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Via Hand Delivery

August 5, 2016

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RE: *SLCPD Officers Checketts' and Winegar's Use of
Deadly Force*
Incident Location: 245 South Rio Grande, Salt Lake City, Utah
Incident Date: February 27, 2016
UPD Case No.: 2016-31482
SLCPD Case No.: 2016-35164
D.A. Case No.: 2016-714

Dear Sheriff Winder and Chief Brown:

The Salt Lake County District Attorney's Office ("D.A.'s Office") operates under Utah State law to review and "screen"¹ criminal charges against individuals where criminal activity may have occurred. The D.A.'s Office operates pursuant to an agreement between the D.A.'s Office and participating law enforcement agencies to perform joint investigations and independent reviews of officer involved critical incidents ("OICI") including police officers' use of deadly force while in the scope of their official duties. Pursuant to the State law and the agreement between the D.A.'s Office and participating law enforcement agencies, the D.A.'s Office has reviewed the above referenced matter to determine whether the above referenced use

¹ As explained more fully herein, the process of "screening" a case includes an assessment of the facts and an application of the facts to relevant law, using legal and ethical standards to determine whether to file a criminal charge.

of deadly force violated criminal statutes and whether a criminal prosecution should commence. Part of our screening process considered whether the use of deadly force was “justified” under Utah State law thereby providing a legal defense to a criminal charge. As outlined more fully below, the D.A.’s Office declines to file criminal charges in the above referenced matter because we conclude that Salt Lake City Police Department (“SLCPD”) Officers Checketts’ and Winegar’s use of deadly force was “justified” under Utah State law.

On February 27, 2016, SLCPD Officers Checketts and Winegar were at the Salt Lake Road Home homeless shelter on Rio Grande Street in Salt Lake City. The officers were investigating a report of a stolen iPhone. During their investigation, they exited the Road Home and saw a disturbance² some distance away. To the officers, it appeared a person was hitting another person with a long, slender object like a pipe or a pole.

The officers ran towards the disturbance. As they got closer, they could see it appeared to be two males with long, metallic objects, at least one of whom was hitting a man with the pipe or pole.

The officers identified themselves as police and ordered the suspects to stop and drop their weapons. The male³ closer to the officers dropped his metal pipe and walked away from the scene. The other male suspect, later identified as a juvenile⁴, held his slender metallic object up and out in front of him and continued to pursue the victim. The officers ordered the suspect to “drop it” and “put it down” several times but the suspect did not. Instead, the suspect took another step towards the victim and started to raise the metallic object higher. The suspect turned his head and looked towards the police officers. At that instant, Officer Checketts and Officer Winegar fired their handguns at the suspect, hitting him. The suspect was transported to the hospital and survived his injuries⁵.

UTAH STATE LAW

As part of the review and screening determination, the D.A.’s Office relied in part upon the following statutory provisions for the legal analysis:

76-2-401 Justification as defense -- When allowed.

² Some facts set forth herein may allege wrongdoing by individuals to varying degrees. All persons accused of criminal wrongdoing are presumed innocent unless and until proven guilty in a court of law.

³ This man was later identified as John Uziogwe.

⁴ The Salt Lake County District Attorney’s Office has never publicly identified the juvenile or referred to him by name and refrains from doing so herein due to privacy interests regarding juveniles and court rules governing pre-trial publicity. All persons accused of criminal wrongdoing are presumed innocent unless and until proven guilty in a court of law.

⁵ The juvenile male was hit in the right middle flank; the center of the back, left of the spine; the left middle flank; and a through-and-through wound to the left triceps.

(1) Conduct which is justified is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:

(a) when the actor's conduct is in defense of persons or property under the circumstances described in Sections 76-2-402 through 76-2-406 of this part;

(b) when the actor's conduct is reasonable and in fulfillment of his duties as a governmental officer or employee;

...

76-2-402 Force in defense of person -- Forcible felony defined.

(1)(a) A person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person's imminent use of unlawful force.

(b) A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force, or to prevent the commission of a forcible felony.

(2)(a) A person is not justified in using force under the circumstances specified in Subsection (1) if the person:

(i) initially provokes the use of force against the person with the intent to use force as an excuse to inflict bodily harm upon the assailant;

(ii) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(iii) was the aggressor or was engaged in a combat by agreement, unless the person withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force.

(b) For purposes of Subsection (2)(a)(iii) the following do not, by themselves, constitute "combat by agreement":

(i) voluntarily entering into or remaining in an ongoing relationship; or

(ii) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described

in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(a)(iii).

(4)(a) For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76, Chapter 6, Offenses Against Property.

(b) Any other felony offense which involves the use of force or violence against a person so as to create a substantial danger of death or serious bodily injury also constitutes a forcible felony.

(c) Burglary of a vehicle, defined in Section 76-6-204, does not constitute a forcible felony except when the vehicle is occupied at the time unlawful entry is made or attempted.

(5) In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors:

- (a) the nature of the danger;
- (b) the immediacy of the danger;
- (c) the probability that the unlawful force would result in death or serious bodily injury;
- (d) the other's prior violent acts or violent propensities; and
- (e) any patterns of abuse or violence in the parties' relationship.

76-2-404 Peace officer's use of deadly force.

(1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

- (a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(3) or (4);
- (b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and

- (i) 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
- (ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others 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 another person.

