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October 24, 2018

**BY HAND DELIVERY**

Interim Police Chief Richard Davis  
West Jordan City Police Department  
8040 S. Redwood Rd.  
West Jordan, UT 84088

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

Re: *WJPD Officers Whitehead's and Shepherd's Use of Deadly Force*  
Incident Location: 6200 South, 4000 West, West Jordan, Utah  
Incident Date: May 28, 2018  
DA Case No.: 2018-715  
UPD Case No.: 18-81285  
WJPD Case No.: 18H008909

Dear Chief Davis and Sheriff Rivera:

This letter addresses West Jordan Police Department ("WJPD") Officer Whitehead's and WJPD Officer Shepherd's discharge of their police weapons on May 28, 2018 at Michael Glad. Mr. Glad died from the gunshot injuries he sustained.

Officer Whitehead's and Officer Shepherd's actions resulting in Mr. Glad'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 Whitehead's and Officer Shepherd's conduct, WJPD, 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 Whitehead and Officer Shepherd, here the Unified Police Department of Greater Salt Lake (UPD), led a task force team of law enforcement officers ("protocol investigators") called in to investigate Officer Whitehead's and Officer Shepherd's weapon discharge; and (ii) the task force'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

## 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 May 28, 2018, Michael Glad robbed a convenience store at gunpoint. A WJPD police officer located Mr. Glad walking down the street shortly thereafter. WJPD Officer Hutchings stopped his police truck behind Mr. Glad and stepped out to talk to Mr. Glad. Mr. Glad pulled out a handgun and Officer Hutchings sought cover. Mr. Glad got into the police truck and sped away. As he fled, Mr. Glad drove the police truck towards several other cars, including police vehicles. WJPD Officers Whitehead and Shepherd fired their weapons at Mr. Glad, fatally wounding him. The police truck Mr. Glad was driving collided with several vehicles and came to a stop. Police and medical personnel attended to Mr. Glad who died from the gunshot wound.

Based on the facts presented, and as further detailed below, we do not intend to file criminal charges against either Officer Whitehead or Officer Shepherd. Assuming Officer Whitehead's and/or Officer Shepherd'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 Whitehead and Officer Shepherd would be legally entitled to the affirmative defense of "justification" under Utah State law. In other words, that Officer Whitehead and Officer Shepherd 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).

## RELEVANT LEGAL STANDARDS

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

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action, proceed with prosecution, move 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).

<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.

<sup>3</sup> Also relevant, but less so given Officer Whitehead's and Officer Shepherd'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

- (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 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

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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).

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. 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 Whitehead’s and Officer Shepherd’s use of deadly force, WJPD 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 Whitehead’s and Officer Shepherd’s weapon discharge; and (ii) the protocol

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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).

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.

On May 28, 2018, police dispatchers received a call from a clerk at a 7-11 convenience store located at 6215 South, Dixie Drive in West Jordan, Utah. The 7-11 clerk reported she had just been robbed at gunpoint. The clerk said a man wearing black and a black bandana over his face had pointed a black handgun at the clerk and demanded cash. The clerk said she emptied her till and gave the man \$336.00 and three packs of cigarettes. The clerk said the man put the cash and cigarettes in a green canvas backpack and left the store. The clerk said the man was walking westbound on 6200 South. Police dispatchers broadcast the robbery and suspect description on the radio.

A few minutes after the 911 call, WJPD Officer Hutchings saw a man matching the robbery suspect's description walking westbound on 6200 South. Officer Hutchings pulled his police truck behind the man and stopped. Officer Hutchings got out of his truck and ordered the man to "stop, stop right there." The man pulled out a handgun and Officer Hutchings sought cover behind his truck. Officer Hutchings informed dispatchers that the man was armed and asked dispatchers to send other police cars quickly. Officer Hutchings repeatedly ordered the man to put the gun down. The man turned and walked towards the truck and got inside.

As other officers arrived to assist with the armed man and contain the area, the man put the truck in gear and quickly drove away. WJPD Officers Whitehead and Shepherd fired their weapons into the truck and one of those shots hit the driver. The police truck collided with several other vehicles and stopped.

Officers and medical personnel attended to the driver's injuries; the driver, subsequently identified as Michael Glad, died from the gunshot wounds.

### **Witness Statements**

#### ***Officer Whitehead***

Officer Whitehead, on the advice of his attorney, did not answer questions or provide a statement or offer information about the OICI to protocol investigators. We reviewed the recording of the OICI made by Officer Whitehead's body-worn camera.

