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Via Hand Delivery

June 8, 2015

RE: *UPD Sgt. Ben Steiner's, and Officers Matt Brownlee's and John Richie's Use of Deadly Force*

Incident Location: 2167 East, 4500 South, Holladay, Utah
Incident Date: January 16, 2016
SLCPD Case No.: 2016-9715
UPD Case No.: 2016-8687
D.A. Case No.: 2016-168

Dear Chief Brown and Sheriff Winder:

The Salt Lake County District Attorney's Office ("D.A.'s Office") operates under Utah State law and pursuant to an agreement between the D.A.'s Office and participating law enforcement agencies to perform joint investigations and independent reviews of officer involved critical incidents ("OICI") including police officers' use of deadly force while in the scope of their official duties. Pursuant to the agreement between the D.A.'s Office and participating law enforcement agencies, the D.A.'s Office has reviewed the above referenced matter to determine whether, and if so why, the use of deadly force in the above referenced OICI was "justified." As outlined more fully below, the D.A.'s Office determined Unified Police Department of Greater Salt Lake ("UPD") Sgt. Ben Steiner's use of deadly force was "justified" under Utah State law. The D.A.'s Office also determined that UPD Officer Matt Brownlee's use of deadly force was "justified" under Utah law. And, the D.A.'s Office determined that UPD Officer John Richie's use of deadly force was "justified" under Utah law.

On January 16, 2016 at about 9:53 a.m., Corey Lee “Jasper” Henderson and a female passenger were involved in an automobile collision with another vehicle at the intersection of 2300 East and 4500 South in Holladay, Utah. Mr. Henderson fled the scene. UPD Officer Doug Barney encountered Mr. Henderson at the end of a cul-de-sac. Mr. Henderson drew a handgun and shot and killed Officer Barney and fled.

UPD Sgt. Ben Steiner and UPD Officers Matt Brownlee and John Richey cornered Mr. Henderson in the front yard of a home at 2167 East, 4500 South. Mr. Henderson opened fire at the police officers; they returned fire. Officer Richey was struck by two bullets—one in each leg. Officer Richey was transported to the hospital and survived. Mr. Henderson was struck by several bullets. He died at the scene from his injuries.

UTAH STATE LAW

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

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

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

- (a) when the actor's conduct is in defense of persons or property under the circumstances described in Sections 76-2-402 through 76-2-406 of this part;
- (b) when the actor's conduct is reasonable and in fulfillment of his duties as a governmental officer or employee;

...

76-2-404. 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.

Use of Deadly Force and “Justification as Defense” in Utah

Reviewing a use of deadly force that results in a person’s death falls within the statutory obligation imposed on the District Attorney to determine whether a decedent died by unlawful means.¹ The District Attorney also determines whether acts causing a person’s death warrant prosecution. A District Attorney determination considers whether a person who caused the death of another nevertheless has a legal defense to prosecution. If a person who caused the death of another has a legal defense to ostensible criminal charges related thereto, no charges can be brought against that person.

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

A person’s use of deadly force (including but not limited to use of deadly force by peace officers) is “justified” when the use of deadly force conformed to the statutes referenced above. Persons may lawfully defend themselves and/or others under circumstances outlined by law, and are afforded the legal defense of “justification” for the lawful use of deadly force in accordance with statutes. Utah Code Ann. 76-2-402 states that a “person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person’s imminent use of unlawful force.” *Id.* This section also states: “A person is justified in using force intended or 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 felony².” *Id.*

1 U.C.A. 26-4-21. Authority of county attorney or district attorney to subpoena witnesses and compel testimony--Determination if decedent died by unlawful means.

...

(2) Upon review of all facts and testimony taken concerning the death of a person, the district attorney or county attorney having criminal jurisdiction shall determine if the decedent died by unlawful means and shall also determine if criminal prosecution shall be instituted.

