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Via Hand Delivery

March 7, 2018

RE: *UPD Officer Weeks' Use of Deadly Force*
Incident Location: 4831 West Lacey Lane (13480 South) Riverton, Utah 84096
Incident Date: January 20, 2018
D.A. Case No.: 18-40
SLCPD Case No.: 18-11986
UPD Case No.: 18-10425

Dear Chief Brown and Sheriff Rivera:

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 Unified Police Department of Greater Salt Lake (“UPD”) Officer Weeks’ use of deadly force was “justified” under Utah State law.

On January 20, 2018, UPD Sgt. Wilson saw fresh footprint tracks in the newly fallen snow. Sgt. Wilson followed the footprints and came upon a man, later identified as Justin Gary Llewelyn. Sgt. Wilson challenged Mr. Llewelyn and ordered him to stop. Instead, it is alleged that Mr. Llewelyn continued to run through an apartment complex and fired a gun. Other UPD officers arrived at the apartment complex. As UPD Officer Weeks arrived, it is alleged that Mr. Llewelyn fired several shots at Officer Weeks. Officer Weeks returned fire. It is alleged that Mr. Llewelyn fled and committed several other criminal offenses for which he has been charged.

At the time of the OICI, Mr. Llewelyn’s identity was not known to police officers involved in the OICI, and this letter refers only to a “person” involved in the actions outlined herein. Due to evidence developed after the OICI, it is believed and alleged that the “person” referred to herein was Mr. Llewelyn. In any event, we review and consider Officer Weeks’ use of deadly force in light of the law as discussed in more detail below.

Some facts and aspects of the OICI (especially the events that allegedly unfolded after the OICI) are not developed more fully herein out of deference to the pending criminal case against Mr. Llewelyn and the rights to which he is entitled in that proceeding. Having reviewed this matter, we believe we can adequately review the salient legal aspects by discussing the case as outlined herein.

All persons accused of wrongdoing are presumed innocent unless and until proven guilty in a court of law.

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 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

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.

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).

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.

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

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.

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.

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.

“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:

...

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.

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

“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 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

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.

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 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, UPD 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 February 13, 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 UPD was 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.

Sometime around 5:50 a.m. on January 20, 2018, UPD Sgt. Wilson was driving his police car when he saw fresh footprint tracks in the newly fallen snow around several parked cars. Worried that the footprints might belong to a person burglarizing cars, Sgt. Wilson followed the footprints to investigate. Sgt. Wilson came upon a man, later identified as Justin Gary Llewelyn who appeared to have made the footprints Sgt. Wilson was following. Sgt. Wilson challenged Mr. Llewelyn and ordered him to stop. Instead, it is alleged that Mr. Llewelyn continued to run through an apartment complex and fired a gun.

Sgt. Wilson called out on the radio that he was in a foot pursuit and the suspect had fired a gun. Other UPD officers arrived at the apartment complex. As UPD Officer Weeks arrived in his police truck, it is alleged that Mr. Llewelyn fired several shots at Officer Weeks. Officer Weeks returned fire at the suspect. It is alleged that Mr. Llewelyn fled and committed several other criminal offenses for which he has been charged.

Sgt. Wilson Interview

On January 20, 2018, OICI protocol investigators interviewed UPD Sgt. Richard Wilson. Sgt. Wilson said earlier that day, he was on duty and in uniform in his marked patrol car. Sgt. Wilson said as he was driving through a neighborhood in Taylorsville, Utah, at about 5:50 in the morning, he saw fresh footprints in the newly fallen snow. Sgt. Wilson said the footprints looked like they near and around several parked cars and he suspected someone may be burglarizing cars. Sgt. Wilson said he followed the footprints to investigate.

Sgt. Wilson said he activated his vehicle spotlight and saw a “dark figure” walking away from him. Sgt. Wilson said he lost sight of person for a few moments.

Sgt. Wilson said he parked his patrol car on Dragonfly Lane on the west side of Monarch Meadows Apartments and followed the footprints to the southwest apartment building at 4854 West Dragonfly Lane.

Sgt. Wilson said he was on the south side of the building when he heard the person he had recently observed now running down the north stairway. Sgt. Wilson said he chased the person around the corner and shouted: “Stop police, stop police!”

Sgt. Wilson said he was about twenty to thirty feet behind the person when he suddenly heard: “pop, pop, pop, pop.” Sgt. Wilson said the person continued to run eastbound through the apartment building parking lot. Sgt. Wilson said he called out on the police radio: “foot pursuit, shots fired, I think he just shot at me, it sounded like gunshots.”

Sgt. Wilson said he drew his handgun from the holster and cautiously checked the area because he didn’t want to be ambushed by the person. Sgt. Wilson said he was advancing around the corner of Dragonfly Lane and Firefly Lane (which were part of the apartment complex parking lot) when he heard another UPD officer (later identified as Officer Trevor Weeks) call out on the radio that Officer Weeks was exchanging gunfire with the person.

