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Via Hand Delivery

September 21, 2016

RE: *UPD Officers Bennett's, Reyes' and Clark's Use of Deadly Force*
Incident Location: 4303 South, 730 East, Salt Lake City, Utah
Incident Date: April 27, 2016
WVCPD Case No.: 16I018461
UPD Case No.: 2016-61939
D.A. Case No.: 2016-1556

Dear Chief Russo and Sheriff Winder:

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 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 Unified Police Department of Greater Salt Lake (“UPD”) Det. Bennett’s, Sgt. Reyes’ and Det. Clark’s use of deadly force was “justified” under Utah State law.

On April 27, 2016, law enforcement personnel served a search warrant to find and arrest David Shane Anderson. Officers encountered Mr. Anderson hiding in a basement closet. UPD K-9 Officer Lovato sent his police service dog Aldo into the closet to secure Mr. Anderson. Mr. Anderson fired two rounds, one which struck Aldo, fatally wounding him. UPD Officers returned fire; some officers later reported they observed Mr. Anderson firing at officers through sheetrock walls between Mr. Anderson and other officers. As discussed in more detail below, UPD Det. Bennett, Sgt. Reyes and Det. Clark returned fire at Mr. Anderson and killed 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 D.A.'s Office is responsible for determining whether a person's actions (in this case, whether a law enforcement officer's use of deadly force) violates a criminal statute (Utah State law) and if so, whether and to what extent that person should be charged with a crime.

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

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

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

- (1) is a public prosecutor for the county; and
- (2) shall perform each public prosecutor duty in accordance with this chapter or as otherwise required by law.

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

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

Legal Standards

A case must satisfy legal standards before a prosecutor files criminal charges. Among the legal standards to file a case is the requirement that facts show "probable cause" to believe that offense was committed and the accused committed the offense. *See, e.g.*, Utah R. Crim. 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—is treated fairly, honorably and respectfully.

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

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

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

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

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

“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.

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.

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 the 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. 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.”

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

As mentioned above, U.C.A. 76-4-202 and 404 constitute legal defenses to potential criminal charges. Although the 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 context⁸. *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.*; see, *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1984) (the question is "whether the totality of the circumstances justify[s] a particular sort of . . . seizure").

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

As laid out in more detail below, we conclude that Det. Bennett's, Sgt. Reyes' and Det. Clark's use of deadly force conformed to the relevant statutes outlined above. We therefore

⁸ The issue addressed 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.

conclude that the legal defense of “justification” applies to the facts set forth herein, and we will not file criminal charges against Det. Bennett, Sgt. Reyes or Det. Clark for their use of deadly force against Mr. Anderson.

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, UPD 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 July 05, 2016, 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 UPD 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 April 22, 2016, UPD Sgt. Ricketts responded to a Holiday Oil gas station at 6189 South 3200 West on a report of a suspicious male asleep in the driver seat of a vehicle. Sgt. Ricketts said he approached the vehicle and identified the male as David Shane Anderson. Sgt. Ricketts said he went back to his patrol car to conduct a records check on Mr. Anderson and while checking the records, heard Mr. Anderson's vehicle engine revving. Sgt. Ricketts said Mr. Anderson's car pulled forward and then rapidly backed up, ramming Sgt. Ricketts patrol vehicle. Sgt. Ricketts said Mr. Anderson fled the scene at a high rate of speed and almost hit four youth in a school crosswalk. Sgt. Ricketts said he did not pursue Mr. Anderson due to public safety concerns and unsafe conditions.

UPD police detectives and officers opened a criminal case against Mr. Anderson. The case was assigned to UPD Detective Kresdon Bennett and UPD's Taylorsville Street Crimes Unit. Over the next several days, detectives gathered information about Mr. Anderson and evidence relating to his behavior on April 22, 2016. Detectives also obtained information about outstanding arrest warrants for Mr. Anderson. A confidential source helped UPD personnel obtain information about Mr. Anderson's location; the source also told police that Mr. Anderson had made the statement that he was not going to go back to jail if contacted by law enforcement. The police learned that Mr. Anderson was probably at a home located at 4303 South 730 East in Salt Lake City, Utah. Police obtained a warrant.

On April 27, 2016, police officers from the UPD and the Utah County Major Crimes Task Force responded to 4303 South 730 East. Police went to the home to serve a search warrant to locate and arrest Mr. Anderson for aggravated assault and felony fleeing that allegedly occurred on April 22, 2016.

Police arrived at the house and made contact with the homeowner, GP. GP told the police that her son, CB, CB's girlfriend, AS, and their friend BB were in the home at that time. GP also told police that Mr. Anderson had been in the house earlier but she did not know if Mr. Anderson was still there. The police officers entered the residence where they made contact with a male exiting the basement. Police identified the male as BB. BB told the police that Mr. Anderson was in the basement.

Police officers moved towards the basement and announced their presence several times. They ordered Mr. Anderson to make himself known and to come out of the basement. Police received no response. The officers decided to use UPD police service dog Aldo to clear the basement. Five police officers entered the basement with Aldo.

As Aldo cleared the basement, he located Mr. Anderson in a bedroom closet. Mr. Anderson fired a handgun into Aldo, fatally wounding him. The police officers returned fire and tactically retreated from the basement, carrying Aldo who was dying from the gunshot wound. The police officers notified dispatchers that shots had been fired, and the UPD SWAT team arrived at the home. The SWAT team deployed chemical munitions and entered the basement where they found Mr. Anderson alive with a gunshot wound to the head. Mr. Anderson was transported to the hospital where he died from his wound on May 2, 2016.

