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September 27, 2019

BY HAND DELIVERY

Sheriff Rosie Rivera
Unified Police Dept. of Greater Salt Lake
3365 South 900 West
Salt Lake City, Utah 84119

Chief Mike Brown,
Salt Lake City Police Dept.
475 South 300 East
Salt Lake City, Utah 84114

Re: *UPD Officer Darrell Broadhead's Use of Deadly Force*
Incident Location: 11779 South Stone Ridge Ct., Riverton, Utah
Incident Date: October 22, 2018
DA Case No.: 2018-1909
SLCPD Case No.: 2018-194313
UPD Case No.: 2018-167471

Dear Chief Brown and Sheriff Rivera:

This letter addresses Unified Police Department (“UPD”) Officer Darrell Broadhead’s discharge of his police weapon on October 22, 2018 at Jason Robert Whittle. Mr. Whittle died from the gunshot injuries he sustained.

Officer Broadhead’s actions resulting in Mr. Whittle’s death constituted the “use of deadly force” and/or the “use of a dangerous weapon,” which is defined under Utah law as “a firearm or [] object that in the manner of its use or intended use is capable of causing death or serious bodily injury.” Utah Code Ann. § 76-2-408(1)(a), (d). As a result, the law enforcement agency with jurisdiction over Officer Broadhead’s conduct (in this case, UPD,) initiated what is known in Utah as the “Officer Involved Critical Incident” (OICI) Protocol. *See* Utah Code Ann. § 76-2-408(2)-(3). Accordingly, an investigative task force of law enforcement officers employed by agencies other UPD, the agency employing Officer Broadhead, were called in to investigate Officer Broadhead’s weapon discharge. After the investigation, the task force’s investigative findings were presented to the Salt Lake County District Attorney’s Office (DA’s Office), which has the constitutional and statutory mandate to screen such matters for possible criminal charges.¹

¹ Utah Const. Art. VIII, section 16; Utah Code Ann. §§ 17-18a-203; *see also id.* at § 77-2-2(1) (defining “screening” as the “process used by a prosecuting attorney to terminate an investigative action, proceed with prosecution, move

SUMMARY OF FACTS AND FINDINGS

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.

At about 5:00 a.m. on October 22, 2018, Mr. Whittle arrived at the home of his mother, Anne Esposito, located at 11779 South Stone Ridge Ct. in Riverton, Utah. Mr. Whittle began knocking on Ms. Esposito's windows trying to convince her to let him in the house. When Ms. Esposito opened the door and let him in, Mr. Whittle began pacing around the house. Ms. Esposito told Mr. Whittle that he needed to check himself into rehab and that he should eat something, which Mr. Whittle agreed to. As Mr. Whittle ate, he began rummaging through the kitchen silverware drawer and took out a butter knife. Ms. Esposito asked Mr. Whittle to put the butter knife away, but rather than complying, he slipped the butter knife up his sleeve.

Soon after slipping the knife up into his sleeve, Mr. Whittle told Ms. Esposito that he wanted her to call the police. UPD received a 911 call from Ms. Esposito, who told police dispatchers that her son, Mr. Whittle, was mentally ill, high on methamphetamine and "out of control." The dispatcher sent police officers to the home. After a few minutes of discussion on the phone the 911 call taker told Ms. Esposito that the police wanted her to walk outside.

As Ms. Esposito exited the home, Mr. Whittle was with her. Police had arrived and were outside the house. When Mr. Whittle saw the police officers he grabbed onto Ms. Esposito. Mr. Whittle held onto Ms. Esposito while standing behind her and held the butter knife to her throat. The officers yelled to Mr. Whittle to "put the knife down" multiple times. Mr. Whittle did not comply but instead yelled: "I can hurt her!" and "I'm going to kill her." One of the officers on scene, UPD Officer Broadhead, fired one shot at Mr. Whittle's head while standing approximately 15 feet away. Mr. Whittle fell to the ground and died immediately from the wound he sustained.

Based on the facts presented, and as further detailed below, we do not intend to file criminal charges against Officer Broadhead. Assuming Officer Broadhead's testimony, if any, would be consistent with the physical and photographic evidence collected by protocol investigators, as well as the statements provided by witnesses, we believe Officer Broadhead likely would be legally entitled to the affirmative defense of "justification" under Utah State law. In other words, we believe Officer Broadhead likely would be able to claim successfully at trial that he believed the "use of deadly force [wa]s necessary to prevent death or serious bodily injury to the officer or another person." Utah Code Ann. § 76-2-404(1)(c).

to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted"). "Commencement of prosecution" is further defined as "the filing of an information or an indictment." *Id.* at § 77-2-2(3).

RELEVANT LEGAL STANDARDS

As relevant here,² law enforcement officers such as Officer Broadhead are legally “justified” in using deadly force when (*see* Utah Code Ann. § 76-2-404(1) (emphases added)):

- (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.

