



## SIM GILL

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February 27, 2026

Chief Brian Redd  
Salt Lake City Police Department  
475 South 300 East  
Salt Lake City, UT 84114

RE:	SLCPD Officer Clifton Payton's Use of Deadly Force
Incident Location:	375 South 765 West, Salt Lake City, Utah
Incident Date:	January 9, 2025
SLCSO Case No.:	25-676
UPD Case No.:	25-2200
SLCPD Case No.:	25-6385
DA Case No.:	DA-INV-2025-17

Dear Chief Redd:

This letter addresses the January 9, 2025, use of deadly force by Salt Lake City Police Department ("SLCPD") Officer Clifton Payton against Chandler Dean Grillone.

Officer Payton'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 County Sheriff's Office ("SLCSO") in conjunction with the Unified Police Department of Greater Salt Lake ("UPD") protocol team and comprised of law enforcement officers employed by agencies other than SLCPD. After the investigation, on January 28, 2025, 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.<sup>1</sup>

<sup>1</sup> 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

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## 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 January 9, 2025, at 1:33 a.m., Officer Payton initiated a traffic stop on a white Ford truck. At 1:40 a.m., as Officer Payton ran the driver's information, an unknown male, who was later identified as Chandler Dean Grillone, knocked on his window. Officer Payton got out of his vehicle and commanded Mr. Grillone to go to the front of his patrol vehicle, but Mr. Grillone did not comply. An altercation ensued, during which Mr. Grillone hit Officer Payton in the arm, asked him if he wanted to die, hit him in the face, and continued to not comply with commands. After getting his flashlight out, Officer Payton saw that Mr. Grillone had a blade—later determined to be a five-pointed ninja star—in his right hand, saw that his arm was covered in blood, and thought that Mr. Grillone had stabbed him when he'd been hit.

Officer Payton drew his handgun and began giving commands to “drop it,” and Mr. Grillone moved towards him with both arms raised in a fighting stance. Eventually, Mr. Grillone turned his attention to the truck driver and then ran towards him. Officer Payton attempted to fire his weapon, however, it did not discharge and Mr. Grillone jumped in the bed of the truck. Eventually, Mr. Grillone got up and then jumped out of the truck bed, ignoring all commands to stop. Mr. Grillone then turned his attention to the female front passenger in Officer Payton's vehicle, told her, “Get out,” and pointed at her as he began walking towards her. Officer Payton then fired his weapon and Mr. Grillone fell to the ground.

Additional officers arrived on scene, took Mr. Grillone into custody, removed the ninja star from his hand, and began rendering medical aid. Mr. Grillone was transported to a hospital, where he succumbed to his injuries.

During the protocol investigation, investigators interviewed Officer Payton about the incident, as well as female front passenger, the truck driver, and officers who arrived after shots were fired. Protocol investigators also documented the scene and examined physical evidence, reviewed the dispatch radio recording and call log, reviewed body-worn camera recordings, examined Officer Payton's weapons, and reviewed the autopsy findings.

As we discuss in more detail below, we believe the facts of this matter, taken together with the reasonable inferences derived from those facts, support a conclusion that if a criminal charge was filed against Officer Payton 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 Officer Payton's use of deadly force

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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).

would likely be subject to the affirmative legal defense of justification under Utah law,<sup>2</sup> and we decline to file a criminal charge against him.

### RELEVANT LEGAL STANDARDS

As relevant here,<sup>3</sup> law enforcement officers are legally justified in using deadly force when:

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

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

Based on this statute, the legal defense of justification, then, may be available where a law enforcement officer “reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury<sup>[4]</sup> 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

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<sup>2</sup> 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.

<sup>3</sup> 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...

<sup>4</sup> “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).

officer “reasonably believes that deadly force is necessary” to prevent a suspect’s escape and the officer had probable cause to believe the suspect posed “a threat of death or serious bodily injury to the officer or to others if apprehension is delayed.” Utah Code § 76-2-404(2)(b). In determining whether the use of deadly force was “justified” under Utah law, several factors may be considered, including: (i) the nature of the danger; (ii) the immediacy of the danger; and (iii) the probability that the unlawful force would result in death or serious bodily injury. *See* Utah Code § 76-2-402(5).

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

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

*Id.* (citations omitted and emphasis added).

## RELEVANT ETHICAL STANDARDS

The DA’s Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing.<sup>5</sup> 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

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<sup>5</sup> 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).

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, SLCSO in conjunction with UPD led an investigative task force of law enforcement officers who conducted the investigation of Officer Payton's use of deadly force, and the protocol investigation's findings were presented on January 28, 2025, to the DA's Office to screen for possible criminal charges. Should additional or different facts subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

On January 9, 2025, at 1:33 a.m., Officer Payton initiated a traffic stop on a white Ford Ranger truck for failing to signal. Officer Payton made contact with the driver, a male who we refer to as "M. M." During the stop, Officer Payton's ride-along passenger, a female who we refer to as "K. T.," remained in his patrol vehicle. At 1:40 a.m., while Officer Payton was in his vehicle, an unknown male, who was later identified as Chandler Dean Grillone, knocked on his driver window.<sup>6</sup>

Officer Payton rolled down his window and Mr. Grillone stuck his head in. Officer Payton then got out of his vehicle, pushing Mr. Grillone back, and began confronting him. Mr. Grillone told Officer Payton he'd "sniffed" him and Officer Payton commanded him to go to the front of his patrol vehicle, but Mr. Grillone did not comply.<sup>7</sup> Officer Payton later recounted to investigators:<sup>8</sup>

At that point he hit me, **he used his right arm and hit me.** And I separated to create a little bit of distance, and at that point, he was coming towards me, still not complying to any commands or anything like that. **He throws, throw it back, hits me in the face.** Gets close enough to where I took a swing to create a little bit more distance. And at this point, I got my light and my baton out. **And once**

<sup>6</sup> BWC at 01:40:34.

<sup>7</sup> Mr. Grillone told Officer Payton, "This is a citizen's audit."

<sup>8</sup> Quotations have been lightly edited for concision and readability.

**my light hit him, I saw that he had a blade in his hand. His arm was covered in blood, which I thought at that point was my blood, I thought that he had stabbed me.**

As captured by body-worn camera, Mr. Grillone was **holding a five-pointed ninja star in his right hand as he first swung upwards towards Officer Payton's left upper arm and hit him.**<sup>9</sup> As they initially grappled with each other, Mr. Grillone asked, "Do you want to die tonight?"<sup>10</sup> Then, Officer Payton retreated and called out "fighting" over the radio.<sup>11</sup> Mr. Grillone continued to not comply and advanced towards Officer Payton. As Officer Payton radioed for assistance, Mr. Grillone briefly turned his attention towards the truck driver,<sup>12</sup> who had gotten out of his vehicle and was moving towards Mr. Grillone from behind. Officer Payton then gave multiple commands to get on the ground,<sup>13</sup> the second altercation ensued, and Mr. Grillone threw a plastic sack he was holding at Officer Payton.<sup>14</sup> As Officer Payton drew his baton,<sup>15</sup> Mr. Grillone positioned himself in a fighting stance with both hands raised in front of him. Officer Payton then shone his flashlight on Mr. Grillone, who was holding an object—later determined to be a five-pointed ninja star—in his extended right hand.