Officer Lovato

OICI protocol investigators interviewed UPD Officer Luis Lovato. Officer Lovato said he was working his assigned regular shift on April 27, 2016, when he was requested to assist other UPD officers on a search warrant in the Millcreek area. Officer Lovato said he, along with other members of his unit, attended a warrant briefing that evening. After the briefing, Officer Lovato said the officers relocated to a residence at 4303 South 730 East. Officer Lovato said the warrant was for the person of David Shane Anderson.

Officer Lovato said he deployed his police service dog Aldo and he and Aldo were part of the initial approach of the residence. Officer Lovato said the officers encountered a female in the carport (later identified as GP), after which Officer Lovato said he made his way to the backyard of the residence.

Officer Lovato said he heard the doors of the home open and a commotion in the front area of the home. Officer Lovato said he heard dogs come out of the house and was concerned about encountering a dog in the backyard. Officer Lovato said he heard detectives announce their presence and yell "search warrant" over thirty times.

Officer Lovato said he saw the other detectives get another male out from the residence. Officer Lovato said he received information from other officers that Mr. Anderson was in the basement and he was by himself. Officer Lovato said he and Aldo entered the home and stationed at the top of the stairs leading to the basement. Officer Lovato said he gave specific commands to the downstairs area. Following the commands, Officer Lovato said he deployed

Aldo on his long lead and asked Sgt. Reyes to accompany and cover Officer Lovato as they started to clear the basement.

Officer Lovato said he was unable to have his weapon out while handling Aldo. Officer Lovato said he had Aldo clear the utility room in the basement located to his left and that he also did a "quick clear" of the utility room. Officer Lovato said he asked Sgt. Reyes to do a "hard clear" of the utility room and continued to have Aldo search an open bedroom area directly in front of Officer Lovato. Officer Lovato said he saw Aldo indicate on an empty shoe on the side of the bed.

As Aldo cleared the basement bedroom, Officer Lovato said he saw Aldo enter the bedroom closet and start to work his way through a pile of clothing on the floor of the closet. Officer Lovato said he saw Aldo bite something. Officer Lovato said he reached down and grabbed Aldo's harness with the intention of dragging the suspect out of the closet and to an area where the suspect could be safely restrained. Officer Lovato said he heard what he perceived to be a balloon pop as he began to drag Aldo and the suspect out of the closet. Officer Lovato said he heard a second pop and third pop and said he then recognized these sounds to be gunfire. Officer Lovato said he pulled Aldo out from the closet towards Officer Lovato's chest and dove back towards Sgt. Reyes in the utility room doorway because Officer Lovato had no place else to go. Officer Lovato said he landed on top of Aldo and covered him leaving his back and legs exposed to the suspect in the closet area.

Officer Lovato said he expected to start "taking rounds" himself. Officer Lovato said he saw a "whole bunch" of blood and said he knew it was coming from Aldo. Officer Lovato said that there were a "bunch" of gunshots and when a "lull" occurred he heard someone say "we're backing out." Officer Lovato said that he needed to get his dog out and he jumped up, grabbed Aldo by the harness and ran up the stairs. Officer Lovato said he removed Aldo from the immediate scene and started to render medical assistance.

Detective Bennett

OICI protocol investigators interviewed UPD Detective Kresdon Bennett. Det. Bennett said that he and Detectives Clark and Lovendaal began investigating the whereabouts of Mr. Anderson, who was wanted for an aggravated assault in which he rammed a police vehicle while fleeing from a traffic stop. Det. Bennett said that they obtained information sufficient to obtain a search warrant for the address of occurrence.

Det. Bennett said that on April 27, 2016, officers gathered for a briefing about the warrant and went to the home. Det. Bennett said that there were officers at both the front and side door of the residence and commands were being given for anybody in the residence to identify themselves and come out because they had a search warrant. Det. Bennett said the officers encountered a female in the carport who informed them that Mr. Anderson, her son CB, his girlfriend, and another male were all inside the house.

Det. Bennett said that after twenty minutes of commands and announcements, no one inside the house responded. Det. Bennett said the officers entered the residence and cleared the main level and took up positions at stairs inside the home. Det. Bennett said officers issued commands again for approximately fifteen to twenty minutes, after which a male exited from the basement who was then taken to custody. Det. Bennett said the male informed officers that Mr. Anderson was inside the home in the basement and stated he did not know of any weapons that would be accessible to Mr. Anderson.

Det. Bennett said that a decision was made to send a police service dog into the basement to take Mr. Anderson into custody. Det. Bennett said that Officer Lovato and his police service dog came to the stairwell leading into the basement and began issuing commands: "this is the Unified Police Department with a police service dog; if you're down there notify us or you may be bitten by a dog." Det. Bennett said this command was issued several times but no one in the basement responded.

Det. Bennett said that after receiving no response from anyone in the basement, they began to descend down the stairwell into the basement; Det. Bennett said his assignment was to cover Officer Lovato and his police service dog.

Det. Bennett said that he remained on the stairs and observed the police service dog clear the utility room to the left and then immediately after that, Det. Clark and Sgt. Reyes entered the room to do a secondary clearing. Det. Bennett said that he saw the police service dog clear the main portion of the basement where there was a bed. Det. Bennett said that he saw police service dog Aldo go into the closet with Officer Lovato standing next to him. Det. Bennett said he heard three to four muffled pops and heard Officer Lovato say: "oh shit," and "shots fired!"

