

Ralph Chamness
Chief Deputy
Civil Division



Jeffrey William Hall
Chief Deputy
Justice Division

Blake Nakamura
Chief Deputy
Justice Division

DISTRICT ATTORNEY
SALT LAKE COUNTY
SIM GILL

April 6, 2012

Chief Del Craig
Taylorsville City Police Department
2600 W. Taylorsville Blvd
Taylorsville, UT 84118

Via Hand Delivery

RE: *Investigation of Officer Brett Miller's Use of
Deadly Force*
Our Case No.: 2012-755
Incident Date: March 1, 2012
Incident Location: 4790 South 4900 West, Kearns, Utah

Dear Chief Craig:

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

On March 1, 2012, at 4790 South 4900 West, Kearns, Utah, Taylorsville Police Officer Brett Miller fired one shot from his duty weapon at Bryan W. Manseau while trying to arrest Manseau.

After working in conjunction with the Unified Police Department, the Salt Lake County District Attorney's Office ("DA's Office") has completed its review of the investigation concerning Miller's use of deadly force against Manseau. The purpose of the review is to determine whether the force employed was lawful and justified under Utah law. As set forth more fully herein, we have concluded that Officer Miller's use of deadly force was justified under Utah law.

MATERIALS RELIED UPON

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

- **Report of Sgt. Travis Peterson, DA's Office Investigator**, dated March 19, 2012, in which Sgt. Peterson describes his investigative efforts and facts developed there from;
- **Unified Police Department Reports** for case nos. 2012-25674; 2011-18081;
- **Cottonwood Heights Police Department Report** for case no. 12X001294;
- **Transcript of Interview of Officer Miller** conducted March 6, 2012 by Unified Police Department Det. Christine Petty-Brown and Sgt. Peterson in which Officer Miller describes the events of March 1, 2012 as discussed more fully herein;
- **Transcript of Interview of Bryan Manseau** on March 1, 2012 by Unified Police Department Detectives Ben Pender and Tyler Richman in which Manseau describes some of the events of March 1, 2012 as discussed more fully herein;
- **Transcript of Interview of Caroline Kichiro** on March 1, 2012 by Det. Pender and Sgt. Craig Watson, DA's Office Investigator in which Ms. Kichiro describes her observations of Manseau as discussed more fully herein;
- **Diagrams of the OICI scene** as prepared by protocol investigators and UPD investigators as discussed more fully herein.

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

UTAH STATE LAW

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

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

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

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

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

...

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

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

...

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

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

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

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

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

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

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

...

FACTS

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

On March 1, 2012, at approximately 5:27 P.M., Taylorsville Police Officer Brett Miller was on duty as part of his assignment with the Joint Criminal Apprehension Team ("JCAT.") While operating his police vehicle on 4900 West, Officer Miller observed Bryan W. Manseau walking with an adult female. Officer Miller and Manseau knew each other from a number of prior incidents, and Officer Miller stated he aware that Manseau had a criminal history and was a documented gang member. Specifically, Officer Miller stated that he knew that Manseau had been previously committed to federal prison for a felony offense. Officer Miller also knew that Manseau had been involved with violent offenders and stolen motor vehicles among other matters.

After recognizing and driving past Manseau, Officer Miller turned into a driveway to determine if Manseau had any arrest warrants. Through his computer, Officer Miller discovered that Manseau had an outstanding arrest warrant. Officer Miller decide to inform Manseau of the warrant and take him into custody. Miller turned his vehicle around, passed Manseau and then approached him from behind and stopped his vehicle along the curb adjacent to where Manseau was walking. When Officer Miller stopped his vehicle, he activated his emergency lights. Manseau continued to walk away seemingly not acknowledging Officer Miller's presence.

Officer Miller said he found Manseau's behavior odd because Miller believed Manseau was familiar with his police vehicle and Manseau has always been compliant with Officer Miller in the past. Miller said Manseau has been responsive and respectful to Miller in their prior interactions. On this occasion, however, Miller found Manseau's actions concerning because Manseau was acting differently from prior interactions. Manseau continued to walk away from Miller

With this concern about Manseau's behavior in mind, Officer Miller exited his vehicle and called out to Manseau to stop and informed Manseau that he had a warrant for Manseau's arrest. Manseau continued to walk away from Miller and responded that it was only a misdemeanor warrant. Officer Miller told Manseau that that was not the issue and Miller was going to arrest Manseau.

