



Ralph Chamness
Chief Deputy
Civil Division

SIM GILL
DISTRICT ATTORNEY

Jeffrey William Hall
Chief Deputy
Justice Division

Lisa Ashman
Administrative
Operations

Blake Nakamura
Chief Deputy
Justice Division

Sheriff Rosie Rivera
Unified Police Department
3365 South 900 West
Salt Lake City, UT 84119

Chief Mike Brown
Salt Lake City Police Department
475 South 300 East
Salt Lake City, UT 84111

Via Hand Delivery

October 4, 2017

RE: *SLCPD Officer Fox's Use of Deadly Force*
Incident Location: 1002 South State St., Salt Lake City, Utah
Incident Date: August 13, 2017
UPD Case No.: 2017-130290
SLCPD Case No.: 17-149617
D.A. Case No.: 2017-980

Dear Sheriff Rivera 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”) Officer Fox’s use of deadly force was “justified” under Utah State law.

On August 13, 2017, SLCPD Officer Smith saw a male, later identified as Patrick Harmon, ride his bicycle across all six road lanes and a median on State Street in Salt Lake City, Utah. Officer Smith said he saw that Mr. Harmon didn’t have a required red rear tail light on his bicycle, although it was night. Officer Smith asked the male for identification and the male gave several different names and spellings. Officer Smith asked for backup.

Eventually, Officer Smith discovered Mr. Harmon had active felony warrants (one for aggravated assault) and arrested him as SLCPD Officers Fox and Robinson arrived to help. Mr. Harmon broke away from the officers and ran. The officers followed. As he ran, Mr. Harmon said “I’ll cut you,” and turned and faced the officers with a knife. Officer Fox fired his weapon at Mr. Harmon, killing him.

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

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.

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.

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.

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.

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 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 August 30, 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 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 10:00 p.m. on August 13, 2017, SLCPD Officer Smith was on patrol in Salt Lake City. He saw a man, later identified as Patrick Harmon, ride his bicycle across all six road lanes and a median on State Street. Officer Smith noticed that, although it was dark, Mr. Harmon didn't have a required red rear tail light on his bicycle. Officer Smith stopped the man and asked him for identification. The man gave a couple of different names while Officer Smith tried to make an identification. Officer Smith asked for backup.

SLCPD Officers Fox and Robinson arrived at the traffic stop. Officer Fox walked over to Mr. Harmon and talked to him. Officer Robinson went to Officer Smith in his patrol car and talked to Officer Smith who was running Mr. Harmon for warrants. As they talked, felony arrest warrants (one for aggravated assault) came up on the computer. Officer Smith told Officer Robinson he was going to arrest Mr. Harmon for the warrants.

Officers Smith and Robinson walked to where Officer Fox was talking to Mr. Harmon. Officer Smith told Mr. Harmon he was under arrest for the warrants, and Mr. Harmon pleaded with the officers not to go to jail. The officers took Mr. Harmon's hands and placed them behind his back. As Mr. Harmon's hands went behind his back, Mr. Harmon bolted from the officers and ran. The officers pursued.

As he ran, Mr. Harmon said he was going to cut or stab the officers. Mr. Harmon stopped running and turned to face the officers. Officer Fox later said he saw a knife in Mr. Harmon's hand with a blade open. Officer Fox said he feared Mr. Harmon would cut or stab him

and/or his fellow officers. Officer Fox said he believed his life and the lives of the other officers were in danger. Officer Fox fired his weapon three times at Mr. Harmon. After Mr. Harmon went down, officers handcuffed him and rendered first aid until medical personnel arrived. Mr. Harmon died from the gunshot wounds.

An OICI protocol investigation team arrived and documented the scene, conducted interviewed and performed other investigation tasks. Investigators located and documented a knife with an open blade among the items at the scene. Investigators inspected and documented the conditions of officers' weapons used in the incident. Investigators also reviewed body-worn camera video recordings of the incident.

Officer Fox

On August 22, 2017, OICI protocol investigators interviewed SLCPD Officer Clinton Fox with his attorney present. Officer Fox said that on August 13, 2017, he was on patrol when he heard Officer Smith on the police radio ask for assistance with a pedestrian stop. Officer Fox said he drove to the area and saw Officer Smith's patrol car. Officer Fox said he walked up to a man, later identified as Patrick Harmon and asked Mr. Harmon to step off his bicycle.

Officer Fox said Mr. Harmon seemed emotional and distraught. Officer Fox said Mr. Harmon was talking about getting right with God and doing work for God; Officer Fox said Mr. Harmon said he was trying to take care of his arrest warrant. Officer Fox said Mr. Harmon seemed nervous.