Based on this statute, the legal defense of “justification,” then, may be available where a law enforcement officer “reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury[³] to the officer or another person.” Utah Code § 76-2-404(1)(c). That affirmative defense may also be available where a law enforcement officer “reasonably believes that deadly force is necessary” to prevent a suspect’s escape and the officer had probable cause to believe the suspect posed “a threat of death or serious bodily injury to the officer or to others if apprehension is delayed.” *Id.* at § 76-2-404(1)(b). In determining whether the use of deadly force was “justified” under Utah law, courts may consider several factors, including: (i) the nature of the danger; (ii) the immediacy of the danger; and (iii) the probability that the unlawful force would result in death or serious bodily injury. *See* Utah Code Ann. § 76-2-402(5).

² Also relevant, but less so given Officer Broadhead’s status as a law enforcement officer, is the articulation of “justification” in Utah State law that applies to individuals more generally, including civilians (*see* Utah Code § 76-2-402(1) (emphases added)):

- (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 [i.e., deadly force] 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.

³ “Serious bodily injury” is defined, in turn, as “bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.” Utah Code § 76-1-601(11).

Although Utah statutory law does not fully differentiate standards of “reasonableness” as between law enforcement officers and civilians, *compare* Utah Code § 76-2-402(1) (universal application), *with* Utah Code § 76-2-404(1) (application to law enforcement officers only), the Supreme Court of the United States did in *Graham v. Conner*, 490 U.S. 386 (1989). In *Graham*, the Supreme Court instructed that “reasonableness” for law enforcement officers must be assessed in light of a “reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396 (internal citations omitted). The Supreme Court held that this determination “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.* Finally, the *Graham* court instructed (*id.* (internal citations omitted; emphases added)):

Because “[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,” . . . 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 [the suspect] is actively resisting arrest or attempting to evade arrest by flight.

RELEVANT ETHICAL STANDARDS

The DA’s Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing.⁴ 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 we consider before the DA’s Office will commence a case is whether there is a reasonable likelihood of success at trial. It is not enough that the technical elements of crime may be met if, when presenting those facts to a jury, the prosecution strongly believes no reasonable jury would unanimously convict the defendant based on those facts. Accordingly, any screening decision by the DA’s Office includes careful consideration of the various factors a jury may consider when weighing testimony, evaluating evidence, applying the law, and rendering a verdict.

⁴ Among the legal standards a prosecutor must follow is the requirement that “probable cause” must exist to believe an offense (i) was committed and (ii) was committed by the accused. *See, e.g.*, Utah R. Crim. P. 4(b). In making that determination, the DA’s Office must evaluate all evidence that will be legally admissible for or against the accused but may disregard evidence that likely will not be admissible at trial (e.g., a coerced confession).

FACTS DEVELOPED DURING OICI INVESTIGATION

As noted previously, following Officer Broadhead's use of deadly force, UPD properly initiated the OICI protocol, *see* Utah Code Ann. § 76-2-408(2)-(3), such that protocol investigators were called in to conduct an independent investigation of Officer Broadhead's weapon discharge, and the protocol investigation's independent investigative findings were presented to the DA's Office to screen for possible criminal charges against Officer Broadhead for his use of deadly force.

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 22, 2018, around 5:00 a.m., Mr. Whittle arrived at his home of his mother, Anne Esposito and started knocking on windows trying to get her to come to the door. The upstairs neighbor awoke from the noise and sent Ms. Esposito a text telling her that Mr. Whittle was at the house. Ms. Esposito felt bad that her son was making a lot of noise, and so she answered the door and let him in. Ms. Esposito described Mr. Whittle as a "mess." Mr. Whittle claimed that he had been assaulted. Mr. Whittle was not wearing shoes and did not have his glasses on.

After Ms. Esposito gave Mr. Whittle some food, he began to pace around and rummage through the silverware drawer. Mr. Whittle pulled out a butter knife and slipped it into his sleeve. Ms. Esposito asked Mr. Whittle to put the knife down, but he didn't comply and Ms. Esposito called the police. Mr. Whittle encouraged Ms. Esposito to call 911.

Around 6:40 a.m., 911 dispatchers received a call from Ms. Esposito. From the recording of the 911 call as outlined in more detail below, it appears Ms. Esposito was using the speakerphone function for some of the call such that Mr. Whittle could hear at least some of the conversation Ms. Esposito had with dispatchers. On the call, Ms. Esposito relayed to dispatchers that her son, Mr. Whittle was high on methamphetamines, mentally ill⁵ and out of control. In the background of the call, Mr. Whittle is heard yelling: "I will be violent with the officers!" and "I will kill them with knives!" Ms. Esposito explained to the 911 call taker that she didn't think Mr. Whittle would harm Ms. Esposito, however the dispatcher told Ms. Esposito to go outside for her own safety.

