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September 18, 2019

RE:	Sgt. Ricks and Officer Holland's Use of Deadly Force
Incident Location:	445 East, 300 South, Salt Lake City, Utah
Incident Date:	February 13, 2020
DA Case No.:	2020-A1
SLCPD Case No.:	2020-28772
USM Case No.:	20-30347
Herriman PD Case No.:	20-1468

Dear Chief Brown, Marshal Harris, Chief Carr, and Agent Wynn:

This letter addresses the February 13, 2020 use of deadly force against Brian Filion by Herriman City Police Department ("HPD") Sgt. Ben Ricks and United States Department of Homeland Security ("DHS") Officer Jared Holland. During the events at hand, Sgt. Ricks and Officer Holland were part of an operation conducted by the United States Marshal Service's Violent Fugitive Apprehension Team ("VFAST.") As a result of their use of deadly force, Mr. Filion died from his injuries. HPD Police Service Dog ("PSD") Hondo was also killed during the event.

The officers' discharge of their firearms constituted 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, pursuant to Utah State law and an agreement among participating law enforcement agencies called the "Officer Involved Critical Incident" ("OICI") Protocol (*see*,

Utah Code Ann. § 76-2-408(2)-(3)), an investigative task force, led by members of the Salt Lake City Police Department (“SLCPD”), and comprising members of law enforcement officers employed by agencies other than the employing agencies of the involved officers, was called in to investigate the use of deadly force. After the investigation, on April 27, 2020, the task force’s investigative findings were presented to the Salt Lake County District Attorney’s Office (“D.A.’s Office”), which has the constitutional and statutory mandate to screen such matters for possible criminal charges¹.

SUMMARY OF FACTS AND FINDINGS

The following summary of facts was 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 February 13, 2020, as the U. S. Marshal Service VFAST task force tried to arrest Brian Filion on a no-bail warrant from the Utah Board of Pardons and Parole, Mr. Filion fled from officers and ran down an alleyway. HPD Sgt. Ricks released his PSD Hondo who chased and caught Mr. Filion. With PSD Hondo holding Mr. Filion on the ground, Mr. Filion produced a .45 ACP caliber handgun. One officer yelled: “Gun!” Another officer yelled that Mr. Filion was “reaching” or “grabbing” for the gun. Several officers later testified they saw Mr. Filion with a gun in his hand.

Sgt. Ricks and Officer Holland opened fire at Mr. Filion, hitting him twice in the head and once in the leg. It was quickly clear to officers that Mr. Filion died from the gunshot wounds in his head. Sgt. Ricks discovered that his dog, PSD Hondo, had also been hit by a bullet. He and another officer took Hondo for emergency veterinary care, but Hondo died from his gunshot wound.

Protocol investigators arrived, inspected and documented the scene, and interviewed witnesses. Investigators found a .45 ACP caliber handgun and loaded magazines next to Mr. Filion’s body. Witnesses described the events immediately prior to and during the officers use of deadly force. The officers who used deadly force refused to be interviewed or provide a statement regarding their use of deadly force, as is their constitutional right. Neither the shooting officers nor any other VFAST member had a body-worn camera during the operation. U. S. Marshal Service police prevents officers from wearing body-worn cameras during a VFAST operation, irrespective of the policy of the individual officer’s own police department policy.

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 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). Also, “Upon review of all facts and testimony taken concerning the death of a person, the district attorney or county attorney having criminal jurisdiction shall determine if the decedent died by unlawful means and shall also determine if criminal prosecution shall be instituted.” U.C.A. 26-4-21 (2).

As we discuss in more detail below, we believe the facts of this matter, taken together with reasonable inferences about the involved officers' apparent decision to use deadly force, where those inferences are derived from the facts, support a conclusion that if criminal charges were filed against Sgt. Ricks and/or Officer Holland, and a jury (or other finder of fact) were called upon to determine whether the officers' use of deadly force constituted a criminal act, the finder of fact would likely determine that Sgt. Ricks and/or Officer Holland's use of deadly force satisfies the elements of the affirmative legal defense of justification. Assuming Sgt. Ricks' and/or Officer Holland's testimony in a criminal case (if any) would be consistent the facts as we believe them to be based upon statements provided by witnesses, corroborated by physical evidence collected by protocol investigators, believe a jury (or other finder of fact) would likely conclude that Sgt. Ricks and Officer Holland used deadly force because they reasonably 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).