After seeing a blade in Mr. Grillone's hand,<sup>16</sup> Officer Payton drew his handgun and began giving commands of "drop it" as Mr. Grillone quickly moved towards him. Mr. Grillone continued to not comply and remained in a fighting stance, with both arms raised in front of him. Eventually, Mr. Grillone took off his beanie and tossed it to the ground, saying, "Here you go. That's yours," before beginning to walk backwards. As he walked, Officer Payton continued giving commands to get on the ground. Mr. Grillone then looked at M. M. who was standing next to his truck, asked him if he could get in,<sup>17</sup> and then ran towards the truck as M. M. quickly got inside. Officer Payton yelled for him to stop and attempted to fire his weapon, however it did not discharge.<sup>18</sup> Mr. Grillone jumped in the bed of the truck.

Officer Payton continued giving commands to Mr. Grillone, but he refused to comply, saying, "Shoot me,"<sup>19</sup> and Officer Payton advised over the radio that he had a knife.<sup>20</sup> Eventually, Mr. Grillone got up and then jumped out of the truck bed, ignoring all commands to

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<sup>9</sup> Officer Payton later discovered that his clothing had been cut and he had sustained injury to the surface skin of the underside of his left bicep.

<sup>10</sup> Mr. Grillone asked, "Do you want to die tonight?," during the altercation (BWC at 01:40:48).

<sup>11</sup> BWC at 01:40:53.

<sup>12</sup> BWC at 01:40:59.

<sup>13</sup> BWC at 01:41:04, 01:41:05, and 01:41:08

<sup>14</sup> BWC at 01:41:09.

<sup>15</sup> BWC at 01:41:12.

<sup>16</sup> BWC at 01:41:26.

<sup>17</sup> BWC at 01:41:52.

<sup>18</sup> BWC at 01:41:55. Officer Payton later described to investigators: "And at a certain point when he, I ordered him to get on the ground or something to that effect. He throws something on the ground, an article clothing or something, and he turns and looks and at that point, I saw that the driver was close, **and he starts to go after the driver. I attempted to shoot the suspect at that point.**" Officer Payton further explained that he decided to use deadly force at that time because, "I thought he was gonna kill the driver."

<sup>19</sup> BWC at 01:42:00

<sup>20</sup> BWC at 01:42:06.

stop.<sup>21</sup> Mr. Grillone then turned his attention to K. T., who was still in the front passenger seat of the patrol vehicle, told her, “Get out,”<sup>22</sup> and pointed at her as he began walking towards her. As Mr. Grillone continued towards her, Officer Payton fired his weapon<sup>23</sup> and Mr. Grillone then fell to the ground. Officer Payton later recounted to investigators:

[H]e stood up in the back of the truck, still refusing to listen to anything that I’m ordering him to do. He jumps out of the bed of the truck, still enough stand-off distance between me and him. He wasn’t within striking distance of me. And he was, at a certain point, **he pointed at my ride-along and he started to make a movement towards her. And he made his way towards that side of the car where she was.**

As officers began arriving on scene, Officer Payton advised, **“He’s got something in his hand. I think it’s a knife,” “He came after me. I don’t know if I’ve been cut.”**<sup>24</sup> Officers placed handcuffs on Mr. Grillone, forcibly removed the ninja star he was grasping in his right hand, and began rendering emergency medical aid. Mr. Grillone was transported to a hospital, where he later succumbed to his injuries.<sup>25</sup>

### *Witness Statements*

#### **Officer Payton**

Protocol investigators interviewed Officer Payton on January 23, 2025, in the presence of his attorney. Officer Payton explained:

So, on a traffic stop about 765 West 400 South, I’d had a couple interactions where I’d got out of the vehicle and spoke to the gentleman, and then the second time I got out the car and came back, I was doing something. I was about to issue a citation, I got a knock on the window. I thought it was like any other encounter with an officer that sees you and backs you, they come up and knock on the window, so I rolled it down a little bit. And the first contact I had with him, he stuck his head in the window and made some sort of noise. And it kind of took me back and was like a “I’m sniffing you” kind of thing. It’s just interfering with my traffic stop at that point.

Officer Payton continued:

He was standing up against my door, so I used my door and pushed him back a little bit. Got out of my vehicle. He was just kind of talking nonsense and I

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<sup>21</sup> BWC at 01:42:26.

<sup>22</sup> BWC at 01:42:28.

<sup>23</sup> Officer Payton fired his weapon five times (BWC at 01:42:30).

<sup>24</sup> BWC at 01:43:31. Shortly after, Officer Payton also said, “I don’t know if he cut me. He has something in his hands. He had a, he had a blade of some, some sort. If you could look me over. I don’t know if I’ve been cut” (BWC at 01:44:40).

<sup>25</sup> Mr. Grillone was declared deceased at 3:07 a.m.

grabbed his right arm and said, "Go to the front my car." . . I told him to go stand in front of my car. . . At that point he hit me, he used his right arm and hit me. And I separated to create a little bit of distance, and at that point, he was coming towards me, still not complying to any commands or anything like that. He throws, throw it back, hits me in the face. Gets close enough to where I took a swing to create a little bit more distance. And at this point, I got my light and my baton out. **And once my light hit him, I saw that he had a blade in his hand. His arm was covered in blood, which I thought at that point was my blood, I thought that he had stabbed me.**

I was very tunnel vision at that point. Things kind of just closed in on me a little bit. I didn't—, what I didn't see was how close the driver of the traffic was to the suspect. And at a certain point when he, I ordered him to get on the ground or something to that effect. He throws something on the ground, an article clothing or something, and he turns and looks and at that point, I saw that the driver was close, and **he starts to go after the driver. I attempted to shoot the suspect at that point.**

When asked about the reason he decided to use deadly force, Officer Payton explained: "At that point I thought he had used deadly force on me. And he turned and looked at the driver of the traffic stop and started to move very quickly towards him. **I thought he was gonna kill the driver.**" Officer Payton explained that he squeezed the trigger and it didn't go off and he then put the weapon back into service as quick as he could. Officer Payton continued:

At that point, the driver had cleared himself, at least out of immediate harm's way. And the suspect jumped in the back of the truck, the bed of the traffic stop's truck. Kind of giving us a little bit of breathing room at that point to where he wasn't an immediate threat to the driver at that point. . . I think we, I gave commands for, it seemed like forever but it was probably just a few seconds, gave commands, and he stood up in the back of the truck, still refusing to listen to anything that I'm ordering him to do. He jumps out of the bed of the truck, still enough stand-off distance between me and him. He wasn't within striking distance of me. And he was, **at a certain point, he pointed at my ride-along and he started to make a movement towards her. And he made his way towards that side of the car where she was.**

When asked what he was thinking when the subject was making his move towards that side of the car, Officer Payton said, "**I was thinking he was going to kill her.**" When asked what the next thing was that happened, Officer Payton said, "That's when I shot him."

