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Via Hand Delivery

April 9, 2018

RE: *AP&P Agent Andrew O’Gwin’s Use of Deadly Force*
Incident Location: 4500 South, Main Street, Murray, Utah
Incident Date: May 13, 2017
SLCPD Case No.: 17-85198
D.A. Case No.: 2017-583

Dear Chief Brown and Director Cook:

The Salt Lake County District Attorney’s Office (“D.A.’s Office”) operates under Utah State law to review and “screen¹” criminal charges against individuals where criminal activity may have occurred. The D.A.’s Office operates pursuant to an agreement between the D.A.’s Office and participating law enforcement agencies to perform joint investigations and independent reviews of officer involved critical incidents (“OICI”) including police officers’ use of deadly force while in the scope of their official duties. Pursuant to the State law and the agreement between the D.A.’s Office and participating law enforcement agencies, the D.A.’s Office has reviewed the above referenced matter to determine whether the above referenced use of deadly force violated criminal statutes and whether a criminal prosecution should commence. Part of our screening process considered whether the use of deadly force was “justified” under Utah State law thereby providing a legal defense to a criminal charge. As outlined more fully

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

below, we do not find that Adult Probation and Parole (“AP&P”) Agent O’Gwin’s use of deadly force was “justified” under Utah State law.

On May 14, 2017, Joe Alvin Gomez, was a passenger in a vehicle. Around midnight, the car Mr. Gomez was riding in pulled up next to a vehicle driven by AP&P Agent O’Gwin. While Mr. Gomez was outside of the car, Agent O’Gwin fired five rounds at Mr. Gomez, hitting him three times. Mr. Gomez got back in his vehicle and the driver drove to the hospital. Mr. Gomez survived his injuries.

UTAH STATE LAW

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

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

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

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

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

...

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

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

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

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

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

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

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

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

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

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

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(a)(iii).

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

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

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

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

(a) the nature of the danger;

(b) the immediacy of the danger;

(c) the probability that the unlawful force would result in death or serious bodily injury;

(d) the other’s prior violent acts or violent propensities; and

(e) any patterns of abuse or violence in the parties' relationship.

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

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

(a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(3) or (4);

(b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and

(i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or

(ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or

(c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.

INVESTIGATION

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

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

(1) As used in this section:

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

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

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

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

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

...

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

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

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

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

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

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

...

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

On June 14, 2017, OICI protocol investigators presented the investigation findings to the District Attorney for review and this opinion letter. During the presentation of the investigation findings, OICI protocol investigators reported that AP&P and the Department of Corrections were 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.

Just after midnight on May 13, 2017, AP&P Agent Andrew O'Gwin was at a red light when a vehicle, driven by witness A. A. with Joe Alvin Gomez in the passenger seat, stopped at

the intersection. According to witnesses at the scene, Mr. Gomez got out of A. A.'s car. Mr. Gomez was next to or near Agent O'Gwin's driver's side window. Some of the witnesses said Mr. Gomez's arms were raised and he was yelled something. According to Agent O'Gwin, Mr. Gomez pounded on Agent O'Gwin's car window. Other witnesses at the scene said that Mr. Gomez never touched Agent O'Gwin's car. Evidence gathered during the investigation showed Agent O'Gwin fired his gun at Mr. Gomez five times, hitting him three times. Mr. Gomez got back into A. A.'s car and A. A. drove to the hospital. Mr. Gomez survived his injuries.

OICI protocol investigators determined that Agent O'Gwin had been assigned to supervise Mr. Gomez who had recently been paroled from the Utah State Prison. As discussed in more detail below, it appears that neither Agent O'Gwin nor Mr. Gomez recognized each other during the OICI. Agent O'Gwin had performed a home visit of Mr. Gomez's listed residence earlier in the day, but Mr. Gomez was apparently not there. Agent O'Gwin later said he spoke to Mr. Gomez by phone after Agent O'Gwin tried to visit Mr. Gomez at the listed residence.

