

Ralph Chamness
Chief Deputy
Civil Division



Jeffrey William Hall
Chief Deputy
Justice Division

Blake Nakamura
Chief Deputy
Justice Division

DISTRICT ATTORNEY
SALT LAKE COUNTY
SIM GILL

Chief Chris Burbank
Salt Lake City Police Department
315 East 200 South, SLC
Salt Lake City, UT, 84111

Via Hand Delivery

July 7, 2011

RE: *Investigation of Officer Matthew Giles' Use of Deadly Force*
Our Case No.: 2011-1344
Incident Date: May 8, 2011
Incident Location: 1594 West, 400 South, Salt Lake City, Utah

Dear Chief Burbank:

As you know, the Office of the Salt Lake County District Attorney, Sim Gill, Salt Lake County District Attorney (hereinafter, the "DA's Office" or the "Office") is required by Utah State law, and operates pursuant to an agreement with participating law enforcement agencies, consistent with established protocols and applicable law, to perform joint investigations and independent reviews of officer involved critical incidents, including police officers' use of deadly (including potentially deadly) force used in the scope of police officers' official duties.

On May 8, 2011, at 1594 West, 400 South, Salt Lake City, Utah, Salt Lake City Police Officer Matthew Giles fired eight shots at a vehicle driven by A.M.¹, a minor (referred to hereinafter as the "Incident.") One shot hit and injured A.M., who survived. Salt Lake City Police Department (hereinafter, the "Department") invoked the Officer Involved Critical Incident ("OICI") protocol. Investigators from the DA's Office responded to the Incident and conducted a joint investigation with the Department. Consistent with the OICI protocol, the DA's Office independently reviewed the Incident. This letter reports the nature of and conclusions reached as a result of the joint investigation conducted by the DA's Office and the Department.

¹ Privacy concerns require the use of initials to identify the juvenile involved in the Incident.

MATERIALS RELIED UPON

As mentioned, this letter reports the nature of and conclusions reached in the joint investigation and independent review. The joint investigation of the Incident developed facts ascertained through a variety of sources, many of which are set forth below:

- **Report of Sgt. Travis Petersen, DA's Office Investigator**, dated May 20, 2011, in which Sgt. Petersen describes his investigative efforts and facts developed there from;
- **Report of Sgt. Craig Watson, DA's Office Investigator**, dated May 10, 2011, in which Sgt. Watson described his investigative efforts, including an inspection of the weapon involved in the shooting and the results thereof;
- **SLCPD Report** Re: Case No. 2011-73584, which sets forth information about the Incident as more fully described therein;
- **SLCPD Report** Re: Case No. 2011-73576, which sets forth information about the Incident as more fully described therein;
- **Photographs** taken on May 8, and May 9, 2011 depicting the scene of the Incident shortly after the events occurred;
- **Photographs** taken on June 1, 2011 depicting among other things some of the vehicles involved in the Incident;
- **Recorded Interview of Salt Lake City Police Officer Matthew Giles**, conducted on May 11, 2011, wherein Officer Giles described his involvement in and recollection of the incident;
- **Recorded Interview of Salt Lake City Police Officer Tom Sawyer**, conducted on May 8, 2011, wherein Officer Sawyer described his involvement in and his recollection of the incident;
- **Police Report of Salt Lake City Police Officer Nick Pearce**, authored on or about May 8, 2011, wherein Officer Pearce described his involvement in and his recollection of the incident;
- **Summary of Recorded Interview of Salt Lake City Police Officer Jake Barker**, conducted on May 11, 2011, wherein Officer Barker described his involvement in and his recollection of the incident;
- **Summary of Recorded Interview of Salt Lake City Police Officer Thad Hansen**, wherein Officer Hansen described his involvement in and his recollection of the incident;

- **Summary of Recorded Interview of Salt Lake City Police Sergeant Don Ouimette**, wherein Sgt. Ouimette described his involvement in and his recollection of the incident;
- **Police Report of Salt Lake City Police Officer Weldon Wilson**, authored on or about May 8, 2011, wherein Officer Wilson described his involvement in and his recollection of the incident;
- **Summary of Recorded Interview of A.M.**, obtained on May 9, 2011, wherein A.M. described his involvement in and his recollection of the incident;
- **Transcription of Radio Traffic** that occurred prior to and during the Incident, in which information about the Incident was broadcast to police officers;
- **Maps, Drawings and Diagrams** of the scene made by crime scene technicians and persons involved during various times as more fully discussed herein;

The opinions and conclusions set forth in this letter are based upon facts obtained from the joint investigation as set forth in sources set forth above, among others. Should additional or different materials or facts subsequently come to light, the opinions and conclusions contained herein may be materially different.

UTAH STATE LAW

The following are among the relevant provisions of Utah State law reviewed by the DA's Office in the independent review of the Incident:

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

(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;

...

(e) when the actor's conduct is justified for any other reason under the laws of this state.

(2) The defense of justification under Subsection (1)(c) is not available if the offense charged involves causing serious bodily injury, as defined in Section 76-1-601, serious physical injury, as defined in Section 76-5-109, or the death of the minor.

...

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.

...

FACTS

The following section outlines the facts as presently known, and as developed from the joint investigation and independent review as set forth in part in the materials relied upon described above. The joint investigation described herein revealed these facts set forth below. The independent review relied on these facts among others as described more fully herein. As mentioned, should different or additional facts subsequently come to light, or should any of the following be subsequently shown to be incorrect, the opinions and conclusions contained herein may likewise be materially different than set forth below.

Sometime prior to May 8, 2011, A.M. stole a Honda; the theft was reported to law enforcement. A report of a hit-and-run incident involving the stolen car was made during the early hours of May 8, 2011. Shortly after the reported hit-and-run, Salt Lake City Police Officers Justin Lancaster and Weldon Wilson were in the area of 400 South and 500 West when radio traffic described the stolen vehicle involved in the hit-and-run incident. It was subsequently determined that A.M. was driving this stolen vehicle. At approximately 3:36 a.m., Officer Lancaster radioed dispatch that he and Officer Wilson were behind the suspect vehicle at a red light, and that when the light changed, they would attempt to pull the vehicle over.

Officer Nick Pearce was nearby in the area of 500 South and Emery Street when he heard radio traffic about the vehicle involved in the hit-and-run. Officer Pearce responded to the area of 400 South and 500 West. He saw Officers Lancaster and Wilson activate their overhead emergency lights and sirens when the signal changed. Officer Pearce saw A.M. flee from the officers at a high rate of speed.

Officer Lancaster notified dispatch that the vehicle was not yielding to his signal to stop but continuing to drive at high speeds. Officer Lancaster advised dispatch the pursuit was being terminated. Officer Pearce continued to observe the route taken by the fleeing vehicle and headed in the same general direction at the speed limit without his emergency lights or siren.

Officer Pearce saw the vehicle travel westbound through the intersection at 400 South and 900 West, and advised dispatch that he believed the vehicle turned southbound near Pueblo Street.

Officer David Campbell radioed dispatch that he observed the suspect vehicle driving erratically at 400 South and Cheyenne Street. Officer Campbell then advised dispatch that he saw A.M. exit the vehicle and flee on foot. By this time, Officer Pearce arrived in the area in time to see A.M. climbing the fence surrounding the Sherwood Forrest trailer park. Officer Pearce drove his vehicle into the trailer park to look for the suspect. Other officers began to arrive at the trailer park and at approximately 3:40 a.m., a containment plan was established whereby officers positioned themselves around the perimeter of the trailer park.

While Officer Pearce was looking for A.M. inside the trailer park, Officer Jake Barker, also driving his police vehicle inside the trailer park, notified dispatch that Office Barker observed a person matching A.M.'s description in a dark-colored Honda. At about 3:42 a.m., Officer Barker radioed that he believed A.M. had just stolen the vehicle.

