



Ralph Chamness
Chief Deputy
Civil Division

SIM GILL
DISTRICT ATTORNEY

Jeffrey William Hall
Chief Deputy
Justice Division

Lisa Ashman
Administrative
Operations

Blake Nakamura
Chief Deputy
Justice Division

Sgt. Todd Conrad Mitchell
Salt Lake City Police Department
475 South 300 East
Salt Lake City, UT 84111

Sheriff James M. Winder
Unified Police Department
3365 South 900 West
Salt Lake City, UT 84119

U.S. Marshal James A. Thompson
United States Marshal
351 S. Temple
Salt Lake City, UT 84101

Via Hand Delivery

September 27, 2016

RE: *UPD Officer Lavin's and US Marshal Evans' Use of Deadly Force*
Incident Location: 10254 South Temple Dr., South Jordan, Utah
Incident Date: June 2, 2016
SLCPD Case No.: 2016-97040
UPD Case No.: 2016-31482
USM Case No.: 1681-0603-1650-S
D.A. Case No.: 2016-2021

Dear Sgt. Mitchell, Sheriff Winder and Marshal Thompson:

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

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.

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 we conclude that Unified Police Department of Greater Salt Lake (“UPD”) Officer Lavin’s and Deputy United States Marshal Evans’ use of deadly force was “justified” under Utah State law.

On June 2, 2016, law enforcement personnel working together in a task force served a search warrant to find and arrest Jason Allen Black, a suspect in a homicide investigation. When officers encountered Mr. Black inside a home, he held a hand gun in his right hand. Police ordered Mr. Black to drop the gun, but he did not. Instead, he turned toward police officers and started to raise his handgun. UPD Officer Lavin and Deputy U.S. Marshal Evans fired their weapons at Mr. Black, hitting him several times.

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 screening function is limited to considering evidence that will likely be admissible against a defendant.

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).

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 (success) 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 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 (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.

A person’s use of deadly force (including but not limited to use of deadly force by peace officers) is “justified” when the use of deadly force conformed to the statutes referenced above. Persons may lawfully defend themselves under circumstances outlined by law, and are afforded the legal defense of “justification” for the lawful use of deadly force in accordance with statutes. Utah Code Ann. 76-2-402 states that a “person is justified in threatening or using force against another when and to the extent that the person reasonably believes that force or a threat of force is necessary to defend the person or a third person against another person’s imminent use of unlawful force.” *Id.* This section also states: “A person is justified in using force intended or likely to cause death or serious bodily injury only if the person reasonably believes that force is necessary to prevent death or serious bodily injury to the person or a third person as a result of another person’s imminent use of unlawful force, or to prevent the commission of a forcible felony⁷.” *Id.*

In addition to the use of deadly force in defense of self or others, a peace officer’s use of deadly force is “justified” when:

“effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or the officer has probable

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*.

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. 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 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 context⁸. *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 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.

⁸ The issue addressed 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.

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 Officer Lavin’s and Deputy Evans’ use of deadly force conformed to the relevant statutes outlined above, we conclude that the legal defense of “justification” applies to the facts set forth herein and we will not file criminal charges against Officer Lavin or Deputy Evans for their use of deadly force against Mr. Black.

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.
- (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, 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 July 20, 2016, OICI protocol investigators presented the investigation findings to the District Attorney 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.

On Thursday, June 2, 2016, Deputy U.S. Marshal Evans and UPD Officer Lavin were working as members of the United States Marshals Service Violent Fugitive Apprehension Strike Team (VFAST) task force for the District of Utah in Salt Lake City. The VFAST task force is comprised of officers from Federal, State and local law enforcement agencies. That evening, Deputy Evans, Officer Lavin and other VFAST members met with law enforcement personnel from UPD to brief about serving a search warrant at 10254 Temple View Circle, South Jordan, UT.

At the briefing, law enforcement personnel were informed that the search warrant was related to a homicide investigation. Personnel were told that a homicide had been committed earlier that week and that Jason Allen Black was a suspect in the homicide investigation. Officers were also advised that the search team was interested in a firearm possibly involved in the homicide. Law enforcement personnel were informed there was probable cause to arrest Mr. Black as part of the homicide investigation.

Law enforcement personnel were told that the warrant would be served on a home at 10254 Temple View Circle in South Jordan, Utah. Personnel were advised that the home belonged to Mr. Black's father. Law enforcement personnel were briefed on information that caused them to believe Mr. Black would be in the home when VFAST served the warrant.