2 U.C.A. 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

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

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

In essence, the analysis for the use of deadly force to prevent death or serious bodily injury (whether by individuals or peace officers) turns on similar elements. Use of deadly force by *individuals*: "A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force" U.C.A. 76-2-402(1)(a),(b). Use of deadly force by *peace officers*: "the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person," or to effect an arrest under circumstances set forth in law. See, U.C.A. 76-2-404. A peace officer's use of deadly force is "justified" when that officer "reasonably believes³" that the use of deadly force is "necessary to prevent" the threat of "death or serious bodily injury."

This OICI investigation and our review that followed was conducted in accordance with an OICI investigation protocol previously established and in conformity with recently enacted legislation governing investigations of OICI events. The OICI investigation protocol strives to establish an investigation methodology and process that provides the D. A.'s Office with the evidence needed to review the investigation to determine whether a police officer's use of deadly force conformed to the above referenced statutes. If the use of deadly force conformed to the statutes, the use of deadly force is "justified," and the legal defense of "justification" is available

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."

³ As mentioned above, U.C.A. 76-4-202 and 404 constitute legal defenses to potential criminal charges. Utah Code doesn't reference other means of evaluating liability and reasonableness of police use of force; the United States Supreme Court case *Graham v. Conner* provides an analytical methodology for assessing excessive force claims in a Fourth Amendment context. We acknowledge that *Graham* considers excessive force claims from a "reasonable officer on the scene, rather than with the 20/20 vision of hindsight." *Graham v. Conner*, 490 U.S. 386, 396 (1989) (citations omitted.) However, *Graham* also "requires a careful balancing of 'the nature and quality of the intrusion on the individual's Fourth Amendment interests'... against the countervailing governmental interests at stake." *Id.* (citations omitted) *Graham* observes: "Because "[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application," *Bell v. Wolfish*, 441 U.S. 520, 559 (1979), however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight. See, *Tennessee v. Garner*, 471 U.S., at 8-9 (the question is "whether the totality of the circumstances justify[es] a particular sort of . . . seizure").

to the officer such that criminal charges cannot be filed against the officer and the criminal investigation into the actions of the officer is concluded.

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

As laid out in more detail below, because we conclude that Sgt. Steiner’s use of deadly force conformed to the relevant statutes outlined above, we therefore conclude that the legal defense of “justification” applies to the facts set forth herein and we will not file criminal charges against Sgt. Steiner for his use of deadly force.

Because we also conclude that Officer Brownlee’s use of deadly force conformed to the relevant statutes outlined above, we therefore conclude that the legal defense of “justification” applies to the facts set forth herein and we will not file criminal charges against Officer Brownlee for his use of deadly force.

And because we conclude that Officer Richie’s use of deadly force conformed to the relevant statutes outlined above, we therefore conclude that the legal defense of “justification” applies to the facts set forth herein and we will not file criminal charges against Officer Richie for his use of deadly force.

INVESTIGATION

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

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

(1) As used in this section:

- (a) “Dangerous weapon” is a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury.
- (b) “Investigating agency” is a law enforcement agency, the county or district

attorney's office, or an interagency task force composed of officers from multiple law enforcement agencies.

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

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

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

...

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

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

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

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

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

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

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To comply with state law requiring an outside agency to investigate an OICI, UPD asked Salt Lake City Police Department ("SLCPD") to investigate this matter together with investigators from the D.A.'s Office.

On March 2, 2016, SLCPD and D.A.'s Office investigators presented the investigation's findings to the District Attorney for review and this opinion letter. During the presentation of the investigation findings, both SLCPD personnel and D.A.'s Office investigators reported that UPD was helpful and accommodating with the investigation's needs, but did not perform any investigation of the OICI itself.

FACTS

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

On January 16, 2016 at about 9:53 a.m., Corey Lee “Jasper” Henderson and a female passenger were involved in an automobile collision with another vehicle at the intersection of 2300 East and 4500 South in Holladay, Utah.

UPD Officer Allgier responded to the scene of the collision and asked for assistance. UPD Officer Doug Barney was in the area and stated he was en route to assist. Witnesses advised Officer Allgier that two people fled from the accident scene. Witnesses described the two people. Officer Allgier relayed the information and the suspect descriptions to Officer Barney.

Officer Barney advised police radio dispatchers that he was in the area in which the male had fled; shortly thereafter, Officer Barney said that he was with Mr. Henderson at the end of Lynne Lane, a few blocks from the collision scene.