The dispatcher sent police officers to the home to respond to what they described as a call for help on a domestic disturbance with a mentally ill subject, high on meth, and who had a knife. Police radio dispatchers informed the arriving officers that Mr. Whittle was apparently high on methamphetamine. Dispatchers advised responding officers that Mr. Whittle said that "he will kill anyone who come[s] in the back door."

⁵ Mr. Whittle had been diagnosed with bi-polar and schizophrenia.

As Ms. Esposito came out of her house with Mr. Whittle, UPD Officers Broadhead and Yates met them at the front of the home. In the background, 911 dispatchers heard Mr. Whittle yell: "I'll kill her!" After seeing the officers, Mr. Whittle grabbed onto Ms. Esposito from behind, while holding the butter knife to Ms. Esposito's throat. At that moment, Officer Yates said he was unable to determine what type of knife Mr. Whittle was wielding. Officers yelled at Mr. Whittle to "put the knife down" several times while Mr. Whittle yelled back: "I can hurt her! I can hurt her!" and "I will kill her! I will kill her!" At this moment, standing approximately fifteen feet away, Officer Broadhead fired his weapon, hitting Mr. Whittle in the head. The bullet wound immediately killed Mr. Whittle and he fell onto the driveway.

Witness Statements

Officer Broadhead

Officer Broadhead declined to answer questions or provide a statement or offer information about the OICI to protocol investigators.

Officer Yates

Protocol investigators interviewed Officer Yates about the incident. Officer Yates said that on October 22, 2018 he was dispatched to respond to a domestic violence incident in which the suspect was reportedly high on methamphetamine. Officer Yates said that, as he responded to the call, he heard police radio dispatchers say that the complainant (Ms. Esposito) told dispatchers her son had a knife. Officer Yates said he arrived at 11779 South Stone Ridge Ct. in Riverton, UT around 6:50 a.m. and waited for his back up officer, Officer Broadhead to arrive at the scene.

After both officers arrived and exited their vehicles, Officer Yates said they heard yelling in the distance. The officers proceeded toward the noise and discussed whether they would employ a Taser or a gun. Officer Yates said they decided they would utilize their handguns rather than a Taser given what they were told about the suspect's condition and the situation; namely, that Mr. Whittle had a knife and had threatened to kill officers and others.

As officers approached the home, Officer Yates said he saw Mr. Whittle coming around the garage by the driveway with his arm around a female (Ms. Esposito) in a chokehold. Officer Yates stated that Mr. Whittle's mother was screaming but he could not hear what she was saying. Officer Yates said he saw Mr. Whittle hold a knife to his mother's neck screaming: "I'm going to fucking kill her!" Officer Yates said he did not know what type of knife Mr. Whittle was holding at the time. Officer Yates told Mr. Whittle: "Drop it! drop it!" but Mr. Whittle did not comply with any of the commands. Officer Yates said that Mr. Whittle had a knife to his mother's neck and was using his mother as a shield. Officer Yates said he heard Ms. Esposito screaming, but he said he couldn't recall what she said.

Officer Yates said he issued several commands to Mr. Whittle to drop the knife. When Mr. Whittle did not comply, Officer Yates heard one gunshot fire and realized that Officer Broadhead had fired his weapon, shooting Mr. Whittle in the head. Officer Yates said he believed that there was no other option but for Officer Broadhead to fire his weapon, fearing for Ms. Esposito's life.

Anne Esposito

On October 22, 2018 investigators interviewed Anne Esposito, Mr. Whittle's mother. Ms. Esposito explained that Mr. Whittle had been living on the street and was bipolar and schizophrenic. She explained that Mr. Whittle had been self-medicating with methamphetamine. Ms. Esposito explained that she had filed a Request for a Protective Order on July 11, 2018 against Mr. Whittle.

On the morning of October 22 around 5:00 a.m., she heard Mr. Whittle knocking on windows and the back door. Ms. Esposito said she received a text from a neighbor telling her that Mr. Whittle was pounding on the windows of Ms. Esposito's house. Ms. Esposito said she opened the door to let Mr. Whittle into the house because she felt bad for the neighbor who lived upstairs. After letting Mr. Whittle into the house, he explained to her that he had been beaten up and could not see very well because his glasses were missing.

Ms. Esposito explained that she could not understand him very well because Mr. Whittle was not speaking coherently and was acting paranoid. Mr. Whittle stated that he was high on marijuana. In response, Ms. Esposito told Mr. Whittle that he could not come back to the home until he was ready to go to rehab, which Mr. Whittle agreed to.

