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Via Hand Delivery

October 25, 2017

RE: *SLCPD Lt. Oblad's Use of Deadly Force*
 Incident Location: 508 East, 300 South, Salt Lake City, Utah
 Incident Date: September 28, 2017
 WVCPD Case No.: 17I019844
 SLCPD Case No.: 2017-185445
 D.A. Case No.: 2017-1230

Dear Chief Nolen and Chief Brown:

The Salt Lake County District Attorney's Office ("D.A.'s Office") operates under Utah State law to review and "screen"¹ criminal charges against individuals where criminal activity may have occurred. The D.A.'s Office operates pursuant to an agreement between the D.A.'s Office and participating law enforcement agencies to perform joint investigations and independent reviews of officer involved critical incidents ("OICI") including police officers' use of deadly force while in the scope of their official duties. Pursuant to the State law and the agreement between the D.A.'s Office and participating law enforcement agencies, the D.A.'s Office has reviewed the above referenced matter to determine whether the above referenced use of deadly force violated criminal statutes and whether a criminal prosecution should commence. Part of our screening process considered whether the use of deadly force was "justified" under Utah State law thereby providing a legal defense to a criminal charge. As outlined more fully below, the D.A.'s Office declines to file criminal charges in the above referenced matter because

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.

we conclude that Salt Lake City Police Department (“SLCPD”) Lieutenant Oblad’s use of deadly force was “justified” under Utah State law.

On September 28, 2017, SLCPD Lt. Oblad arrived at a Maverick convenience store at 300 South, 508 East and saw Michael Bruce Peterson assaulting SLCPD Officer Lovell with Officer Lovell’s baton. Officer Lovell was on the ground and bleeding from his face and head. As Lt. Oblad ran to Officer Lovell’s aid, Mr. Peterson, still wielding Officer Lovell’s baton, ran at Lt. Oblad. Lt. Oblad ordered Mr. Peterson to stop but he did not. Lt. Oblad fired his weapon at Mr. Peterson. Mr. Peterson still did not stop but continued to run at Lt. Oblad with Officer Lovell’s baton. Lt. Oblad continued to fire at Mr. Peterson until he went down. Mr. Peterson died at the scene.

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.

Criminal Charges and Prosecution: Standards

The D.A.'s Office reviews police officers' use of deadly force pursuant to the D.A.'s Office's authority as a public prosecutor as set forth in Utah Constitution Article VIII, Section 16² and Utah Code 17-18a-203³, among other legal authority. Pursuant to this authority, the D.A.'s Office is responsible for determining whether a person's actions (in this case, whether a law enforcement officer's use of deadly force) violates a criminal statute (Utah State law) and if so, whether and to what extent that person should be charged with a crime.

² **Utah Const. Art. VIII, Section 16 [Public prosecutors.]** The Legislature shall provide for a system of public prosecutors who shall have primary responsibility for the prosecution of criminal actions brought in the name of the State of Utah and shall perform such other duties as may be provided by statute. Public prosecutors shall be elected in a manner provided by statute, and shall be admitted to practice law in Utah. If a public prosecutor fails or refuses to prosecute, the Supreme Court shall have power to appoint a prosecutor pro tempore.

³ **17-18a-203. District attorney powers and functions.**

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

(1) is a public prosecutor for the county; and

(2) shall perform each public prosecutor duty in accordance with this chapter or as otherwise required by law.

The D.A.'s Office is a public prosecution agency for and has jurisdiction over the prosecution of criminal offenses that occur within Salt Lake County. Among the duties of the D.A.'s Office is the responsibility to receive investigations of potential criminal activity from law enforcement agencies. Law enforcement agencies "screen"⁴ potential criminal charges with the D.A.'s Office by presenting evidence to the D.A.'s Office that may support the filing of criminal charges against a person who may have committed a criminal offense. Law enforcement agencies present all the relevant facts presently known to them.

After receiving relevant facts about a particular matter, the D.A.'s Office considers potentially applicable statutes to determine whether the statutes proscribe the conduct. During the "screening" process, the D.A.'s Office applies legal and ethical standards to the matter at hand to decide whether to file criminal charges. The D.A.'s Office files criminal charges against individuals accused of violating the law when certain legal and ethical standards are satisfied. When these legal and ethical standards are not satisfied, the D.A.'s Office declines to file a criminal charge.

