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February 13, 2026

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

RE: SLCPD Officer William Barnett's Use of Deadly Force
Incident Location: ~149 W. Pierpont Ave., Salt Lake City, Utah
Incident Date: December 13, 2025
SLCPD Case No.: SL25-288250
WVCPD Case No.: WV25-99964
DA Case No.: 25INV001209

Dear Chief Redd:

This letter addresses the December 13, 2025, use of deadly force by Salt Lake City Police Department ("SLCPD") Officer William Barnett against an unidentified male who fired multiple rounds from the passenger-side of a vehicle.

Officer Barnett'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 West Valley City Police Department ("WVCPD") protocol team and comprised of law enforcement officers employed by agencies other than SLCPD. After the investigation, on February 27, 2026, the investigative task force's findings were presented to the Salt Lake County District Attorney's Office ("DA's Office"), which has the constitutional and statutory mandate to screen such matters for possible criminal charges.¹

¹ Utah Const. Art. VIII, section 16; Utah Code §§ 17-18a-203; *see also id.* at § 77-2-2(4) (defining "screening" as the "process used by a prosecuting attorney to terminate investigative action, proceed with prosecution, move to

SUMMARY OF FACTS AND FINDINGS

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

On December 13, 2025, at 2:59 a.m., SLCPD officers were dispatched to reports of “a possible another fight in progress” at Sky bar at 149 West Pierpont after a 911 caller reported a fight breaking out. Shortly after, additional officers were dispatched to the Gem Nightclub at 132 West Pierpont and advised that a female gave the address, then a male came on the line and stated that everyone at the nightclub had guns, and then the call disconnected. Officers determined that the calls were most likely related.

Two non-dispatched officers, Officer Barnett and Officer Hargrave, arrived in the parking lot south of Pierpont and spoke with the 911 caller as they waited for dispatched patrol officers to arrive.

At approximately 3:11 a.m., a white four-door sedan fled south through the parking lot while a rear passenger-side passenger fired multiple handgun rounds from the vehicle. Officer Barnett fired one round in the direction of the suspect vehicle. The suspect vehicle then fled west onto 300 South. Efforts to locate the suspect vehicle were unsuccessful.

During the protocol investigation, Officer Barnett refused to be interviewed about his decision to use deadly force, as is his constitutional right.² Investigators interviewed Officer Hargrave and the 911 caller, documented the scene and examined physical evidence, reviewed 911 calls, reviewed the radio traffic recording and dispatch call log, reviewed body-worn camera recordings (which were not activated until after the shooting), and examined Officer Barnett’s weapon.

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 Officer Barnett 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 Barnett’s use of deadly force would likely be subject to the affirmative legal defense of justification under Utah law,³ and we decline to file a criminal charge against him.

dismiss a prosecution that has been commenced, or cause a prosecution to be diverted”). “Commencement of prosecution” is further defined as “the filing of an information or an indictment.” *Id.* at § 77-2-2(1).

² Officer Barnett has a constitutional right to remain silent and to be presumed innocent of any wrongdoing.

³ 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.

RELEVANT LEGAL STANDARDS

As relevant here,⁴ 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 injury⁵ 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

⁴ 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...

⁵ “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).

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.⁶ 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.

⁶ 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).

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.