However, after Ms. Esposito gave Mr. Whittle some food to eat, he started rummaging through the silverware drawer, taking a butter knife and sticking it up his sleeve. During this time, Mr. Whittle was looking out the window and speaking repetitively. Mr. Whittle then told Ms. Esposito that he thought she needed to call the police so that he can get help. Ms. Esposito said she felt like Mr. Whittle was "making things worse" because he wanted her to call the police. Ms. Esposito said she called 911 because she was concerned about Mr. Whittle. While Ms. Esposito was on the phone with the police, Mr. Whittle started yelling and became agitated as Ms. Esposito explained the situation to the dispatcher. Ms. Esposito said she told 911 dispatchers that Mr. Whittle had a butter knife, but that he wasn't threatening her with it—that he was just walking around with it.

The 911 dispatcher told Ms. Esposito to walk outside when the police arrived. Eventually, Ms. Esposito said she exited the house and Mr. Whittle followed her. Ms. Esposito explained that when Mr. Whittle saw the police officers, he grabbed onto her. The officers told Mr. Whittle to stop, and Mr. Whittle replied: "I can hurt her! I can hurt her!" Ms. Esposito said that Mr. Whittle was holding her from behind and had a butter knife in his hand. Ms. Esposito

said she told the police officers that Mr. Whittle had never hurt her before. Ms. Esposito said when she saw the officers draw their weapons, she said: "Don't do this. He is just mentally ill."

Ms. Esposito explained that the officers kept telling Mr. Whittle to put down the knife, but Mr. Whittle would not comply. Ms. Esposito stated that soon after, she saw a blinding light and an officer shoot Mr. Whittle in the head. Ms. Esposito said she made it clear to the officers that Mr. Whittle wasn't violent.

Witness J. L.

On October 22, 2018 investigators interviewed witnesses J. L. J. L. said she and witness N. L. lived in the upstairs level of 11779 South Stone Ridge Court in Riverton. J. L. said Anne Esposito was a good friend of J. L. and Ms. Esposito had moved into the basement two years prior to the shooting. J. L. explained that Ms. Esposito had been having problems with her son, Mr. Whittle, and had obtained a protective order against him earlier in the year.

On October 22, around 5:00 a.m., J. L. said she heard Mr. Whittle yelling and knocking on the back door. J. L. said she saw Mr. Whittle rip off the window screens and knock on the windows. J. L. said she sent Ms. Esposito a text message telling her to ignore Mr. Whittle and to keep the door closed. J. L. said she went back to sleep.

Forty minutes later J. L. said she heard Mr. Whittle arguing with Ms. Esposito downstairs. J. L. said she went downstairs to alert her son, N. L. of the situation. J. L. said she and N. L. walked outside the house on to the front porch. J. L. said she saw police officers arrive and draw their handguns as they walked up to the house. J. L. said she heard the officers yell: "Put your hands up!" and "Put down the knife!" several times. J. L. said she heard Ms. Esposito yell: "Don't shoot, he's fine, he's not gonna hurt me, don't shoot." J. L. said she and N. L. decided to go back in the house, and as they did so, she heard a gunshot followed by Ms. Esposito screaming. J. L. said she looked and saw Ms. Esposito hovering above Mr. Whittle's body. J. L. said she went to Ms. Esposito to help her away from the scene.

Witness N. L.

Protocol investigators interviewed N. L. who said he lived at the home and in the early morning hours of October 22, 2019, he saw Mr. Whittle "freaking out." N. L. said he overheard Ms. Esposito calling 911 and talking to police. N. L. said he also called police and told police that a SWAT Team was not necessary, but that police ought to conduct a welfare check.

N. L. said that after the police arrived on the scene, he and J. L. walked out to the front porch. N. L. said he and J. L. saw police officers pull out their handguns as they approached the driveway. N. L. said he heard officers order Mr. Whittle to put the knife down several times. N. L. said he heard the officers shout: "Put your hands up! Put your hands up! Put down the knife! Put down the knife!" N. L. said he heard Mr. Whittle yell something at the officers but couldn't

tell what it was. N. L. said he heard Ms. Esposito yell to the officers not to shoot and telling the officers Mr. Whittle was holding a butter knife. After the officer fired, N. L. said he heard Ms. Esposito saying: "Why did they have to shoot, he wasn't going to hurt me, he would never hurt me?"

Witness W. C.

Protocol investigators interviewed W. C. who lived at 11784 South Stone Ridge Court. W. C. said she knows Mr. Whittle and he has caused numerous problems in the neighborhood in the past.

W. C. said she was inside her house with a window open when she heard yelling and then heard: "I'll kill her! I'll kill her!" W. C. said she went out to her front porch and saw Mr. Whittle "face to face" with someone. W. C. said at the time, she didn't realize police were on scene. W. C. said she heard a pop and saw Mr. Whittle fall to the ground.

Witness J. W.