The Suspect Flees

Upon hearing this, Manseau stopped for a moment and then began to run west toward a wall and attempted to climb over it. Officer Miller pursued Manseau and told Manseau he would taser Manseau if he did not stop. Manseau dropped off the wall, turned toward Officer Miller briefly and then ran east across the street and toward an apartment complex.

Officer Miller noticed that Manseau kept one hand in the pocket of the sweatshirt Manseau was wearing; Manseau was using his other hand to climb the wall and run. Officer Miller noted that Manseau seemed to make a deliberate effort to conceal and retain control of whatever was in his hand. Officer Miller said this added to his concerns about Manseau's behavior.

Officer Miller Officer Miller began to shout commands at Manseau, including commands to stop; to get down on the ground; and for Manseau to show Miller his hands. Manseau did not comply with any of Miller's commands, but instead continued to run with one hand concealed in Manseau's pocket.

Officer Miller pursued Manseau toward the apartment complex. Manseau ran across a snow-covered lawn in front of an apartment building¹. As Manseau neared the corner of one of the buildings, he fell in the snow scrambled to get back on his feet. When Manseau fell, he dropped the object he was holding in his pocket and began digging in the snow to find it. Officer Miller was getting closer to Manseau as Manseau was searching in the snow for his object.

The Suspect had a Gun

Manseau located the object and brought it up out of the snow. Officer Miller immediately saw it was a gun. Officer Miller specifically recalled seeing the silver colored metal tag on the underside of the gun's frame that often contains the serial number of the weapon. Upon seeing the serial number tag, Miller stated that now Miller was aware Manseau had a gun, and it was very likely a real gun.

During this time, Officer Miller was continuing to yell at Manseau to stop and to drop the gun. Manseau continued to ignore his commands. Manseau's refusal to respond to Officer Miller continued to contrast from the compliant way Manseau previously interacted with him.

Miller said at this moment, he realized that Manseau was very probably a restricted person who was in possession of a dangerous weapon, a felony offense. Furthermore, Miller concern about Manseau was heightened given Manseau's efforts to conceal the gun during the foot chase, together with his efforts to take

¹ The locations of the items discussed herein are depicted in diagrams attached to this letter.

time to dig and find the gun and Manseau's continued disregard for Miller's commands.

Officer Miller expressed that he was concerned that Manseau would delay his escape to re-arm himself with the firearm, particularly because the delay allowed Officer Miller to close the distance with Manseau. Officer Miller thought that if Manseau wanted to separate himself from the firearm or otherwise succeed in fleeing, Manseau could have continued to run after he dropped the gun. The fact that Manseau stopped, took the time to find the gun and re-armed himself caused Officer Miller concern that Manseau intended to use the firearm.

In his interview, Officer Miller stated:

[H]ad just dropped the gun and kept running, that's a totally different scenario. But the fact that he has re-armed himself ... I know he's never in his life supposed to possess a firearm. He's already been to federal prison. He's a convicted felon. He's in violation of ... federal firearms laws and state statutes.... [H]e had no business having a hand gun. And the fact that he's re-armed himself right in front of me ... I thought for sure when we came right around the corner he was just gonna wait and take a shot at me as I got closer to him....

I was just waiting to hear the shot. I was waiting for him to turn and fire at me. I thought for sure that's, and...based on those...previous incidents I've had with him, he's no problem sitting there talking. We'd sit around a joke or whatever, and then on this instance, he's running, he's guarding his right...holding his arm in his jacket pocket and waiting enough time to; it didn't matter that, you know, I was getting closer to him. He re-armed himself. I thought for sure we're gonna shoot it out here. He's gonna shoot me. Miller Transcript at 16.