Officer Payton explained that after he was shot, the suspect kind of collapsed down in a sitting-up position and it was only a few moments after that when the first backing officer arrived. Officer Payton said he thought he shot five rounds.

When asked why he was using deadly force the first time (when his gun clicked), Officer Payton said, "I thought he was gonna kill the driver." When asked why he didn't re-engage immediately after he'd attempted to use deadly force and the suspect was in the back of the truck, Officer Payton responded, "It wouldn't have been right to do it at that point. It, he was, he was at least not an immediate threat to anyone around him." When asked why he reengaged and used deadly force after the suspect got out of the back of the truck, Officer Payton explained: "He pointed at the ride-along that I had with me and started making a movement towards her" and "I thought he was going after her to attack and potentially kill her."

When asked at what point he thought he had probably been stabbed, Officer Payton responded, "Yeah, I remember that. Clear as day, it's when I shined the light on him and I saw that he had blood. I thought that my adrenalin was spiked and I just didn't feel it and that I was severely bleeding."

Officer Payton clarified that the person he engaged with was not the driver of the truck he pulled over. Officer Payton confirmed that the person he shot did not have anything to do with the traffic stop and he just kind of appeared. Officer Payton said that initially he thought it was another officer until he rolled the window down and the person stuck his head in the window. Officer Payton said that the ride-along with him was a civilian and not a law enforcement officer. Officer Payton confirmed that he never saw the suspect until he knocked on his window.

When asked what if he remembered anything that the suspect said when he was first grappling with him, Officer Payton said: "Yeah, he said, 'Are you ready to die?'" When asked what he took that to mean, Officer Payton explained: "Once I saw the blood on him, I thought he'd, he really tried to kill me." Officer Payton did not recall if that statement was before or after the suspect hit him. When asked where the suspect hit him, Officer Payton explained that he hit him up under (his armpit) and that he didn't realize until later, after he got home, that he actually cut him up under his arm.

#### **Witness M. M.**

Protocol investigators interviewed the male truck driver, who we refer to as "M. M." M. M. said that the male started trying to say, "Can he get in my truck?," and so he jumped in his truck and shut the door. M. M. said that the male jumped in the back of the truck. M. M. said that then the male jumped out of the truck and started going towards the female that was inside the police officer's vehicle. M. M. said that then the male turned around and went back at the officer again, and that's when the officer had to fire. M. M. expressed, "[T]hat's what the guy was pushing for. He was pushing to be—, he was aiming for that to be the final result." M. M. also expressed that he'd wanted to get behind the guy and put him to the ground, and that, "[T]he guy who got shot, he just wasn't stopping."

M. M. explained the traffic stop, including that he pulled to the side of the road, the officer came behind him, he was out of his vehicle looking at the front, the officer had him get back in the vehicle, the officer asked him about his paperwork for the vehicle, he gave his

driver's license to the officer, the officer went back to run it, he found paperwork for his vehicle, and the officer came up and grabbed it. M. M. said:

And then as he was walking back to his truck, this dude came out of like thin air (unintelligible). . . And this guy just came out of nowhere and started attacking the officer. And then when I seen that happen, I was like—, the officer stepped back and pulled his weapon and he—, told the guy, you know, “Get on the ground. Get on the ground.” The guy kept on coming at him, and kept on coming at him. Every time the officer would go, the guy would put down his hands, and the officer would go up to him, the dude would try to get him again. And, I don't know what was in the guy's hand but something was in the guy's hand because—, whatever it was, it was sharp, because it cut the guy who attacked the officer, cut the guy's hand open. And so that's why I was worried about the officer, and that's—, I mean, a weapon involved, I jumped out and that's when I started trying to get him be from behind, do a figure four on his—, on him to subdue him, at least until he could get cuffs on him. And every time I started to get close, the guy would turn around and focus his attention towards me, and then the officer would be able to get a couple steps closer, and then he'd go back to the officer. And then the guy yelled out, “Can I get in your truck?” And I said, “No.” And I went and I jumped in my truck door and shut the door so he didn't have a chance to get a vehicle to run away.

And then he jumped in the back of the bed of the truck, and then the officer ordered him to get out, ordered him to get out. He got out of the truck. And then he's all, “Who's that?” And he started going towards the female who was in the officer's truck. And I didn't know much about the female, she just seemed really petite is all I could tell from her facial features. And then he turned back around and went at the officer again, and that's when the officer had to, had to answer with force.

M. M. explained: “[T]hat's when he had to fire upon him 'cause the guy came at him with whatever it was in his hand again. And as it was, the officer already didn't know if he'd already been stabbed once.” M. M. expressed, “The guy attacked him before he had any chance to do anything” and further expressed, “[I]t seemed like that's what the guy wanted. I don't know if he was hopped up on drugs or if he was having a bad day, but it seemed like he was, he was aiming to get—, per a fatal result. He was trying to, he was trying to go suicide-by-a-cop, by the looks of it.”

When asked about the officer who pulled him over, M. M. described that he was polite, courteous, was in a calm demeanor, was respectful and was helping him out, and was doing his job. When asked about when the guy appeared, M. M. said he was in his truck, holding his title paperwork out the window, looking back towards the officer's vehicle, and that the guy came from behind. M. M. explained: “I seen him from my rear view mirror, lunge at the officer, and that's whenever I turned around and hopped out of the vehicle to give assistance.” M. M. said

that the male was wearing a red and black flannel shirt, had brown curly-ish hair, had something in his hand but he didn't know what, and was white. M. M. said he'd never seen him before.

M. M. said that when he saw the male, the officer had just come up to his vehicle and grabbed paperwork and that "he was walking back to his vehicle when the guy come rushing up on him." M. M. said that the male rushed up on him "and attacked him." M. M. explained, "He had, whatever was in his hand, he ran up to the officer and caught him right in the face and then caught him again on the, in the side of, in the side of his vest, right here." M. M. clarified: "Caught him with a jab with the punch and caught him with whatever was in his hand to the side of his head. And that's when the officer had to step, stutter and step back and said, you know, 'Hey, what the hell are you doing?' And then started demanding him to calm down. . ." When asked what hand the guy had something in his hand, M. M. clarified that it would have been his right hand because "that's the hand that it got—, he gashed it open whenever he, he had tried to hit the officer with it. He, he tried to kill the officer."

M. M. clarified:

He went with the weapon thing towards his head, like that. And I think is what happened is he missed, missed the whole head and he got the arm, to his arm to the officer's head. And then he came with the punch to the officer's side. And that's when the officer did the shove-back and pulled from his holster and told him to "Get on the ground. Get on the ground."