Protocol investigators interviewed J. W. who lived at 11780 South Stone Ridge Court. J. W. said he looked out and saw two police officers confronting Mr. Whittle. W. C. said he saw Mr. Whittle holding his mother "tightly" from behind. W. C. said it didn't look like Ms. Esposito was free to leave. W. C. said he heard Mr. Whittle yell: "I'll kill her!" W. C. said he saw a police officer shoot Mr. Whittle.

Witness M. R.

Protocol investigators interviewed witness M. R. who said he went outside and heard Mr. Whittle yelling: "I will not put down the knife, I will not put down the knife." M. R. said he made sure his kids were safe and he saw Mr. Whittle forcefully walking Ms. Esposito. M. R. said he saw Mr. Whittle holding Ms. Esposito by her shirt near her shoulder and possibly her neck. M. R. said it looked to him like Ms. Esposito was not moving according to her will.

M. R. said he heard Mr. Whittle yell: "I'm going to kill the bitch, I'm going to kill the bitch." M. R. said he went inside his house because he recognized the possibility of "being in the line of" imminent gunfire. M. R. said within seconds of closing the door, he heard a single gunshot.

Physical Evidence

Protocol investigators inspected and photographed the OICI scene where Mr. Whittle was shot. Investigators also obtained a diagram Officer Yates drew during his interview depicting the relative positions of persons involved in the incident.

Investigators inspected the Smith & Wesson, M&P 9 mm used by Officer Broadhead. Investigators determined that the weapon had been fired once. No shell casing was located on the scene.

Surveillance cameras were located around the house, but the cameras did not capture the incident. Witness' M. R. had a surveillance camera on his home pointed in a direction which did not capture video of the incident, but did capture some audio prior to Officer Broadhead firing his weapon. Neither Officer Broadhead nor Officer Yates were wearing body-worn cameras.

911 Call

We reviewed Ms. Esposito's 911 phone call asking for police to respond to help. As the 911 call taker asked for the address of the emergency, Mr. Whittle can be heard yelling in the background. Eventually, Ms. Esposito can be heard speaking on the phone while Mr. Whittle yelled in the background. Ms. Esposito told the 911 call taker: "My son is mentally ill and he is high on meth. He came pounding on my door and [I let him in?] and he's out of control." The call taker asked: "And you believe he's on meth?" Ms. Esposito answered: "Yes. And he is also mentally ill. He's schizophrenic." The call taker asked Ms. Esposito: "Are you in danger?" to which Ms. Esposito replied: "No, but I think [unintelligible]." The call taker asked: "You can't do what?" Ms. Esposito turned her attention and said something to Mr. Whittle who had been yelling in the background the whole time.

The 911 call taker asked Ms. Esposito: "Are there any weapons there?" At this point in the call, it became apparent that Ms. Esposito had the conversation on speakerphone, because Mr. Whittle answered the call taker's question: "Yes, there are!" Ms. Esposito also said: "No." Mr. Whittle continued: "there are several handguns and knives" while Ms. Esposito again said: "No" and then to Mr. Whittle: "Stop." Mr. Whittle can be heard repeating: "several handguns and knives."

Ms. Esposito told the call taker that she had "a court order against him that needs to be served." Ms. Esposito told the call taker: "I just went into my closet, I'm sure he'll be here soon. He's been homeless, he's not been allowed to come home. He was making a racket. So I let him in. He was quiet at first but he's just escalated. He's getting aggressive." The 911 call taker asked Ms. Esposito: "You're sure there's no weapons, right?" Ms. Esposito replied: "There are no guns, I think he has a butter knife." The call taker asked: "In his hand?" Ms. Esposito replied: "Yea."

In the background, Mr. Whittle can be heard asking: "Aren't officers of the law supposed to be here by now?" The call taker asked Ms. Esposito: "Will he be violent with officers?" Ms. Esposito said: "No." and Mr. Whittle started yelling: "I will be violent with officers!" several times, and "I will kill them with knives!"

Mr. Whittle can be heard saying to Ms. Esposito: "Come with me, go outside, now. We need to go outside. If the officers are coming, we need to go outside. I'm going to jail! Any officer—I will kill them with knives! I will kill them with knives if they come in the back door." The call taker asked Ms. Esposito: "Does he still have a butter knife in his hand?" Ms. Esposito replied: "Yes." The call taker asked Ms. Esposito: "Can you get out of the house safely?" To which Mr. Whittle replied: "No she cannot!" The call taker again asked Ms. Esposito: "Can you exit this house?" Ms. Esposito replied: "I can but I don't want to because he'll just lock it down."

The call taker asked: "Does he have any weapons on him? Does he still have the butter knife?" Ms. Esposito said: "No, he has nothing else." The call taker tried to clarify: "He's put down the knife?" Ms. Esposito replied: "He still has the butter knife." At this point in the call, the call taker asked Ms. Esposito to take the call off speaker phone and she complied. Then the call taker again clarified: "He does not have the butter knife or he does?" Ms. Esposito said: "He does, he still does." The call taker asked: "Do you know of anything that's going to settle him down some?" Ms. Esposito said: "No. I've been trying to talk quietly with him and he just keeps escalating."