Legal Standards

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

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

Ethical Standards

The D.A.'s Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing⁵. Honoring ethical standards ensures that everyone affected by the criminal justice system—suspects, defendants, victims, the community and the system itself—are treated fairly, honorably and respectfully.

Among the ethical standards which a case must satisfy is a reasonable likelihood of success at trial. A prosecutor must prove each element of the case beyond a reasonable doubt and to the unanimous satisfaction of a jury to prevail (succeed) at trial. A screening decision

⁴ Utah State Code defines "screening" as "the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution [by filing an information or indictment], move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted." U.C.A. 77-2-2 (1).

⁵ Even when a criminal case is filed, the defendant is presumed innocent of the charges unless and until convicted in a court of law.

includes a consideration of factors that a jury may consider in weighing testimony, evaluating evidence, applying the law and rendering a verdict.

The D.A.'s Office follows many of the screening considerations outlined by organizations like the National District Attorneys Association⁶ and the American Bar Association—organizations that address the prosecution function and provide guidance in screening a case. These ethical screening standards are helpful to prosecutors deciding whether a case ought to be filed.

⁶ For instance, some relevant considerations for screening are outlined in *NDAA Standards 3-3.9 and 4-4.2*:

Standard 3-3.9 Discretion in the Charging Decision

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

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

- (i) the prosecutor's reasonable doubt that the accused is in fact guilty;
- (ii) the extent of the harm caused by the offense;
- (iii) the disproportion of the authorized punishment in relation to the particular offense or the offender;
- (iv) possible improper motives of a complainant;
- (v) reluctance of the victim to testify;
- (vi) cooperation of the accused in the apprehension or conviction of others; and
- (vii) availability and likelihood of prosecution by another jurisdiction.

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

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

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

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

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

...

4-2.2 Propriety of Charges

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

“Justification” as Defense in Utah

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

One legal defense to potential criminal charges available to police officers who used deadly force (whether or not the deadly force caused the death of a person) is the legal defense of “justification.” This legal defense is found in Utah State Code as 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 include criminal homicide, murder (or attempted murder), aggravated assault, or other offenses set forth in the criminal code. The legal defense of “justification” is applicable to any potential criminal charge.

A person’s use of deadly force (including but not limited to use of deadly force by peace officers) is “justified” when the use of deadly force conformed to the statutes referenced above. Persons may lawfully defend themselves under circumstances outlined by law, and are afforded the legal defense of “justification” for the lawful use of deadly force in accordance with statutes. Utah Code Ann. 76-2-402 states that a “person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person’s imminent use of unlawful force.” *Id.* This section also states: “A person is justified in using force intended or 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 felony⁷.” *Id.*

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

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

In essence, the analysis for the use of deadly force to prevent death or serious bodily injury (whether by individuals or peace officers) turns on similar elements. In relation to the use of deadly force by *individuals*: “A person is justified in using force intended or likely to cause death

⁷ For the enumerated “forcible felonies,” see U.C.A. 76-2-402(4)(a), *supra*.

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). For the use of deadly force by *peace officers*: "the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person," or to effect an arrest under circumstances set forth in law. *See*, U.C.A. 76-2-404. A peace officer's use of deadly force is "justified" when that officer "reasonably believes" that the use of deadly force is "necessary to prevent" the threat of "death or serious bodily injury." *Id.*

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

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 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. 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

⁸ The issue addressed in this OICI review is narrow and well defined: did an officer's use of force violate a criminal statute and if so, should a prosecution ensue? While our review does not directly employ a Fourth Amendment analysis, the *Graham* case is nevertheless informative.

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.

INVESTIGATION

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

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

(1) As used in this section:

- (a) "Dangerous weapon" is a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury.
- (b) "Investigating agency" is a law enforcement agency, the county or district attorney's office, or an interagency task force composed of officers from multiple law enforcement agencies.
- (c) "Officer" is a law enforcement officer as defined in Section 53-13-103.
- (d) "Officer-involved critical incident" is any of the following:
 - (i) the use of a dangerous weapon by an officer against a person that causes injury to any person;
 - ...