Officer Pearce continued to rove in his vehicle around the trailer park when he heard Officer Barker's radio traffic about A.M. in a recently stolen car. At about this same time, Officer Pearce saw A.M. driving towards him. As they approached each other, Officer Pearce turned right about the same time A.M. turned left. Officer Pearce's vehicle and A.M.'s vehicle collided, and Officer Pearce radioed dispatch that the A.M. had "rammed"² Officer Pearce's vehicle. Officer Pearce broadcast over the radio more than once that A.M. had rammed or struck his vehicle. Lieutenant Johnson, the watch commander at the time, radioed Officer Pearce and asked him whether Officer Pearce would "charge" A.M. with "aggravated assault on a peace officer." Officer Pearce replied, "I would." Lt. Johnson then authorized a pursuit of A.M. Officer Pearce turned around and pursued A.M. through the trailer park

Prior to the Officer Pearce's report of the "ramming," Officer Giles left his position in the containment plan and moved to the southern side of the trailer park where traffic entered and exited the trailer park via short roadways (entrance and exit lanes) leading in and out of the park. When Officer Giles heard Officer Pearce report the "ramming," Officer Giles obtained his .223 caliber rifle from his patrol vehicle and joined Officer Thomas Sawyer in the median between the entrance and exit lanes of the trailer park. Officers Giles and Sawyer were behind (south of) a large sign with the trailer park's name which stands in the median between the entrance and exit lanes.

During this time, Officer Pearce was pursuing A.M. in a counter-clockwise direction of travel around the loop roadway inside the trailer park. They had driven around the trailer park twice when A.M. turned right and drove towards the exit. Officer Pearce was apparently one to two car lengths behind A.M. during this pursuit. A.M. accelerated down the exit lane of the trailer park.

² Subsequent inspection of A.M.'s stolen vehicle and Officer Pearce's vehicle revealed that Officer Pearce actually impacted the rear passenger (right) side of A.M.'s vehicle. Nevertheless, at the time, Officer Pearce informed dispatch that it was A.M. who "rammed" Officer Pearce, and no information was conveyed to anyone at the time of the Incident to contradict Officer Pearce's assertion it was A.M. who "rammed" Officer Pearce.

Officer Giles was standing in the exit lane when A.M. drove down the exit lane of the trailer park. Officer Giles fired eight shots at A.M.'s vehicle. One shot, apparently fired through A.M.'s driver's side window, struck A.M. in the arm and the bullet when through A.M.'s left tricep and entered A.M.'s torso.

A.M. continued to flee from the officers. He was apprehended a short time later, and treated for a gunshot wound and thereafter taken into custody. A.M. survived the injury.

INTERVIEWS, STATEMENTS

Pursuant to the OICI protocol, several witnesses (some of whom are referenced above) were interviewed, the substance of which are set forth in more detail below.

Officer Pearce

Officer Pearce was interviewed on May 8, 2011. He also completed a police report dated May 8, 2011. The substance of his interview and report are substantially consistent with the facts set forth above insofar as Officer Pearce's conduct is described.

In his police report, Officer Pearce stated that he collided with A.M. after both turned into each other. Officer Pearce said he turned around began chasing A.M. at speeds he estimated to reach forty miles per hour around the trailer park. Officer Pearce stated that he radioed that A.M. had "rammed" him, and confirmed to the watch commander that he would charge A.M. with aggravated assault on a peace officer.

In his interview, Officer Pearce stated that as A.M. approached the turn to exit the complex, officers made room for A.M. to exit the trailer park. Officer Pearce estimated that he was about thirty feet behind A.M. when A.M. turned to exit. Officer Pearce continued to pursue A.M. as A.M. made the turn to the south to exit the trailer park.

As Officer Pearce began to make the turn into the exit lane pursuing A.M., his "windshield blew up in [his] face and shot glass in [his] direction." *Police Report*, Case No. 2011-73576, at 81. Officer Pearce stated further: "I looked at my windshield and observed severe damage to the driver side and below the rear view mirror. I concluded that this was from a bullet. As I did so, I looked towards 400 S[outh] and observed [Officer] Giles with his rifle in the ready position and he began firing at the suspect vehicle. He continued firing as the vehicle traveled south in his direction and past him." *Id.*

Sgt. Ouimette

Sgt. Ouimette was interviewed on May 8, 2011 by Salt Lake City Police Sergeant Justin Hudson and DA's Office Investigator Sergeant Vaun Delahunty. Sgt. Ouimette said he arrived at the trailer park, drove his vehicle northbound up the exit lane, and stopped his vehicle prior to getting all the way into the trailer park. He stated he was sitting in the driveway still trying to orient himself and evaluate the situation. Sgt. Ouimette said he knew that the suspect was still in a vehicle and had just rammed an officer's car. Sgt. Ouimette said that after being in the exit lane for a few seconds, he saw a vehicle speeding up towards him. He said that he recognized it as

the suspect vehicle and thought to himself that he better quickly move out of the way. He said that he quickly turned his vehicle to the west and pulled on the grass to avoid getting hit by A.M.'s vehicle.

Sgt. Ouimette said that he believed that the suspect was going out the exit and that the suspect would have hit him if he did not move. He estimated A.M.'s travel speed at thirty five miles per hour at the time A.M. turned to exit out the driveway.

Sgt. Ouimette stated that he and the suspect nearly collided but Ouimette was able to get out of the way in time. Sgt. Ouimette stated that A.M. had already turned and had just exited his line of sight when he heard gunshots. In his police report, Sgt. Ouimette stated: "Just as the suspect vehicle passed my vehicle, gun shots rang out." *Police Report*, Case No. 2011-73576, at 52. Sgt. Ouimette said in his interview that when he heard the gunshots, Officer Pearce was turning the corner and directly next to his vehicle.

Sgt. Ouimette stated that when Officer Giles started firing, Officer Pearce was right behind A.M.'s vehicle. Sgt. Ouimette said the gunshots came in rapid succession, and that he believed the shots may have been a "double tap" type, meaning two quick trigger pulls at a time.

In his interview with Sgt. Delahunty and Sgt. Hudson, Sgt. Ouimette stated after the shooting, he was verifying with Officer Giles that Giles was the officer that fired the shots. Sgt. Ouimette said he asked Officer Giles: "so you shot at the car, but we don't know if anyone has been hit?" Sgt. Ouimette said that Officer Giles replied: "Oh no, I was aiming dead center on him."

Officer Giles

Officer Giles was interviewed on May 11, 2011. Present in the interview with Officer Giles were Officer Giles' attorney, Sgt. Hudson, and DA's Office Investigator Sergeant Travis R. Peterson.

Officer Giles recounted the events of the Incident. Officer Giles described sitting in his patrol car and hearing the initial radio traffic describing a hit-and-run suspect fleeing from Officers Lancaster and Wilson. Officer Giles recounted that he drove to the general area where A.M. was seen fleeing. Officer Giles stated that he heard who he believed was Officer Campbell describe a suspect (A.M.) abandon a vehicle and flee on foot in the area of the trailer park.

Officer Giles said he went to the trailer park area to assist with the containment plan. Officer Giles said he initially took a position near 400 South and Redwood Road. He said he heard who he believed was Officer Barker state that A.M. had possibly stolen another vehicle inside the trailer park, and shortly thereafter heard who he believed was Officer Pearce broadcast over the radio that he was inside the trailer park following the vehicle A.M. had just stolen. Officer Giles said he left his place in the containment plan and drove his police vehicle to the entrance lane of the trailer park to assist Officer Pearce.

Officer Giles recounted that he heard the radio traffic wherein Officer Pearce claimed A.M. “rammed” Officer Pearce. Officer Giles stated: “I don’t know if it was multiple officers saying that they had struck their vehicle or if they were stating that they had struck Officer Pearce’s vehicle. But I remember hearing a couple different times, ‘He struck my vehicle! He struck my vehicle!’” *Transcribed Interview of Officer Giles*, May 11, 2011 at 4.

Officer Giles stated he heard Lt. Johnson ask Officer Pearce if “this was an aggravated assault on a police officer. Officer Pearce said, ‘Yes, he struck my car on purpose, deliberately, trying to hit me.’ The watch commander, Lt. Johnson, said, ‘Pursuit authorized.’” *Id.* Officer Giles stated that at this time, he arrived at the entrance to the trailer park.