When an officer uses deadly force because the officer reasonably believes the "use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person," Utah State law affords the officer the affirmative legal defense of "justification" and the jury is instructed to find a person charged with a crime "not guilty" of the alleged offense. In this case, we believe the facts meet the elements of a justified use of deadly force, and we decline to file a criminal charge against either officer for his use of deadly force.

RELEVANT LEGAL STANDARDS

As relevant here,² law enforcement officers 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

² Also relevant, but less so given the officers' status as law enforcement officers, 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.

- (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 injury³ 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).

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.

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).

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.

FACTS DEVELOPED DURING OICI INVESTIGATION

As noted previously, SLCPD led an investigative task force of law enforcement officers who conducted the OICI protocol investigation of the officers' weapons discharge. The protocol investigation's independent investigative findings were presented on April 27, 2020 to the D. A.'s Office to screen for possible criminal charges.

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

Brian Filion was released on parole from the Utah State Prison and was ordered to report to his parole officer on February 8, 2020 but failed to do so and became a fugitive. Investigators in Utah Department of Corrections' Adult Probation and Parole ("AP&P") opened an investigation into Mr. Filion's whereabouts. That investigation generated information that caused AP&P to believe Mr. Filion may have been involved in a murder in Weber County, Utah on February 8, 2020. AP&P also developed information that Mr. Filion was in possession of a .45 ACP caliber handgun that was stolen in an unrelated burglary. On February 10, 2020, the Utah Board of Pardons issued a no-bail, fugitive arrest warrant for Mr. Filion.

By February 13, 2020, AP&P and the U. S. Marshal Service developed information about Mr. Filion's whereabouts. In the afternoon of February 13, 2020, VFAST task force officers located a gray Nissan Altima driven by an unknown woman, (who was later identified as a woman we refer to as J. F.) with Mr. Filion in the passenger seat. With the help of a Utah Department of Public Safety helicopter and officers in vehicles, VFAST members followed Mr.

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).

Filion as he traveled through Weber and Davis Counties and into Salt Lake City. It was a little after 10:00 p.m. as they entered the city.

At about 10:35 p.m., Mr. Filion and J. F. parked the Nissan in the area of 450 East and 300 South in Salt Lake City. Mr. Filion and J. F. got out of the car and entered the Peter Pan apartment building. Officers discussed a plan to apprehend Mr. Filion while he was in the middle of the street to prevent him from reentering the apartment building or the Nissan. HPD Sgt. Ricks and his police service dog ("PSD") Hondo were working as part of the VFAST task force and were on scene. Sgt. Ricks and PSD Hondo were in a van east of the parked Nissan. Other VFAST officers were staged in the area.

At 11:33 p.m., Mr. Filion and J. F. exited the apartment building. They walked southbound across 300 South. When they reached the middle of the street, VFAST officers gave the take-down signal, and Sgt. Ricks and PSD Hondo got out of the van to make contact with Mr. Filion. VFAST officers ordered Mr. Filion and J. F. to put their hands up and get on the ground. Instead of following the officers' orders, Mr. Filion fled and ran north back towards the apartment building and eastbound to an alley on the east side of the apartment building. Sgt. Ricks released PSD Hondo who chased Mr. Filion down the alley. Sgt. Ricks and other VFAST members, including Officer Holland, Deputy U. S. Marshal Thomson, and AP&P Agents Roothoff and Perry followed.

PSD Hondo caught Mr. Filion and took him to the ground in the alley. Mr. Filion was on his back. As he raised up, he produced a firearm while PSD Hondo was attached to Mr. Filion's left arm. Deputy Marshal Thompson saw Mr. Filion's firearm and yelled: "Gun!" In a subsequent interview, AP&P Agent Roothoff said he heard someone say something like: "He's going for it!" "He's grabbing it!" "He's reaching it!" Sgt. Ricks and Officer Holland fired their weapons at Mr. Filion. Officers called out "shots fired" at 11:34 p.m.

PSD Hondo limped back to Sgt. Ricks who discovered that the dog had been shot. Sgt. Ricks removed PSD Hondo from the scene and rushed him to Advanced Veterinary Care for treatment. PSD Hondo died from his injuries.

Other officers approached Mr. Filion. They determined he was deceased with two gunshot wounds in his head. VFAST members secured the scene and notified SLCPD of the situation. SLCPD officers arrived, assumed command of the scene and coordinated the OICI protocol response.

