Adamson, Medic Cooper, Detective Bibeau, and K-9 Officer Manis—located Mr. Ballew walking next to the parking lot (north of Building 23) and began yelling commands of "Police! Stop!" and "Police! Canine!" Mr. Ballew then turned and fled back into the apartment complex (between Buildings 22 and 23), and the officers pursued. Star 9 called out that he was running by another dog, and then advised, "He's in the breezeway. Be careful. He's going down in the breezeway. Of building 22." As the officers then ran westbound across the front of Building 22, Star 9 advised that he was to their right, in the breezeway. The officers then went around the corner of Building 22 and north (between Buildings 21 and 22). Notably, protocol investigators later learned that Mr. Ballew had attempted to hide by entering the unlocked front door of Apartment 2201 where he encountered a male resident and then quickly exited back out (during the interaction, the occupant observed that Mr. Ballew had a handgun on him).

Star 9 told officers that they just passed him, to stop, that he went into the staircase that they just walked by. The officers turned back around, and as they headed southbound, with

¹² Mr. Ballew's vehicle, a silver 2020 Honda Civic, was impounded on February 2, 2024, during a traffic stop (the vehicle's registration was cancelled and Mr. Ballew's driver license was invalid). During the encounter, Mr. Ballew was found to have a firearm on his person. The firearm was returned to Mr. Ballew after the officer determined that it was not stolen and Mr. Ballew was legally allowed to possess the firearm.

¹³ Mr. Ballew's vehicle was parked in the northeast corner of the complex.

¹⁴ The detective conducting surveillance observed Mr. Ballew exit the vehicle at about 8:01 p.m.

¹⁵ Detectives Lott, Groesbeck, and Fraughton.

Detective Konecny joining them, Star 9 told them to keep walking towards the backside of the building, that he was hiding in the breezeway, and to turn to their left and walk and he was to their left in the breezeway. At 8:09 p.m., after coming around the corner of Building 22, officers located Mr. Ballew in front of the front door of an apartment (Apartment 2201). Officers immediately challenged Mr. Ballew at gunpoint, yelling at him to drop the gun.¹⁶ Mr. Ballew raised the gun he was holding in his right hand, and Sergeant Adamson, Detective Bibeau, and Medic Cooper fired their handguns, and Detective Konecny also fired a less lethal (40 mm) round.¹⁷

Officer Manis later described to investigators:¹⁸

As we came around the building, I remember seeing him in front of a doorway. I think I started giving him commands to show me his hands or he is gonna get bit. As I was in the process of that, I saw him bring gun up to his head. I want to say he started to move it away from his head. And then shots rang out. When I heard shots, I lost hold of my dog. And so my focus went to [my dog] to make sure he wasn't gonna get and get shot.

Officer Manis further recalled:

I do remember Detective Bibeau saying, "Drop the gun," which is honestly I think kind of what also drew my attention to the fact that he actually had a gun. 'Cause I did kind of see his elbow and then I think I heard him say "Drop the gun" and that's when I saw, you could see the black handgun kind of pointing towards his head. And around that same time, he moved. I don't remember if he was moving the gun away to point at officers. I don't remember. But shortly after that, I mean, it was so fast, it was just gunshots.

Officers held their weapons on Mr. Ballew as they gave additional commands and then approached with a shield and immediately began to provide emergency medical aid. The AFPD SWAT Team included two medics as part of the personnel¹⁹. The presence of these SWAT medics afforded Mr. Ballew the significant benefit of receiving emergency, life-saving medical treatment without the need to wait for other medical personnel to arrive, assess the patient, and render medical aid. It seems probable that the immediate medical attention and care the two SWAT medics were able to provide significantly contributed to Mr. Ballew surviving the incident.

¹⁶ After officers began giving commands, Star 9 is heard telling them that they were pointed right at him.

¹⁷ Shots were fired at 8:09 p.m.

¹⁸ Quotations have been lightly edited for concision and readability.