After re-arming himself, Manseau started to run away from Miller again. Manseau took a couple of steps towards the corner of the apartment building. As Manseau approached the building's corner, Officer Miller immediately became concerned that Miller was about to lose sight and awareness of Manseau. Miller was concerned that Manseau could ambush Miller as he rounded the same corner, or that Manseau could use the corner for cover and begin firing at Miller. Officer Miller's concern was heightened because Miller was still several feet away from the building and out in the open with no cover should Manseau shoot. Officer Miller explained that his fear that Manseau could use the firearm stemmed in part from Manseau's aberrant behavior in contrast from prior interactions. Manseau's behavior left Miller to question Manseau's state of mind.

At this same time, Officer Miller could hear people in the area Manseau was headed, causing Miller further concern that Manseau could pose a threat to those people. While Officer Miller said he was not immediately concerned that Manseau would shoot those people or otherwise take a person hostage, his immediate thought was that he may try to “carjack” a person as they were entering their vehicle or otherwise use his firearm to escape from Miller.

Thus, as Manseau ran toward the corner of the building, Officer Miller yelled at Manseau to stop and drop the weapon. Miller said he believed he yelled at Manseau that he would shoot if he did not. Manseau did not respond to Officer Miller’s commands. Officer Miller fired one round at Manseau from his firearm. At the moment he fired at Manseau, Officer Miller recognized that once Manseau got around the corner and became physically associated with people who he heard coming out of the apartment complex that he would not be able to use his firearm out of concern for the safety of others.

The shot missed Manseau; the bullet was eventually recovered from a tire of a vehicle parked in front of the apartment building.

After Miller fired, Manseau continued running around the corner of the building and Officer Miller lost sight of him. As Officer Miller was proceeding back to his vehicle, he was contacted by witness Caroline Kichiro who observed Manseau running around the building. Ms. Kichiro informed Officer Miller that she observed Manseau throw two objects; one into a yard adjacent to the apartment complex and the other onto a carport roof in the complex. The objects were later recovered from the locations provided. In the yard, Manseau’s firearm was recovered and a magazine with rounds fitting the firearm was found on the carport cover.

Shortly after speaking with Ms. Kichiro, Officer Miller saw Manseau walking toward the roadway where the initial stop occurred. Manseau surrendered to Miller and was taken into custody.

The Scene

The scene is depicted in the diagram attached hereto as Attachment A. The locations of Miller’s initial contact with Manseau, the buildings and the locations of recovered items are also depicted.

The fired bullet was recovered from the rear passenger side tire of the Nissan Sentra shown in the diagram. As discussed in more detail below, the location of that tire from which the bullet was recovered, and the trajectory of the bullet are consistent with Officer Miller shooting at Manseau as Officer Miller and Manseau were approaching the corner of the building and at the time that he was developing his concerns over the potential threat Manseau presented.

The recovered bullet and its trajectory (as shown in the diagram) is not consistent with Miller's March 6, 2012 diagram and the events it purports to depict. For reasons discussed more fully below, protocol investigators elected to invite Officer Miller to perform a scene walk-through to clarify these apparent inconsistencies.

Cottonwood Heights Police Officer J. Woods and other officers located and recovered a black leather double magazine pouch with two firearm magazines from a carport in the apartment complex. From the marks left in the snow, it appeared that the magazine pouch had been thrown onto the top of the carport

Officer Miller's Statements

Immediately after the shooting, Officer Miller showed on-scene officers the general area Miller was when he fired. As mentioned below, Miller later recounted in his walk-through how he told on-scene officers this information.

On March 6, 2012, Officer Miller was interviewed by Det. Petty-Brown and Sgt. Peterson as part of the OICI protocol investigation. Officer Miller's account of the incident is largely reflected in the "Facts" section above. During his interview, Officer Miller drew a diagram in which he set forth the position and location of relevant items at various time points during the incident. Officer Miller's March 6, 2012 diagram is attached hereto as Attachment B.

As mentioned above, and as can be seen by comparing Attachment B with Officer Miller's statements made in the interview, some inconsistencies seemed to arise. Specifically, Officer Miller's statements seem to portray Miller shooting before Manseau rounded the corner of the apartment building. However, Miller's diagram shows both Miller and Manseau past the corner of the apartment building and the two in a straight line with Manseau running away from Miller when Miller fired.