Officer Giles said he parked his patrol vehicle in the entrance lane to the trailer park and observed several other police cars in the area. Officer Giles stated that his “understanding [was] that the suspect had...was driving very erratically, very fast, had purposely struck a police officer...at least one police vehicle, that I understood, that he’d struck at least one of them on purpose, he was very reckless, did not care for human safety, did not care for police safety, um...was very erratic.” *Id.* Officer Giles continued: “I felt if the vehicle tried to strike myself, to have a weapon with more stopping power than a pistol. I felt more confident in a high stress situation with my rifle than I did with my pistol, not saying that I’m terrible with my pistol but I felt more confident. I felt the rifle had more stopping power. It was more accurate in high stress situations.” *Id.* at 5.

Officer Giles said he made his rifle “combat ready,” by which he meant that he checked to see if the rifle’s magazine was properly loaded and then chambered a round. Officer Giles said: “I then went from my patrol car to the west side of the street on the exit lane, where I could clearly see and get a clear view of everything that was in front of me. I could hear vehicles, I could hear engines, very loud. I could hear sirens. I could see ambient light from the overhead lights from the patrol vehicles that were following the vehicle. I was standing directly next to the median. I could feel my right foot touching the concrete curb.” *Id.*

Officer Giles said he heard radio traffic describing Officer Pearce’s pursuit of A.M. Officer Giles said he saw A.M. approach the turn into the exit lane at a high rate of speed. Officer Giles stated: “I remember Sgt. Ouimette pulling his vehicle...getting his vehicle out of the way to avoid being struck by the suspect vehicle. At that time, the vehicle made a very fast turn around the south corner and was coming southbound through the exit lane. The vehicle was directly in front of me and was coming directly at me. I could hear very high, the engine revving very high acceleration, if you will. ... It was very loud. It was very, moving very fast. I could see the vehicle wasn’t trying to swerve to miss me at all.” *Id.* at 6. Officer Giles explained that he “could see the vehicle was not stopping. It wasn’t swerving. Seeing that the vehicle was coming at me at a very high rate of speed, I feared for my safety, I feared for my life, knowing that if I got hit by this vehicle, I, my life could be, I could die or I could get seriously injured.” *Id.*

Officer Giles said he aimed his rifle at the driver, quickly looked behind him (and did not see any other vehicles), and fired two shots in quick succession. Officer Giles stated: “the

vehicle, at the time I started firing was approximately twenty feet³ away.” *Id.* Officer Giles stated he fired another two quick shots followed by another two quick shots because “the vehicle was still coming at [him].” *Id.* Later in the interview, Office Giles again stated that “it was approximately twenty feet prior to my, me actually firing—once I start firing.” *Id.* at 13.

Officer Giles explained: “I saw Officer Pearce’s patrol, the lights on his patrol vehicle coming around the corner. I could see the vehicle still coming straight at me. I could see the vehicle wasn’t gonna stop. I could see Officer Pearce was coming into my line of fire. I stopped firing⁴.” *Id.* at 6.

Officer Giles stated: “I don’t remember if I jumped out of the way or if I quickly slid [*sic*] out of the way. I remember getting out of the way, and the vehicle, I remember seeing the vehicle pass to the side of me. I didn’t fire any shots after that.” *Id.* at 7.

Sgt. Peterson asked Officer Giles: “...the reason why you’re pulling the trigger, and you explained that you were in the road, he wasn’t making any maneuvers—so did I understand that right, at the time you pulled the trigger was in fear for *your* safety?” *Id.* at 8,(emphasis in the original). Officer Giles replied: “yes, sir.” *Id.*

When asked by Sgt. Peterson: “when you see him around that corner, did it cross your mind to move into the median immediately or did you think he was gonna turn, see you, and turn off right or...” *Id.* at 17. Officer Giles replied: “I don’t recall really anticipating whether he was gonna come this way straight at me or come directly and just kind of make like a wide turn and then ... exit out. I remember just kind of standing in that area just, and then as he comes around, I see him straighten out and then come directly towards me.” *Id.*, pp.17-18. Officer Giles continued: “I didn’t really anticipate him one way or the other, with this sign that’s right here...I knew if I stood there, I really wasn’t gonna be able to get any type of a...a clear type of a shot, versus being right, as close as I could to the side, giving him still plenty of room to come to take his vehicle off to the side of me.” *Id.* at 18.

In the interview, Sgt. Peterson clarified Officer Giles’ reason for shooting at A.M. Officer Giles denied that he shot at A.M. “for a stolen vehicle;” nor did Officer Giles shoot at A.M. for the “pursuit issue,” nor for the “stuff about striking vehicles” if Officer Giles “had not been in the way;” nor was Officer Giles’ use of force to disable A.M.’s vehicle. See, *id.*, pp. 19-20.

³ As discussed in more detail below, this statement is not consistent with nor supported by the evidence and conclusions derived therefrom.

⁴ As discussed in more detail below, this statement is likely not consistent with nor supported by the evidence and conclusions derived therefrom. Also, Officer Giles further explained: “at the time of my last two shots, I remember seeing Officer Pearce’s truck begin to come around the corner. At that time the suspect vehicle was probably right about, it was within five feet of me.” This statement is not consistent with nor supported by the evidence and conclusions derived therefrom.

Sgt. Peterson asked: "You hear all the stuff about striking vehicles. Even if you had not been in the way, would you have still pulled the trigger as he was pulling out?" *Id.* at 19. Officer Giles replied: "No, sir." *Id.*

Sgt. Peterson asked: "So we get down to the reason why you pulled the trigger at the time you did was because you were in fear of yourself?" *Id.* Officer Giles replied: "Yes, sir." *Id.* at 20.

Sgt. Peterson explored further: "...it wasn't all these other events?" *Id.* Officer Giles answered: "No, sir. No, sir." *Id.*

In the interview, Officer Giles reiterated what his intent was when he fired his rifle⁵: "My intent was to stop the vehicle. The person that was driving the vehicle was obviously, you know, he had his foot accelerated on the gas so you could hear the engine revving up very high. My intent was to stop that person from accelerating the vehicle. I was attempting to stop the vehicle, and that ultimately, but stop the person behind the vehicle from driving the vehicle into me." *Id.* at 20.

Officer Giles further explained:

TP: The reason why I ask is sometimes we have cases like this where, you know, officers say whether it's, you know, right, wrong, or indifferent that, you know, "I was just shooting at the tire to disable the car."

MG: No. No.

TP: Or were you shooting at the person driving and to stop the action?

MG: I was trying to stop the action. I was trying to stop the person.

TP: Do you see the difference?

MG: Yes. I...

TP: (unintelligible) clarify that?

MG: No, this wasn't - I wasn't tryin' to do the quote unquote Hollywood shoot the tire out, car flies, rolls over me and...

TP: There's sometimes that people will shoot at cars.

MG: I...

TP: (unintelligible) clarify that at the time you pulled the trigger, you were aiming at the person...

MG: Yes.

⁵ Sgt. Peterson's question was: "at the time you did pull the trigger, when the suspect car was coming around the corner, you aimed just above the headlight (unintelligible), so were you aiming at the person or at the vehicle? What was your intent?"

TP: ...to stop their action.

MG: Yes, sir.

TP: And that was your...

MG: I was aiming at what I under[stood]-what I thought was the person right above the headlights.

Id., pp. 20-21

Officer Sawyer

Officer Sawyer authored a police report dated May 8, 2011. In his report, Officer Sawyer stated that he responded to the area of the trailer park to assist with a containment plan. Officer Sawyer positioned himself in the median between the entrance and exit lanes. Officer Sawyer said he could not see the pursuit, but could see the red and blue lights of the police vehicles in pursuit.

Officer Sawyer said that he was with Officer Giles was behind the sign in the median. Officer Sawyer said he, Officer Sawyer, stepped out from behind the sign to the east to observe what was happening. Officer Sawyer said he saw A.M.'s vehicle turn into the exit lane and proceed southbound, leaving the trailer park. Officer Sawyer said he saw Officer Giles step out from behind the sign to the west. Officer Sawyer said he saw Officer Giles raise his rifle and point it to the north in the direction of A.M.'s vehicle. Officer Sawyer said Officer Giles fired a shot, whereupon Officer Sawyer took cover behind the sign. Officer Sawyer said he heard several shots fired thereafter. Officer Sawyer saw A.M. exit the trailer park; Officer Sawyer followed A.M. and other police vehicles out of the trailer park.