¹⁹ We commend AFPD for including medical personnel in their SWAT Team. We know many agencies operate SWAT teams with similar medical personnel. We believe the ability to provide instant, significant medical care increases the chances of better outcomes.

Officers observed Mr. Ballew's handgun—a loaded black Taurus G3c 9mm pistol—on the ground between his legs. Eventually, emergency medical responders arrived and transported Mr. Ballew to a hospital, where he received treatment for his injuries.²⁰

During the investigation, protocol investigators determined that the Sergeant Adamson, Detective Bibeau, and Medic Cooper likely collectively fired 14 rounds during the incident, and that Detective Konecny fired one less-lethal 40mm foam baton round.²¹ Investigators determined that the officers were in the following order when shots were fired (east to west): Detective Bibeau, K-9 Officer Manis (and his K-9), Medic Cooper, Sergeant Adamson, and Detective Konecny. Investigators further determined the involved officers' distances from Mr. Ballew when shots were fired—Detective Bibeau was approximately 7 yards away, Medic Cooper was approximately 9.5 yards away; and Sergeant Adamson was approximately 9.4 yards away (notably, Detective Konecny was approximately 9.2 yards away).

Witness Statements

Sergeant Adamson (AFPD)

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

Detective Bibeau (AFPD)

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

Medic Cooper (AFPD / AFPD SWAT)

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

²⁰ Investigators determined that Mr. Ballew was struck approximately eight times and sustained serious injuries as a result of the incident.

²¹ Based on the weapons downloads, investigators determined that Sergeant Adamson likely fired five 9mm rounds, Detective Bibeau likely fired six 9mm rounds, and Medic Cooper likely fired three 9mm rounds. The download count is consistent with the 14 9mm shell casings recovered at the scene.

Mr. Ballew

Mr. Ballew has been charged with criminal offenses allegedly arising out of or related to this incident in the Utah Third Judicial District Court in the matter of *State of Utah v. Kevin Ballew*, Case No. 241906278.²² Charges are currently pending.²³

Protocol investigators interviewed Mr. Ballew on February 9, 2024, regarding the incident. Notably, Mr. Ballew explained that he was homeless, he had been living out of his vehicle, and that he had stepped out to go for a walk “and then all of a sudden they were there.” Mr. Ballew responded that he did not know anybody at the apartment complex. Mr. Ballew explained that he saw police looking like “SEAL Team Six” and “all tactical.” Mr. Ballew said he never even made it in the apartment, didn’t do anything inside, and that it was really quick and police shot him right after that happened. Mr. Ballew said that when he walked out, that’s when police were there and that’s when he got shot. Mr. Ballew explained that when he got shot, he saw flashlights, he couldn’t really see their faces, it was dark, he heard them tell him to drop the gun, and he was trying to raise the gun to his head and thought it was actually already there.

Mr. Ballew further explained that when he went into the apartment, it was just to hide but then he realized that would be a bad move and so he walked back out and that’s when it happened. Mr. Ballew said he didn’t see anybody in the apartment and that he heard a little dog barking.

K-9 Officer Manis (AFPD)

Protocol investigators interviewed K-9 Officer Manis, who is a member of the SWAT Team.²⁴ Officer Manis said that they met nearby and got briefed on the incident. Officer Manis said that they knew he was armed, that he was facing felony burglary and discharge of a firearm charges, and that they understood he had some mental issues. Officer Manis said that after the briefing, undercover officers told them that the suspect had exited the vehicle, they were getting information from the helicopter about where he was, and they chased him. Officer Manis said that at some point, he and another officer saw the suspect a long way away, the other officer yelled out, “Police,” and he took off running and out of sight. Officer Manis said that again, the helicopter was updating them on his location and that they said he was going westbound, that he had gone into a breezeway, and that they had passed him and to turn around, to turn left, and that he was right there inside a breezeway.