When asked how the male was facing the officer, M. M. explained that the officer was facing towards him and his truck, and the guy "came from the officer's back, rear blind side." M. M. clarified that the first blow was with the weapon hand, it was to the face, and it hit him with his arm instead of with whatever was in his hand (he thought whatever was in his hand probably hit the vest and sliced the guy's hand open). M. M. said that then the guy did another punch at the vest and explained, "the officer would get closer and closer and then the guy would lower down his hands like he was gonna give up, but then right as soon as the officer got close to him, the guy would start hitting him again." When asked if the male reattacked, M. M. explained the male attacked three times and then jumped in the back of his vehicle and then was the final time.

When asked about the second time the guy attacked, M. M. said the guy had put his hands down finally, the officer came up and went to go grab his wrist, and "right as the officer got to the wrist, the guy punched him again and started hitting him again" and that the male was telling him he doesn't have the right to tell him to get on the ground and he's not going to get on the ground. When asked if he still had the weapon in his hand, M. M. said he didn't see the weapon at that point but did see that his hand was bleeding from it. When asked if he knew what the weapon was, M. M. said he didn't get to see it and that "whatever was in his hand, it had to have been sharp, 'cause it caused his hand to be gashed all the way open." When asked if he could tell the color, M. M. said it was too dark and explained that he was looking in the little rear-view mirror. M. M. said that after the second attack, the officer stepped back again.

M. M. explained that the officer already had his gun out from after the first attack when he did the push-off and then drew his weapon and told him to get on the ground, and that he had his flashlight up and told him, "Get on the ground. Get on the ground." M. M. said that after the second attack is when the officer's flashlight dropped, and explained that when the officer went to grab the guy's wrist, the guy attacked him again and caused him to drop his flashlight and he had to step back again.

When asked about the third attack, M. M. said he didn't get to see because he was walking back to his truck and that's when he started saying, "Can I get in your truck?" and that's when he started going back to his door and getting his door closed. M. M. said he just heard the scuffle for the third attack.

When asked about the fourth attack, M. M. explained: "[H]e went for the fourth attack and that's whenever he got shot." M. M. said he heard the scuffle from him trying to go for the third attack and explained:

I jumped in my truck, shut my door, and then the guy jumped in the back of my truck, and then the officer ordered him out of the truck, ordered him out of the truck, and the guy got out of the truck and then seen the girl inside of the officer's vehicle and said, "Oh, who's that? Who's her?" And (unintelligible) was telling her, that he was, he was gonna go after her. And that's—, and the officer's like, got his attention, and that's when he lunged towards the officer again and that's when he got shot.

M. M. said he was out of his truck when the guy asked if he could get in his truck and explained that he was creeping up behind him to try to get him into submission. M. M. further explained that every time he got within about seven feet of him, he would turn his attention towards him, but that allowed the officer to get a little closer.

When asked what happened next, M. M. explained that when he said no, he jumped in his truck, slammed his door shut, and then the male jumped in the back of the truck. When asked what the male was doing when he was on the bed, M. M. said he was "just yelling back and forth." M. M. said that the officer got him to hop out, he hopped out, and he heard him hit the ground. M. M. explained: "**Then he's all, he's all, 'Her. Who's that?'**" M. M. explained that **the male "put his direction towards the female."** M. M. explained that the female was inside the officer's vehicle in the passenger seat. M. M. explained that **the male "did take a couple steps towards the female before he turned his attention back to the officer."** M. M. clarified that he watched all four shots be fired. M. M. recalled, "**He turns away from the female, he turned to the right, went back towards the officer,**" and the officer then placed one round, which caused the male to turn around 180 degrees, and that the officer fired four times. When asked if the male was walking toward the officer before the first shot, M. M. explained, "**[H]e was lunging towards the officer for, for another attack.**" M. M. said he didn't see the weapon at that time. M. M. further explained, "**He was going for another attack. He was, he was lunging for an attack. He, his goal was to cause serious if not fatal bodily harm to that officer. . . that's exactly what his body language and his attitude and demeanor were.**" M.

M. expressed, "That cop did his job," and, "he made sure that I was protected the whole time, made sure that the female was safe. . ."

**Witness K. T.**

Protocol investigators interviewed the female ride-along passenger, who we refer to as "K. T." K. T. explained that Officer Payton initiated a traffic stop on a truck for not signaling. K. T. said that the driver pulled over, the truck had no license plate, and there was "a bunch of crap" in the back of the bed. K. T. said that the driver immediately opened his door and got out of the vehicle and so she decided to stay in the car. K. T. said that Officer Payton walked up on the driver's side, no one else was there, and she was sitting in the car. K. T. said she rolled down the window and could vaguely hear what was going on. K. T. said that the driver got back in the vehicle (she believed he left the door open), and they had a short conversation (she couldn't hear what was said). K. T. said that Officer Payton walked back to the car, had two pieces of paper with him (the driver's information and the truck information, and he used the paper to run the driver.

K. T. said she thought that when the incident happened, they were verifying the VIN number, and that they were both still in the patrol vehicle. K. T. recalled that in the middle of looking up something, she was watching the driver (nobody else still). K. T. recalled that the driver had a piece of paper, it was kind of folded, he was looking on it, and he rolled his window down and waved it out of the car, holding it up. K. T. said she told Officer Payton that he was waving a piece of paper, he said he'd get it in a minute, and then he went and got it, talked to the driver for a second, and came back.

K. T. said they put the VIN number in from that piece of paper and it wasn't popping up so they were trying it and verifying what he'd typed with what was on the paper. K. T. said:

And that is when somebody knocked on his window. And in my head I'm like, "Oh, it's like the driver" . . . But then there's this dude, unrelated to, new guy, not the truck driver. The truck driver I think is still in his car at this point. . . But he was like right on the window. Knocked on it. . . [H]e had like a teal blue kind of beanie. . . He was like looking very intently.

And so Officer Payton puts his window down probably like, like this much, like maybe like two inches. And he was like, he said something like, "Hey man," like "What's your problem?" like "What's, what's going on?" And the dude, I think he like spit on him 'cause he opened his mouth and was like, I don't know if that's what happened but that's what it looked like from my point of view. . .

So, we're sitting there, that happens, and then [Officer Payton] goes like, "Dude," like "What the fuck's your problem?" And then that's when he opened the door, and he gets out, and then he shut the door and he's like, "What's your problem?" like, "Why? What are you doing?" like, "What's going on?" like. And the guy's

trying to get up close to him. So he's like, "No," like "Stay over there. Stay over there."

K. T. explained how the car was placed and that when Officer Payton first got out, she could see the guy. K. T. said:

[A]nd at some point the guy I think was trying to come towards [Officer Payton], so [Officer Payton] was backing up and being like, "Hey," like "Stay over there. Stay there." . . . [H]e was backing up behind the vehicle on the driver's side. So there was a point where I couldn't see [Officer Payton] but I could see whatever the guy's name was, the guy. I was trying to watch through the mirror at some point.