Protocol investigators were informed Sgt. Ricks and Officer Holland refused to be interviewed or provide statements, as is their constitutional right. Investigators interviewed law enforcement officers Deputy US Marshal Thompson, AP&P Agents Roothoff and Perry, HPD Det. Beckstead, as well as civilian witnesses J. F., J. C., H. L., B. W., and L. F. Investigators also interviewed fourteen additional VFAST task force members who were part of the operation but did not witness the OICI events.

Witness Statements

Sgt. Ricks

Sgt. Ricks' attorney informed protocol investigators that Sgt. Ricks refused to be interviewed by or make a statement to investigators about his use of deadly force. Sgt. Ricks has a constitutional right to remain silent and not answer questions or provide a statement and is presumed innocent of any wrongdoing.

Officer Holland

Officer Holland's attorney informed protocol investigators that Officer Holland refused to be interviewed by or make a statement to investigators about his use of deadly force. Officer Holland has a constitutional right to remain silent and not answer questions or provide a statement and is presumed innocent of any wrongdoing.

Deputy Marshal Thompson

On February 14, 2020, protocol investigators interviewed Deputy U. S. Marshal Thompson. Deputy Thompson said he was the team leader of VFAST and in charge of the operation on February 13, 2020. Deputy Thompson said VFAST received information about Mr. Filion's whereabouts and were able to locate him in a neighboring county. Deputy Thompson said officers followed the Nissan Altima in which Mr. Filion was traveling into Salt Lake City. Deputy Thompson said officers followed the vehicle until it parked in the area of 450 East, 300 South in Salt Lake City.

Deputy Thompson said he saw the driver, (a woman we refer to as J. F.) and Mr. Filion get out of the car and enter the Peter Pan Apartments at 445 East, 300 South. Deputy Thompson said he notified SLCPD that VFAST was conducting an operation in the city. Deputy Thompson said while Mr. Filion was inside the apartment building, he formulated a take down plan and shared it with the other VFAST officers. Deputy Thompson said the plan was to deploy Sgt. Ricks' PSD Hondo and arrest Mr. Filion in the middle of 300 South Street.

Deputy Thompson said when Mr. Filion and J. F. exited the apartment building, Sgt. Ricks got out of the van with PSD Hondo. Deputy Thompson said Mr. Filion ran north toward the apartment building and Sgt. Ricks released PSD Hondo who chased Mr. Filion. Deputy Thompson said he drove his police truck into the alleyway where Mr. Filion ran and saw PSD Hondo take Mr. Filion to the ground. Deputy Thompson said as he approached, he saw Mr. Filion produce a handgun while PSD Hondo was in Mr. Filion's lap. Deputy Thompson said it looked to him like Mr. Filion had PSD Hondo in a headlock and Mr. Filion had his gun pointed at PSD Hondo.

Deputy Thompson said he yelled: "Gun! Gun!" Deputy Thompson said he heard officers yelling: "Police! Drop it!" Deputy Thompson said he saw Mr. Filion look up at him and then heard gunshots firing around him. Deputy Thompson said he didn't know whether Mr. Filion

had shot the dog or fired his gun. Deputy Thompson said once Sgt. Ricks realized PSD Hondo was shot, he removed the dog from the scene. Deputy Thompson said he saw Mr. Filion's handgun on the ground and didn't touch the weapon.

Agent Roothoff

On February 14, 2020, protocol investigators interviewed AP&P Agent Roothoff. Agent Roothoff said the evening before, VFAST was following a parole fugitive and homicide suspect, Brian Filion. Agent Roothoff said VFAST followed a car Mr. Filion was traveling in as the car entered Salt Lake City and parked in the area of 450 East, 300 South. Agent Roothoff said Mr. Filion, the female driver and a third, unknown male went into the Peter Pan Apartments on 300 South. Agent Roothoff said he was attempting to place a tracking device on the car when the female ran out of the apartment building to the vehicle and quickly ran back inside.

Once the female went back into the apartments, Agent Roothoff said he placed a tracker on the vehicle and then left the area with his partner, AP&P Agent Karson Welch. Agent Roothoff said he and Agent Welch soon returned to the area where the vehicle was parked. Agent Roothoff said he waited in a driveway just east of 451 East, 300 South.

Agent Roothoff stated an officer on the police radio said Mr. Filion and the woman (whom we refer to as J. F.) were coming out of the apartments. Agent Roothoff said Agent Welch slowly moved their vehicle forward to the sidewalk. As they did so, Agent Roothoff said someone on the radio said: "Go ahead, take them." Agent Roothoff stated Mr. Filion and J. F. were in the middle of the road when the police dog came out. Agent Roothoff said he saw Mr. Filion run back across the street just west of where Agent Roothoff was.