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

- (a) upon receiving notice of the officer-involved critical incident, the law enforcement agency having jurisdiction where the incident occurred shall, as soon as practical, notify the county or district attorney having jurisdiction where the incident occurred; and
- (b) the chief executive of the law enforcement agency and the county or district attorney having jurisdiction where the incident occurred shall:
 - (i) jointly designate an investigating agency for the officer-involved critical incident; and
 - (ii) designate which agency is the lead investigative agency if the officer-involved critical incident involves multiple investigations.

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

...

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

On October 19, 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 SLCPD was helpful and accommodating with the investigation's needs, but did not perform any substantive investigation tasks related to 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 September 28, 2017, SLCPD Officer Gregory Lovell responded to a report of a man trespassing and sexually assaulting a massage therapist at the Salt Lake Salon at 363 South and 500 East in Salt Lake City, Utah. When he arrived, Officer Lovell saw a male, later identified as Michael Bruce Peterson—the man described in the assault and trespass—in the parking lot. Officer Lovell followed Mr. Peterson as he walked northbound on 500 East.

At the Maverick convenience store at 300 South and 508 East, Mr. Peterson got into a Jeep belonging to someone else. Officer Lovell ordered him out, but Mr. Peterson did not comply. Officer Lovell deployed his Taser and tazed Mr. Peterson who became enraged and leapt out of the Jeep at Officer Lovell. As he did so, SLCPD Lt. Andrew Oblad arrived on the scene in his patrol car.

Mr. Peterson started punching Officer Lovell and Officer Lovell deployed his baton. Officer Lovell lost control of the baton and Mr. Peterson got it. Lt. Oblad got out of his police car and quickly moved towards Mr. Peterson who was pursuing Officer Lovell. Mr. Peterson began beating Officer Lovell with the baton. Officer Lovell retreated from Mr. Peterson who continued to hit Officer Lovell. Lt. Oblad drew Mr. Peterson's attention and Mr. Peterson ran directly at Lt. Oblad wielding Officer Lovell's baton as though he were going to attack Lt. Oblad. Lt. Oblad fired his weapon at Mr. Peterson who continued to run at Lt. Oblad. Even though Mr. Peterson was hit with the first few shots, he didn't stop, but continued to come at Lt. Oblad. Lt. Oblad continued to fire at Mr. Peterson, ultimately hitting him with ten rounds. Mr. Peterson died at the scene.

An OICI protocol investigation team arrived and documented the scene, conducted interviews, reviewed video recordings and performed other investigation tasks. Investigators located and documented Officer Lovell's baton at the scene. Investigators also inspected and documented the conditions of Lt. Oblad's weapon and Officer Lovell's Taser used in the incident. Investigators reviewed body-worn camera and other video recordings of the incident and photographed the scene.

Witnesses C. K. and S. S.

Witness C. K. said on September 28, 2017, she was giving a client a massage at Salt Lake Salon at 363 South, 500 East, when a man, later identified as Michael Bruce Peterson, walked into the salon. C. K. told OICI protocol investigators that the man walked up to her and grabbed her buttocks with both hands. C. K. said the man walked out of her studio and into another studio inside the salon. C. K. said she locked the studio door; salon employees called police to report C. K. had just been sexually assaulted by a trespassing man.

Mr. Peterson went to another studio in the salon, lied down on a massage table, and demanded a massage. Salon employee S. S. told him to leave and advised him the police had been called. S. S. said the man tried to take the phone from S. S. and said he wanted to talk to the police. S. S. said the man got up off the table, walked out of the salon and yelled: "You fucking bitches! Fuck you!"

Officer Lovell

On October 6, 2017, protocol investigators interviewed SLCPD Officer Lovell. Officer Lovell said he was on patrol and in uniform on September 28, 2017 when dispatchers advised him of a call about a man trespassing and a sexual assault that occurred. Officer Lovell said that the call was close his location. Officer Lovell said that dispatchers advised him multiple people had called police regarding to the trespasser. Officer Lovell said he advised dispatchers he would take the call.

Officer Lovell said that he arrived at the salon, got out of his car, and saw a salon employee pointing towards a male who was walking in the parking lot. Officer Lovell said that the suspect, a man later identified as Michael Bruce Peterson, started walking towards his patrol car. Officer Lovell said that the suspect said something to him like "Let's go take a ride" or "Let's go get in the car." Officer Lovell said he made sure his car was locked by pressing the lock button on the car's key fob.