As the subsequent investigation revealed, as Officer Barney approached Mr. Henderson, Mr. Henderson drew a firearm and shot and killed Officer Barney at the end of Lynne Lane. Mr. Henderson fled southbound and west through backyards in the area. Very shortly thereafter, UPD Officer Evans called out that he was with Officer Barney and then called out that an officer was down and he needed help.

UPD Sgt. Ben Steiner and UPD Officer John Richey arrived at the end of Lynne Lane and followed Mr. Henderson’s footprints to the backyard of a home at 2185 East, 4500 South. They continued down the home’s driveway and towards a home at 2167 East, 4500 South.

About this time, UPD Officer Browlee arrived in the area on 4500 South. As Officer Brownlee arrived near the home at 2167 East, 4500 South, he and Sgt. Steiner and Officer Richey all saw Mr. Henderson in the front yard of the home. Sgt. Steiner and Officer Richey shouted commands to Mr. Henderson to drop the gun Mr. Henderson had in his hands. Instead of complying with the officers’ commands, Mr. Henderson opened fire at Sgt. Steiner and Officer Richey. Officer Richey was struck by two bullets, one in each leg.

Sgt. Steiner and Officers Brownlee and Richey returned fire at Mr. Henderson, striking him several times. Eventually, Mr. Henderson went down and died from his injuries. Officer Richey was transported to the hospital and survived his injuries.

Witness Interviews and Statements

Law Enforcement Interviews and Statements

Sgt. Steiner

UPD Sgt. Ben Steiner declined to be interviewed for the OICI investigation, but provided a written statement through his attorney. Sgt. Steiner said that on January 16, 2016, at about 9:45 a.m., he was at the UPD Holladay substation approving reports. Sgt. Steiner said he heard UPD Officer Allgier call out on the police radio that she was at a traffic accident and advised that two people were fleeing the scene of the collision. Sgt. Steiner said he heard Officer Allgier describe the fleeing suspects as a heavy set, Hispanic male wearing dark or gray clothing, and a shorter white female.

Sgt. Steiner said he responded to the area and heard Officer Barney call out on the radio that he was with a (probable) male suspect at the end of Lynne Lane near the collision scene. Sgt. Steiner said that as he was approaching Lynne Lane, he saw UPD Officer Jared Evans in front of him. Sgt. Steiner said he saw Officer Barney's vehicle at the end of Lynne Lane but did not see Officer Barney. Sgt. Steiner said he got out of his patrol vehicle when Officer Evans broadcast on the police radio that Officer Barney was shot and called out "10-33, officer down." Sgt. Steiner said he radioed "officer down, start me everybody."

Sgt. Steiner said as he walked to the end of Lynne Lane, he saw Officer Barney down with a traumatic gunshot wound to the head. Sgt. Steiner said he drew his weapon and began scanning the area looking for a suspect. Sgt. Steiner said he directed other arriving police officers to go to 4500 South to cut off the suspect and set up a containment area. Sgt. Steiner said he directed Officer Evans and UPD Officer Jared Lopez to stay with Officer Barney.

Sgt. Steiner said UPD Officer John Richey arrived in the area informed Sgt. Steiner that he had fresh tracks (footprints) from the suspect. Sgt. Steiner said he and Officer Richey followed the tracks to a fence and located a hat (subsequently shown to belong to Mr. Henderson.) Sgt. Steiner said he and Officer Richey continued following the tracks northwest around the back of the next house then south down a gravel driveway. Sgt. Steiner said he saw a bald male matching the suspect's description directly west of him standing in the front yard of a home at 2167 East, 4500 South.

Sgt. Steiner said the suspect was facing north/northeast and was not looking directly at him until Sgt. Steiner began to give commands to the suspect. Sgt. Steiner said it appeared that Mr. Henderson might have been making a plan, as he was turning both his head and upper body scanning the area. Sgt. Steiner said he aimed his weapon at Mr. Henderson and yelled commands: "show me your hands, show me your hands!" Sgt. Steiner said Mr. Henderson appeared to clearly see and hear him as Mr. Henderson looked right at him. Sgt. Steiner said he stepped to the side and away from Officer Richey to get a tactical angle on Mr. Henderson.