K. T. recalled that before, when she could still see the guy, he put both fists up. K. T. explained:

But then all of a sudden, it was, I couldn't see them anymore. And then I look in the mirror and, at one point like, I'm like, "Oh great," like I can't see him. . . They have, I don't know if he ever hit him or not. I did not see that. I don't know if [Officer Payton] ever like pulled something else out. But at one point I heard "knife." Somebody said "knife," I don't know if he said, I think he said, "Put the knife down." And I think that's when he drew his weapon because as soon as the next point that I could see [Officer Payton] in the mirror, he had his gun drawn. And it took me a second to realize that that's what it was.

When asked what mirror she was looking in, K. T. said she tried to look through either the driver's side or the rear-view mirror, she was trying to see as much as she could without moving, and she could not see out the back window at all. K. T. continued:

But at one point, I hear like, "Put the knife down," and then somehow the fight, or whatever this whole confrontation, moves back towards the driver's side door, not next to it, but in view. And I see the dude has like blood on his right hand, dripping down. **I didn't see a weapon or anything**, I don't know. But then, that's like kind of around the time where I saw [Officer Payton] have his gun. The dude, and keep in mind like the truck is still in front of us. . . He kind of was like, he was out of his truck, but kind of like staying away to see like what was happening. At one point while that was happening, he was in front of our vehicle and he looked me in the eye, like "I don't know what's happening". . . He eventually moved back over to his, the truck driver, driver door, 'cause I think it was open, 'cause they were moving this way, towards the front of the car.

K. T. continued:

So the suspect, it was super weird, he like backtracks and he jumps in the back of the guy's truck bed. So not his vehicle that I'm aware of. Jumps in the back of the vehicle. The driver by that point had gone back in the truck and had shut the

door. . . The guy, suspect, back of the truck, is like kind standing there in like stance or whatever on top of all the crap that's in there. There's this like rectangular, almost like a, what do you call that, like a drain or like house, you know, like the drain pipe, the metal ones outside, . . . it's almost like a gutter, but it's this like, I don't know if it was metal or plastic or whatever, but it was long, and just sitting in the back of the truck. He like, as he's standing there, picks it up for, I don't even know why, it was super long, there's no way he was gonna throw it. But he's standing there with it in his hand, like crazy-eye. . . He legitimately was like, "This is what I'm doing right now." But he like had it in his hands. And [Officer Payton] was saying something to him, I don't know if it was "Get on the ground," I don't know if it was like, "Put it down," something. Eventually, . . . he like puts it down, **jumps out of the truck, and is in front, dead in front of our police car. Turns, looks at me directly in the eye, points at me. . . Points at me as he's looking at me. Starts to come around the passenger side, like gets to like the light.** As soon as he is there, he's there, "I'm like, "Shoot, should I lock the door". . . And as soon as, like **he starts walking towards the mirror.**

K. T. described the "three-inch blind spot" between the windshield and the passenger and driver window and explained:

He was standing right there when [Officer Payton], I don't know what he said, I couldn't hear it, the window was up, door was locked, whatever. [Officer Payton] had his weapon on him. **And as soon as he started walking towards me, he fired,** I'm pretty sure it's three rounds. And by that time, I did, so I did not see the suspect get hit, but I saw the shots be fired and then I saw him on the ground, kind of on the ground. He was, like I know he was there, I know he got shot, I know the progression, I just did not physically see bullet hit person. Or whenever, however his hand got cut. Just those happened to be in the exact spots. . . And he was down on the rocks.

K. T. said she didn't see Officer Payton put hands on the guy at all. K. T. said that Officer Payton shot the guy, she was pretty sure it was three times, and it looked like upper center mass. K. T. said that the truck driver was still in the front seat of the truck and so he was uninvolved. K. T. said that as soon as Officer Payton had gotten out of the car and the guy was starting to be a problem, he had called over the radio, "925 fight," and it went through because she could hear it in the car. K. T. said that after Officer Payton shot the guy, the guy was on the rocks, on the ground, and she could see parts of him but not his full body. K. T. said that Officer Payton was telling him to stay down and not move and had the gun still pointed at him, that the truck driver was off, but didn't touch him or move, and that then cop cars started arriving. K. T. said that three officers handled the guy on the ground and called for medical immediately, and another officer went over and got the guy out of the truck and sat him on a curb.

K. T. explained: "[A]fter thinking about it too, is like, he was, he had to have been protecting me because **the dude pointed at me, said something, and walked to my, started**

**walking to my door.**” K. T. said that Officer Payton didn’t help detain the guy. K. T. said that officers came over to Officer Payton to check on him and make sure he wasn’t hit, and remarked, “The dude had a knife.” K. T. said that Officer Payton seemed physically unharmed, but she didn’t know if he was punched at all. K. T. said she stayed in the car, eventually a firetruck pulled up, an ambulance was there too, they looked the guy over, and they loaded the guy on the stretcher and took him away.

When asked about the guy’s demeanor when he first knocked on the window, K. T. said, “He was not pleasant” and described:

He was like this on the window. He, I don’t think he said anything. He like knocked on the window and was like there like this. Like right up, he—, I think that’s why I think he opened his window very little because the dude was almost like, you almost could see his breath on the window. Like that’s how close he was. That’s why I think he spit on him too, ‘cause I saw his mouth.

When asked if she thought the guy intentionally spit, K. T. said: “Oh, a hundred percent. No, no, no. That was not accidental whatsoever. Like I said, like he had that look in his eyes, like he was gonna accomplish something.” K. T. added: “that was the same look the entire time, especially when he looked at me. ‘Cause I think at that point he was like, ‘Oh, there’s another one of you.’”

When asked about seeing blood on the guy’s hand, K. T. said that the right hand was down, she was about 15-20 feet away, and she could see the majority of his hand was covered in blood. K. T. said she thought he had long sleeves on, so she didn’t know if that’s where the blood came from and didn’t know if it was on his hand. K. T. clarified that no shots were fired until he started walking towards her, and that it was three, right there. K. T. said she didn’t see the knife she just saw the blood after that was said and they had moved back a little bit.

K. T. explained that it went from the guy with his fists up to she couldn’t see them, to “Put the knife down,” to the dude has blood on him, to Officer Payton has a gun out now. K. T. expressed about her decision to not get out of the car, “it would’ve been another additive of it’s not just his safety, it’s my safety too. So I’m glad that I wasn’t, like I was in the mix by being present but not in the mix of being outside.”

K. T. clarified that after the guy jumped out of the bed of the truck, he was in the front, like dead center, between the patrol vehicle and the truck, and that Officer Payton was off to her left by the driver’s side more so. K. T. explained: **“But I think that’s when he turned and saw me Like, not like that dramatic, but like turned from [Officer Payton] to me, like turned from [Officer Payton] to the car, straight on. . . So I think that’s when he saw me, he pointed, and then moved. And then that’s when [Officer Payton] followed. And then he kept coming towards me. I locked the door and then he shot him.”**

K. T. said that Officer Payton rolled his window down “very minimal,” that she didn’t think the guy said anything and that he did something with his mouth which is why she though

he spit on him because Officer Payton was like, “Seriously, man?,” and then opened the door and pushed the door enough because the dude was in front of the door. K. T. described: “It was just, the beginning of it was weird, I don’t, the whole thing was weird, but the beginning was like it scared me, ‘cause I was like, I didn’t even see him come up. I thought he was the truck guy. I turn around, it’s some dude in a beanie.”