Agent Roothoff said he jumped out of his vehicle and ran up the alley where Filion ran. He stated he was familiar with the alley from a previous experience and knew the alley was narrow. As he was rounding the corner of the alley, Agent Roothoff said a truck was quickly pulling into the alley. Agent Roothoff said he hugged the wall of the alley to avoid being hit by the truck. Agent Roothoff said Sgt. Ricks was ahead of him, first in line; Officer Holland was second in line behind Sgt. Ricks, and Agent Roothoff was third in line, behind Officer Holland.

Agent Roothoff said he peered around Officer Holland and saw Mr. Filion on the ground. Agent Roothoff said he thought PSD Hondo had a hold of Mr. Filion. Agent Roothoff said he heard someone say something like: "He's going for it!" "He's grabbing it!" "He's reaching it!" Agent Roothoff said he was not exactly sure what was said, but he heard someone say something about a gun. Agent Roothoff said he immediately heard three to four gunshots.

Agent Roothoff said he believed Officer Holland fired one to two shots, but Agent Roothoff said he was not sure where the other gunshots came from. Agent Roothoff said as soon as shots were fired he saw Mr. Filion go down and PSD Hondo limp over to Sgt. Ricks. Agent Roothoff said Sgt. Ricks picked up PSD Hondo and carried him out of the alley.

Agent Roothoff said he approached Mr. Filion and could tell “he was gone.” Agent Roothoff said grabbed Mr. Filion’s arm and handcuffed him and rolled him over to his back. Agent Roothoff said he could see two bullet holes in Mr. Filion’s head and saw blood streaming from his head. Agent Roothoff said medical personnel were called and he and other VFAST officers secured the scene and marked what they felt was important evidence on scene to preserve it.

Agent Perry

On February 14, 2020, protocol investigators interview AP&P Agent Perry. Agent Perry said on February 13, 2020, he was not part of VFAST but was a member of the Salt Lake Metro Gang Unit and was working with VFAST members to try to apprehend Brian Filion. Agent Perry said the Board of Pardons had issued a no-bail arrest warrant for Mr. Filion.

Agent Perry said he and other VFAST members followed Mr. Filion to the area of 300 South and 400 East in Salt Lake City. Agent Perry stated Marshal Thomson had already briefed everyone on the plan for the takedown. He stated the plan was to let Mr. Filion get far enough away from the apartment building so that he didn’t go back into the building and not allow him to get back to the car to go mobile. Agent Perry said the plan was to take Mr. Filion down in the middle of the road.

Agent Perry said information went out over the police radio that Mr. Filion had exited the apartment building and was in the street. Agent Perry said there was a team of officers to the east with a police dog. Agent Perry said the officers were going to deploy the police dog and then everyone was going to converge and take Mr. Filion into custody.

Agent Perry said that when officers made contact with Mr. Filion, he ran north towards the apartment building. Agent Perry said that police vehicles converged and drove up the alley where Mr. Filion ran. Agent Perry said he got out of his vehicle, ran up the alley and heard gunshots fired. Agent Perry said he did not see who fired the shots. Agent Perry said Mr. Filion was on the ground with blood gushing from his head and he could see a handgun on the ground. Agent Perry stated officers said Mr. Filion was obviously deceased with gunshot wounds in his head. Agent Perry said he stood next to a handgun on the ground next to Mr. Filion until he was relieved by a SLCPD officer.

Det. Beckstead

On February 14, 2020, protocol investigators interviewed HPD Det. Beckstead. Det. Beckstead said he was a member of VFAST. Det. Beckstead said on February 13, 2020, he attended a briefing with other VFAST members regarding the apprehension of Brian Filion. During the briefing, Det. Beckstead said VFAST members were informed that Mr. Filion was considered to be “armed and dangerous,” and that officers had information to believe that Mr. Filion possessed a stolen .45 ACP caliber handgun. Det. Beckstead said officers were briefed that Mr. Filion was a suspect in a homicide, and that the Board of Pardons and Parole had issued

a no-bail warrant for his arrest. Det. Beckstead said Sgt. Ricks and Officer Holland were present during the briefing.

