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Via Hand Delivery

March 23, 2017

RE: *SLCPD Officer Cardon's Use of Deadly Force*
Incident Location: Salt Lake City, Utah
Incident Date: October 1, 2016
UPD Case No.: 2016-163348
SLCPD Case No.: 16-184205
D.A. Case No.: 2016-2757

Dear Sheriff Winder and Chief Brown:

The Salt Lake County District Attorney's Office ("D.A.'s Office") operates under Utah State law to review and "screen"¹ criminal charges against individuals where criminal activity may have occurred. The D.A.'s Office operates pursuant to an agreement between the D.A.'s Office and participating law enforcement agencies to perform joint investigations and independent reviews of officer involved critical incidents ("OICI") including police officers' use of deadly force while in the scope of their official duties. Pursuant to the State law and the agreement between the D.A.'s Office and participating law enforcement agencies, the D.A.'s Office has reviewed the above referenced matter to determine whether the above referenced use of deadly force violated criminal statutes and whether a criminal prosecution should commence. Part of our screening process considered whether the use of deadly force was "justified" under Utah State law thereby providing a legal defense to a criminal charge. As outlined more fully

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.

below, the D.A.'s Office concludes that Officer Philip Cardon's use of deadly force was "justified" under Utah State law, and therefore declines to file criminal charges against him in the above referenced matter.

On October 1, 2016, Salt Lake City Police Department ("SLCPD") Officer Cardon encountered Jason Richard Garcia. Mr. Garcia did not comply with many commands to stop and show his hands. Instead, more than once, Mr. Garcia drew an object from a sweatshirt pocket and pointed it at police, who believed it was gun. Officer Cardon fired one round at Mr. Garcia which went through Mr. Garcia's clothing but did not hit Mr. Garcia's person. Mr. Garcia was arrested and booked into jail.

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.*, Ut.R.Cr.P. 4(b).

A criminal case must be built on admissible evidence; the screening function doesn't simply consider all the relevant facts presented by law enforcement but must evaluate what evidence will be legally admissible against a defendant charged with a crime. Some evidence proves facts that, while true, may nevertheless not be admissible against a defendant at trial. The screening function is limited to considering evidence that will likely be admissible against a defendant.

Ethical Standards

The D.A.'s Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing⁵. Honoring ethical standards ensures that everyone affected by the criminal justice system—suspects, defendants, victims, the community and the system itself—are treated fairly, honorably and respectfully.

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 Utah State Code as set forth above and operates in conjunction with other legal authority. The legal defense of “justification” could apply to any potential criminal charge; some of the potential criminal charges a police officer could face through an improper use of deadly force include criminal homicide, murder (or attempted murder), aggravated assault, or other offenses set forth in the criminal code. The legal defense of “justification” is applicable to any potential criminal charge.

A person’s use of deadly force (including but not limited to use of deadly force by peace officers) is “justified” when the use of deadly force conformed to the statutes referenced above. Persons may lawfully defend themselves under circumstances outlined by law, and are afforded the legal defense of “justification” for the lawful use of deadly force in accordance with statutes. Utah Code Ann. 76-2-402 states that a “person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person’s imminent use of unlawful force.” *Id.* This section also states: “A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person’s imminent use of unlawful force, or to prevent the commission of a forcible felony⁷.” *Id.*

In addition to the use of deadly force in defense of self or others, a peace officer’s use of deadly force is “justified” when:

“effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.” U.C.A. 76-2-404.

