



**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

Chief Lee W. Russo  
 West Valley Police Department  
 3600 South Constitution Blvd.  
 West Valley City, UT 84119

Chief Doug Diamond  
 West Jordan Police Department  
 8040 South Redwood Rd.  
 West Jordan, UT 84088

*Via Hand Delivery*

October 13, 2015

RE: *WJPD Sgt. Mitch Soper's Use of Deadly Force*  
 Incident Location: 9493 South Alane Hollow Dr., West Jordan, UT  
 Incident Date: August 26, 2015  
 WVPD Case No.: 15I045040  
 WJPD Case No.: 15H012701  
 D.A. Case No.: 2015-

Dear Chief Russo and Chief Diamond:

The Salt Lake County District Attorney's Office ("D.A.'s Office") operates under Utah State law and 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 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, and if so why, the use of deadly force in the above referenced OICI was "justified." As outlined more fully below, the D.A.'s Office determined West Jordan Police Department ("WJPD") Sgt. Mitch Soper's use of deadly force was "justified" under Utah State law.

On August 26, 2015, WJPD officers responded to the Lambrose home in West Jordan on a report of a suicidal person. Upon arriving, officers contacted Kyle Lambrose who would not come out of the house or let his wife and minor children leave the home. Sgt. Soper entered a second story widow to try to rescue the children from the home. While entering the bedroom,

Sgt. Soper encountered Mr. Lambrose who was armed. Mr. Lambrose pointed his weapon at Sgt. Soper and the children and retreated down a hallway. Mr. Lambrose fired his weapon (later discovered to be at his own head) whereupon Sgt. Soper returned fire. As discussed in more detail below, the Utah Medical Examiner determined that Mr. Lambrose's self-inflicted gunshot wound was the cause of his death.

### UTAH STATE LAW

As part of the review and "justification" 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;

...

**76-2-404. 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.

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### *Use of Deadly Force and “Justification as Defense” in Utah*

Reviewing a use of deadly force that results in a person’s death falls within the statutory obligation imposed on the District Attorney to determine whether a decedent died by unlawful means.<sup>1</sup> The District Attorney also determines whether acts causing a person’s death warrant prosecution. A District Attorney determination considers whether a person who caused the death of another nevertheless has a legal defense to prosecution. If a person who caused the death of another has a legal defense to ostensible criminal charges related thereto, no charges can be brought against that person.

By operation of agreement and pursuant to the D. A.’s Office to screen potential criminal charges against persons who may have violated the law, the D.A.’s Office also reviews the use of deadly force which did not cause a person’s death. This use of deadly force, whether resulting in the death of another or not, is the subject of recent legislation enacted in Utah and is discussed in more detail below.

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 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 could include attempted criminal homicide, murder; aggravated assault; or other violations 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 felony<sup>2</sup>.” *Id.*

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**1 U.C.A. 26-4-21. Authority of county attorney or district attorney to subpoena witnesses and compel testimony--Determination if decedent died by unlawful means.**

...  
(2) Upon review of all facts and testimony taken concerning the death of a person, the district attorney or county attorney having criminal jurisdiction shall determine if the decedent died by unlawful means and shall also determine if criminal prosecution shall be instituted.

**2 U.C.A. 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

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. 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 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). 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."

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 if any. 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 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

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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."

investigation and consideration may be required to determine whether the use of deadly force warrants criminal charges.

As laid out in more detail below, because we conclude that Sgt. Soper's use of deadly force conformed to the relevant statutes outlined above, we therefore conclude that the legal defense of "justification" applies to the facts set forth herein and we will not file criminal charges against Sgt. Soper related to his use of deadly force.

## 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.

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To comply with state law requiring an outside agency to investigate an OICI, WJPD asked West Valley Police Department (“WVPD”) to investigate this matter together with investigators from the D.A.’s Office.

On September 11, 2015, WVPD and D.A.’s Office investigators presented the investigation’s findings to the District Attorney for review and this opinion letter. During the presentation of the investigation findings, both WVPD personnel and D.A.’s Office investigators reported that WJPD 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.

On August 26, 2015, Andrea Lambrose received several phone calls and text messages from her husband, Kyle Lambrose. Ms. Lambrose was at work and did not immediately respond to Mr. Lambrose’s efforts to contact her, although Mr. Lambrose’s text messages were concerning to her. Ms. Lambrose subsequently told OICI protocol investigators that Mr. Lambrose’s texts and voicemails threatened that he was going to kill himself among other things.