Det. Beckstead said VFAST members surveilled a car traveling into Salt Lake City, driven by a female and with Mr. Filion inside. Det. Beckstead said the female parked the car on the south side of 300 South and she and Mr. Filion walked into an apartment building on the north side of 300 South. Det. Beckstead said he was positioned east of the apartment building; he was at 500 East and 300 South. Det. Beckstead said he knew a police dog was positioned two cars in front of the suspect vehicle with PSD Hondo in the back seat ready to deploy.

Det. Beckstead said an officer on the police radio stated the male and the female were coming out of the apartment building. Det. Beckstead said when the Mr. Filion and the female came out of the apartment building, he started driving toward them with his lights and siren on. Det. Beckstead said he could see Sgt. Ricks and PSD Hondo getting out of their vehicle.

Det. Beckstead said Mr. Filion ran north across 300 South and up an alleyway. Det. Beckstead said PSD Hondo chased him. Det. Beckstead said he believed he saw Mr. Filion running with a gun in his hand. By the time Det. Beckstead got out of his vehicle, PSD Hondo had apprehended Mr. Filion and Det. Beckstead said he saw a muzzle flash come from Mr. Filion's gun⁵. Det. Beckstead said Mr. Filion's gun was aimed "point blank" at PSD Hondo.

Det. Beckstead said that another VFAST officer's vehicle pulled in front of Det. Beckstead and he then heard more gun shots. Det. Beckstead said he did not see who shot because his view was blocked by the vehicle, but he could hear officers yelling. Det. Beckstead said went around the vehicle and saw PSD Hondo walking back and was wounded. Det. Beckstead said Sgt. Ricks started yelling for medical assistance because PSD Hondo was shot. Det. Beckstead said he and Sgt. Ricks loaded PSD Hondo into his truck and he and Sgt. Ricks and drove to the veterinarian.

Det. Beckstead thought there were two to three rounds that Mr. Filion shot at PSD Hondo and he did not know if any rounds were fired at officers. Det. Beckstead stated PSD Hondo saved their lives because Mr. Filion was going to shoot one of the officers.

Witness J. F.

On February 14, 2020, protocol investigators interviewed J. F., who said she met Mr. Filion a couple of days prior to the OICI. J. F. said that in the afternoon of February 13, 2020, Mr. Filion called her and asked for a ride. J. F. said she and Mr. Filion drove to Ogden and Farmington, Utah and met with people. J. F. said she and Mr. Filion drove back to Salt Lake City and met her friend; the three went to a third party's apartment. J. F. said she was unaware that Mr. Filion had any weapons.

⁵ As outlined below in our discussion of physical evidence, it's very unlikely that what Det. Beckstead saw was actually muzzle flash from Mr. Filion's pistol, as all the evidence tends to show that Mr. Filion's weapon was not fired during the incident.

J. F. said she and Mr. Filion left the apartment and walked back to her car. J. F. said as they crossed the street, police officers approached them. J. F. said she recognized them as police officers and thought they were a SWAT team. J. F. said she saw badges around their necks and recognized them as “officers of the law.”

J. F. said the officers told them to put their hands up and get down on the ground. J. F. said Mr. Filion ran towards the apartment building. J. F. said she heard three gunshots. J. F. said one of the officers approached her and she saw another officer carrying a dog to his police vehicle and leave.

Witnesses J. C. and H. L.

On February 14, 2020, protocol investigators interviewed J. C. and H. L. who said they live in the Peter Pan Apartments in a basement apartment unit in the northeast corner of the building. H. L. said she was in the bedroom and J. C. was in the living room when the shooting occurred. H. L. said she heard lots of yelling and vaguely remembered someone saying something about a gun. H. L. said she heard what she described as tapping on the windows, like someone was tapping a flashlight against the window. H. L. said she looked out the window and saw a white male lying on the pavement with a gunshot wound in his head.

J. C. said he was watching a show when he heard yelling outside and thought it was the neighbors. J. C. said when he realized what was being said, he knew it was not the neighbors. J. C. said he heard someone yell: “Stop!” and “Get on the ground!” J. C. said he heard a dog barking and then someone yell: “Gun!” J. C. said he heard what he thought was three gunshots, and said it was the same sound that H. L. described as tapping on the window. J. C. said he looked out the window and saw a white male on the ground with a gunshot wound in his head and what he thought was a gun on the ground next to the male.

Witnesses B. W. and L. F.

