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May 17, 2024

Chief Jason Mazuran
Unified Police Dept. of Greater Salt Lake
3365 South 900 West
Salt Lake City, UT 84119

Chief Brady Cottam
Taylorsville City Police Department
2600 W. Taylorsville Blvd.
Taylorsville, UT 84129

RE: TVPD Officer Michael Haggard's and Officer Shawn
McKinnon's Use of Deadly Force
Incident Location: 4374 S. Marvinwood Dr., Taylorsville, Utah
Incident Date: March 18, 2023
UPD Case No.: 23-28546
TVPD Case No.: 23-8860
DA Case No.: DA-INV-2023-604

Dear Chiefs Mazuran and Cottam:

This letter addresses the March 18, 2023, use of deadly force by Taylorsville City Police Department ("TVPD") Officers Michael Haggard and Shawn McKinnon against Alex Stewart Boren.

Officer Haggard's and Officer McKinnon's discharge of their firearms constitutes the "use of a 'dangerous weapon,'" which is defined under Utah law as "a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury to a person." Utah Code § 76-2-408(1)(a), (f). As a result, pursuant to Utah State law and an agreement among participating law enforcement agencies called the "Officer Involved Critical Incident" ("OICI") Investigative Protocol (*see* Utah Code § 76-2-408(2)-(3)), an investigative task force was called in to investigate the use of deadly force. The investigative task force was led by the Unified Police Department ("UPD") protocol team and comprised of law enforcement officers employed by agencies other than TVPD. After the investigation, on March 30, 2023, the investigative task force's findings were presented to the Salt Lake County District Attorney's Office ("DA's Office"), which has the constitutional and statutory mandate to screen such matters for possible criminal charges.¹

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

SUMMARY OF FACTS AND FINDINGS

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

In the evening of March 17, 2023, a male who we refer to as “K. S.” called 911 and reported that his friend, Alex Boren, may be attempting to take his life, had cut his wrists and throat, and had taken a knife upstairs with him. TVPD officers were dispatched to K.S.’s residence in Taylorsville and obtained additional information from K. S. Concerned that Mr. Boren was bleeding out and dying, officers decided to enter the residence to locate Mr. Boren.

At about midnight, officers began calling out to Mr. Boren as six officers—Officers Haggard, McKinnon, Sargent, Teynor, Berg, and Sgt. Marriott—entered the residence. Eventually, officers located Mr. Boren covered in bedding inside an upstairs bedroom closet, breathing but not responding. When officers attempted to remove the bedding, they uncovered a large knife near the entrance to the closet. Mr. Boren quickly sat up, rushed towards officers and grabbed the knife, and stood up with the knife in his hand; officers yelled commands, but Mr. Boren did not comply. As Mr. Boren stood up with the knife, Officer McKinnon deployed a taser, Officer Berg fired a 40mm less-lethal weapon, and Officer Haggard fired his handgun.

Mr. Boren fell back into the closet, still holding the knife. Mr. Boren continued to wave the knife in his hand and move around, not complying with commands. Mr. Boren then sat up towards officers with the knife raised in his hand, and Officer McKinnon fired his handgun.

Mr. Boren eventually threw the knife out of the closet. Officers were able to take Mr. Boren into custody and begin rendering emergency medical aid. Mr. Boren was transported to a hospital where he was treated for multiple gunshot wounds as well as for self-inflicted injuries.

During the protocol investigation, investigators interviewed witnesses, documented the scene and examined physical evidence, reviewed body-worn camera recordings, reviewed dispatch recordings and the dispatch call log, and examined Officer Haggard’s and Officer McKinnon’s weapons.² Notably, Officers Haggard and McKinnon refused to be interviewed or provide a statement, as is their constitutional right.³

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 Body-worn camera recordings were available for both Officers Haggard and McKinnon, as well as for Officers Sargent, Teynor, and Berg, and Sgt. Marriott.

³ Officers Haggard and McKinnon have a constitutional right to remain silent and to be presumed innocent of any wrongdoing.

As we discuss in more detail below, we believe the facts of this matter, taken together with reasonable inferences derived from those facts,⁴ support a conclusion that if a charge was filed against Officers Haggard and/or McKinnon for their use of deadly force, and a jury (or other finder of fact) was called upon to determine whether their use of deadly force constituted a criminal act, a jury would likely determine that they reasonably believed the “use of deadly force [wa]s necessary to prevent death or serious bodily injury to the officer or an individual other than the suspect.” Utah Code § 76-2-404(2)(c)). Consequently, we believe that Officer Haggard’s and Officer McKinnon’s use of deadly force would likely be subject to the affirmative legal defense of justification under Utah law,⁵ and we decline to file a criminal charge against them.

RELEVANT LEGAL STANDARDS

As relevant here,⁶ 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

⁴ While Officers Haggard and McKinnon refused to be interviewed by protocol investigators regarding the incident and their apparent decisions to use deadly force, we presume their testimony in a criminal case (if any) would be consistent the facts developed from the OICI investigation.

⁵ 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.

⁶ 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...

- (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 injury⁷ to the officer or an individual other than the suspect.” Utah Code § 76-2-404(2)(c). That affirmative defense may also be available where a law enforcement officer “reasonably believes that deadly force is necessary” to prevent a suspect’s escape and the officer had probable cause to believe the suspect posed “a threat of death or serious bodily injury to the officer or to others if apprehension is delayed.” Utah Code § 76-2-404(2)(b). In determining whether the use of deadly force was “justified” under Utah law, several factors may be considered, including: (i) the nature of the danger; (ii) the immediacy of the danger; and (iii) the probability that the unlawful force would result in death or serious bodily injury. *See* Utah Code § 76-2-402(5).

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

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

Id. (citations omitted).

RELEVANT ETHICAL STANDARDS

⁷ “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).

The DA's Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing.⁸ Honoring ethical standards ensures that everyone affected by the criminal justice system—suspects, defendants, victims, the community, and the system itself—is treated fairly, honorably, and respectfully.