### ***Officer Shepherd***

Officer Shepherd, on the advice of his attorney, did not answer questions or provide a statement or offer information about the OICI to protocol investigators. We reviewed Officer Shepherd's dash camera recording which captured much of the OICI.

### ***Officer Hutchings***

On May 28, 2018, protocol investigators interviewed WJPD Officer Hutchings. Officer Hutchings said he was on duty and in uniform that day and driving his police truck. Officer Hutchings said he heard police radio traffic about an armed robbery suspect nearby. Officer Hutchings said he saw a man matching the description of the suspect walking westbound on 6200 South in West Jordan, Utah.

Officer Hutchings said he pulled his police truck up behind the suspect and made contact with him. Officer Hutchings said the man drew a handgun but did not threaten Officer Hutchings with it. Officer Hutchings said he gave numerous orders to the suspect but the man did not comply. Officer Hutchings said the suspect took several steps towards Officer Hutchings but still did not threaten Officer Hutchings with the handgun.

Officer Hutchings said he put distance between him and the suspect. Officer Hutchings said a civilian vehicle pulled up next to him and stopped and Officer Hutchings said he used the vehicle for cover. Officer Hutchings said he tried to use his door lock remote to lock the truck's doors, but it apparently didn't work; the suspect suddenly got into the truck and quickly accelerated westbound on 6200 South towards police officers standing in the roadway and police and other vehicles. Officer Hutchings said he saw the suspect collide with several vehicles and come to a stop. Officer Hutchings said he assisted other police officers at the scene.

### ***Officer Clark***

On May 28, 2018, protocol investigators interviewed WJPD Officer Clark. Officer Clark said he was on duty and in uniform that day, and had been with Officer Shepherd on a prior call. Officer Clark said he heard the police dispatchers on the radio broadcast a call about an armed robbery, and then heard Officer Hutchings on the radio describing his interaction with the armed robbery suspect.

Officer Clark said he drove his police car to the area where Officer Hutchings was dealing with the suspect and saw the suspect with what appeared to be a black handgun in the suspect's right hand. Officer Clark said he watched as the suspect got into Officer Hutchings' police truck and drove off.

Officer Clark said he heard gunshots but did not know who fired rounds at the suspect. Officer Clark said he felt scared for Officer Hutchings and appreciated the danger the suspect posed to the public. Officer Clark described the danger the suspect presented by stealing and driving a police car at a high rate of speed. Officer Clark also described his fear that the suspect had possession and control of a police truck with police weapons inside and available to the suspect.

***Officer Jacobsen***

On May 28, 2018, protocol investigators interviewed WJPD Officer Jacobsen. Officer Jacobsen said he was on duty that day and wearing his police uniform. Officer Jacobsen said he heard Officer Hutchings on the police radio say that he was with a suspect who had a gun. Officer Jacobsen said he drove to Officer Hutchings location, and as he arrived in the area of the intersection of 6200 South and 4000 West, he heard a "pop."

Officer Jacobsen said he heard Officer Hutchings' police truck motor revving and saw the truck start driving westbound. Officer Jacobsen said he initially thought Officer Hutchings was driving his police truck, chasing the suspect. Officer Jacobsen said he saw the police truck collide with his police car and several other vehicles as it went through the intersection.

***Detective Leary***

On May 28, 2018, protocol investigators interviewed WJPD Det. Leary. Det. Leary said he was off duty that day. Det. Leary said he heard Officer Hutchings call over the police radio that he was with a suspect who had a gun. Det. Leary said he drove his police car to Officer Hutchings' location.

Det. Leary said when he arrived in the area where Officer Hutchings was, he saw Officer Hutchings in the street and a suspect standing near Officer Hutchings' police truck. Det. Leary said he saw a black handgun in the suspect's right hand. Det. Leary said he saw the suspect raise the weapon and wondered why no one was shooting the suspect. Det. Leary said he saw the suspect get into the police truck and start driving towards other officers and police cars stopped to the west.

Det. Leary said he saw Officer Shepherd shoot at the police truck driven by the suspect and saw the police truck collide with two other cars.

***Lt. Rees***

On May 28, 2018, protocol investigators interviewed WJPD Lt. Rees. Lt. Rees said he was on duty and listening to the police radio when he heard Officer Hutchings call on the radio

and say: "he's got a gun; I've moved back to another car." Lt. Rees said Officer Hutchings sounded worried.

Lt. Rees said he drove his police car to the area and saw a suspect with a black handgun. Lt. Rees said he was surprised to see the suspect with the gun and was surprised that no one had shot the suspect yet.