Criminal Charges and Prosecution: Standards

The D.A.'s Office reviews police officers' use of deadly force pursuant to the D.A.'s Office's authority as a public prosecutor as set forth in Utah Constitution Article VIII, Section 16⁶ and Utah Code 17-18a-203⁷, among other legal authority. Pursuant to this authority, the D.A.'s Office is responsible for determining whether a person's actions (in this case, whether a law enforcement officer's use of deadly force) violates a criminal statute (Utah State law) and if so, whether and to what extent that person should be charged with a crime.

The D.A.'s Office is a public prosecution agency for and has jurisdiction over the prosecution of criminal offenses that occur within Salt Lake County. Among the duties of the D.A.'s Office is the responsibility to receive investigations of potential criminal activity from law enforcement agencies. Law enforcement agencies "screen"⁸ potential criminal charges with the D.A.'s Office by presenting evidence to the D.A.'s Office that may support the filing of criminal charges against a person who may have committed a criminal offense. Law enforcement agencies present all the relevant facts presently known to them.

After receiving relevant facts about a particular matter, the D.A.'s Office considers potentially applicable statutes to determine whether the statutes proscribe the conduct. During the "screening" process, the D.A.'s Office applies legal and ethical standards to the matter at hand to decide whether to file criminal charges. The D.A.'s Office files criminal charges against individuals accused of violating the law when certain legal and ethical standards are satisfied.

⁶ **Utah Const. Art. VIII, Section 16 [Public prosecutors.]** The Legislature shall provide for a system of public prosecutors who shall have primary responsibility for the prosecution of criminal actions brought in the name of the State of Utah and shall perform such other duties as may be provided by statute. Public prosecutors shall be elected in a manner provided by statute, and shall be admitted to practice law in Utah. If a public prosecutor fails or refuses to prosecute, the Supreme Court shall have power to appoint a prosecutor pro tempore.

⁷ **17-18a-203. District attorney powers and functions.**

In a county that is located within a prosecution district, the district attorney:

- (1) is a public prosecutor for the county; and
- (2) shall perform each public prosecutor duty in accordance with this chapter or as otherwise required by law.

⁸ Utah State Code defines "screening" as "the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution [by filing an information or indictment], move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted." U.C.A. 77-2-2 (1).

When these legal and ethical standards are not satisfied, the D.A.'s Office declines to file a criminal charge.

Legal Standards

A case must satisfy legal standards before a prosecutor files criminal charges. Among the legal standards to file a case is the requirement that facts show "probable cause" to believe that offense was committed and the accused committed the offense. *See, e.g.,* Ut.R.Cr.P. 4(b).

A criminal case must be built on admissible evidence; the screening function doesn't simply consider all the relevant facts presented by law enforcement but must evaluate what evidence will be legally admissible against a defendant charged with a crime. Some evidence proves facts that, while true, may nevertheless not be admissible against a defendant at trial. The screening function is limited to considering evidence that will likely be admissible against a defendant.

Ethical Standards

The D.A.'s Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing⁹. Honoring ethical standards ensures that everyone affected by the criminal justice system—suspects, defendants, victims, the community and the system itself—are treated fairly, honorably and respectfully.

Among the ethical standards which a case must satisfy is a reasonable likelihood of success at trial. A prosecutor must prove each element of the case beyond a reasonable doubt and to the unanimous satisfaction of a jury to prevail (success) at trial. A screening decision includes a consideration of factors that a jury may consider in weighing testimony, evaluating evidence, apply the law and rendering a verdict.

The D.A.'s Office follows many of the screening considerations outlined by organizations like the National District Attorneys Association¹⁰ and the American Bar

⁹ Even when a criminal case is filed, the defendant is presumed innocent of the charges unless and until convicted in a court of law.

¹⁰ For instance, some relevant considerations for screening are outlined in *NDAA Standards 3-3.9 and 4-4.2*:

Standard 3-3.9 Discretion in the Charging Decision

(a) A prosecutor should not institute, or cause to be instituted, or permit the continued pendency of criminal charges when the prosecutor knows that the charges are not supported by probable cause. A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction.

(b) The prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that sufficient evidence may exist which would support a conviction. Illustrative of the factors which the prosecutor may properly consider in exercising his or her discretion are:

- (i) the prosecutor's reasonable doubt that the accused is in fact guilty;
- (ii) the extent of the harm caused by the offense;
- (iii) the disproportion of the authorized punishment in relation to the particular offense or the offender;
- (iv) possible improper motives of a complainant;

Association—organizations that address the prosecution function and provide guidance in screening a case. These ethical screening standards are helpful to prosecutors deciding whether a case ought to be filed.

“Justification” as Defense in Utah

When screening a case, a prosecutor considers whether a person who ostensibly committed a crime (or for which there may be probable cause to believe has committed a crime) nevertheless has a legal defense to prosecution. If a person who, for instance, shot or attempted to kill another has a legal defense to ostensible criminal charges related thereto, no charges can be brought against that person.

One legal defense to potential criminal charges available to police officers who used deadly force (whether or not the deadly force caused the death of a person) is the legal defense of “justification.” This legal defense is found in Utah State Code set forth above and operates in conjunction with other legal authority. The legal defense of “justification” could apply to any potential criminal charge; some of the potential criminal charges a police officer could face through an improper use of deadly force could include criminal homicide, murder (or attempted murder); aggravated assault; or other offenses set forth in the criminal code. The legal defense of “justification” is applicable to any potential criminal charge.