Officer Miller's Walk-Through

Behavioral scientists who specialize in perception/reaction dynamics in officer involved shootings have considered an officer's ability to recall and explain events following a shooting. Many experts advocate the use of a "walk-through" with involved officers after enough time has passed for the mind to be able to effectively process and recall the events of the incident.

As mentioned, Officer Miller's diagram referenced above was inconsistent with his narrative from his interview. Officer Miller's March 6, 2012 diagram seemed to depict Officer Miller firing at Manseau after both had rounded the first corner and when Miller was in a position to see that Manseau had not in fact lied in wait to ambush Miller. From Miller's diagram, it appeared that Miller fired at Manseau when Manseau was doing little more than continuing to flee.

Bullet trajectory data also tended to contradict Miller's March 6, 2012 diagram; Miller probably could not have been in the location he drew on the diagram given the bullet trajectory.

In order to clarify what actually occurred and who was where, Officer Miller was taken back to the scene on March 15, 2012; he was asked to describe his locations as the incident developed. He was particularly asked to describe the locations where Manseau dropped the gun and where Miller was when he fired at Manseau.

In his walk-through, Miller showed protocol investigators where Manseau dropped the gun; where Miller was as Manseau was looking for the gun; when Miller and Manseau both were when Manseau picked up the gun and Miller saw the serial number tag of the gun; and where Manseau took his steps to round the corner of the building.

Without disclosing any information from the investigation that that would have not been known to Officer Miller,² Miller was asked to show his location at the time he fired at Manseau. Miller showed protocol investigators the area prior to rounding the corner of the building. This location was consistent with the bullet's trajectory. The location was also consistent with Manseau running towards the corner of the building.

Miller was asked whether it was possible that he had rounded the corner of the building and was in line with Manseau when Miller fired. Miller said it was not. Miller reiterated that neither he nor Manseau had rounded the corner, and Miller's fear was based in part on the immediately rounding of the corner that caused him to fire.

Miller was informed that he drew a diagram showing he and Manseau both having rounded the corner and Manseau in a straight line when Miller fired. Miller was asked if he recalled drawing the diagram this way. Miller said he did not recall it. Miller was asked if he could explain why he would have drawn the diagram that way; Miller could not explain it³, but Miller again clarified where Miller and Manseau were when Miller fired.

² e.g., the bullet trajectory.

³We do not take the inconsistencies in Miller's diagram to be a matter other than the result of Miller's apparent inability to accurately recall the all the events of the evening. Miller's interview did not take place at the scene, or with any visual reference points other than a black and white aerial diagram of the scene. It is neither surprising nor concerning that Miller's diagram was less than accurate under the circumstances surrounding its creation. This aspect of the investigation highlights the value of a walk-through with involved officers to allow them to return to the scene and experience visual clues to aid recall, as well as spatially orient themselves while providing information about the scene and incident.

Miller's statements during the walk-through were consistent with forensic evidence, and were consistent with and illuminated his statements he made during the March 6, 2012 interview.

DISCUSSION

1. *The Lawful Use of Deadly Force*

Individuals (including but not limited to peace officers) are justified in using deadly force to defend themselves under circumstances as outlined by law. The use of deadly force for reasons other than defense of self or others is also permitted as set forth in state law. Utah Code Ann. 76-2-402 states that a "person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person's imminent use of unlawful force." *Id.* This section also states: "A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force, or to prevent the commission of a forcible felony⁴." *Id.*

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

"effecting an 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 to individuals or peace officers) turns on similar elements: *individuals*: "A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third

⁴ Utah Code 76-2-402(4)(a): "For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76, Chapter 6, Offenses Against Property."

person as a result of another person's imminent use of unlawful force" U.C.A. 76-2-402(1)(a),(b); *officers*: "the officer reasonably believes that the 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.

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

Whether, and if so to what extent a threat is imminent turns on several factors. The threat's proximity to the officer and others is one factor; so is the speed at which a moving threat is traveling, as is the means by which the threat is moving. The likelier a suspect is to gain a tactical advantage over an officer, the greater the potential threat of injury or death to another person.

