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Via Hand Delivery

June 16, 2015

RE: *WVC PD Det. Vincent's Use of Deadly Force*
Incident Location: 3330 West, 4060 South, West Valley City, Utah
Incident Date: March 1, 2016
SLCPD Case No.: 2016-36937
WVC PD Case No.: 16I-010976
D.A. Case No.: 2016-599

Dear Chief Brown and Chief Russo:

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

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.

below, the D.A.'s Office determined that Det. Vincent's use of deadly force was "justified" and declines to file criminal charges in the above referenced matter.

On March 1, 2016, Ricardo Jose Lopez and his brother, Paul Leroy Jiron got into a verbal altercation. While they walked down 4060 South Street in West Valley City, Utah, Mr. Lopez drew a handgun from his pants pocket and fired two rounds into the air. Several residents heard the gunshots and called the police. Mr. Lopez put the gun back in his pocket and he and Mr. Jiron walked to their home at 3330 West 4060 South. Mr. Lopez's and Mr. Jiron's dispute became physical and they fought and hit each other as they went into the backyard.

Witnesses directed arriving West Valley City Police Department (WVC PD) officers to the home. As officers announced their presence, Mr. Lopez came up outside stairs from the basement with a handgun. WVC PD Detective Jason Vincent saw Mr. Lopez come up the stairs with a gun in his hand. Det. Vincent ordered Mr. Lopez to drop the handgun; instead of complying, Mr. Lopez turned toward Det. Vincent and raised his arm that held the weapon. Det. Vincent fired his weapon, hitting Mr. Lopez who fell to the ground. Officers secured Mr. Lopez and provided first aid as medical personnel arrived and treated his injuries. Mr. Lopez was transported to the hospital and survived his injuries.

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.

“Justification” as Defense in Utah

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 set forth above and operates in conjunction with other legal authority. The legal defense of “justification” could apply to any potential criminal charge; some of the potential criminal charges a police officer could face through an improper use of deadly force could include criminal homicide, murder; aggravated

assault; or other violations set forth in the criminal code. The legal defense of “justification” is applicable to any potential criminal charge.

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 and/or others 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 felony².” *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 “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. 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). 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 believes³” that the use of deadly force is “necessary to prevent” the threat of “death or serious bodily injury.”

2 U.C.A. 76-2-402(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.”

³ As mentioned above, U.C.A. 76-4-202 and 404 constitute a legal defense to potential criminal charges. Utah Code doesn’t reference other means of evaluating criminality and reasonableness of police use of force and defenses thereto; the United States Supreme Court case *Graham v. Conner* provides an analytical methodology for assessing excessive force claims in a Fourth Amendment context. *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,’ ...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

This OICI investigation and our review that followed was conducted in accordance with an OICI investigation protocol previously established and in conformity with recently enacted legislation governing investigations of OICI events. The OICI investigation protocol strives to establish an investigation methodology and process that provides the D. A.'s Office with the evidence needed to review the investigation to determine whether a police officer's use of deadly force conformed to the above referenced statutes. If the use of deadly force conformed to the statutes, the use of deadly force is "justified," and the legal defense of "justification" is available to the officer such that criminal charges cannot be filed against the officer and the criminal investigation into the actions of the officer is concluded.

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

As laid out in more detail below, because we conclude that Det. Vincent's use of deadly force conformed to the relevant statutes outlined above, we therefore conclude that the legal defense of "justification" applies to the facts set forth herein and we will not file criminal charges against Det. Vincent for his use of deadly force.

INVESTIGATION

During the 2015 Utah State Legislature's General Session, the legislature enacted U.C.A. 76-2-408 which sets forth in relevant part the following provisions governing the investigation of peace officers' use of deadly force:

76-2-408 Peace officer use of force -- Investigations.

(1) As used in this section:

(a) "Dangerous weapon" is a firearm or an object that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(b) "Investigating agency" is a law enforcement agency, the county or district attorney's office, or an interagency task force composed of officers from multiple law enforcement agencies.

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.*

(c) “Officer” is a law enforcement officer as defined in Section 53-13-103.

(d) “Officer-involved critical incident” is any of the following:

(i) the use of a dangerous weapon by an officer against a person that causes injury to any person;

...

(2) When an officer-involved critical incident occurs:

(a) upon receiving notice of the officer-involved critical incident, the law enforcement agency having jurisdiction where the incident occurred shall, as soon as practical, notify the county or district attorney having jurisdiction where the incident occurred; and

(b) the chief executive of the law enforcement agency and the county or district attorney having jurisdiction where the incident occurred shall:

(i) jointly designate an investigating agency for the officer-involved critical incident; and

(ii) designate which agency is the lead investigative agency if the officer-involved critical incident involves multiple investigations.

(3) The investigating agency under Subsection (2) may not be the law enforcement agency employing the officer who is alleged to have caused or contributed to the officer-involved critical incident.

...

To comply with state law requiring an outside agency to investigate an OICI, WVC PD invoked the OICI investigation protocol; a team led by Salt Lake City Police Department (“SLCPD”) and consisting of law enforcement personnel from many different agencies investigated this matter together with investigators from the D.A.’s Office.