A person’s use of deadly force (including but not limited to use of deadly force by peace officers) is “justified” when the use of deadly force conformed to the statutes referenced above. Persons may lawfully defend themselves under circumstances outlined by law, and are afforded the legal defense of “justification” for the lawful use of deadly force in accordance with statutes. Utah Code Ann. 76-2-402 states that a “person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person’s imminent use of unlawful force.” *Id.* This section also states: “A person is justified in using force intended or

(v) reluctance of the victim to testify;

(vi) cooperation of the accused in the apprehension or conviction of others; and

(vii) availability and likelihood of prosecution by another jurisdiction.

(c) A prosecutor should not be compelled by his or her supervisor to prosecute a case in which he or she has a reasonable doubt about the guilt of the accused.

(d) In making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or to a desire to enhance his or her record of convictions.

(e) In cases which involve a serious threat to the community, the prosecutor should not be deterred from prosecution by the fact that in the jurisdiction juries have tended to acquit persons accused of the particular kind of criminal act in question.

(f) The prosecutor should not bring or seek charges greater in number or degree than can reasonably be supported with evidence at trial or than are necessary to fairly reflect the gravity of the offense.

(g) The prosecutor should not condition a dismissal of charges, *nolle prosequi*, or similar action on the accused’s relinquishment of the right to seek civil redress unless the accused has agreed to the action knowingly and intelligently, freely and voluntarily, and where such waiver is approved by the court.

...

4-2.2 Propriety of Charges

A prosecutor should file charges that he or she believes adequately encompass the accused’s criminal activity and which he or she reasonably believes can be substantiated by admissible evidence at trial.

likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force, or to prevent the commission of a forcible felony¹¹." *Id.*

In addition to the use of deadly force in defense of self or others, a peace officer's use of deadly force is "justified" when:

"effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and 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 the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person." U.C.A. 76-2-404.

In essence, the analysis for the use of deadly force to prevent death or serious bodily injury (whether by individuals or peace officers) turns on similar elements. Use of deadly force by *individuals*: "A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force" U.C.A. 76-2-402(1)(a),(b). Use of deadly force by *peace officers*: "the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person," or to effect an arrest under circumstances set forth in law. See, U.C.A. 76-2-404. A peace officer's use of deadly force is "justified" when that officer "reasonably believes" that the use of deadly force is "necessary to prevent" the threat of "death or serious bodily injury."

As mentioned above, U.C.A. 76-4-202 and 404 constitute legal defenses to potential criminal charges. Although Utah Code doesn't directly reference other means of evaluating liability and reasonableness of police use of force, the United States Supreme Court case *Graham v. Conner* provides an analytical methodology for assessing excessive force claims in a Fourth Amendment context¹². *Graham* considers excessive force claims from a "reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Conner*, 490 U.S. 386, 396 (1989) (citations omitted.) *Graham* also "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.* (citations omitted) *Graham* observes: "Because '[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,' [citation omitted] however, 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

11 For the enumerated "forcible felonies," see U.C.A. 76-2-402(4)(a), *supra*.

12 The issue addressed review is narrow and well defined: did an officer's use of force violate a criminal statute and if so, should a prosecution ensue. While our review does not directly employ a Fourth Amendment analysis, the *Graham*

others, and whether he is actively resisting arrest or attempting to evade arrest by flight. See, *Tennessee v. Garner*, 471 U.S., at 8-9 (the question is "whether the totality of the circumstances justify[s] a particular sort of . . . seizure").

This OICI investigation and our review that followed were conducted in accordance with an OICI investigation protocol previously established and in conformity with legislation governing investigations of OICI events. The OICI investigation protocol strives to establish an investigation methodology and process that provides the D. A.'s Office with the evidence needed to review the investigation to determine whether a police officer's use of deadly force conformed to the above referenced statutes. If the use of deadly force conformed to the statutes, the use of deadly force is "justified," and the legal defense of "justification" is available to the officer such that criminal charges cannot be filed against the officer and the criminal investigation into the actions of the officer is concluded.

If the use of deadly force does not conform to the statutes above, the use of deadly force may not be "justified," and the legal defense of "justification" may not be available to the officer. In other words, if the use of deadly force failed to conform to the applicable statutes, the law does not afford the officer the legal defense of "justification." Further investigation may be needed to determine whether, and if so which criminal charges can and should be filed against the officer if any. Just because the legal defense of "justification" may not be available (because the use of deadly force did not conform to the statutes) does not therefore necessarily mean that criminal charges should be filed against the officer. For instance, the evidence available to the District Attorney may not support criminal charges, the case may not have a reasonable likelihood of success at trial, or other reasons may preclude a prosecution. Again, further investigation and consideration may be required to determine whether the use of deadly force warrants criminal charges.

As laid out in more detail below, because we conclude that Officers Checketts' and Officer Winegar's use of deadly force conformed to the relevant statutes outlined above, we therefore conclude that the legal defense of "justification" applies to the facts set forth herein and we will not file criminal charges against Officer Checketts or Officer Winegar for his use of deadly force against the juvenile.

INVESTIGATION

During the 2015 Utah State Legislature's General Session, the legislature enacted U.C.A. 76-2-408 which sets forth in relevant part the following provisions governing the investigation of peace officers' use of deadly force:

76-2-408 Peace officer use of force -- Investigations.

(1) As used in this section:

(a) "Dangerous weapon" is a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(b) “Investigating agency” is a law enforcement agency, the county or district attorney’s office, or an interagency task force composed of officers from multiple law enforcement agencies.

