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*Via Hand Delivery*

December 5, 2017

RE: *WVCPD Officer Weeks' Use of Deadly Force*  
Incident Location: West Valley City, Utah  
Incident Date: November 7, 2017  
SBI Case No.: 17-INV0556  
D.A. Case No.: 2017-1370

Dear Agent Davis, Sheriff Rivera and Chief Nolen:

The Salt Lake County District Attorney's Office ("D.A.'s Office") operates under Utah State law to review and "screen"<sup>1</sup> 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

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<sup>1</sup> 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.

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 we conclude that West Valley City Police Department (“WVCPD”) Officer use of deadly force was “justified” under Utah State law.

On November 7, 2017, WVCPD Officer Aaron Weeks was off duty in plain clothes when he encountered two juvenile males later identified as A. R and F. D.<sup>2</sup> One of the juveniles pointed a handgun at Officer Weeks and said: “Gimme what you got.” Officer weeks drew his own handgun and fired at the juvenile. The juvenile fired back at Officer Weeks, hitting him in the foot. The juveniles fled to the hospital where they were later arrested.

### 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;

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#### **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.

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<sup>2</sup> Privacy rules governing the involvement of juveniles in the justice system require us to identify these juveniles by their initials, “A. R.” and “F. D.” See, U. C. A. 78A-6-114. WVCPD investigated allegations pertaining to the events surrounding the OICI and A. R.’s and F. D.’s alleged roles therein. Petitions were filed in juvenile court containing allegations relating to some of the juveniles’ alleged conduct in the matter. All persons are presumed innocent unless and until proven guilty or adjudicated in a court of law.

(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 16<sup>3</sup> and Utah Code 17-18a-203<sup>4</sup>, among other legal authority. Pursuant to this authority, the

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<sup>3</sup> **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.

<sup>4</sup> **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"<sup>5</sup> 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 filing<sup>6</sup>. 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.

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<sup>5</sup> 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).

<sup>6</sup> 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 Association<sup>7</sup> 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.

### ***“Justification” as Defense in Utah***

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<sup>7</sup> For instance, some relevant considerations for screening are outlined in *NDAAs 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.

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#### **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.

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 relevant potential criminal charge related to the use of force; 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 under consideration.

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 felony<sup>8</sup>.” *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 or serious bodily injury only if the person reasonably believes that force is necessary to prevent

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<sup>8</sup> For the enumerated “forcible felonies,” see U.C.A. 76-2-402(4)(a), *supra*.

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.<sup>9</sup> *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

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<sup>9</sup> 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.

criminal charges should be filed against the officer. For instance, the evidence available to the District Attorney may not support criminal charges, the case may not have a reasonable likelihood of success at trial, or other reasons may preclude a prosecution. Again, further investigation and consideration may be required to determine whether the use of deadly force warrants criminal charges.

## 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-

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involved critical incident involves multiple investigations.

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

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To comply with state law requiring an outside agency to investigate an OICI, WVCPD 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 November 20, 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 WVCPD 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.

WVCPD Officer Aaron Weeks worked a part-time security job for an apartment complex where he lived in West Valley City, Utah. In the evening on November 7, 2017, Officer Weeks was off duty and at home in his apartment when received a phone call about a possible transient person sleeping in a stairwell at the apartment complex. Officer Weeks went to investigate the matter.

Officer Weeks took his police radio, a pair of handcuffs, and his firearm, a Glock Model 43 handgun and a spare magazine. Officer Weeks was dressed in plain clothes.

Officer Weeks went to the area where the transient person was reported to be but did not see anyone. Officer Weeks walked back to his apartment. As he passed between two apartment buildings, two juveniles walked the opposite direction and passed Officer Weeks. Shortly thereafter, the two juveniles turned around and one said: "Hey!" Officer Weeks turned around and saw the two juveniles running or jogging towards him. Officer Weeks stopped.

When the two juveniles were within a few feet, Officer Weeks saw that one juvenile, later identified as A. R. pointed a handgun at Officer Weeks. The other juvenile, later identified as F. D., stood off to the side. A. R. had his finger on the handgun's slide. A. R. said: "Gimme what you got." A. R.'s finger moved from the slide towards the trigger as Officer Weeks reached behind him and drew his own concealed firearm.

Officer Weeks drew and pointed his weapon at A. R. and fired at him. Officer Weeks withdrew as he fired at A. R. A. R. fired back at Officer Weeks hitting Officer Weeks in the foot. A. R. and F. D. fled the area and went to the hospital where they were both treated for gunshot wounds. A. R. and F. D. were eventually released from the hospital and taken to juvenile detention.

### *Officer Weeks*

On November 10, 2017, OICI protocol investigators interviewed WVCPD Officer Aaron Weeks with his attorney present. Officer Weeks said he was off duty and at home on November 7, 2017 when he received a call about a transient person asleep in a stairwell in the apartment complex. Officer Weeks said he works part-time as a security officer for the apartment complex, although he was not on the job at the time. Officer Weeks said he decided to go check on the situation and, if needed, call an on-duty police officer to address the matter.

