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Via Hand Delivery or Email Transmission

September 19, 2018

RE: *ATF Agent Embley's Use of Deadly Force*
Incident Location: 181 E., 8960 S., Sandy, UT
Incident Date: March 13, 2018
D.A. Case No.: 18-344
UPD Case No.: 18-39037

Dear Sheriff Rivera and Special Agent Livingston

The Salt Lake County District Attorney's Office ("D.A.'s Office") operates under Utah State law to review and "screen"¹ criminal charges against individuals where criminal activity may have occurred. The D.A.'s Office operates pursuant to an agreement between the D.A.'s Office and participating law enforcement agencies to perform joint investigations and independent reviews of officer involved critical incidents ("OICI") including police officers' use of deadly force while in the scope of their official duties. Pursuant to the State law and the agreement between the D.A.'s Office and participating law enforcement agencies, the D.A.'s Office has reviewed the above referenced matter to determine whether the above referenced use of deadly force violated criminal statutes and whether a criminal prosecution should commence. Part of our screening process considered whether the use of deadly force was "justified" under Utah State law thereby providing a legal defense to a criminal charge. As outlined more fully below, the D.A.'s Office declines to file criminal charges in the above referenced matter because

¹ As explained more fully herein, the process of "screening" a case includes an assessment of the facts and an application of the facts to relevant law, using legal and ethical standards to determine whether to file a criminal charge.

we conclude that Bureau of Alcohol, Tobacco, Firearms and Explosives (“ATF”) Resident Agent in Charge Brian Embley’s use of deadly force was “justified” under Utah State law.

On March 13, 2018, police officers working in a task force encountered Bryan Liles during their search for a wanted person. When Mr. Liles saw the police officers, he got into a car. Officers ordered Mr. Liles to stop and get out of the car but he did not. Instead, he started to drive away and turned the car, endangering nearby police officers. Agent Embley fired at Mr. Liles, hitting him. Mr. Liles continued to drive away with police officers following closely on foot. Mr. Liles stopped the car, looked at Agent Emblem and reached down with both hands as though he were searching for something. Agent Embley fired at Mr. Liles again, hitting him. Officers extracted Mr. Liles from the car and medical personnel transported him to the hospital where he was pronounced dead from the gunshot injuries he sustained.

UTAH STATE LAW

As part of the review and screening determination, the D.A.’s Office relied in part upon the following statutory provisions for the legal analysis:

76-2-401 Justification as defense -- When allowed.

(1) Conduct which is justified is a defense to prosecution for any offense based on the conduct. The defense of justification may be claimed:

(a) when the actor's conduct is in defense of persons or property under the circumstances described in Sections 76-2-402 through 76-2-406 of this part;

(b) when the actor's conduct is reasonable and in fulfillment of his duties as a governmental officer or employee;

...

76-2-402 Force in defense of person -- Forcible felony defined.

(1)(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 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.

(2)(a) A person is not justified in using force under the circumstances specified in Subsection (1) if the person:

(i) initially provokes the use of force against the person with the intent to use force as an excuse to inflict bodily harm upon the assailant;

(ii) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(iii) was the aggressor or was engaged in a combat by agreement, unless the person withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force.

(b) For purposes of Subsection (2)(a)(iii) the following do not, by themselves, constitute "combat by agreement":

(i) voluntarily entering into or remaining in an ongoing relationship; or

(ii) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(a)(iii).

(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.

(b) Any other felony offense which involves the use of force or violence against a person so as to create a substantial danger of death or serious bodily injury also constitutes a forcible felony.

(c) Burglary of a vehicle, defined in Section 76-6-204, does not constitute a forcible felony except when the vehicle is occupied at the time unlawful entry is made or attempted.

(5) In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors:

(a) the nature of the danger;

(b) the immediacy of the danger;

- (c) the probability that the unlawful force would result in death or serious bodily injury;
- (d) the other's prior violent acts or violent propensities; and
- (e) any patterns of abuse or violence in the parties' relationship.

76-2-404 Peace officer's use of deadly force.

(1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

- (a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5(3) or (4);
- (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.

Criminal Charges and Prosecution: Standards

The D.A.'s Office reviews police officers' use of deadly force pursuant to the D.A.'s Office's authority as a public prosecutor as set forth in Utah Constitution Article VIII, Section 16² and Utah Code 17-18a-203³, among other legal authority. Pursuant to this authority, the D.A.'s Office is responsible for determining whether a person's actions (in this case, whether a

² **Utah Const. Art. VIII, Section 16 [Public prosecutors.]** The Legislature shall provide for a system of public prosecutors who shall have primary responsibility for the prosecution of criminal actions brought in the name of the State of Utah and shall perform such other duties as may be provided by statute. Public prosecutors shall be elected in a manner provided by statute, and shall be admitted to practice law in Utah. If a public prosecutor fails or refuses to prosecute, the Supreme Court shall have power to appoint a prosecutor pro tempore.