On March 15, 2016, OICI protocol investigators presented the investigation’s findings to the District Attorney for review and this opinion letter. During the presentation of the investigation findings, both SLCPD personnel and D.A.’s Office investigators reported that WVC PD 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.

On March 1, 2016, Jose Ricardo Lopez was apparently upset after receiving a disheartening cancer prognosis of his girlfriend, L.T. Witnesses reported that Mr. Lopez was drinking alcohol during the day and becoming depressed as he talked with L.T. about her outlook. Mr. Lopez's mother tried to console Mr. Lopez but to little avail. Mr. Lopez's mother left the home and called Paul Leroy Jiron, Mr. Lopez's brother, and asked him to check on Mr. Lopez.

In a later interview, Mr. Jiron said that when he arrived at Mr. Lopez's home, L.T. took the children in the home and went to the next door neighbor. Shortly after L.T. left, she apparently called Mr. Lopez's mother and told her that Mr. Jiron was with Mr. Lopez who was upset and had a gun to his head. Mr. Lopez's mother drove back to Mr. Lopez's house.

While Mr. Lopez's mother was en route to the home, Mr. Lopez and Mr. Jiron were fighting. Mr. Jiron ran out of the home followed by Mr. Lopez. Residents in the neighborhood said they saw Mr. Lopez fire two shots in the air from his handgun. Several people called the police. Witnesses saw Mr. Lopez and Mr. Jiron walk back to the home, start fighting again and go inside the house.

WVC PD arrived to investigate the reports of a man with a gun, shots fired, and people fighting. WVC PD officers announced their presence at a house at 3330 West, 4060 South. Mr. Lopez came up a flight of stairs leading from the home's basement. Mr. Lopez had a gun in his hand. Several WVC PD officers saw Mr. Lopez with the gun. WVC PD Det. Jason Vincent ordered Mr. Lopez to drop his gun. Mr. Lopez did not comply and instead turned his body towards Det. Vincent and raised his elbow and arm holding the gun in Det. Vincent's direction. Det. Vincent fired two shots at Mr. Lopez who went down. WVC PD officers secured Mr. Lopez and recovered Mr. Lopez's handgun which had fallen next to Mr. Lopez. Medical personnel transported Mr. Lopez to the hospital where he was treated for his injuries. Mr. Lopez survived and was subsequently charged with crimes related to the events of the day.

Witness Interviews and Statements

Det. Jason Vincent

OICI protocol investigators interviewed Det. Vincent with his attorney present. Det. Vincent said on March 1, 2016, he had been in K-9 training earlier in the day. Det. Vincent said he was in his WVC PD police vehicle when he heard police dispatchers announce a call of a man with a gun, shots fired and men fighting at 3330 West, 4060 South. Det. Vincent said he responded to the call to assist other officers with the investigation.

Det. Vincent said that he had been to that house previously with a drug enforcement task force investigating allegedly significant drug distribution activity. Information previously developed indicated the possibility of weapons and criminal activity at the house, although Mr. Lopez was unknown to Det. Vincent at that time. However, Det. Vincent said he approached the house with caution based in part on his previous interaction with the home, and based in part on the description from police dispatch that a man with a gun had fired his weapon and was engaged in a fight at the home.

Det. Vincent said he saw WVC PD Officers Williams and Lill at the front door of the house. Det. Vincent said he took a position on the southeast corner of the home. Det. Vincent said he heard glass breaking inside the house. Det. Vincent said he heard a loud, booming voice announce a police presence and heard glass breaking again inside the home.

Det. Vincent said he noticed an outside staircase on the east side of the house leading down into a basement entrance. Det. Vincent said he saw a man walk up the stairs in a northern direction with his back to Det. Vincent. Det. Vincent said he saw the man had a handgun in his right hand as he walked up the stairs. Det. Vincent said that when he saw the man come up the stairs from the basement, he thought: "that man should not be armed."

Det. Vincent said the man did not see Det. Vincent at first, and Det. Vincent said he verbally challenged the man. Det. Vincent said he couldn't remember exactly what he said to the man, but he recalled that he gave the man verbal commands to drop the weapon⁴. Det. Vincent said that the man took another step and raised his right elbow as he turned toward Det. Vincent. Det. Vincent said: "that's the mannerism followed by a shot." Det. Vincent said that he believed that the man "was making that turn to get shots off." Det. Vincent said: "I need to shoot or I'm going to be shot."

Officer William Williams

OICI protocol investigators interviewed WVC PD Officer Williams with his attorney present. Officer Williams said he arrived at 3330 West 4060 South on a report of a man with a gun, shots fired and men fighting at the home. He said he assisted WCPD Officer Lill and Det. Vincent on the east side of the home. Officer Williams said he saw a man standing on stairs leading down to a basement. Officer Williams said he saw the man had a gun in his hand. Officer Williams said he (Officer Williams) pointed his duty weapon at the male.