Officer Lovell said that at the time, he thought: "something is not right with him and I was afraid that he was gonna hurt someone else." Officer Lovell said that the suspect appeared to be on some kind of drug or drugs. Officer Lovell said he asked for his backup to "step it up," meaning that he wanted another officer to arrive quickly to assist him.

Officer Lovell said he told Mr. Peterson he wanted to talk to him. Officer Lovell said at first, Mr. Peterson didn't respond. Officer Lovell said Mr. Peterson started walking away from him northbound on 500 East.

Officer Lovell said he followed Mr. Peterson; Officer Lovell said he wanted to talk to Mr. Peterson about the alleged trespassing and sexual assault incident at the salon. Officer Lovell said he also followed Mr. Peterson because he was worried about his demeanor; Officer Lovell said he was concerned that Mr. Peterson might hurt someone else. Officer Lovell said Mr. Peterson kept walking away from him. Officer Lovell said he told the suspect to stop a couple of times but the suspect refused to do so.

Officer Lovell said that Mr. Peterson got to a Maverick convenience store at the southeast corner of 300 South and 500 East. Officer Lovell said Mr. Peterson climbed into a Jeep (that Officer Lovell suspected didn't belong to him) in the Maverick parking lot. Officer Lovell said that someone (the owner of the Jeep) yelled to the suspect to get out of the Jeep. Officer Lovell said he also told Mr. Peterson to get out of the Jeep. Officer Lovell said he was concerned that, if Mr. Peterson drove the Jeep somewhere, he could seriously hurt someone else.

Officer Lovell said that he gave multiple commands to the suspect to get out of the Jeep but the suspect refused commands. Officer Lovell said that he deployed his Taser when he saw Mr. Peterson reaching for the ignition. Officer Lovell said he fired his Taser at Mr. Peterson. Officer Lovell said the initial Taser deployment had an effect on Mr. Peterson, but it also made him very angry. Officer Lovell said Mr. Peterson yelled out when he was hit with the Taser.

Officer Lovell said Mr. Peterson started to get out of the Jeep and Officer Lovell realized that the suspect was mad and was about to assault him. Officer Lovell said that Mr. Peterson immediately engaged him after exiting the Jeep. Officer Lovell said he knew Mr. Peterson was going to fight.

Officer Lovell said that as Mr. Peterson got out of the Jeep, he pulled the trigger on the Taser again and immediately realized that the Taser did not work and had no effect. Officer Lovell said that he got rid of the Taser and grabbed his expandable baton impact weapon and deployed it. Officer Lovell said that he did not have a good grip on his baton. Officer Lovell said that Mr. Peterson hit him in the face. Officer Lovell said at the same time, he hit Mr. Peterson with the baton. Officer Lovell said Mr. Peterson's attack dazed him and he had trouble seeing.

Officer Lovell said that he lost control of his baton. Officer Lovell said Mr. Peterson got control of the baton and started to hit him with his baton. Officer Lovell said that he saw Mr. Peterson at least twice raising the Officer Lovell's baton and hit him in the face. Officer Lovell said he ran to put distance between him and the suspect.

Officer Lovell said that as he ran, he felt pressure on his left ankle and he fell down. Officer Lovell said that he feared for his life. Officer Lovell said Mr. Peterson continued to pursue him and continued the attack.

Officer Lovell said he saw SLCPD Lt. Oblad arrive on the scene and get out of his car. Officer Lovell said he saw Mr. Peterson change direction away from him and engage Lt. Oblad. Officer Lovell said that he transitioned to his handgun, but lost sight of Lt. Oblad and Mr. Peterson due to a tractor-trailer parked in the Maverick parking lot.

Officer Lovell said as he repositioned himself to try to see Lt. Oblad and Mr. Peterson, Lt. Oblad started shooting. Officer Lovell said that he saw the suspect on the ground. Officer Lovell said he tried to walk to Mr. Peterson to handcuff him, but Officer Lovell said his ankle gave out and he stopped. Officer Lovell said he was transported to the hospital where he was treated for a broken fibula, a broken nose and lacerations to his face requiring stitches.

Lt. Oblad

On October 5, 2017, protocol investigators interviewed Lt. Oblad with his attorney present. Lt. Oblad said he was on duty as the watch commander on September 28, 2017. Lt. Oblad said he was in his patrol car at the police station when he heard Officer Lovell responding to a call. Lt. Oblad said he heard Officer Lovell on the police radio asking for his back up to “step it up.”