Det. Bennett said that he saw blood coming from Aldo and saw debris or dust coming from the closet area where Mr. Anderson was. Det. Bennett said he saw Officer Lovato near the closet where gunfire was occurring. Det. Bennett said at that point he feared for Officer Lovato's, Det. Clark's and Sgt. Reyes' lives. Det. Bennett said he could still hear gunfire and see dust coming from the closet area going towards Officer Lovato. Det. Bennett said based on Aldo's last position when the gunfire started, and believing the suspect was behind the wall and inside the closet, Det. Bennett began firing into the closet through the wall to stop the threat. Det. Bennett said that he believed he fired four to six rounds and then saw Officer Lovato get up off of the ground carrying Aldo; Det. Bennett said Officer Lovato ran past him and said the dog was hit.

Det. Bennett said he heard two additional shots that he believed were coming from within the closet, so Det. Bennett said he began firing into the closet again to provide cover fire and told Det. Clark and Sgt. Reyes to get out. Det. Bennett said that he doesn't remember who went up first, but he saw that Det. Clark and Sgt. Reyes were able to get past him and back up the stairs. Det. Bennett said he remained on the stairs coving the closet until someone grabbed him by the back of his tactical vest and pulled him up the stairs. Det. Bennett said based upon his experience and training and the circumstances of the moment, he believes Mr. Anderson was waiting in ambush, trying to kill them.

Sergeant Reyes

OICI protocol investigators interviewed UPD Sgt. Chad Reyes. Sgt. Reyes said he and his unit responded to a request from UPD Sgt. Miller to assist on a search warrant for a wanted suspect. Sgt. Reyes said he responded to the area and attended a briefing with his police service dog and the Taylorsville Unit. Following the briefing, Sgt. Reyes said they deployed with the detectives at the residence in the Millcreek area. Sgt. Reyes said he deployed his police service dog and assisted with containment of the residence.

On approach of the residence, Sgt. Reyes said they encountered a female in the carport. Sgt. Reyes said the detectives breeched the doors to the residence and he moved to the front area of the yard. Sgt. Reyes said there were two dogs in the home and they were aggressive towards his police service dog. Sgt. Reyes said after they were able to gain control over the dogs, detectives had to breach the front door a second time because someone had apparently barricaded the door while the officers dealt with the dogs.

Sgt. Reyes said officers started to give commands and announcements into the residence. Sgt. Reyes said a younger male exited the house and told officers that there was a male in the basement and an additional male and female upstairs. Sgt. Reyes said both the female encountered in the carport and this male coming from the home stated Mr. Anderson was in the basement.

Sgt. Reyes said police gave more commands into the residence, but no one else came out. At this point, Sgt. Reyes said Sgt. Miller asked Sgt. Reyes if officers could clear the residence with a police service dog. Sgt. Reyes said that because of the history of the suspect and the information they had, they agreed to clear the rest of the home with a police service dog. Sgt. Reyes said they decided they would search the downstairs (basement) area for the suspect first.

Sgt. Reyes said Officer Lovato placed his police service dog Aldo at the top of the stairs to the basement and gave commands to anyone in the basement that a police dog would be deployed. Sgt. Reyes said there was no response from the basement and Officer Lovato gave another set of warnings. After there was no response again, Sgt. Reyes said Officer Lovato gave Aldo the "search" command.

Sgt. Reyes said he went into the basement with Officer Lovato and Aldo. Sgt. Reyes said at the bottom of the basement stairs they encountered a utility washroom on the left first and an open bedroom with a closed door to the right. Sgt. Reyes said Aldo and Officer Lovato performed a "soft clear" of the utility room and then asked him to do a "hard clear" of the utility room. Sgt. Reyes said he saw Officer Lovato enter the basement bedroom out of the corner of his eye. Sgt. Reyes said he saw Aldo jump onto the bed and as he lost sight of Aldo he heard one "pop" that definitely sounded like a gunshot. Sgt. Reyes said there was a pause and then he heard two more successive rounds or gunshots. Sgt. Reyes said he heard Officer Lovato yell "shots fired." Sgt. Reyes said he thought the suspect was firing a weapon in the room; he said he directed his fire towards the closet when Officer Lovato told Sgt. Reyes the suspect was in the

closet. Sgt. Reyes said he believed the suspect was going to either “finish off” Officer Lovato or engage the rest of the officers.

Sgt. Reyes said he remembered in the briefing that Mr. Anderson had apparently stated he would not go back to jail. Sgt. Reyes said when he saw the bullets “coming through the walls” Sgt. Reyes believed Mr. Anderson was intent on “going out with a bang.” Sgt. Reyes said he started shooting at the back of the room and intentionally angled his shots down in case the suspect was crouched behind the bed or advancing out of the room. Sgt. Reyes said eventually the gunfire stopped. Sgt. Reyes said he heard Officer Lovato say Aldo had been hit; Sgt. Reyes said he saw a lot of blood coming from Aldo. Sgt. Reyes said he asked Officer Lovato if he had been hit and they decided to evacuate Aldo. Sgt. Reyes said that Det. Clark was still sitting in the basement room and he decided to provide “cover fire” for Officer Lovato as Officer Lovato evacuated his police service dog from the basement.

Sgt. Reyes said he remembered that as Officer Lovato ran out of the room, he stated that “he [Mr. Anderson] is in the closet.” Sgt. Reyes said he provided cover fire and Officer Lovato exited the room and went up the stairs holding Aldo. Sgt. Reyes said that the officers on the stairs yelled to him and Det. Clark: “we’ve got you, come out.” Sgt. Reyes said that Det. Clark left the basement first and then Sgt. Reyes evacuated up the stairs. Sgt. Reyes said that as he left the room, he fired an additional two rounds towards the closet.