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

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

FACTS DEVELOPED DURING OICI INVESTIGATION

The following facts were developed from the protocol investigation of the matter. As noted previously, UPD led an investigative task force of law enforcement officers who conducted the investigation of Officer Haggard's and Officer McKinnon's use of deadly force, and the protocol investigation's findings were presented on March 30, 2023, to the DA's Office to screen for possible criminal charges. Should additional or different facts subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

In the evening of March 17, 2023, a male who we refer to as "K. S." called 911 and reported that his friend, Alex Boren, may be attempting to take his life, had cut his wrists and throat, and had taken a knife upstairs with him.⁹ Emergency medical responders (Fire) and

⁸ Among the legal rules a prosecutor must follow is the requirement that "probable cause" must exist to believe an offense (i) was committed and (ii) was committed by the accused. *See, e.g.,* Utah R. Crim. P. 4(c). In making that determination, the DA's Office must evaluate all evidence that will be legally admissible for or against the accused but may disregard evidence that likely will not be admissible at trial (*e.g.,* a coerced confession).

⁹ K. S. called 911 at 11:05 p.m.

TVPD officers were dispatched to the location.¹⁰ After arriving on scene, Officers Sargent, Berg, and McKinnon spoke with K. S., who reported that Mr. Boren was experiencing a mental health crisis, was a guest in his home and had a large knife, was possibly injured, and was destroying his property.¹¹ Concerned that Mr. Boren was bleeding out and dying, officers decided to enter the residence and locate Mr. Boren.¹²

At about midnight, officers began calling out to Mr. Boren as six officers—Officers Haggard, McKinnon, Sargent, Teynor, Berg, and Sgt. Marriott—entered the residence.¹³ After searching the main level of the residence, officers proceeded upstairs (a trail of blood lead upstairs). Upstairs, while continuing to make callouts, officers checked inside a bathroom (where they observed a lot of blood), and then popped open a closed door on the right, which opened into a mostly empty bedroom (a blood trail lead into the room).¹⁴ After holding in the hallway, officers entered the room, located a closed closet door, and popped it open.¹⁵

Inside the closet, officers located Mr. Boren covered in bedding on the floor, but not visible. Officers began giving commands for Mr. Boren to show his hands and observed that he was breathing but not moving.¹⁶ Officers continued to give commands, but Mr. Boren continued to not respond. Officers retrieved a broom to attempt to move the bedding off him.¹⁷

As Officer Sargent reached into the closet with the broom handle and moved some of the bedding, he uncovered a large knife—with an approximately 10-inch fixed blade—on the floor near the closet entrance. As he moved the knife out of the closet with the broom handle, Mr. Boren quickly sat up, popping out from underneath the bedding, and rushed towards officers, who had quickly begun backing up and yelling commands. Mr. Boren grabbed the knife, and as he stood up with the knife in his hand, Officer McKinnon deployed his Taser, Officer Berg fired his 40mm less-lethal weapon (from the wall across from the closet), and Officer Haggard fired his handgun three times (from the corner of the room, across from the closet).¹⁸

Mr. Boren fell back into the closet, still holding the knife, and an officer called out “shots fired,” over the radio. Officers yelled commands to Mr. Boren to not move and “Drop the

¹⁰ Officers were dispatched to the “ambulance back” call at 11:06 p.m. K. S.’s residence was located at 4374 Marvinwood Drive in Taylorsville.

¹¹ Officers began arriving on scene at about 11:10 p.m.

¹² While the initial officers were on scene, Sgt. Marriott also arrived at about 11:25 p.m., Officer Haggard arrived at about 11:51 p.m., and Officer Teynor arrived at about 11:54 p.m.

¹³ Officers Haggard (shield), McKinnon, and Sargent (less-lethal pepper ball) entered through a garage man-door while Officer Teynor (shield), Sgt. Marriott, and Officer Berg (less-lethal 40mm) entered from the back.

¹⁴ Officers opened the bedroom door about six minutes after they began call-outs.

¹⁵ Officers Teynor and Haggard (shields) entered first (dual-entry), followed by Officers Berg (less-lethal 40mm) and Sargent (less-lethal pepper ball). As they entered, Officers Teynor and Berg went to the right, where they located the closet door. Officer Berg popped the closet door open and located Mr. Boren at about 12:08 a.m. Notably, Sgt. Marriott and Officer McKinnon had remained on the main level of the residence and were the last to proceed upstairs.

¹⁶ After the officers located Mr. Boren, Sgt. Marriott and Officer McKinnon also enter the room.

¹⁷ Sgt. Marriott retrieved a broom from downstairs and then gave it to Officer Sargent.

¹⁸ Shots were fired at about 12:10 a.m. When shots were fired, Officers Teynor (shield) and Sargent (broom) had no weapons drawn, and Sgt. Marriott who had been closest to the bedroom entrance, ran out of the room.

knife,” but Mr. Boren continued to wave the knife in his hand and move around. Mr. Boren then sat up, moving towards officers, with the knife raised in his hand. As he did so, Officer McKinnon, who had transitioned to his handgun, fired two times.¹⁹

Officers continued yelling commands to drop the knife, but Mr. Boren did not immediately comply. About 30 seconds after the last shots fired, Mr. Boren threw the knife out of the closet as he said, “Don’t shoot me.” After formulating a plan, officers pulled Mr. Boren out of the closet, got control of his arms, and handcuffed him, while using a taser.²⁰ Emergency medical responders, who were already staged downstairs, quickly entered the room and began rendering medical aid.²¹ Mr. Boren was transported to a hospital where he was treated for multiple gunshot wounds as well as for his self-inflicted injuries.

Witness Statements

Officers Haggard

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

Officer McKinnon

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

Mr. Boren

Mr. Boren was charged with criminal offenses allegedly arising out of or related to this incident in the Utah Third Judicial District Court in the matter of *State of Utah v. Alex Stewart Boren*, Case No. 231903456. Mr. Boren was accepted into the Court’s Veterans Court Program, and on December 7, 2023, Mr. Boren entered a guilty plea to one count of Criminal Mischief, a Second Degree Felony, which was ordered to be held in abeyance until successful completion of Veteran’s Court Program (at which time the plea shall be withdrawn and the case dismissed). As a factual basis in support of his plea to the second count, Mr. Boren stated:

On March 18, 2023, Defendant went to a friend’s residence, where he damaged and destroyed several pieces of furniture, resulting in damage in excess of \$5,000.00.

(Statement of Defendant in Support of Guilty Plea, filed on December 7, 2023.) Mr. Boren’s participation in Veteran’s Court is ongoing.

¹⁹ The second shots were fired a little over 20 seconds after the first shots, also at 12:10 a.m.