Lt. Rees said he heard a motor revving and saw the police truck driving straight at him. Lt. Rees said he believed the police truck was going to collide with his police car and Lt. Rees said he ran to the sidewalk. Lt. Rees said he heard gunshots fired. Lt. Rees said he assisted other officers after the police truck collided with several vehicles and came to a stop.

### ***Officer Hofheins***

On May 28, 2018, protocol investigators interviewed WJPD Officer Hofheins. Officer Hofheins said he was on duty that day and heard police radio traffic about a suspect with a gun. Officer Hofheins said he drove to the suspect's location and saw a man with a gun in his right hand.

Officer Hofheins said he saw the man get into a police truck and drive towards other police vehicles. Officer Hofheins said the man driving the truck appeared to turn the steering wheel towards other police officers and police vehicles. Officer Hofheins said he heard three gunshots, but didn't know who was shooting. Officer Hofheins said he saw the suspect drive the police truck through the intersection of 6200 South and 4000 West and collide with several vehicles.

### ***Officer Schaaf***

On May 28, 2018, protocol investigators interviewed WJPD Officer Schaaf. Officer Schaaf said he was on duty that day and heard Officer Hutchings on the police radio say that he was with a suspect who had a gun and need police officers to assist. Officer Schaaf said he has known Officer Hutchings for sixteen years and he could hear the stress in Officer Hutchings' voice.

Officer Schaaf said he drove his police car to Officer Hutchings' location and when he arrived, he saw a man standing by Officer Hutchings' police truck holding something in his hand. Officer Schaaf said he saw the suspect get into Officer Hutchings' police truck and drive off very fast. Officer Schaaf said: "It appeared the male's intent was trying to go as fast as he could and smash or run over someone."

Officer Schaaf said he moved another police car to provide cover as the suspect sped down the street. Officer Schaaf said the suspect collided with several vehicles in the street.



Officer Schaaf said after the OICI, he drove Officer Shepherd and Officer Whitehead to the hospital to be examined and locked their rifles in the truck of his police car. Officer Schaaf said he turned the rifles over to the OICI protocol investigation team for their examination.

***Witnesses M. C. and S. C.***

On May 28, 2018, protocol investigators interviewed witnesses M. C. and S. C. M. C. said he and S. C. were driving on 6200 South when they saw a police officer who signaled for them to stop. M. C. said he saw a man on the sidewalk and a police truck near the man. M. C. said the man on the sidewalk appeared to have a gun in his hand. M. C. said the man started to walk toward a police officer standing by the police truck.

Witness S. C. said she saw the man with the gun in his hand near the police truck. S. C. said she saw the man get into the police truck and start driving down the street. M. C. said he and S. C. got out of their car and ran behind a house. M. C. said he heard three to four gunshots and saw the police truck speed through the intersection at 6200 South and 4000 West and collide with several vehicles.

***Physical Evidence***

Protocol investigators inspected and photographed the OICI scene and the areas in which Mr. Glad collided with other vehicles. Investigators documented the succession of events prior to, during and after Mr. Glad drove the police vehicle. Investigators noted that Mr. Glad got into the police truck at 3975 West, 6200 South. At about 2:45 p.m., Mr. Glad drove the truck westbound on 6200 South approaching the intersection at 4000 West where numerous police officers were positioned. Investigators estimated that Mr. Glad drove to where police officers were positioned in about 3 seconds and reached speeds between 19 and 25 mph. Investigators estimated that a few seconds later, Mr. Glad hit Officers Jacobsen's and Bithell's police vehicles at about 38 mph. Investigators estimated that Mr. Glad was still going about 38 mph when he collided with two more civilian vehicles just past the intersection at 4000 West where the police truck driven by Mr. Glad stopped.

Inside the police truck, protocol investigators observed and photographed Mr. Glad's green backpack with what appeared to be cash and cigarettes from the 7-11 robbery inside. Investigators also observed and photographed Mr. Glad's handgun inside the police truck.

Investigators inspected the rifles used by Officers Whitehead and Shepherd. Investigators determined that both weapons had been fired; however, investigators were not able to determine exactly how many rounds had been fired by Officer Whitehead because investigators could not determine conclusively how many rounds Officer Whitehead's rifle contained before the OICI. Investigators noted that Officer Whitehead's magazine was loaded

with an unknown number of rounds prior to the OICI. Investigators noted that Officer Shepherd stated he loads his magazines with 28 rounds; investigators documented 26 rounds in the magazine in the rifle after the OICI, so it appears Officer Shepherd fired twice.