VFAST personnel secured the home's perimeter and the team of officers assigned to enter the residence went to the front door. Deputy U.S. Marshal Evans and UPD Officer Lavin were assigned to be the first to make entry into the home. Officer Lavin knocked on the front door and announced "police with a warrant, open the door!" Officer Lavin repeated this announcement multiple times until Mr. Black's father opened the door. When the father opened the door, Officer Lavin asked where Mr. Black was. The father replied that Mr. Black was in the basement. Officer Lavin and Deputy Evans moved to the top of the stairs.

Officer Lavin and Deputy Evans saw Mr. Black in the basement at the bottom of the stairs with a black handgun in his hand. Officer Lavin and Deputy Evans ordered Mr. Black to stop and drop his handgun. Mr. Black did not drop his gun, but instead turned towards the officers who saw Mr. Black start to raise up his handgun. In subsequent interviews, both police officers said they feared for their lives and believed Mr. Black may shoot the officers. Both officers fired their weapons at Mr. Black who went down and was secured by police. Mr. Black was transported to the hospital and survived his gun shot injuries.

Officer Lavin

UPD Officer Lavin provided a written statement to OICI protocol investigators. Officer Lavin said he was on duty on June 2, 2016 and assigned to be part of the VFAST team serving a warrant at 10254 Temple View Circle in South Jordan, Utah. Officer Lavin said he attended a briefing for law enforcement personnel that included information about Jason Allen Black. Officer Lavin said he received information⁹ about Mr. Black's alleged involvement in a recent homicide, including allegations of Mr. Black's recent, violent activity. Officer Lavin said he was briefed that a firearm possibly used in the homicide was still outstanding.

Officer Lavin said he and other police officers participating in the VFAST operation went to the South Jordan home. Officer Lavin said he was advised the home belonged to Mr. Black's father. Officer Lavin said he and other VFAST personnel had information that caused them to believe Mr. Black was in the home and that there was probable cause to arrest Mr. Black for his alleged role in a recent homicide.

⁹ The details of the allegations related to the homicide investigation are not set forth in our letter partly because of Mr. Black's fair trial and due process rights related to a presumption of innocence for Mr. Black.

Officer Lavin said he was assigned to knock on the front door of the home. Officer Lavin said he knocked on the door and Mr. Black's father, Brent opened the door. Officer Lavin said he talked with Mr. Black's father. Officer Lavin said the father told Officer Lavin that Mr. Black was downstairs. Officer Lavin said he took a position at the top of the stairway leading down to the basement and could see Jason Black standing at the bottom of the stairs with his left shoulder towards him in a bladed position.

Officer Lavin said that as he looked down the stairwell, he saw Mr. Black "standing in the hall, just feet from the bottom of the stairs." Officer Lavin said he was able to identify Mr. Black immediately. Officer Lavin said Mr. Black "was standing broadside in the basement hallway with his left side closest to [Officer Lavin.]" Officer Lavin said he could see Mr. Black's left hand but Mr. Black's right hand was obscured by Mr. Black's body, and Officer Lavin said at first he couldn't see Mr. Black's right hand. Officer Lavin said he "was in fear [Mr. Black] was holding a weapon in his right hand and purposely concealing it from ... view." Officer Lavin said he ordered Mr. Black to "show me your hands" several times.

Officer Lavin said that as he ordered Mr. Black to show his hands, Mr. Black turned his head to look at Officer Lavin and then turned away, and that he did this more than once. Officer Lavin said it was apparent that Mr. Black was not complying with Officer Lavin's commands.

Officer Lavin said that, based on his "police experience with compliant and non-compliant subjects, [Officer Lavin] felt as though [Mr. Black] was thinking about doing something other than following [Officer Lavin's] commands to surrender." Officer Lavin said he was "in fear for our safety because he was not complying."

Officer Lavin said he ordered Mr. Black to raise his hands so they were visible. Officer Lavin said Mr. Black "raised his right hand out in front of his body where [Officer Lavin] could clearly see [Mr. Black] was holding onto a gray and black handgun." Officer Lavin said: "At this point I was in fear for my life and the life of my partners. I knew, based on my police training and experience, that Jason Black could flick his wrist and begin to fire into the funnel that the stairway created in an instant."

Officer Lavin said he ordered Mr. Black several times: "Put the gun down" and also said "Jason you don't want to do this." Officer Lavin said that Mr. Black shook his head "No" and Officer Lavin said he felt Mr. Black was indicating he was not going to follow Officer Lavin's orders.