The call taker asked Ms. Esposito: "Do you think he'll hurt you?" Ms. Esposito said: "No." The call taker said: "The officers are asking you to step outside." Ms. Esposito replied: "If I do, I won't—they won't be able to get him, get in." The call taker said: "Like I said, the officers are asking you to walk outside." Ms. Esposito replied: "Ok, he's holding the dog." A discussion about how to leave the home followed. Mr. Whittle can be heard yelling throughout. Once outside, Mr. Whittle can be heard yelling repeatedly: "I'll kill her! I'll kill her!"

Police Radio Traffic

We reviewed the recording of police radio dispatchers communicating with the responding officers. After informing the officers of the address, the police radio dispatcher advised the officers: "Complainant's son is mentally ill and is out of control, possibly on meth. He's going to be in the basement apartment, it will be Jason Whittle. We do have a 'hazard' on him: he's bipolar and schizophrenic..."

About three minutes after the above transmission, dispatchers advised the officers: "Riverton 13, units, be advised, he now has a knife in his hand." Officer Yates acknowledged the information. Then the police dispatcher "three beeped" the radio, a signal that the call was more urgent than a routine assignment. The dispatcher then advised: "both of you [responding officers] will be Code 1 due to the knife." A responding officer advised he would be "10-39," which meant he would be responding to the call with lights and sirens and traveling at high speed. Radio traffic recordings captured other police units responding to the call.

About two minutes after the above radio transmissions, the dispatcher informed the officers: "Be advised, he says he's going to kill anyone that comes into the back door." Officer

Broadhead acknowledged the information and informed dispatchers they were arriving. The dispatcher asked the officers: "Is he still holding the knife as well?" to Officer Broadhead responded: "yea, complainant [unintelligible] still inside [unintelligible] outside...have them exit if they can." Officer Broadhead broadcast: "she clearly inside and doesn't want to go outside because he's going to lock the door if she walks outside." Officer Broadhead asked the dispatcher: "just tell her to go outside."

The dispatcher advised officers: "the complainant will be stepping out the back door." About a minute elapsed, and Officer Yates broadcast: "[unintelligible] he's got one at, uh..." Ms. Esposito can be heard in the background. A few seconds later Officer Yates broadcast: "shots fired, I've got one down, gunshot wound to the head, start medical. We had a female, uh, he had a knife to her throat, start medical, we're going to try to work him, we're secure for fire." Ms. Esposito can be heard yelling in the background.

ANALYSIS

As noted previously, as is his constitutional right, Officer Broadhead declined to answer questions or provide a statement to investigators. Without Officer Broadhead's explanation of his use of deadly force against Mr. Whittle, we don't know his reason for his decision to fire his weapon. We are therefore left to infer the rationale for Officer Broadhead's decision to use deadly force based on other evidence we received, as well as the reasonable inferences to be drawn from that evidence.

In considering whether to charge Officer Broadhead with a criminal offense, we try to ascertain whether Utah's broad affirmative defense of "justification," particularly as applied to law enforcement officers, effectively precludes criminal prosecution based on the facts before us. In other words, we consider whether Officer Broadhead could establish at trial that he believed the "use of deadly force [wa]s necessary to prevent death or serious bodily injury to the officer or another person." Utah Code Ann. § 76-2-404(1)(c). We also consider whether Officer Broadhead's belief was reasonable given the facts as we presently know them.

As considered more fully below, statements provided by witnesses including other officers at the scene, as well objective evidence from the 911 audio recording, together with physical evidence recovered at the scene, all point toward a statutory defense of "justification." Although Officer Broadhead did not provide a statement to investigators, we believe the totality of the circumstances provides the bases for reasonable inferences that support the defense of "justification."

Specifically, during the morning of October 22, Mr. Whittle began loudly knocking on the windows of Ms. Esposito's basement in a frenzied state. When Ms. Esposito responded to Mr. Whittle's repetitive knockings and opened the door, Ms. Esposito noticed that Mr. Whittle, who had been previously diagnosed as bipolar and schizophrenic, seemed high on drugs and very agitated. Ms. Esposito called police officers out of concern for her son's wellbeing, as Mr.

Whittle apparently became agitated, yelling threats over the speakerphone which police dispatchers heard and relayed to officers responding to the call. Police dispatchers heard Mr. Whittle claim there were weapons in the home and that Mr. Whittle would kill police officers who arrived at the home. In the background of the call, Mr. Whittle is heard yelling: "I will be violent with the officers!" and "I will kill them with knives!" As the police officers traveled to the home, dispatchers informed them that Mr. Whittle was high on methamphetamines, mentally ill and out of control and threatening to kill anyone who came in the home and that Mr. Whittle had a knife.