Ms. Lambrose left work in the afternoon for an appointment. While en-route to the appointment, Mr. Lambrose called Ms. Lambrose and told Ms. Lambrose that she had better come home and get the kids. Ms. Lambrose said she believed Mr. Lambrose was going to kill their children and himself. Ms. Lambrose said she began to drive home. While on her way home, Ms. Lambrose tried to call neighbors and friends to ask them to go to the family home and check on Mr. Lambrose and the children. Ms. Lambrose could not reach anyone. Ms. Lambrose said she called the children’s day care and was told that Mr. Lambrose had picked their children up. Ms. Lambrose said she attempted to call Mr. Lambrose but he did not answer, and she said she thought he may have already killed their children and himself. Ms. Lambrose called 911 and reported that she was concerned that Mr. Lambrose may hurt himself and/or the children in the home. Ms. Lambrose told 911 that Mr. Lambrose had been talking about suicide recently and had been depressed. Ms. Lambrose told 911 that Mr. Lambrose had guns in the home. The 911 operator told Ms. Lambrose not to enter the home when she arrived, but Ms. Lambrose did anyway.

911 dispatched WJPD police officers to the home on a suicidal person call and advised that the subject may have barricaded himself and was possibly not letting his wife or children leave the home. 911 advised arriving officers that the subject had weapons inside the home. Several WJPD officers responded to the home. WJPD Sgt. Mitch Soper was working at the police station when he heard the call dispatched on the radio. Sgt. Soper had recently served on the SWAT Team and has had extensive experience in SWAT and hostage rescue situations. Sgt. Soper felt that he could be of assistance at the scene and headed to the home.

Sgt. Soper arrived at the scene and saw police officers on scene talking to Mr. Lambrose who could periodically be seen standing in an upstairs bedroom window. Sgt. Soper could also see minor children in a different bedroom window located down an upstairs hallway to the south of Mr. Lambrose's location.

Sgt. Soper and WJPD Sgt. Bruce Shepherd used a ladder to ascend onto the garage roof in order to gain access to the children's bedroom and evacuate the children. As Sgt. Soper and Sgt. Shepherd stood on the garage roof next to the children's bedroom open window, they tried to get the children to exit through the window but the children would not leave. Sgt. Soper began to remove the screen covering the bedroom window; as he did so, the family dog that was with the children began to bark. Sgt. Soper heard Mr. Lambrose stop talking with the other officers outside. Sgt. Soper said he heard Mr. Lambrose walking down the hallway towards the children's bedroom. Sgt. Soper entered the bedroom through the window.

As Sgt. Soper entered the room, Mr. Lambrose came down the hallway and entered the children's bedroom. Sgt. Soper saw that Mr. Lambrose was armed with a pistol that he had pointed at his children. Mr. Lambrose saw Sgt. Soper and pointed his weapon at Sgt. Soper while backing up in the hallway. Sgt. Soper brought his shotgun up to aim at Mr. Lambrose. While doing so, Sgt. Soper heard a gunshot and saw the flash from the muzzle blast. Sgt. Soper fired his shotgun at Mr. Lambrose, hitting him several times.

#### ***Sgt. Soper's Interview***

OICI protocol investigators interviewed Sgt. Soper with his legal counsel present. Sgt. Soper said that he was at work on August 26, 2015 when he heard a radio dispatch requesting officers respond to a suicidal person who had children in the home. Police radio dispatchers advised that the subject was armed and had weapons in the home.

Sgt. Soper said he arrived at the home and could see minor children in an upstairs bedroom window. Sgt. Soper said he could see the children pressed up against the window and Sgt. Soper said it appeared to him as if Mr. Lambrose was preventing them from leaving. Sgt. Soper said he wanted to evacuate the children. So he said he and Sgt. Shepherd ascended a ladder and got on to the roof of the garage to access the second story bedroom window.

Sgt. Soper said he asked the children to exit through the open window but they would not leave. He said began to remove the screen covering the window at which time the dog with the

children began to bark. Sgt. Soper said he heard Mr. Lambrose coming down the hallway towards the children. Sgt. Soper said he decided to put himself between Mr. Lambrose and the children; Sgt. Soper said that he feared that Mr. Lambrose was on his way to harm or kill the children, so Sgt. Soper said he decided to quickly place himself between Mr. Lambrose and the children to protect them.