Witness N. S.

OICI protocol investigators interviewed witness N. S., who said that on May 13, 2017, he and witness J. H. were driving east on 4500 South in Murray, Utah. N. S. said as he approached the intersection of 4500 South and Main Street, he saw two vehicles side by side—one, which turned out to be a Volkswagen Passat; and the other, a Chevrolet Malibu. N. S. said both vehicles appeared to be waiting to turn left onto Main Street and travel northbound. N. S. said the cars were next to each other, each in its own turn lane.

N. S. said he saw a person get out of the front passenger seat of the Passat and approach the Malibu driver's window. N. S. said it looked like the man wanted to have "words with" the Malibu driver. N. S. said the man was posturing and had what the man called a "gangster strut." N. S. said he saw the man move quickly to the Malibu driver's side window.

N. S. said he did not see anything in the man's hands. N. S. said the man had his hands up; N. S. described the man raising his hands as though the man was saying: "What's up; what do you wanna do?" N. S. said, based on the man's actions, he thought a fight was about to start. N. S. said after the man raised his arms, he was shot. N. S. said he saw spray come from the Malibu's driver's side window at the man. N. S. said the man did not touch the Malibu prior to being shot.

N. S. said he saw the man fall down. N. S. said he saw that the man was bleeding. N. S. said he saw the man get back into the Passat and the Passat quickly drove away.

Witness J. H.

On May 13, 2017, protocol investigators interviewed witness J. H. a couple of hours after the shooting. J. H. said she and N. S. were driving east on 4500 South in Murray, Utah. J. H. said they pulled up to a red light behind a Volkswagen Passat. J. H. said the Passat was next to

another car at the intersection. J. H. said she saw the Passat's passenger side front door open and a man get out of the Passat and go to the other car's front driver side window.

J. H. said she thought the situation would result in a fight. J. H. said she looked down and when she looked up, she said she saw the man being shot. J. H. said she saw gunshots fired through the car window at the man. J. H. said after the man was shot, she saw him fall to the ground next to the car.

Witness A. A.

On May 13, 2017, protocol investigators interviewed Witness A. A. A. A. said that on May 13, 2017, he and Mr. Gomez were at 1499 South, 900 West in Salt Lake City when they decided to go to a strip club. A. A. said he drove his Volkswagen Passat with Mr. Gomez in the passenger seat, eventually going southbound on I-15.

A. A. said he first noticed Agent O'Gwin's car as he and Mr. Gomez were getting on State Road 201 from 900 West. A. A. said Mr. Gomez asked him: "What kind of car is that?" A. A. said he replied: "a cop car." A. A. denied he and Mr. Gomez followed Agent O'Gwin; A. A. said he and Agent O'Gwin just happened to be going the same direction.

A. A. said that while they were driving, Mr. Gomez was texting someone and didn't say much to A. A. A. A. said he believed Mr. Gomez was arguing via texts with someone A. A. called Mr. Gomez's "baby mama." A. A. said that no "road rage" situation occurred between him and the police car while they were driving.

A. A. said the police car "got quite a bit ahead" of A. A. and Mr. Gomez as they both drove southbound on I-15 freeway. A. A. said that at about 3000 South on I-15, Mr. Gomez told A. A. to exit the freeway at 4500 South. A. A. said Mr. Gomez said he wanted to meet friend who lived in the area. A. A. said that as they drove eastbound and approached Main Street, Mr. Gomez told A. A. to turn into the left-turn lane.

A. A. said he did not see Agent O'Gwin's car exit the freeway at 4500 South. A. A. said he didn't see Agent O'Gwin's car until after exiting the freeway at 4500 South and they approached the intersection at Main Street. A. A. said that when he stopped at the traffic light at Main Street and 4500 South, Mr. Gomez got out of the car. A. A. said he didn't know why Mr. Gomez got out of the car.