Sgt. Reyes recounted the shooting of Salt Lake County Sheriff’s Deputy Mike Welker and how he was shot through a wall. Sgt. Reyes said that this was going through his mind when he was in the utility room and felt that the suspect had waited to ambush an officer and was waiting again to take out another officer.

Detective Clark

UPD Det. Clark provided a written statement to OICI protocol investigators. Relevant portions are set forth below.

On 04/27/2016, ... I arrived in the area around 18:45 hours, and relieved Sergeant Miller of his surveillance spot on 4255 S near 800 E. I continued to hold surveillance on 4255 S and disseminate observations over the radio. I heard Detective Bennett announce over the air that a warrant had been approved for the residence [...].

I continued to hold surveillance at my position while Sergeant Miller ordered assisting officers and detectives to assemble at a predetermined location to conduct a briefing and operation plan. Sometime around 22:00 hours, I heard Sergeant Miller announce that the operation team was on the way to the residence from the staging location. I observed all involved officers park on 4255 S west of 730 E. Officers approached the house from the north, and I exited my truck and put on a Unified Police “raid jacket” identifier. I fell in behind the rest of the officers and arrived at the property line as officers made contact with a female – later identified as the home owner – in the driveway. Shortly after, I observed and heard officers at the front door knock and make announcements of “Police! Search Warrant!” in clear and loud voices.

Officers breached the door with a ram shortly after and held at the threshold. I had been walking on 730 E near the end of the target driveway when I observed this. A large and aggressive dog exited the front door after it was breached and began to charge and bark aggressively at officers. I heard the female homeowner tell officers in the driveway that David Anderson, her son, and several other people were inside the house. I walked down the driveway passed the home owner and held cover on the man-door leading from the driveway into the south side of the house under the car port while officers cleared an enclosed area at the east end of the driveway under the car port (just off to my right from the man-door).

I approached the man-door and found it was unlocked. I opened the door and held at the threshold with Detective Josh Workman as my cover. A second dog emerged from this door and began to bark at officers and run around the driveway. This dog did not appear as aggressive as the first dog and officers just let it run around the driveway area and bark. Sergeant Miller approached Detective Workman and I at the man-door, and Detective Miller and I both made clear announcements from this door into the interior. I made at least three loud announcements similar to, "This is the Unified Police Department! We have a search warrant for the house! All occupants need to exit the house with hands up! This is the only way we can guarantee your safety! Exit the residence now!" I continued to give similar announcements for approximately 5-10 more minutes with no response. The homeowner and officers were successfully able to secure the first dog that emerged from the house into a car parked in the driveway under the car port while I continued to hold cover on the man-door.

...

I made announcements continuously for approximately 10 minutes with no response. I heard over the air that officers at the front of the house could see the majority of the main level from the front door and they were going to start a slow, methodical search to the stairwells. I held my position at the threshold of the man-door with Detective Josh Workman. I could see the stairwells leading upstairs and to the basement from my position. The stairwells were about 10 feet down the hallway and to the right from the man-door. When officers inside the house reached the stairwells, I entered the house through the man-door and joined them and held cover on the stairs leading to the basement. Detective Bennett and I held cover on the basement stairwell facing down the stairs. Officers continued to give announcements from the base/top of the stairs for any occupants of the house to make their presence known and exit with their hands up. After approximately five minutes of announcements from the stairs, I heard a male call out from the basement. Detective Bennett observed the male first and began to give him orders to come up the stairs. The male was compliant and placed into custody after passing Detective Bennett and I. I did not see who placed him into custody because Detective Bennett and I continued to hold cover on the stairwell.

I heard Sergeant Miller ask the male if anybody else was in the basement. The male denied there was anybody else, but changed his story after further questioning and said David Anderson was indeed in the basement. I heard Sergeant Miller ask the male if David was armed or had access to any guns. I heard the male tell Sergeant Miller that David may have a BB gun

with him. The male emphatically denied David was armed with a real gun. Sergeant Miller made an announcement over the air that David Anderson was confirmed to be in the basement.

K-9 Officer Lovato entered the house with his service dog and joined Detective Bennett and I at the top of the basement stairwell. There were two or three officers holding cover at the base of the stairs leading up from the main level next to us. Officer Lovato began to give announcements into the basement from the top of the stairs for David to give himself up or a police dog would find him. There was still no response from the basement. Officer Lovato placed his dog onto a long leash and began to descend the stairs with his dog. I began to descend behind Officer Lovato when I was stopped by K-9 Sergeant Reyes who said he would be Lovato's cover. Sergeant Reyes passed me on the stairs and I followed him with Detective Bennett following me.

I saw the dog make a buttonhook turn to the left and go into a small room at the base of the stairs. I was still descending the stairs when I observed this. The dog emerged almost immediately from this room and began to search the main room. When I reached the bottom of the stairs, Officer Lovato asked that the small room to the left be checked and doubled. Sergeant Reyes took several steps into the main room with Officer Lovato, and Detective Bennett remained at the base of the stairwell. I entered this room and found it was a utility room for the furnace and water heater. There was no door to this room – just a door frame. My attention was drawn back to Officer Lovato and his dog because his dog was showing a clear interest in the closet directly in front of the base of the stairs and the pile of clothing coming out of it. The closet was only a couple of feet from the base of the stairwell. I observed Officer Lovato's dog begin to dig into and shove his face into the pile of clothing. Officer Lovato was right behind his dog and I believed he had one hand on the dog's harness. I was about 5-6 feet away from Officer Lovato observing this. I then heard three or four muffled but loud "pops" coming from the clothing/closet area, and then saw smoke coming from the pile of clothing. Officer Lovato screamed, "Shots fired!" I was now standing in the threshold of the utility closet and I observed Officer Lovato stumble and fall back towards the stairs with his dog.