Sgt. Steiner said Mr. Henderson yelled: "what, what do you want, what do you want?" Sgt. Steiner said Mr. Henderson raised his hand holding his pistol and almost simultaneously he heard gunshots. Sgt. Steiner said he saw Mr. Henderson's gun recoiling and could see and hear Mr. Henderson fire four to five rounds at him. Sgt. Steiner said he started firing his weapon at Mr. Henderson at the same time.

Sgt. Steiner said he reloaded his weapon, stepped to the south, and continued firing at Mr. Henderson. Sgt. Steiner said that eventually Mr. Henderson crumpled to the ground. Sgt. Steiner said he saw Mr. Henderson's pistol on the ground next to Mr. Henderson and Mr. Henderson's right arm outstretched and move towards his pistol on ground. Sgt. Steiner said he feared Mr. Henderson would grab his weapon and continue shooting at Sgt. Steiner and other officers. Sgt. Steiner said he intended to keep Mr. Henderson from reaching for his weapon, so he fired again at Mr. Henderson. Sgt. Steiner said Mr. Henderson rolled over on his face ending up on his stomach with his hands by his head.

Sgt. Steiner said he started to approach Mr. Henderson and heard Officer Richey yell out "officer down, I'm shot." Sgt. Steiner said he and UPD Officer Matt Brownlee approached Mr. Henderson and kicked Mr. Henderson's pistol away from him. Sgt. Steiner said he noticed Mr. Henderson's weapon was locked back with an empty magazine. Sgt. Steiner said he provided cover with his weapon pointed at Mr. Henderson while Officer Brownlee handcuffed him.

Sgt. Steiner said he went to Officer Richey and began providing him first aid to a gunshot wound to each leg. Sgt. Steiner said that Officer Richey had a tourniquet on his left leg and UPD Sgt. Steiner obtained a tourniquet which he placed on Officer Richey's right leg.

Sgt. Steiner said he started to direct arriving police officers to appropriate positions when other police officers arrived and took command of the scene.

Officer Richey

UPD Officer John Richey declined to be interviewed by OICI protocol investigators, but provided a written statement through his attorney. Officer Richey said that on January 16, 2016, he was on duty at the UPD Holladay precinct station when he heard Officer Allgier on the police radio talking about a traffic accident at 2300 East, 4500 South. Officer Richey said he heard Officer Allgier state that there were two people fleeing on foot. Officer Richey said he heard Officer Allgier broadcast a description of the suspects; he said he heard the male was larger built wearing black, loose fitting clothing.

Officer Richey said he decided to go to the location to assist. Officer Richey said that as he arrived in the area, Officer Allgier radioed that the fleeing person(s) turned west on Melodie Ann Way. Officer Richey said he saw two police cars turn west on Melodie Ann Way, so he went west on 4500 South with the intent to intercept the suspects in the event they headed south.

Officer Richey said as he reached 2200 East on 4500 South, he heard on the radio: "10-33, officer down." Officer Richey said he went to Lynne Lane and saw Officer Barney down with a gunshot wound to the left side of his head. Officer Richey said he saw Sgt. Steiner and other officers administering aid to Officer Barney. Officer Richey said he and Sgt. Steiner located fresh foot tracks heading south through towards a six foot fence; he said the tracks continued through the backyard of the house at 2185 East, 4500 South and to the driveway. Officer Richey said he and Sgt. Steiner (who was ahead of him) walked south down the

driveway where they saw the footprints cross a four foot fence in the yard of the house west of 2185 E, 4500 South.

Officer Richey said he drew his weapon and stood near the east side of the fence; he said he visually followed the tracks and saw a person standing about twenty yards away. Officer Richey said the male was wearing black, loose fitting clothing. Officer Richey said the suspect's focus was initially towards 4500 South and his legs were in a crouching position. Officer Richey said the suspect straightened his legs upright and turned to his right until he was directly facing Officer Richey.