²⁰ Mr. Boren was taken into custody at about 12:13 a.m. Officer Sargent tased Mr. Boren while other officers pulled him out and handcuffed him.

²¹ Dispatch noted that Mr. Boren was in custody and Fire was called upstairs at about 12:14 a.m.

Protocol investigators interviewed Mr. Boren on March 24, 2023, during which he discussed the circumstances surrounding the incident. Mr. Boren explained that he was with his friend K. S. at K.S.'s house and a man K. S. knew walked into the house like he owned the place. Mr. Boren said the man pulled a gun on him so he ran upstairs, hid in a really dark room so that the man couldn't find him (he tried to camouflage himself in whatever was on the floor), and waited. Mr. Boren said that as he waited, the man was downstairs with K. S., talking and watching TV. Mr. Boren said he made a break for the door and the man came at him and he tried to push the man away. Mr. Boren said that they attacked him and then he booked it out of the house. Mr. Boren explained that he got the knife wounds from holding his hands up from the man, who was slashing a knife at him.

Mr. Boren also said that after he left the house, a cop shot him. Mr. Boren said he couldn't remember all the details and didn't know what happened. Mr. Boren said he didn't know why the cops shot him. Mr. Boren didn't recall anything else happening in the closet and denied taking any weapons with him into the closet.

Officer Berg

Investigators interviewed Officer Berg who said they got called to a man who had called in saying that his friend was having a mental episode, threatening to kill himself, and had a knife. Officer Berg said that the complainant had come outside [the residence] and the male was inside alone. Officer Berg said they learned that the male did not live there and was just visiting, and that they were worried that he was bleeding out or dead inside. Officer Berg said that after talking with the complainant, they made a plan to go inside, with three of them in the back, three of them in the front, and with lethal, non-lethal and shields. Officer Berg later clarified that the element in the back consisted of himself, Sgt. Marriott, and Officer Teynor.

Officer Berg said he went to the back, they posted up on the back door, opened the door and made call outs, and they could see inside and saw that there was blood everywhere. Officer Berg said that after several callouts were made, both teams entered. Officer Berg said he held on the stairs going upstairs with his 40mm less-lethal weapon while other officers cleared the rest of the main level. Officer Berg said he saw quite a bit of blood along the stairs, the wall, and going up the stairs. Officer Berg explained that they were pretty sure that the man was upstairs (the complainant had said he normally stayed in the bedroom upstairs). Officer Berg said that once the rest was cleared, he and Officer Haggard, who had the shield, went upstairs together.

Officer Berg said that upstairs, there was an open door to a bathroom, he checked inside as the two shields held on the closed doors (he switched to his gun), and there was a lot of blood inside. Officer Berg said he then re-holstered his gun, pulled his 40mm less-lethal weapon back out, and went with the shield to go into the bedroom that they believed he was in. Officer Berg said that they made entry into the bedroom (he later clarified that the order they entered was Officer Teynor, Officer Haggard, himself, and then the other three). Officer Berg explained that inside, it was a pretty empty room and there was a closed closet to the right. Officer Berg said

that when they saw the closed closet, he and Officer Teynor immediately fixed on the door. Officer Berg said they opened the closet up (he popped the door) and could see someone wrapped up tightly in a sheet (it was obvious there was a person in there), and that then they could see him breathing (but he wasn't moving in any other way).

Officer Berg said they backed up a little bit and made several callouts to him (to get him to come out), but nothing. Officer Berg said they retrieved a broom to try and pull the sheet up (so they could see his hands or him). Officer Berg said the sheet was tight on him and the second they were able to pry a little bit, the man all of a sudden popped up, stood up, and started walking towards them. Officer Berg said that as he did so, he stepped down and grabbed a big, fixed-blade knife that had fallen out of the sheet with him, and he went to go lunge. Officer Berg said that right as the man picked up that knife, he heard shots from the officer to his left and he fired off the 40mm less-lethal weapon (he had pointed it at the man when they had backed up). Officer Berg clarified that he believed Officer Haggard, who was to his left with a shield, fired the first two shots, and that right as he heard the shots, he fired the 40mm less-lethal weapon.

Officer Berg said that the man fell back into the closet but still had the knife in his hand. Officer Berg said he maneuvered around so he could still see with the 40mm but transitioned to his firearm since the man still had the knife in his hands. Officer Berg said the man leaned forward a little bit to go to get up, he heard two more shots, and the man fell back. Officer Berg said that the man still had the knife but wasn't really moving (he was moaning and twisting). Officer Berg said that as they were calling out to him, trying to get the man to drop the knife, the man "kind of just half-assed tosse[d] it towards us."

Officer Berg said that once the man tossed the knife, the man put his hands towards his waist, and they couldn't verify what was in his waist but could see that nothing was in his hands. Officer Berg said they commanded him several times to show them his hands and to come out. Officer Berg explained that because of where his hands were at, they decided for another officer to deploy a taser so that they could pull him out and get him in handcuffs. Officer Berg said they deployed the taser, and he reached in, grabbed him by the legs, and he and another pulled the man out. Officer Berg said the man tensed his arm underneath his waistband, he kept hold of the man's arm, they kept tasing the man to keep him controlled, and after the taser stopped, he got the man's arm out and behind him and he put handcuffs on him. Officer Berg said they checked the man for weapons, began to assess his injuries, and had medical come up. Officer Berg said that medical care was provided, and the man was carried downstairs. Officer Berg recalled that while they were holding on the man after he'd tossed the knife, he said "just shoot me."

Officer Sargent

Investigators interviewed Officer Sargent who said he was initially dispatched with Officer Berg. Officer Sargent said it came in as a mental subject and the complainant was stating that his friend was having some type of mental episode and had attempted to cut his throat and his wrists, or did, and was bleeding. Officer Sargent said they had eyes on the house and tried to gather information from the complainant. Officer Sargent said the complainant said that there

was a lot of blood, he took a knife away from his friend and then his friend grabbed another knife and ran upstairs, and dispatch told him to step out (he drove out of the garage).

Officer Sargent said that another officer, Officer McKinnon, attempted to call the subject as he was suicidal with a weapon and by himself, but no answer. Officer Sargent said they went around the side with a ladder and Officer McKinnon climbed up to the windows. Officer Sargent said he had a shield and peeped in the windows, he couldn't see anything obvious, they assumed the friend was upstairs, there was blood and they assumed he was probably bleeding out, and they also checked the back door but couldn't see anything else. Officer Sargent said they went up the back stairs, attempted more call outs, and no answer.