²² Mr. Ballew has also been charged in the Utah Fourth Judicial District Court in the matter of *State of Utah v. Kevin Mitchell Ballew*, Case No. 241401416, with criminal offenses relating to the alleged events from the day prior, on February 6, 2024, in American Fork. A warrant was issued on August 5, 2024, for failure to appear; it remains outstanding.

²³ A warrant was issued July 5, 2024, based on the probable cause statement, and Mr. Ballew has not yet appeared.

²⁴ Officer Manis statements regarding the events immediately surrounding the incident, only, are summarized here.

Officer Manis said they came back around. Officer Manis explained:

As we came around the building, I remember seeing him in front of a doorway. I think I started giving him commands to show me his hands or he is gonna get bit. As I was in the process of that, I saw him bring gun up to his head. I want to say he started to move it away from his head. And then shots rang out. When I heard shots, I lost hold of my dog. And so my focus went to [my dog] to make sure he wasn't gonna go and get shot. And I was able to grab him and I just held him and ducked out of the way.

Officer Manis said that afterwards, he saw officers go up and they started rendering aid. Officer Manis explained that as they were chasing the suspect, Detective Bibeau provided lethal coverage for him most of the time and that Sergeant Adamson provided coverage as well.

Officer Manis recalled that once he saw it was a gun, he stopped giving commands because he knew he wasn't going to send his dog in, and that he heard Detective Bibeau on his right side say, "Drop the gun," and then quickly after that, it was gunfire. Officer Manis said he did not draw his weapon as he was trying to wrestle his dog.

Officer Manis explained when they found him in the breezeway:

I do remember Detective Bibeau saying, "Drop the gun," which is honestly I think kind of what also drew my attention to the fact that he actually had a gun. 'Cause I did kind of see his elbow and then I think I heard him say "Drop the gun" and that's when I saw, you could see the black handgun kind of pointing towards his head. And around that same time, he moved. I don't remember if he was moving the gun away to point at officers. I don't remember. But shortly after that, I mean, it was so fast, it was just gunshots.

Officer Manis explained that his thoughts during the incident were to secure his dog, make sure he didn't bite another officer, make sure he didn't get shot, make sure he wasn't in the way, and basically get down. Officer Manis said he remembered kind of seeing the suspect fall, so he didn't really retreat and just held his position.

Officer Manis recalled feeling frustrated during the incident and explained:

[B]ecause once [the suspect] got out of the vehicle it was pretty unclear where he was. And the fact that we're chasing a guy that's known to be armed with a gun and I have no idea where he is, it's kind of frustrating and it's scary. Going around through some of those breezeways and it opens up and it's dark on both sides and you realize, "Holy shit, I could have just been shot in the face" 'cause we're running.

Detective Konecny (AFPD)

Detective Konecny refused to be interviewed about the incident or her use of less-lethal force.

Additional Officer Witnesses

Protocol investigators interviewed Detective Shawn Lott (AFPD), Detective Hope Groesbeck (AFPD), Detective Kolten Fraughton (AFPD), Medic Scott Christensen (AFPD / AFPD SWAT), and Detective Joseph Nordin (AFPD), who were at the apartment complex during the incident but did not witness the events immediately preceding the shooting.²⁵ They are mentioned here for the purpose of completeness.

Witness P. V.

Protocol investigators interviewed a male who resided in Apartment 2201, who we refer to as "P. V."²⁶ P. V. explained that it was after 8:00 p.m., he was in his kitchen making dinner, his entry door was unlocked, and he was playing music when he heard someone opening the door. P. V. said he thought it was his wife and was going to the living room and said, "You got off from work early." P. V. said he then saw a guy, the guy didn't identify himself at all, and he had just got in and was looking around, confused. P. V. said he yelled at him, saying to get out of there, asked him who he was, and was cussing at him. P. V. said the man turned around and was going outside and closed the door. P. V. said he tried to go to the door and lock it but couldn't because he heard the shooting start. P. V. said he ran to a bedroom, took care of his son, and hid.