Lt. Oblad said he started driving towards Officer Lovell’s location. Lt. Oblad said he arrived in the area and saw a police vehicle in the parking lot near 400 South and 500 East. Lt. Oblad said that he heard Officer Lovell update his location at the Maverick convenience store, so Lt. Oblad said he drove towards the store.

Lt. Oblad said as he pulled into the Maverick parking lot, he heard Officer Lovell say on the police radio that he had deployed a Taser. Lt. Oblad said he saw Officer Lovell in the parking lot with a Taser in his extended hand. Lt. Oblad said he saw the Taser wire going into a Jeep but couldn’t see a suspect at that point.

Lt. Oblad said he saw a man quickly jump out of the Jeep and run at full speed towards Officer Lovell. Lt. Oblad said he got out of his car to confront the suspect. Lt. Oblad said he saw the suspect punch Officer Lovell with full force directly in Officer Lovell’s face. Lt. Oblad said that, because it was a fist fight at this point, Lt. Oblad reached for his “O.C.” pepper spray to use against the suspect. Lt. Oblad said the suspect was very aggressive and actively assaulted Officer Lovell.

Lt. Oblad said that Officer Lovell “did not look right.” Lt. Oblad said that Officer Lovell was clearly hurt. Lt. Oblad said he could see blood on Officer Lovell’s face. Lt. Oblad said he then saw the suspect take control of Officer Lovell’s baton. Lt. Oblad said he repeatedly ordered the suspect to stop, but the suspect started to hit Officer Lovell with the baton. Lt. Oblad said he drew his handgun and again ordered the suspect to stop.

Lt. Oblad said the suspect turned his attention away from Officer Lovell and towards Lt. Oblad. Lt. Oblad said the suspect had the means and opportunity to run away; however, the

suspect turned, raised the baton and ran at Lt. Oblad. Lt. Oblad said the suspect said: "Oh, you want some of this?" Lt. Oblad said the suspect advanced on him and held the baton like a baseball bat. Lt. Oblad said the suspect came right at him.

Lt. Oblad said he feared for his life, Officer Lovell's life and the lives and safety of the public in the parking lot and at the store. Lt. Oblad said that under the circumstances, he viewed the baton as a deadly weapon and the suspect as capable of continuing an assault that could result in death or serious bodily injury. Lt. Oblad said the suspect refused to comply with his commands to stop and instead continued to run with the baton at Lt. Oblad. Lt. Oblad said he fired his weapon at the suspect.

Lt. Oblad said he could see his bullets hitting the suspect, but the suspect did not stop charging at him. Lt. Oblad said the suspect kept coming at him even though he was shot several times. Lt. Oblad said he feared the suspect may be wearing body armor.

Lt. Oblad said he continued to fire at the suspect as Mr. Peterson continued to run at him. Lt. Oblad said eventually the suspect went down, although he saw the suspect move as though he were getting back up. Lt. Oblad said he continued to watch the suspect go down and it appeared to Lt. Oblad that Mr. Peterson's will to fight eventually drained from the suspect. Lt. Oblad said other officers and medical personnel arrived on scene and started medical treatment for the suspect.

Lt. Oblad said after the incident concluded, he noticed his arm was injured. Lt. Oblad said he did not recall how his arm was injured⁹.

Witness S. L.

On September 28, 2017, SLCPD officers took a statement from Witness S. L. S. L. said he was at the Maverick convenience store at 300 South and 500 East sitting by his Jeep when a man jumped in the Jeep and tried to take it. S. L. said a police officer was pursuing the man who jumped in the Jeep. S. L. said the man jumped out of the Jeep and attacked the officer. S. L. said the man was hitting the officer and the officer fell under a delivery truck parked at the convenience store. S. L. said the man kicked the officer as he was down. S. L. said a second police officer arrived and the man attacked the second officer. S. L. said the second officer drew his weapon and fired at the man.

Witness A. C.

