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October 22, 2018

**BY HAND DELIVERY**

Chief Mike Brown  
Salt Lake City Police Department  
475 South 300 East  
Salt Lake City, UT 84111

Sheriff Rosie Rivera  
Unified Police Department of Greater Salt Lake  
3365 South 900 West  
Salt Lake City, Utah 84119

Re: *UPD Officer Trever McLelland's Use of Deadly Force*  
Incident Location: 2750 South, 8400 West, Magna, Utah  
Incident Date: April 17, 2018  
DA Case No.: 2018-576  
SLCPD Case No.: 18-66259  
UPD Case Nos.: 18-57367; 18-57364

Dear Chief Brown and Sheriff Rivera:

This letter addresses Unified Police Department of Greater Salt Lake (UPD) Officer Trever McLelland's discharge of his police rifle at Lonnie Marcel Bowen on April 17, 2018. Mr. Bowen died on scene following Officer McLelland's use of deadly force.

Officer McLelland's actions resulting in Mr. Bowen's death constituted the "use of a dangerous weapon," which is defined under Utah law as "a firearm or [] object that in the manner of its use or intended use is capable of causing death or serious bodily injury." Utah Code Ann. § 76-2-408(1)(a), (d). As a result, the law enforcement agency with jurisdiction over Officer McLelland's conduct, UPD, initiated what is known in Utah as the "Officer Involved Critical Incident" (OICI) protocol. *See* Utah Code Ann. § 76-2-408(2)-(3). Accordingly: (i) a law enforcement agency other than the agency employing Officer McLelland, here Salt Lake City Police Department (SLCPD), was called in to investigate Officer McLelland's weapon discharge; and (ii) SLCPD's independent investigative findings were presented to the Salt Lake County District Attorney's Office (DA's Office), which has the constitutional and statutory mandate to screen such matters for possible criminal charges.<sup>1</sup>

<sup>1</sup> Utah Const. Art. VIII, section 16; Utah Code Ann. §§ 17-18a-203; *see also id.* at § 77-2-2(1) (defining "screening" as the "process used by a prosecuting attorney to terminate an investigative action, proceed with prosecution, move to dismiss a prosecution that has been commenced, or

## SUMMARY OF FACTS AND FINDINGS<sup>2</sup>

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 April 17, 2018, 911 dispatchers received a call reporting a hostage situation. The caller did not provide a location but dispatchers were able to tell where the call came from. The caller threatened to kill the hostage. Police officers found a truck in the area the call came from and approached the vehicle. It fled and police followed. Eventually, officers stopped the truck. Officers approached the truck and observed a man, later identified as Lonnie Marcel Bowen, holding a knife to the throat of a woman we refer to as N. N.

WVCPD Officer Barrett heard Mr. Bowen threaten to kill the woman he was holding hostage. Officer Barrett relayed the information to officers on scene. WVCPD Officer Pepper and UPD Officer McLelland approached the truck and ordered the man: "Let her go! Let her go!" but he did not comply. Officer McLelland fired five rounds at Mr. Bowen, killing him.

Officer McLelland declined to be interviewed in connection with this incident, as is his constitutional right. As such, we don't have his explanation as to why he fired his rifle. We are therefore left to infer the rationale for Officer McLelland's decision to discharge his weapon. Reasonable inferences were drawn based on other evidence we received and carefully reviewed.

WVCPD Officers Barrett and Pepper gave statements both on the day of the incident. Protocol investigators also collected interviews of relevant non-officer witnesses, body camera footage from officers, police radio dispatch recordings, photographic and physical evidence from in and around the scene, and forensic analysis of some of the physical evidence.

Based on the facts presented, and as further detailed below, we do not intend to file criminal charges against Officer McLelland. Assuming Officer McLelland's testimony, if any, would be consistent with the physical and photographic evidence collected by protocol investigators, as well as the statements provided by witnesses, we believe Officer McLelland would be legally entitled to the affirmative defense of "justification" under Utah State law. In other words, that Officer McLelland would be able to claim successfully at trial that he believed the "use of deadly force [wa]s necessary to prevent death or serious bodily injury to the officer or another person." Utah Code Ann. § 76-2-404(1)(c).

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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).

<sup>2</sup> The factual background and the 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.