Officer Lavin said he continued to order Mr. Black to "put the gun down." Officer Lavin said Mr. Black "slightly bent his right knee and began to lower his right hand, as if he [was] thinking about putting the gun on the ground." Officer Lavin said Mr. Black "abruptly straightened his right leg and moved his right hand back up to his waist area." Officer Lavin said "this movement put his right hand and the gun in an area which was not clearly in [Officer Lavin's] view any longer." Officer Lavin said: "Based on this movement, coupled with his non-compliance, I was fearful Jason's gun was now pointed towards us and our lives were in imminent danger."

Officer Lavin said: “I fired my weapon at [Mr. Black] and stopped firing once I witnessed the gun was out of [Mr. Black’s] hand and he was lying on the ground.” Officer Lavin said he could see that Mr. Black’s gun was lying on the ground near his left hand.

Officer Lavin said he ordered Mr. Black to raise his hands above his head. Officer Lavin said at first, Mr. Black did not respond. Officer Lavin said he told Mr. Black: “I want to get you medical care but you need to raise your hands above your head.” Officer Lavin said eventually Mr. Black moved his hands away from the gun, and officers were able to provide first aid.

Deputy Evans

Deputy U. S. Marshal Evans provided a written statement to OICI protocol investigators. In his statement, Deputy Evans said he was on duty on June 2, 2016. Deputy Evans said he was assigned to a VFAST operation to serve a search warrant. Deputy Evans said VFAST planned to serve a warrant and arrest Jason Allen Black for his alleged role in a recent homicide. Deputy Evans described his awareness of the allegations¹⁰ against Mr. Black in the homicide investigation, including allegations of recent violent crime. Deputy Evans said he was briefed that a firearm possibly used in the homicide was still outstanding.

Deputy Evans said he and other VFAST personnel arrived at the home, and he was with Officer Lavin when Officer Lavin knocked on the front door and loudly announced the police presence with a warrant. Deputy Evans said Mr. Black’s father answered the door and told police that his son was downstairs in the basement. Deputy Evans said he and Officer Lavin went to the top of the stairs leading down into the basement.

As he and Officer Lavin were near the top of the stairs, Deputy Evans said he heard Officer Lavin yell at Mr. Black: “don’t do it, Jason! Don’t do it!” Deputy Evans said he moved to get a clear view to the bottom of the stairs. Deputy Evans said he could clearly see Mr. Black at the bottom of the stairs in the basement. Deputy Evans said Mr. Black was “standing in a bladed position with his left shoulder facing [the officers] at the top of the stairs and his right shoulder facing away from [the officers.]” Deputy Evans said he couldn’t see Mr. Black’s right hand so he ordered Mr. Black to show him his right hand. As Mr. Black turned, Deputy Evans said he “could clearly see that he was holding a hand-gun in his right hand with the muzzle pointed down toward the ground.” Deputy Evans said: “as soon as I saw the gun I yelled ‘drop it, drop it!’”

Deputy Evans said Mr. Black did not comply with his commands and “continued holding the gun with the muzzle down in spite of these repeated orders to drop the gun.” Deputy Evans said he “observed a slight movement of the weapon still held by [Mr.] Black in his right hand.” Deputy Evans said: “in the split second I had available to me to assess the threat posed by Black and based on my knowledge of Black’s history of violence, his previous use of a weapon to murder a civilian, his continued non-compliance with commands to drop the gun, and the

¹⁰ As mentioned above, the details of the allegations related to the homicide investigation are not set forth in our letter partly because of Mr. Black’s fair trial and due process rights related to a presumption of innocence for Mr. Black.

movement of the weapon despite his awareness of police officers pointing their weapons right at him I feared that Black was about to raise the weapon to shoot at me, [Officer] Lavin, and all the other members of VFAST at the top of the stairs. In order to stop this threat I fired two rounds from my hand-gun at Black. I also heard a shot being fired from my left.”

Deputy Evans said after he fired his weapon at Mr. Black, he saw Mr. Black go down and fall onto the floor. Deputy Evans said he could see that Mr. Black’s “left hand was still close to the gun and his right hand was under his body near his waistline.” Deputy Evans said he “could see [Mr.] Black’s hands and legs make very slight movements, almost like a twitch, so [Deputy Evans] knew he was still alive.” Deputy Evans said eventually, VFAST personnel were able to secure Mr. Black, take him into custody and begin first aid medical treatment for his injuries.

Agent Schugk

OICI protocol investigators interviewed Adult Probation and Parole Agent Schugk. Agent Schugk said he was on duty on June 2, 2016 and assigned to a VFAST team serving a warrant on a home in South Jordan, Utah. Agent Schugk said that after he and other officers entered the home, he was in a position in which he could see Mr. Black at the bottom of the stairs. Agent Schugk said he saw Mr. Black turned slightly towards Agent Schugk, and Agent Schugk said he heard Officer Lavin yell, "Drop the gun!" Agent Schugk said he also yelled to Mr. Black to drop the gun. Agent Schugk said Mr. Black did not comply with those orders. Agent Schugk said police officers were giving Mr. Black “constant commands” and at one point, Mr. Black looked up at the officers.