Sgt. Wilson said he saw Officer Weeks and he ran up to Officer Weeks and made sure that he was okay. Sgt. Wilson said Officer Weeks told him that the person was last seen running westbound on Lacey Lane.

Sgt. Wilson said he heard UPD Officer Dustin Olzack call out on the radio that the person fled towards Favre Bay Road. Sgt. Wilson said he retrieved his rifle and headed towards Officer Olzack’s location.

Sgt. Wilson said while he was holding containment in the area, he heard a commotion and “glass breaking” coming from one of the neighbor’s back yards. Sgt. Wilson said he and Officer Olzack shouted commands: “Just give up, just give up!” Sgt. Wilson said Officer Olzack told him that he heard a couple of gunshots. Sgt. Wilson said that the police radio dispatcher advised officers over the radio that there was a victim with a gunshot wound on Duncan Meadow Lane. Sgt. Wilson said police were advised that the person fled the area in a stolen car.

Officer Olzack Interview

On January 20, 2018, protocol investigators interviewed UPD Officer Dustin Olzack. Officer Olzack said earlier that day he was beginning his shift when he heard UPD Sgt. Wilson advise over the police radio that he was following footprint tracks in the snow, and there was a possible prowler in the area of Monarch Meadows Apartments.

Officer Olzack said he heard Sgt. Wilson calling out a foot pursuit on the police radio, and that a “shot had been fired.” Officer Olzack said he turned on his overhead emergency lights and pulled into the Monarch Meadow apartment complex.

Officer Olzack said he got a description of the subject: “a male with facial hair wearing dark clothing.” Officer Olzack said he learned that the subject was last seen running in a westward direction. Officer Olzack said followed the footprint tracks and set up a containment position.

Officer Olzack said while holding containment, he heard two shots coming from the north side of the homes in the area. Officer Olzack said Sgt. Wilson arrived and he, Sgt. Wilson and Officer Weeks yelled out commands, “give it up, give it up, you’re not going to get away, just give it up.” Officer Olzack said after that, he then heard another shot coming from the same location.

Officer Olzack said police radio traffic informed him that the subject had shot a homeowner and fled the area in a stolen car. Officer Olzack said he deployed his rifle, but did not return fire. Officer Olzack said his handgun remained in his holster during the entire incident.

Officer Weeks Interview

On February 6, 2018, protocol investigators interviewed UPD Officer Trevor Weeks with his attorney present. Officer Weeks said on January 20, 2018, he was in uniform and driving his patrol vehicle when he heard Sgt. Wilson call over the radio that he was following “suspicious footprints” in the snow. Officer Weeks said he heard Sgt. Wilson call out, “foot pursuit, northbound, I think he’s shooting at me!”

Officer Weeks said he drove to the Monarch Meadows apartments and started to look for the fleeing subject. Officer Weeks said as he was traveling eastbound on Lacey Lane, he saw a

male matching the subject's description walking westbound on the sidewalk on the south side of Lacey Lane.

Officer Weeks said the subject immediately raised his hand and fired several shots at him. Officer Weeks said he heard the pops and could see the muzzle flash from the shots. Officer Weeks said he quickly stopped his marked police truck and jumped out of the driver's seat.

Officer Weeks said he yelled out, "In the biggest scariest command voice that I could come up with, POLICE PUT DOWN THE GUN!" Officer Weeks said the subject refused to comply with his commands and walked towards the north side of Lacey Lane.

Officer Weeks said he reengaged the subject and again ordered him to put the gun down, and the subject spun around and fired at him again. Officer Weeks said he knew the subject was firing at him because he could see the muzzle flash and could hear the "pops" coming from the gun.

Officer Weeks said he returned fire after the subject fired two rounds at him. Officer Weeks said he fired two more rounds at the subject because it looked like the subject was advancing on him. Officer Weeks said the subject turned around and continued to walk westbound, passing the clubhouse. Officer Weeks said he believed the subject fired a total of four rounds while they were on the north side of Lacey Lane.

Officer Weeks said he didn't pursue the subject because he lost sight of him. Officer Weeks said he also didn't want to advance on the subject because he wasn't sure if the subject was hiding behind a parked car, waiting to ambush him. Officer Weeks said he walked back to his police truck and called out over the police radio: "Herriman 277, he's shooting at me and I'm shooting back!"

Officer Weeks said he heard Officer Olzack over the radio say that he had followed the subject to Favre Bay Street. Officer Weeks said he also heard Officer Olzack alert officers that the subject was in a backyard, and that he [Officer Olzack] heard gunshots.

Officer Weeks said that to him, it sounded like the subject was trying to barricade himself. Officer Weeks he and other officers believed the subject was contained in a backyard, but they later learned that the subject had fled the area after breaking into a home. Officer Weeks said he remained at the scene until other officers picked him up and drove him to the command post.