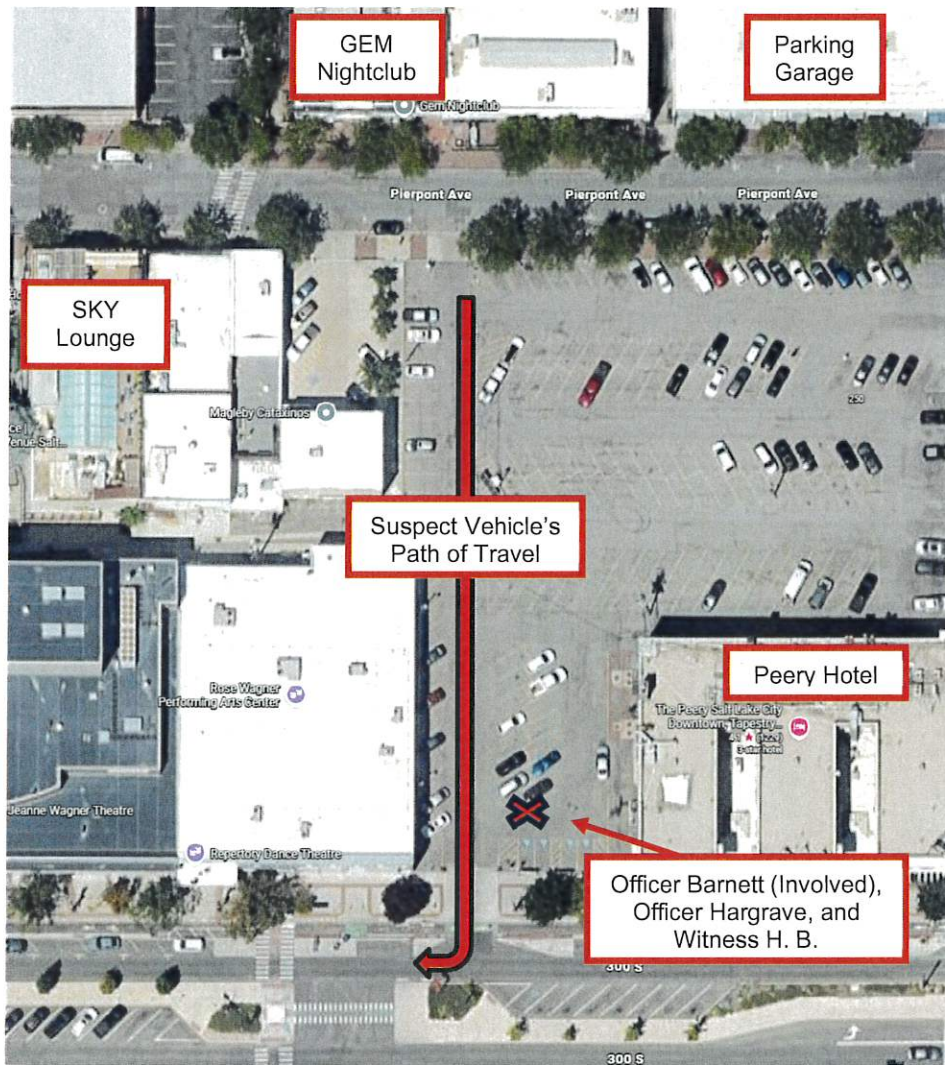
FACTS DEVELOPED DURING OICI INVESTIGATION

The following facts were developed from the protocol investigation of the matter. As noted previously, WVC PD led an investigative task force of law enforcement officers who conducted the investigation of Officer Barnett's use of deadly force, and the protocol investigation's findings were presented on February 27, 2026, 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 December 13, 2025, at 2:59 a.m., SLCPD officers were dispatched to reports of "a possible another fight in progress" at Sky bar at 149 West Pierpont after a private security guard, who we refer to as "H. B.", called 911 and reported a fight breaking out in a group of approximately 10 black male adults on Pierpont Avenue, directly north of the Peery Hotel.⁷ Shortly after, additional officers were dispatched to the Gem Nightclub at 132 West Pierpont and advised that a female gave the address, then a male came on the line and stated that everyone at the nightclub had guns, and then the call disconnected.⁸ Officers determined that the calls were most likely related.

⁷ Officers Strong and Jurmu were dispatched at 2:59 a.m. Dispatch further advised that a couple "X-ray" units had responded previously and it was "gone on arrival." Officer Hargrave then said that the group of people had seemed to be arguing but nothing was getting physical at the time.

⁸ Officers Boyd and Peterson and Boyd were dispatched at 3:02 a.m.



Two non-dispatched officers, Officer Barnett and Officer Hargrave, arrived in the parking lot south of Pierpont and spoke with H. B. as they waited for dispatched patrol officers to arrive.⁹

At approximately 3:11 a.m., a white four-door sedan fled south through the parking lot while a rear passenger-side passenger leaned out and fired multiple handgun rounds from the vehicle.¹⁰ Officer Barnett fired one round in the direction of the suspect vehicle. The vehicle then fled west onto 300 South. Efforts to locate the vehicle were unsuccessful.

Protocol investigators later determined that the round fired by Officer Barnett struck a vehicle that was parked along the west side of the parking lot. Investigators located five 9mm shell casings along the suspect vehicle's path of travel and identified bullet damage to the east of

⁹ Officer Barnett and Officer Hargrave were on "park duty" and had already cleared parks.

¹⁰ Over the radio, the officers reported, "gunshots going off in the parking garage," "shots fired," and then, "The group on Pierpont is shooting shots."

its path. Investigators were unable to obtain any video footage that captured the shooting incident.¹¹

Witness Statements

Officer Barnett

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

Officer Hargrave

Protocol investigators interviewed Officer Hargrave, who was working a “park shift,” who said that there was a large group, he didn’t usually respond to patrol calls (while working the park shift), and that he and Officer Barnett were waiting. Officer Hargrave said that while waiting, a security guard waved them down, so he and Officer Barnett drove up but were still not going to approach the whole group because it was just the two of them. Officer Hargrave said they stayed just a little bit south so they could kind of see what was going on but couldn’t really hear much. Officer Hargrave said that the security guard was saying, “Hey, these guys are starting to argue, starting to fight, might be getting physical,” and that he had a video but it was very blurry and that it didn’t show much in the very brief amount that he watched.