Agent Schugk said he then saw Mr. Black change his body position. Agent Schugk said Mr. Black turned his body more towards the team of officers at the top of the stairs. Agent Schugk said initially, Mr. Black held a handgun in Mr. Black’s right hand and the gun was down by Mr. Black’s leg. Agent Schugk said Mr. Black turned to face the team, Agent Schugk said it looked like Mr. Black’s gun was now going “vertical” and that the gun was now “presenting itself” to the police officers.

Agent Schugk said that he switched the safety on his weapon off and his finger was on the trigger of his rifle applying pressure. Agent Schugk said he heard what he believed were three gunshots. Agent Schugk said he estimated the shots were fired within a half second of each other and all the shots were on top of each other. Agent Schugk said he then took his finger off the trigger. Agent Schugk said after the shots were fired, he saw Mr. Black fall to the ground.

Brent Black

OICI protocol investigators interviewed Brent Black. Brent Black said he is the father of Jason Allen Black. Brent Black said he was home on June 2, 2016 when he heard police knocking on his front door. Brent Black said he answered the door and told police Jason was in the basement. Brent Black said it was obvious when he answered the door that it was the police at the door. Brent Black said he heard police giving commands including “drop the gun!”

Jason Allen Black

OICI protocol investigators interviewed Mr. Black. Some of that interview is not set forth here to due to fair trial and due process rights related to criminal allegations against Mr. Black. As mentioned elsewhere herein, all persons accused of criminal wrongdoing are presumed innocent unless and until proven guilty in a court of law.

Investigators asked Mr. Black about the events of the evening of June 2, 2016. Mr. Black said that he heard the police on the stairs inside his father's home and that he knew it was the police. Mr. Black said he had a handgun in his hand. Mr. Black said the police were telling him: "Police. Put it down." Mr. Black said that he turned to put the gun down and police told him to go slow. Mr. Black said that he didn't believe he turned the weapon at or towards the police. Mr. Black said he turned so that his left shoulder was facing the police so he could slowly put the gun down because he said he was afraid the police were going to shoot him. Mr. Black said he doesn't remember anything after that. Mr. Black said he woke up in the hospital in pain the next day.

Physical Evidence

OICI protocol investigators inspected and documented items of physical evidence at the scene and other physical evidence related to the event. Investigators inspected Officer Lavin's and Deputy Evans' weapons and documented which weapons were fired and how many rounds were fired.

Investigators recovered and documented Mr. Black's handgun found at the scene. Investigators also documented Mr. Black's injuries. Information available when we reviewed the OICI indicated that Mr. Black was shot five times.

DISCUSSION***Justified Use of Deadly Force***

Officer Lavin and Deputy Evans (and other witnesses at the scene) said they saw Mr. Black with a handgun. Mr. Black did not drop his handgun despite repeated orders to do so. Rather than comply with the officers lawful commands, Mr. Black turned his body towards the police officers and start to raise his gun in their direction.

Given what Officer Lavin knew about allegations against Mr. Black related to violent criminal offenses, taken together with Officer Lavin's observations of Mr. Black's noncompliance with lawful orders and Mr. Black's actions with the gun in his hand, Officer Lavin reasonably believed that Mr. Black presented a threat of death or seriously bodily injury to Officer Lavin and the other police officers present. Officer Lavin reasonably believed that he

needed to use deadly force against Mr. Black to prevent Mr. Black from inflicting death or serious bodily harm upon Officer Lavin and the other police officers present.

Similarly, given what Deputy Evans knew about allegations against Mr. Black related to violent criminal offenses, taken together with Deputy Evans' observations of Mr. Black's noncompliance with lawful orders and Mr. Black's actions with the gun in his hand, Deputy Evans reasonably believed that Mr. Black presented a threat of death or seriously bodily injury to Deputy Evans and the other police officers present. Deputy Evans reasonably believed that he needed to use deadly force against Mr. Black to prevent Mr. Black from inflicting death or serious bodily harm upon Deputy Evans and the other police officers present.

CONCLUSION

Both Officer Lavin and Deputy Evans reasonably believed deadly force was necessary to prevent death or serious bodily injury to themselves and others and therefore their use of deadly force was "justified" under Utah State law, and provides Officer Lavin and Deputy Evans 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 Officer Lavin. For the same reasons, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Deputy Evans.

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