In his interview with protocol investigators, Officer Weeks he said he returned fire after the subject fired the first round at Officer Weeks. Protocol investigators asked Officer Weeks what was going through his mind when he was taking gunfire from the subject. Officer Weeks replied: "the fact that he was shooting at me, I needed to make him ... stop shooting at me, and ... the only way that I could make him stop shooting at me was to start shooting back. I was scared that if I didn't do something, he was going to advance back and kill me, he was gonna

come back, double back and kill me.” During his interview, Officer Weeks said he was “scared to death” and believed his safety was “in jeopardy.”

Witnesses A. A. and E. A.

While protocol investigator Detective Wiley was processing the Lacey Lane OICI scene, two witnesses, A. A. and E. A. approached him. A. A. and E. A. said they were awakened by gunshots outside their building. A. A. said they looked out their apartment window and saw a man wearing dark clothing running past the clubhouse. A. A. said he saw a man holding a pistol in his hand. A. A. said he saw the man with the gun near the clubhouse fire two to three gunshots towards the east. E. A. said she called 911 to report the armed man and gunshots. A. A. said he saw the man run westbound through the roundabout and into a neighborhood just west of the apartment complex.

Physical Evidence

Investigators performed downloads of Officer Weeks’ handgun and determined he likely fired three shots during the OICI. Investigators also downloaded and inspected Sgt. Wilson’s and Officer Olzack’s weapons and determined they were not fired during the OICI.

Investigators recovered three .40 mm caliber spent (empty) cartridge casings from the OICI scene. This ammunition was consistent with that carried by Officer Weeks.

Investigators also recovered two .45 ACP caliber spent (empty) cartridge casings from the OICI scene. Based on evidence collected during Mr. Llewelyn’s arrest and search of his property, investigators believed these .45 ACP rounds were allegedly fired by Mr. Llewelyn.

None of the officers were wearing body cameras during the OICI. We reviewed a Monarch Meadows apartment building surveillance camera video recording purporting to show Mr. Llewelyn firing a gun in the direction of Officer Weeks. And we reviewed police dispatch radio recordings of officers transmitting information over the air. Relevant portions of the radio traffic are included below:

Sgt. Wilson: “I’m out on foot in the Monarch Meadows Apartments with a possible, I’m trying to track a possible prowler, following the tracks in the snow.”

Sgt. Wilson: “He’s running eastbound from me, foot pursuit.”

Sgt. Wilson: “Salt Lake, I don’t know if he just shot at me or what, but I heard a bang, bang (unintelligible).”

Sgt. Wilson: “Wearing a dark coat, dark pants, on the very east side of the complex.”

Officer Weeks: "He's shooting at me on the north side of the complex."

Officer Weeks: "Herriman 277, shots fired, he's heading north (unintelligible), he's shooting at me, I'm shooting back! ... Just south of the clubhouse."

...

Officer Olzack: "Copy, hey, I got footprints going westbound, westbound from here."

...

Officer Olzack: "Hey, shots, shots, shots over here, can't see where they're coming from."

Officer Olzack: "4942 Favre Bay, I need some people with me now. I heard two shots."

Officer Olzack: "Copy I can hear them, I just, shots sounded awful close, right within, within about two house of me."

DISCUSSION AND CONCLUSION

Justified Use of Deadly Force

As Sgt. Wilson lawfully investigated footprints in the snow, he lawfully encountered Mr. Llewelyn and lawfully ordered him to stop. Instead of complying with Sgt. Wilson's lawful commands, Mr. Llewelyn allegedly ran from him and allegedly fired a gun. Sgt. Wilson's inference that Mr. Llewelyn presented an imminent danger of death or serious bodily injury to Sgt. Wilson or others in the area was reasonable. So when Sgt. Wilson relayed information about Mr. Llewelyn allegedly shooting a gun and fleeing from him, those who heard that information, including Officer Weeks, reasonably inferred that the person they were looking for could present an imminent danger of death or serious bodily injury to those the person encountered.

Officer Weeks' reasonable belief that Mr. Llewelyn allegedly presented an imminent risk of death or serious bodily injury was compounded when Mr. Llewelyn allegedly fired his gun at Officer Weeks. Officer Weeks reasonably believed that Mr. Llewelyn's alleged unlawful use of deadly force against Officer Weeks constituted an imminent threat of death or serious bodily injury to Officer Weeks and others in the area. And Officer Weeks reasonably believed that he, Officer Weeks, needed to use deadly force to prevent Officer Weeks' (and/or other's) death or serious bodily injury.

For purposes of this discussion, if we were to conclude that Officer Weeks should be criminal charged for his use of deadly force against Mr. Llewelyn, we would have to prove Officer Weeks' decision to use deadly force was not reasonable, and we would have to prove it beyond a reasonable doubt. In this case, we determined that Officer Weeks reasonably believed that Mr. Llewelyn was armed with a gun, and reasonably believed that Mr. Llewelyn used a gun against Officer Weeks. We conclude that Officer Weeks 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 Officer Weeks 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 Officer Weeks.

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

Very Truly Yours,

SIM GILL,
Salt Lake County District Attorney

SG/JWH/jh
enclosure