(c) “Officer” is a law enforcement officer as defined in Section 53-13-103.

(d) “Officer-involved critical incident” is any of the following:

(i) the use of a dangerous weapon by an officer against a person that causes injury to any person;

...

(2) When an officer-involved critical incident occurs:

(a) upon receiving notice of the officer-involved critical incident, the law enforcement agency having jurisdiction where the incident occurred shall, as soon as practical, notify the county or district attorney having jurisdiction where the incident occurred; and

(b) the chief executive of the law enforcement agency and the county or district attorney having jurisdiction where the incident occurred shall:

(i) jointly designate an investigating agency for the officer-involved critical incident; and

(ii) designate which agency is the lead investigative agency if the officer-involved critical incident involves multiple investigations.

(3) The investigating agency under Subsection (2) may not be the law enforcement agency employing the officer who is alleged to have caused or contributed to the officer-involved critical incident.

...

To comply with state law requiring an outside agency to investigate an OICI, SLCPD invoked the OICI investigation protocol and an investigative team comprised of law enforcement personnel from several agencies responded to investigate this matter pursuant to the previously agreed upon OICI investigation protocol.

On April 28, 2016, OICI protocol investigators presented the investigation findings to the District Attorney for review and this opinion letter. During the presentation of the investigation findings, OICI protocol investigators reported that SLCPD was helpful and accommodating with the investigation’s needs, but did not perform any investigation of the OICI itself.

FACTS

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

On February 27, 2016, a man referred to herein as K.M. (sometimes identified by witnesses as the “victim”) was in the area of the Road Home homeless shelter located at 210 South Rio Grande Street in Salt Lake City, Utah. K.M. was in the area to allegedly purchase drugs. K.M. rode his bicycle up to a juvenile male and allegedly asked the juvenile if K.M. could purchase a marijuana cigarette for \$1.10. The juvenile male allegedly said he only had methamphetamine but demanded K.M. give the juvenile the \$1.10 anyway. K.M. initially refused and offered the juvenile a metal broom handle K.M. recently found and said “take this.”

The juvenile allegedly took the metal broom handle from K.M. and began hitting K.M. with it. The juvenile and another male pursued K.M. down the street as SLCPD officers who saw and heard the disturbance headed that way.

SLCPD Officers Checketts and Winegar saw two men, each of whom held a long, slender metallic object pursuing K.M. The officers repeatedly ordered the men to drop their objects and stop. One of the men complied and dropped his object and walked off. The juvenile did not comply and continued to pursue K.M. while still holding his long, slender metallic object. As the juvenile closed the distance between himself and K.M., the officers saw the juvenile move his arm as though he were about to raise up the metallic object. The officers said they feared the juvenile was about to strike K.M. again and fired their weapons. The officers shot the juvenile who went down. SLCPD and other law enforcement agencies responded to the area because the crowd who gathered became unruly and hostile which delayed medical personnel’s response to the scene and ability to provide medical attention to the juvenile.

OICI protocol investigators interviewed several witnesses to the incident, many of which are recounted below:

Officer Checketts

OICI protocol investigators interviewed SLCPD Officer Kory Checketts with his attorney present. Officer Checketts said he was on duty on February 27, 2016 in Salt Lake City, Utah. Officer Checketts said he was wearing his uniform and his department issued equipment.

Officer Checketts said during the evening hours of February 27, 2016, he and SLCPD Officer Winegar were at the homeless shelter on Rio Grande Street investigating a report of a stolen cell phone. Officer Checketts said he and Officer Winegar were with two security guards from the shelter. Officer Checketts said he, Officer Winegar and the two security guards stepped outside the building during their investigation of the stolen phone. Officer Checketts said as he

stepped outside, he saw that there were people to the north and south of him all along the east side of Rio Grande Street.

Officer Checketts said in his training and experience, homeless individuals using the shelter usually stay on the east side of Rio Grande Street. Officer Checketts said in his training and experience, there are sometimes individuals who are not transient and who prey upon the homeless population; Officer Checketts said in his experience, those who prey upon the transient population often have weapons and violently victimize the homeless population near the shelter.

Officer Checketts said as he and Officer Winegar left the shelter, he turned right to go south along the west sidewalk when he heard yelling or a disturbance and looked south east towards the east side of Rio Grande Street. Officer Checketts said he saw something (an object or a pile of things) in the roadway. Officer Checketts said he saw three people who caught his attention. Officer Checketts said he saw two males wearing dark clothing and one male with light clothing (subsequently identified as a person referenced herein as "K.M.") During his interview, for ease of identification, Officer Checketts referred to the two men wearing dark clothing as suspects, and the man wearing light colored clothing (K.M.) as the victim. Officer Checketts said he had a feeling that he needed to focus his attention on these three males and deal with the stolen cell phone later.

Officer Checketts said he saw one of the suspects hit the victim with a long, slender metallic object in the suspect's hands. Officer Checketts said he saw the victim stumble backwards several steps. Officer Checketts said he saw both suspects walk around towards the victim as the victim stumbled backwards.

Officer Checketts said he turned his flashlight on to get a better view of what was going on. Officer Checketts said he used the strobe function of his flashlight to notify the three men that police were present. Officer Checketts said there was no reaction to his flashlight and strobe from any of the three people. Officer Checketts said he saw both suspects had shiny, long objects. Officer Checketts said he saw both suspects drag their poles on the ground; Officer Checketts said the objects dragging on the ground made metallic sounds. Officer Checketts said he thought: "oh my gosh, they have swords."