### RELEVANT LEGAL STANDARDS

As relevant here,<sup>3</sup> law enforcement officers such as Officer McLelland are legally “justified” in using deadly force when (*see* Utah Code Ann. § 76-2-404(1) (emphases added)):

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

Based on this statute, the legal defense of “justification,” then, may be available where a law enforcement officer “reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury[<sup>4</sup>] to the officer or another person.” Utah Code § 76-2-404(1)(c). That affirmative defense may also be available where a law enforcement officer “reasonably believes that deadly force is necessary” to prevent a suspect’s escape and the officer had

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<sup>3</sup> Also relevant, but less so given Officer McLelland’s status as a law enforcement officer, is the articulation of “justification” in Utah State law that applies to individuals more generally, including civilians (*see* Utah Code § 76-2-402(1) (emphases added)):

- (a) A person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person’s imminent use of unlawful force.
- (b) A person is justified in using force intended or likely to cause death or serious bodily injury [i.e., deadly force] only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person’s imminent use of unlawful force, or to prevent the commission of a forcible felony.

<sup>4</sup> “Serious bodily injury” is defined, in turn, as “bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.” Utah Code § 76-1-601(11).

Probable cause to believe the suspect posed “a threat of death or serious bodily injury to the officer or to others if apprehension is delayed.” *Id.* at § 76-2-404(1)(b). In determining whether the use of deadly force was “justified” under Utah law, courts may consider several factors, including: (i) the nature of the danger; (ii) the immediacy of the danger; and (iii) the probability that the unlawful force would result in death or serious bodily injury. *See* Utah Code Ann. § 76-2-402(5).

Although Utah statutory law does not fully differentiate standards of “reasonableness” as between law enforcement officers and civilians, *compare* Utah Code § 76-2-402(1) (universal application), *with* Utah Code § 76-2-404(1) (application to law enforcement officers only), the Supreme Court of the United States did exactly that in *Graham v. Conner*, 490 U.S. 386 (1989). In *Graham*, the Supreme Court instructed that “reasonableness” for law enforcement officers must be assessed in light of a “reasonable officer on the scene, rather than with the 20/20 vision of hindsight.” *Id.* at 396 (internal citations omitted). The Supreme Court held that this determination “requires a careful balancing of the nature and quality of the intrusion on the individual’s Fourth Amendment interests . . . against the countervailing governmental interests at stake.” *Id.* Finally, the *Graham* court instructed (*id.* (internal citations omitted; emphases added)):

Because “[t]he test of reasonableness under the Fourth Amendment is not capable of precise definition or mechanical application,” . . . its proper application requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether [the suspect] is actively resisting arrest or attempting to evade arrest by flight.

### RELEVANT ETHICAL STANDARDS

The DA’s Office files cases that satisfy ethical standards and considerations in addition to legal standards for filing.<sup>5</sup> Honoring ethical standards ensures that everyone affected by the criminal justice system—suspects, defendants, victims, the community, and the system itself—is treated fairly, honorably, and respectfully.

Among the ethical standards we consider before the DA’s Office will commence a case is whether there is a reasonable likelihood of success at trial. It is not enough that the technical elements of crime may be met if, when presenting those facts to a jury, the prosecution strongly believes no reasonable jury would unanimously convict the defendant based on those facts.

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<sup>5</sup> 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).

Accordingly, any screening decision by the DA's Office includes careful consideration of the various factors a jury may consider when weighing testimony, evaluating evidence, applying the law, and rendering a verdict.

### **FACTS DEVELOPED DURING OICI INVESTIGATION**

As noted previously, following Officer McLelland's use of deadly force, UPD properly initiated the OICI protocol, *see* Utah Code Ann. § 76-2-408(2)-(3), such that: (i) protocol investigators were called in to conduct an independent investigation of Officer McLelland's weapon discharge; and (ii) the protocol investigation's independent investigative findings were presented to the DA's Office to screen for possible criminal charges.

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.

During the very early morning hours of April 17, 2018, Valley Emergency Communications ("VECC") received a 911 call from a man (later identified as Lonnie Marcel Bowen) calling from a cell phone. The man told VECC there was a "definite hostage situation" and requested a hostage negotiator. The VECC operator asked the man for his location, but the man said he didn't know his location, and then said the "9<sup>th</sup> Apartments." VECC operators determined the call to be coming from the Millcreek area. The VECC operator asked the man for his name; the man replied: "the man in the mirror."

VECC transferred the call to UPD police radio dispatchers but the call disconnected. VECC operators tried to call the number back, but each time the operators got voicemail for a woman subsequently identified as N. N. VECC relayed the call's location to UPD dispatchers and officers arrived in the area.

VECC received another call from the same man who said he had a hostage. The man told VECC to tell the police officers to back up or he would kill the woman he was holding hostage. The man said he was surrounded by police and would stick a knife through someone's throat if the police didn't back up. The call disconnected. VECC operators relayed this information to UPD dispatchers and informed them the call appeared to come from the area of 3900 South and 900 East. UPD dispatchers relayed this information over the police radio.