Officer Fox said Officers Smith and Robinson walked over to him and Mr. Harmon. Officer Fox said he saw Officer Smith wearing gloves and inferred that Mr. Harmon was going to jail for his warrants. Officer Fox said he positioned himself to assist Officer Smith with the arrest; Officer Fox said Officer Smith stood on Mr. Harmon's right side and Officer Robinson stood on Mr. Harmon's left side. Officer Fox said Officer Smith told Mr. Harmon he was under arrest for the outstanding warrants and asked Mr. Harmon to remove his backpack. Officer Fox said Mr. Harmon complied.

Officer Fox said the other officers took Mr. Harmon's hands to place him in handcuffs. Officer Fox said as soon as Mr. Harmon's hands went behind his back, Mr. Harmon bolted and ran. Officer Fox said he believed Officer Smith yelled at Mr. Harmon to stop. Officer Fox said he saw Mr. Harmon's hands move to his right pants pocket. Officer Fox said he heard Mr. Harmon say he was going to cut them, or that they (the officers) would get cut. Officer Fox said he quickly realized Officer Robinson was in a dangerous position if Mr. Harmon produced a knife. Officer Fox said he believed Mr. Harmon could have stabbed Officer Robinson.

Officer Fox said Mr. Harmon stopped running, turned and yelled: "I'll fucking stab you." Officer Fox said Mr. Harmon came at the officers with something in his hand. Officer Fox said he was terrified by how close Mr. Harmon was to the officers when Mr. Harmon stopped and turned towards them. Officer Fox said when Mr. Harmon turned towards the officers, Officer Fox saw that Mr. Harmon had an open knife in his hand. Officer Fox said he was afraid Mr.

Harmon was going to stab him and/or the other officers. Officer Fox said he didn't know whether the other officers could see or perceive that Mr. Harmon was armed with an open knife. Officer Fox said he was worried about Officers Smith and Robinson if they tried to go "hands-on" with Mr. Harmon.

Officer Fox said he feared if he didn't immediately use deadly force, Mr. Harmon was going to stab him and/or the other officers. Officer Fox said he remembered he felt like Mr. Harmon was going to stab him. Officer Fox said he aimed his weapon at Mr. Harmon and fired three times.

Officer Fox said that in ten years of law enforcement and two military deployments, it was the scariest situation he had ever been in. Officer Fox said Mr. Harmon immediately gained the "upper hand" when Mr. Harmon produced the open knife as he stopped running and turned to face the officers. Officer Fox said he felt like Mr. Harmon presented a situation from which Officer Fox could not recover.

Officer Smith

On August 14, 2017, protocol investigators interviewed SLCPD Officer Kris Smith. Officer Smith said he was on duty on August 13, 2017 and on patrol when he saw a man on a bicycle riding on State Street. Officer Smith said he saw the man, subsequently identified as Patrick Harmon, ride across all six lanes of travel and across a median on State Street. Officer Smith said it was night, but Mr. Harmon's bicycle did not have a required red tail light. Officer Smith said he stopped Mr. Harmon to discuss the situation.

Officer Smith said he asked the man for his name, and the man gave him a name that had no match in his police computer. Officer Smith said he asked the man for his name a couple more times and each time, the man gave a different name. Officer Smith said he called on the police radio for other officers to assist him. Eventually, Officer Smith said the man said he was Patrick Harmon and Officer Smith found that Mr. Harmon had warrants for his arrest, including a felony warrant for aggravated assault.

Officer Smith said SLCPD Officers Fox and Robinson arrived and made contact with him and Mr. Harmon. Officer Smith said he walked from his patrol car to where Mr. Harmon and the officers were standing. Officer Smith said he told Mr. Harmon that he had warrants and was under arrest. Officer Smith said he reached for his handcuffs and Mr. Harmon started to put his hands behind his back. Officer Smith said that once Mr. Harmon's hands were behind his back, Mr. Harmon turned and ran northbound on the sidewalk. Officer Smith said Mr. Harmon turned quickly and started to run back towards the south. Officer Smith said he drew his Taser.

Officer Smith said he heard Mr. Harmon say "I'm going to cut..." Officer Smith said he saw Mr. Harmon reach towards his pants with his right hand. Officer Smith said he fired his Taser and simultaneously heard a gunshot. Officer Smith said he saw Mr. Harmon go down. Officer Smith said Officer Robinson placed Mr. Harmon in handcuffs and he and the other officers rendered aid until medical personnel arrived.