Officer Weeks said he was dressed in plain clothes at the time. Officer Weeks said he left the apartment at about 7:05 p.m. and it was dark outside. Officer Weeks said he took his police mobile radio, a pair of handcuffs, and his firearm, a Glock Model 43 handgun and a spare magazine.

Officer Weeks said he went to the area where the transient person was reported to be but did not see anyone. Officer Weeks said he walked back towards his apartment. Officer Weeks said as he passed between two apartment buildings, he saw two juveniles walking in the opposite direction coming towards him. Officer Weeks said the juveniles walked passed him. Officer Weeks said shortly thereafter, he heard one of the juvenile say: "Hey!" Officer Weeks said he turned around and saw the two juveniles running or jogging towards him. Officer Weeks said the two juveniles were wearing hoodies and had their hands in their pockets.

Officer Weeks said when the two juveniles were within a few feet, he saw that one juvenile, later identified as A. R., had a handgun pointed at Officer Weeks. Officer Weeks said the other juvenile, later identified as F. D., stood off to the side. Officer Weeks said he saw that A. R.'s finger was outside the trigger guard on the handgun's slide. Officer Weeks said A. R. said to him: "Gimme what you got."

Officer Weeks said he saw A. R.'s finger move from the slide towards the trigger. Officer Weeks said he thought to himself: "this guy's going to kill me." Officer Weeks said he reached back and drew his own firearm from his inside-the-waistband holster. Officer Weeks said he fired two shots at A. R. and saw at least one of the rounds hit A. R. Officer Weeks said he saw two muzzle flashes from A. R.'s gun and heard what he described as three rounds fired. Officer Weeks said he heard a round buzz past him.

Officer Weeks said he moved towards cover to seek protection from being shot. Officer Weeks said as he moved, he felt a sting in his right foot and realized he had been shot. Officer Weeks said he got to a place of cover and realized his weapon's slide was locked back and his magazine was empty. Officer Weeks said he heard two more rounds fired by the suspect.

Officer Weeks said he got his police radio and notified police dispatchers that he was shot and was down and in distress. Officer Weeks said he notified dispatch of the suspects' description and location and advised them of his location and condition. Officer Weeks said police officers and medical personnel arrived and treated his injuries.

### ***Juveniles***

Protocol investigators interviewed A. R. and F. D. Because A. R. and F. D. face allegations in juvenile court, statements they may have made are not included here.

Police officers working security at Intermountain Medical Center Hospital heard about Officer Weeks being shot in an officer involved shooting and became aware of two juveniles recently admitted to the hospital with gunshot wounds. The officers notified Unified Police Department of Greater Salt Lake ("UPD") detectives who continued their investigation into the shooting. After investigating the matter, UPD detectives presented cases against A. R. and F. D. for their alleged roles in the OICI and petitions were filed in juvenile court.

### ***Physical Evidence***

Officer Weeks was not wearing a body-worn video camera during the OICI. WVCPD officers arriving to assist Officer Weeks and to secure the scene and investigate the incident were wearing body-worn cameras; however, none of those cameras captured any of the OICI and those recordings were not reviewed by our office.

OICI protocol investigators recovered and reviewed the apartment complex's security surveillance camera recordings. While the recordings were made in low light and from some distance away, some of the recordings nevertheless depict some of the OICI, including the involved persons' positions relative to each other and some muzzle flashes from both Officer Weeks' and A. R.'s weapons. The recordings appear to corroborate Officer Weeks' account of the OICI.

The recordings also appear to corroborate Officer Week's statements that A. R. allegedly had a handgun out and ready to fire. One recording appears to show a muzzle flash from Officer Week's weapon and, what appears to be one second or less later, a muzzle flash from A. R.'s alleged handgun. From this recording, it appears highly likely that, rather than A. R. taking the time to react to Officer Weeks by drawing a handgun from concealment and firing the weapon, A. R. allegedly had the weapon out and at least somewhat ready to fire.

Protocol investigators photographed, documented and collected items of physical evidence. Investigators recovered numerous empty (spent) 9mm handgun ammunition cartridges. Investigators also recovered a 9mm handgun with blood on it believed to be the weapon that A. R. allegedly used in the OICI.

Protocol investigators also photographed and documents two trails of blood: one consistent with Officer Weeks' travel and the other consistent with the juvenile's alleged movements.

Investigators inspected and downloaded Officer Weeks' handgun and determined that he fired eight rounds from his handgun.

## **DISCUSSION AND CONCLUSION**

### ***Justified Use of Deadly Force***

A. R. allegedly unlawfully threatened Officer Weeks with deadly force. Officer Weeks said he feared A. R. was going to kill him as A. R. allegedly pointed a handgun at Officer Weeks. When Officer Weeks saw A. R. allegedly move his finger towards the handgun's trigger, Officer Weeks reasonably believed that deadly force was necessary to prevent death or serious bodily injury to himself. As such, we determined that Officer Weeks' use of deadly force against A. R. was "justified" under Utah State law and affords Officer Weeks a legal defense against criminal charges. Accordingly, we decline to file criminal charges against Officer Weeks.

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,

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SIM GILL,  
Salt Lake County District Attorney

SG/JWH/jh