Officer Williams said he heard Det. Vincent order the man to drop his weapon, but instead the man turned and raised his arm with the gun in Det. Vincent's direction. Officer Williams said he thought the man was going to shoot Det. Vincent. Officer Williams said he saw Det. Vincent fire his duty weapon at the man who went down. Officer Williams said he assisted in securing the man. Officer Williams said he saw the man's black handgun lying on the ground near the man.

⁴ When asked how much time elapsed between Det. Vincent's order to drop the gun and when the man turned towards Det. Vincent, Det. Vincent said it was enough time to drop the gun if the man had chosen to do so.

Civilian Witnesses

OICI protocol interviewed several civilians who witnessed parts of the incident. Of the civilian witnesses interviewed, all were more or less consistent in recounting the basic facts, and no witness contradicted any other in any material way. Several witness interviews are summarized below.

Witness L. W. who lives in the neighborhood said on March 1, 2016, he heard gunshots outside. He said he looked outside and saw two Hispanic males, one of whom was putting a handgun into his pants pocket. L. W. said he called 911 and relayed the information. L. W. said he saw the two males walk inside a house and then emerge from the house. When the two males came out of the house, L. W. said they were fighting.

Witness J. C. said on March 1, 2016, she saw two Hispanic males “jogging” down the street when one of the males took a pistol from his pants pocket and fired two shots into the air. She said she saw the man put the pistol back in his pocket. J. C. said she followed the men who stopped in front of a house and started fighting. J. C. said she saw the men go into the backyard and out of her sight.

Witness B. R. said on March 1, 2016, she heard two gunshots and looked out her home’s window to see two men walking down the street, B. R. said she saw one of the men put a handgun into his pants pocket and continued walking down the street.

Witness S. K. said on March 1, 2016, she saw two Hispanic males fire two shots into the air. She said the men walked southbound and turned east on a nearby street. S. K. said the two men started fighting with another man with their fists. She said the group then went into the backyard. She said police arrived and fired three shots at someone in the backyard.

Witnesses E. S. and S. M. live in the area. E.S. and S.M. said they saw Mr. Lopez drinking during the day. They said they saw Mr. Lopez and another man running westbound down the street and turn a corner. They said after the men turned the corner, they heard a “pop” and wondered whether it was a gunshot. They said that the two men came back to their home and briefly fought with each other. They said the men stopped fighting and went into the home. S.M. said that when the men went into the house, a woman and children came out of the house and went next door. S.M. said she saw police arrive at the house and heard the police “making their presence known.”

E.S. said he saw two officers go to the front door and two to the east side of the house. E.S. said he heard the two officers yell something at the front door. E.S. and S.M. said they heard officers on the side of 3330 W say “put your hands up, put your hands up!” or “I’m going to shoot.” S.M. said she heard officers give commands and then heard gunfire.

Ricardo Jose Lopez

OICI protocol investigators interviewed Mr. Lopez. Because Mr. Lopez has been charged with criminal offenses relating to the OICI and other events of the day, Mr. Lopez's statements are not set forth here.

Physical Evidence

OICI protocol investigators inspected and documented several items of physical evidence at the scene. Investigators inspected and documented Mr. Lopez's weapon and empty (fired) cartridges from Mr. Lopez's weapon.

OICI protocol investigators also recovered empty (fired) cartridges from WVC PD Det. Vincent's weapon and observed the download count of Det. Vincent's weapon and those of other officers present during the OICI.

Body Camera Footage

OICI protocol investigators obtained and reviewed video recordings made from WVC PD officers pertaining to the OICI. Det. Vincent said he had recently been involved in K-9 training and due to the training, Det. Vincent said his body camera was turned off. Det. Vincent's body camera did not record any of the OICI.

OICI protocol investigators obtained and reviewed Officer Williams' body camera recording. Officer Williams' body camera was on and recorded the OICI. OICI protocol investigators obtained and reviewed other WVC PD officers' body cam video recordings which depict different moments and aspects of the OICI depending on where the particular officer was located during the event. OICI protocol investigators presented relevant body camera recordings to the District Attorney for the review of the OICI and made available all body camera recordings.

DISCUSSION AND CONCLUSION***Det. Vincent Reasonably Believed Deadly Force was Necessary.***

Det. Vincent was among several officers who responded to Mr. Lopez's home on a report of a man with a gun, shots fired, and men fighting in front of the house. Det. Vincent arrived at Mr. Lopez's house reasonably believing that the person he was looking for was very recently armed, had fired a weapon and was violent.

When Det. Vincent encountered Mr. Lopez, Mr. Lopez was in fact still armed with a handgun. Det. Vincent lawfully ordered Mr. Lopez to drop the weapon; when Mr. Lopez disregarded Det. Vincent's lawful command and turned toward Det. Vincent, raising his elbow and arm with the gun, Det. Vincent reasonably believed that Mr. Lopez was about to use deadly force against him or other police officers in the immediate vicinity. So to prevent his death or

serious bodily injury, or to prevent the death or serious bodily injury of those around him, Det. Vincent reasonably believed his use of deadly force against Mr. Lopez was necessary. As such, Det. Vincent's use of deadly force against Mr. Lopez was "justified" under Utah State law, and provides Det. Vincent a legal defense to a criminal prosecution. Accordingly, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Det. Vincent.

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