Officer Hargrave recalled:¹²

While we’re standing there talking with the security guard, this white four-door sedan starts approaching us, not directly at us in the lane of travel in the parking lot there. **And then out of the passenger side rear, I see a male, a male, black adult, lean out. I didn’t see his face, I only saw the back of his head. I, at first, I figured he was gonna yell something, it was my first thought. And then I hear about five or six pops, which were gunshots.** So my immediate reaction was—I wasn’t sure where he was shooting at—and so my immediate reaction was to get cover. Well, I pulled my firearm, my department-issued firearm here, and then I got cover, and then I picked up a sight on the vehicle. I didn’t have a confirmed sight on the person shooting, so I didn’t take a shot. **Saw the vehicle take off, looked like it was going westbound.** I jumped in my car. I radio, you know, “shots fired,” brief description, direction. And then I go take off and I try to find the car.

When asked if they arrived before patrol officers, Officer Hargrave said he was not sure if patrol officers were there and didn’t see them, and explained that they weren’t really on the call at that point and he was just there, had cleared out the parks already, and figured he’d be

¹¹ Officer Barnett’s and Officer Hargrave’s body-worn cameras were both activated after shots were fired.

¹² Quotations have been lightly edited for concision and readability.

there to help out if it was needed. Officer Hargrave confirmed that he was south in the parking lot, could see groups of people that he assumed the security guard was talking about were fighting, but he didn't see any fighting. Officer Hargrave confirmed that the people were more north in the parking lot and looked like they were almost on Pierpont onto the road.

Officer Hargrave confirmed that the car was a white four-door sedan and that when it was driving towards them, it was traveling south through the parking lot. Officer Hargrave said he saw the male on the rear passenger side lean out and explained, "**the car's facing us, so he leans out and then turns towards the rear of the vehicle. So he's facing north, the vehicle is still north of us as well. And he started shooting, it looked like back towards the group, and then he, they, they took off. The five or six shots, he gets back in, and he's gone.**" Officer Hargrave said that Officer Barnett was working the park shift with him.

Officer Hargrave said he did not realize that Officer Barnett had fired his gun until he heard it over the radio and expressed that he did. When asked where Officer Barnett was in relation to where he was standing during the incident, Officer Hargrave explained: "when the shots come out, we kind of spin with the vehicle. And then it looked like he kind of took some steps forward, and then that's when I jumped in my car." When asked about getting behind cover, Officer Hargrave said that it looked like Officer Barnett looked like he was behind his [Officer Barnett's] car, and he [Officer Hargrave] was behind his own car and then moving behind a random car, "just trying to kind of pivot with the car in case they decided to shoot at us."

Officer Hargrave said that after the vehicle fled, it went west on 300 South. Officer Hargrave recalled: "So it looked like Barnett was kind of peeking down to see where it was going. So I jumped in my car immediately, I whip around, you know, I confirm with Officer Barnett, I'm like, 'Hey, it went west?,' and he's like, 'west.' So I activate my lights and sirens and I start hauling west looking for this white four-door sedan." Officer Hargrave explained that his body camera was on the "ready" mode so that when he turns his lights and sirens on it turns the camera on, and so it was activated 30 seconds prior to when he jumped in his car, which was "pretty much immediately after the shots were fired."

When asked about the suspect, Officer Hargrave said that he was looking away but looked younger, about 21-25 years old, and that his hair was pretty short and kind of curly. Officer Hargrave confirmed that **the suspect was leaning out the rear passenger side, facing back north.** Officer Hargrave said that the security officer was standing with them and that as soon as the shots came out, it looked like the security officer jumped in front of Officer Barnett's car and behind his [Officer Hargrave's] car, and he explained that his and Officer Barnett's cars were lined up.

Officer Hargrave recalled that the sedan's windshield was pretty tinted, he couldn't see the driver or the person in the front passenger seat, he could see figures but couldn't make out a face or even gender, there were at least three people in the car, and he did not see behind the driver. Officer Hargrave said he didn't really know the make or model of the vehicle. Officer

Hargrave said he did not know if Officer Barnett ever got in his vehicle and pursued. Officer Hargrave said that the vehicle was gone by the time he was on 3rd South.