³ **17-18a-203. District attorney powers and functions.**

In a county that is located within a prosecution district, the district attorney:

- (1) is a public prosecutor for the county; and
- (2) shall perform each public prosecutor duty in accordance with this chapter or as otherwise required by law.

law enforcement officer's use of deadly force) violates a criminal statute (Utah State law) and if so, whether and to what extent that person should be charged with a crime.

The D.A.'s Office is a public prosecution agency for and has jurisdiction over the prosecution of criminal offenses that occur within Salt Lake County. Among the duties of the D.A.'s Office is the responsibility to receive investigations of potential criminal activity from law enforcement agencies. Law enforcement agencies "screen"⁴ potential criminal charges with the D.A.'s Office by presenting evidence to the D.A.'s Office that may support the filing of criminal charges against a person who may have committed a criminal offense. Law enforcement agencies present all the relevant facts presently known to them.

After receiving relevant facts about a particular matter, the D.A.'s Office considers potentially applicable statutes to determine whether the statutes proscribe the conduct. During the "screening" process, the D.A.'s Office applies legal and ethical standards to the matter at hand to decide whether to file criminal charges. The D.A.'s Office files criminal charges against individuals accused of violating the law when certain legal and ethical standards are satisfied. When these legal and ethical standards are not satisfied, the D.A.'s Office declines to file a criminal charge.

Legal Standards

A case must satisfy legal standards before a prosecutor files criminal charges. Among the legal standards to file a case is the requirement that facts show "probable cause" to believe that offense was committed and the accused committed the offense. *See, e.g.,* Ut.R.Cr.P. 4(b).

A criminal case must be built on admissible evidence; the screening function doesn't simply consider all the relevant facts presented by law enforcement but must evaluate what evidence will be legally admissible against a defendant charged with a crime. Some evidence proves facts that, while true, may nevertheless not be admissible against a defendant at trial. The screening function is limited to considering evidence that will likely be admissible against a defendant.

Ethical Standards

The D.A.'s Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing⁵. Honoring ethical standards ensures that everyone affected by the criminal justice system—suspects, defendants, victims, the community and the system itself—are treated fairly, honorably and respectfully.

⁴ Utah State Code defines "screening" as "the process used by a prosecuting attorney to terminate investigative action, proceed with prosecution [by filing an information or indictment], move to dismiss a prosecution that has been commenced, or cause a prosecution to be diverted." U.C.A. 77-2-2 (1).

⁵ Even when a criminal case is filed, the defendant is presumed innocent of the charges unless and until convicted in a court of law.

Among the ethical standards which a case must satisfy is a reasonable likelihood of success at trial. A prosecutor must prove each element of the case beyond a reasonable doubt and to the unanimous satisfaction of a jury to prevail (succeed) at trial. A screening decision includes a consideration of factors that a jury may consider in weighing testimony, evaluating evidence, applying the law and rendering a verdict.

The D.A.'s Office follows many of the screening considerations outlined by organizations like the National District Attorneys Association⁶ and the American Bar Association—organizations that address the prosecution function and provide guidance in screening a case. These ethical screening standards are helpful to prosecutors deciding whether a case ought to be filed.

⁶ For instance, some relevant considerations for screening are outlined in *NDAA Standards 3-3.9 and 4-4.2*:

Standard 3-3.9 Discretion in the Charging Decision

(a) A prosecutor should not institute, or cause to be instituted, or permit the continued pendency of criminal charges when the prosecutor knows that the charges are not supported by probable cause. A prosecutor should not institute, cause to be instituted, or permit the continued pendency of criminal charges in the absence of sufficient admissible evidence to support a conviction.

(b) The prosecutor is not obliged to present all charges which the evidence might support. The prosecutor may in some circumstances and for good cause consistent with the public interest decline to prosecute, notwithstanding that sufficient evidence may exist which would support a conviction. Illustrative of the factors which the prosecutor may properly consider in exercising his or her discretion are:

- (i) the prosecutor's reasonable doubt that the accused is in fact guilty;
- (ii) the extent of the harm caused by the offense;
- (iii) the disproportion of the authorized punishment in relation to the particular offense or the offender;
- (iv) possible improper motives of a complainant;
- (v) reluctance of the victim to testify;
- (vi) cooperation of the accused in the apprehension or conviction of others; and
- (vii) availability and likelihood of prosecution by another jurisdiction.

(c) A prosecutor should not be compelled by his or her supervisor to prosecute a case in which he or she has a reasonable doubt about the guilt of the accused.

(d) In making the decision to prosecute, the prosecutor should give no weight to the personal or political advantages or disadvantages which might be involved or to a desire to enhance his or her record of convictions.

(e) In cases which involve a serious threat to the community, the prosecutor should not be deterred from prosecution by the fact that in the jurisdiction juries have tended to acquit persons accused of the particular kind of criminal act in question.

(f) The prosecutor should not bring or seek charges greater in number or degree than can reasonably be supported with evidence at trial or than are necessary to fairly reflect the gravity of the offense.