Officer Lovato fell at the base of my feet with his dog, and Officer Lovato made a loud grunting sound as he fell. I believed Officer Lovato had been shot and was being shot as he fell based on the loud guttural grunting sound he made. I heard Detective Bennett firing rounds from the base of the stairs off my right side, and I believed shots were being fired in our direction from the closet and I feared for my life and the lives of my fellow officers. I pointed my pistol at the clothing pile and back of the closet and fired several rounds into the clothing pile and back/side panel of the closet. I did not know how many rounds I had fired. I was in a semi-crouched position just above Officer Lovato as I fired. Sergeant Reyes was to my right side and firing his pistol just over and to the right side of my head. I also heard Detective Bennett firing. I briefly looked down and saw that Lovato's dog was seriously injured, bleeding heavily, and not moving.

I stopped firing when Officer Lovato began to move and get up. I did not want to shoot Officer Lovato and moved to my left further into the utility closet from the threshold/opening. At this point Sergeant Reyes and I were in the utility closet and I believed Officer Lovato had exited the basement with his dog. I was terrified that bullets were going to start entering the utility

closet through the wall or door opening at Sergeant Reyes and me. Sergeant Reyes and I were alone in the closet for probably only several seconds, but it felt like minutes.

I felt we were trapped or pinned down in the utility closet and the suspect would soon discover our location and start to shoot rounds in our direction. My view of the closet and clothing (suspect location) was now blocked from my position in the closet. I could hear somebody from the stairs yelling at us to retreat and that they had the stairs covered. I looked at Sergeant Reyes and said, "Let's go!" I put my left hand on his shoulder and we exited the utility room and turned onto the stairs which is an immediate buttonhook turn out of the closet entry. Sergeant Reyes fired two rounds of directed enforcement (cover) fire into the basement area to assist in our retreat and provide cover as we ascended the stairs. I believed that the suspect was still secreted in the closet and still had the capability to shoot at officers from his position.

We made it to the top of the stairs, and I yelled at an officer at the top for everyone to exit the house. I believe the time lapse from the first shot fired at Officer Lovato and his dog to my ascent of the stairs was around 30 seconds.

I exited out the front door and ran to my truck where I found Officer Lovato and Sergeant Reyes crouched over Lovato's service dog at the back of my truck. Sergeant Reyes asked that I shine my flashlight on the dog so he could give aid and look for wounds. I held my light over the dog while Sergeant Reyes probed the dog's body for wounds. The dog was lying in a large pool of blood and not moving. Sergeant Reyes checked for a pulse on the dog's leg and said, "He's gone."

I asked Officer Lovato to stand up so I could check him for wounds or bullet holes in his clothing. I checked Officer Lovato and did not observe any. I walked over to Lieutenant Robertson and advised him this was an officer involved shooting and I was a shooter. I was then sequestered and paired up with Officer Miskin. Officer Miskin transported me to the Sheriff's Office Building where I met with Detective Dripps and the West Valley City Police investigation team.

Officer Ricks

OICI protocol investigators interviewed UPD Officer Benjamin Ricks. Officer Ricks said he was on duty on April 27, 2016, when UPD Sgt. Reyes asked him to help serve a search warrant. Officer Ricks said he responded to the staging area near the home where he learned information about the warrant and the suspect identified as Mr. Anderson.

Officer Ricks said as the officers who were serving the warrant approached the house, the officers met and detained a female. Officer Ricks said the female told officers that Mr. Anderson was inside the home. Officer Ricks said he heard police officers yelling into the house announcing themselves and giving commands. Officer Ricks said officers entered the residence through the front door and went into the kitchen by the stairs. Officer Ricks said that from the kitchen he could see stairs that went up and stairs that went down.

Officer Ricks said that police yelled more commands inside the home when a male came out from the basement. Officer Ricks said the male informed the police that Mr. Anderson was in the basement. Officer Ricks said that police officers yelled several more commands to Mr. Anderson for him to come out, but Mr. Anderson did not comply or respond to the commands.

Officer Ricks said UPD Officer Lovato and other officers went down the stairs while Officer Ricks stayed at the top of the stairs. Officer Ricks said he heard a pop like a gunshot and said he someone yell "shots fired!" Officer Ricks said he then heard several more shots being fired. Officer Ricks said he saw UPD Detective Bennett about half way down the stairs firing his rifle. Officer Ricks said he could see shots impacting a wall at the bottom of the stairs.

Officer Ricks said he saw Officer Lovato come out of the basement carrying his police service dog Aldo and said he (Aldo) had been shot. Officer Ricks said he saw blood coming from Aldo. Officer Ricks said all the police officers inside the home came out and SWAT was called.

Detective Workman

OICI protocol investigators interviewed Department of Public Safety Detective Josh Workman who was working with Utah County Major Crimes Task Force.

Detective Workman said on April 27, 2016, UPD asked him to help serve a search warrant. Detective Workman said he attended a briefing about the warrant service. Detective Workman said that as officers approached the home, they made contact and detained a female who lived at the home. Detective Workman said that two aggressive dogs came out of the home and the female secured the dogs.

Detective Workman said the police served the warrant. Detective Workman said the team breached the front door with a ram but the door was barricaded from the inside, keeping it from opening all the way. Detective Workman said he heard officers at the home's side door giving verbal commands. Detective Workman said he and other officers were able to enter the residence through the front door. Detective Workman said he entered the front room and then went into the kitchen where he observed other officers at a staircase that went upstairs and downstairs.