On February 14, 2020, protocol investigators interviewed B. W. and L. F. who live at 260 South, 500 East, on the same city block and to the northeast of the OICI scene. Their apartment building faces the rear of the Peter Pan Apartments. B. W. said he was watching television with L. F. when they heard a helicopter hovering nearby. B. W. said he and L. F. went to the apartment’s balcony and, as they did so, heard five or six gunshots. B. W. said he saw police officers confronting a man who was on the ground. B. W. said it appeared the man had been shot because there was blood everywhere. B. W. and L. F. said they did not see the shooting or events that led up to it, nor did they hear any verbal commands from the officers. L. F. said she made a video recording of the officers handcuffing the man on the ground. Protocol investigators reviewed the recording and confirmed the recording did not capture the shooting or events leading up to it.

Physical Evidence

Protocol investigators inspected and photographed the OICI scene, inspected the involved officers' weapons, attended Mr. Filion's autopsy, and reviewed veterinary medical records. Investigators looked for, but did not find, surveillance or other video recordings of the OICI, and determined, as far as investigators know, no video recording exists of the shooting or the events leading up to it.

Body-Worn Camera Recordings

Neither Sgt. Ricks nor Officer Holland or any of the witness officers were wearing body-worn cameras during the incident. Protocol investigators were informed that, pursuant to U. S. Marshal Service policy, VFAST officers are not authorized to wear body-worn cameras during an operation⁶. As far as we know, no body-worn camera recording exists of the shooting or the events leading up to it.

Officer Downloads

OICI Protocol investigators examined Sgt. Ricks' and Officer Holland's weapons and police equipment they used and possessed during the OICI. Investigators downloaded the officers' weapons. Investigators determined Sgt. Ricks' 9mm caliber handgun was down two rounds. Investigators observed and documented Sgt. Ricks' two 9mm bullets in Mr. Filion's two head wounds during the autopsy. Investigators determined Officer Holland's .223 caliber M4 rifle was down four rounds. Investigators observed and documented one .223 bullet in Mr. Filion's hip during the autopsy. Investigators recovered or accounted for the other three rounds at the OICI scene. Veterinarians removed several small bullet fragments from PSD Hondo. The physical evidence appears to show that it's most likely that the bullet fragments removed from PSD Hondo are consistent with a .223 bullet, most likely fired by Officer Holland. Based on the position of PSD Hondo and Mr. Filion, together with the bullet fragments recovered during the autopsies of PSD Hondo and Mr. Filion, investigators determined that Officer Holland's .223 caliber bullet likely struck PSD Hondo in his sternum, traveled through his right caudodorsal chest wall and ribs seven through nine, and exited his back, where it entered Mr. Filion's leg and stopped in his hip. Investigators noted that the entry wound on PSD Hondo did not show any signs of powder burns, stippling, or other fouling, or any other evidence of a contact wound or very close range of fire. Evidence showed the entry wound on PSD Hondo was caused by a gunshot from a distant or indeterminate range of fire.

⁶ The particular specifics of this matter illustrate the complications created by a policy prohibiting body-worn cameras. The two shooting officers refused to explain their apparent decisions to use deadly force, as is their constitutional right. However, when the shooting officers' vantage points seem to be substantially clearer than the other witness officers, and the shooting officers refuse to explain what they saw, what they believed, and why they decided to use deadly force, and there is no video recording to portray what the shooting officers might or could have seen, our analysis must depend on inferences we try to draw from the facts that are available to us. A policy prohibiting body-worn cameras can significantly undermine our ability to independently decipher the truth. The Utah State Legislature may want to consider a statute that requires Utah law enforcement officers to wear body-worn cameras in their interactions with our community, whether the officer acts as an agent of the State or part of a federal task force or other enforcement capacity.

Investigators inspected and documented Mr. Filion's .45 ACP Kimber brand "Stainless Ultra Carry" 1911 model pistol. Investigators observed and documented that the pistol's magazine was not in the weapon—it was on the ground and had not been removed by police officers prior to protocol investigators' arrival. The magazine on the ground was filled to capacity with seven cartridges. Investigators also found another magazine, also filled to capacity with seven cartridges. The pistol itself was empty—it did not have a cartridge in chamber. Investigators noted the hammer of the single-action gun was forward. No .45 ACP spent (empty) cartridge casings were found in the area. From the physical evidence at the scene, and, supported by their observations of the weapon, investigators concluded Mr. Filion did not fire his weapon during the OICI.