A. A. said he heard Mr. Gomez say something as Mr. Gomez got out of the car. A. A. said he did not understand what Mr. Gomez said as he got out of the car. A. A. said he didn't see anything in Mr. Gomez's hands when he got out of the car. A. A. said that Mr. Gomez did not have a gun.

A. A. said that Mr. Gomez sounded "a little bit angry" when said something after getting out of the car. A. A. said just before the gunshots, he heard "words." A. A. said he assumed the

“words” came from Mr. Gomez as he believed the other driver was still inside the other car. A. A. said as he heard the “words,” he heard gunshots.

A. A. said that after the shooting, Mr. Gomez got back into his car and he and A. A. “raced” towards the hospital.

A. A. said that Mr. Gomez has made the comment to him that Mr. Gomez’s parole officer was “pretty cool,” and that A. A. didn’t believe Mr. Gomez was upset with his parole officer. Protocol investigators asked A. A. to comment on Agent O’Gwin’s use of deadly force; A. A. said that when Agent O’Gwin shot Mr. Gomez, Agent O’Gwin was doing what he had to do to protect himself.

On June 13, 2017, protocol investigators interviewed A. A. again to follow up with additional questions. A. A. said he did not recall whether Mr. Gomez was smoking inside his car prior to the OICI. A. A. said that cigarettes found in his car didn’t belong to him.

A. A. said that during the OICI, he heard gunshots, heard glass breaking and heard someone say: “What the fuck?” but that he did not recall in what order he heard those things. A. A. said he did not hear a sound like someone hitting or punching the window of Agent O’Gwin’s police car. A. A. said that the windows of his car were up during the OICI.

A. A. said he didn’t know the driver of the Impala (Agent O’Gwin) was a police officer during the OICI. A. A. A. said he had active warrants for his arrest at the time, and he didn’t want to bring attention to himself.

Agent O’Gwin

On May 18, 2017, investigators interviewed Agent O’Gwin with his attorney present. Agent O’Gwin said that, as an AP&P agent, he was assigned to supervise gang member parolees. Agent O’Gwin said he was assigned to supervise Joe Alvin Gomez who had recently been released from the Utah State Prison on parole. Agent O’Gwin said that prior to the day of the shooting, he had only met Mr. Gomez once in an AP&P office when he was paroled in April of 2017.

Agent O’Gwin said that on Friday, May 12, 2017 he stopped by the address Mr. Gomez listed as his residence. Agent O’Gwin said that he talked to people at the residence, but Mr. Gomez was not there. Agent O’Gwin said he told the people at the residence that he needed to speak to Mr. Gomez soon. Agent O’Gwin said that later in the afternoon, Mr. Gomez called him on the phone. Agent O’Gwin said he and Mr. Gomez had a brief, pleasant conversation about Mr. Gomez’s residence and remind him of an upcoming appointment. Agent O’Gwin said Mr. Gomez gave him appropriate answers and he was “fine with the phone call.”

Agent O’Gwin said that later Friday evening, he went to the Fortitude Treatment Center at 1747 South 900 West in Salt Lake City, Utah. Agent O’Gwin said that he left Fortitude Treatment Center and traveled south towards Murray, Utah to assist other police officers. Agent

O’Gwin said he got on SR 201 at 900 West and traveled eastbound. Agent O’Gwin said he turned south on to I-15 and headed towards Murray.

Agent O’Gwin said he exited I-15 at 4500 South and drove east until he stopped at the intersection of Main Street and 4500 South. Agent O’Gwin said he was the first car to arrive at the intersection and stopped in the south (outer) left turn lane at the red light. Agent O’Gwin said he was “kind of zoning out” at the red light. Agent O’Gwin said he believed he was at the red light for about one minute before another car arrived.

Agent O’Gwin said a car approached from behind him at a high rate of speed and got into the north (inside) left turn lane. Agent O’Gwin said the car made an abrupt stop almost into the intersection. Agent O’Gwin said the car’s front seat passenger (later identified as Mr. Gomez, but who Agent O’Gwin apparently did not recognize at the time) got out of the car and started yelling. Agent O’Gwin said Mr. Gomez’s hands were moving around and making “furtive movements.”