(g) The prosecutor should not condition a dismissal of charges, *nolle prosequi*, or similar action on the accused's relinquishment of the right to seek civil redress unless the accused has agreed to the action knowingly and intelligently, freely and voluntarily, and where such waiver is approved by the court.

...

4-2.2 Propriety of Charges

A prosecutor should file charges that he or she believes adequately encompass the accused's criminal activity and which he or she reasonably believes can be substantiated by admissible evidence at trial.

“Justification” as Defense in Utah

When screening a case, a prosecutor considers whether a person who ostensibly committed a crime (or for which there may be probable cause to believe has committed a crime) nevertheless has a legal defense to prosecution. If a person who, for instance, shot or attempted to kill another has a legal defense to ostensible criminal charges related thereto, no charges can be brought against that person.

One legal defense to potential criminal charges available to police officers who used deadly force (whether or not the deadly force caused the death of a person) is the legal defense of “justification.” This legal defense is found in Utah State Code as set forth above and operates in conjunction with other legal authority. The legal defense of “justification” could apply to any relevant potential criminal charge related to the use of force; some of the potential criminal charges a police officer could face through an improper use of deadly force include criminal homicide, murder (or attempted murder), aggravated assault, or other offenses set forth in the criminal code. The legal defense of “justification” is applicable to any potential criminal charge under consideration.

A person’s use of deadly force (including but not limited to use of deadly force by peace officers) is “justified” when the use of deadly force conformed to the statutes referenced above. Persons may lawfully defend themselves under circumstances outlined by law, and are afforded the legal defense of “justification” for the lawful use of deadly force in accordance with statutes. Utah Code Ann. 76-2-402 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 felony⁷.” *Id.*

In addition to the use of deadly force in defense of self or others, a peace officer’s use of deadly force is “justified” 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 by individuals or peace officers) turns on similar elements. In relation to the use of

⁷ For the enumerated “forcible felonies,” see U.C.A. 76-2-402(4)(a), *supra*.

deadly force by *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). For the use of deadly force by *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. A peace officer’s use of deadly force is “justified” when that officer “reasonably believes” that the use of deadly force is “necessary to prevent” the threat of “death or serious bodily injury.” *Id.*

As mentioned above, U.C.A. 76-4-202 and 404 constitute legal defenses to potential criminal charges. Although Utah Code doesn’t directly reference other means of evaluating liability and reasonableness of police use of force, the United States Supreme Court case *Graham v. Conner* provides an analytical methodology for assessing excessive force claims in a Fourth Amendment context.⁸ *Graham* considers excessive force claims from a “reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Graham v. Conner*, 490 U.S. 386, 396 (1989) (citations omitted.) *Graham* also “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.* (citations omitted) *Graham* observes: “Because ‘[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,’ [citation omitted] however, 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 he is actively resisting arrest or attempting to evade arrest by flight.” *Id.* (citations omitted).

This OICI investigation and our review that followed was conducted in accordance with an OICI investigation protocol previously established and in conformity with legislation governing investigations of OICI events.

The OICI investigation protocol strives to establish an investigation methodology and process that provides the D.A.’s Office with the evidence needed to review the investigation to determine whether a police officer’s use of deadly force conformed to the above referenced statutes. If the use of deadly force conformed to the statutes, the use of deadly force is “justified,” and the legal defense of “justification” is available to the officer such that criminal charges cannot be filed against the officer and the criminal investigation into the actions of the officer is concluded.

If the use of deadly force does not conform to the statutes above, the use of deadly force may not be “justified,” and the legal defense of “justification” may not be available to the officer. In other words, if the use of deadly force failed to conform to the applicable statutes, the law does not afford the officer the legal defense of “justification.” Further investigation may be needed to determine whether, and if so which, criminal charges can and should be filed against

⁸ The issue addressed in this OICI review is narrow and well defined: did an officer’s use of force violate a criminal statute and if so, should a prosecution ensue? While our review does not directly employ a Fourth Amendment analysis, the *Graham* case is nevertheless informative.

the officer. Just because the legal defense of “justification” may not be available (because the use of deadly force did not conform to the statutes) does not therefore necessarily mean that criminal charges should be filed against the officer. For instance, the evidence available to the District Attorney may not support criminal charges, the case may not have a reasonable likelihood of success at trial, or other reasons may preclude a prosecution. Again, further investigation and consideration may be required to determine whether the use of deadly force warrants criminal charges.

INVESTIGATION

To comply with state law requiring an outside agency to investigate an OICI, Sandy City Police Department (the agency in whose jurisdiction the OICI occurred) invoked the OICI investigation protocol, and an investigative team comprised of law enforcement personnel from several agencies responded to investigate this matter pursuant to the previously agreed upon OICI investigation protocol.

On April 23, 2018, OICI protocol investigators presented the investigation findings to the District Attorney’s Office for review and this opinion letter. During the presentation of the investigation findings, OICI protocol investigators reported that ATF personnel were helpful and accommodating with the investigation’s needs, but did not perform any investigation of the OICI itself.