UPD sent two police officers to the area where the call came from. UPD Officer Twitchell-Smith saw a dark colored truck leave the 9<sup>th</sup> Street Apartments located at 3698 South, 900 East. The officers couldn't see who was in the truck and at first, they didn't think the truck was involved in the 911 call. The officers saw the truck leave the area at a normal rate of speed.

In the meantime, the man called 911 and VECC operators again tried to get a location. The man told VECC operators that he was in West Valley. The man became upset with the VECC operator and demanded a hostage negotiator. VECC operators asked the man his name and the man replied: "Mystery Man." After a lull in the phone conversation, VECC operators heard a woman on the phone say: "I think they're fucking stupid. This isn't a fucking game." VECC operators told the woman they didn't know how to help because the man didn't tell VECC what was happening. The woman replied: "He just told you, he has a hostage. Are you fucking retarded?" A short time later, the call disconnected.

Shortly after the phone conversation with the woman, VECC received another call from the same number. The call showed coming from the area of 5737 Kilt Rock in West Valley City. Several West Valley City Police Department ("WVCPD") officers headed to the area. As officers made their way, VECC received another 911 call and the man said: "If they think I'm joking, I'm going to stick this right through her throat." VECC operators told the man that police were on their way. They asked the man to confirm his location and to speak to officers when they arrived. VECC operators could overhear words between the man and a woman, and heard the man say: "I've got you hostage."

As police arrived in the Kilt Rock area, they saw a dark colored truck. The officers saw the truck's engine start and drive away as the officers arrived. Police officers broadcast a description of the truck on the police radio and followed it. A WVCPD officer reported seeing the truck at 3100 South and 5600 West and tried to make a traffic stop. The officer said the truck did not stop so the officer initiated a pursuit. Another WVCPD officer got ahead of the truck and tried to spike the tires, but the truck avoided the spikes and continued on.

Another WVCPD officer set up another set of spike strips which successfully punctured the truck's tires and the truck came to a stop at about 2750 South on 8400 West. Officers surrounded the truck. After a few minutes, the truck's passenger door opened and the man yelled to the officers that it was a hostage situation and he was going to kill the female hostage. A WVCPD officer standing near the truck heard the man's threat and relayed it to the other officers in the area. The officer positioned his police vehicle in front of the truck to prevent it from leaving.

WVCPD officers and UPD Officer McLelland approached the truck. WVCPD Officer Pepper tried to open the driver's side door but found it was locked. Officer Pepper saw the woman, identified as N. N. lying over the driver's seat across the passenger seat and over the man. Officer Pepper saw the man holding the woman by the neck. Officer Pepper saw a knife in the man's right hand. Officer McLelland deployed his rifle and fired five rounds into the driver's window. The rounds hit the man who was sitting in the passenger seat in the head, killing him. Other officers retrieved the knife, helped the woman from the truck, and called for medical personnel to attend to the woman and the man. N. N. was transported to the hospital for

minor injuries; medical personnel declared the man, later identified as Mr. Bowen, dead at the scene.

### **Witness Statements**

#### ***Officer McLelland***

As mentioned previously, Officer McLelland declined to be interviewed in connection with this incident, as is his constitutional right. As such, we don't have his account of what he was thinking or feeling, or even what he saw when he fired his rifle.

#### ***Officer Barrett***

On April 17, 2018, protocol investigators interviewed WVCPD Officer Barrett. Officer Barrett said he was on duty and heard police radio traffic about a hostage situation. Officer Barrett said he saw the vehicle and realized the need to prevent the vehicle from driving further. Officer Barrett said he deployed spike strips as the truck approached and passed him. Officer Barrett said the spike strip worked and disabled the truck.

Officer Barrett said he drove his patrol car to the front of the truck and parked it against the truck's front bumper to prevent the truck's further escape. Officer Barrett said he heard the male in the truck, subsequently identified as Mr. Bowen, yell that he was going to kill the woman in the truck. Officer Barrett said he relayed the statement to the police officers who were surrounding the truck.

#### ***Officer Pepper***

On April 17, 2018, protocol investigators interviewed WVCPD Officer Pepper. Officer Pepper said he was near the truck after it was disabled by the spike strips. Officer Pepper stated he walked up to the truck on the driver's side with a UPD officer. Officer Pepper said the UPD officer "fanned out" so that he had a better angle on the truck. Officer Pepper said the UPD officer was closer to the front of the truck and Officer Pepper was behind the driver's door.