Agent O’Gwin said Mr. Gomez came around the front of his police vehicle and punched his car’s driver’s side window. During his interview, Agent O’Gwin demonstrated the significant force and energy that he claimed Mr. Gomez used when he punched the window. Agent O’Gwin said he believed Mr. Gomez struck his police car window as “hard as he could.”

Agent O’Gwin said he knew Mr. Gomez had something (“an object”) in his hand by the sound it made when Mr. Gomez punched the window. Agent O’Gwin said whatever Mr. Gomez apparently had in his hand made a loud, metallic sound when he hit Agent O’Gwin’s car. Agent O’Gwin said he didn’t see anything in Mr. Gomez’s hands.

Agent O’Gwin said: “This individual wanted to do extreme harm to me, I could see that from the get go.” Agent O’Gwin said Mr. Gomez came at the window and forcefully punched it a second time. Agent O’Gwin said that he reached for his gun as Mr. Gomez came at the window a third time. Agent O’Gwin said: “To be honest with you man, like this guy is trying to breach my car, he’s trying to get inside my car, he’s trying to do harm to me, there’s no conversation.” Agent O’Gwin said he never saw Mr. Gomez try to open the car door with the door handle.

Agent O’Gwin said that after Mr. Gomez punched the window the third time, Agent O’Gwin fired his gun at Mr. Gomez. Agent O’Gwin said he believed he fired three times. Agent O’Gwin said he fired his weapon because he was “in fear for my life.” Agent O’Gwin said he believed Mr. Gomez was trying to “end me,” or “take my life.” Agent O’Gwin said he believed Mr. Gomez was not going to stop hitting the window until he got in.

Agent O’Gwin said the event unfolded very quickly. Agent O’Gwin said there was no pause or delay in the action. Agent O’Gwin said: “By the time the third hit happened, I just remembered I was pulling my trigger.”

Agent O’Gwin said he didn’t know it was Mr. Gomez at the time of the shooting. Agent O’Gwin said he thought the suspect might be a gang member parolee. Agent O’Gwin’s said his concern for his safety was heightened by the thought that the suspect may be a gang member parolee or someone acting on behalf of a gang member parolee and that the suspect may have been carrying out a “hit” against Agent O’Gwin. Agent O’Gwin said that his concern that the suspect was carrying out a “hit” against him contributed to his fear that his life was in jeopardy.

Joe Alvin Gomez

On May 22, 2017, investigators met Joe Alvin Gomez at Intermountain Medical Center hospital. Mr. Gomez said he was sedated and asked investigators to return in a few days.

On June 12, 2017, investigators met Mr. Gomez again, this time at the Utah State Prison. Mr. Gomez stated that on the date of the incident, prior to the shooting, he was with a friend who was driving on State Road 201; Mr. Gomez said they saw a police car at about 900 West. Mr. Gomez said the police car was “swerving” on the freeway.

Mr. Gomez said on the date of the incident, he and his friend drove southbound on I-15 exited the freeway at 4500 South. Mr. Gomez said his friend pulled up to a red light at Main Street and stopped in the left turn lane. Mr. Gomez said another car was stopped to his right, also waiting to turn left onto Main Street.

Mr. Gomez said he was smoking a cigarette and threw it out the car window. Mr. Gomez said the cigarette’s “cherry” landed on his lap. Mr. Gomez said the cigarette “cherry” started to burn him, so he opened the car door to get the “cherry” off his lap. Mr. Gomez said he got out of his car and was facing the other car also stopped at the red light. Mr. Gomez said he came out of his car kind of “crazy” because the cigarette “cherry” was burning him. Mr. Gomez said he was yelling while he was outside of the car because the “cherry” was burning him.

