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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 Franklin's Auto-Pedestrian Fatality*
Incident Location: 3304 South, 2300 East, Salt Lake City, Utah
Incident Date: March 5, 2019
D.A. Case No.: 2019-302
SLCPD Case No.: 2019-39246
UPD Case No.: 19-39246

Dear Sheriff Rivera and Chief Brown:

This letter addresses Unified Police Department of Greater Salt Lake (“UPD”) Officer Megan Franklin’s collision with Cindreia Simone Europe. Ms. Europe died as a result of the injuries she sustained in the collision. This fatal auto-pedestrian collision falls within the statutory definition of an “Officer Involved Critical Incident” (“OICI”) *See* Utah Code Ann. §76-2-408(1)(f)(iii)(A)¹.

After the collision, the law enforcement agency employing Officer Franklin (UPD) initiated what is known in Utah as the OICI Protocol. *See* Utah Code Ann. § 76-2-408(2)-(3). Accordingly, an investigative task force of law enforcement officers employed by agencies other than UPD, led by members of the Salt Lake City Police Department (“SLCPD”), was called in to investigate the incident. After the investigation, 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 charges.²

¹ Utah State law defines an OICI as follows (in relevant part): “death or serious bodily injury to any person, other than the officer, resulting from an officer’s ... use of a motor vehicle while the officer is on duty.”

² 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.

On March 5, 2019, UPD Officer Megan Franklin was on duty assigned to patrol in Millcreek Precinct. Officer Franklin was dispatched to check on a report of a person down at a strip mall located at the southwest corner of the intersection of 2300 East and 3300 South in Millcreek, Utah. It was dark and Officer Franklin drove into the parking lot for the strip mall. Officer Franklin looked for a person in the area but saw no one. Officer Franklin turned left to drive to the southern end of the parking lot. As she completed her turn, Officer Franklin felt her patrol car run over an object. Officer Franklin stopped her vehicle, got out, and discovered she had run over a female who had been lying down in the parking lot. Officer Franklin called for other police officers and medical personnel to assist and started first aid. The injured female was transported to the hospital but died from the injuries she sustained in the collision.

RELEVANT LEGAL STANDARDS

In considering whether criminal charges should be filed, we considered the statutes that might apply to the facts as we presently believe them to be. The screening process applies facts as we believe them to be to Utah State code statutes. We evaluate whether the facts of the case satisfy the legal standards of filing a case; or in other words, we asked whether the facts support filing a particular criminal charge based upon a violation of a statute.

Under Utah State law, each criminal statute specifies the mental state or intent the prosecution must prove to obtain a conviction against a person for a violation of the statute. Utah Code states that a “person is not guilty of an offense unless ... the person acts intentionally, knowingly, recklessly, with criminal negligence, or with a mental state otherwise specified in the statute defining the offense, as the definition of the offense requires....” U.C.A. 76-2-101(1)(a),(b)(i), (2005).

Each of the statutes we considered has a mental state or intent we must prove to obtain a conviction. Among the mental states or intents we considered were: intentionally, knowingly, recklessly, or acting with criminal negligence. As outlined in more detail below, we were able to rule out certain mental states or intent and we evaluated what remained. In this case, there’s no evidence of or suggestion that Officer Franklin intentionally caused injury to Ms. Europe, so we’ve not considered any criminal offense that contains an element of acting intentionally, knowingly or purposefully (i.e., criminal homicide, murder; aggravated assault, etc.)

Under Utah law, a person acts “[r]ecklessly with respect to circumstances surrounding [her] conduct or the result of [her] conduct when [she] is aware of but consciously disregards a

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).

substantial and unjustifiable risk that the circumstances exist or the result will occur.” U.C.A. 76-2-103(3)(2007). In this case, to have acted “recklessly,” we would have to show Officer Franklin was aware of the risk that by driving into the parking lot, she could run over Ms. Europe. Moreover, Utah law states that “[t]he risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that an ordinary person would exercise under all the circumstances as viewed from the actor's standpoint.” *Id.*

Lastly, we considered statutes that required us to prove Officer Franklin acted with criminal negligence, or that her conduct was criminally negligent. Under Utah law, a person acts with criminal negligence “with respect to circumstances surrounding [her] conduct or the result of [her] conduct when [she] ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur. The risk must be of a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that an ordinary person would exercise in all the circumstances as viewed from the actor's standpoint.” U.C.A. 76-2-103(4)(2007).