Officer Checketts said he yelled to the suspects: "Stop, police! Drop the weapon¹³!" Officer Checketts said he drew his firearm because he believed the suspects had metal objects (like swords or pipes) and Officer Checketts said he could see the suspects were advancing on the victim.

Officer Checketts said that he drew his handgun from the holster because he believed the suspects had metal objects which could inflict death or serious bodily injury on the victim. Officer Checketts said he started running towards the suspects and continued to yell: "Police, drop the weapon!" Officer Checketts said for the first few moments, neither suspect acknowledged his commands. Officer Checketts said he continued to order the suspects to stop and drop their weapons. Officer Checketts said as he was getting closer to the suspects, one of

¹³ Officer Checketts' body camera recording captured the following commands he yelled at the juvenile and John Uziogwe: "Put it down now! Put it down now! Put it down now! Police! Drop it! Drop it! Hey! Drop it now! Put it down! Put it down! Put it down! Stop!"

the suspects stopped, turned, dropped his weapon (which Officer Checketts believed was a metal pipe) and turned and ran. Officer Checketts said he heard a metallic sound when the suspect dropped his weapon.

Officer Checketts said that the other suspect continued to advance towards the victim as the victim was walking backwards with his hands up in the air. Officer Checketts said this suspect was the same person who hit the victim with the long metallic object earlier. Officer Checketts said he saw the suspect closing the distance between the suspect and the victim; Officer Checketts said he continued to run towards the suspect to protect the victim. Officer Checketts said he continued to yell commands at the suspect.

Officer Checketts said the suspect was getting closer to the victim and the victim continued to retreat with his hands up. Officer Checketts said he saw the suspect raise the “pipe” up, in close proximity to the victim. Officer Checketts said he had seen this suspect strike the victim with the “pipe” previously.

Officer Checketts said he was trying to get ahead of the victim to provide better protection to the victim. Officer Checketts said as he saw the suspect start to raise the metal object, he decided that he needed to use deadly force needed to stop the suspect and protect the victim. Officer Checketts said he took a fraction of a second to look at the victim and ensure he was not in the line of fire and there were no other people in Officer Checketts’ backdrop. Officer Checketts said as he decided to pull the trigger, he “heard two bangs.” Officer Checketts said he fired his weapon at the suspect.

Officer Checketts said he saw the suspect go down and saw the victim turn towards Officer Checketts. Officer Checketts said he told the victim to get down on the ground. Officer Checketts said he could see that the suspect’s metal object had landed far enough from the suspect so as not to be a threat.

Officer Checketts said he called out on the radio: “shots fired” and gave the address. Officer Checketts said he looked around to ensure people were ok. Officer Checketts said that he saw between what he estimated were twenty-five to thirty-five people who seemed angry and were advancing towards the officers. Officer Checketts said he ordered the people to get back. Officer Checketts said the people were not complying and had their hands in their pockets and continued to advance on the police. Officer Checketts said as additional police officers arrived, he said the crowd was eventually contained and moved back so medical personnel could attend to the suspect and victim.

Officer Checketts said he knew¹⁴ he and other officers needed to get medical attention to the suspect, but he knew that the crowd presented a dangerous situation to those responding to provide medical care to the juvenile.

During his interview, OICI protocol investigators asked Officer Checketts why he didn’t use his Taser on the suspect. Officer Checketts said that he felt like he had to use means more

¹⁴ During his interview, Officer Checketts became emotional discussing the need to get medical attention to the juvenile and the inability to provide medical assistance due to the volatile nature of the crowd.

reliable than a Taser to protect the victim. Officer Checketts said that to him, a Taser is better employed for someone who is suicidal to prevent injury to himself, or someone who is passively or active resisting arrest or commands. Officer Checketts said that the effective use of a Taser is not 100% guaranteed. Officer Checketts said he felt he couldn't take the chance to have the two prongs of the Taser go different directions, and he felt he didn't have time to re holster his firearm. Officer Checketts said that to use the Taser, he would have to get closer and stay closer (within striking range) to the suspect. Officer Checketts said that given the suspect's serious actions and his distance to the victim, the Taser was not the necessary weapon to prevent the victim's death or seriously bodily injury. Officer Checketts said the suspect was going straight for the victim with a metal pipe or pole and the situation was too dynamic and the victim too close to the suspect with the weapon for the Taser to be a viable option.

Officer Winegar

OICI protocol investigators interviewed SLCPD Officer Jordan Winegar with his attorney present. Officer Winegar said he was on duty on February 27, 2016 and in uniform when he and SLCPD Officer Checketts responded to the homeless shelter on Rio Grande Street to investigate a stolen cell phone.

Officer Winegar said he and Officer Checketts spent some time in the homeless shelter looking for the stolen phone when they decided to step outside the building to look for the phone. Officer Winegar said as he and Officer Checketts stepped outside the building, a female told Officer Winegar that there was "some kind of problem outside."

Officer Winegar said as he stepped out of the shelter's front door, he heard a loud "pop" that he compared to a long fluorescent lightbulb popping. Officer Winegar said he saw a long "weapon" held above the suspect's head. Officer Winegar said he thought "it was a sword or a pipe." Officer Winegar said he thought: "Oh my gosh, they are attacking this guy." Officer Winegar said he saw the victim (subsequently identified as K.M.) in a defensive position and was being attacked. Officer Winegar said he could see the suspect's long object was reflecting light and Officer Winegar said he could see it was hard metal.