Officer Richey said he couldn't see the male's hands because the suspect's clothing covered his hands. Officer Richey said he challenged the suspect and yelled: "Police, get on the ground!" Officer Richey said although he couldn't see Sgt. Steiner, he knew Sgt. Steiner was a short distance south of him. Officer Richey said he could hear Sgt. Steiner yelling commands to the suspect as well. Officer Richey said the suspect started moving his hands repeatedly and quickly back and forth between his pockets. Officer Richey said the suspect was saying something that Officer Richey couldn't make out.

Officer Richey said the suspect's face and voice were very tense, and that he seemed to be angry and hostile. Officer Richey said the suspect squared off on Officer Richey and suddenly and quickly raised his right arm into a shooting position. Officer Richey said the suspect was slightly crouched at the waist, his shoulders canted forward, and his arm locked at the elbow. Officer Richey said that he still couldn't clearly see the suspect's right hand, but based on the suspect's behavior and actions, Officer Richey said he believed the suspect had a gun in his hand.

Officer Richey said the suspect initially aimed at Sgt. Steiner and began rapidly firing a gun at Sgt. Steiner. Officer Richey said he immediately returned fire and began to shoot at the suspect's center of mass. Officer Richey said that after he fired two or three rounds towards the suspect, the suspect switched his aim to him and continued to fire his gun repeatedly at Officer Richey.

Officer Richey said that as he continued to fire at the suspect, he felt bullets hit his legs. Officer Richey said he continued to fire at the suspect and heard bullets flying by him on either side of him. Officer Richey said that although Officer Richey (and presumably other officers) were firing at the suspect, the suspect didn't react to any gunshots and didn't pause his gunfire. Officer Richey said he believed the suspect may have been wearing body armor. Officer Richey said he felt that he was nearly out of ammunition when the suspect leaned towards his left and the suspect's gunfire paused. Officer Richey said he stopped firing and kept aim on the suspect until an officer approached from 4500 South and walked to the suspect who was now down on the ground. Officer Richey said he holstered his weapon. Officer Richey said other officers came to his assistance and started medical care for his injuries.

Officer Richey said he believed his life and Sgt. Steiner's were in imminent danger of death or serious bodily injury when he used deadly force against Mr. Henderson.

Officer Brownlee

UPD Officer Matt Brownlee declined to be interviewed by OICI protocol investigators, but provided a written statement through his attorney. Officer Brownlee said he was on duty on January 16, 2016. Officer Brownlee said he heard Officer Allgier on the police radio call out that she arrived at a traffic collision at 2300 East, 4500 South and asked for additional officers to assist her. Officer Brownlee said he heard Officer Barney on the radio reply that he was en route to assist Officer Allgier. Officer Brownlee said he was in his patrol car and in the area and headed towards the collision scene to see if he could help.

Officer Brownlee said he heard Officer Allgier radio that there were two persons (a white male, bald, overweight, wearing a black shirt & a skinny female with blond hair) fleeing the scene and had gone west on Melodie Ann Way. Officer Brownlee said he turned his patrol car west on Melodie Ann Way and noticed a red four door passenger car stop and pick up a female. Officer Brownlee said he started to turn around to stop the vehicle but he heard Officer Evans on the radio call out "10-33" on Lynne Lane.

Officer Brownlee said he started driving towards Lynne Lane but instead headed towards 4500 South in case the suspect came out from behind homes on 4500 South. Officer Brownlee said while he was traveling westbound on 4500 South, Sgt. Steiner radioed he was tracking footprints. Officer Brownlee said he saw another police car west of him so he turned around and went eastbound on 4500 South.

Officer Brownlee said he saw Sgt. Steiner and Officer Richey walking south down an alleyway towards 4500 south. Officer Brownlee said that when he was about fifty feet west of Sgt. Steiner and Officer Richey, he heard gunfire.

Officer Brownlee said he parked his patrol car pointing northeast towards the front yard of a home on 4500 south at which Sgt. Steiner and Officer Richey were pointing their guns. Officer Brownlee said he heard and felt debris hitting the front of his vehicle and believed it was bullets impacting his car. Officer Brownlee said he got out of his vehicle, drew his weapon, and saw a heavier set male, dressed in a black shirt, blue shorts, standing in the front yard of the home in front of him. Officer Brownlee said the male was facing west but his upper torso was turned to the right; his right arm and hand were outstretched pointing towards Sgt. Steiner and Officer Richey.

