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DISTRICT ATTORNEY  
SALT LAKE COUNTY  
SIM GILL

Chief Chris Burbank  
Salt Lake City Police Department  
315 East 200 South, SLC  
Salt Lake City, UT, 84111

*Via Hand Delivery*

August 18, 2011

RE: *Criminal Charges Relating to Officer Matthew Giles' Use  
of Deadly Force*  
Our Case No.: 2011-1344  
Incident Date: May 8, 2011  
Incident Location: 1594 West, 400 South, Salt Lake City, Utah

Dear Chief Burbank:

As you know, the Office of the Salt Lake County District Attorney's independent review of a joint investigation conducted by the Salt Lake County District Attorney's Office and the Salt Lake City Police Department determined that the legal defense of "justification" as set forth in Utah Code Ann. §76-2-401 did not apply to Officer Matthew Giles' use of deadly force against A.M. on May 8, 2011, at 1594 West, 400 South, Salt Lake City, Utah. The findings and conclusions related thereto were set forth in our letter to you of July 7, 2011; that letter and its contents are hereby incorporated by reference.

Our July 7, 2011 letter concluded by stating that the Salt Lake County District Attorney's Office would evaluate and screen potential criminal charges against Officer Giles related to the use of force as referenced above.

As before, the opinions and conclusions set forth herein are based upon facts obtained from the previously conducted joint investigation as more fully discussed in the July 7, 2011 letter. Should additional or different materials or facts subsequently come to light, the opinions and conclusions contained therein and those of which we advised you herein may be materially different.

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The Office of the District Attorney approaches each decision to charge someone with a crime with the great care and scrutiny. The standards and processes by which criminal charges are screened are substantially different from the standards and processes by which officer involved critical incidents are reviewed for justification. The standards and process we used to consider whether Officer Giles' use of deadly force was justified were set forth in our July 7, 2011 letter.

In general, the review of an officer involved critical incident ("OICI") results in one of several outcomes: the review may conclude that the officer was justified in his or her use of deadly force. When justified, the officer is entitled to the legal defense of "justification" as set forth in Utah Code Ann. §76-2-401. This legal defense absolves the actor of criminal responsibility and is a bar to prosecution. Accordingly, the Office conducts no further analysis to determine whether an officer ought to be charged with a crime resulting from the justified use of force.

When a review determines that the legal defense of justification is not afforded to the officer's use of deadly force, the District Attorney's office screens charges to determine whether, and if so which crimes may fit the facts of the OICI. When no crime can be clearly identified, the screening process is concluded, and the Office declines to file criminal charges. However, when a crime or crimes seem to apply to the facts, the screening process continues to analyze the quality of the evidence and the applicability of the facts to the elements of each identified criminal offense.

Our screening of potential criminal charges began by reviewing the facts established by the previous review, and ensuring we had enough facts to proceed with the screening process. Having established the facts of the case to a reasonable degree of certainty, we next considered whether and if so which Utah State statutes prohibited conduct described by the established facts. In applying the established facts to Utah State law, we considered a variety of criminal offenses, and considered whether, and if so to what degree we could establish each element of each potential offense.

Our review determined that there was probable cause<sup>1</sup> to believe that Officer Giles' use of force against A.M. likely violated Utah state criminal statutes. Our determination of probable cause considered only whether "some evidence" existed to prove each element of each potential offense under consideration. Our evaluation of probable cause did not consider whether and if so which potential legal or factual defense might mitigate the conduct or exculpate Officer Giles. Nor did our consideration of probable cause consider what factors a potential jury might consider, and whether a jury would likely believe the prosecution could prove each element of each offense to the unanimous satisfaction of all jurors and beyond a reasonable doubt.

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<sup>1</sup> Utah courts have held that a "probable cause" standard means "the prosecution must present sufficient evidence to support a reasonable belief that an offense has been committed and that the defendant committed it." *State v. Timmerman*, 2009 UT 58 ¶12, quoting *State v. Clark*, 2001 UT 9 ¶16; *see also: State v. Harker*, 2010 UT 56, ¶ 20, quoting *Virginia v. Moore*, 553 U.S. 164 (2008): probable cause is defined as "facts and circumstances within the officer's knowledge that are sufficient to warrant a prudent person, or one of reasonable caution, in believing... that the suspect has committed, is committing, or is about to commit an offense."

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Our first screening step only determined that there was “sufficient evidence” to believe Officer Giles’ actions were in violation of Utah state criminal law, and therefore, probable cause existed to believe Officer Giles committed a criminal offense. As such, we conducted a more detailed analysis to consider whether the facts in the case supported a reasonable likelihood of success at trial.

The Office of the Salt Lake County District Attorney adheres to and applies professional standards established by, among others, the National District Attorneys Association (“NDAA.”) The charging standards and policies of the District Attorney’s Office are consistent with NDAA and many prosecution offices around the country: the District Attorney’s Office files and prosecutes cases with a reasonable likelihood of success of conviction at trial.

In this matter, we conclude that, although Officer Giles’ conduct may have violated criminal statutes, other factors we considered (including but not limited to, for example, intent; as well as potential defenses) caused us to believe that this matter does not present a reasonable likelihood of conviction at trial. In other words, just because Officer Giles’ actions were not justified under Utah law, such a determination does not necessarily mean that a jury will unanimously conclude that the prosecution has proven each element of a criminal offense beyond a reasonable doubt. Also, even though there appears to be probable cause that Officer Giles’ actions violate Utah criminal statutes, to file criminal charges, the Office of the District Attorney standards require that the case has a reasonable likelihood of success at trial as stated above.

As mentioned, we do not find that this case presents a reasonable likelihood that a jury would conclude to the unanimous satisfaction of all jurors and beyond a reasonable doubt that Officer Giles committed a criminal act. Accordingly, unless materially different or additional facts subsequently come to light, the Office of the Salt Lake County District Attorney declines to charge Officer Giles with a criminal violation of Utah State law.

Thank you for the opportunity to review this matter. As always, please contact me if you have any questions or if I can be of any assistance in this matter.

Very Truly Yours,

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Sim Gill,  
Salt Lake County District Attorney

SG/JWH/jh

cc: Officer Matthew Giles