Investigators reviewed video recordings of the OICI, including body-worn cameras and dash camera recordings from patrol cars. We reviewed the body-worn camera records and/or dash camera recordings of Officers Roberts, Hutchings, Jacobsen, Clark, Shepherd, and Whitehead. The body-worn camera and dash camera recordings are consistent with the officers' statements and appear to corroborate the timeline of events as outlined in witness statements.

Notable in our review of the camera recordings is the amount of time Officer Hutchings spent trying to deescalate the situation and talk to Mr. Glad, even while Mr. Glad's handgun was out and ostensibly ready. As depicted in Officer Hutchings' dash camera recording, Officer Hutchings was the first police officer to encounter Mr. Glad after the armed robbery. Officer Hutchings' dash cam shows him pulling up behind Mr. Glad who was walking on the sidewalk. In the recording, Officer Hutchings is seen getting out of his police truck, yelling at Mr. Glad to stop, and drawing his police firearm. Approximately six seconds after Officer Hutchings arrives, Mr. Glad draws what appears to be a handgun from his hoodie pocket, turns, raises the weapon and points it at Officer Hutchings. Officer Hutchings withdrew to the cover of his police truck and advised police dispatchers that the suspect had a gun.

Beginning at fifteen seconds after the initial encounter, Officer Hutchings ordered Mr. Glad: "Stop right there! Stop right there!" Mr. Glad was turned to face the officer and still had his gun. At about thirty seven seconds after initial contact, Officer Hutchings ordered Mr. Glad: "Put the gun down, man! Put the gun down!" to which Mr. Glad replied: "I don't think I'm going to do that, nah I'm not gonna do that."

Officer Hutchings relayed information about the situation to police dispatchers, and then again said to Mr. Glad: "Put the gun down man, it's not worth it." Mr. Glad started walking towards Officer Hutchings with his gun in his right hand pointed at the ground. Officer Hutchings yelled: "Put the gun down." As Mr. Glad approached the police truck, Officer Hutchings withdrew further. Officer Hutchings again yelled: "Put the gun down man, [unintelligible] don't want to do this!"

Officer Hutchings crossed the street and took cover behind a vehicle while he kept police radio dispatchers informed of the situation. About three and a half minutes after initial contact, Officer Hutchings again ordered Mr. Glad: "Put the gun down, man; it's not worth it!" About thirty seconds later, Officer Hutchings said: "Put it down man, it doesn't have to be this way! Put down the gun man!" After another thirty seconds, Officer Hutchings ordered: "Put down the gun [unintelligible] put it down!"

About four and a half minutes after Officer Hutchings' initial contact with the suspect, Mr. Glad got into the patrol truck, put it in gear and drove off at a high rate of speed. As he did so, Officer Hutchings announced on the police radio: "He's taking my truck!" Other body-worn cameras and dash camera recording captured Officer Hutchings' announcement.

Although eventually difficult to hear over the sirens of arriving police vehicles, it appears Officer Hutchings and other officers continued to issue commands to Mr. Glad up to the time Mr. Glad got in the truck and drove off. Mr. Glad never complied with any of Officer Hutchings' commands.

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

### ANALYSIS

As noted previously, as is their constitutional right, Officer Whitehead and Officer Shepherd declined to answer questions or provide a statement to investigators. Without Officer Whitehead's or Officer Shepherd's explanation of their use of deadly force against Mr. Glad, we don't know their reasons for their decisions to fire their weapons. We are therefore left to infer the rationale for Officer Whitehead's and Officer Shepherd'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 either Officer Whitehead or Officer Shepherd 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 Whitehead or Officer Shepherd 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 witnesses including other officers at the scene, considered with the historical context of the armed robbery, as well objective evidence from the body worn and dash camera recordings, together with physical evidence recovered at the scene, all point toward a statutory defense of "justification."

Specifically, Mr. Glad robbed a convenience store at gunpoint shortly before Officer Hutchings stopped him. Almost immediately after making contact with Mr. Glad, Officer Hutchings saw Mr. Glad produce a handgun. Mr. Glad failed to follow Officer Hutchings' numerous lawful orders over a considerable amount of time. It was reasonable for Officer

Hutchings to fear for his safety and the safety of others, and it was reasonable for other police officers who heard Officer Hutchings's radio communication to share that fear. Officers who arrived on scene, including Officer Whitehead and Officer Shepherd, presumably heard Officer Hutchings' radio traffic and saw for themselves the situation and the danger Mr. Glad presented to the public.