A.M.

On May 9, 2011, A.M. was interviewed by Sgt. Peterson and Sgt. Hudson. A.M. was advised that this interview sought information about the Incident, apart from an investigation⁶ into alleged criminal violations by A.M.

A.M. acknowledged that he evaded police in a stolen car early in the morning of May 8, 2011. A.M. stated that he abandoned the stolen vehicle near the Sherwood Forrest trailer park and jumped the perimeter wall into the trailer park. A.M. also acknowledged stealing another vehicle inside the trailer park.

A.M. stated that when police arrived inside the trailer park looking for him, he also tried to elude and run from the police following him inside the trailer park. A.M. recalled a police

⁶ Salt Lake City Police Det. Cordon Parks interviewed A.M. on May 8, 2011. A.M. waived his *Miranda* rights and discussed the Incident with Det. Parks. Inasmuch as Det. Parks interviewed A.M. as part of a criminal investigation with A.M. as a suspect, the substance of that interview will only be considered in the review of the Incident whether, and if so to what extent the information Det. Parks obtained materially differs from A.M.'s May 9, 2011 interview.

vehicle⁷ driving at him; A.M. stated that A.M. swerved to the left to avoid a collision, and A.M. stated that he was not aware that the vehicles made contact. A.M. denied trying to hit the police car, and again stated that his only desire was to escape from the trailer park.

A.M. stated that he decided to exit the trailer park. He said that he made a right hand turn into the exit lane and headed southbound. A.M. said that an officer suddenly came out into the middle of the road. A.M. used words such as “jumped” and “hopped” in describing the officer’s actions. A.M. said that he immediately turned to the right to try to miss the officer. A.M. recalled that in turning right to avoid the officer, he came close to hitting what he recalled as a “brick wall” to the west. A.M. said that he heard gunshots. A.M. said that he was hit with what felt to him like a “bean-bag” round.

A.M. said that he could see how the officer on foot could have thought that A.M. was going to run the officer over. A.M. acknowledged that the officer would not have been able to know A.M.’s thoughts or intentions. A.M. also said that it was the officer who stepped out in from of A.M., and that the officer put himself in that position.

THE SCENE AND EXAMINATIONS THEREOF

Most of the Incident occurred at the Sherwood Forrest trailer park. Sherwood Forrest trailer park is enclosed by 400 South on the south, Redwood Road on the west, 300 South on the north, and Cheyenne Street on the east. *See, Aerial Photo of Sherwood Forrest trailer park*, attached hereto as Attachment A. The trailer park’s road circles the interior of the trailer park. *See, id.* The trailer park has an entrance and exit lane accessed from 400 South, as described more fully below. *See, id.*

It is established that Officer Giles fired his weapon while he was in the exit lane of the trailer park. The exit lane is approximately twenty feet wide, and about one hundred three feet in length as measured from 400 South to the beginning of the turn into the loop road inside the trailer park. *See, Diagram*, attached hereto as Attachment B. The entrance and exit lanes to the trailer park are divided by a median. At about ten and a half feet north of the southern end of the median is a large wooden sign supported by two concrete and stone pillars each approximately two feet thick and about six feet high. The sign is made of thick wood approximately five feet high. *See, Attachment B.*

As mentioned above, immediately prior to the shooting, Officer Pearce was pursuing A.M.; eventually, both were driving around the trailer park’s road in a counter-clockwise direction. When A.M. elected to exit the trailer park via the exit lane, A.M. turned into the exit lane by turning right (southbound) ninety degrees. Officer Pearce followed A.M.’s turn. As Officer Pearce entered the turn, he saw Sgt. Ouimette’s vehicle up on the lawn to the southwest when Officer Pearce’s windshield “exploded” as described above. The approximate location of Officer Pearce’s vehicle as it rounded the turn into the exit lane is depicted on a diagram attached hereto as Attachment C.

⁷ The oncoming vehicle was driven by Officer Pearce, who later radioed that A.M. had rammed his police vehicle.

On May 8, 2011, investigators from Salt Lake City Police Department and the DA's Office performed a joint scene investigation. The results of this joint investigation were set forth in police reports which contained among other things, witness statements, diagrams and photographs.

On June 1, 2011, investigators and personnel from the Police Department and the DA's Office jointly performed a subsequent scene investigation. The vehicle driven by A.M. and shot by Officer Giles, and the vehicle driven by Officer Pearce and also shot by Officer Giles were brought to the scene. Efforts to estimate the probable locations of each vehicle at various points during the Incident were undertaken. Colored rods were inserted into bullet holes in A.M.'s vehicle to illustrate the location of the bullet holes. Where sufficient information could provide reasonable estimations, the likely trajectory of the shots which created the bullet holes were illustrated by the colored rods, as shown in the photograph of A.M.'s stolen vehicle attached hereto as Attachment D.

Results of the scene investigations, including measurements, observations, photographs, and other information obtained were considered in the analysis set forth below as described in more detail herein.

PHYSICAL EVIDENCE

Eight spent (empty) .223 cartridge casings from Officer Giles' rifle were recovered from the scene, as well as one live cartridge. The locations from which the cartridge and the casings were recovered are depicted on a diagram attached hereto as Attachment E.

As mentioned above, the damage inflicted by Officer Giles' shots that hit A.M.'s stolen vehicle is depicted in a photograph attached hereto as Attachment D. Damage sustained by Officer Pearce's vehicle from a bullet is illustrated in the photograph attached as Attachment F.

DISCUSSION

1. Officer Giles' Belief that A.M. had Committed an Aggravated Felony was Reasonable.

Officer Pearce's radio transmissions during the pursuit inside the trailer park included statements that A.M. had "rammed" him. Officer Pearce repeated this claim over the radio up to two more times. When asked over the radio by Lt. Johnson whether Officer Pearce would charge A.M. could with aggravated assault on a peace officer, Officer Pearce replied "I would."

During his interview, Officer Giles recounted that he heard radio traffic from Officer Pearce stating that Officer Pearce was trying to stop A.M. Officer Giles recounted that he believed he heard Officer Pearce call out that "the suspect had struck his vehicle in an attempt to flee and was fleeing the area in the trailer park." Officer Giles also recounted that he believed he heard Officer Pearce state that A.M. "struck [his] car on purpose, deliberately trying to hit [him]." Also, Office Giles recounted that immediately prior to the Incident, Officer Giles believed A.M. was driving very fast, had purposefully struck perhaps several officers, as he heard more than one radio transmission that A.M. struck an officer's vehicle.

Utah Code Annotated 76-5-103 (more fully set forth in the Appendix attached hereto) defines aggravated assault: “A person commits aggravated assault if the person commits assault as defined in Section 76-5-102⁸ and uses a dangerous weapon as defined in Section 76-1-601⁹ or other means or force likely to produce death or serious bodily injury....” Radio traffic of which Officer Giles was aware and heard indicated that A.M. had probably used a dangerous weapon (A.M.’s vehicle) to attempt to do bodily injury to Officer Pearce, or threatened with a show of immediate force or violence, to do bodily injury to Officer Pearce; or A.M. acted with unlawful force or violence which created a substantial risk of bodily injury to Officer Pearce.

In this Incident, Officer Giles was aware or had reason to believe that A.M. had ostensibly “rammed” or intentionally collided with at least one police vehicle. Further, Officer Pearce, the ostensible victim of the “ramming,” advised the watch commander that he would charge A.M. with aggravated assault on a peace officer. Officer Giles’ perception that A.M. had likely committed a violent felony was likely compounded by Officer Giles’ awareness that A.M. had been allegedly involved in a prior hit-and-run accident; that he had evaded officers prior to A.M.’s arrival in the trailer park by escaping at high speed; and that A.M. continued to drive at (relatively) high speed through the trailer park in an ongoing attempt to elude officers.

Thus, the situation during the Incident and prior to the shooting supports Officer Giles’ assertion that he believed A.M. had committed a violent felony and that A.M. was exhibiting less than reasonable care for the safety of others, and perhaps exhibiting deliberate disregard and possibly exhibiting an intent to harm officers during the pursuit.