Officer Brownlee said he saw that the suspect had a silver and black handgun in his right hand and was firing the weapon at Sgt. Steiner and Officer Richey. Officer Brownlee said he believed Sgt. Steiner's and Officer Richey's lives were in imminent danger and that the male was trying to kill Sgt. Steiner and Officer Richey.

Officer Brownlee said he advanced northeast towards the male and started firing his weapon. Officer Brownlee said he believed he fired five or six rounds at the suspect. Officer Brownlee said the suspect fell face down with both hands under his chest. Officer Brownlee said

he heard Sgt. Steiner giving commands to the suspect, saying: “show me your hands”, but the male did not respond. Officer Brownlee said he and Sgt. Steiner approached the male and Officer Brownlee said he placed handcuffs on the male. Officer Brownlee said he saw a handgun to the right side of the suspect with the slide locked to rear.

Officer Brownlee said he advised police dispatchers of his location and called for medical personnel to arrive. Officer Brownlee said he was escorted to a patrol vehicle.

Sgt. Gezik

OICI protocol investigators interviewed Sgt. Matthew Gezik. Sgt. Gezik said he is a National Security Agency Police Officer; Sgt. Gezik said on January 16, 2016, he was driving eastbound on 4500 South when he saw and heard police officers giving commands to a person later identified as Mr. Henderson. Sgt. Gezik said he heard officers shouting “let me see your hands, let me see your hands!” to Mr. Henderson as he walked away from officers. Sgt. Gezik said he lost sight of Mr. Henderson behind some bushes when gunfire erupted. Sgt. Gezik said he saw that a police officer (later identified as Officer Richey) was injured. Sgt. Gezik said he got his medical kit from his car and provided emergency medical care to Officer Richey. Sgt. Gezik said he saw a “through and through” gunshot wound in Officer Richey’s left leg and a gunshot entrance wound in Officer Richey’s; right leg. Sgt. Gezik said he and another police officer applied a tourniquet to Officer Richey’s legs.

Civilian Witnesses

Several civilians witnessed parts of the incident. Of the civilian witnesses interviewed, all were more or less consistent in recounting the basic facts, and no witness contradicted any other in any material way. Several witness interviews are summarized below.

Witness M. S. said he lives in a home in the area of the incident. He said his wife told him that there was someone (later identified as Mr. Henderson) in the yard of a home. M. S. said he looked out of a window in his home and saw two police officers in a driveway with their weapons out. He said he heard police officers yelling “get your hands up.” M. S. said he heard gunfire and saw Mr. Henderson go down.

Witness E. S. said she was in the area of the incident when she heard sounds she initially thought were firecrackers. She said she looked out a window and saw a police officer firing his weapon at a person in the front yard of a home at 2167 East, 4500 South. E. S. said she saw a man standing in the front yard shooting at police officers. She said she saw a police officer fall to the ground.

Witness A. B. said she was in the area of the incident when she heard three or four sounds she thought were firecrackers. She said she looked out a window and saw a police officer falling to the ground. She said she saw police officers firing their weapons at a person standing in a front yard at 2167 East, 4500 South. A. B. said she saw the man standing in the yard firing a gun at police officers. She said she saw the man in the front yard fall to the ground.

Marcella Austin

OICI protocol investigators interviewed Marcella Austin on January 18, 2016. Ms. Austin said that on January 15, 2016, Mr. Henderson picked her up in a BMW and she rode in the car with Henderson for a while. Ms. Austin said that while she was in the BMW, Mr. Henderson tossed a black and silver gun in her lap.

Ms. Austin said that while in the BMW, she received a phone call and made plans to meet a person at 2300 East, 3900 South. Ms. Austin said that as Mr. Henderson drove northbound on 2300 East and approached the intersection at 4500 South, she yelled out “red light!” Ms. Austin said they hit a car in the intersection and spun several times. Ms. Austin said Mr. Henderson got out of the car told her to run.