Officer Winegar said he and Officer Checketts were on the west side of Rio Grande Street, and the two suspects and victim were closer to the east side of Rio Grande and south east of the officers' location. Officer Winegar said he estimated the suspects were perhaps several car lengths away from his initial location.

Officer Winegar said he and Officer Checketts started running towards the suspects and victim and yelled: "Stop, stop!" Officer Winegar said he saw both the suspects had long metal objects in their hands and he said he was very concerned that one of the suspects may hit the victim. Officer Winegar said he believed that "one blow's just gonna kill [the victim.]"

Officer Winegar said he remembered the sound of metal as one of the suspects dragged a "pipe" on the ground. Officer Winegar said as one of the suspects dragged the metal object on the ground, the suspect seemed focused on pursuing the victim. Officer Winegar said he ran

towards the suspects and victim and continued to yell: "Police, stop!" Officer Winegar said as he started running towards the suspect and victim, he drew his handgun. Officer Winegar said one of the suspects stopped and dropped his "pipe" on the ground. Officer Winegar said his focus switched to the other suspect who was still advancing on the victim.

Officer Winegar said the suspect and the victim were walking perpendicular to Officer Winegar. Officer Winegar said it appeared that the suspect was intent on going after the victim and that there "was nothing stopping him." Officer Winegar said the victim appeared helpless as he walked backwards away from the suspect. Officer Winegar said the suspect was pursuing the victim and closing the distance between the suspect and the victim. Officer Winegar said he continued to yell: "Police! Stop! Drop it!"¹⁵ Officer Winegar said the suspect did not acknowledge his commands and did not comply.

Officer Winegar said the suspect continued to advance on the victim with a "slow, methodical rage, and he's like, on a mission" and Officer Winegar said he believed the suspect was going to kill the victim. Officer Winegar said he thought to himself that there was "only one thing [he] could do to stop the threat" and help the victim and that was to shoot the suspect. Officer Winegar said that the victim was backing up and had his hands up and "clearly just could not protect himself," and that Officer Winegar said he "knew [he, Officer Winegar] was the only one that was going to be able to protect [the victim.]"

Officer Winegar said that he saw the suspect "making a movement that, I felt like, if I don't act now, this is going to be a strike, and he's going to end up killing this guy." Officer Winegar said he saw the suspect moving "his hand from down and he started bringing the pipe up." Officer Winegar said he made a decision to shoot the suspect. Officer Winegar said as he decided to shoot, he moved his trigger finger from the weapon's slide to the trigger and fired his weapon. Officer Winegar said he used his firearm because he knew he needed to act swiftly because he was worried about the victim's life "at this second." Officer Winegar said he believed his decision to use deadly force saved the victim's life.

Officer Winegar said he saw the suspect fall to the ground. Officer Winegar said he looked at the victim on the ground who was crying. Officer Winegar said he asked the victim if he needed medical or he needed help. Officer Winegar said he noticed that the crowd encircled the officers and he heard Officer Checketts calling police radio dispatchers calling shots fired and asking for assistance. Officer Winegar said he also called "shots fired." Officer Winegar said he couldn't provide care for the injured suspect because the crowd's anger. Officer Winegar said he expected someone in the crowd to start shooting at the officers given the anger in the crowd. Officer Winegar said he continued to yell at the crowd for people to get back. Officer Winegar said other officers started to arrive and were able to get the crowd back and medical to arrive. Officer Winegar said he stayed close to the suspect because he didn't know the nature of the suspect's injuries but wanted to provide assistance. Officer Winegar said other officers arrived and pulled him and Officer Checketts away from the scene.

¹⁵ Officer Winegar's body camera recording captured the following commands he yelled at the juvenile and John Uziogwe: "Put it down! Drop it! Drop it! Drop it now!"

Officer Mackay

SLCPD Officer D. Mackay wrote a police report about his involvement with the OICI. Officer Mackay said he heard radio traffic asking for assistance and responded to the shelter area. Officer Mackay said he made contact with K.M. Officer Mackay said K.M. had a hard time standing and walking to Officer Mackay's patrol car. Officer Mackay said he transported K.M. to SLCPD's Public Safety Building ("PSB") to be interviewed about the incident. While en route to the PSB, K.M. told Officer Mackay that he had been beaten up with a pipe. Officer Mackay said K.M. showed Officer Mackay what K.M. claimed to be the wounds from the beating with the pipe. Officer Mackay said he observed what he described as a red mark on one of Kelly's arms. Officer Mackay said he delivered K.M. to the PSB and waited while protocol investigators interviewed K.M.

Other Interviews***K.M.***

On February 28, 2016, OICI protocol investigators interviewed K.M. K.M. said that on February 27, 2016, he went to the homeless shelter on Rio Grande Street to find something to eat. K.M. said that while he was near the shelter, a young man (subsequently identified as the juvenile referenced herein) approached him and wanted to sell "speed" or "meth." K.M. said he told the young man K.M. had \$1.10 on him and K.M. said he wanted to buy a "joint." K.M. said he showed the young man the money and said he just wanted to buy a "J" and go home. K.M. said the young man said to K.M.: "let me show you my stuff." K.M. said he told the young man "that's ok."

K.M. said the young man said "give me your \$1.25." K.M. said he told the young man "I can't give you my money." K.M. said the young man said to him "let me have your money and I'll get it for you." K.M. said he told the young man he wasn't going to give the young man his money. K.M. said he told the young man that the money was his last dollar.