Officer Sargent said that they decided to go in with a shield and less lethal options—he had a pepper ball, Officer Berg had a 40mm, and they had some lethal and shields. Officer Sargent said they had one team that went through the garage man door—himself, Officer Haggard, and Officer McKinnon—and another team which was Officer Teynor, Sgt. Marriott, and Officer Berg. Officer Sargent said he came through the house, saw a lot of blood in the kitchen and all on the carpet, and saw disarray (like stuff had been broken or tossed around). Officer Sargent said they cleared the first floor. Officer Sargent said there were blood trails leading up the stairs, so they went to the stairs and continued callouts. Officer Sargent said that they had the two shields and then two less-lethal behind the shields—Officer Berg had the 40mm behind Officer Haggard, and he had the pepper ball behind Officer Teynor. Officer Sargent said they went up the stairs, continued callouts, and the blood trail was leading right into a room.

Officer Sargent said they held the door and went in the room (he believed Officer Teynor entered the bedroom first, with the shield, and that he was third) and saw that the man was in the closet. Officer Sargent said that once they contacted him, they advised that they contacted him and gave him some commands (e.g., “show us your hands,” “we’re just checking on you,” “we want to make sure you’re okay”). Officer Sargent explained that the man had some sheets wrapped around him (tucked under his legs and covering almost all the way to the door), was in a closet inside the room, and was breathing but not responsive. Officer Sargent said that there was a lot of blood and they didn't know if he was bleeding out but he was still breathing.

Officer Sargent said they decided they needed to remove the sheet to see him, his hands, and if he had any weapons. Officer Sargent said they retrieved a broom to have a little distance to do so, and he took the broom and approached at the right side of the door. Officer Sargent explained that they still had lethal and the shield there. Officer Sargent said he stuck the broom in and tried to move the sheet, but it was tucked in and kind of tight. Officer Sargent said there was a side that was kind of loose and he was able to flip it and as he did, he saw a very large knife, almost like a machete, which startled him, and that it wasn't on the man but was next to him. Officer Sargent said he just said “oh” and that Officer Teynor said something as well.

Officer Sargent said that the man was still breathing, and he took the broom and tried to pull the knife back by the handle, which spun the knife. Officer Sargent said that at that exact moment, the man woke up from whatever trance he was in and grabbed it and went for it.

Officer Sargent said he backed up and saw that the man had the knife. Officer Sargent said he heard commotion, heard a couple officers say, "drop the knife," the man didn't, and the first set of shots sprung out. Officer Sargent said that Officer Haggard and Officer McKinnon fired (he wasn't sure if he saw Officer Teynor fire or not, he was standing right there with a shield).

Officer Sargent said that the man still had the knife even after being hit, and it looked like he was motioning towards him with the knife still and he wasn't dropping it. Officer Sargent said they shot him again and then the man threw the knife at Officer McKinnon. Officer Sargent said that they advised that shots were fired on the radio and Sgt. Marriott came back in. Officer Sargent said that the man still had his hands tucked (they couldn't see them) and they didn't know if he had any other knives. Officer Sargent said that less lethal—40mm and then a taser—was deployed at some point by other officers. Officer Sargent said that after the second shots rang out, the man was still in the closet and said something like, "shoot me."

Officer Sargent said the next plan was to move up, tase him (since they couldn't see his hands), and pull him out and cuff him. Officer Sargent said that he had his taser and he moved into the side where Officer Teynor still had lethal cover on the man. Officer Sargent said he tased the man, it worked, and they pulled him out. Officer Sargent explained that he tased the man several times, and that the first time he shot the man, it seemed to be effective, and then when the man moved it wasn't effective, so he shot the man again with the second set which didn't seem effective. Officer Sargent said he then drive-stunned the man several times, and that in between drive stuns, they were controlling the man's arms, and that after another drive stun they were finally able to get the man into cuffs. Officer Sargent said the man had obviously cut himself and then also had been shot and was bleeding everywhere.

Officer Sargent explained:

[W]hen I first saw the knife and saw how large it was, and then he woke up out of that trance or whatever he was in, I backed up 'cause he was going for it and I didn't have any tools. And so I was pretty fearful that he was gonna stab me with that. I mean, I had the broom handle. I did have cover, but I personally didn't have anything. That's not comfortable for me.

Officer Sargent further explained, "when I saw [the knife], I tried to kind of move it discreetly, but he noticed and woke up and went for it. And so I backed up in fear, you know, honestly, you know, that he was gonna attack me with that." Officer Sargent explained that the man was very close when shots were fired and expressed, "That's why I was so scared. 'Cause like, I knew I had cover, but also I didn't have anything myself. I had the broom trying to move that. And I almost went in for the knife to grab it, but I didn't want to be in that scenario."

Officer Sargent stated: "I remember seeing the knife, being startled by it, and then he just immediately went for it. I didn't have anything. I retreated." Officer Sargent continued: "I believe they gave him every chance in the book, you know, but more than enough. And he

obviously heard us and was planning whatever he was planning. It seemed like he was planning as the knife was staged right there.”

Officer Teynor

Officer Teynor said he heard the call for an “ambulance back” on the radio, it sounded like they might need another officer, and he contacted Sgt. Marriott who told him to come. Officer Teynor explained that the call was for an “ambulance back welfare assist” in which the complainant had said that his friend had self-inflicted cuts on his neck and arms and that there was blood everywhere. Officer Teynor said that he got there and talked to other officers, who said they had been unable to make contact with the man, that it wasn’t his house, that a criminal mischief incident had potentially occurred, that the primary issue was that the man had serious self-inflicted wounds, that the complainant had said that he was concerned that the man was going to bleed out because of the severity of the wounds, and that they had not had any contact with the man. Officer Teynor said he put his patrol vehicle’s spotlight on the house.

Officer Teynor said they split into two teams and then he went with the back team to the rear of the home. Officer Teynor said that Officer Berg and Sgt. Marriott were with him, and Officers Sargent, Haggard, and McKinnon went to the man door in the garage. Officer Teynor said that the rear door was unlocked, they opened it and gave commands, and they verified that the front team could hear them. Officer Teynor said that there was no response from the man. Officer Teynor said that inside, there was a fair amount of blood on the carpet and floor, and there was a blood trail up the stairs and blood on the walls. Officer Teynor said that after multiple call outs, they entered and cleared the ground level.