P. V. said that afterwards, he heard knocking on the door and got out of the apartment and ran with his son and his dog. P. V. explained that when the man was inside, he saw a gun in his waistband. P. V. explained that the man had left the door open when he got in and then when the man turned around and was on his way outside, he was going to push him and lock the door but couldn't because his legs were shaking from seeing the gun and everything. P. V. said that when the man got out, he heard the shooting.

Physical Evidence

Protocol investigators inspected and documented the scene and physical evidence, reviewed the dispatch call log, reviewed body-worn camera recordings and Star 9 helicopter surveillance footage, examined the involved officers' weapons, and reviewed limited medical records for Mr. Ballew.

²⁵ Detective Lott, Detective Groesbeck, Detective Fraughton, and Medic Christensen saw muzzle flashes but did not see Mr. Ballew in the alcove before he fell to the ground.

²⁶ While the officers on scene were not privy to the events inside the apartment, we include P. V.'s statement for the purpose of completeness.

OICI Scene

Protocol investigators inspected the OICI scene located at the Eight20 Apartments and in front of Apartments 2201 and 2202. Apartments 2201 and 2202 are located on the main floor at the far west end of Building 22 (a two-story 8-plex building), face south toward a courtyard area, and share a front porch area, with the front door of Apartment 2201 furthest to the west.²⁷

In front of Apartment 2201, investigators located a total of 14 spent 9mm shell casings (on the sidewalk and in the grass and rocks in front of the apartment). Investigators observed numerous holes and markings consistent with discharged bullets in the exterior of Apartments 2201 and 2202, in their front doors, and inside the apartments. Investigators recovered multiple fired bullets both outside and inside the apartments (and inside a jacket pocket), as well as some bullet fragments.²⁸ Protocol investigators also located clothing items (which contained a wallet), first aid items, and blood.

Mr. Ballew's Firearm

Investigators were provided with a black Taurus G3c 9mm pistol (removed from the scene), an unfired 9mm round and a 12-round capacity magazine containing 11 additional unfired rounds (the round and magazine were removed from the weapon on scene), and a black S-TEC folding knife (removed from Mr. Ballew's back pant pocket).²⁹

Notably, body-worn camera recordings depict the Taurus lying on the ground between Mr. Ballew's legs as officers first approach him after the shooting incident. Based on the download count, Mr. Ballew could have fired up to one round during the incident; however, protocol investigators did not locate any rounds in Mr. Ballew's immediate vicinity (*i.e.*, the porch area) and we are unaware of any other evidence that would indicate that he fired his weapon during the incident.

Call Log

Investigators reviewed the call detail report which indicates that on February 7, 2024, at about 7:00 p.m., the target was 710 West Timber Creek Way, and the vehicle was at the northeast of the apartment complex. The call detail report indicates that officers continued surveillance on the target as officers responded to a nearby location. The report indicates that at 7:54 p.m., Star 9 advised that they were about one minute out.

²⁷ The apartments are located at 820 West Timbercreek Way in South Salt Lake.

²⁸ Fired bullets were located on the exterior side of the front entry way of apartments 2201 and 2202, on the exterior front entry way of apartment 2201, on the kitchen floor of apartment 2202, on the exterior metal trim on the bottom of the door of apartment 2201, on the interior floor of the bottom of the door, in the threshold of the front door on the metal floor plate, on the floor in the living room of apartment 2201, and from inside a pocket of a jacket from Mr. Ballew.

²⁹ Investigators learned that the pistol had been purchased by Mr. Ballew in August of 2023.

The report indicates that at 8:01 p.m., the driver's door of the silver Honda Civic was open, that the target was getting out, and that he was walking southbound. As officers continued to surveil him, he was seen walking in the apartment complex. The report indicates that at 8:06 p.m., he was running westbound through the common area; at 8:07 p.m., he was around the back side of building 26 and then he was running westbound to 24; at 2:08 p.m., he was in the breezeway of building 22, and to their right; and at 8:09 p.m., to "stop right there", that he went to the stair case they walked by, he was hiding in the breezeway, to turn to their left and he was in the breezeway and they were pointing right at him, and "shots fired."