K.M. said he (K.M.) had a metal rake handle K.M. had just got out of the garbage can. K.M. said he told the young man, referring to the rake handle: "you can have this." K.M. said that this appeared to really agitate the young man. K.M. said the young man hit him with the rake handle several times. During the interview with protocol investigators, K.M. showed the investigators what K.M. said were his injuries. Protocol investigators noted a large welt on the back of K.M.'s right arm, bruised welts on K.M.'s forearms and a red mark on K.M.'s back. K.M. said that both of his legs hurt; K.M. said he wasn't sure whether the young man hit K.M. on the legs.

K.M. said that after the young man hit him with the rake handle, a person who appeared to be a friend of the young man came towards K.M. with an object that K.M. said looked like a thick, metal stick. K.M. said this man was bigger than the young man who had hit K.M. with the rake handle. K.M. said the bigger male told K.M. he was going to "jack up" K.M. K.M. said a

woman told K.M. to give up his money for “being stupid.” K.M. said that he thought at the time that if he went down, several people would start attacking him.

K.M. said he dropped his bicycle and ran. K.M. said he heard police yelling “stop, Police, don’t move, put it down!” K.M. said he saw the police officers had their guns drawn. When he was asked by protocol investigators whether K.M. knew why the police had their guns drawn, K.M. replied because he was being pursued by two men with “giant pipes.” K.M. said the police were yelling loudly at the suspects to stop and drop their weapons, but neither suspect looked at the police or complied with the officers’ commands.

K.M. said that when he realized the police were chasing the suspects, he thanked god because he believed the police were there to protect him. K.M. said he heard a “pop, pop, pop” and believed one of the officers fired his weapon at the smaller, young man. Protocol investigators asked K.M. to estimate the distance between the officer who fired his gun and the young man. K.M. believed the distance was about ten feet.

Protocol investigators asked K.M. what he felt when the two men pursued him with their pipes. K.M. said he believed the two men were trying to rob him and take his money. K.M. said he believed the young man would have killed K.M. “very easily.” K.M. said the young man had a “look of determination on his face” like “he wanted to blast [K.M.] and hit a homerun.” Protocol investigators asked K.M. if he was fearful of being hit with the pipe. K.M. replied that he was fearful of being killed by the pipe. K.M. said he believed the officers saved his life and that the officers put themselves in jeopardy to protect him.

Witness M.W.

M.W. said he knew the juvenile and had been with him a couple of times before the incident. M.W. said he was in the area of the shelter the night of the incident and saw the juvenile at the shelter.

M.W. said he saw a white man (likely the same person as K.M.) walk up to the juvenile and the juvenile try to get away. M.W. said he saw the white man “antagonizing” the juvenile, and the juvenile wanted to get away from the white man. M.W. said he saw the juvenile pick up a stick to “defend himself.” M.W. said he saw police officers running up to the juvenile with their guns drawn.

M.W. said he heard the police yell: “drop it,” and “as soon as” the juvenile turned around, “maybe [to] see what was going on” the police shot the juvenile. M.W. said that it appeared that the juvenile “was about to hit” the white man when one of the police officers fired at the juvenile.

Witness A.G.

OICI protocol investigators interviewed witness A.G. A.G. said she was on the sidewalk when she saw the juvenile (who she knows) shaking a broom stick as he chased another man.

A.G. said she heard someone yell: “Get him!” A.G. said she heard police officers yell: “Drop the weapon!” A.G. said she heard two gunshots.

Witness R.M.

Witness R.M. said he was near the shelter on Rio Grande Street when he saw two men fighting. R.M. said he saw that one person had an object in his hands. R.M. said he saw two police officers run past him yelling: “Put it down, put it down!” R.M. said he heard two gunshots but did not look back to see what was occurring.

OICI protocol investigators interviewed several other police officers who responded and civilian witnesses. The recordings and notes of these interviews are part of the OICI protocol investigators’ file, but are not set forth here.

Physical Evidence

OICI protocol investigators inspected and documented items of physical evidence at the scene and other physical evidence related to the event.

SLCPD Body Cameras

OICI protocol investigators reviewed Officer Checketts’ and Officer Winegar’s body cameras. Because the video recordings depict events that may form the basis of criminal allegations against the juvenile, the District Attorney’s Office considers the body camera recordings as evidence and, consistent with the handling of other items of evidence, will not release the body camera recordings to the public at this time. The District Attorney’s Office asserts that Utah State and federal law require the District Attorney’s Office to present evidence only in a court of law and in compliance with rules that pertain to evidence.

Surveillance Video

OICI protocol investigators also reviewed surveillance camera video recordings. Because the video recordings depict events that may form the basis of criminal allegations against the juvenile, the District Attorney’s Office considers the surveillance camera recordings as evidence and, consistent with the handling of other items of evidence, will not release the surveillance camera recordings to the public at this time. The District Attorney’s Office asserts that Utah State and federal law require the District Attorney’s Office to present evidence only in a court of law and in compliance with rules that pertain to evidence.

Photos

OICI protocol investigators obtained and reviewed photographs depicting the location of several items of physical evidence at the scene, as well as the other facts and things from the OICI.

Weapons Downloads

Officers Checketts' and Winegar's firearms were inspected and examined pursuant to the OICI investigation protocol. Investigators determined Officer Winegar fired three rounds from his weapon and Officer Checketts fired one round from his weapon.