In essence, the analysis for the use of deadly force to prevent death or serious bodily injury (whether by individuals or peace officers) turns on similar elements. In relation to the use of deadly force by *individuals*: “A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person’s imminent use of unlawful force” U.C.A. 76-2-402(1)(a),(b). For the use of deadly force by *peace officers*: “the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person,” or to effect an arrest under circumstances set forth in law. *See*, U.C.A. 76-2-404. A peace officer’s use of deadly force is “justified” when

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

that officer “reasonably believes” that the use of deadly force is “necessary to prevent” the threat of “death or serious bodily injury.” *Id.*

As mentioned above, U.C.A. 76-4-202 and 404 constitute legal defenses to potential criminal charges. Although Utah Code doesn’t directly reference other means of evaluating liability and reasonableness of police use of force, the United States Supreme Court case *Graham v. Conner* provides an analytical methodology for assessing excessive force claims in a Fourth Amendment context.⁸ *Graham* considers excessive force claims from a “reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham v. Conner*, 490 U.S. 386, 396 (1989) (citations omitted.) *Graham* also “requires a careful balancing of “the nature and quality of the intrusion on the individual’s Fourth Amendment interests”... against the countervailing governmental interests at stake.” *Id.* (citations omitted) *Graham* observes: “Because ‘[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,’ [citation omitted] however, its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight.” *Id.* (citations omitted).

This OICI investigation and our review that followed was conducted in accordance with an OICI investigation protocol previously established and in conformity with recently enacted legislation governing investigations of OICI events. The OICI investigation protocol strives to establish an investigation methodology and process that provides the D.A.’s Office with the evidence needed to review the investigation to determine whether a police officer’s use of deadly force conformed to the above referenced statutes. If the use of deadly force conformed to the statutes, the use of deadly force is “justified,” and the legal defense of “justification” is available to the officer such that criminal charges cannot be filed against the officer and the criminal investigation into the actions of the officer is concluded.

If the use of deadly force does not conform to the statutes above, the use of deadly force may not be “justified,” and the legal defense of “justification” may not be available to the officer. In other words, if the use of deadly force failed to conform to the applicable statutes, the law does not afford the officer the legal defense of “justification.” Further investigation may be needed to determine whether, and if so which, criminal charges can and should be filed against the officer. Just because the legal defense of “justification” may not be available (because the use of deadly force did not conform to the statutes) does not therefore necessarily mean that criminal charges should be filed against the officer. For instance, the evidence available to the 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.

⁸ The issue addressed in this OICI review is narrow and well defined: did an officer’s use of force violate a criminal statute and if so, should a prosecution ensue? While our review does not directly employ a Fourth Amendment analysis, the *Graham* case is nevertheless informative.

As laid out in more detail below, we conclude that Officer Cardon's use of deadly force conformed to the relevant statutes outlined above, and therefore we conclude that the legal defense of "justification" applies to the facts set forth herein. Accordingly, we decline to file criminal charges against Officer Cardon for his use of deadly force against Mr. Garcia.

INVESTIGATION

During the 2015 Utah State Legislature's General Session, the legislature enacted U.C.A. 76-2-408 which sets forth in relevant part the following provisions governing the investigation of peace officers' use of deadly force:

76-2-408 Peace officer use of force -- Investigations.

(1) As used in this section:

- (a) "Dangerous weapon" is a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury.
- (b) "Investigating agency" is a law enforcement agency, the county or district attorney's office, or an interagency task force composed of officers from multiple law enforcement agencies.
- (c) "Officer" is a law enforcement officer as defined in Section 53-13-103.
- (d) "Officer-involved critical incident" is any of the following:
 - (i) the use of a dangerous weapon by an officer against a person that causes injury to any person;
 - ...

(2) When an officer-involved critical incident occurs:

- (a) upon receiving notice of the officer-involved critical incident, the law enforcement agency having jurisdiction where the incident occurred shall, as soon as practical, notify the county or district attorney having jurisdiction where the incident occurred; and
- (b) the chief executive of the law enforcement agency and the county or district attorney having jurisdiction where the incident occurred shall:
 - (i) jointly designate an investigating agency for the officer-involved critical incident; and
 - (ii) designate which agency is the lead investigative agency if the officer-involved critical incident involves multiple investigations.

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

...