FACTS

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 13, 2018, a task force of ATF agents and other police officers were looking for a fugitive with a federal arrest warrant named Brian Solis. Task force officers obtained information (including an ostensible cell phone number) about Mr. Solis from a confidential informant. Based upon the information, task force officers obtained a search warrant and order allowing the officers to “ping” the phone number as part of their efforts to locate and apprehend the fugitive.

As the electronic surveillance equipment started looking for the cell phone’s location, task force personnel saw that the phone was in the Sandy, Utah area. Agents drove to the area of 181 East, 8960 South and found a parking lot with cars. The electronic surveillance equipment showed the cell phone to be in the parking lot to a degree of accuracy within nine meters.

ATF Resident Agent in Charge Brian Embley and other task force officers arrived in the parking lot. Officers saw that the only vehicle with people in it was a white BWM sedan backed into a parking stall. Officers saw three people in the BMW; they were subsequently identified as Bryan Liles, a female we refer to as T.C. and a female we refer to as S. C. Officers could see that the male did not match the photograph and physical description of Brian Solis. But task

force officers contacted the people in the BMW to determine why the cell phone apparently connected to the wanted fugitive seemed to be located in their car.

Agent Embley, ATF Agent W. Newell and Task Force Officer M. Aguilera approached the BMW and made verbal contact with the man and two women. The agents identified themselves and asked Mr. Liles for identification. Mr. Liles said his identification was inside the car and started to walk towards the car. Agent Newell told Mr. Liles not to worry about his identification and to stay outside the car. But Mr. Liles continued walking and got into the BMW. The agents ordered Mr. Liles to get out of the car, but Mr. Liles did not comply.

Mr. Liles started the car and put it in gear. Agent Newell reached into the car through the driver's window and tried to stop Mr. Liles by turning off the car or taking it out of gear. Mr. Liles accelerated away with Agent Newell half inside the car. Agent Embley was in front of the car. Mr. Liles turned the car to the right as he started to leave the parking space. Agent Embley, in front of the BMW, saw that it appeared Agent Newell would be run over or dragged by the BMW, and saw that the BMW would run over him and/or push him into Agent Newell's car. Agent Embley fired a series of shots at Mr. Liles. Agent Newell was able to pull himself free of the BMW as it drove away.

Mr. Liles continued to drive away. Agents Embley and Newell ran after the car, following closely. Mr. Liles stopped the car and Agent Embley caught up to the open driver's side window. Mr. Liles said something like: "why did you shoot me?" Mr. Liles' upper body was turned towards Agent Embley as he said this, and both of Mr. Liles' hands were reaching down and moving around as though Mr. Liles was trying to get something. Agent Embley fired again at Mr. Liles.

Agents Newell, Embley and Task Force Officer Aguilera opened the driver's door and took Mr. Liles out of the car. The BMW continued to move forward and Agent Newell ran after and caught up with the car and got it stopped. The officers started first aid and called for medical personnel to arrive. Mr. Liles was transported to the hospital where he was pronounced dead.

Task Force Officer McIntyre

On March 13, 2018, OICI protocol investigators interviewed Task Force Officer B. McIntyre. Officer McIntyre said that she was part of a task force looking for a wanted fugitive named Brian Solis. Officer McIntyre said the task force received information about Mr. Solis from a confidential informant. Officer McIntyre said the confidential informant had provided reliable information in the past. Officer McIntyre said the confidential informant provided a cell phone number for "Brian," apparently intending the phone number to be for Brian Solis. Officer McIntyre said task force officers subsequently learned the confidential informant had provided a phone number belonging to Bryan Liles.

Officer McIntyre said, based upon the information she knew at the time, she authored a search warrant to "ping" the phone belonging to the phone number the confidential informant provided. Officer McIntyre said once the electronic surveillance equipment was operating, the

“ping” locations were received by another task force member and that task force member relayed the “ping” location information over the radio to task force members.

Special Agent Newell

OICI protocol investigators interviewed ATF Special Agent W. Newell. Agent Newell said on March 13, 2018, he was working as part of a task force searching for a wanted fugitive named Brian Solis. Agent Newell said he had a photo of Mr. Solis. Agent Newell said task force officers received information about a cell phone ostensibly belonging to the wanted person. Agent Newell said that during the task force operation, he was told that this phone had been located in the area of 189 East, 9000 South in Sandy, Utah.

Agent Newell said he and other task force officers arrived in the area where the phone was reported to be and saw a Utah Transit Authority (“UTA”) Trax parking lot with cars in it. Agent Newell said he looked at the cars in the parking lot and saw people in only one car: a white BMW with the hood up with no front license plate, backed into a parking stall. Agent Newell said he was told it appeared the cell phone “pings” were coming from the area of the BMW.

Agent Newell said he met up with task force officer M. Aguilera and other officers on the street to the north east of the parking lot. Agent Newell said he and the other officers discussed the situation. Agent Newell said they agreed to make contact with the people in the BMW to see if they could determine why the cell phone “pings” were coming from the car.