A Tenth Circuit case affirming summary judgment in favor of a police officer and government agency illuminates the discussion of a police officer's reasonable use of force. In *Cordova v. Aragon*, the Tenth Circuit opined: "[T]he 'objective reasonableness' standard ... governs ... Fourth Amendment inquiries." *Cordova v. Aragon*, 569 F.3d 1183, 1188 (10th Cir. 2009), citing *Graham v. Connor*, 490 U.S. 386, 395, (1989): ("[A]ll claims that law enforcement officers have used excessive force ... in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard."). *Id.* The *Cordova* court held: "We thus ask 'whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." *Cordova*, quoting *Graham*, 490 U.S. at 397. "Reasonableness 'must be judged from the perspective of a reasonable officer on the scene,' who is 'often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.'" *Cordova*, quoting *Graham*, 490 U.S. at 396-397.

According to the *Cordova* court, "[t]here is no easy-to-apply legal test for whether an officer's use of deadly force excessive; instead, we must 'slosh our way through the fact-bound morass of 'reasonableness.'" *Cordova* at 1188, quoting *Scott v. Harris*, 550 U.S. 372, 383 (2007). The Tenth Circuit continued: "This sloshing requires us to weigh 'the nature and quality of the intrusion on the individual's Fourth Amendment interests against the importance of the governmental interests alleged to justify the intrusion.'" *Id.* Consistent with the discussion above, the *Cordova* court set forth "[s]ome of the factors that we have

found useful when conducting this balancing act [which] include ‘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.’” *Cordova* at 1188, quoting *Weigel v. Broad*, 544 F.3d 1143, 1151-52 (10th Cir. 2008)(citation omitted).

2. *Officer Miller’s Beliefs Were Reasonable*

Officer Miller’s use of force must be analyzed by considering whether his actions were objectively reasonable in light of the facts and circumstances confronting him. Thus, careful and individual consideration of the specific circumstances surrounding and ostensibly causing the use of deadly force must control the analysis of whether the use of force was reasonable.

As mentioned above, Officer Miller is justified in using deadly force when effecting an arrest if he reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape and Officer Miller has probable cause to believe the suspect posed a threat of death or serious bodily injury to the Miller or to others if apprehension was delayed.

Officer Miller was personally familiar with Manseau as a result of interacting with him on a number of prior occasions. That familiarity caused Officer Miller to anticipate certain behavior from Manseau. At the very least, Miller had prior experience with Manseau with which he could compare Manseau’s behavior during the incident. Manseau acted contrary to Miller’s experience and in contrast to his prior interactions. Furthermore, Manseau’s behavior could not be reasonably explained by Officer Miller’s communication to him that he intended to arrest him. As Manseau commented, the arrest was for a misdemeanor warrant. It was not a severe matter that would reasonably cause Manseau to flee or especially cause Manseau to re-arm himself after dropping the gun. Miller was faced with a suspect who behaved very differently on this occasion, and in a way Miller could not explain or justify under the circumstances known to Miller.

Officer Miller knew that Manseau knew that Manseau’s carrying, dropping and picking up the gun were all a felony possession of a weapon by a restricted person. Miller also knew that Manseau knew what the potential state and federal criminal penalties for that crime were. Miller was also shouting commands to stop, drop the gun, etc. In spite of Manseau’s appreciation of his criminal conduct, and in disregard of Miller’s commands, Miller watched as Manseau re-armed himself right in front of Miller.

Also, Manseau re-armed himself with the gun when Miller was in a location without cover or other protection. And Manseau was a step or two away from an area of concealment and cover from which he could have attacked Officer Miller. Left unchecked, Manseau was very quickly escalating a situation which presented a threat of death or serious bodily injury to Miller and perhaps

others in the apartment complex. If Manseau was allowed to go around the corner, it could be too late. Thus, Officer Miller formed a reasonable belief that firing his weapon was necessary. He fired at Manseau prior to Manseau gaining cover and a tactically superior position (rounding the corner). Using deadly force was necessary to cause Manseau's immediate apprehension and prevent Manseau from gaining a tactical advantage over Miller.

Consequently, we conclude Officer Miller's use of deadly force against Manseau was legally justified under Utah Code Ann. § 76-2-404(1)(b)(ii).