Body-Worn Camera Recordings

Investigators reviewed body-worn camera recordings relating to this incident, including recordings from Sergeant Adamson, Detective Bibeau, Officer Manis, and Detective Konecny, as well as additional officers who were at the apartment complex when shots were fired.³⁰ Notably, Medic Cooper did not have a body-worn camera. With respect to events immediately preceding the shooting, body-worn camera recordings collectively capture the following.

As Detective Bibeau (equipped with a shield) and K-9 Officer Manis exit out from between two buildings to the parking lot, Sergeant Adamson and Medic Cooper are heading westbound past them on the sidewalk next to the north parking lot. Sergeant Adamson points his handgun and its light further west and yells, "I've got him right here!" (Bibeau BWC timestamp 20:08:06; Adamson BWC at timestamp 20:08:04). Sergeant Adamson and Officer Manis yell commands, including "Stop! Police" and "Police! Canine!" The officers pursue as Sergeant Adamson communicates that he's around that corner, that he went left, and that he's running.

As the officers turn left (southbound) and go in between two buildings (Buildings 22 and 23), Star 9 advises that he's running right there, right by another dog, and "He's in the breezeway. Be careful. He's going down in the breezeway. Of Building 22." As the officers reach a common area (a person is seen walking his dog), they ask where he went and begin to head westbound in the common area, along the south-facing side of an apartment building (Building 22). Star 9 then advises, "To your right, to your right. He's in that breezeway." (Bibeau BWC at timestamp 20:08:29; Adamson BWC timestamp at 20:08:27). The officers head westbound on the sidewalk along the south-facing building (Building 22), and then after reaching the end of the building, they turn northbound (between Buildings 21 and 22).

After turning the corner, officers ask if they're on it and if they are good. Star 9 then instructs, "Hey, stop right there. He went in that staircase you guys just walked by" (Bibeau BWC timestamp 20:08:47; Adamson BWC at timestamp 20:08:45). Sgt. Adamson asks which team, the west team or the east team, and Star 9 advises, "All right, keep walking towards the back side of that building. He's hiding in the breezeway. Turn to your left with— and walk. Right. And then he's to your left in that breezeway" as the officers turn back around, walk

³⁰ For example, body-worn camera recordings were available for Detective Lott, Detective Fraughton, and Detective Nordin.

southbound between the two buildings (Buildings 21 and 22), and then turn left (eastbound) and begin pointing their lights into the furthest west entry/stairway area of the building (Building 22).

The officers begin yelling commands, including “Police, don’t— Drop that gun! Drop the gun!” “Show me your hands!” and “Drop the fucking gun!” (Bibeau BWC at timestamp 20:09:12; Adamson BWC at timestamp 20:09:10), and Star 9 is heard saying, “You’re pointing right at him.” Mr. Ballew’s figure is seen in front of the door to the first apartment, and the door appears to be closing. The sound of gunshots then begins (Bibeau BWC at timestamp 20:09:15; Adamson BWC at timestamp 20:09:13), and then Sergeant Adamson gives commands to hold fire (Bibeau BWC at timestamp 20:09:18; Adamson BWC at timestamp 20:09:16).

Notably, as officers made contact, they were in the following order: Detective Bibeau (equipped with a shield), Officer Manis (and his canine), Medic Cooper, Sergeant Adamson, and Detective Konecny (equipped with a 40mm less-lethal weapon).

Star 9 Surveillance Footage

Investigators reviewed surveillance video from the Star 9 helicopter, which begins at 8:02 p.m. The video captures, in relevant part, the following.

At 8:03 p.m., officers describe Mr. Ballew’s location, as Star 9 attempts to locate Mr. Ballew. At about 8:04 p.m., several vehicles stop at Mr. Ballew’s vehicle, numerous officers exit, and an officer advises that the suspect is not at the car and is walking, south and west of them in a dark cutout in the apartment complex, and that he has a large dark coat on and dark pants.