Agent Newell said he and the officers entered the parking lot and he parked his unmarked police car in front of the BMW, partially obstructing its exit. Agent Newell said he made contact with the male, later identified as Bryan Liles. Agent Newell said he identified himself to Mr. Liles as a police officer checking on a suspicious vehicle.

Agent Newell said Mr. Liles initially appeared calm. Agent Newell said he asked Mr. Liles for identification and Mr. Liles responded that it was inside the BMW. Agent Newell said Mr. Liles started moving towards the car. Agent Newell said he told Mr. Liles to stop and not worry about the identification. Agent Newell said he didn’t want Mr. Liles to get inside the car. Agent Newell said Mr. Liles kept walking towards the car. Agent Newell said he yelled and ordered Mr. Liles to stop and not to get into the car.

Agent Newell said Mr. Liles did not stop, but got into the driver’s seat and started the BMW. Agent Newell said he chased after Mr. Liles to try to stop Mr. Liles from leaving by reaching in through the car’s open window. Agent Newell said he saw Mr. Liles put the car in gear. Agent Newell said he reached in through the open driver’s door window and across Mr. Liles in the driver’s seat. Agent Newell said he put his left hand on Mr. Liles’ left hand which was on the steering wheel. Agent Newell said he put his right hand on Mr. Liles’ right hand which was on the gear shift handle. Agent Newell said he tried to take the car out of gear but could not. Agent Newell said he believed he repeatedly ordered Mr. Liles to stop.

Agent Newell said Mr. Liles accelerated and started driving away with Agent Newell half inside the car. Agent Newell said as Mr. Liles started to drive away, he knew his police car was parked close by (Agent Newell said he believed his car was one to two feet away). Agent Newell said he also believed ATF Resident Agent in Charge Brian Embley was next to or in front of the BMW. Agent Newell said Mr. Liles “got it into drive, and at that point he hit the gas, and to this day I don’t know how [Agent] Brian [Embley] did not get hit or get pinned because I’m tellin ya when I last saw [Agent Embley] he was standing right at that front of ... the suspect’s car, the white BMW, and I don’t know how he didn’t get pinned between the two cars. I don’t know how he didn’t because, I mean, one second [Agent Embley] is standing right where I described rear drivers side quarter panel trunk corner of my car and front and the next second he’s standing right next to me I mean it was just like that, I mean it was that fast...”

Agent Newell said he believed he was going to be crushed between the BMW and his car parked in front of the BMW, or dragged by the BMW. Agent Newell said he feared for his life and thought he was going to be killed. Agent Newell said he also knew Agent Embley was standing in front of the BMW and thought Agent Embley was going to be run over and killed.

Agent Newell said as Mr. Liles started to drive the BMW, Agent Newell heard gunshots⁹. Agent Newell said he was able to break free from the car and saw the BMW drive away. Agent Newell said he was behind the car and saw Agent Embley and Officer Aguilera follow the car and make contact with the driver. Agent Newell said he remembered hearing others shouting commands to the driver but did not recall the exact wording. Agent Newell said he heard another round of gunshots and saw the BMW drive off and then stop in the middle of the street.

Agent Newell said he and Agent Embley and Officer Aguilera approached the car, opened the driver’s side door and removed Mr. Liles from the car. Agent Newell said the BMW was still in gear and the car moved forward across the street. Agent Newell said eventually he was able to bring the car to a stop and secured it.

Task Force Officer Aguilera

On March 13, 2018, protocol investigators interviewed Task Force Officer M. Aguilera. Officer Aguilera said he was working as part of a task force searching for a wanted fugitive. Officer Aguilera said he was informed that the task force located a cell phone signal in the area of 189 East, 9000 South in Sandy, Utah. Officer Aguilera said he traveled to the area and met up with other task force officers.

⁹ In his interview with OICI protocol investigators, Agent Newell said: “My shoulder hit the support beam on the driver’s side between the driver’s side and rear passenger seat where the car door (obviously it was closed) and he kinda spun me and I saw Brian like get up on his, not toes, but like not a normal shooting position like a shooting position like he’s intentionally shooting down, like he went like this bam bam I mean it was that fast. And ... I instantly thought ‘he hit him, he had to have hit him;’ I mean he was that close and I don’t know if you know but you saw there’s powder burns on my right hand, and I’m okay with that because I’m tellin ya--this guy, was he was gonna make what we were intending to be a easy situation, he took it bad (snaps) that fast, and so my hand must’ve been literally just literally half way across his chest coming out when Brian fired, and uh and I have no problem with tha-I want to make that real clear-- I got no issues with that, because this dude was, he-a-again I don’t-not know how Brian moved that fast and didn’t get run over-run over or hit or pinned, be caught between this guy’s car and my car, and so right then when-right after Brian fired the guy like spun because he had to so he didn’t hit my car.”

Officer Aguilera said he arrived in the area and saw a UTA Trax parking lot with cars in it. Officer Aguilera said he saw people in only one car: a white BMW with the hood up, no front license plate, backed into a parking stall. Officer Aguilera said he was informed it appeared the cell phone “pings” were coming from the area of the BMW.