2. *Officer Giles’ Perception that A.M. Posed a Threat of Death or Serious Bodily Injury to Giles is Not Supported by Physical Evidence or Witness’ Statements.*

Several variables were taken into account in considering the dynamic and evolving situation at the time Officer Giles first fired his weapon, and the shots he fired thereafter. Some parameters are known; others must be defined by boundaries of reasonableness. For example, it is established that Officer Giles fired eight rounds from his weapon. It is also known that some shots were fired at an angle to A.M.’s vehicle, rather than straight on. It is also very likely that Giles fired the last shot when A.M. was passing Officer Giles’ position, and not at anytime thereafter. Also, evidence is consistent that A.M. was driving fast and very likely accelerating while driving southbound down the exit lane.

Measurements obtained during scene investigations also established distances. While the exact location of A.M.’s vehicle, Officer Giles and Officer Pearce’s vehicle at various times during the Incident cannot be established with precision, certain boundaries can be defined. For

⁸ As set forth above, Utah Code Ann. 76-5-102 defines an assault as: “an attempt, with unlawful force or violence, to do bodily injury to another; a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.”

⁹ As set forth above, Utah Code Ann. 76-5-601(5) defines “Dangerous weapon” as: “any item capable of causing death or serious bodily injury; or a facsimile or representation of the item, if the actor’s use or apparent intended use of the item leads the victim to reasonably believe the item is likely to cause death or serious bodily injury; or the actor represents to the victim verbally or in any other manner that he is in control of such an item.”

example, measurements obtained indicate that the exit lane from its northern border to the southern curb (baseline) on 400 South is approximately one hundred three feet. *See, Diagram, Attachment B.* There is an additional twenty seven feet to the north of the exit lane wherein the turn from the trailer park road curves into the exit lane. Thus, a vehicle turning right (southbound) from the trailer park road into the exit lane would traverse a curve on the turn before the vehicle straightened into a southbound direction of travel down the exit lane. *See, id.*

Officer Giles' statements, considered together with the locations of spent cartridge casings, indicate that Officer Giles very likely began firing his weapon somewhere to the north (but not too far north) of 400 South, while Officer Giles was still standing for at least some of the time in the exit lane. Physical evidence indicates bullets impacted the A.M.'s vehicle as the vehicle traveled southbound after the turn but probably not much prior thereto¹⁰. Thus, it seems most probable that Officer Giles fired his weapon when A.M. was no more than approximately one hundred feet away, and likely somewhat closer.

Other variables such as A.M.'s speed must also be defined by boundaries of reasonableness; that is to say, all evidence indicates that A.M.'s speed down the exit lane was certainly at least twenty miles per hour¹¹; however, it is unlikely that A.M.'s speed exceeded forty miles per hour, especially shortly after executing the right turn. Some witnesses estimated A.M.'s speed rounding the final turn into the exit lane at about thirty miles per hour. While thirty miles per hour falls within boundaries of reasonableness, A.M.'s exact speed at any given point cannot be known with any degree of certainty. Nor can A.M.'s rates of acceleration be established with any degree of certainty. Witnesses reported that A.M. accelerated while traveling down the exit lane. Consequently, A.M.'s speeds must be approximated within a range of reasonableness as discussed herein.

By using the boundaries of probabilities, some conclusions about speed, time and distance can be drawn for this analysis. The following table shows the relationship between variables of the times distances and speeds in the Incident to illustrate the continuum of possibilities.

The horizontal axis of the table below lists a range of possible speeds A.M.'s vehicle may have been traveling down the exit lane during the Incident. Speeds are set forth in miles per hour and converted to feet per second at a ratio of 1:1.4666. The vertical axis lists various distances between A.M.'s vehicle and Officer Giles. At the intersection of the two numbers is the time in seconds to cover the distance at the speed referenced:

¹⁰ *See, e.g.,* Photograph of A.M.'s vehicle attached as Attachment D, wherein no trajectories were observed showing a bullet traversed the vehicle from passenger side towards driver's side, as would be expected had A.M.'s vehicle been shot while turning right (southbound) towards Officer Giles.

¹¹ Indeed, as discussed in more detail herein, if A.M.'s speed had been any less, the imminence of the threat A.M.'s vehicle posed to Officer Giles would be mitigated such a degree that the vehicle would likely not pose any threat of death or serious bodily injury to Officer Giles. Moreover, as indicated above, Officer Giles himself stated that A.M. was traveling at a high rate of speed and that A.M. was accelerating down the exit lane. *See, e.g., supra*, p.9.

Speed	20 mph	25 mph	30 mph	35 mph	40 mph
Speed	29.3 fps	36.6 fps	43.9 fps	51.3 fps	58.6 fps
Distance					
20 ft.	0.68	0.54	0.45	0.39	0.34 Seconds
30 ft.	1.02	0.82	0.68	0.54	0.51 Seconds
40 ft.	1.36	1.09	0.91	0.78	0.68 Seconds
50 ft.	1.70	1.36	1.13	0.97	0.85 Seconds
60 ft.	2.05	1.64	1.36	1.16	1.02 Seconds
70 ft.	2.38	1.91	1.59	1.36	1.19 Seconds
80 ft.	2.73	2.18	1.82	1.55	1.36 Seconds
90 ft.	3.07	2.45	2.05	1.75	1.53 Seconds
100 ft.	3.41	2.73	2.27	1.94	1.70 Seconds

Officer Giles firing rate (shots fired per second) during the Incident is unknown. However, it is improbable that Officer Giles did (or could have) fired eight rounds in less than one second¹². Therefore, the analysis below assumes that Officer Giles fired his rifle for a span of time exceeding one second. From this assumption only a certain number of conclusions follow, as set forth more fully below.

As mentioned above, Officer Giles stated that he believed he fired his first shot at A.M. when A.M.'s vehicle was about twenty feet away. As shown in the chart above, at the A.M.'s slowest reasonable speed, A.M. would have traveled the twenty foot distance described by Officer Giles in 0.68 seconds. If the last shot was very likely fired as A.M.'s vehicle passed¹³, then Officer Giles would have had to fire all eight rounds in 0.68 seconds¹⁴. This situation is not reasonable, as it would require an average of one shot per 0.085 seconds. It is therefore

¹² Eight rounds fired in one second would be an average of one round every 0.125 seconds.

¹³ Both the physical evidence observed on A.M.'s vehicle and Officer Giles' statement support that the last shot was fired as A.M.'s vehicle passed, and not after.

¹⁴ Not included in this time is Officer Giles' perception and decision time, or the amount of time during which Officer Giles perceived the ostensible need and made the decision to shoot. Such perception and reaction time would decrease the amount of time Officer Giles had to actually operate the weapon and fire the shots.

probable that either A.M. was farther away from Officer Giles than the twenty feet stated by Officer Giles, or A.M. was driving much slower than twenty miles per hour. For example, if Officer Giles began firing when A.M. was twenty feet away, A.M. would have had to been traveling ten miles per hour to allow 1.36 second for all eight shots to be fired. If A.M. was driving this slowly, A.M. seems to pose little to no threat of serious bodily injury or death or Officer Giles. Such a slow speed is not consistent with witnesses' reports, nor with Officer Giles' account of the Incident.

Given the range of probable vehicle speeds and the likely rates of fire of which Officer Giles was capable and in fact achieved, it seems very likely A.M. was at least sixty and perhaps at least seventy or eighty feet from Officer Giles when Officer Giles first fired his weapon. At such distances, at a range of vehicle speed between twenty-five to thirty-five miles per hour, Officer Giles would have had between 1.63 to 2.18 seconds to fire eight times, which seems to fall within boundaries of reasonableness. If A.M. was traveling faster (accelerating) the total time to fire eight shots would be reduced accordingly.

The likelihood that A.M. was more than sixty feet away from Officer Giles when the shooting began is further supported by Officer Pearce's and Sgt. Ouimette's statements describing the location of the vehicles when Officer Giles began shooting. As set forth above, Officer Pearce said he was about thirty feet behind A.M. during the pursuit and turn into the exit.

It appears likely that Officer Pearce's vehicle was hit as he began making the turn into the exit. *See, e.g.*, Attachment C. Officer Pearce was likely roughly about one hundred twenty feet north of 400 South when his vehicle was hit. If Officer Pearce's pursuit in fact placed him about thirty feet behind A.M., then A.M. was likely between seventy to ninety feet north of Officer Giles when Officer Pearce was hit.