Utah courts have considered that which rises to the level of “criminal negligence,” especially as distinguished from ordinary negligence, or negligence as discussed in a civil law context. “[o]rdinary negligence . . . is not sufficient to constitute criminal negligence.” *State v. Boss*, 127 P.3d 1236, 1238 (Utah Ct. App. 2005) (quoting *State v. Larsen*, 999 P.2d 1252, 1257 (Utah Ct. App. 2000)) (alterations in original). Further, “[m]ere inattention or mistake in judgment resulting even in death of another is not criminal unless the quality of the act makes it so.” *Id.* To constitute criminal negligence, the defendant’s conduct must be more than a “serious mistake in judgment.” *Id.* at 1239. Because criminal negligence requires an inquiry into what a defendant “ought” to have been aware of, courts will look at objective criteria instead of what the defendant subjectively was aware of. *See, State v. Martinez*, 14 P.3d 114, 117 (Utah Ct. App. 2000) (citing *State v. Elton*, 680 P.2d 727, 729-30 (Utah 1984)).

RELEVANT ETHICAL STANDARDS

The D. A.’s Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing.³ 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 D. A.’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 D. A.’s Office includes careful consideration of the

³ 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).

various factors a jury may consider when weighing testimony, evaluating evidence, applying the law, and rendering a verdict.

FACTS DEVELOPED DURING OICI INVESTIGATION

Sometime during the day on March 5, 2019, the date of the incident, Cinderia Simone Europe's vehicle was towed from a strip mall parking lot at adjacent to the intersection of 2300 East and 3300 South, in Millcreek, Utah. Prior to being towed, Ms. Europe's vehicle had apparently been parked in the parking lot for several days, prompting the property manager to have the vehicle towed, leaving Ms. Europe without a vehicle. It's believed Ms. Europe may have been living in her vehicle at the time, so the loss of her vehicle probably left her homeless.

During the day on March 5, 2019, Ms. Europe was seen in and around the strip mall and parking lot. Later that evening, an employee of a business adjacent to the parking lot called 911 to report a person lying down in the parking lot. The caller said that the person was wearing dark clothing. The caller asked police to respond to check out the situation. The caller conveyed his concern that the person lying in the parking lot might be run over.

Unfortunately, in relaying the information from the 911 call, not all the information provided by the caller was communicated to patrol officers. Police dispatchers informed UPD officers of a "man down" and provided the address of the business adjacent to the parking lot; however, dispatchers did not convey the information about the person lying down in the parking lot. Also, UPD patrol officers dispatched to the call were not informed of the witness' concern that the person lying down in the parking lot might be run over.

UPD Officer Franklin acknowledged the call and drove to the area. Another officer headed that way to provide back up. At 10:59 p.m., Officer Franklin entered the parking lot from 2300 East and drove westbound into the parking lot. Officer Franklin looked to the north at the Pizza Hut store and saw a bench in front of the store, but no one was outside. Officer Franklin looked to the south and saw a Zion's Bank building, but didn't see anyone there, either. As she neared the corner of the Zion's Bank building, Officer Franklin made a left turn to the south to drive towards businesses on the south end of the parking lot. As she completed the turn, Officer Franklin ran over Ms. Europe who was lying on her back in the parking lot. The impact dragged Ms. Europe a short distance. Officer Franklin, not knowing what she hit, stopped her police vehicle and got out, only to discover she had run over a person. Officer Franklin called for other police officers to respond and assist and starting providing first aid.

Witness Statements, Evidence

Officer Franklin

Protocol investigators interviewed Officer Franklin about the events surrounding the OICI. Officer Franklin said she was dispatched to a call for service about a man down in a strip

mall located at the intersection of 2300 East and 3300 South. Officer Franklin said she was not told where the person might be.