Detective Workman said he heard more verbal announcements of police presence inside the home. Detective Workman said that he learned that Mr. Anderson was inside the home from other people who left the home as the police were inside.

Detective Workman said he saw officers with a police service dog go into the basement and a short time later heard shots being fired. Detective Workman said he saw an officer come out from the basement with an injured police service dog, at which time everyone retreated out of the house.

Sergeant Bailey

OICI protocol investigators interviewed Orem Police Department Sergeant Jeff Bailey who was assigned to work with Utah County Major Crimes Task Force. Sgt. Bailey said he was on duty on April 27, 2016, when UPD Det. Bennett asked him to assist with a warrant. Sgt. Bailey said he attended a briefing on the warrant and the suspect, Mr. Anderson.

Sgt. Bailey said as the police officers approached the home to serve the warrant, they met and detained a female (later identified as GP) who lived in the home. Sgt. Bailey said that GP told officers she had seen Mr. Anderson in the house just prior to their arrival. Sgt. Bailey said he relayed this information to the other officers on scene. Sgt. Bailey said as he told the officers Mr. Anderson was inside the home, other officers breached the home's front door.

Sgt. Bailey said he heard police officers giving commands and announcing that they had a search warrant for Mr. Anderson who they ordered to exit the residence. Sgt. Bailey said the team entered the home and made several announcements as they entered. Sgt. Bailey said that officers told him that a male had come up from the basement. Sgt. Bailey said the male was identified as BB. Sgt. Bailey said he asked BB if he knew where Mr. Anderson was inside the residence. Sgt. Bailey said BB told him that when the door was breached, Mr. Anderson ran downstairs into the basement. Sgt. Bailey said he asked BB if Mr. Anderson had any weapons and BB told Sgt. Bailey that Mr. Anderson told BB that he had a pellet gun. Sgt. Bailey said that BB also gave him a description of the basement; Sgt. Bailey said he relayed all of this information to officers inside the residence.

Sgt. Bailey said he remained outside of the residence with GP and BB and heard gunshots inside the residence. Sgt. Bailey said saw a police officer with a police service dog coming out of the house yelling shots fired and asking for medical help for the dog. Sgt. Bailey said he saw that the police service dog was injured. Sgt. Bailey said he saw all of the officers inside the home retreat out of the house and a perimeter was set up.

Detective Billings

OICI protocol investigators interviewed Provo Police Department Detective Russell Billings, who was also a member of Utah County Major Crimes Task Force.

Det. Billings said UPD Sgt. Miller contacted the Utah County Major Crimes Task force and asked for their assistance in locating a fugitive and serving a warrant at a residence. Det. Billings said he went to the home to help with the warrant service on April 27, 2016. Det. Billings said as police officers approached the home, they saw a female (later identified as GP) in the home's carport and was detained. Det. Billings said someone stated that one of the occupants inside the home had run downstairs.

Det. Billings said he breached the front door of the residence with a ram and found that the door had been barricaded; Det. Billings said he could only open the door about a foot. Det.

Billings said once the door was opened, police encountered two loose dogs. Det. Billings said it took them approximately fifteen minutes to get the dogs contained with GP's help.

Det. Billings said he heard several verbal announcements of police presence and commands from both the front and side door of the residence. Det. Billings said he and other officers entered the home and cleared the main level. Det. Billings said a UPD officer and his police service dog also entered the residence and took up a position at the top of the stairs leading into the basement. Det. Billings said he heard more verbal announcements and commands.

Det. Billings said he and Det. Adams took up a position at the bottom of the stairs leading to up to the upstairs portion of the home. Det. Billings said while he was standing at the bottom of the stairwell, he heard a couple of pops, heard somebody yelling "shots fired" and then heard more shots all coming from the basement. Det. Billings said he initially heard two shots in rapid succession and a few seconds later heard several others. Det. Billings said he believes the shots that he heard being fired were from two different types of guns because one set of shots sounded louder than the other.

Det. Billings said he saw a UPD officer come up from the basement carrying his police service dog; Det. Billings said they were followed a few seconds later by several other officers. Det. Billings said everyone exited the residence and took up a position on the perimeter while waiting for SWAT officers to arrive.

Detective Gardner

OICI protocol investigators interviewed Spanish Fork Police Department Detective Scott Gardner, who was assigned to the Utah County Major Crimes Task Force. Det. Gardner said he was on duty on April 27, 2016. Det. Gardner said he attended a briefing that was conducted by UPD Det. Bennett. Det. Gardner said Det. Bennett had a search warrant for the address of 4303 South 730 East to search for suspect David Shane Anderson. Det. Gardner said Det. Bennett showed the officers photos of the suspect, Mr. Anderson; the residence to be searched; and the known occupants of the home at the time. Det. Gardner said he was assigned to the primary entry team.

Det. Gardner said that upon arriving at the residence, they walked towards the house and heard a female voice coming from the carport. Det. Gardner said he saw a female standing in the carport area (later identified as GP); Det. Gardner said GP was speaking with a male who was inside the residence.

Det. Gardner said he heard multiple announcements of police presence and observed that nobody exited the home. Det. Gardner said that as announcements were made, the team made entry into the home. Det. Gardner said he took up a position standing at the top of the stairs leading into the basement. Det. Gardner said a male came up from the basement and told the officers that Mr. Anderson was downstairs and was possibly armed with a pellet gun. Det. Gardner said he maintained his position near the stairs and saw a UPD officer and his police

service dog enter the basement. Det. Gardner said a short time later he heard one or two quiet pops which he said believed were gun shots. Det. Gardner said that a few seconds later he hears multiple gun shots coming from the basement and someone yelling "shots fired." Det. Gardner said all officers inside the residence then exited the home.