Sgt. Ouimette's statements place A.M.'s vehicle in the area proximate to Sgt. Ouimette's vehicle when Officer Giles began firing. As stated in his police report, Sgt. Ouimette said: "Just as the suspect vehicle passed my vehicle, gun shots rang out." Sgt. Ouimette's statements (as viewed with Attachments B and C) describe the likely area in which A.M.'s vehicle was located when Officer Giles began firing: A.M.'s vehicle was likely just passing somewhere in the area of one hundred feet north of the south baseline formed by 400 South. *See*, Attachment B. If Officer Giles was standing several feet north of the 400 South street, and A.M.'s vehicle covered a small distance after passing Sgt. Ouimette's vehicle, it seems likely that A.M. was at least seventy feet to the north of Officer Giles when the firing began.

Therefore, as shown from the above analysis, Officer Giles' statement that he fired the first shot when A.M.'s vehicle was twenty feet away is fairly conclusively refuted by the physical evidence and time, distance and speed calculations, as well as the observations of witnesses to the Incident. It is therefore very probable that A.M. was considerably father than twenty feet away from Officer Giles when he first fired his weapon.

3. Officer Giles' Use of Deadly Force in Defense of Himself Was Not Reasonable.

For the purposes of this analysis, it is established that at some point in time during the Incident, A.M. drove his vehicle in a direction towards Officer Giles. However, as shown from

above analysis, either A.M. was considerably farther than twenty feet away from Officer Giles when he first began firing, or A.M. was driving considerably slower than the witnesses (including Officer Giles) reported. The latter scenario seems less likely than the former: it seems more likely that A.M. was considerably farther than twenty feet away from Officer Giles when he started shooting.

Individuals (including but not limited to peace officers) are justified in using deadly force to defend themselves under circumstances as outlined by law. 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 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 felony¹⁵.” *Id.*

In addition to the justifications set forth above regarding the use of deadly force, peace officers are justified in using deadly force when:

“effecting an arrest¹⁶ 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.

Setting aside for the moment the consideration of whether Officer Giles was using deadly force to effect an arrest, the following considers the application of the facts to the elements of justification set forth above. In essence, the analysis for the use of deadly force to prevent death or serious bodily injury (whether to individuals or peace officers) turns on similar elements: *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); *officers*: “the officer reasonably believes that the

¹⁵ Utah Code 76-2-402(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.”

¹⁶ For reasons discussed below, Officer Giles’ use of deadly force against A.M. to effect an arrest was not justifiable.

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(c).

The justification for the use of deadly force by a peace officer requires that the officer “reasonably believe” that the use of deadly force is “necessary to prevent” the threat of “death or serious bodily injury;” however it does not explicitly require an “imminent use of unlawful force” by another that constitutes the threat of death or serious bodily injury. That said, the analysis of the reasonableness of whether, and if so the extent to which the officer’s belief that deadly force is necessary turns on, among other things, whether the threat of death or serious bodily injury was imminent. The more imminent the threat, the more reasonable the officer’s belief that deadly force is necessary.

Whether, and if so to what extent a threat is imminent turns on several factors. The threat’s proximity is one factor; so is the speed at which a moving threat is approaching, as is the means by which the threat is moving. The less one is able to evade or avoid a moving threat the greater the threat’s imminent ability to cause death or serious bodily injury. The converse is likewise true.

In this case, when Officer Giles first fired his weapon, it seems very probable that A.M.’s vehicle was too far away to constitute a reasonable threat of death or serious bodily injury to Officer Giles. In analyzing this Incident, for the reasons set forth above, we conclude that the physical evidence does not support a reasonable belief that A.M. posed an imminent threat of death or serious bodily injury to Officer Giles when Officer Giles began using deadly force; and therefore Officer Giles’ use of force was not reasonable. As such, Officer Giles’ use of deadly force was not justified as necessary to prevent death or serious bodily injury to Officer Giles.

4. *Officer Giles Initial Use of Force to Arrest A.M. was not Reasonable.*

Viewed apart from and disregarding Officer Giles’ statements regarding his intent behind his use of deadly force against A.M., it is unlikely that Officer Giles’ actions satisfy the elements set forth in U.C.A. 76-2-404(b)(i), which states, in relevant part, that an officer may use deadly force in “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....”

Although it seems likely that Officer Giles’ reasonably believed that A.M. had committed “a felony offense involving the infliction or threatened infliction of death or serious bodily injury,” Officer Giles could not have a reasonable belief “that deadly force is necessary to prevent the arrest from being defeated by escape....” *Id.* Here, Officer Giles’ use of force resulted in one bullet impacting Officer Pearce’s vehicle, and one bullet likely missing both A.M. and Officer Pearce. Given the likely distance at which Officer Giles first shot, Officer Giles’ initial use of force was not reasonably necessary to prevent A.M.’s escape from arrest, as it subjected others an unreasonable risk of death or serious bodily injury.

5. *Officer Giles Denied He Was Using Deadly Force for Purposes Other Than in Defense of Himself.*

Whether or not facts of the Incident may have provided Officer Giles with justification for using deadly force in effecting A.M.'s arrest, when asked whether he used deadly force to arrest A.M., Officer Giles replied that he did not use deadly force for any other purpose than to prevent Officer Giles' death or serious bodily injury. When given an opportunity to change, clarify or otherwise reflect on this position, Officer Giles confirmed that he only used deadly force because Officer Giles believed A.M. was going to hit Officer Giles with his car, and that Officer Giles used deadly force because of the ostensible imminent threat of death or serious bodily injury to Officer Giles. Officer Giles ruled out another reasons for his use of force.

Since Officer Giles denied he used deadly force for a purpose other than his own physical safety (*e.g.*, to affect an arrest) we cannot attribute to Officer Giles a motive or intent he denied to thereby justify his actions. Accordingly, we conclude that Officer Giles' use of deadly force against A.M. was not justified under U.C.A. 76-2-404(b)(i).

CONCLUSION

Officer Giles' version of the Incident is not supported by physical evidence. It is extremely unlikely that A.M. was twenty feet away when Officer Giles began firing. Witness statements and physical evidence applied to known variables show that A.M. was considerably farther away from Officer Giles when Officer Giles began firing. Thus, given the likely location of A.M.'s vehicle when Officer Giles began firing, Officer Giles ostensible belief that deadly force was necessary to prevent his death or serious bodily injury was not reasonable, and therefore his use of deadly force was not justified.

Physical evidence shows that Officer Giles' likely final shot was fired as A.M. passed Officer Giles. This use of deadly force could not reasonably prevent death or serious bodily injury to Officer Giles because A.M. could not be a threat to Officer Giles at that point. Accordingly, this final shot which injured A.M. was not a reasonable use of deadly force, and therefore not justified.

It seems that Officer Giles' use of deadly force to affect an arrest was not a reasonable use of force. Moreover, whether or not Officer Giles may have been justified in using deadly force to arrest A.M., Officer Giles stated he did not use deadly force for such a purpose. Accordingly, Officer Giles' use of deadly force was not justified under this provision.

We therefore conclude that Officer Giles' use of deadly force in the Incident was not justified. Based upon the facts as presently known, justification is not available to Officer Giles to claim as a defense to a prosecution for an offense based on his conduct in the Incident pursuant to U.C.A 76-2-401.

The DA's Office is evaluating and may screen potential criminal charges. As always, the same ethical and professional standards to which the Office adheres in the consideration of criminal charges against anyone will be employed in this process.

As always, every person suspected, accused or charged of a criminal offense is presumed innocent unless and until convicted in a court of law.

If you have any concerns or questions, please contact me to arrange a time to visit personally with me.