Officer Aguilera said he met up with ATF Agent Newell and other officers on the street to the north east of the parking lot. Officer Aguilera said the officers discussed the situation. Officer Aguilera said the officers agreed to make contact with the people in the BMW to see if they could determine why the cell phone “pings” were coming from the car.

Officer Aguilera said he drove his unmarked police vehicle into the parking lot and parked in a parking stall to the north of the BMW. Officer Aguilera said he saw a male and two females around the BMW. Officer Aguilera said all three people got out of the car as the officers arrived and all three appeared nervous. Officer Aguilera said he saw the male, later identified as Bryan Liles, move towards the car and heard Agent Newell yell for the male to stop. Officer Aguilera said he saw the male get into the BMW and saw Agent Newell reach into the car to stop the male from escaping.

Officer Aguilera said he saw the BMW quickly drive off; Officer Aguilera said he thought the BMW was headed straight for Agent Embley who was in front of the car. Officer Aguilera said he saw that Agent Newell was still half inside the car as it drove away. Officer Aguilera said he heard a series of gunshots as the car drove forwards.

Officer Aguilera said he ran towards the car as it drove away and approached the BMW from the driver’s side. Officer Aguilera said he saw the car stop and heard a police officer yelling commands. Officer Aguilera said he could see Mr. Liles’ head and shoulders but could not see Mr. Liles’ hands. Officer Aguilera said he heard another series of shots and saw the BMW drive a few more feet and stop. Officer Aguilera said he assisted Agents Embley and Newell in arresting Mr. Liles and started first aid for Mr. Liles.

Resident Agent in Charge Embley

Protocol investigators interviewed ATF Resident Agent in Charge Brian Embley. Agent Embley said he was the agent in charge of the March 13, 2018 operation to apprehend Brian Solis. Agent Embley said that in the afternoon of March 13, 2018, it became unclear whether the task force would successfully apprehend Mr. Solis that day. Agent Embley advised the task force officers to discontinue their work for the day and begin again the following day.

Agent Embley said shortly after he advised the task force officers to discontinue their work for the day, the officer running the electronic surveillance equipment advised the task force officers that the equipment was receiving “pings” from a phone they believed to be owned by Brian Solis, the wanted fugitive they were seeking. Agent Embley said he told task force officers to meet up in the area of 9000 South and 200 East, near the area the “pings” were coming from.

Agent Embley said he and other task force officers met near the location of the "pings." Agent Embley said as he looked into the parking lot where the "pings" were located, he saw three people in a white BMW. Agent Embley said the BMW appeared to be the only car with people in it. Agent Embley said the BMW's hood was up.

Agent Embley said he saw the three people were moving around in the car and not sitting still. Agent Embley said he asked Agent Newell and Task Force Officer Aguilera to make contact with the people in the BMW. Agent Embley said he wanted to know why a cell phone he believed belonged to a wanted fugitive appeared to be located inside the car.

Agent Embley said he saw Agent Newell pull his car in close to the BMW, partially in front of the BMW. Agent Embley said he saw Agent Newell's door was open. Agent Embley said he saw that Officer Aguilera was addressing two people so he decided to assist Agent Newell. Agent Embley said he heard Agent Newell yell at the BMW driver to not get back in the car. Agent Embley said he walked towards Agent Newell to assist him dealing with the driver.

Agent Embley said as he got close to Agent Newell, he heard Agent Newell yell: "Don't do that!" at the driver. Agent Embley said he saw Agent Newell reach inside the BMW through the driver's side window and start fighting with the driver. Agent Embley said he saw the BMW start driving away fast; Agent Embley said he believed he was going to be hit by the BMW and run over. Agent Embley said he also believed Agent Newell was going to be dragged or pinned between the BMW and Agent Newell's nearby car.

Agent Embley said he made a "very split-second decision, where this guy was coming at me and I realized I was going to be taken out or pushed into Newell's car, and [Agent Newell] would probably be dragged if he stayed in the vehicle or tugged with this individual." Agent Embley said he made the decision to fire his gun at the driver because he feared he was going to be killed and/or Agent Newell was going to be killed. Agent Embley said he fired three rounds at the driver. Agent Embley said the car passed by him and Agent Newell freed himself from the car.

Agent Embley said the BMW slowed and stopped several feet away at the parking lot entrance. Agent Embley said he and Officer Aguilera ran alongside the vehicle and approached the driver's door as the car stopped. Agent Embley said he remembered giving commands to the driver but said he could not remember the specific commands he gave to the driver in this instance. Agent Embley said as long as he's been a law enforcement officer, his commands have been to "show me your empty hands." Although Agent Embley said he thought he gave this command to the driver, he couldn't say for certain.

Agent Embley said the driver replied to Agent Embley's commands by saying, in an angry tone: "I've been shot! Why did you shoot me?" Agent Embley said while he was yelling commands to the driver, the driver's hands were down and appeared to be reaching around the car's floorboards. Agent Embley said the driver never showed his hands to him or the other

officers. Instead, Agent Embley said the driver continued to move as though his hands were searching for something.