Officer Franklin said she arrived at the strip mall parking lot and pulled into the driveway. Officer Franklin said she didn't see anyone. Officer Franklin said she began scanning the Pizza Hut store at the northeast end of the parking lot. Officer Franklin said she saw a bench by the Pizza Hut and looked for someone on the bench. Officer Franklin said she didn't see anyone in the area. Officer Franklin said she looked around the area of the Zion's Bank building to her left (towards the south) and visually searched the area around the building for someone down. Officer Franklin said she didn't see anyone in that area, either.

Officer Franklin said she felt her vehicle hit something and she stopped immediately. Officer Franklin said she got out of her patrol car and discovered that she had run over a woman lying down in the parking lot. Officer Franklin said she called for other police officers and medical personnel to assist. Officer Franklin said she did not see anyone lying on the ground in front of her prior to the impact.

Officer Hampton

Protocol investigators interviewed UPD Officer Hampton about the OICI. Officer Hampton said that he heard the call for service about a man down and drove to the reported area. Officer Hampton said he was behind Officer Franklin and saw her turn into the parking lot. Officer Hampton said he saw Officer Franklin's vehicle make an "odd movement."

Officer Hampton said he saw Officer Franklin get out of her police vehicle. Officer Hampton said he drove to Officer Franklin's location and saw that she had run over a person. Officer Hampton said he helped render first aid until medical personnel arrived. Officer Hampton said he did not see anyone in the parking lot prior to the collision with Officer Franklin's vehicle.

Physical Evidence, Accident Reconstruction

Protocol investigators inspected and documented the parking lot, including Officer Franklin's route of travel and Ms. Europe's location at the time of impact. Investigators prepared and presented diagrams of the scene. One of the diagrams showing the point of impact and location of Ms. Europe at the time of impact is included with this letter.

Investigators noted that at the place of impact, Ms. Europe was lying in a travel lane in the parking lot between the parking stalls to the west of the Zion's Bank building and the next row of parking stalls.

Accident reconstructionists determined Officer Franklin's police vehicle was likely never traveling more than ten miles per hour after it entered the parking lot.

Surveillance Camera Recording

Protocol investigators obtained and reviewed surveillance camera recordings of the parking lot showing Ms. Europe lying down in the parking lot prior to the collision. Video recordings also showed Officer Franklin arriving in the area and the collision between her vehicle and Ms. Europe.

Based upon the analysis of the surveillance video, investigators determined that Ms. Europe was lying on the ground for about thirteen minutes before the collision. Investigators also documented the low light conditions in the parking lot and area of impact, as well as the clothing worn by Ms. Europe which did not reflect light and was hard to see in the surveillance video recordings.

LEGAL ANALYSIS

Reckless Conduct

As mentioned above, we're not aware of any evidence of or suggestion that Officer Franklin acted intentionally or knowingly in colliding with Ms. Europe. We considered whether there's evidence that Officer Franklin acted recklessly. As previously discussed, Under Utah law, a person acts "[r]ecklessly with respect to circumstances surrounding [her] conduct or the result of [her] conduct when [she] is aware of but consciously disregards a substantial and unjustifiable risk that the circumstances exist or the result will occur." 76-2-103(3)(2007).

In this case, it appears Officer Franklin was not advised that Ms. Europe was or may be lying in the middle of the parking lot. From the evidence of which we're aware, police radio dispatchers did not pass along to patrol officers the information that Ms. Europe was or had been lying down in the parking lot. Nor did dispatchers advise patrol officers that the complainant was concerned that Ms. Europe could be run over.

To have acted "recklessly," we would have to show Officer Franklin was aware of a risk that by driving into the parking lot, she could run over Ms. Europe. The evidence of which we're aware supports the opposite conclusion: that Officer Franklin was not aware that by driving into the parking lot, she would collide with a person. Absent information that a person was lying down in the parking lot, we believe it was reasonable for Officer Franklin not to anticipate encountering Ms. Europe lying down in the middle of the parking lot. Because we conclude that Officer Franklin was not aware of a risk (and thus, could not disregard a risk of which she was not aware,) Officer Franklin did not act recklessly and therefore, we decline to file a criminal charge that requires we show reckless conduct.