Officer Teynor said they went up the stairs, continuing call outs, and when they got to the top, there were two bedroom doors which were shut and the bathroom door which was open. Officer Teynor said that Officer Berg cleared the bathroom and they decided to try the bedroom on the right where the blood trail lead. Officer Teynor said that one of the officers popped the door, which opened to the right, and the room was bare. Officer Teynor said he came up and had a shield, he saw he had blind angles, he called up the other shield, Officer Haggard, and they did a dual entry. Officer Teynor said that to the right, there was a closet door that was closed (on the wall right behind where the door opened to). Officer Teynor said he had another officer pop the door and after, he could tell the man was in there.

Officer Teynor said the man was completely covered with a sheet or sheets and there were bloody pillows on the ground next to him (a giant pile of bloody bedding). Officer Teynor said he could see that the man was there and was breathing—he could see the rise and fall of his chest. Officer Teynor said that multiple commands were given again and no response at all. Officer Teynor said that went on for a few minutes while they were trying to figure out what to do. Officer Teynor said they decided not to use a pepper ball because it was a very tight enclosed space and the driving force was medical aid. Officer Teynor said that because he didn’t know what was under the sheet (he understood the man potentially had a knife), he had an officer go downstairs to get a broom to try to get a reaction to check on him.

Officer Teynor said he came up with the shield in the [closet] doorway. Officer Teynor said that one of the officers took the broom and they were trying to hook and lift up the sheet to see the subject, who wasn't moving and was just breathing. Officer Teynor said that on the second or third attempt of the officer trying to hook the sheet, all of the sudden the subject reared up from the sheet. Officer Teynor said the sheet came off, the subject sat up, and they backed off. Officer Teynor said that the subject didn't have the knife at that point but had it shortly after he reared up. Officer Teynor described it as a big Bowie-looking knife, with a 10- to 12-inch fixed blade plus the hilt, like a big fighting type knife. Officer Teynor said that he and Officer Berg backed off and then they ended up forming like a half circle around the doorway and gave verbal commands to him ("stop," "don't move," "don't drop that").

Officer Teynor said that the man came forward with the knife and he heard the 40mm less-lethal and then the man went down (he knew Officer Berg had the 40 and didn't realize shots were fired until later). Officer Teynor said he assumed that the 40 had been effective because the man dropped on his back pretty quick. Officer Teynor said that then the man came back up again with the knife, and again, they were giving commands, but the man wasn't listening to anything. Officer Teynor said that the man tried to come up again and that's when another officer fired (he believed he heard two shots). Officer Teynor said the man went down again and then it was more commands. Officer Teynor said that a short time later, he moved up with the shield. Officer Teynor said that the man was still holding onto the knife and wouldn't let it go, and finally, he threw the knife at them (he thought it almost hit Officer Haggard).

Officer Teynor said that at that point, the man was on his back in the threshold area of the walk-in closet but wasn't showing his hands. Officer Teynor said the man wasn't responding at all to commands (he heard him say "shoot me" and "kill me"). Officer Teynor said they made a plan to take him under power, pull him out, cuff him, and render medical aid. Officer Teynor said that somebody tased him, he and Officer Berg grabbed him and dragged him out, and the man instantly started fighting again (he'd been shot, tased, and had a bunch of self-inflicted injuries, including on his wrist, neck, and calf). Officer Teynor said the man was kicking and had put his hands underneath him and was fighting them. Officer Teynor said that he overpowered the man and got one arm, other officers got his other arm, they cuffed him, and he was still resisting. Officer Teynor said that medical was applied, they cut off clothes to identify wounds, Fire came upstairs, and they got him on a stretcher and moved him down.

Sgt. Marriott

Sgt. Marriott said the complainant reported that his friend was experiencing a mental health crisis and had cut his neck and wrists and was bleeding. Sgt. Marriott said that a couple officers arrived on scene, more details came in, and she attached herself to the call. Sgt. Marriott said that before she got there, she made sure they got the homeowner out and that nobody else was in the house. Sgt. Marriott said she heard on the radio that the officers on scene were getting ready with a shield and less lethal and that the man was reported to have a knife. Sgt. Marriott said that after arrived, she talked to the complainant/homeowner (about the knife, weapons, and

his friend's mental health, and that he said his friend had started destroying the house, and that there was blood. Sgt. Marriott said they tried calling and texting Mr. Boren several times, but he didn't answer. Sgt. Marriott said they were concerned that Mr. Boren was bleeding out and dying, they were pretty confident there were no firearms in the house, and they got six officers on scene. Sgt. Marriott explained they tried to look for Mr. Boren in the house from the outside.

Sgt. Marriott said they put together an arrest plan and put together two teams of three officers—one on the back and one in the garage (with shields and less lethal weapons). Sgt. Marriott later clarified that Officer Teynor, Officer Berg (with a 40mm less-lethal weapon), and herself were in the back, and Officers Haggard, Sargent (with a pepper ball gun), and McKinnon were at the front. Sgt. Marriott said they made sure the back door was unlocked, both teams made entry, and they made call outs. Sgt. Marriott said she saw a ton of blood all over. Sgt. Marriott said they got no response and systematically cleared the house.

Sgt. Marriott said they got upstairs, two officers and shields were up front, and she was at the back, on the main level with Officer McKinnon holding the basement door. Sgt. Marriott explained that they were pretty confident he was upstairs. Sgt. Marriott said she heard one of the officers up top say that they could hear him in the room and so she and Officer McKinnon ran up. Sgt. Marriott said they all went in the room, and he was in the closet laying down, there was blood everywhere in there, and he was covered with a sheet, and they couldn't see his hands or anything (she explained she was in the doorway and to the side of the closet and so she couldn't see all the way in the closet). Sgt. Marriott said that there were the two officers with the shields and then some other officers behind. Sgt. Marriott said they asked her to get a broom or something so they could reach and get the sheet off him. Sgt. Marriott said that they could see that he was breathing.