To comply with state law requiring an outside agency to investigate an OICI, SLCPD invoked the OICI investigation protocol, and an investigative team comprised of law enforcement personnel from several agencies responded to investigate this matter pursuant to the previously agreed upon OICI investigation protocol.

On December 5, 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 SLCPD was helpful and accommodating with the investigation's needs, but did not perform any investigation of the OICI itself.

FACTS

The following facts were developed from the OICI protocol investigation. Should additional or different facts subsequently come to light, the opinions and conclusions contained in this letter may likewise be different.

On October 1, 2016 a person called SLCPD to report a trespassing problem with transient person. SLCPD Officers Cardon and Wright responded to 1376 Jefferson St. in Salt Lake City, Utah. When they arrived, they found a man, subsequently identified as Jason Richard Garcia in the area. Mr. Garcia matched the physical description of the reportedly trespassing transient person. Officers walked up to Mr. Garcia.

Mr. Garcia put his hands in the pockets of his hoodie sweatshirt. Officer Cardon told Mr. Garcia to show his hands, but Mr. Garcia did not. Instead, Mr. Garcia said: "I'm not going back to prison," and walked away from the officers. The officers followed.

Officer Cardon ordered Mr. Garcia to stop. Mr. Garcia ran off; Officer Wright called out "foot pursuit" on the police radio. Both officers gave chase. Mr. Garcia stopped, turned and faced Officer Cardon, pulled an object out of his pocket in his hand and pointed it at Officer Cardon. In a subsequent interview with investigators, Officer Cardon said he believed Mr. Garcia pointed a gun at him and Officer Cardon said he expected to hear the "pop" of a gun shot at him.

Mr. Garcia continued to run, eventually coming to an area full of people. Officers continued to order Mr. Garcia to stop and show his hands but he did not. After following him to the sidewalk of 1300 South, officers and civilians saw Mr. Garcia pull an object out of his pockets and point it at police officers. Officer Cardon drew his weapon and fired one round at Mr. Garcia, who went down. Officers went to Mr. Garcia's aid but discovered that the bullet

only traveled through Mr. Garcia's clothing and did not hit his body. Officers arrested Mr. Garcia and booked him into jail.

Officer Wright

OICI protocol investigators interviewed SLCPD Officer Benjamin Wright. Officer Wright said he was on duty and wearing his standard uniform on October 1, 2016. Officer Wright said he and Officer Cardon responded on a report of a transient person trespassing. Officer Wright said when he and Officer Cardon arrived, he saw a male wearing a grey hoodie walking away from Officer Cardon.

Officer Wright said the male was not complying with Officer Cardon's commands; Officer Wright said the male put his hands in the hoodie pockets and walked away from Officer Cardon. Officer Wright said he heard the male say: "I'm not going back to prison." Officer Wright said the male started to run away.

Officer Wright said he called out "foot pursuit" on the police radio. Officer Wright said he saw the male stop and pull a black object out of his pocket that he held in his hand. Officer Wright said he couldn't see what the object was.

Officer Wright said the male crossed 1300 South and ran through a Utah Transit Authority ("UTA") Trax parking lot at 1300 South, and continued northbound towards Lucy Ave. Officer Wright said he saw the male stop and face Officer Cardon. Officer Wright said he took cover behind a vehicle in the Trax parking lot. Officer Wright said he yelled at the male: "We don't want to hurt you!" Officer Wright said the male responded: "I'm not going back to prison, just shoot me!" Officer Wright said the male started running again; this time the male ran southbound through a grassy area towards 1300 South.

Officer Wright said the male was holding an object in his hand and pointing it at officers as though the object were a gun. Officer Wright said he feared for his own safety and the safety of others in the area because he believed the male was pointing a gun at people. Officer Wright said he heard a gunshot and saw the male fall to the ground.