Mr. Gomez said the other car’s window was shut and denied ever having a conversation with the driver of the car next to him. Mr. Gomez denied he knew the other driver was a police officer or his parole agent. Mr. Gomez denied he recognized Agent O’Gwin. Mr. Gomez denied he “confronted” the other driver. Mr. Gomez said he was brushing off his pants while he walked towards the other car. Mr. Gomez said that while he was brushing off his pants, he was shot.

Mr. Gomez said he didn’t know the other car stopped at the light at Main Street was a police car. Mr. Gomez denied having a gun or any other weapon during the incident. Mr. Gomez denied confronting Agent O’Gwin; Mr. Gomez denied touching Agent O’Gwin’s car. Mr. Gomez denied throwing anything at Agent O’Gwin’s car.

Mr. Gomez said he had no problems with Agent O’Gwin, his parole officer. Mr. Gomez said he was not angry with Agent O’Gwin’s visit to his listed residence earlier that day. Mr. Gomez denied that he knew at the time that it was his parole officer who shot him. During his interview on June 12, 2017, Mr. Gomez asked: “was it my [parole officer] who shot me? Was it?” Mr. Gomez said it was “ironic.”

Mr. Gomez was interviewed again on February 9, 2018. Mr. Gomez was asked when he remembered first seeing the Malibu on the day of the OICI. Mr. Gomez said he first remembered seeing the car as it exited the freeway at 4500 South. Mr. Gomez was asked about A. A.'s statement in which A. A. said he first noticed Agent O'Gwin's car as he and Mr. Gomez were getting on State Road 201 from 900 West. Mr. Gomez said he did not recall seeing the vehicle as A.A. recounted.

Mr. Gomez was asked about A. A.'s statement wherein A. A. said that Mr. Gomez asked him: "What kind of car is that?" and A. A. said he replied: "a cop car." Mr. Gomez said he did not recall that conversation.

Mr. Gomez said after A. A. pulled up to the red light and stopped, part of the cigarette "cherry" dropped in his lap. Mr. Gomez said he opened the car door; Mr. Gomez said he didn't think anything of it since they were stopped at a red light and there was no traffic at that time of night. Mr. Gomez said he got out of the car to brush off his pants. Mr. Gomez said he didn't gesture towards or take action against the neighboring car or its driver. Mr. Gomez said he paid little attention to the car stopped next to him and he paid no attention to the driver. Mr. Gomez said his purpose and object of getting out of the car was to get the cigarette "cherry" off his pants.

Mr. Gomez said he was shot within a moment after he got out of A. A.'s car. Mr. Gomez said when he was shot, he didn't realize or understand what was happening. Mr. Gomez said that, all of a sudden, he felt like he was being punched and he collapsed. Mr. Gomez said he looked down at his torso and saw blood. Mr. Gomez said he pulled himself up and back into A. A.'s car. Mr. Gomez said A. A. told Mr. Gomez that he had been shot, and it was only then that Mr. Gomez realized he had in fact been shot. Mr. Gomez said at the time, he had no idea why he had been shot.

Mr. Gomez said he remained confused about why he had been shot when, at the hospital, he said he was informed that it was a police officer that shot him. Mr. Gomez said he could not understand why a police officer would have shot him. Mr. Gomez said he was likewise surprised when he was later told it was his parole officer who shot him.

Physical Evidence

OICI protocol investigators processed Agent O'Gwin's vehicle. OICI protocol investigators observed and photographed Agent O'Gwin's driver's side window. It appeared that Agent O'Gwin fired through the closed window, as the window was still intact following the shooting and during the investigation.

OICI protocol investigators observed and photographed a cell phone lying in the road near Agent O'Gwin's driver's side door. Investigators recovered and processed the phone, including an examination of the phone's contents. Investigators determined the phone belonged to Mr. Gomez, although the phone contained nothing of relevance to the OICI.