H. B.

Protocol investigators interviewed H. B., who called 911 while working private security at the Peery Hotel. H. B. who said that there were about four African-American 20-year-olds by a car, he walked past them, asked them if they were good, and told them he was just checking if they were all right. H. B. said he walked from where they were on the northwest side and then walked along the building of the Peery Hotel and could see a big group of people fighting, so he called SLCPD dispatch, said there was fighting, and gave the address. H. B. said that eventually two patrol cars came, which happened to be the two officers that were in the altercation, and that they came and they just drove by. H. B. said he went back to his car for a little bit and then went back inside and told the front desk that there was some stuff going on in the parking lot. H. B. said that then he went back out, there was some really loud fighting and a woman screaming, and he was trying to figure out what was going on and get a good view. H. B. explained that at some point, he went back to his car because he was too close and didn't want them to see him and come after him as it was a huge group. H. B. said he called dispatch again but was on their hold line, and then saw the two cops over in the parking lot by Gracie's bar. H. B. said he waved at them, they didn't see him, and so he shined his flashlight on them and they came over.

H. B. said that the first cop pulled in, he told him that the group was fighting, and the cop said it was the same group from earlier. H. B. said that the two cops went and parked and he also talked to the second cop about the group fighting. H. B. said that the cops parked their cars and got out, his white Honda Pilot was still up against the building of the hotel, that there was a red car they parked next to, and that the police cars were doubled up. H. B. said that the cops got out and they were just chatting together. H. B. said:

And they're like, "These are the same guys we told us screw off earlier, but we're just waiting for a few more units to arrive before we go, 'cause we don't want two against how many there are." And then as soon as he said that, that's when this white, no, not white, this silver car. It's a four-door, but it's a small one, it's like a, looked like a Honda Civic, could've been something like that. It was silver. And it had, the driver was a black male. Don't remember what he was wearing. The passenger, black male. And there's three guys in the back seat. **And the guy on the passenger side in the back, he gets out of the window like this, right? And then we see like kind of scrambling, we're like watching, they're like kind of (unintelligible), I, we're like, "What's he doing?" He's driving and all of a sudden boom, boom, boom, boom, boom.**

H. B. clarified:

I can't just tell what direction, all I saw was a flash of the muzzle. So it looked like it could have been backwards, could it have been at us? I'm not

sure, all I saw was him get outta the car with this, boom, boom, boom, boom, boom. I don't remember what direction, 'cause it was all like, "Crap, shots fired," so then me and the other officers, we're like, so there's an officer in front of me, an officer behind me, they're like, "Shots fired, shots fired!" So I'm like, "Oh shoot." So we're getting down, we're running like in between the car, cops and I'm like, "Yo, this is happening." It was crazy. So, the one officer, "shot fired, shot fired." **Apparently he shot his gun. I didn't remember that,** but probably because I was just like, "Wow, those guys are shooting" so I, but I did see him draw his gun.

H. B. said that the cops had their guns drawn, and so his was safe being there and he just took cover and let the cops handle it. H. B. said that then one of them, the guy who was behind him, jumped in his patrol vehicle and took off after them, but before he jumped in the car, he said something along the lines of "PD, PD, stop" or "Police, stop," and then "shots fired, shots fired," and he thought that's immediately when he shot the gun. H. B. explained that the cop got into his vehicle and took off, and then the other cop got into his vehicle and took off.

H. B. said that after checking the scene, he went inside and told the client what happened, and then went back outside, there were a ton of cops, and he ran up to one of them and told them what happened. H. B. clarified:

I could not see what direction it was they were shooting at. All I saw was, 'cause the car was literally coming like this. **The guy gets out of the back window and he's like, he's like fumbling around down here before he's out of the back window. And he just, it could have been at us, could have back been out, I wasn't sure. All I saw was the phew, phew, phew, the flare of the muzzle. And it was just like, I think we saw the first two, the two, first two flares before like it kind of registered,** when they all got down and like ran.

H. B. said that there were more after the first two shots, probably three more. H. B. said that the vehicle was heading north to south and probably came from that large group. When asked where he and the officers were standing, H. B. explained:

We were standing in between the patrol car and this red car that was right next to it. We were kinda like standing a little bit behind and in between those two. Because they just got out and we're just like chatting, not thinking anything crazy was gonna happen. So we just, get out, and then we see that car drive by, we're like, *bam bam, whoa.*

When asked about after the car fled, H. B. explained that the first officer got in his car and was "lickety-split gone." H. B. said that the other cop left eventually. H. B. then recalled the other cop getting in his vehicle (as he was walking back towards his Honda Pilot) and that he went to floor it, made a right turn, almost ran into a sign, and then chased after it too. H. B. said he did

not remember exactly from when the first cop left until the second cop, and he didn't remember what the second cop did until he got into his car.

H. B. explained the layout of the area, including where the incident took place, where the police cars were parked, where the suspect vehicle was, and where his vehicle was. H. B. clarified that the vehicle was heading out of the parking lot, going south. H. B. confirmed that there were two black males in the front and three in the back, and explained:

And then this guy right here, **he hopped, he like did his torso out of the window. And then, they were yelling or something, and then popped off two.**

And then we were standing about right here, where those exits, and when they pulled up we're like, "Oh, shoot." So then this cop went this way and I, we all like kind of followed in a line. And I think this guy returned fire when he was saying "PDPD." And then he immediately jumped in that car and then chased after them. And this car fled this way. And then that cop car followed, chased him there.