Sgt. Marriott said she found a broom and took it upstairs to them, they moved the sheet, they could see his hands and he had a large knife still. Sgt. Marriott said that they were giving commands for him to "drop the knife" and "show us your hands" and he wouldn't. Sgt. Marriott explained that she was by the door and could barely see into the closet and that the other officers were facing the closet with the shields. Sgt. Marriott also explained that she and the other five officers retreated when they yelled to drop the knife. Sgt. Marriott said she didn't know what the other officers saw but they were giving him commands and he was apparently not following them. Sgt. Marriott said the officers then communicated that they were going to use the 40mm [less lethal], the 40mm was deployed and she heard gunshots (she was just inside the door frame, trying to give room), and then they all started backpedaling towards the door. Sgt. Marriott said she recognized she was in a crossfire situation, so she ran down about six stairs. Sgt. Marriott said that when the shooting stopped, she ran back up and took cover in the bathroom.

Sgt. Marriott said they were still giving commands and yelling, she asked to come in, she was able to scoot in the room and stand behind Officer Sargent, and she saw the man throw the Bowie knife out. Sgt. Marriott said they still couldn't see his waistband, he was still not listening to commands, and they decided to tase him and cuff him under power. Sgt. Marriott said they moved up with a shield and tased him and went hands on and cuffed him under power, and he

was still fighting the whole way. Sgt. Marriott said she could see numerous self-inflicted wounds and he was bleeding all over. Sgt. Marriott said they finally got his hands behind his back, she yelled for Fire to come up (she had advised Fire to stage inside the house when they called that shots were fired), and they gave him medical treatment.

Additional Witnesses

Protocol investigators interviewed the homeowner, a male who we refer to as “K. S.”, who witnessed portions of the earlier events involving Mr. Boren, called 911, and was not inside his residence when the OICI occurred. He is mentioned here for the purpose of completeness.

Physical Evidence

Protocol investigators inspected and documented the OICI scene, reviewed the 911 call and dispatch call log, reviewed body-worn camera recordings, and downloaded the officers’ weapons.

OICI Scene

Protocol investigators inspected the OICI scene located at 4374 South Marvinwood Drive in Taylorsville. Inside the residence, investigators observed reddish brown stains throughout the main level living room and kitchen area, the upstairs stairway, the upstairs bathroom, and the upstairs southeast bedroom.

Inside the southeast bedroom, investigators located a total of five 9mm casings.²² Investigators observed defects to the bedroom closet and debris in the closet doorway and recovered two bullets. Investigators also located a large fixed-blade knife with an approximately 10-inch blade, taser components, a flashlight, scissors, clothing, bedding, and emergency medical items.²³

At the hospital, investigators obtained a bullet fragment that was recovered from Mr. Boren’s left hand, as well as clothing from Mr. Boren and a taser component recovered from Mr. Boren’s clothing.

911 Call and Dispatch Call Log

The homeowner, K. S., called 911 at 11:05 p.m. on March 17, 2023.²⁴ The dispatch notes indicate that the complainant, K. S., called to report that his friend, Alex Boren, was trying to cut his throat and wrist, was bleeding, and took a knife upstairs with him.

²² Two casings had a headstamp of FC Luger 9mm and three had a headstamp of Speer Luger+P 9mm.

²³ Investigators also located a knife in the upstairs bathroom as well as other items of interest in the residence; while not directly involved in the incident, they are mentioned here for the purpose of completeness.

²⁴ Because the officers were not privy to the 911 call, we did not rely on its contents for the purpose of our screening analysis. It is referenced here for the purpose of the completeness.

TVPD and Fire were dispatched to the “ambulance back” call at 11:06 p.m.²⁵ Dispatch noted that Officer Sargent was on scene at 11:10 p.m., Officer Berg at 11:11 p.m., Officer McKinnon at 11:12 p.m., Sgt. Marriot at 11:25 p.m., Officer Haggard at 11:51 p.m., and Officer Teynor at 11:54 p.m.

Dispatch noted that officers were going to make contact at 12:00 a.m. on March 18, 2023. At 12:08 a.m., dispatch noted that contact was made, and that the male was breathing and not responding. At 12:10 a.m., dispatch twice noted “Shots fired.” At 12:11 a.m., dispatch noted that he still had a knife, and then that he threw the knife. At 12:14 a.m., dispatch noted that he was in custody and Fire was called upstairs.

Body-Worn Camera Recordings

Protocol investigators reviewed the body-worn camera recordings of Officers Haggard and McKinnon, as well as of Officers Berg, Sargent, and Teynor and Sgt. Marriott, who were present inside the residence.²⁶ When viewed together, the videos capture, in relevant part, the following:

Officers approach the residence—with Officers Haggard (shield), McKinnon, and Sargent (less-lethal) at the garage man-door and Officer Teynor (shield), Sgt. Marriott, and Officer Berg (less-lethal) at a back door—and begin making callouts to Mr. Boren.²⁷ After not hearing anything, both teams of officers enter the residence,²⁸ continue making callouts, and search the main level of the residence for Mr. Boren. After searching the main level, Officers Haggard, Berg, Teynor, and Sargent proceed upstairs (where blood was visible in the stairway)²⁹ while Sgt. Marriott and Officer McKinnon remain on the ground floor.

Upstairs, while continuing to make callouts, officers check inside an open bathroom where they observe a lot of blood. After observing blood leading into the room on the right, Officer Sargent pops open the door, which opens into a mostly empty bedroom.³⁰ After holding in the hallway, officers enter the room (Officers Teynor and Haggard (shields) entered first, followed by Officers Berg and Sargent).³¹ As officers enter, Officers Teynor (shield) and Berg (less-lethal 40mm) go to the right, locate a closed closet door, and Officer Berg pops it open.³² The officers back up, with their flashlights shining into the closet, and advise that Mr. Boren is in the closet. The officers remain focused on the floor of the closet, where a pile of bedding is visible on the floor.

²⁵ Officers Sargent and McKinnon were initially dispatched at 11:06 p.m., followed by Officer Berg at 11:08 p.m., Sgt. Marriot at 11:11 p.m., Officer Teynor at 11:48 p.m., and Officer Haggard at 11:51 p.m.

²⁶ The camera view on Officer Haggard’s and also Officer Teynor’s is largely obscured by their shields.

²⁷ Berg BWC, timestamp 00:01:32.

²⁸ Berg BWC, timestamp 00:03:18, and McKinnon BWC, timestamp 00:03:31.