Officer Armstrong

OICI protocol investigators interviewed SLCPD Officer Matthew Armstrong. Officer Armstrong said he was on duty and in uniform on October 1, 2016. Officer Armstrong said he was on patrol in the area of 1800 South and Main Street when he heard other SLCPD officers on the radio asking for assistance with a male walking away from the officers and not obeying commands. Officer Armstrong said he headed towards the area.

Officer Armstrong said he was westbound on Lucy Ave. when he saw two SLCPD officers and a male suspect interacting with each other. Officer Armstrong said when the male reached a grassy area near 1300 South, the male reached into the pocket of his hoodie with his

right hand. Officer Armstrong said he heard police officers yell: "Show me your hands!" Officer Armstrong said the suspect did not comply and walked away.

Officer Armstrong said when the male reached 1300 South, the male pulled a black object out of his pocket. Officer Armstrong said he heard one shot fired and saw the male go down. Officer Armstrong said he went to the suspect to secure the male and render medical aid. Officer Armstrong said the male said to him: "I'm mentally unstable and want to die." Officer Armstrong said the male was handcuffed and searched, and Officer Armstrong said he kicked an object away from the male's hand.

Officer Cardon

OICI protocol investigators interviewed Officer Philip Cardon with his attorney present. Officer Cardon said he was on duty and in uniform on October 1, 2016. Officer Cardon said he was dispatched to 1376 South Jefferson St. in Salt Lake City, Utah on a transient person problem. Officer Cardon said he and SLCPD Officer Wright arrived at the address at about 4:37 p.m. Officer Cardon said he and Officer Wright made contact with a male, later identified as Jason Richard Garcia. Officer Cardon said Mr. Garcia matched the physical description of the transient person they were looking for.

Officer Cardon said he contacted Mr. Garcia, and Mr. Garcia said to him: "I'm not going back to prison." Officer Cardon said he saw that Mr. Garcia had something in his hands. Officer Cardon said Mr. Garcia started running away. Officer Cardon said he radioed to police dispatchers that the male was running and had something in his hands. Officer Cardon said he yelled: "Stop!"

Officer Cardon said Mr. Garcia, stopped, turned towards Officer Cardon, raised his right arm and thrust his right hand forward with a black object in his hand and pointed it at Officer Cardon. Officer Cardon said he waited for the "pop" of a gun being fired, but nothing happened. Officer Cardon said Mr. Garcia turned away and continued running.

Officer Cardon said Mr. Garcia ran towards a UTA Trax train stopped and several cars waiting for the train near the UTA parking lot at 1300 South. Officer Cardon said he saw Mr. Garcia running towards people near the Trax train and platform at the 1300 South Trax stop. Officer Cardon said he saw Mr. Garcia reach the Trax parking lot at 1300 South and stop. Officer Cardon said Mr. Garcia had both of his hands in his pockets.

Officer Cardon said he took cover behind a vehicle in the Trax parking lot and shouted commands at Mr. Garcia. Officer Cardon said he repeatedly commanded Mr. Garcia to show his hands, but Mr. Garcia did not comply. Instead, Officer Cardon said Mr. Garcia ran eastbound on Lucy Ave. Officer Cardon said he saw a SLCPD bicycle officer cycling towards Mr. Garcia on Lucy Ave. Officer Cardon said Mr. Garcia turned and ran back through a grassy area to the south.

Officer Cardon said Mr. Garcia reached a small hill in the grassy area and stopped. Officer Cardon said Mr. Garcia pointed what Officer Cardon was a gun at Officer Cardon. Officer Cardon said he did not fire at Mr. Garcia due to concerns about the area in which he would be firing his weapon—Officer Cardon did not feel it was safe to fire at Mr. Garcia at the time.

Officer Cardon said Mr. Garcia started running again back towards 1300 South and reached the sidewalk on 1300 South. Officer Cardon said when Mr. Garcia reached 1300 South, he believed he was in a better position to fire at Mr. Garcia, so he drew his weapon and fired one round at Mr. Garcia. Officer Cardon said Mr. Garcia fell to the ground. Officer Cardon said he and other officers in the area took Mr. Garcia into custody.