Criminal Negligence

Finally, we considered statutes that required us to prove Officer Franklin acted with criminal negligence, or that her conduct was criminally negligent. As mentioned above, a person acts with criminal negligence “with respect to circumstances surrounding [her] conduct or the result of [her] conduct when [she] ought to be aware of a substantial and unjustifiable risk that the circumstances exist or the result will occur.” U.C.A. 76-2-103(4)(emphasis added). As applied to this case, were we to file a charge against Officer Franklin alleging she acted with criminal negligence, we would have to prove Officer Franklin ought to have been aware that driving into a parking lot constituted a “substantial and unjustifiable risk” of running over that person.

More specifically, we would have to prove that Officer Franklin’s decision to drive into the parking lot was more than “[m]ere inattention or mistake in judgment resulting even in death of another.” *State v. Boss, supra*. Indeed, we would have to prove the decision to drive into the parking lot was even more than a “serious mistake in judgment.” *Id.* at 1239. To file a charge alleging criminal negligence, we would have to prove more than a serious mistake in judgment; we would have to prove Officer Franklin should have known that by driving in the parking lot she could have run over someone.

We believe the evidence tends to refute a suggestion that Officer Franklin should have known that by driving into the parking lot under the circumstances she faced, she faced a “substantial and unjustifiable risk” that she would run over and injure Ms. Europe. Officer Franklin was not advised that Ms. Europe had been or would be lying down in the parking lot. Whether or not 911 call takers or police dispatchers should have informed patrol officers that Ms. Europe had been lying down in the parking lot, the facts as we presently know them indicate that 911 call takers and/or police radio dispatchers did not inform Officer Franklin. Without any other indication that Ms. Europe (or anyone) would be lying down in the parking lot, we cannot impute a duty to Officer Franklin that suggests she should have known that by turning into the parking lot, Officer Franklin would run over someone lying down. Officer Franklin was looking for a person in the parking lot. She was looking in places one would think to look: on a bench, by a store or a building.

Furthermore, surveillance recordings show Ms. Europe wearing dark clothing, consistent with the description given by the caller who requested police response. Investigators documented that the area of the parking lot where Ms. Europe was lying was dimly lit with no street light over the area of the collision. And Officer Franklin’s headlights were illuminating the area ahead of the vehicle, but not the parking lot to Officer Franklin’s left towards which Officer Franklin turned right before the collision.

Lastly, as documented by investigators and accident reconstructionists, Ms. Europe was lying in the middle of a travel lane in the parking lot, between two rows of parking stalls. She was also lying adjacent to the corner of the Zion’s Bank building where Officer Franklin turned

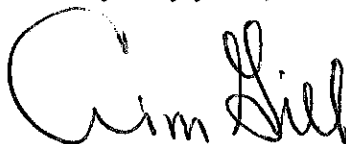
left to drive to the southern end of the parking lot. Unfortunately, Ms. Europe was lying in a position and location of the parking lot that made her difficult to see. Ms. Europe's position on the ground, her location relative to the turn, while wearing dark clothing, late at night, all appears to have combined to make it difficult to see Ms. Europe, especially to someone who was previously unaware of her location.

CONCLUSION

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 facts presented to date, however, and the reasonable inferences to be drawn from that evidence, we conclude that no criminal charge applies to the facts of this case. Specifically, we don't have facts to support a finding that Officer Franklin ought to have been aware that by driving into the parking lot, Officer Franklin created a "substantial and unjustifiable risk" that she would run over and injure Ms. Europe. Nor are we aware of any evidence to suggest that Officer Franklin was aware of but consciously disregarded the substantial and unjustifiable risk that she would run over Ms. Europe in the parking lot. Finally, we're not aware of any evidence of or suggestion that Officer Franklin acted intentionally or knowingly in colliding with Ms. Europe.

We believe that if Officer Franklin had been informed that the call for service regarded a person lying in the middle of the parking lot, her actions would have been respectively different. However, under the circumstances as we understand them to be, we can't say that Officer Franklin's actions violated any state criminal statute. Accordingly, we do not intend to pursue criminal charge against Officer Franklin.

Very truly yours,



Sim Gill

Salt Lake County District Attorney