Sgt. Soper said that Mr. Lambrose came into the room with Mr. Lambrose's "gun up;" Sgt. Soper said Mr. Lambrose seemed surprised that Sgt. Soper was entering the room from the window. Sgt. Soper said that he pointed his shotgun at Mr. Lambrose when Mr. Lambrose entered the room. Sgt. Soper said that Mr. Lambrose quickly withdrew from the room. Sgt. Soper said he immediately heard a shot from Mr. Lambrose and saw the muzzle flash from Mr. Lambrose's weapon. Sgt. Soper said that when Mr. Lambrose fired his gun, Sgt. Soper believed that Mr. Lambrose was shooting at the children. Sgt. Soper said he immediately fired four<sup>3</sup> shots at Mr. Lambrose. Sgt. Soper said he fired his weapon at Mr. Lambrose because he believed Mr. Lambrose was shooting at the children and at him. After the children were evacuated from the home, and Sgt. Soper could see that the children were unharmed, Sgt. Soper said he inspected himself to see whether Mr. Lambrose had shot him.

### *Physical Evidence*

OICI investigators inspected and documented several items of physical evidence at the scene. Investigators inspected and documented Mr. Lambrose's several weapons he apparently made ready (loaded) and stored in the upstairs hallway. Investigators also recovered an empty (spent) cartridge from Mr. Lambrose's handgun. Investigators also collected five empty (spent) shotgun shells from Sgt. Soper's weapon.

OICI investigators recovered and inspected video recordings of the some of the event from officers who were outside the home and who were wearing body cameras. Neither Sgt. Soper nor Sgt. Shepherd were wearing body cameras and no video recording of the OICI itself is known to exist.

OICI investigators discussed the results of the Utah Office of the Medical Examiner's autopsy. The Medical Examiner determined that when Mr. Lambrose fired his own weapon it was directed at his head and the gunshot wound he received from his own weapon was the cause of his death. Medical Examiner also determined that the gunshot wounds to Mr. Lambrose by Sgt. Soper struck Mr. Lambrose after Mr. Lambrose's own shot was fired, although the injuries were nearly simultaneous. Nevertheless, the Medical Examiner concluded that Mr. Lambrose's shot killed him and determined that the cause of Mr. Lambrose's death was suicide.

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<sup>3</sup> The subsequent OICI protocol investigation revealed that Sgt. Soper in fact fired five shots. In his protocol interview, Sgt. Soper acknowledged that he may have fired five times.

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## DISCUSSION AND CONCLUSION

### *Sgt. Soper Reasonably Believed Deadly Force was Necessary.*

Sgt. Soper arrived at a scene that he and other police officers understood to be a reportedly suicidal person apparently holding his children and wife hostage or not letting them leave the home. Police officers attempted to negotiate a peaceful resolution with Mr. Lambrose, but he repeatedly refused to cooperate, to obey lawful orders, or to bring the situation to a peaceful conclusion. Instead, Mr. Lambrose entered the room where his children were while he was armed with a handgun and pointed the weapon at Sgt. Soper and the children.

In his interview, Sgt. Soper said that he saw Mr. Lambrose enter the room with Mr. Lambrose's weapon pointed in the children's direction. Sgt. Soper said he believed Mr. Lambrose was on his way in to the room to kill the children. In this case, Mr. Lambrose's actions up to that point apparently demonstrated his unwillingness to conclude the situation in a peaceful manner. Instead, to Sgt. Soper, Mr. Lambrose presented an imminent, unlawful threat of death or serious bodily injury to the children and possible Sgt. Soper as well. After he entered the bedroom with his weapon pointed at the children, Mr. Lambrose fired his gun. Sgt. Soper said he believed Mr. Lambrose was shooting at the children. Mr. Lambrose's actions leading up to and during the time he came into the room armed and fired made Sgt. Soper's belief that deadly force was necessary to prevent death or serious bodily injury reasonable.

We believe Sgt. Soper's use of deadly force against Mr. Lambrose was reasonably necessary to prevent the children's potential death or serious bodily injury as a result of Mr. Lambrose's actions. As such, Sgt. Soper's use of deadly force was "justified" under Utah State law, and provides Sgt. Soper a legal defense to a criminal prosecution. Accordingly, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Sgt. Soper.

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