H. B. recalled that the shooter was wearing a gray shirt, had a flat-top black hairstyle, could not have been older than 25, and was very dark. When asked what he heard while they were shooting, H. B. said he heard a whole lot of swearing. H. B. explained that there was a parking garage and then bars and businesses, and that before the shooting, there was a huge group of people right in the alley, that they were the ones yelling, and that that got his interest. H. B. explained that he initially walked past a group of people and asked if they were good, and they said there was fighting over there. H. B. said that the car he saw before was not the same car because it was white and that the suspect car was silver or gray. H. B. said that after talking to those guys, he went over to where he still had a couple rows of cars to kind of protect him but still give him a good view, and then that's when the two original police cars drove by. H. B. said he then continued his patrol around, went inside, came back out, and they were still yelling. H. B. said he went back out to his initial spot and saw them pushing each other around, being really aggressive, and there was a woman screaming. H. B. recalled that the white car was still there the second time he came out. H. B. recalled that the suspect vehicle was a four-door and it could have been a silver Honda Accord.

H. B. clarified that the officers were across the road when he waved them down and that they came in through the parking lot, he talked to them for like two seconds, and then they parked. H. B. said: "And then we were just talking right there. **And then that's when the car came from somewhere over here. Made it way down there and then popped 'em off.**" H. B. said that the way the cop cars were parked, one of their trunks was hanging out and clearly visible. When asked about when he saw the passenger first shoot, H. B. said that the suspect could have definitely clearly seen the first cop car. H. B. explained that **he "shot, shot, shot" and then stopped shooting a little bit before they reached the cop cars and that's when they sped off.** H. B. clarified that the officers did not have their emergency lights on, but their headlights were on. H. B. confirmed that the shooting vehicle was silver or gray.

Physical Evidence

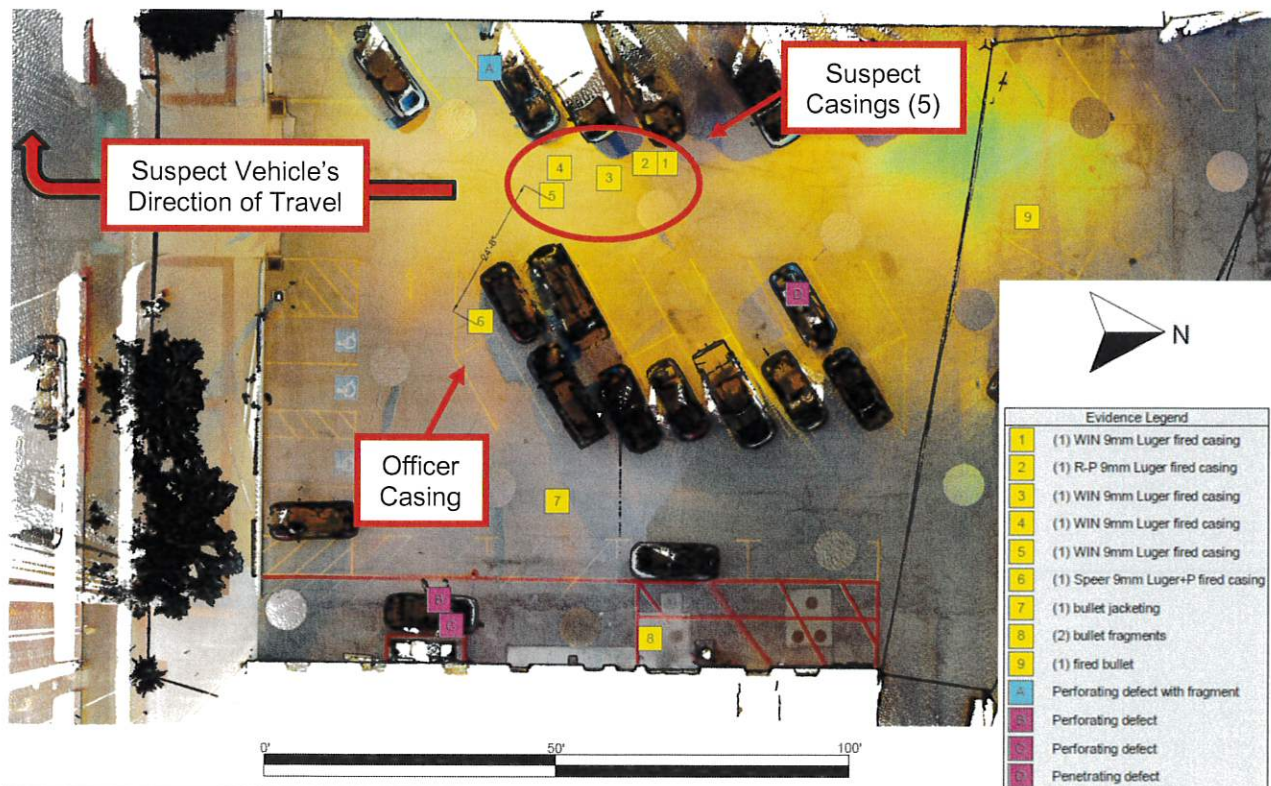
Protocol investigators inspected and documented the OICI scene, reviewed the 911 calls, reviewed the radio traffic recording and call dispatch log, reviewed body-worn camera recordings, and downloaded Officer Barnett’s weapons.