At 8:05 p.m., Star 9 advises that there is a person in the common area, on the south side of the building, and he is walking a little bit eastbound (timestamp 21:05:38). Another officer advises that if he is coming back, they are set up. At 8:06 p.m., Star 9 advises that the person is walking westbound along the pathway at the common area (timestamp 21:06:04). Star 9 then advises that he is running westbound through the common area (timestamp 21:06:18), and that he threw something down too. An officer is heard saying, “That is him” (timestamp 21:06:37).

Mr. Ballew is seen continuing walking westbound in between some buildings, officers advise that they are all in the center area and ask where he went, and Star 9 responds, “westbound” (timestamp 21:06:55), to keep heading westbound, and to stay on the path and keep going westbound, and that he went between the apartment complex, heading towards Building 6. At 8:07 p.m., Star 9 advises that the suspect is around the backside of Building 26 in a northbound direction, heading back towards the parking lot (timestamp 21:07:10), and that he is running westbound to Building 24 (timestamp 21:07:21). Star 9 then advises that he is coming out to street side, Creek Drive, where the cars are parked (timestamp 21:07:45), so that if they keep going west, they should see him walking there. As officers head west towards him (along the parking lot), Mr. Ballew is seen running back in between apartment buildings.

At 8:08 p.m., Star 9 advises that the suspect is circling on you them (timestamp 21:08:11), that there should be another dog, and that the suspect is running right by the other dog, running around. Star 9 then advises, "He's in the breezeway. Be careful. He's going down in the breezeway, of Building 22" (timestamp 21:08:20). As officers walk across the front of Building 22 (through a common area), Star 9 advises, "To your right, to your right, to your right. He's in that breezeway" (timestamp 21:08:28). As four officers and a dog continue past the front of the building, Star 9 advises, "That building right there. You just passed him" (timestamp 21:08:37) and "Stop right there" (timestamp 21:08:40), but the officers and dog continue around the corner and to the side of Building 22. Star 9 remarks that he went in the staircase, and then advises, "Stop right there. He went in that staircase you guys just walked by" (timestamp 21:08:48), and the officers begin to walk back toward the front of Building 22 as a fifth officer [Konecny] walks along the parking lot towards them.

Officers ask which team, the four officers and dog all walk towards the front of the building, and Star 9 directs, "Keep walking towards the backside of that building. He's hiding in the breezeway" (timestamp 21:08:59); meanwhile, Mr. Ballew is seen in front of the doors of Apartments 2201 and 2202. As Mr. Ballew disappears from view at the front door of Apartment 2201, Star 9 begins directing, "Turn to your left with and walk right— and then he's to your left in that breezeway. To your left in that breezeway" (timestamp 21:09:03); the four officers [Detective Bibeau, Officer Manis, Medic Cooper, and Sergeant Adamson] then walk to face the front entrances of Apartments 2201 and 2202. Mr. Ballew is seen at the front door of Apartment 2201, Star 9 advises, "You're pointing right at him" (timestamp 21:09:13), and the fifth officer [Konecny] also comes around the corner to the front of the apartment building. As officers point their weapons at Mr. Ballew, **he quickly raises his right arm up, with an object consistent with a firearm in his hand, and officers begin firing their weapons** (timestamp 21:09:15). Mr. Ballew then falls to the ground, Star 9 remarks that shots are fired as additional officers begin running into view, and officers call out, "Shots fired." Officers quickly assemble behind a shield, approach, and make contact with Mr. Ballew, who is lying in front of Apartment 2201.

Weapons Downloads

Protocol investigators examined and downloaded Sergeant Adamson's Glock 45 9mm pistol, which had an inserted 17-round capacity magazine. Protocol investigators counted one round in the chamber and 12 rounds in the inserted magazine, for a total of 13 rounds. Presuming Sergeant Adamson began with a fully loaded inserted magazine and a round in the chamber, that count indicates he likely fired five rounds during the incident.