DISCUSSION

Expert Witness

The District Attorney's Office retained *Martinelli and Associates, Justice and Forensic Consulting, Inc.* to assist the D.A.'s Office with the review of this matter. Given the community interest in the matter, the D.A.'s Office chose to seek the assistance of an outside expert opinion as part of the D.A.'s review. Dr. Ron Martinelli¹⁶ provided a report to the D.A.'s Office. The following is a relevant portion of report containing his opinions and conclusions:

The forensic evidence provided by the body cameras worn by Officers Winegar and Checketts documents that both officers ran across the street to intercept [the juvenile] who had walked from the street and stepped up onto the sidewalk while holding a bent metal pole in his right hand, which was approximately four feet in length.¹⁷ The body cam videos document that [the juvenile] aggressively approached the male subject "K.M." Victim "K.M." is observed to have both of his hands up in submission and is backing away from [the juvenile.] (Bodycam video PO Winegar, time stamps: 00:25 – 00:33; Bodycam video PO Checketts, time stamps: 03:00 – 03:06; Evidence photo #1)

At this point in the incident and based upon Officers Winegar's and Checketts' statements of their observations, it would have been objectively reasonable for the officers to believe that [the juvenile] was an armed aggressor engaging another citizen with a bludgeon capable of inflicting serious bodily injury or death.

¹⁶ "Dr. Martinelli is a nationally recognized forensic criminologist specializing in police/corrections practices, who is also an adjunct professor of Forensic Science at an accredited university and holds a number of current certifications in forensics and law enforcement. He is Board Certified in Forensic Traumatology and holds Diplomat status with the National Center for Crisis Management and the American Academy of Experts in Traumatic Stress. Dr. Martinelli, is a Certified Force Analyst through the Force Science Research Center® at Minnesota State University; a Certified Forensic Analyst through the Institute for the Prevention of In-Custody Death®; and a Certified Litigation Specialist through the Americans for Effective Law Enforcement (AELE). Dr. Martinelli is currently retained as the Special Investigator for the City of Riverside, where he consults with the Mayor's Office and its Police Community Review Commission on all officer-involved shootings and in-custody deaths. He is a retained police/corrections practices expert for several large municipalities, states and law enforcement officer associations in California and Nevada." http://www.martinelliandassoc.com/founder_ceo_bio.html

¹⁷ Metal pole was measured to be approximately 42" in length. See Evidence Photo #1.

FBI

On May 23, 2016, the FBI special agents reviewed the body camera video recordings at the D.A.'s Office. After reviewing the body camera recordings, the FBI declined to open a criminal investigation.

Justified Use of Deadly Force

Officer Checketts said he observed the juvenile assault K.M. with a metal object. Officer Checketts said he repeatedly ordered the juvenile to stop and drop the metal object. Officer Checketts said that rather than comply with Officer Checketts' orders, the juvenile continued to advance on K.M. and close the distance between them. Officer Checketts said he saw the juvenile bring his metal object up again and it appeared to Officer Checketts that the juvenile was going to strike the victim again.

Officer Checketts reasonably believed that the juvenile unlawfully presented a threat of death or seriously bodily injury to the victim. Officer Checketts reasonably believed that he needed to use deadly force against the juvenile to prevent the juvenile from inflicting death or serious bodily on K.M.

Officer Winegar said he also repeatedly ordered the juvenile to stop and drop the metal object. Officer Winegar said that rather than comply with the officers' orders, the juvenile continued to advance on the victim and close the distance. Officer Winegar said he saw the juvenile make a movement that, to Officer Winegar appeared that the juvenile was going to strike the victim.

Officer Winegar reasonably believed that the juvenile unlawfully presented a threat of death or seriously bodily injury to the victim. Officer Winegar also reasonably believed that he needed to use deadly force against the juvenile to prevent the juvenile from causing death or serious bodily injury to another person.

CONCLUSIONS

To the responding officers, it appeared that the juvenile unlawfully placed K.M. at risk of death or seriously bodily injury. Both officers lawfully ordered the juvenile to drop his weapon and stop advancing on K.M. several times; when the juvenile did not comply with Officer Checketts' and Officer Winegar's lawful commands and made a motion that, to the officers appeared to be preparing to strike the K.M., Officer Checketts and Officer Winegar reasonably believed that the juvenile was about to use unlawful force capable of inflicting death or serious bodily injury. To prevent K.M.'s apparently imminent death or serious bodily injury, Officer Checketts and Officer Winegar reasonably believed their use of deadly force against the juvenile was necessary.

As such, Officer Checketts' use of deadly force against the juvenile was "justified" under Utah State law, and provides Officer Checketts a legal defense to a criminal prosecution. Accordingly, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Officer Checketts. For the same reasons, Officer Winegar's use of deadly force against the juvenile was also "justified" under Utah State law, and provides Officer Winegar the same legal defense to a criminal prosecution. Accordingly, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Officer Winegar.

If you have any questions or concerns regarding the determination made in this case, or otherwise wish to discuss the matter, please feel free to contact our office to set up a personal meeting.

Very Truly Yours,

SIM GILL,
Salt Lake County District Attorney



Photo 1: The metal object allegedly held by John Uziogwe as he pursued K.M.



Photo 2: The metal object allegedly held by the juvenile male as he pursued K.M.



Photo 3: Detail of the metal object allegedly held by the juvenile male as he pursued K.M.