OICI Scene

Protocol investigators inspected the OICI scene located in the parking lot at approximately 130 West, between Pierpont Avenue (240 South) and 300 South. Notably, Officers Barnett and Hargrave had driven their marked patrol vehicles from the scene following the incident (when they pursued the suspect vehicle).

Investigators located a total of six spent 9mm casings—one they determined was fired by Officer Barnett (#6) and the other five they determined were likely fired by the suspect (#1-5). Investigators also located a fired bullet (#9), bullet fragments (#8), and bullet jacketing (#7).

In a vehicle parked along the west side of the parking lot, investigators located a bullet defect with a fragment (#A), which they determined was from the shot fired by Officer Barnett. Investigators located bullet defects to a vehicle (H. B.’s) parked along the east side of the parking lot (#B-C), as well as to a vehicle parked in a center row of the parking lot (#D); investigators determined that the defects were from the suspect’s shots.



911 Calls, Radio Traffic Recording, and Call Dispatch Log

Investigators reviewed the 911 calls, the radio traffic recording, and the dispatch call log relating to the incident. The records show that at 2:59 a.m., two patrol officers were dispatched to reports of “a possible another fight in progress” at Sky bar at 149 West Pierpont after H. B. called 911 and reported a fight breaking out in a group of approximately 10 black male adults on Pierpont Avenue, directly north of the Peery Hotel.¹³ Dispatch further advised that a couple “X-ray” units had responded previously and it was “gone on arrival” as far as they reported, that one of the complainants indicated that police was on scene, and that “details were all over the place.” Officer Hargrave then advised that the group of people had seemed to be arguing but nothing was getting physical at the time.

At about 3:02 a.m., two additional patrol officers were dispatched to the Gem Nightclub at 132 West Pierpont and advised that a female gave the address, then a male came on the line and stated that everyone at the nightclub had guns, and then the call disconnected.¹⁴ A sergeant then advised that the calls were most likely related.

At about 3:11 a.m., the officers advised over the radio of “gunshots going off in the parking garage” and of “shots fired”; Officer Hargrave then advised, “[T]he group on Pierpont is shooting shots.”

As officers responded to the area and attempted to locate the suspect vehicle, Officers Hargrave and Barnett provided information about the shooting and the suspect vehicle; their statements, which were also captured by their body-worn cameras, are summarized in the following section.

Body-Worn Camera Recordings

Investigators reviewed body-worn camera recordings from Officer Barnett and Officer Hargrave, which both begin after the incident has already occurred. A summary of the recordings, when viewed together and in relevant part, is as follows.

Officer Hargrave’s body-worn camera recording begins without audio and shows Officer Hargrave with his handgun in his right hand and pointed southwest towards 300 South; he then grasps it with both hands (Hargrave BWC at 03:10:53).¹⁵ Officer Barnett is to the west of him, with his handgun also pointed in the same direction. Both officers are positioned with Officer Barnett’s marked patrol vehicle as cover (they are to the north and northwest of its driver’s side), which is parked facing east towards the south end of the parking lot. Officer Barnett begins to run west, out from behind the cover of his patrol vehicle and across the parking lot towards 300

¹³ Because Officer Barnett was not privy to the 911 calls, we did not rely on their contents for the purpose of our screening analysis. Officers Strong and Jurmu were the initial dispatched officers.

¹⁴ Officers Peterson and Boyd were the officers dispatched to the Gem Nightclub call.

¹⁵ The first approximately 26 seconds of the recording is without audio, as is consistent with the buffering feature of an Axon-brand body-worn camera.

South, and Officer Hargrave turns back and runs east towards his patrol vehicle, which is parked in front of Officer Barnett's vehicle, also facing east.