### **Additional Witnesses**

Protocol investigators interviewed additional officers regarding the events, however, they were not present when the shots were fired; they are mentioned here for the purpose of completeness.<sup>26</sup>

### *Physical Evidence*

Protocol investigators inspected and documented the OICI scene, reviewed the dispatch radio recording and call log, reviewed body-worn camera recordings, downloaded Officer Payton’s weapon, and reviewed the autopsy findings.

### **OICI Scene**

Protocol investigators inspected the OICI scene located at 375 South 765 West in Salt Lake City. A SLCPD marked Ford Interceptor was facing north and parked to the right side of the road on 765 West, just before 375 South. A white 2002 Ford Ranger pickup was parked in front of the SLCPD vehicle, also facing north.

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<sup>26</sup> Officer Reilly. Officer Reilly said she heard Officer Payton call out his call sign and “fighting” and that they didn’t know where he was at first. Officer Reilly said they finally mapped him out and then Officer Payton said “He’s got a knife” over the radio. Officer Reilly said that when she was about two blocks away, she heard Officer Payton say “shots fired” over the radio. Officer Reilly said that when she arrived, she saw the male on the ground to the east of the patrol car, Officer Payton standing between the patrol car and the truck that was pulled over, and she ran up with her gun and asked Officer Payton if he was good. Officer Reilly said that Officer Payton said, “I don’t know if he got me. He’s got something in his hand. I don’t know what it is.” Officer Reilly said she didn’t know what it was but saw that the male had something silver, sharp-looking, and that was shining in the light. Officer Reilly said that the male was moving around a little bit and that at some point he said, “He illegally pulled that guy over.” Officer Reilly said that the male would not let go of whatever was in his hand, she heard officers telling him to open his hand, and she thought that somebody ended up using pliers to pull it out. When asked if Officer Payton told her anything else about the event, Officer Reilly said that Officer Payton told her “He came at me.”

Officer Moran. Officer Moran said that the initial call came out for an officer needing help fighting one, he arrived quickly (third or fourth), and that when he exited his vehicle, he saw two officers (including Officer Riley and another male officer) holding lethal coverage on a downed male that was yelling (he believed another officer had already pulled Officer Payton off the line). Officer Moran said that they went hands-on with the male, took the man into custody, and placed handcuffs on him. Officer Moran said that inside of his right hand, clasped, was a five-pointed ninja star or a bladed throwing device, and that with one of them pointing outwards in between his middle fingers. Officer Moran said that the male refused to let go (he was speaking coherently and acknowledging his words). Officer Moran said he took out a pair of pliers and unsuccessfully tried to pry his fingers off of it. Officer Moran said that eventually they pried his fingers open and got the device away. Officer Moran explained that when Officer Payton called out “fighting” on the radio, they initially didn’t have his location, dispatch pinged his location, at which point he and other officers drove towards him.

On the hood of the patrol vehicle, investigators located a silver ninja star with apparent blood stains. In the roadway, to the south of the patrol vehicle, was a white grocery bag, a bottle of 5 Hour Energy, a baton (Officer Payton's), a flashlight (Officer Payton's), and a teal-colored beanie. In the gutter near the front passenger corner of the patrol vehicle were two lighters and a box of cigarettes. Medical paraphernalia was in the rocky area by the curb.

Investigators located a total of five spent Speer 9mm Luger casings—one near the driver's side of the patrol vehicle, one near its front driver's side tire, two on the road in front of it, and one near its driver's side windshield.

### **Injury to Officer Payton**

Investigators documented injury sustained by Officer Payton during the incident—to the surface skin of his left anterior biceps brachii muscle—and observed that the two shirts he had been wearing both had a visible defect to the underside of the left sleeve bicep area.

### **Dispatch Radio Traffic Recording and Call Log**

Investigators reviewed the dispatch radio traffic and call log relating to this incident. The call log indicates the following: the call (on-view traffic stop) began at 1:41:29 a.m., additional officers were dispatched at 1:42:01 a.m., Officer Payton advised of "has a knife" at 1:42:15 a.m., shots fired was at 1:43:10 a.m., and the subject was deceased at 3:12:12 a.m.

Additionally, the radio traffic recording begins with Officer Payton calling out, "Motor 925. Fighting" (Radio at 00:00). Dispatch then advises that Officer Payton is at 765 West 375 South. Officer Payton then calls out, "Motor 925. He's got a knife" (Radio at 00:30). Officer Payton then advises, "I'm on the north side. Shots fired. I can't see in his hands" (Radio at 00:49). Medical is then dispatched.

### **Body-Worn Camera Recordings**

Investigators reviewed Officer Payton's body-worn camera recording, which begins at 01:33:09 a.m.; the first 29 seconds of the recording has no audio, as is consistent with the buffering feature of an Axon brand body-worn camera.<sup>27</sup> The recording is briefly summarized, in relevant part, as follows.

Officer Payton gets out of his vehicle and makes contact with M. M., who he's pulled over and is outside of his truck (BWC at 01:33:47); meanwhile, K. T., remains in the front passenger seat of the patrol vehicle. Officer Payton asks M. M. to get in his car and then advises him that he didn't signal. Eventually, Officer Payton returns to his vehicle with some of M. M.'s information (BWC at ~01:36:41). After a couple minutes, Officer Payton gets out of his vehicle and again makes contact with M. M., who is holding a paper out his window. After speaking with him, Officer Payton then returns to his vehicle (BWC at ~01:39:48).

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<sup>27</sup> The recording is 13 minutes and 49 seconds long.

As Officer Payton and K. T. are verifying the truck's VIN number, knocking is heard (BWC at 01:40:34) and Officer Payton quickly rolls down his window. Officer Payton says, "Bro, what are you doing?" and "Get back," as he gets out of his vehicle. As Officer Payton again asks, "What are you doing, dude?" (BWC at 01:40:39), a male wearing a teal-colored beanie—Mr. Grillone—is seen facing Officer Payton with his hands down by his side and with a white plastic sack in his left hand. Mr. Grillone says, "I sniffed you," and Officer Payton says, "Huh?" as he closes his car door. Mr. Grillone again says, "I sniffed you" (BWC at 01:40:42). As Officer Payton points to in front of his vehicle and tells him, "Get up here in front of the car right now" (BWC at 01:40:42), Mr. Grillone says, "This is a citizen's audit" while putting both hands behind his back. Officer Payton tells him, "Do what I said" as he grabs Mr. Grillone's right upper arm with left hand (BWC at 01:40:44) and then places his right hand on Mr. Grillone's chest and attempts to turn him to the right. **Mr. Grillone is seen resisting and swings/jabs his right hand upwards towards Officer Payton—before he swings, a dark-colored object (consistent in shape with the ninja star) is briefly visible in Mr. Grillone's right hand** (BWC at 01:40:45).