Very Truly Yours,

SIM GILL,
Salt Lake County District Attorney

SG/JWH:jh

Attachments

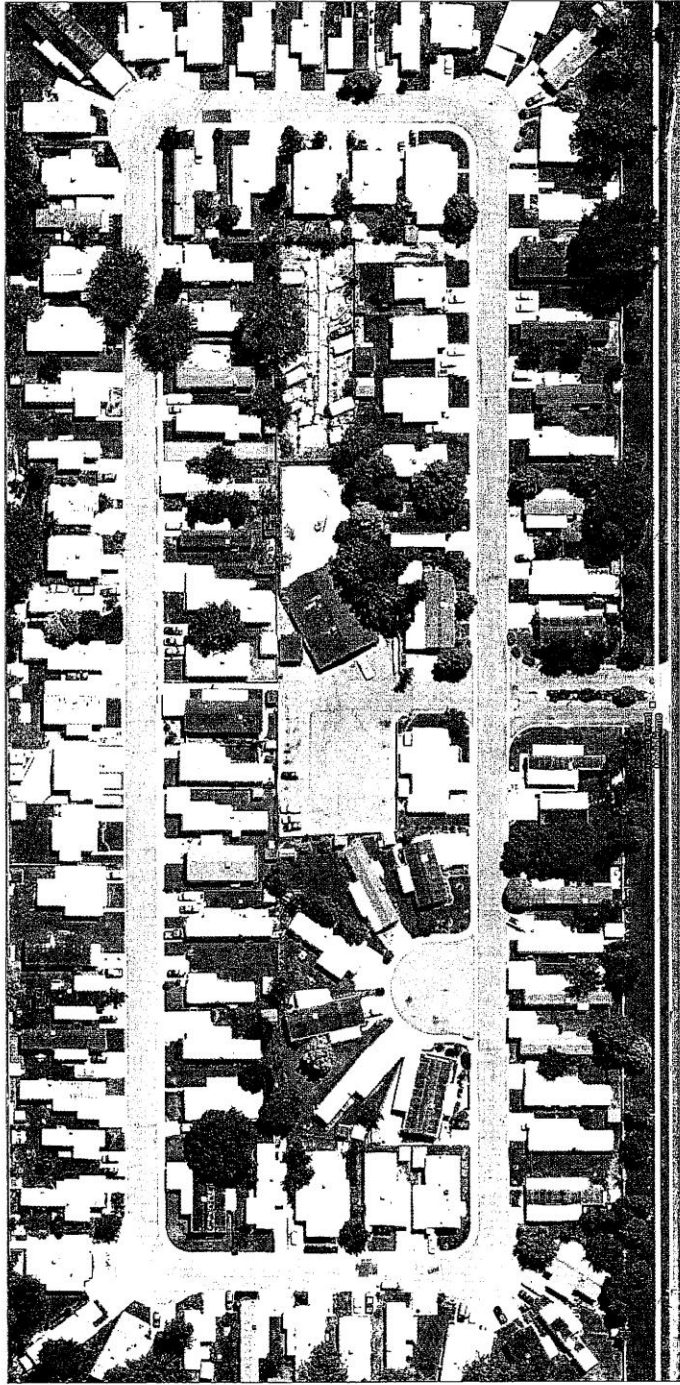
ATTACHMENT A

Page 1 of 1

400 south cheyenne st salt lake city ut - Google Maps

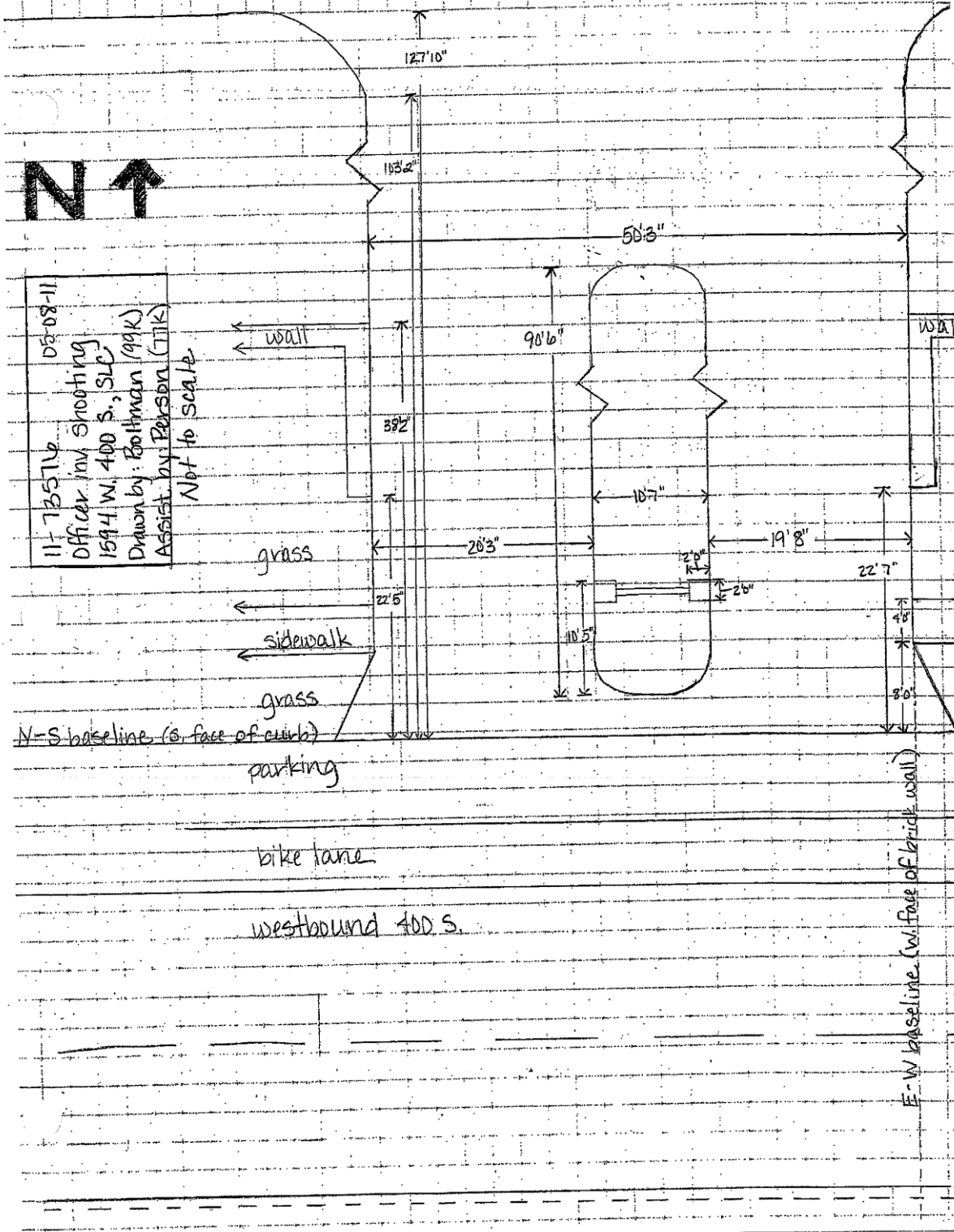
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Google maps