As Officer Hargrave gets in his vehicle, Officer Barnett's body-camera recording begins (with audio) with him on 300 South, facing east as he heads back towards the parking lot, still holding his handgun (Barnett BWC at 03:11:04). Meanwhile, Officer Hargrave begins driving and loops around in the parking lot. As he heads towards the exit, he rolls his window down; Officer Hargrave is heard asking Officer Barnett where they went, and Officer Barnett responds, "They went that way" (Barnett BWC at 03:11:17). Officer Hargrave continues towards the exit; at this point, the audio on Officer Hargrave's recording begins and sirens are heard (meanwhile, Officer Barnett has opened his driver's door) (Hargrave BWC at 03:11:19; Barnett BWC at 03:11:20 (sirens activate)). Officer Hargrave turns right onto 300 South and drives westbound. Officer Barnett also begins driving, turns around in the parking lot, and then also turns right onto 300 South and drives westbound.

As they drive, Officer Hargrave advises over the radio, "The suspects were fleeing in a vehicle. They were going westbound from Pierpont in a white sedan, four-door" (Hargrave BWC at 03:11:36). Officer Barnett then advises, "X-Ray 1-5-4. **There's gonna be several male black adult, one in the rear passenger side that fired several rounds**" (Barnett BWC at 03:12:09).¹⁶ Officer Barnett further advises, "X-ray 1-5-4. **No shots were fired at officers, they were at the crowd. However, I had one sight picture and fired one round.**" (Barnett BWC at 03:12:55; Hargrave BWC at 03:12:56). Officer Hargrave also advises, "White, 4-door sedan" (Hargrave BWC at 03:13:10).

Officer Barnett further advises, "**I tried to get a plate, but I had to duck out of the way**" (Barnett BWC at 03:13:56; Hargrave BWC at 03:13:57), and then adds, "**I thought it may have been a Honda, but I'm unsure.**" (Barnett BWC at 03:14:08; Hargrave BWC at 03:14:09).

After returning to the scene, Officer Barnett tells other officers, "**I don't know if I hit anybody, but he was shooting several rounds**" (Barnett BWC at 03:17:36). Officer Barnett confirmed that he shot, said he probably fired one shot, and then checked his weapon and confirmed that he fired one round. When asked if he saw where he hit, Officer Barnett said, "**I thought I was hitting the guy with the gun, but I have no idea. It would've went through glass or . . .**" (Barnett BWC at 03:18:13). Officer Barnett indicated where he was at when he shot. Officer Barnett then explained to officers, "**So we were out here with security, we were just observing. We heard this car screech and then stop. I saw a male reach out, start swinging three or four rounds that way. So we ducked back. I pulled my gun. He looked like he was still swinging this way. So I shot from this direction approximately**" (Barnett BWC at 03:18:40).

Weapons Downloads

¹⁶ Officer Barnett's call sign is X154.

Protocol investigators examined and downloaded Officer Barnett's duty Glock 45 9mm pistol, which had an inserted 17-round-capacity magazine.¹⁷ Protocol investigators counted one round in the chamber and 16 rounds in the inserted magazine, for a total of 17 rounds. Presuming that Officer Barnett began with a fully loaded inserted magazine and a round in the chamber, that count indicates that he likely fired **one round** during the incident, which is consistent with the one casing recovered on scene.

LEGAL ANALYSIS

The scope of this review, and the OICI protocol investigation related to it, is narrow in its scope and purpose: to determine whether the facts of this case, when applied to the law, warrant the filing of a criminal charge against an officer who used deadly force. In considering whether to charge a criminal offense against a law enforcement officer who uses deadly force, we try to ascertain whether Utah's broad affirmative legal defense of justification, particularly as applied to law enforcement officers, effectively precludes criminal prosecution based on the facts before us. In other words, we ask whether an officer could establish at trial that his or her use of deadly force was justified. To answer that question, we ask whether he or she reasonably believed the use of deadly force was necessary to prevent death or serious bodily injury to the officer or an individual other than the suspect. *See* Utah Code § 76-2-404(2)(c).

As discussed more fully below, we believe the totality of the facts in this matter, taken together with reasonable inferences arising from those facts, would likely satisfy the elements of the affirmative legal defense of justification as applied to Officer Barnett'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 another person. Where the facts of a case satisfy these elements of the affirmative legal defense of justification, Utah State law affords an officer a legal defense and the finder of fact is instructed to render a verdict of not guilty of the offense(s) alleged.

As noted above, Officer Barnett refused to be interviewed or provide a statement explaining his use of deadly force, as is his constitutional right. Without his explanation as to his use of deadly force, we don't know what his actual beliefs were or his reason(s) for his decision to fire his weapon. We are therefore left to infer the rationale for his apparent decision to use deadly force based on other evidence we received, as well as the reasonable inferences to be drawn from that evidence. In similar situations where a shooting officer has refused to answer questions or provide a statement, we have proceeded in this manner. In doing so, however, we have never strayed from the objective evidence or testimony of other witnesses, nor do we do so here. While it is the prerogative and constitutional right of an officer not to share information with investigators, an officer's refusal to explain his or her apparent decision to use deadly force does not diminish our duty to explain and account for our decisions and conclusions or absolve

¹⁷ Investigators also downloaded Officer Barnett's two spare 17-round-capacity magazines, which were both fully loaded (17 rounds).

us of our obligations to the community to present the truth to the community about an officer's use of deadly force on a member of our community.