The video image is then obscured, and Mr. Grillone is heard saying, "**Do you want to die tonight?**" (BWC at 01:40:48), and then he continues to speak (unintelligible) as Officer Payton backs away, M. M. is seen getting out of his vehicle, and Officer Payton says, "What the fuck are you talking about?" (BWC at 01:40:50). Mr. Grillone then walks towards Officer Payton while continuing to speak, M. M. is seen walking towards Mr. Grillone, and Officer Payton retreats as he calls out over the radio, "Motor 925. Fighting" (BWC at 01:40:53). Officer Payton then says, "You better get away from me right now" (BWC at 01:40:55), and Mr. Grillone responds, "Why?" (BWC at 01:40:56), moves towards him, and then, "I sniffed you" (BWC at 01:40:58).

M. M. says, "I've got your back" (BWC at 01:40:59), and Mr. Grillone turns to his left and looks at M. M. and speaks to him as Officer Payton calls out, "785 South—, 785 West, 4<sup>th</sup> South. Give me a back" (notably, only the beginning was transmitted) (BWC at 01:41:00). Mr. Grillone looks back at Officer Payton and speaks to him as Officer Payton tells him, "You better get on the ground" (BWC at 01:41:04) and "Get on the fucking ground" (BWC at 01:41:05). The body-camera quickly moves as Officer Payton is heard saying, "You better get on the fucking ground, dude" (BWC at 01:41:08), and Mr. Grillone then throws the plastic sack at Officer Payton while saying something (unintelligible) (BWC at 01:41:09). Mr. Grillone then says, "That's my possession. Beat it" (BWC at 01:40:10).

Officer Payton draws his baton and flashlight as Mr. Grillone positions himself in a fighting stance with both hands raised in front of him, with his right hand closer to his chest and his left hand open and further in front of him. Officer Payton says, "Bro, I'm not—," and Mr. Grillone says, "That's right" and continues moving towards Officer Payton while maintaining a fighting stance. Mr. Grillone then says, "What did I do? I sniffed to you" (BWC at 01:41:17) and then extends his right arm towards Officer Payton and says, "What's your name?" (BWC at 01:41:19). Officer Payton says "Yeah," as he shines his light on Mr. Grillone (BWC at 01:41:22), who continues to say, "What's your name?" and then, "This is a palm. It's a tool" (BWC 01:41:23) as he his right arm is extended, his wrist bent down, and **some of his fingers appearing to be holding an object in his hand (consistent with the ninja star).** Officer

Payton says, "I got it" and then remarks, "What the fuck?" (BWC at 01:41:26). Mr. Grillone quickly moves towards him, and Officer Payton commands, "Bro, get the—" (BWC at 01:41:27) and drops his baton, draws his handgun (BWC at 1:41:29), and commands, "Drop it, now!" (BWC at 01:41:29).

As Officer Payton continues commands to "drop it," Mr. Grillone asks if it's a taser and then continues speaking while maintaining a fighting stance. Officer Payton then begins giving repeated commands to get on the ground (BWC at 01:41:37), but Mr. Grillone continues to remain in a fighting stance with both arms raised in front of him. Mr. Grillone then reaches up with his right hand and takes off his beanie (BWC at 01:41:41) and tosses it to the ground, saying "Here you go. That's yours." Mr. Grillone then begins walking backwards as Officer Payton continues giving repeated commands to get on the ground. As Mr. Grillone continues walking backwards, Officer Payton walks forwards, towards the back of the patrol car, and M. M. comes into view next to his truck.

Mr. Grillone then looks towards M. M. (BWC at ~01:41:51), says, "Can I get in your truck, bro?," and then runs towards the truck as M. M. quickly gets inside and closes the door. As he runs, Officer Payton yells at him to stop, attempts to fire his weapon, and then racks the slide; meanwhile, Mr. Grillone jumps up over the tailgate and on top of items in the truck bed (BWC at 01:41:55). As Mr. Grillone sits in the truck bed, Officer Payton continues commanding him to stop, and Mr. Grillone says, "**Shoot me**" (BWC at 01:42:00) and then continues talking, making statements such as "What's a taser gonna do?" and "Did I pull anything on you?" Officer Payton calls out on the radio, "Motor 925. **He's got a knife.**" (BWC at 01:42:06), and Mr. Grillone yells, "It's not a knife, you liar. You don't know what it is. Identify it. How big? How many inches?" Mr. Grillone continues speaking as M. M. then opens his door (BWC at 01:42:16). M. M. then exits his vehicle and walks towards the front of his truck. Mr. Grillone then begins to get up in the bed of the truck, grabs and attempts pull out one of the items in the truck, and then begins to stand up; Officer Payton says, "You better stop, dude" (BWC at 01:42:22) as Mr. Grillone begins to step up onto the edge of the tailgate. As Mr. Grillone stands up fully, he says, "I know you don't have ammunition on you" (BWC at 01:42:23) as he pulls his sleeves up, and Officer Payton says, "Yeah" (BWC at 01:42:25). Mr. Grillone then steps forward to stand with both feet the edge of the tailgate and then jumps off the truck as Officer Payton says, "You better stop, dude" (BWC at 01:42:26).

**Mr. Grillone says, "What" (BWC at 01:42:27) and then, "Get out" (BWC at 01:42:28) as he points towards K. T. who is in the front passenger seat of the patrol vehicle and begins walking towards her.** Officer Payton says, "Yeah—, You better stop," **Mr. Grillone continues walking and pointing towards K. T., and Officer Payton begins firing his weapon (five times)**, and Mr. Grillone falls to the ground (BWC at 01:42:30). Officer Payton attempts to call out on radio, "Motor 925. Shots fired" (BWC at 01:42:33) as Mr. Grillone sits up and attempts to get up. With his firearm still pointed at him, Officer Payton gives commands to stay down, and Mr. Grillone continues responding. Officer Payton commands him to roll over, Mr. Grillone remains seated, and Officer Payton calls out on the radio, "I'm on the north side. Shots fired. I can't see in his hands" (BWC at 01:43:04). Mr.

Grillone then falls backwards to the ground (BWC at 01:43:16). As sirens are heard approaching, Officer Payton is heard telling M. M. to get in his truck and stay.

Officer Reilly is seen running up (BWC at 01:43:29), she then asks Officer Payton if he's good, and Officer Payton advises, "**He's got something in his hand. I think it's a knife,**" "**He came after me. I don't know if I've been cut,**" and "I shot" (BWC at 01:43:31). Shortly after, Officer Payton further advises, "I don't know where I hit him, I'm pretty sure it's a torso shot" (BWC at 01:43:48). Officer Payton then steps away, and other officers are seen making contact with Mr. Grillone. Officer Payton further remarks, "**I don't know if he cut me. He has something in his hands. He had a, he had a blade of some, some sort. If you could look me over. I don't know if I've been cut**" (BWC at 01:44:40).