²⁹ Berg BWC, timestamp 00:06:20.

³⁰ Sargent BWC, timestamp 00:07:28.

³¹ Teynor BWC, timestamp 00:07:56.

³² Berg BWC, timestamp 00:08:05.

Officers begin giving numerous commands for Mr. Boren to show his hands,³³ and comment, “No movement” and “He’s breathing”; meanwhile, Sgt. Marriott and Officer McKinnon also enter the room.³⁴ Officers continue giving commands for Mr. Boren to show his hands and comment, “He’s not moving at all.” Officer Teynor then asks if they have any tool to grab the sheet and pull it off of him, like a broom;³⁵ Sgt. Marriott then leaves the room.³⁶ Officer Teynor says he’s going to run “dedicated” (*i.e.*, shield only), asks for someone else to run the light, holsters his weapon, and then turns the closet light on.³⁷ Officers continue making callouts as they wait for Sgt. Marriott to return.

As Officer Sargent reaches into the closet with a broom handle and moves some of the bedding, a large knife becomes visible on the floor of the closet.³⁸ As he then moves the knife out of the closet with the broom handle, Mr. Boren quickly begins sitting up, popping out from underneath the bedding, and moving towards the officers. Officers quickly back up and begin yelling commands, including to “Don’t move!” and “Stay right there,” and Mr. Boren continues quickly moves towards the officers, grabs the knife, and stands up with the knife in his hand.³⁹ Almost simultaneously, Officer McKinnon deploys his Taser, Officer Berg fires the less-lethal 40mm (from the wall across from the closet), and Officer Haggard fires his handgun (from the corner of the room, across from the closet).⁴⁰ Mr. Boren falls back into the closet, still holding the knife, an officer calls out, “Shots fired” over the radio, and then, as Mr. Boren continues to move around while holding the knife, officers begin to yell commands of “Don’t move!”⁴¹ Officers continue yelling commands of “Don’t move” and “Drop the knife!” as Mr. Boren continues moving around in the closet and waving the knife around. As Mr. Boren sits up with the knife in his hand (moving towards officers), Officer McKinnon fires his handgun two times.⁴²

Officers continue yelling commands to drop the knife, but Mr. Boren does not immediately comply. About 30 seconds after the last shots fired, Mr. Boren throws the knife out of the closet as he says, “Don’t shoot me.”⁴³ Officers remark that they see nothing in his hands, continue giving commands, and formulate a plan to approach and take Mr. Boren into custody. Eventually, officers approach the closet, deploy a Taser,⁴⁴ pull Mr. Boren out of the closet, get control of his arms, and put handcuffs on him (during which Officer Sargent deploys his Taser a

³³ Teynor BWC, timestamp 00:08:08.

³⁴ McKinnon BWC, timestamp 00:08:18.

³⁵ Teynor BWC, timestamp 00:08:27.

³⁶ Marriott BWC, timestamp 00:08:52.

³⁷ Berg BWC, timestamp 00:09:05.

³⁸ Sargent BWC, timestamp 00:10:00.

³⁹ Berg BWC, timestamp 00:10:03-07.

⁴⁰ McKinnon BWC, timestamp 00:10:06-07, and Berg BWC, timestamp 00:10:07-08. Notably, when shots were fired, Officer Teynor was holding only a shield (no weapon drawn), Officer Sargent was holding the broom (no weapon drawn), and Sgt. Marriott, who had been closest to the bedroom doorway, ran out of the room.

⁴¹ McKinnon BWC, timestamp 00:10:13, and Berg BWC, timestamp 00:10:13.

⁴² McKinnon BWC, timestamp 00:10:28-29, and Berg BWC, timestamp 00:10:29.

⁴³ Berg BWC, timestamp 00:10:57.

⁴⁴ Sargent BWC, timestamp 00:13:00.

second time). Officers and emergency medical responders (who were already staged downstairs) quickly begin rendering emergency medical aid. Mr. Boren is then transported to a hospital.

Weapons Downloads

Protocol investigators examined and downloaded Officer Haggard's GLOCK 17 Gen 5 9mm pistol, which had an inserted 17-round capacity magazine. Protocol investigators counted one cartridge in the chamber and 14 cartridges in the inserted magazine—all Speer Luger+P ammunition—for a total of 15 cartridges.⁴⁵ Presuming Officer Haggard began with a fully loaded inserted magazine and a chambered round, that count indicates that Officer Haggard likely fired up to three rounds during the incident, which is consistent with the three Speer Luger casings located on scene.

Protocol investigators examined and downloaded Officer McKinnon's GLOCK 17 Gen 5 9mm pistol, which had an inserted 17-round capacity magazine. Protocol investigators counted one cartridge in the chamber and 15 cartridges in the inserted magazine—all FC Luger 9mm ammunition—for a total of 16 cartridges.⁴⁶ Presuming Officer McKinnon began with a fully loaded inserted magazine and a chambered round, that count indicates that Officer McKinnon likely fired up to two rounds during the incident, which is consistent with the two FC Luger casings located on scene.

While protocol investigators determined that no other lethal force was used during the incident, they also examined Officer Berg's Lewis Machine and Tool (LMT) 40mm launcher, which had one spent 40mm casing in the chamber; Officer McKinnon's Taser 7, which contained two spent cartridges; and Officer Sargent's Taser 7, which did not contain any cartridges.

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)).

⁴⁵ Investigators also examined Officer Haggard's two spare magazines, one of which was fully loaded (17 rounds) and the other contained 16 rounds.

⁴⁶ Investigators also examined Officer McKinnon's two spare magazines, which were both fully loaded (17 rounds).

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 Haggard's and Officer McKinnon's use of deadly force. In other words, we believe that if charges were filed against them for their use of deadly force, a jury (or other finder of fact) would have a reasonable basis to conclude that they used deadly force because they reasonably believed that deadly force was necessary to prevent death or serious bodily injury to themselves and/or others. Where the facts of a case satisfy these elements of the affirmative legal defense of justification, Utah State law affords an officer a legal defense and the finder of fact is instructed to render a verdict of not guilty of the offense(s) alleged.