After Officer Broadhead and Officer Yates arrived on scene, Mr. Whittle followed Ms. Esposito outside and grabbed onto her from behind. Witnesses reported that Mr. Whittle held a knife up to Ms. Esposito's throat. Although the knife was observed later at the scene by protocol investigators as a butter knife, police radio dispatchers advised responding officers that Mr. Whittle had a knife, not a butter knife. Ms. Esposito later told investigators that Mr. Whittle held the knife to her neck but did not press the knife into her throat. However, we consider what information Officer Broadhead had at the time he made the decision to use deadly force. Officers told Mr. Whittle to drop the knife multiple times, but Mr. Whittle refused and screamed: "I can hurt her!" and/or "I will kill her!"

As noted above, Officer Broadhead declined to be interviewed or provide a statement explaining the basis for his decision to use deadly force so we don't know what Officer Broadhead was thinking or feeling, or the facts upon which he may have based his decision to use deadly force against Mr. Whittle. In this case, we don't know whether Officer Broadhead heard Ms. Esposito's claims that Mr. Whittle was only holding a butter knife, that he was mentally ill, and that he wouldn't hurt Ms. Esposito. We don't know whether Officer Broadhead heard Ms. Esposito ask him not to shoot Mr. Whittle. We don't know whether Officer Broadhead heard Ms. Esposito's statements and disregarded them, or considered and rejected them or some other scenario. Without Officer Broadhead's explanation of his decision to use deadly force against Mr. Whittle, we are left to draw reasonable inferences regarding Officer Broadhead's perception of the threat Mr. Whittle ostensibly posed to Ms. Esposito.

As outlined above, there are objective facts to support an inference that Mr. Whittle placed Ms. Esposito's life in immediate danger of death or serious bodily injury. Even though it appears that the knife Mr. Whittle held to Ms. Esposito's throat was a butter knife, and that Ms. Esposito told the at least the 911 call taker and also possibly officers it was a butter knife, we believe it's reasonable that officers would not take the time under these circumstances to try to assess the lethality of the particular knife at a victim's throat in part because, in this instance, they had been told Mr. Whittle had a knife which was not described as a butter knife. Here, officers were confronted with a man they were informed was high on methamphetamine, and mentally ill with a knife. When they arrived, they saw a man holding a woman from behind while holding a knife to her throat and threatening to kill her.

In this case, we considered Officer Yates' statements about what he perceived and what conclusions he drew from his observations. Officer Yates said he saw Mr. Whittle hold a knife to his mother's neck screaming: "I'm going to fucking kill her!" Officer Yates said Mr. Whittle did not comply with officers' commands. Officer Yates said that Mr. Whittle had a knife to his mother's neck and was using his mother as a shield. Officer Yates said he believed Officer Broadhead had no choice but to use deadly force.

Although we don't know what Officer Broadhead saw or heard or believed because he did not make a statement, we believe it's reasonable to infer that Officer Broadhead likely would have seen and heard and believed facts and circumstances similar to Officer Yates, such that we can draw reasonable inferences about Officer Broadhead's decision to use deadly force based somewhat upon Officer Yates' statements. To the extent that we can infer that Officer Broadhead believed that he needed to use deadly force against Mr. Whittle to prevent death or serious bodily injury to Ms. Esposito, we believe that inference is reasonable and supported by the objective facts that would have been available to Officer Broadhead.

The cumulative effect of these facts, as recounted to investigators by several witnesses, combined with the unfolding of the events leading up to the shooting, created a scenario in which Officer Broadhead could have reasonably believed that deadly force was necessary to prevent the death or serious bodily injury of Ms. Esposito at the OICI scene.

We don't believe Ms. Esposito's statements and requests⁶ to the 911 call taker or the officers ("don't shoot" and "it's a butter knife") affect our analysis and conclusions, even if Officer Broadhead heard them. Firstly, Ms. Esposito may have been objectively correct in her assertion that Mr. Whittle would not hurt her. Then again, Ms. Esposito, perhaps without knowing it, may have been objectively wrong—on this occasion, Mr. Whittle may have hurt her. And, although Ms. Esposito said she told the officers Mr. Whittle wasn't violent, in that moment he was indeed violent, inasmuch as he was apparently holding a knife to Ms. Esposito's throat while holding her body with his other hand. These actions appear to be corroborated by Officer Yates and witness M. R.