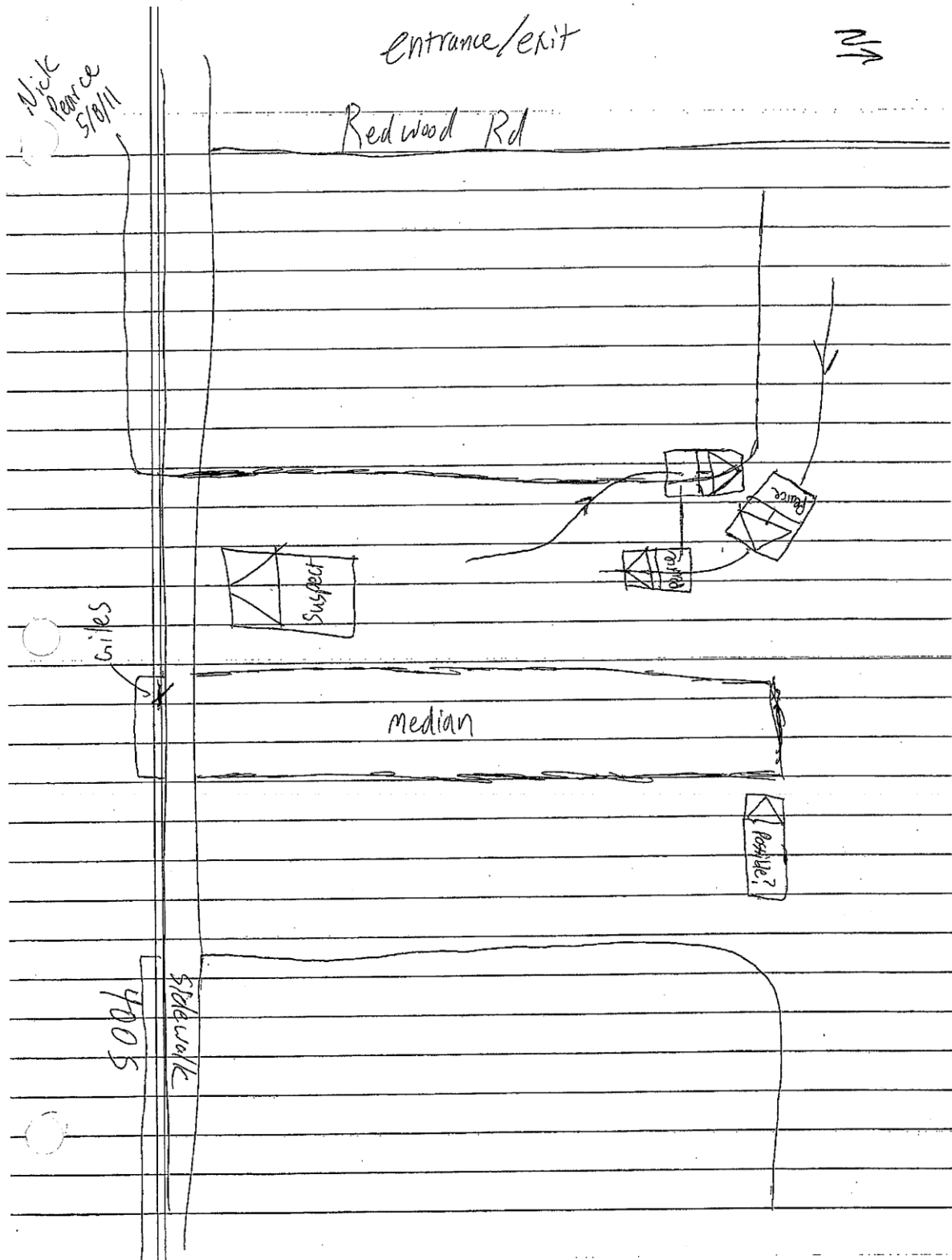


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ATTACHMENT B



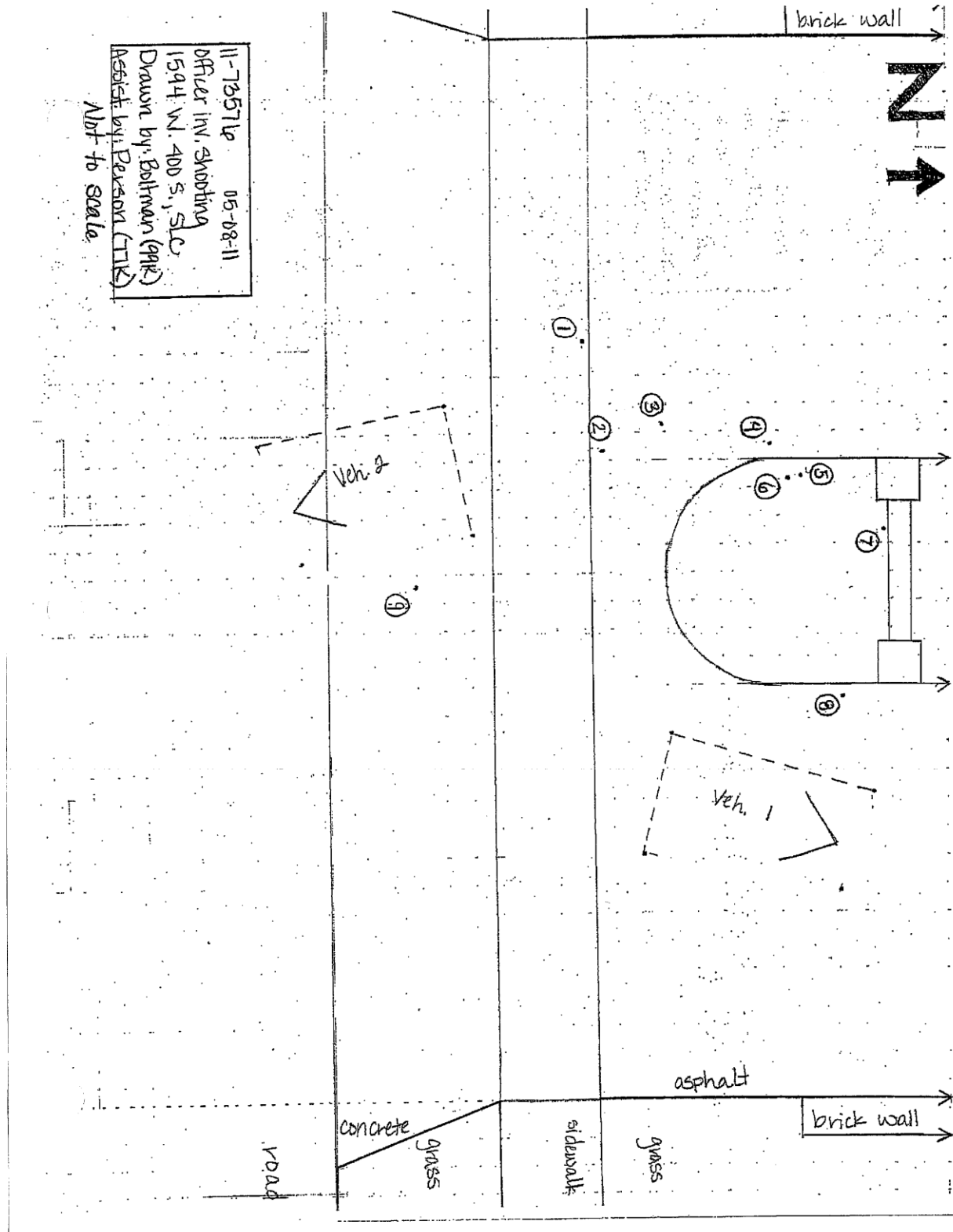
ATTACHMENT C



ATTACHMENT D



ATTACHMENT E



ATTACHMENT F



APPENDIX A***ADDITIONAL STATUTES REFERNCED*****76-1-601. Definitions.**

Unless otherwise provided, the following terms apply to this title:

- (1) "Act" means a voluntary bodily movement and includes speech.
- (2) "Actor" means a person whose criminal responsibility is in issue in a criminal action.
- (3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.
- (4) "Conduct" means an act or omission.
- (5) "Dangerous weapon" means:
 - (a) any item capable of causing death or serious bodily injury; or
 - (b) a facsimile or representation of the item, if:
 - (i) the actor's use or apparent intended use of the item leads the victim to reasonably believe the item is likely to cause death or serious bodily injury; or
 - (ii) the actor represents to the victim verbally or in any other manner that he is in control of such an item.
- ...
- (7) "Offense" means a violation of any penal statute of this state.
- (8) "Omission" means a failure to act when there is a legal duty to act and the actor is capable of acting.
- (9) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.
- (10) "Possess" means to have physical possession of or to exercise dominion or control over tangible property.
- (11) "Serious bodily injury" means 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.
- (12) "Substantial bodily injury" means bodily injury, not amounting to serious bodily injury, that creates or causes protracted physical pain, temporary disfigurement, or temporary loss or impairment of the function of any bodily member or organ.

...

76-5-102. Assault.

- (1) Assault is:
 - (a) an attempt, with unlawful force or violence, to do bodily injury to another;
 - (b) a threat, accompanied by a show of immediate force or violence, to do bodily injury to another; or
 - (c) an act, committed with unlawful force or violence, that causes bodily injury to another or creates a substantial risk of bodily injury to another.

...

76-5-103. Aggravated assault.

(1) A person commits aggravated assault if the person commits assault as defined in Section **76-5-102** and uses:

- (a) a dangerous weapon as defined in Section **76-1-601**; or
- (b) other means or force likely to produce death or serious bodily injury.

...

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;

(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.

...

(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.

...