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FOR IMMEDIATE RELEASE: Feb. 18, 2014

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Salt Lake County District Attorney's Office Finds UPD Officer's Use of Deadly Force Legally Justified

Salt Lake City, UT -- After conducting a routine Officer Involved Critical Incident (OICI) review, the Salt Lake County District Attorney's Office has determined that the Feb. 6th Use of Deadly Force by a Unified Police Department Officer was legally justified.

The Salt Lake County District Attorney's Office is required by Utah State law, and operates pursuant to an agreement with participating law enforcement agencies and consistent with established protocols and applicable law, to perform joint investigations and independent reviews of officer involved critical incidents including police officers' use of deadly (including potentially deadly) force used in the scope of police officers' official duties.

See the attached letter to Salt Lake County Sheriff Winder for additional details.

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Sheriff James M. Winder
Unified Police Department
3365 South, 900 West
Salt Lake City, UT 84119

via hand delivery

February 14, 2014

RE: *Investigation of UPD Officer Olzack's Use of Deadly Force*
Incident Date: February 6, 2014
Incident Location: Approx. 3485 South, Oquirrhlane, Magna Utah
Our Case No.: 2014-327
UPD Case No.: 2014-18094

Dear Sheriff Winder:

As you know, the Office of the Salt Lake County District Attorney's Office, Sim Gill, Salt Lake County District Attorney, ("DA's Office") is required by Utah State law, and operates pursuant to an agreement with participating law enforcement agencies and consistent with established protocols and applicable law, to perform joint investigations and independent reviews of officer involved critical incidents ("OICI") including police officers' use of deadly (including potentially deadly) force used in the scope of police officers' official duties.

After working in conjunction with the Unified Police Department ("UPD") the DA's Office has completed its review of the investigation concerning UPD Officer Dustin Olzack's use of deadly force against Michael Jerome Joseph. The purpose of the review was to determine whether the force employed was lawful and justified under Utah law. As set forth more fully herein, we have concluded that Officer Olzack's use of deadly force was justified under Utah law.

The opinions and conclusions set forth in this letter are based upon facts obtained from the investigation as set forth in investigation materials presented to the DA's Office. Should additional or different facts subsequently come to light, the opinions and conclusions contained herein may be materially different.

FACTS

On February 6, 2014, Wells Fargo Bank employees at 8295 West, 3500 South, Magna, Utah, called police and reported a male in the bank trying to pass a bad check. Three UPD marked police vehicles arrived at the bank. UPD Officers Dustin Olzack, Chris Christensen, and James Russell got out of their patrol cars and walked to the bank. Officers Olzack and Russell approached the front of the bank and met Michael Jerome Joseph, the male suspect, as he was leaving the bank. Joseph said to the officers: "they called you on me."

Officers Olzack and Russell attempted to handcuff Joseph, but he pulled away and fled on foot. Joseph ran east on 3500 South and then north onto Oquirrhlane. Officers Olzack and Russell pursued Joseph on foot; Officer Christensen pursued Joseph in his police vehicle. As the Joseph rounded the corner north onto Oquirrhlane, Officer Russell, who was running behind Officer Olzack, saw a gun in Joseph's right hand. Officer Russell advised over the radio that the suspect had a gun.

During the investigation, Officer Olzack discussed the events leading up to the shooting. Officer Olzack said that he was chasing Joseph east bound on 3500 South. Officer Olzack said he could see Joseph pulling and tugging at something in his front pants waistband; Officer Olzack said Joseph was trying to remove something from his pants. Officer Olzack ordered Joseph to show his hands. Joseph produced a gun from his waistband, looked back at Officer Olzack and pointed the weapon at the officer. Officer Olzack said the weapon looked like a MAC-10 machine pistol. When Joseph pulled the weapon out, Officer Olzack yelled "gun, gun" and broadcast on his radio that the suspect had a weapon.

Officer Olzack and suspect Joseph began to pull away from Officer Russell as they ran north on Oquirrhlane. As Joseph turned west onto 3485 South, Officers Russell and Olzack subsequently stated that they both heard a gunshot from Joseph's direction. Officer Russell said he could not see Joseph at the time he heard the gunshot but could clearly see Officer Olzack. Officer Russell said that Officer Olzack was not the one who shot. Officer Russell stated he saw Officer Olzack raise his weapon and fire in the direction of the suspect. Officer Russell stated that as he caught up to Officer Olzack, he could see Joseph west of their location and Joseph fell to the ground.

Officers Olzack, Russell and Christensen approached Joseph and took him into custody. The officers located a gun in close proximity to Joseph. While he was being arrested, Joseph uttered something to the effect that he should have shot himself.

Investigators processed the shooting scene; they found 3 spent shell casings from Joseph's gun on 3485 South and 2 spent shell casings from Officer Olzacks' handgun were located in the intersection of Oquirrhlane and 3485 South. The investigation revealed that no officers nor the suspect were injured by gunfire; however, there was a bullet hole in Joseph's coat. That bullet apparently missed the suspect. Bullet trajectory data produced in the investigation indicated that at least one of Joseph's shots traveled in Officer Olzacks' direction.

DISCUSSION

1. *Use of Deadly Force: Utah State Law*

Individuals (including but not limited to peace officers) are justified in using deadly force to defend themselves under circumstances outlined by law.

Anyone's use of deadly force is governed by, among other law, Utah Code Ann. 76-2-402 which states that a "person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person's imminent use of unlawful force." *Id.* This section also states: "A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person's imminent use of unlawful force, or to prevent the commission of a forcible felony¹." *Id.*

In addition to the justifications set forth above regarding the use of deadly force, peace officers are justified in using deadly force when:

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

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

¹ Utah Code 76-2-402(4)(a): "For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title 76, Chapter 6, Offenses Against Property."

2. *Officer Olzack Use of Deadly Force was Reasonable.*

Joseph escaped an arrest and fled on foot from the officers. Joseph fled with a gun which he then pointed and then fired at Officer Olzack. When Officer Olzack made the decision to use deadly force, it was reasonable for him to believe that the force was necessary to prevent death or serious bodily injury to himself and/or others. Joseph unlawfully threatened Officer Olzack and potentially others with death or serious bodily injury by pointing and shooting a gun at Officer Olzack. Utah law justifies the use of deadly force against someone under the circumstances that Joseph created and presented to the officers.

CONCLUSION

Officer Olzack reasonably believed that deadly force was necessary to defend himself because Joseph unlawfully threatened him with death or serious bodily injury. Also, Officer Olzack had probable cause to believe that deadly force was necessary to prevent Joseph's apprehension from being delayed because of Joseph's imminent threat of death or serious bodily injury. As such, we conclude that Officer Olzack's use of deadly force was justified under Utah State law.

If you have any questions or concerns regarding the determination made in this case, or otherwise wish to discuss the matter, please feel free to contact our office to set up a personal meeting.

Very Truly Yours,

SIM GILL,
Salt Lake County District Attorney

SG/JWH/jh