Detective Adams

OICI protocol investigators interviewed Utah County Sheriff's Office Detective Zach Adams, who was assigned to the Utah County Major Crimes Task Force. Detective Adams said he was assigned as the fourth man in entry team for the warrant service and was assigned to enter the residence and hold security. Det. Adams said as the officers approached the residence, they encountered a female (later identified as GP) in the carport.

Det. Adams said as the home's front door was breached, officers encountered two dogs in the home. Det. Adams said both of these dogs were eventually contained, at which time police officers made more announcements before making entry into the residence and securing the main level. Det. Adams said he took up a position covering the stairwell leading to the upstairs portion of the residence.

Det. Adams said that while he was in this position, he saw a UPD officer and his police service dog enter the home; Det. Adams said the officer began giving commands into the basement. Det. Adams said that after several more commands and announcements were made, several officers went down into the basement. Det. Adams said a short time later he heard two shots and then heard the K-9 officer yelling "shots fired." Det. Adams said the first shots sounded muffled and the following shots were louder like a rifle. Det. Adams said he saw the UPD officer exit the basement carrying his injured police service dog. Det. Adams said everyone exited the residence took up positions of containment outside until relieved by SWAT personnel.

Sergeant Miller

OICI protocol investigators interviewed Unified Police Department Sergeant Brett Miller. Sgt. Miller said he is the Taylorsville Precinct Street Crimes Unit sergeant. Sgt. Miller said he was on duty on April 27, 2016. Sgt. Miller said he and others in the Precinct had been searching for Mr. Anderson since the previous Friday. Sgt. Miller said Mr. Anderson was a fugitive with warrants; Sgt. Miller said they also had probable cause to arrest Mr. Anderson for aggravated assault on a police officer, fleeing, and reckless endangerment all stemming from an incident that happened the prior Friday in Taylorsville.

Sgt. Miller said UPD personnel and members of the Utah County Major Crimes Task Force participated in a warrant service on a home where they believed Mr. Anderson was. Sgt. Miller said a briefing occurred describing the warrant service.

Sgt. Miller said as officers approached the residence, they made contact with a female (GP) in the carport who was the homeowner. Sgt. Miller said officers issued commands to the

remaining occupants of the residence through the front and side doors. Sgt. Miller said the officers encountered two loose dogs in the home and both of these dogs were eventually contained. Sgt. Miller said officers continued calling out to the remaining occupants of the residence but received no response.

Sgt. Miller said officers entered the home and cleared the main level. Sgt. Miller said officers then took up positions on the split stairwell, one going up to the second floor and the other going down to the basement. Sgt. Miller said officers continued calling out to the remaining occupants of the house. Sgt. Miller said eventually, a male identified as BB exited the basement and informed officers that Mr. Anderson was down in the basement and was alone.

Sgt. Miller said the decision was made to clear the basement using a police service dog. Sgt. Miller said UPD K-9 Officer Lovato stood at the top of the stairs leading into the basement and began giving K-9 warnings and announcements. Sgt. Miller said that, after receiving no response, officers began to clear the basement.

Sgt. Miller said Officer Lovato and his police service dog Aldo cleared the area at the bottom of the stairs and a room to the left. Sgt. Miller said that after Officer Lovato and Aldo cleared the room, UPD Det. Clark and Sgt. Reyes went into the basement and out of Sgt. Miller's view.

Sgt. Miller said Det. Bennett was at the bottom of the stairwell and Sgt. Miller was directly behind Det. Bennett. Sgt. Miller said he could see Officer Lovato and Aldo clearing the area behind a room divider and they were in the southeast corner of the room. Sgt. Miller said there was a lot of clutter in the room and he could hear stuff moving when he heard a pop/crack noise and thought it was just the police service dog knocking stuff over.

Sgt. Miller said he saw Officer Lovato turn and yell "shots fired," at which time Sgt. Miller said he heard a series of gunshots. Sgt. Miller said he saw Officer Lovato fall to the ground and initially believed that Officer Lovato had been shot. Sgt. Miller said he then saw Officer Lovato get up carrying Aldo, who he could see was limp and had blood coming from his mouth.

Sgt. Miller said Det. Bennett returned fire at the suspect; Sgt. Miller said at one point he saw Det. Clark moving back towards the stairwell and return fire also. Sgt. Miller said once all officers were out of the basement, they left the home to hold containment and wait for the SWAT team.

Sergeant Ikemiyashiro

OICI protocol investigators interviewed UPD Sgt. Mike Ikemiyashiro. Sgt. Ikemiyashiro said that he is on the UPD SWAT Team. Sgt. Ikemiyashiro said on April 27, 2016, he responded to the home in which the OICI occurred and arrived afterwards as part of the SWAT Team response. Sgt. Ikemiyashiro said he was on the outside perimeter of the home by a basement window where the OICI had taken place. Sgt. Ikemiyashiro said before he arrived, the

basement window had already been broken by the Unified Fire Authority robot. Sgt. Ikemiyashiro said while he was outside by the window, he heard groaning coming from inside the room. Sgt. Ikemiyashiro said that he could see a lot of clutter between the closet and the bed but he could see a shadow moving up against the back wall of the closet. Sgt. Ikemiyashiro said that he used his flashlight to light up the closet area and saw Mr. Anderson face down in the basement closet with his hands tucked up underneath him. Sgt. Ikemiyashiro said that he began giving verbal commands and at one point, Mr. Anderson lifted his head up and turned and looked at him, and that he did this several times. Sgt. Ikemiyashiro said that Mr. Anderson did not otherwise respond to the verbal commands; Sgt. Ikemiyashiro said he believed Mr. Anderson was trying lure police officers into the room so that he could shoot at them.