Mr. Glad's unlawful actions were compounded by his apparent decision to unlawfully take control of Officer Hutchings' police truck which contained Officer Hutchings' firearms and other weapons, and then drive Officer Hutchings' police truck and collide with other vehicles. Officers arriving at the scene placed themselves and their vehicles around Mr. Glad and Officer Hutchings' truck to both contain the volatile situation and protect the public from entering a dangerous scene. Mr. Glad chose to drive the police truck at the officers and their vehicles and collided with police cars. Mr. Glad also drove the police truck through the protective barrier formed by the police officers and their vehicles and past them into the intersection where he collided with civilian vehicles.

Mr. Glad's actions placed many people in immediate danger of death or serious bodily injury and we believe it would be reasonable for Officer Whitehead and Officer Shepherd to believe that Mr. Glad's unlawful actions created such a risk. We also believe that it would be reasonable for Officer Whitehead and Officer Shepherd to believe that they needed to use deadly force against Mr. Glad to prevent death or serious bodily injury to those who lay in Mr. Glad's path.

The cumulative effect of these facts, combined with the unfolding of the events leading up to the shooting, creates a scenario in which Officer Whitehead or Officer Shepherd could have reasonably believed that deadly force was necessary to prevent the death or serious bodily injury of many other people at the OICI scene.

Here, if criminal charges were brought against Officer Whitehead or Officer Shepherd, the DA's Office would be required to prove beyond a reasonable doubt that Officer Whitehead or Officer Shepherd, intentionally and without legal "justification" as defined by statute, shot and killed Mr. Glad; in other words, that Officer Whitehead or Officer Shepherd did not "reasonably believe[] that the use of deadly force [was] necessary to prevent death or serious bodily injury to ... another person," e.g., the many people in the area, when Officer Whitehead and Officer Shepherd shot Mr. Glad. 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 the witnesses listed above would testify consistently with their prior statements and facts described above, and assuming Officer Whitehead and/or Officer Shepherd (if either testified at all) would articulate similar

fears for the public's safety, we believe Officer Whitehead or Officer Shepherd 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 Whitehead or Officer Shepherd did not reasonably believe that deadly force was necessary to prevent death or serious bodily injury to those in the area.

While we don't know (because neither answered questions or gave a statement, as is their right not to) what either Officer Whitehead or Officer Shepherd saw or heard or believed at the time each used deadly force, we know what each could have seen or heard or believed, based on the facts we presently know. Indeed, as we have the benefit of Officer Whitehead's body-worn camera recording, we know what Officer Whitehead's vantage point was, and we can draw reasonable inferences about what he could have seen and likely saw. We also have the benefit of Officer Shepherd's dash camera recording, which shows Officer Shepherd's and other officers' vantage point. We can draw reasonable inferences from what Officer Shepherd could have seen and heard. From these facts, an inference that Officer Whitehead and/or Officer Shepherd used deadly force because he believed deadly force was necessary to prevent 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 Whitehead's and Officer Shepherd's use of deadly force likely falls within the definition of "justification" set forth in Utah State law.

### CONCLUSION

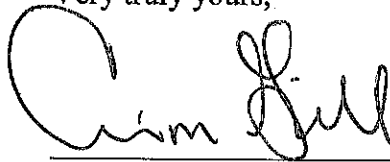
As noted previously, the facts and conclusions set forth in this letter are based on the evidence of which we are currently aware. If additional facts become available, these conclusions may change. While the shooting officers did not answer questions or provide a statement, this matter has more evidence (especially in the form of video recordings) than some OICIs we've previously reviewed. Notably, we have the benefit of Officer Whitehead's body-worn camera recording, and Officer Shepherd's dash camera recording.

Based on the totality of evidence presented to date, and the reasonable inferences to be drawn from that evidence, we conclude Officer Whitehead 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 Whitehead.

Similarly, we conclude Officer Shepherd 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 Shepherd.

We acknowledge each OICI is unique and presents a specific set of circumstances to each officer involved. In this instance, we commend Officer Hutchings for his persistent efforts to deescalate the very volatile and dangerous situation Mr. Glad created. Officer Hutchings’ attempts to convince Mr. Glad to drop his weapon and surrender merit our recognition. We regret the loss of any life in any OICI; we commend Officer Hutchings for his willingness to seek a peaceful resolution of a dangerous situation.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Sim Gill". The signature is written in black ink and is positioned above a horizontal line.

Sim Gill  
Salt Lake County District Attorney