Investigators processed Agent O’Gwin’s vehicle. Investigators recovered three empty (fired) 9mm cartridges from the vehicle; investigators also recovered one empty cartridge from Agent O’Gwin’s body armor vest and one empty cartridge from his clothing. Investigators inspected Agent O’Gwin’s department issued handgun and determined that Agent O’Gwin likely fired five rounds during the OICI.

Protocol investigators examined medical records and interviewed hospital personnel regarding Mr. Gomez’s injuries and treatment. Among the medical records investigators reviewed were records from Dr. Chardack, whose notes reflect his examination of Gomez’s hands and that he found no injuries to Gomez’s hands. Medical records documented Mr. Gomez received three gunshot wounds. Doctors performed several surgeries on Mr. Gomez as part of the treatment for his gunshot wounds.

In about November, 2017, acting on information received from an anonymous tip, protocol investigators began reviewing audio recordings of Mr. Gomez’s telephone calls from the prison. Over the course of several weeks, many hours of recorded phone conversations were reviewed, but no relevant information was obtained.

Radio Traffic

Protocol investigators obtained and listened to a recording of police radio calls related to the OICI. Shortly after the shooting, Agent O’Gwin broadcast on the police radio: “Shots fired, shots fired; 4500 South...[someone jumped out of the window]...the car ...vehicle...suspect...driving...did you copy? I’m on 4500 South...shots just fired, [the] individual just jumped out of the vehicle, threw something/object at me, tried to attack me...”

Thereafter some radio traffic followed discussing the suspect’s direction of travel and whether Agent O’Gwin was ok. After a few more seconds, O’Gwin radioed: “...I was waiting at the red light to turn left on Main Street, individual hopped out of the vehicle, threw something at my window, [committed] to get back up, and he hit my vehicle again, I drew my weapon...shot.”

DISCUSSION

Use of Deadly Force

Agent O’Gwin’s account of the events of the OICI does not appear to be supported by the statements of other witnesses or the physical evidence presently known to us. Other than Agent O’Gwin, none of the other witnesses said they saw Mr. Gomez strike Agent O’Gwin’s vehicle. Witness N. S. said he saw that Mr. Gomez did not strike Agent O’Gwin’s vehicle. Witness J. H. said she may not have witnessed the entire event because she briefly looked away, but she said he did not see Mr. Gomez hit Agent O’Gwin’s vehicle. Mr. Gomez’s and Witness A. A.’s statements seem consistent with N. S.’s and J. H.’s statements. And the witness’ testimony that Mr. Gomez did not strike Agent O’Gwin’s car seems to be corroborated by the physical evidence known to us at this time, including the apparent lack of injuries to Mr. Gomez’s hands and forearms, and the condition of Agent O’Gwin’s vehicle window after the shooting.

Other than Agent O’Gwin’s statements, we cannot find a basis to conclude that the use of deadly force was necessary to prevent death or serious bodily injury to Agent O’Gwin. And we cannot find any corroborating evidence to support Agent O’Gwin’s statements; indeed, the evidence of which we’re aware seems to contradict Agent O’Gwin’s statements.

Having considered all the statements of all the witnesses and the physical evidence as presently known, we cannot conclude that the circumstances Agent O’Gwin faced constituted a threat of death or serious bodily injury to Agent O’Gwin. We cannot conclude that Agent O’Gwin’s ostensible belief that deadly force was necessary was reasonable. Nor do we believe that it was reasonable to use deadly force under the circumstances as presently known. Similarly, we cannot conclude that the facts as outlined by Agent O’Gwin constitute a reasonable need to use deadly force.

Accordingly, we cannot conclude that Agent O’Gwin’s use of deadly force was “justified” under Utah State law.

At this time, our review to consider whether Agent O’Gwin’s use of deadly force was “justified” has concluded and we now turn our consideration to whether Agent O’Gwin’s use of deadly force violates Utah State law; and if so, whether criminal charges should follow. We endeavor to conclude this work shortly and reach this decision soon.

Very Truly Yours,

SIM GILL,
Salt Lake County District Attorney