Officer Robinson

On August 14, 2017, protocol investigators interviewed SLCPD Officer Scott Robinson. Officer Robinson said he was on duty at the police station on August 13, 2017 when he heard Officer Smith on the police radio ask for assistance. Officer Robinson said he and Officer Fox drove to Officer Smith's location and saw Officer Smith's patrol car and a man with a bicycle stopped by the side of the road.

Officer Robinson said he saw Officer Fox talking to the man, later identified as Patrick Harmon. Officer Robinson said Officer Fox asked Mr. Harmon to get off his bicycle. Officer Robinson said he talked to Officer Smith who was running Mr. Harmon for warrants. Officer Robinson said Officer Smith told him that Mr. Harmon had felony warrants and he was going to arrest Mr. Harmon. Officer Robinson said he activated his body worn camera.

Officer Robinson said Officer Smith told Mr. Harmon he was under arrest for the warrants. Officer Robinson said Mr. Harmon pleaded with the officers not to take him to jail. Officer Robinson said one of the officers asked Mr. Harmon to remove his backpack and set it on the ground. Officer Robinson said he held Mr. Harmon's left hand and placed Mr. Harmon's hand behind his back in order to handcuff him. Officer Robinson said Officer Smith took control of both of Mr. Harmon's hands and placed them behind Mr. Harmon's back. Officer Robinson said that when Mr. Harmon's hands went behind his back, Mr. Harmon bolted and ran.

Officer Robinson said he tried to grab Mr. Harmon's clothing to stop him but couldn't. Officer Robinson said he heard Mr. Harmon say: "I stab" or something to that effect; Officer Robinson said he couldn't remember Mr. Harmon's exact words. Officer Robinson said Mr. Harmon turned and ran again and said something about stabbing again.

Officer Robinson said he saw that Mr. Harmon had something in his hand. Officer Robinson said he couldn't tell for sure if it was a knife, but Mr. Harmon appeared to be holding it out towards the officers.

Officer Robinson said he heard a Taser "pop" and three gunshots almost simultaneously. Officer Robinson said he saw Mr. Harmon go down. Officer Robinson said he and the other officers secured Mr. Harmon in handcuffs and rendered first aid until medical personnel arrived to treat Mr. Harmon.

Physical Evidence

All three officers wore body cameras that recorded the incident. OICI protocol investigators reviewed the body-worn camera recordings and presented the recordings and still photographs made from the recordings to the District Attorney for this review. Some of the still photographs are included with this letter as an exhibit.

Officer Smith's body-worn camera recorded Mr. Harmon when he stopped and turned towards the officers with the knife in his hand. Still photographs from Officer Smith recording

are included as Figures 1 and 2. In Figure 2, Mr. Harmon's toes and feet are shown pointing at Officer Fox. Officer Smith's recording also captured Officer Fox's abrupt stop when Mr. Harmon turned towards him with a knife. Figure 3 depicts Officer Fox up on his toes with his back arched away from Mr. Harmon as he fired his weapon.

OICI protocol investigators observed and photographed a knife on the ground near where Mr. Harmon went down. Photographs of the knife are depicted in Figures 4 and 5.

Protocol investigators inspected and documented Officer Fox's handgun and Officer Smith's Taser. Investigators determined that Officer Fox's weapon fired three shots during the incident. Investigators also determined that Officer Smith's Taser was fired. Investigators determined the officers' other weapons were not used in the incident.

DISCUSSION AND CONCLUSION

Justified Use of Deadly Force

Mr. Harmon threatened to stab or cut the officers as they tried to arrest him. While the officers were in very close proximity to Mr. Harmon, he presented an opened knife as he turned towards the officers who were running at him. Officer Fox saw that he and Officers Smith and Robinson were in immediate danger of Mr. Harmon inflicting death or serious bodily injury on them. Officer Fox said he believed Mr. Harmon was going to stab or cut him and/or the other officers.

Officer Fox 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 Officer Fox a legal defense to a criminal prosecution for his use of force. Accordingly, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Officer Fox.

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
enclosure

Photographs



Figure 1: Three still frames from Officer Smith's body-worn camera video recording showing Mr. Harmon's turn towards the officers.



Figure 2: Still frame from Officer Smith's body-worn camera video recording showing Mr. Harmon turning to face the officers.



Figure 3: Two still frames from Officer Smith's body-worn camera video recording.



Figure 4: Still frame from Officer Robinson's body-worn video camera recording showing a knife on the ground.



Figure 5: Photograph from the OICI scene investigation showing a knife on the ground.