LEGAL ANALYSIS

The scope of this review, and the OICI Protocol investigation related to it, is narrow in its scope and purpose: to determine whether the facts of this case, when applied to the law, warrant the filing of a criminal charge against an officer or officers who used deadly force. In considering whether to charge law enforcement officers who use deadly force with a criminal offense, we try to ascertain whether Utah's broad affirmative legal defense of justification, particularly as applied to law enforcement officers, effectively precludes criminal prosecution based on the facts before us. In other words, we ask whether an officer could establish at trial that he or she reasonably believed the use of deadly force was necessary to prevent death or serious bodily injury to the officer or another person.

As considered more fully below, statements provided by witnesses, corroborated by physical evidence recovered at the scene, give rise to facts which, when considered in their totality, would likely satisfy the elements of the affirmative legal defense of justification as applied to the officers' use of deadly force. If charges were filed against the officers for their use of deadly force, we believe all the facts of this matter, together with reasonable inferences supported by those facts, would provide a reasonable basis for a jury (or other finder of fact) to conclude that the involved officers used deadly force because they reasonably believed that deadly force was necessary to prevent death or serious bodily injury to the officer or another person. Where the facts of a case satisfy these elements of the affirmative legal defense of justification, Utah State law affords the involved officers a legal defense and the finder of fact is instructed to render a verdict of not guilty of the offense(s) alleged.

As noted above, neither Sgt. Ricks nor Officer Holland agreed to be interviewed by protocol investigators or provide a statement explaining why they used deadly force, as is their constitutional right. Without either officer's explanation of his use of deadly force against Mr. Filion, we don't know their reasons for their apparent decisions to fire their weapons. We are therefore left to infer the rationale for Sgt. Ricks' and Officer Holland's apparent decision to use deadly force based on other evidence we received, as well as the reasonable inferences to be drawn from that evidence. In similar situations where a shooting officer has not agreed to answer questions or provided a statement, we have proceeded in this manner. In doing so,

however, we have never strayed from the objective evidence or testimony of other witnesses, nor do we do so here. While it is the prerogative and constitutional right of an officer not to share information with investigators, an officer's refusal to explain his or her apparent decision to use deadly force does not diminish our duty to explain and account for our decisions and conclusions or absolve us of our obligations to the community to present the truth to the community about the death of a member of our community.

When an officer reasonably believes deadly force is necessary to prevent death or serious bodily injury to the officer or another person, Utah State law affords the officer the affirmative legal defense of justification. When an officer does not articulate his or her rationale for his or her use of deadly force, we do not know what the officer's actual beliefs were, so we cannot say whether the officer "reasonably believed" deadly force was necessary. We can, however, infer from the facts we know, the reasonableness of a belief that deadly force was necessary under these circumstances. And here, given what we know from other officers about their perceptions, observations, and information in the moments leading up to the use of deadly force, it's reasonable for us to infer that, if Sgt. Ricks or Officer Holland believed that they needed to use deadly force against Mr. Filion to prevent their death or serious bodily injury or the death or serious bodily injury of those nearby, such a belief would be reasonable given the totality of facts and circumstances of this event.

In this matter, task force officers conducted an operation to apprehend a fugitive and return him to custody. Prior to and in preparation for the operation to arrest Mr. Filion, officers were briefed that the Board of Pardons and Parole had issued a no-bail arrest warrant for Mr. Filion. Officers were informed that Mr. Filion was a suspect in a homicide, although we have no other information about that assertion. Officers were told that Mr. Filion was considered armed and dangerous, and that specifically, he was believed to be in possession of a stolen .45 ACP caliber handgun. Again, we don't know the basis for that assertion or the strength of the evidence to support it. We include the information here because the protocol investigation determined that VFAST officers were briefed on these assertions.

The specific facts that seem to directly relate to and, ostensibly caused the officers' use of deadly force appear to have transpired fairly quickly. Officers encountered Mr. Filion in the street and ordered him to raise his hands and get on the ground. Instead of complying with officers' lawful orders, Mr. Filion ran. Sgt. Ricks released his PSD Hondo to apprehend Mr. Filion and stop his flight. According to witnesses who saw the events, PSD Hondo took Mr. Filion to the ground, whereupon Mr. Filion produced a gun.

In his interview, Deputy Marshal Thompson said he saw Mr. Filion hold the handgun while PSD Hondo was in Mr. Filion's lap. Deputy Thompson said it looked to him like Mr. Filion had PSD Hondo in a headlock and Mr. Filion had his gun pointed at PSD Hondo. Deputy Thompson said he yelled: "Gun! Gun!" Deputy Thompson said he heard officers yelling: "Police! Drop it!" Although we don't have a video recording to clarify what was said or who said it, at least Officer Agent Roothoff said he heard someone say something like: "He's going for it!" "He's grabbing it!" "He's reaching it!" Civilian witnesses also corroborate the accounts

of witness officers who testified that they heard commands yelled (including a reference to a gun) prior to the officers' use of deadly force. After the officers' use of deadly force, protocol investigators observed and documented a .45 ACP caliber handgun near Mr. Filion's body, which is the weapon officers were advised Mr. Filion possessed.