Officer Cardon said he believed Mr. Garcia was armed with a gun and was pointing the gun at Officer Cardon; Officer Cardon said he believed he needed to use deadly force against Mr. Garcia to prevent Mr. Garcia from shooting and killing or wounding him or other people in the area.

OICI protocol investigators reviewed video recordings of the event; investigators observed that Officer Cardon issued the following commands to Mr. Garcia: “Stop!” “Stop right there!” “Stop right there or you’re going to get tazed!” “Show me your hands!” (11 times) “We need to talk;” and “I don’t know what you have in your pocket.”

Witness D.P.

OICI protocol investigators interviewed D.P., a man who works for a business on 1300 South. D.P. said he saw a man getting into an altercation with police officers. D.P. said the police officers were wearing uniforms. D.P. said he saw the male draw something like a firearm or a knife. D.P. said the object “looked like a ... gun.”

Other Witnesses

OICI protocol investigators interviewed nineteen other witnesses. These witnesses reported that the male suspect kept walking or running away from the officers. The witnesses reported that they heard the police repeatedly yelling commands to the man to “Stop!” Witnesses reported that they saw the man with something in his hand point something at the police officers.

Jason Richard Garcia

OICI protocol investigators interviewed Mr. Garcia. Because Mr. Garcia has been charged with criminal offenses relating to this event, his statements are not set forth herein. Each person accused of criminal wrongdoing is presumed innocent unless and until proven guilty in a court of law.

Physical Evidence

OICI protocol investigators obtained and reviewed Officer Armstrong's body camera recording which captured the later moments of the OICI.

OICI protocol investigators inspected Officer Cardon's firearm. Investigators documented that Officer Cardon was armed with his department issued weapon and determined that the weapon was missing one round. Investigators recovered a spent (empty) handgun cartridge at the scene. OICI protocol investigators inspected Officer Cardon's weapon and determined that it appeared to function normally.

DISCUSSION AND CONCLUSION

Officer Cardon and Officer Wright encountered a man whose conduct, from the outset, reasonably caused the officers concern for their safety and the safety of others. Although the officers lawfully ordered Mr. Garcia to stop and show his hands, Mr. Garcia did neither, nor did he comply with the officers other lawful commands. Instead, Mr. Garcia ran and stated that he was not going back to prison. Mr. Garcia's disobedience, together with what appeared to be a weapon with which he threatened officers, gave Officer Cardon a reasonable belief that he needed to use deadly force against Mr. Garcia to prevent Mr. Garcia from inflicting death or serious bodily injury to Officer Cardon or other people in the area.

Officer Cardon's reasonable belief was corroborated by the observations of other police officers and at least one other civilian witness, all of whom believed that Mr. Garcia was pointing a gun at the officers. Officer Cardon's perception that Mr. Garcia was threatening him with a gun was reasonable, especially when considered in the context of the event: Mr. Garcia refused to show his hands when lawfully ordered to do so; Mr. Garcia did not stop when lawfully ordered to do so; Mr. Garcia ran from officers several times although he was ordered to stop; Mr. Garcia stated that he was not going back to prison when he fled from officers; and Mr. Garcia had a small, black object in his hand which he pointed at officers in a manner consistent with a gun.

Because we conclude that Officer Cardon reasonably believed that he needed to use deadly force against Mr. Garcia to prevent Mr. Garcia from inflicting death or serious bodily injury against Officer Cardon and/or others in the area, we conclude that Officer Cardon was "justified" in his use of deadly force and is entitled to the legal defense of "justification." Accordingly, Officer Cardon's legal defense of "justification" precludes us from filing a criminal case, and we decline to file a criminal case against Officer Cardon relating to his use of deadly force.

This concludes our involvement in the matter. 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