Ms. Austin said they both ran north on 2300 East. Ms. Austin said when she reached Melodie Ann Way, she hid behind a wall with shrubs Ms. Austin said she last saw Mr. Henderson running west on Melodie Ann Way. Ms. Austin said she saw two police cars pass her on Melodie Ann Way.

Ms. Austin said she telephoned the person waiting for her at 2300 East and 3900 South and asked them to pick her up. Ms. Austin said the person picked her up from Melodie Ann Way and they drove to a friend’s house.

Ms. Austin said she had no idea Mr. Henderson was going to shoot at police. Ms. Austin said she ran because Mr. Henderson told her to and she was scared.

Physical Evidence

OICI investigators inspected and documented several items of physical evidence at the scene. Investigators inspected and documented Mr. Henderson’s weapon and nine empty (fired) cartridges from Mr. Henderson’s weapon in the front yard of the home at 2167 East, 4500 South. Investigators observed that Mr. Henderson’s weapon was locked back and out of battery, and that the handgun’s magazine was empty. Investigators noted that the weapon’s magazine capacity was ten rounds. Investigators also recovered one empty (fired) cartridge from the end of Lynn Lane where Officer Barney was killed. Investigators noted this one empty cartridge was the same caliber and manufacture as the other ammunition from Mr. Henderson’s weapon. Investigators believed that Mr. Henderson fired once at Officer Barney killing him, and nine times at Sgt. Steiner and Officers Richey and Brownlee.

OICI protocol investigators also recovered empty (fired) cartridges from UPD police weapons and observed the download count of the weapons belonging to Sgt. Steiner, Officer Richey and Officer Brownlee.

OICI investigators determined that no video recording exists of the events. Investigators photographed and diagramed the various scene locations.

DISCUSSION AND CONCLUSION

Sgt. Steiner Reasonably Believed Deadly Force was Necessary.

Having just murdered Officer Barney, Mr. Henderson opened fire at Sgt. Steiner and other police officers in the area. It seems clear that Mr. Henderson wanted to and was trying to kill Sgt. Steiner and other police officers.

We believe Sgt. Steiner's use of deadly force against Mr. Henderson was reasonably necessary to prevent Mr. Henderson from killing more police officers. As such, Sgt. Steiner's use of deadly force against Mr. Henderson was "justified" under Utah State law, and provides Sgt. Steiner a legal defense to a criminal prosecution. Accordingly, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Sgt. Steiner.

Officer Richey Reasonably Believed Deadly Force was Necessary.

Having just murdered Officer Barney, Mr. Henderson opened fire at Officer Richey and other officers in the area. Mr. Henderson hit and seriously injured Officer Richey who likely would have died from his injuries had immediate medical attention not come to his aid. It seems clear that Mr. Henderson wanted to and was trying to kill Officer Richey and other police officers.

We believe Officer Richey's use of deadly force against Mr. Henderson was reasonably necessary to prevent Mr. Henderson from killing more police officers. As such, Officer Richey's use of deadly force against Mr. Henderson was "justified" under Utah State law, and provides Officer Richey a legal defense to a criminal prosecution. Accordingly, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Officer Richey.

Officer Brownlee Reasonably Believed Deadly Force was Necessary.

Having just murdered Officer Barney, Mr. Henderson opened fire at Sgt. Steiner and Officer Richey and other officers in the area. Officer Brownlee also stated that he believed bullets were impacting his vehicle. Mr. Henderson hit and seriously injured Officer Richey who likely would have died from his injuries had immediate medical attention not come to his aid. It seems clear that Mr. Henderson wanted to and was trying to kill Officer Richey and other police officers.

We believe Officer Brownlee's use of deadly force against Mr. Henderson was reasonably necessary to prevent Mr. Henderson from killing more police officers. As such, Officer Brownlee's use of deadly force against Mr. Henderson was "justified" under Utah State law, and provides Officer Brownlee a legal defense to a criminal prosecution. Accordingly, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Officer Brownlee.

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

Very Truly Yours,

SIM GILL,
Salt Lake County District Attorney