These facts support our conclusion that the facts of this matter, taken together with reasonable inferences about the involved officers' apparent decision to use deadly force, would likely cause a jury (or other finder of fact) to determine that Sgt. Ricks and/or Officer Holland's use of deadly force satisfies the elements of the affirmative legal defense of justification. Assuming Sgt. Ricks' and/or Officer Holland's testimony in a criminal case (if any) would be consistent the facts as we believe them to be based upon statements provided by witnesses, corroborated by physical evidence collected by protocol investigators, we believe a jury (or other finder of fact) would likely conclude that Sgt. Ricks and Officer Holland used deadly force because they reasonably believed deadly force was necessary to prevent death or serious bodily injury to the officers. Such a use of deadly force, by an officer who reasonably believes the deadly force is necessary to prevent death or serious bodily injury to the officer or another person," satisfies the elements of the affirmative legal defense of "justification" and affords the officer a legal defense to a criminal charge. In this case, we believe the facts satisfy the elements of a justified use of deadly force.

If, for the sake of discussion, we elected to file charges against Sgt. Ricks and/or Officer Holland their use of deadly force, and the officers asserted the legal defense of justification, we would have to prove at trial, beyond a reasonable doubt, and to the unanimous satisfaction of all jurors, that Sgt. Ricks and/or Officer Holland did not reasonably believe that using deadly force against Mr. Filion was necessary to prevent death or serious bodily injury. We do not believe the facts of this matter would support an effort to show either Sgt. Ricks and/or Officer Holland did not reasonably believe deadly force was necessary. We believe Sgt. Ricks and/or Officer Holland likely would claim successfully at trial that each reasonably believed deadly force was necessary and therefore, their use of deadly force was justified, and each are afforded a legal defense to criminal charges.

Because the statutory defense of justification is an affirmative legal defense, we, as the prosecution, bear the burden of refuting the affirmative legal defense by showing evidence to prove, beyond a reasonable doubt, that the affirmative defense does not apply. In other words, to achieve a conviction against these officers for their use of deadly force, we would have to show evidence to prove, beyond a reasonable doubt, that the officers' belief that deadly force was necessary to prevent their death or serious bodily injury and/or the death or serious bodily injury of others was not a reasonable belief. Based on the evidence before us, we conclude that no reasonable jury would unanimously conclude that the officer did not reasonably believe deadly force was necessary in this situation. We conclude that we could not refute or overcome the affirmative legal defense of justification and therefore, we believe the officers are entitled to the legal defense.

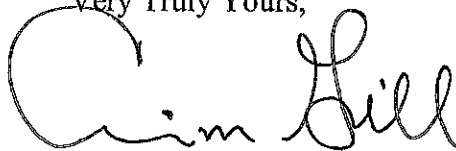
As the United States Supreme Court instructed in *Graham*, assessing “reasonableness” in the Fourth Amendment context “requires careful attention to the facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to the safety of the officers or others.” 490 U.S. at 496 (emphases added). Assuming the witnesses listed above would testify consistently with their prior statements and facts described above, and, considering reasonable inferences about Sgt. Ricks’ and Officer Holland’s apparent decisions to use deadly force, we believe Sgt. Ricks and/or Officer Holland could successfully argue each “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). 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 Sgt. Ricks’ and Officer Holland’s use of deadly force likely meets the elements of a justified use of deadly force as 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.

Based on the facts presented, and as outlined in more detail above, we conclude that those facts, together with reasonable inferences about Sgt. Ricks’ and Officer Holland’s apparent decisions to use deadly force against Mr. Filion, would likely support a finding that the affirmative legal defense of justification applies to their use of deadly force, and would probably afford each officer the legal defense of justification. Because we believe the facts and reasonable inferences satisfy the elements of the affirmative legal defense of justification and affords each officer a legal defense to a criminal charge, we decline to file a criminal charge against either Sgt. Ricks or Officer Holland for their respective use of deadly force in this matter.

Very Truly Yours,



Sim Gill,
Salt Lake County District Attorney