Protocol investigators obtained a statement from Witness A. C. who was running eastbound on 300 South when the incident occurred. A. C. said: "Guy in light blue shirt was shouting at the police officer and start coming towards the police officer. The police officer pulled out his baton and the guy with the light blue shirt still attacked and was able to get the

⁹ At least one of the video recordings appears to show Mr. Peterson close enough to Lt. Oblad to strike Lt. Oblad with Officer Lovell's baton; however, none of the witnesses directly asserted that Mr. Peterson actually struck Lt. Oblad with Officer Lovell's baton, and video recordings do not conclusively depict the baton contacting Lt. Oblad. By the same token, we cannot rule out that Mr. Peterson struck Lt. Oblad with Officer Lovell's baton thereby causing the injury to Lt. Oblad's arm.

baton by punching the police officer. He continued attacking the police officer. There was another police officer that drew the guy with the light blue shirt's attention. The guy then continued to attack the other officer and that's when the police officer fired his gun to neutralize the guy."

Witness V. H.

Protocol investigators obtained a statement from Witness V. H. who was standing at a gas pump when the incident occurred. V. H. said: "I was standing outside of my truck about to pump my gas. I noticed a cop begin to yell at a man in a jeep. He then tazed him. The man (white male) then came out of the car and walking toward the cop. The cop pulled out a baton. This is when I got into my truck and locked the doors and began to video. Somehow the man had the cops baton and was running to attack the cop. The cop shot the man 10 times. The man did not stop until about 4 shots in. There were also 2 other cops at this time."

Other Witnesses

Protocol investigators interviewed or obtained statements from other witnesses. None of the witnesses the investigators interviewed or obtained statements from said anything materially different from the narrative set forth above.

Physical Evidence

Officer Lovell wore a body-worn camera that recorded the incident and the events leading up to it. OICI protocol investigators reviewed the body-worn camera recording and presented the recording and still photographs made from the recording to the District Attorney for this review.

Lt. Oblad said he was at the police station when he responded to Officer Lovell's location and he had already docked his body-worn camera and therefore the camera was not available. Investigators determined that no video recording of the incident exists from Lt. Oblad's body-worn camera.

Protocol investigators obtained other video recordings capturing various parts of the incident. Investigators obtained and review recordings from surveillance cameras and private citizens who recorded parts of the incident. Some of these citizen recordings have already been publically released.

Protocol investigators inspected and documented Lt. Oblad's handgun and Officer Lovell's Taser. Investigators determined that Lt. Oblad fired ten shots during the incident. Investigators also determined that Officer Lovell's Taser was fired twice. Investigators documented and recovered Officer Lovell's baton.

DISCUSSION AND CONCLUSION

Justified Use of Deadly Force

Lt. Oblad arrived at a scene which quickly turned violent and saw Mr. Peterson unlawfully assaulting Officer Lovell. Lt. Oblad saw Mr. Peterson take control of Officer Lovell's expandable baton impact weapon and assault Officer Lovell with it. Lt. Oblad could see Officer Lovell bleeding and going down. Lt. Oblad saw that Mr. Peterson didn't comply or respond to any of Lt. Oblad's lawful orders to stop. Instead, Lt. Oblad saw Mr. Peterson come for him with the baton.

Lt. Oblad saw that he and Officer Lovell were in immediate danger of Mr. Peterson inflicting death or serious bodily injury on them. Indeed, Mr. Peterson had in fact been inflicting what appeared to be force capable of causing death or serious bodily injury on Officer Lovell. And Mr. Peterson turned his attack and violence towards Lt. Oblad, threatening Lt. Oblad with the risk of death or serious bodily injury.

Lt. Oblad reasonably believed deadly force was necessary to prevent death or serious bodily injury to himself and/or others and therefore his use of deadly force was "justified" under Utah State law. A "justified" use of deadly force provides Lt. Oblad a legal defense to a criminal prosecution for his use of force.

In contrast and by way of illustration, if we were to file criminal charges against Lt. Oblad for his use of deadly force, we would have to prove that Lt. Oblad's belief that his use of deadly force against Mr. Peterson was not reasonable, and we would have to prove this beyond a reasonable doubt. Here, we have no evidence that Lt. Oblad's belief was unreasonable. In this matter, it seems clear that Lt. Oblad had a reasonable belief that he needed to use deadly force against Mr. Peterson to prevent his own death or serious bodily and Officer Lovell's death or further serious bodily injury.

Accordingly, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Lt. Oblad.

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

SG/JWH/jh