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

While we do not know Officer Haggard's and Officer McKinnon's actual beliefs and thus cannot say whether they "reasonably believed" deadly force was necessary, we can infer the reasonableness of a belief that deadly force was necessary from the facts of which we are aware. In this case, we know that the officers were in the residence attempting to locate and help Mr. Boren, who they believed was experiencing a mental health crisis, had cut himself, and believed to be in possession of a knife. After locating him covered in bedding in a closet, breathing but not moving and not responding, officers moved some of the bedding and uncovered a large knife on the floor of the closet. As an officer moved the knife, Mr. Boren quickly sat up, popping out from underneath the bedding, rushed towards officers, and grabbed the knife. As he stood up with the knife in his hand, Officers McKinnon and Berg deployed less lethal weapons (a taser and 40mm, respectively) and Officer Haggard fired his handgun three times. Mr. Boren fell back into the closet, still holding the knife. Mr. Boren continued to wave the knife in his hand and move around, not complying with commands. Then, as Mr. Boren sat up towards officers with the knife in his hand, Officer McKinnon, who had transitioned to his handgun, fired two times.

In assessing the threat presented by Mr. Boren, we considered the statements of the other officers, as well as the body-worn camera recordings. For example, Officer Sargent explained:

[W]hen I first saw the knife and saw how large it was, and then he woke up out of that trance or whatever he was in, I backed up 'cause he was going for it and I didn't have any tools. And so I was pretty fearful that he was gonna stab me with that. I mean, I had the broom handle. I did have cover, but I personally didn't have anything. That's not comfortable for me.

Officer Sargent also expressed:

[W]hen I saw [the knife], I tried to kind of move it discreetly, but he noticed and woke up and went for it. And so I backed up in fear, you know, honestly, you know, that he was gonna attack me with that.

Officer Sargent further described: "I remember seeing the knife, being startled by it, and then he just immediately went for it. I didn't have anything. I retreated." Similarly, Officer Teynor recalled that Mr. Boren suddenly reared up from the sheet, the sheet came off, Mr. Boren sat up, officers backed off, Mr. Boren had the knife shortly after he reared up, and he came forward with the knife. In addition, Officer Berg recalled that Mr. Boren suddenly popped up, started walking towards them, stepped down and grabbed a big, fixed-blade knife, and went to go lunge.

In relation to the second shots fired, Officer Teynor explained that shots were fired when Mr. Boren came back up again with the knife, not listening to any commands. Officer Berg also explained seeing Mr. Boren lean forward a little bit to go to get up when he heard the shots. Meanwhile, Officer Sargent described that Mr. Boren still had the knife, it looked like Mr. Boren was motioning towards him with the knife still, and he wasn't dropping it.

Based upon the facts in this case, as outlined here, we believe it is reasonable for us to infer that Officers Haggard and McKinnon likely believed they needed to use deadly force against Mr. Boren to prevent death or serious bodily injury to themselves and others. We further conclude that such a belief was reasonable. Mr. Boren unlawfully presented an immediate threat of death or serious bodily injury to officers when, after being found hiding in a closet with a large fixed-blade knife and concealed in bedding, he suddenly got up, grabbed the knife, and rushed towards the officers. We further find that Mr. Boren continued to present a threat of death or serious bodily injury when he continued to not comply with commands to drop the knife, he instead continued moving and waving the knife around, and then he quickly sat up and moved towards officers with the knife raised in his hand. Importantly, in reaching our conclusions, we note that these events unfolded rapidly, and in a relatively small, enclosed space.

The totality of the facts of this case, together with reasonable inferences based upon those facts, supports our conclusion that, to the extent that Officers Haggard and McKinnon believed deadly force against Mr. Boren was necessary to prevent death or serious bodily injury to themselves and/or others, a jury would likely find such a belief reasonable under the circumstances. Assuming Officer Haggard's and Officer McKinnon's 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 thus conclude that they

used deadly force because they reasonably believed deadly force was necessary to prevent death or serious bodily to themselves and/or others. Such a use of deadly force, by an officer who reasonably believes the deadly force is necessary to prevent death or serious bodily injury to himself or another person, satisfies the elements of the affirmative legal defense of justification and affords the officer a legal defense to a criminal charge. 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 Officers Haggard and/or McKinnon for their use of deadly force, and they asserted the legal defense of justification, we would have to prove at trial, beyond a reasonable doubt and to the unanimous satisfaction of all jurors, that they did not reasonably believe that using deadly force against Mr. Boren was necessary to prevent death or serious bodily injury. We do not believe the facts of this matter would support an effort to disprove the justification defense. We believe Officers Haggard and McKinnon would likely claim successfully at trial that they reasonably believed deadly force was necessary; therefore, their use of deadly force would be found justified and they would be afforded a legal defense to criminal charges.

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 Officers Haggard and McKinnon for their use of deadly force, we would have to show evidence to prove, beyond a reasonable doubt, that either Officers Haggard and McKinnon did not believe they needed to use deadly force prevent death or serious bodily injury (to themselves or another); or, that if they did believe they needed to use deadly force, that their beliefs were unreasonable. We do not believe we have sufficient evidence to do so. Based on the evidence before us, we conclude that no reasonable jury would unanimously determine that Officers Haggard and McKinnon 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 Officers Haggard and McKinnon the legal defense.

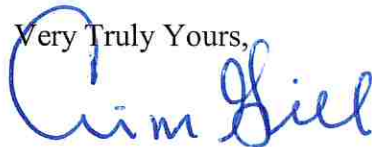
As the United States Supreme Court instructed in *Graham*, assessing “reasonableness” in the Fourth Amendment context “requires careful attention to the facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to the safety of the officers or others.” 490 U.S. at 496 (emphasis added). The facts of this matter support a conclusion that Officers Haggard and McKinnon could successfully argue that they reasonably believed their use of deadly force was necessary to prevent death or serious bodily injury to themselves or another individual (in this case, to themselves and the other officers). 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 Haggard’s and Officer McKinnon’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 Haggard's and Officer McKinnon's decisions to use deadly force, would likely support a finding that they reasonably believed deadly force was necessary to prevent death or serious bodily injury to themselves and/or others. As such, we believe that a jury would likely find that the facts and reasonable inferences satisfy the elements of the affirmative legal defense of justification and therefore afford them a legal defense to a criminal charge. Accordingly, we decline to file a criminal charge against Officers Haggard and McKinnon for their use of deadly force in this matter.

Very Truly Yours,



Sim Gill,
Salt Lake County District Attorney