Protocol investigators examined and downloaded Detective Bibeau's Glock 45 9mm pistol, which had an inserted 17-round capacity magazine. Protocol investigators counted one round in the chamber and 11 rounds in the inserted magazine, for a total of 12 rounds. Presuming that Detective Bibeau began with a fully loaded inserted magazine and a round in the chamber, that count indicates he likely fired six rounds during the incident.

Protocol investigators examined and downloaded Medic Cooper's Glock 45 9mm pistol, which had an inserted 17-round capacity magazine. Protocol investigators counted one round in the chamber and 14 rounds in the inserted magazine, for a total of 15 rounds. Presuming Medic Cooper began with a fully loaded inserted magazine and a round in the chamber, that count indicates he likely fired three rounds during the incident.

Notably, the download counts—a total of 14 total rounds fired by the three officers—is consistent with the 14 9mm casings recovered on scene.

Medical Records

Protocol investigators obtained and reviewed limited medical records for Mr. Ballew. The records consisted of imaging studies performed between February 7, 2024, and March 17, 2024, and showed evidence of multiple gunshot wounds.

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 Adamson's, Detective Bibeau's, and Medic Cooper'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 Adamson, Detective Bibeau, and Medic Cooper 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 Adamson's, Detective Bibeau's, and Medic Cooper's actual beliefs and thus cannot say whether they "reasonably believed" deadly force was necessary, we can infer the reasonableness of a belief that deadly force was necessary from the facts of which we are aware. In this case, we know that the officers—members of the AFPD SWAT Team—were called out to locate and arrest Mr. Ballew, who they believed was armed with a 9mm handgun that he had used the day prior while committing a burglary at the tow lot. We know that before they arrived to take custody of Mr. Ballew at his vehicle, Mr. Ballew got out and went into the apartment complex. With the assistance of the Star 9 helicopter, the officers then attempted to chase Mr. Ballew through the apartment complex as he ran and hid from them. Eventually, the officers located Mr. Ballew standing in front of the front door of an apartment, holding a handgun in his right hand. The officers began challenging him at gunpoint, yelling at him to drop the gun, but Mr. Ballew quickly raised the gun he was holding, at which time officers fired.³¹

We conclude that the facts of the case support a finding that Sergeant Adamson, Detective Bibeau, and Medic Cooper reasonably believed they needed to use deadly force against Mr. Ballew to prevent death or serious bodily injury to themselves and/or others. Mr. Ballew unlawfully presented an immediate threat of death or serious bodily injury to the officers when he presented a handgun—a loaded Taurus G3c 9mm pistol—at officers who had located him and begun challenging him.

The totality of the facts in this case, taken together with reasonable inferences about Sergeant Adamson's, Detective Bibeau's, and Medic Cooper'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 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.

³¹ After officers began giving commands, Star 9 is heard telling them that they were pointed right at him.

If, for the sake of discussion, we elected to file a charge against Sergeant Adamson, Detective Bibeau, and Medic Cooper 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. Ballew 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 Adamson, Detective Bibeau, and Medic Cooper 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 Adamson, Detective Bibeau, and Medic Cooper 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 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 Adamson, Detective Bibeau, and Medic Cooper 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 Adamson, Detective Bibeau, and Medic Cooper the legal defense.

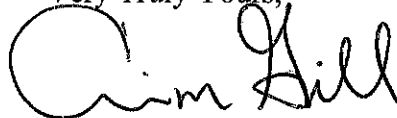
As the United States Supreme Court instructed in *Graham*, assessing “reasonableness” in the Fourth Amendment context “requires careful attention to the facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to the safety of the officers or others.” 490 U.S. at 496 (emphasis added). The facts of this matter support a conclusion that Sergeant Adamson, Detective Bibeau, and Medic Cooper 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 Adamson’s, Detective Bibeau’s, and Medic Cooper’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 Adamson's, Detective Bibeau's, and Medic Cooper'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,

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.

Sim Gill,
Salt Lake County District Attorney