While we do not know Officer Barnett'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, the evidence shows that officers were waiting for dispatched patrol officers to arrive to a reported fight and that as they were talking to the 911 caller, a vehicle with multiple occupants fled south through the parking lot, away from the crowd with the fighting. As it traveled south, the rear passenger-side passenger leaned out and began firing multiple handgun rounds from the vehicle (notably, five 9mm shell casings were recovered along the suspect vehicle's path). One of the rounds traveled west to east, impacting a vehicle parked behind the officers and to their left as they were seeking cover in a narrow space between a parked car and Officer Barnett's marked patrol vehicle. It is within this context that Officer Barnett fired one round in the direction of the suspect vehicle, which then fled from the parking lot.

While Officer Barnett's body-worn camera did not capture the incident itself, it captured statements he made about the shooting and the shot he fired. For example, after the vehicle fled, Officer Barnett advised: "**There's gonna be several male black adult, one in the rear passenger side that fired several rounds,**" and then further advised, "**No shots were fired at officers, they were at the crowd. However, I had one sight picture and fired one round.**" Officer Barnett also advised that he tried to get a plate number, but "**had to duck out of the way.**" Additionally, after returning to the scene, Officer Barnett stated, "**I don't know if I hit anybody, but he was shooting several rounds,**" and that, "**I thought I was hitting the guy with the gun. . .**" Officer Barnett further explained to officers: "So we were out here with security, we were just observing. We heard this car screech and then stop. **I saw a male reach out, start swinging three or four rounds that way. So we ducked back. I pulled my gun. He looked like he was still swinging this way.**"

Officer Hargrave and H. B. also described to investigators the male firing rounds from the suspect vehicle and the threat he presented. Officer Hargrave later described to investigators: "**And then out of the passenger side rear, I see a male, a male, black adult, lean out.** I didn't see his face, I only saw the back of his head. I, at first, I figured he was gonna yell something, it was my first thought. **And then I hear about five or six pops, which were gunshots.**" Officer Hargrave further explained: "**the car's facing us, so he leans out and then turns towards the rear of the vehicle. So he's facing north, the vehicle is still north of us as well. And he started shooting, it looked like back towards the group,** and then he, they, they took off. **The five or six shots, he gets back in, and he's gone.**" Similarly, H. B. described: "**And the guy on the passenger side in the back, he gets out of the window like this, right? And then we see like kind of scrambling,** we're like watching, they're like kind of (unintelligible), I, we're like, "What's he doing?" **He's driving and all of a sudden boom, boom, boom, boom, boom.**" While H. B. clarified that he could not tell what direction the male was shooting, he saw "a flash of the muzzle," and said that it could have been at them or it could have been back out.

Based upon the evidence before us in this case, we believe that the shooter unlawfully presented an immediate threat of death or serious bodily injury to Officer Barnett and/or other individuals when he leaned out of the fleeing vehicle and fired multiple handgun rounds, one of which impacted behind the officers and to their left. We further believe it is reasonable to infer that Officer Barnett believed he needed to use deadly force to prevent death or serious bodily injury to himself and/or others, and that such a belief was reasonable.

The totality of the facts in this case, taken together with reasonable inferences about Officer Barnett'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 injury to himself and/or others. Such a use of deadly force, by an officer who reasonably believes the deadly force is necessary to prevent death or serious bodily injury to himself or another person, satisfies the elements of the affirmative legal defense of justification and affords the officer a legal defense to a criminal charge. Thus, in this case, we believe a jury would likely find that the facts satisfy the elements of a justified use of deadly force.

If, for the sake of discussion, we elected to file a charge against Officer Barnett 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 was necessary to prevent death or serious bodily injury to himself or another person. We do not believe the facts of this matter would support an effort to disprove the justification defense. We believe that Officer Barnett 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 Barnett 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 to prevent death or serious bodily injury (to himself or another person); or, that if he did believe he needed to use deadly force, that his belief was unreasonable. We do not believe we have sufficient evidence to do so. Based on the evidence before us, we conclude that no reasonable jury would unanimously determine that Officer Barnett 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 Barnett 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 Barnett 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 person. 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 Barnett'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 Barnett's decision to use deadly force, would likely support a finding that he reasonably believed deadly force was necessary to prevent death or serious bodily injury to himself and/or another person. 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