Agent Embley said: "he was originally fleeing, obviously trying to run me over, and then [he] continued north to what I believed to get out of the parking lot." Agent Embley said as the driver approached the exit to the parking lot, Agent Embley believed the driver would escape.

Agent Embley said the path for the driver's escape was clear. Agent Embley said he became greatly concerned that, instead of escaping or fleeing, the driver stopped as the police officers followed. Agent Embley said he thought to himself: "why is he slowing down?" Agent Embley said he was concerned that the driver was "stopping to have a battle with us, otherwise he would have been complying with the commands to ... give up, to let us see yours hands...."

Agent Embley said he saw the driver bending over and reaching down while he was looking directly at Agent Embley. Agent Embley said he asked himself: "if the driver's goal was to flee, why did he stop and not continue his escape; if the driver can talk in a heated conversation, why isn't he complying? And what is the driver reaching for on the floor, while keeping eye contact with me?" Agent Embley said he made another split-second decision to fire more rounds at the driver. Agent Embley said he believed the driver was going to obtain a weapon from somewhere inside the car and kill him and the other officers. Agent Embley said he feared that he was about to be killed when he made his decision to fire the second shots.

Agent Embley said after firing the second round of shots, the car rolled forward and came to a stop. Agent Embley said he could not recall if the driver was pulled out of the car. Agent Embley said he saw Officer Aguilera secure the driver and begin first aid. Agent Embley said he did not see a firearm during the incident. Agent Embley said he was advised later by Officer Aguilera that there appeared to be a firearm in the BMW¹⁰.

Witness T. C.

On March 13, 2018, protocol investigators interviewed T. C. T. C. said that earlier that same day, she received a phone call from S. C. T. C. said that S. C. had purchased a BMW earlier that day. T. C. said that S. C. told her to meet at a UTA Trax station at 180 East, 9000 South in Sandy. T. C. said that she saw a BMW with S. C. inside pull into the Trax station. T. C. said that she saw the BWM was smoking as it pulled into the Trax station.

T. C. said that she got into the BWM. T. C. said that S. C. told her that S. C. and Mr. Liles were in a fight. T. C. said Mr. Liles was outside the car during her conversation with S. C. T. C. said that police officers arrived in the parking lot and walked towards the BMW. T. C. said she could see that at least one of the officers had police markings on his vest and she knew he was a police officer. T. C. said Mr. Liles was under the BMW's hood looking at the engine when the police officers walked towards the car.

¹⁰ We commend Resident Agent in Charge Embley on his decision to make a statement and answer questions posed by protocol investigators. We note that, while Agent Embley perhaps could have said he saw a gun during the incident without fear of contradiction (because protocol investigators found a gun inside the BMW), Agent Embley did not claim to have seen a gun. We believe Agent Embley's candor tends to lend credibility to other aspects of Agent Embley's version of events.

T. C. said she got out of the car. T. C. said Mr. Liles got back into the car and started driving away. T. C. said she heard police officers yell: "Stop! Stop!" T. C. said after the police yelled commands, she heard gunshots.

Witness S. C.

On March 13, 2018, protocol investigators interviewed S. C. S. C. said that earlier in the day, she and Mr. Liles purchased a BMW. Not long after they purchased the car, it started overheating. S. C. said she and Mr. Liles argued about the BMW and the argument turned into a fight. S. C. said Mr. Liles hit her in the mouth and on the chin with his closed fist. S. C. said Mr. Liles then pulled out a handgun, pointed it at S. C.'s face, and told S. C. not to talk to him like that or he would kill her.

S. C. said she was sitting inside the BMW in the Trax parking lot. S. C. said Mr. Liles was outside the car looking under the open hood. S. C. said police officers arrived in the parking lot and she got out of the car. S. C. said she walked around to the front of the car when Mr. Liles "stepped on the gas" and the BMW collided with her. S. C. said she heard gunshots.

Witness S. S.

On March 13, 2018, protocol investigators interviewed S. S., a UTA transit operator. S. S. said that earlier in the day, he heard three gunshots and looked up and saw three detectives running alongside a car. S. S. said it looked like the detectives were trying to get the car to stop. S. S. said he heard three more shots. S. S. said he saw the car stop and the detectives remove the car's driver and handcuff him.

Other Witnesses

OICI protocol investigators interviewed other witnesses, including three other civilians (unrelated to each other: a man and two women) who witnessed various parts of the OICI. None of these other witnesses' testimony contradicted the statements of others set forth above or the physical evidence obtained and reviewed by the protocol investigation.

Physical Evidence

None of the police officers were wearing body-worn cameras during the OICI. Protocol investigators searched the area for surveillance video. Two surveillance video recordings were found and presented during our review of this case. One video recording depicts a few events leading up to but not including the OICI. We were informed this camera was motion activated and located a long distance away from the OICI. Apparently, the motion of the BMW was too far to activate the camera, and the recording did not capture the OICI.