Sgt. Ikemiyashiro said the decision was made to deploy a chemical agent into the room. Sgt. Ikemiyashiro said the chemical agent was deployed and Mr. Anderson did not react. Sgt. Ikemiyashiro said he considered Mr. Anderson may have been incapacitated so an immediate action team went in and used another police service dog to drag Mr. Anderson out of the closet where police took him into custody.

Other Witnesses

Witness GP

OICI protocol investigators interviewed Witness GP. GP said that she lived in the home at 4303 South 730 East with her son, CB, and his girlfriend, AS. GP said that on the day of the OICI, a man she knows as Shane (later identified as Mr. Anderson) was at the house with CB. GP said that she believed Mr. Anderson had been in the home for about a day or two prior to the OICI. GP said that on April 27, 2016, she was taking her dogs outside the home when she was approached by a police officer in a uniform identifying him as such. GP said that officer asked her to control her dogs so GP secured one in a car in the driveway and the other in a bathroom inside her house.

GP said that the officer told her they were there to arrest Mr. Anderson. GP said she told the officer that Mr. Anderson had been in the home earlier that day but GP was unsure if Mr. Anderson was still in the home at that time. GP said that she continued to talk with the officer and walked out to the street with him. GP said that while she was talking to the officer, she could hear someone making announcements to the other people inside the home to come out. GP said that while she was out by the street she heard what she believed to be possibly five gun shots inside the home and someone yelling "shots fired."

Witness BB

OICI protocol investigators interviewed Witness BB. BB said that he knows CB who lives at 4303 South 730 East with his mother, GP, and CB's girlfriend, AS. BB said that at the time of the OICI there was another male in the home BB only knows as "Shane" (later identified as Mr. Anderson). BB said that he was at the home helping GP with a doorknob on a door leading to the home's carport. BB said that as he was working on the doorknob he heard police

officers banging on the front door and announcing “Unified Police, search warrant!” BB said he heard police announce this twice. BB said he looked up and saw police officers at the home who were wearing bulletproof vests that had the words “POLICE” clearly visible; BB said that there was no doubt in his mind that they were police officers.

BB said that as some of the officers went inside the home, an officer asked BB where Mr. Anderson was. BB said he told the officers that Mr. Anderson fled down into the basement as police were knocking on the door and announcing their presence. BB said that police escorted him away from the residence; BB said he was talking to an officer outside when he heard at least six gunshots, which he described as a burst of six to seven shots. BB said he believed he also saw a police officer with a rifle standing outside the home shooting into the home⁹.

Physical Evidence

Investigators determined that no video recordings of the incident exist; none of the officers had body cameras on at the time of the OICI.

As per OICI investigation protocol, investigators inspected Officer Lovato’s, Det. Bennett’s, Sgt. Reyes’ and Det. Clark’s weapons and documented which weapons were fired and how many rounds were fired. Investigators determined that Officer Lovato did not fire a weapon; Det. Bennett fired 11 rounds of .223 caliber ammunition from his office-issued rifle; Sgt. Reyes fired 14 rounds of 9mm caliber ammunition from his office-issued handgun; and Det. Clark fired 5 rounds of .357 SIG caliber ammunition from his office-issued handgun.

Investigators recovered and documented Mr. Anderson’s handgun found at the scene. Investigators determined Mr. Anderson was armed with a Glock 19 9mm caliber handgun. Investigators determined that the weapon had one FC 9mm Luger cartridge in the chamber. The weapon contained one Glock 9mm magazine with a marked capacity of 15 rounds. The magazine contained four FC 9mm Luger cartridges, four Winchester 9mm Luger cartridges and three Aguila 9mm cartridges.

Investigators also recovered and documented one FC 9mm Luger casing and one Aguila 9mm casing from the basement closet’s floor. Both of these casings found in the closet were identified as have been fired from Mr. Anderson’s handgun.

DISCUSSION

Justified Use of Deadly Force

Officer Lovato, Det. Bennett, Sgt. Reyes and Det. Clark were lawfully executing a search warrant when Mr. Anderson unlawfully fired a weapon into service police dog Aldo, fatally wounding him. Officer Lovato, Det. Bennett, Sgt. Reyes and Det. Clark each said he heard someone start shooting; Det. Clark said he saw Officer Lovato go down. All the witnesses who directly observed the events of the OICI said they heard and saw what they believed to be Mr. Anderson firing a weapon at officers through the sheetrock walls of the closet.

⁹ No physical evidence or any other witness account supports this assertion, and we believe BB’s perception is incorrect.

Based upon their perceptions and observations of events unfolding around them, Det. Bennett, Sgt. Reyes and Det. Clark reasonably believed that Mr. Anderson presented a threat of death or seriously bodily injury to the police officers present. The officers reasonably believed that they needed to use deadly force against Mr. Anderson to prevent Mr. Anderson from inflicting death or serious bodily harm upon the police officers present.

CONCLUSION

Det. Bennett, Sgt. Reyes and Det. Clark reasonably believed deadly force was necessary to prevent death or serious bodily injury to themselves and others. Therefore, their use of deadly force was “justified” under Utah State law, which provides Det. Bennett, Sgt. Reyes and Det. Clark 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 Det. Bennett, Sgt. Reyes or Det. Clark.

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