Officer Pepper said he told the UPD officer to stay on lethal force; Officer Pepper told the UPD officer that he was going "off gun" to try to open the driver's door. Officer Pepper tried the truck door handle, and found it was locked. Officer Pepper said he looked into the truck and said could see a woman in the driver's seat stretched from the driver's seat over to the passenger's seat. Officer Pepper said he saw a man sitting in the passenger seat holding the woman's neck. Officer Pepper said he saw that the man had his arms around the woman's neck and was pulling her back towards him in the passenger seat.

Officer Pepper said he did not see a weapon at that time, but stated he did not have a clear view of the man and woman due to the fog on the inside of the driver's window. Officer Pepper said he believed the UPD officer had a better view into the truck from the UPD officer's vantage point. Officer Pepper said he and the UPD officer yelled: "Let her go!" Officer Pepper said the man did not let the woman go. Officer Pepper said the UPD officer fired four or five rounds into the truck through the driver's window.

*Witness N. N.*

On April 17, 2018, OICI protocol investigators interviewed N. N. who said she was Mr. Bowen's ex-girlfriend. N. N. said that, on April 16, 2018 at about 11:00 p.m., she went outside to get something from her vehicle and Mr. Bowen was standing near her truck. N. N. said she was surprised to see Mr. Bowen. N. N. said she believed Mr. Bowen was "off his meds" and seemed to be in a mentally distressed state.

N. N. said Mr. Bowen punched her in the mouth and forced her to get inside a truck. N. N. said Mr. Bowen had a knife. N. N. said Mr. Bowen was talking about N. N. working with the police to have Mr. Bowen killed. N. N. said Mr. Bowen seemed to be delusional. N. N. said Mr. Bowen talked about police officers hiding inside the truck.

N. N. said Mr. Bowen threatened to cut her with the knife and ordered her to drive the truck to some apartments in the Millcreek area. N. N. said Mr. Bowen made her call 911, tell the operator she was kidnapped, and demand a hostage negotiator. N. N. said that the 911 operator had a hard time understanding what was going on. N. N. said Mr. Bowen made her hang up the phone and turn it off for a few minutes. N. N. said eventually, Mr. Bowen told her to call 911 again. N. N. said she made the call on the speakerphone and Mr. Bowen talked to the 911 operator.

N. N. said that Mr. Bowen held a knife to her throat and threatened to kill her several times. N. N. said Mr. Bowen told her to drive to the area of 5600 West and 2700 South, which she did. N. N. said she and Mr. Bowen saw police officers in the area, and Mr. Bowen told her to drive away. N. N. said Mr. Bowen told her to run over the officers but she refused.

N. N. said that a police officer spiked the truck's tires and the truck slowed down around 3100 South and 8400 West. N. N. said that when the truck stopped, Mr. Bowen pulled her close to him. N. N. said she put her hands up to defend herself and begged Mr. Bowen: "Please don't do this, just get out." N. N. said Mr. Bowen refused to leave the truck.

N. N. said the police were around the truck. N. N. said Mr. Bowen yelled to the police: "This is a hostage situation, I'll kill her." N. N. said as Mr. Bowen yelled this, he pressed the knife tighter on her neck. N. N. said Mr. Bowen told her: "You're going to cover me." N. N.



said a police car pushed the front of the truck and “then the glass came [in] and I screamed.” N. N. said a police officer told her to get out and she did.

### **Video Recordings, Photographs**

Protocol investigators reviewed WVCPD officers’ body worn camera recordings. At least Officer Pepper’s body worn camera recording captured a knife in Mr. Bowen’s right hand after he was shot by Officer McLelland. Officer McLelland was not wearing a body camera at the time of the OICI.

Investigators also reviewed dash camera recordings from patrol cars. The body worn camera and dash camera recordings are consistent with the officers’ statements and seem to corroborate the timeline of events and actions observable on the recordings.

Protocol investigators obtained and reviewed 911 call recordings and police radio dispatch recordings and logs. The audio recordings of telephone calls and police radio traffic are consistent with and corroborate officers’ statements.

Investigators photographed the OICI scene. Investigators photographed a knife that officers identified as the knife Mr. Bowen held and assaulted N. N. with. The knife is approximately nine inches long and has a five inch blade.

### **LEGAL ANALYSIS**

As noted previously, as is his constitutional right, Officer McLelland declined to provide a statement to investigators. Without Officer McLelland’s explanation of his use of deadly force against Mr. Bowen, we don’t know his reasons for his decision to fire his rifle. We are therefore left to infer the rationale for Officer McLelland’s decision to use deadly force based on other evidence we received, as well as the reasonable inferences to be drawn from that evidence. In similar situations where a shooting officer has not provided a statement, we have proceeded in this manner. In doing so, however, we have never strayed from the objective evidence or testimony of other witnesses, nor do we do so here.