Another video recording from a camera located a long distance from the OICI documented some of the timeframe surrounding the OICI, but the camera's distance from the events prevented a

detailed recording of the events. The recordings appear to corroborate the sequence of events to the extent the recordings captured the events.

OICI protocol investigators inspected, documented and photographed the scene of the two shootings and the surrounding area.

Photos and medical records from Mr. Liles' medical treatment at the hospital and autopsy photographs show that Mr. Liles was shot four times.

Protocol investigators photographed and documented injuries Mr. Liles inflicted on S. C. Photos taken at the hospital after the OICI show injuries to S. C.'s face and lip. S. C. also complained of injuries to her left hip resulting from the BWM colliding with her. Medical personnel did not observe any visible injuries to S. C.'s hip and protocol investigators did not present us with any physical evidence of injuries to S. C.'s hip.

Protocol investigators inspected Agent Embley's firearm, a Glock Model 22, caliber .40 S&W.

Protocol investigators recovered a Jiminez Arms brand 9 mm handgun from the BWM's driver's side floorboard. Investigators determined the weapon was listed as stolen from a Taylorsville, Utah address.

DISCUSSION AND CONCLUSIONS

Justified Use of Deadly Force

Upon seeing Mr. Liles, Agent Embley and other task force officers knew Mr. Liles was not the wanted fugitive they were initially looking for. But the officers reasonably engaged in investigative efforts to try to determine why it appeared that the wanted fugitive's cell phone seemed to be located in Mr. Liles' car. Agent Embley and other officers lawfully asked Mr. Liles questions and issued lawful orders to Mr. Liles which he disobeyed.

Agent Newell lawfully and reasonably took steps to prevent Mr. Liles from driving away while officers conducted their investigation. It appears Mr. Liles unlawfully disregarded and disobeyed Agent Newell's lawful commands. When Agent Newell reached into the BWM to try to turn the car off and prevent Mr. Liles' escape, Mr. Liles could have complied with Agent Newell's lawful orders, but apparently chose to disobey those orders.

Agent Embley saw Agent Newell trying to prevent Mr. Liles' unlawful escape, and perceived the danger he and Agent Newell were in as Mr. Liles unlawfully fled and drove away from the scene. Agent Embley reasonably believed that Mr. Liles' actions placed him and/or Agent Newell at risk of death or serious bodily injury. Agent Embley reasonably believed he needed to use deadly force against Mr. Liles to prevent his own death or serious bodily injury and/or Agent Newell's death or serious bodily injury. Agent Embley's first shots at Mr. Liles as he initially drove away was a justified use of deadly force.

Agent Embley also reasonably believed that Mr. Liles continued to present a risk of death or seriously bodily injury to himself and/or other officers in the area. Agent Embley explained that, in deciding to use deadly force against Mr. Liles a second time, he was concerned about the possibility that Mr. Liles stopped to “battle” him and/or other officers. Agent Embley recounted his thoughts at the time—that he considered that if Mr. Liles stopped for a reason other than to battle or fight the officers, Mr. Liles would have been complying with the commands to give up and/or show his hands. Instead of giving up and complying with orders, Agent Embley said it appeared to him that Mr. Liles was confronting the officers and appeared to be obtaining a weapon.

Agent Embley said he saw the driver bending over and reaching down while he was looking directly at Agent Embley. Agent Embley’s thought process was reasonable when he asked himself: “if the driver’s goal was to flee, why did he stop and not continue his escape; if the driver can talk in a heated conversation, why isn’t he complying; and what is the driver reaching for on the floor, while keeping eye contact with me?” Agent Embley’s decision to fire again at Mr. Liles was reasonable under the circumstances. The investigation of the OICI determined that there was very probably a gun in the area where Mr. Liles was reaching before Agent Embley fired the second round of shots.

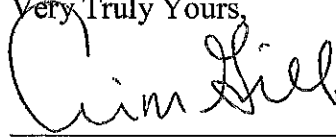
For purposes of this discussion, if we were to conclude that Agent Embley should be criminal charged for his use of deadly force against Mr. Liles, we would have to prove Agent Embley’s decisions to use deadly force were not reasonable, and we would have to prove beyond a reasonable doubt that his decisions to use deadly force were not reasonable.

In this case, we determined that Agent Embley reasonably believed that Mr. Liles’ initial actions placed him and/or Agent Newell at risk of death or serious bodily injury. And we determined that the totality of the circumstances presented to Agent Embley reasonably caused him to believe Mr. Liles continued to present a risk of death or serious bodily injury to Agent Embley and/or the other officers. We conclude that Agent Embley reasonably believed deadly force was necessary to prevent death or serious bodily injury to himself or another person, and was therefore a “justified” use of deadly force.

A “justified” use of deadly force provides Agent Embley a legal defense to a criminal prosecution for his use of force. The District Attorney’s Office declines to file criminal charges and prosecute or otherwise pursue matters against Agent Embley.

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,

A handwritten signature in black ink that reads "Sim Gill". The signature is written in a cursive style with a large initial "S".

SIM GILL,
Salt Lake County District Attorney

SG/JWH/jh