Given the totality of circumstances presented to the officers (about which Officer Yates testified) we cannot impose a duty on Officer Broadhead to follow Ms. Esposito's requests not to shoot or consider her statements about a knife given the specific details of this event. In other words, Officer Broadhead and Officer Yates experienced a situation in which Ms. Esposito's statements, if they were heard by the officers, were somewhat contradicted by the events unfolding before them, and were statements about which one couldn't make a guarantee: given what was occurring in front of the officers, it was not unreasonable for the officers to perceive a significant likelihood that Mr. Whittle was about to fatally injure Ms. Esposito unless the officers used deadly force. Mr. Whittle failed to follow their orders to drop the knife and persisted in his

⁶ While we acknowledge Ms. Esposito explained to the 911 call taker that she didn't think Mr. Whittle would harm Ms. Esposito, not all of that information appears to have been conveyed to the officers on the call. Specifically, at the time 911 call takers ask whether Ms. Esposito believes Mr. Whittle will hurt her, officers are outside the home and Ms. Esposito and Mr. Whittle are walking outside. Seconds later, Mr. Whittle is heard yelling: "I will kill her!" and moments later Officer Broadhead fired his weapon.

verbal and demonstrable threats against Ms. Esposito. It appears the officers were reacting to the events quickly unfolding before them within a context established by information they received while *en route*; specifically, the officers reacted to a man they were informed was high on methamphetamine, mentally ill, acting erratically, failing to comply with lawful orders, holding a woman from behind while holding a knife to her throat and threatening to kill her.

Our analysis and discussion accounts for our burden of proof in the criminal justice system. Even in matters where more than one point of view is considered, conclusions can still be reached and relied upon. Here, if criminal charges were brought against Officer Broadhead the DA's Office would be required to prove beyond a reasonable doubt that Officer Broadhead, intentionally and without legal "justification" as defined by statute, shot and killed Mr. Whittle; in other words, that Officer Broadhead did not "reasonably believe[] that the use of deadly force [was] necessary to prevent death or serious bodily injury to ... another person," when Officer Broadhead shot Mr. Whittle. *See* Utah Code § 76-2-404(1)(c) (emphases added).

As the United States Supreme Court instructed in *Graham*, assessing "reasonableness" in the Fourth Amendment context "requires careful attention to the facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to the safety of the officers or others." 490 U.S. at 496 (emphases added). Assuming the witnesses listed above would testify consistently with their prior statements and facts described above, and assuming Officer Broadhead would articulate similar fears for the public's safety, we believe Officer Broadhead could successfully argue he "reasonably" believed the "use of deadly force [wa]s necessary to prevent death or serious bodily injury to ... another person." Utah Code Ann. § 76-2-404(1)(c). We further believe, based on the foregoing, that if evidence outlined above were presented to a jury in a criminal trial against Officer Broadhead for his use of deadly force, it's unlikely a jury would unanimously conclude that Officer Broadhead did not reasonably believe that deadly force was necessary to prevent death or serious bodily injury to Ms. Esposito.

While we don't know what Officer Broadhead saw, heard or believed at the time he used deadly force, we know what he could have seen or heard or believed, based on the facts we presently know. Indeed, as we have the benefit of Officer Yates's testimony, we know what Officer Yates' vantage point was, and we can draw reasonable inferences about what Officer Broadhead could have seen and likely saw. We also have the benefit of the 911 recording and the recording of police radio traffic capturing some of Mr. Whittle's conduct and, by inference, state of mind at the time, even though Ms. Esposito equivocated about the danger and the threat Mr. Whittle presented. We also have the statements of witnesses who observed some of the events surrounding the OICI. From these facts, an inference that Officer Broadhead used deadly force because he believed deadly force was necessary to prevent death or serious bodily injury is a reasonable inference and one that supports the legal defense of "justification."

In short, paying "careful attention to the facts and circumstances" of this case, and considering the totality of the evidence and reasonable inferences to be drawn therefrom, we

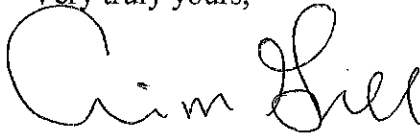
conclude Officer Broadhead's use of deadly force likely falls within the definition of "justification" set forth in Utah State law.

CONCLUSIONS

As noted previously, the facts and conclusions set forth in this letter are based on the evidence of which we are currently aware. If additional facts become available, these conclusions may change. While Officer Broadhead did not answer questions or provide a statement, this matter has significant evidence, such as Officer Yate's testimony, the 911 phone call and statements of other witnesses to corroborate events as they were reported.

Based on the totality of evidence presented to date, and the reasonable inferences to be drawn from that evidence, we conclude Officer Broadhead could likely establish at trial that he believed the "use of deadly force [wa]s necessary to prevent death or serious bodily injury to the officer or another person." Utah Code Ann. § 76-2-404(1)(c). In that event, Utah State law would provide him the legal defense of "justification" from criminal liability in connection with this incident. Accordingly, we do not intend to pursue criminal charges against Officer Broadhead.

Very truly yours,



Sim Gill
Salt Lake County District Attorney