In considering whether to charge Officer McLelland with a criminal offense, we try to ascertain whether Utah’s broad affirmative defense of “justification,” particularly as applied to law enforcement officers, effectively precludes criminal prosecution based on the facts before us. In other words, whether Officer McLelland could establish at trial that he believed the “use of deadly force [wa]s necessary to prevent death or serious bodily injury to the officer or another person.” Utah Code Ann. § 76-2-404(1)(c).

As discussed more fully above, statements provided by N. N. and Officers Barrett and Pepper, as well as the body worn camera footage and dash camera recordings, together with

physical evidence recovered at the scene, all point toward a statutory defense of “justification.” Specifically, the police officers responded to several 911 calls concerning a hostage and threats that Mr. Bowen would kill the hostage. Officers saw the truck in question fail to yield to orders to stop. At least Officer Barrett heard Mr. Bowen threaten to kill N. N. after the truck stopped. N. N. testified that Mr. Bowen held her tightly with a knife to her throat as police approached the disabled truck. N. N. said that when Mr. Bowen was shot, he had pressed the knife harder into her neck.

Officer Pepper said he saw a man sitting in the passenger seat holding the woman’s neck. Officer Pepper said he saw that the man had his arms around the woman’s neck and was pulling her back towards him in the passenger seat. And officers testified (and body worn camera recordings corroborated) that when Mr. Bowen was shot, he had a knife in his right hand.

Evidence at the scene documented by protocol investigators appears seems to corroborate the witnesses’ testimony. Witness statements are largely corroborated by the body worn camera footage and dash camera recordings. Police and protocol investigators documented Mr. Bowen’s knife in his right hand when he was shot, and N. N.’s physical injuries are consistent with Mr. Bowen’s knife pressed against her neck.

Here, if criminal charges were brought against Officer McLelland, the DA’s Office would be required to prove beyond a reasonable doubt that Officer McLelland, intentionally and without legal “justification” as defined by statute, shot and killed Mr. Bowen; in other words, that Officer McLelland did not “reasonably believe[] that the use of deadly force [was] necessary to prevent death or serious bodily injury to the officer or another person,” e.g., N. N., when Officer McLelland shot Mr. Bowen. *See* Utah Code § 76-2-404(1)(c) (emphases added).

As the United States Supreme Court instructed in *Graham*, assessing “reasonableness” in the Fourth Amendment context “requires careful attention to the facts and circumstances of each particular case, including . . . whether the suspect poses an immediate threat to the safety of the officers or others.” 490 U.S. at 496 (emphases added). Assuming Officers Barrett and Pepper would testify consistently with their prior statements and facts described above, and assuming Officer McLelland (if he testified at all) would articulate similar fears for N. N.’s safety, we believe Officer McLelland could successfully argue he “reasonably” believed the “use of deadly force [wa]s necessary to prevent death or serious bodily injury to . . . another person.” Utah Code Ann. § 76-2-404(1)(c). We further believe, based on the foregoing, that no reasonable jury would unanimously conclude that Officer McLelland did not reasonably believe that deadly force was necessary to prevent N. N.’s death or serious bodily injury.

While we don’t know (because he didn’t answer questions or give a statement, as is his right not to) what Officer McLelland saw or heard or believed at the time he used deadly force, we know what he could have seen or heard or believed, based on the facts we presently know. From these facts, an inference that Officer McLelland used deadly force because he believed

deadly force was necessary to prevent N. N.'s death or serious bodily injury is a reasonable inference and one that supports the legal defense of "justification."

In short, paying "careful attention to the facts and circumstances" of this case, and considering the totality of the evidence and reasonable inferences to be drawn therefrom, we conclude Officer McLelland's use of deadly force likely falls within the definition of "justification" set forth in Utah State law.

### 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 all the totality of evidence presented to date, however, and the reasonable inferences to be drawn from that evidence, we conclude Officer McLelland could likely establish at trial that he believed the "use of deadly force [wa]s necessary to prevent death or serious bodily injury to the officer or another person." Utah Code Ann. § 76-2-404(1)(c). In that event, Utah State law would provide him the legal defense of "justification" from criminal liability in connection with this incident. Accordingly, we do not intend to pursue criminal charges against Officer McLelland.

Very truly yours,



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Sim Gill  
Salt Lake County District Attorney