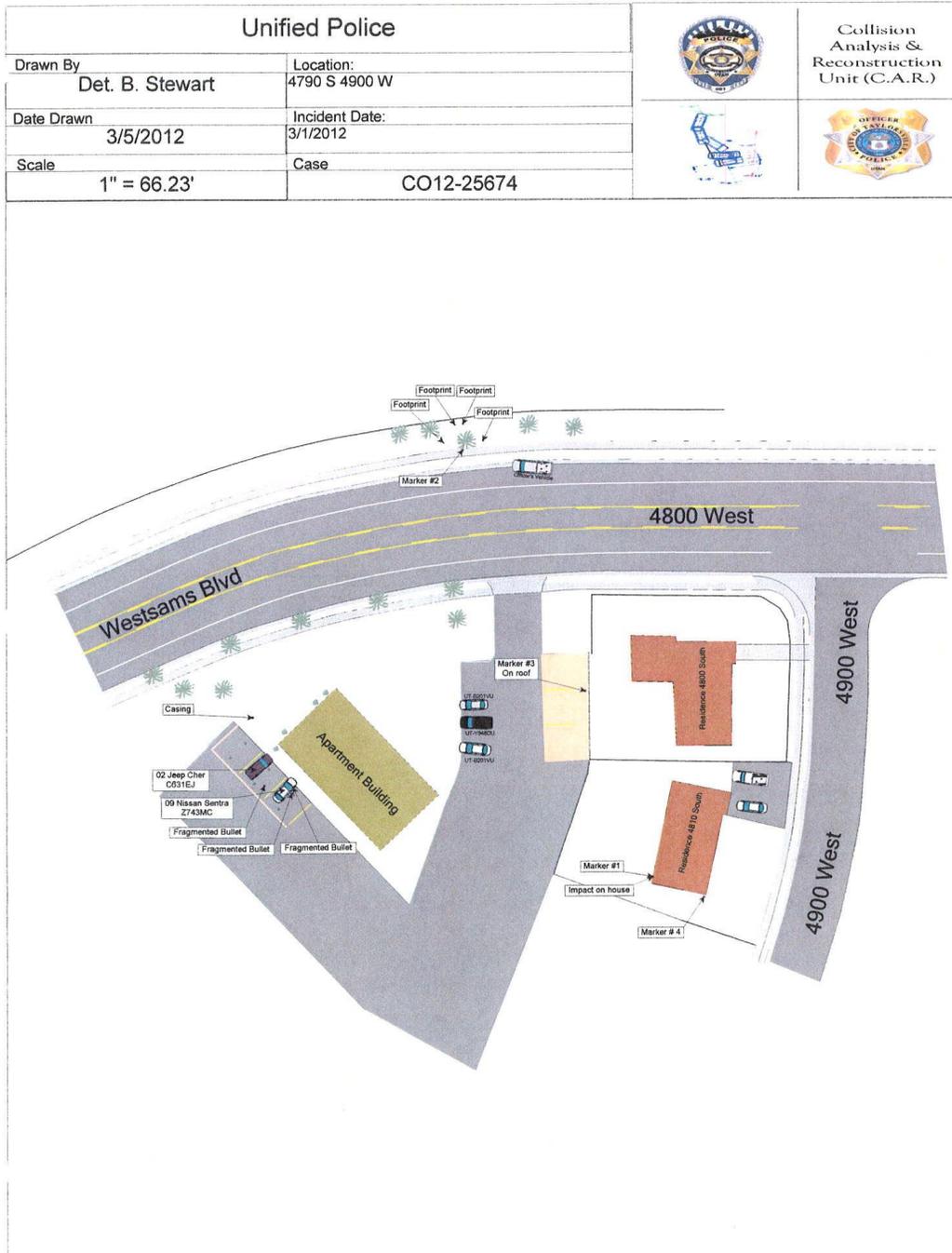
If you have any questions or concerns regarding the determination made in this case, or otherwise wish to discuss the matter, please feel free to contact our office to set up a personal meeting.

Sincerely,

SIM GILL,
Salt Lake County District Attorney

SG/BN/JWH/jh

Attachment A



Attachment B