Notably, other officers' body-worn camera recordings capture them approaching Mr. Grillone, placing him in handcuffs, forcibly removing the ninja star from his hand (and placing it on the hood of Officer Payton's patrol car), and rendering emergency medical aid.

### **Weapons Download**

Protocol investigators examined and downloaded Officer Payton's Glock 17 9mm pistol, which had an inserted 17-round capacity magazine.<sup>28</sup> Protocol investigators counted one round in the chamber and 11 rounds in the inserted magazine, for a total of 12 rounds. Presuming Officer Payton began with a fully loaded inserted magazine and a round in the chamber, that count indicates that he likely fired **up to six rounds** during the incident. Notably, the body-worn camera recording captures the sound of **five shots fired**, and five casings were recovered.

### **Autopsy**

Dierdre Amaro, M. D., with the Utah Office of the Medical Examiner performed an autopsy of Mr. Grillone's body and determined that he died of multiple gunshot wounds. Dr. Amaro identified three penetrating gunshot wounds of his torso (all of indeterminate range, with projectiles recovered from his upper abdomen, upper left abdomen, and anterior left hip), as well as a graze wound of his abdomen and a superficial perforating gunshot wound of his chest. Dr. Amaro also reported sharp force injuries of his right hand (*i.e.*, multiple full thickness sharp wounds, up to 2cm, predominantly on the palmar surface), consistent with reported shuriken use.

### **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

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<sup>28</sup> Investigators also examined Officer Payton's two spare magazines, which were both fully loaded.

force was justified. To answer that question, we ask whether he or she reasonably believed the use of deadly force was necessary to prevent death or serious bodily injury to the officer or an individual other than the suspect. *See* Utah Code § 76-2-404(2)(c)).

As discussed more fully below, we believe the totality of the facts in this matter, taken together with reasonable inferences arising from those facts, would likely satisfy the elements of the affirmative legal defense of justification as applied to Officer Payton'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 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, protocol investigators interviewed Officer Payton about his decision to use deadly force and the surrounding events. Officer Payton said that his first contact with Mr. Grillone was when he heard a knock on his window and then Mr. Grillone stuck his head inside. Upon getting out and giving commands, Mr. Grillone refused to comply. **Mr. Grillone then hit him using his right arm**, he separated away, and then Mr. Grillone came towards him and hit him in the face. After creating distance and getting his light and baton out, Officer Payton **"saw that he had a blade in his hand," that his arm was covered in blood, and that he thought it was his own blood and that he had been stabbed, and that the suspect had "really tried to kill [him]."** **Mr. Grillone then starting to go after the driver, at which point he attempted to shoot him because he thought he was going to kill him.** The gun didn't go off, he put it back into service, the driver had cleared himself out of harm's way, and Mr. Grillone jumped in the back of the truck. Officer Payton continued to give commands, but Mr. Grillone still refused to listen to orders and stood up in the back of the truck. Mr. Grillone then jumped out of the bed of the truck, and at a certain point, **Mr. Grillone pointed at his ride-along and started to make a movement towards her, and that he made his way towards the passenger side of the car.** Officer Payton said he **"was thinking he was going to kill her" and that that's when he shot him.** Officer Payton further explained **thinking that Mr. Grillone "was going after her to attack and potentially kill her."**

Officer Payton's statements about the threat presented by Mr. Grillone are supported by other evidence that was produced by the protocol investigation in this case. For example, Officer Payton's body-camera recording captures the approximately two-minute long encounter before Mr. Grillone was shot, including **when Mr. Grillone cut Officer Payton with the ninja star**, continued to present the ninja star while not complying with any commands, and then went towards K. T., told her to, "Get out," and pointed at her as he walked towards her in the passenger side of the patrol vehicle, with the ninja star still in his hand. Further, K. T. described to investigators: Mr. Grillone "jumps out of the truck, and is in front, dead in front of our police car. **Turns, looks at me directly in the eye, points at me. . . Points at me as he's looking at me. Starts to come around the passenger side, like gets to the light" and that "as soon as he started walking towards me, [Officer Payton] fired."** K. T. recalled that **Mr. Grillone was**

“walking to [her] door,” that “he had that look in his eyes, like he was gonna accomplish something,” and “that was the same look the entire time, especially when he looked at me.”

Based upon the evidence before us in this case, we believe that Officer Payton was reasonable in believing that he needed to use deadly force against Mr. Grillone to prevent death or serious bodily injury to K. T. Mr. Grillone was advancing towards her with the ninja star, after having already used it on Officer Payton and threatened to kill him. Thus, we conclude that Mr. Grillone unlawfully presented an immediate threat of death or serious bodily injury to K. T. when Officer Payton fired.

The totality of the facts in this case, taken together with reasonable inferences about Officer Payton’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 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 to himself and/or others (in this case, K. T.). Such a use of deadly force, by an officer who reasonably believes the deadly force is necessary to prevent death or serious bodily injury to himself or another person, satisfies the elements of the affirmative legal defense of justification and affords the officer a legal defense to a criminal charge. Thus, in this case, we believe a jury would likely find that the facts satisfy the elements of a justified use of deadly force.

If, for the sake of discussion, we elected to file a charge against Officer Payton 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. Grillone was necessary to prevent death or serious bodily injury to himself and/or another person. We do not believe the facts of this matter would support an effort to disprove the justification defense. We believe Officer Payton 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 Officer Payton for his use of deadly force, we would have to show evidence to prove, beyond a reasonable doubt, that either he did not believe he needed to use deadly force prevent death or serious bodily injury (to himself and/or another); or, that if he did believe he needed to use deadly force, that his beliefs were unreasonable. We do not believe we have sufficient evidence to do so. Based on the evidence before us, we conclude that no reasonable jury would unanimously determine that Officer Payton did not reasonably believe deadly force was necessary in this situation. We conclude that we could not refute or overcome the affirmative legal defense of justification and therefore, we believe a jury would afford Officer Payton the legal defense.

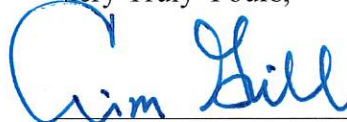
As the United States Supreme Court instructed in *Graham*, assessing “reasonableness” in the Fourth Amendment context “requires careful attention to the facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to the safety of the officers or others.” 490 U.S. at 496 (emphasis added). The facts of this matter support a conclusion that Officer Payton 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 Officer Payton’s use of deadly force would likely satisfy the elements of a justified use of deadly force as set forth in Utah State law.

### CONCLUSION

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

As outlined in more detail above, we conclude that the facts in this case, together with the reasonable inferences about Officer Payton’s decision to use deadly force, would likely support a finding that he 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 in this matter.

Very Truly Yours,



Sim Gill,

Salt Lake County District Attorney