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*Via Hand Delivery*

December 28, 2016

RE: *WJPD Officer Jenkins' Use of Deadly Force*  
Incident Location: 8890 South, 1070 West, West Jordan City, Utah  
Incident Date: November 2, 2016  
WVCPD Case No.: 16I032195  
D.A. Case No.: 2016-2843

Dear Chief Russo and Chief Diamond:

The Salt Lake County District Attorney's Office ("D.A.'s Office") operates under Utah State law to review and "screen"<sup>1</sup> 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

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<sup>1</sup> 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 West Jordan Police Department (“WJPD”) Officer Keith Jenkins’ use of deadly force was “justified” under Utah State law.

On November 2, 2016, several WJPD Officers encountered Jesse Jay Taylor, a man who had reportedly just robbed a credit union at gun point. Police officers chased Mr. Taylor at high speeds into and through a residential neighborhood where Mr. Taylor crashed his vehicle. Mr. Taylor fled the crash scene and ran. Several WJPD officers, including Officer Jenkins, saw Mr. Taylor running through the neighborhood with a gun. Many officers ordered Mr. Taylor to stop and drop the gun, repeatedly shouting commands. Mr. Taylor did not stop or drop the gun, but instead ran with his gun towards several police officers.

Officer Jenkins later recounted his concerns about Mr. Taylor and his fear for his and others’ safety. Officer Jenkins fired his weapon, hitting Mr. Taylor who went down to the ground. Several police officers provided lifesaving medical care, but Mr. Taylor died from a gunshot wound.

### 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;

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#### **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 16<sup>2</sup> and Utah Code 17-18a-203<sup>3</sup>, among other legal authority. Pursuant to this authority, the

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<sup>2</sup> **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.

<sup>3</sup> **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.

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"<sup>4</sup> 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.

### ***Ethical Standards***

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

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<sup>4</sup> 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).

<sup>5</sup> Even when a criminal case is filed, the defendant is presumed innocent of the charges unless and until convicted in a court of law.

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 Association<sup>6</sup> and the American Bar 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.

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<sup>6</sup> 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.

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#### **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.

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### ***“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 potential criminal charge; 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.

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 felony<sup>7</sup>.” *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 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

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

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.<sup>8</sup> *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.

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

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<sup>8</sup> 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.

D.A.'s Office 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, we conclude that Officer Jenkins' use of deadly force conformed to the relevant statutes outlined above, and therefore we conclude that the legal defense of "justification" applies to the facts set forth herein. Accordingly, we will not file criminal charges against Officer Jenkins for his use of deadly force against Mr. Taylor.

## **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. To comply with state law requiring an outside agency to investigate an OICI, WJPD 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 December 5, 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 WJPD 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 November 2, 2016, a man later identified as Jessie Jay Taylor entered the Mountain America Credit Union at 6761 South Redwood Road in West Jordan, Utah. Mr. Taylor wore a mask and had a gun, and went to a teller and demanded cash. The teller gave Mr. Taylor cash and included marked US currency bank notes and a GPS tracking device. Mr. Taylor took the money and ran out of the credit union. The teller called the police.

Police dispatchers notified officers of the armed bank robbery and broadcast the suspect's location and direction of travel based upon the real-time GPS data from the tracker. WJPD police officers drove to the location to intercept Mr. Taylor. WJPD Sgt. Robertson saw what he believed to be Mr. Taylor driving a Chevrolet Silverado truck going southbound on 1300 West near 6900 South. Sgt. Robertson got behind Mr. Taylor's truck and Mr. Taylor accelerated away at a high rate of speed. Sgt. Robertson pursued him.

GPS tracking data, later recovered and analyzed by OICI protocol investigators, showed Mr. Taylor driving through residential neighborhoods at very high speeds, often between seventy and eighty miles per hour, and reaching a top speed of one hundred, two point nine miles per hour. Mr. Taylor drove through a lowered TRAX light rail crossing guard arm, sending the arm across the railroad tracks.

Mr. Taylor crashed his truck into a fence of a home at 8880 South, 1095 West. Mr. Taylor ran from the truck and through a neighborhood. WJPD officers arrived and saw Mr. Taylor running with a gun. Mr. Taylor ran to a fence and turned and ran back the way he came.

As Mr. Taylor ran southbound, still holding a gun, WJPD Officers Jones, Jenkins and Hoffman arrived in the area. Officer Jones broadcast on his police radio: "he's got a gun, 10-88<sup>9</sup>, he's running." Several officers shouted at Mr. Taylor: "Stop! Drop the gun! Do it now!" Mr. Taylor continued to run at Officers Jones and Jenkins. As Mr. Taylor approached Officer Jenkins without slowing down or dropping the gun in his hand, Officer Jenkins fired three rounds at Mr. Taylor, hitting him once in the chest. Mr. Taylor went down. Several officers ran to Mr. Taylor and provided first aid. Medical personnel arrived and transported Mr. Taylor to the hospital where he died from the gunshot wound.

### ***WJPD Officer Jones***

OICI protocol investigators interviewed WJPD Officer Rye Jones. Officer Jones said he was on duty on November 2, 2016 and responded to the scene where Mr. Taylor's truck crashed. Officer Jones said he heard police radio dispatchers inform officers that the credit union had been robbed at gunpoint. Officer Jones said he heard that the credit union placed a GPS tracker in the money given to the robber. Officer Jones said he heard that officers were pursuing the suspect vehicle on 1300 West in the area of 7000 South.

Officer Jones said he arrived in the area of 8200 South and 1300 West and saw officers stopped in the area. Officer Jones said he was told that the suspect was driving southbound on 1300 West. Officer Jones said he lost visual contact of the suspect in a neighborhood, but he saw some citizens pointing towards the direction the suspect fled.

Officer Jones said he heard the dispatchers providing updated suspect locations from the GPS data and heard officers on the radio who were following the suspect. Officer Jones said he ended up on 1095 West and eventually got behind the suspect vehicle. Officer Jones said he followed the suspect and saw the suspect crash into a fence in the neighborhood.

Officer Jones said he saw the suspect get out of the crashed vehicle. Officer Jones said he saw a gun in suspect's hand. Officer Jones said he got out of his own car and yelled at the suspect to drop the gun. Officer Jones said the suspect did not drop the gun but instead continued to run.

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<sup>9</sup> "10-88" is police radio code for "man with a gun."

Officer Jones said he saw the suspect run down the road on 8870 South and saw other officers arrive in the area. Officer Jones said he saw WJPD Officer Jenkins pull up in the area and get out of his police vehicle. Officer Jones said he saw the suspect run towards him and Officer Jenkins. Officer Jones said he saw that suspect was still holding the gun.

Officer Jones said he attempted to acquire a shooting position because the suspect refused to stop. Officer Jones said as he did this, he saw Officer Jenkins shoot two to three shots at the suspect. Officer Jones said he went over to the suspect who was down and began first aid on the suspect.

### ***WJPD Officer Hoffman***

OICI protocol investigators interviewed WJPD Officer Don Hoffman. Officer Hoffman said he was on duty on November 2, 2016. Officer Hoffman said that he heard police radio dispatchers broadcast an armed robbery call at the credit union and heard dispatchers relaying the suspect's location based on GPS data. Officer Hoffman said he went to 7600 South and 1300 West to deploy spikes to disable the suspect's vehicle. Officer Hoffman said he couldn't get to the intersection in time to deploy his spikes because the suspect was driving too fast.

Officer Hoffman said he saw the suspect vehicle fleeing police and followed the suspect. Officer Hoffman said the suspect drove into a residential neighborhood and he lost sight of the suspect. Officer Hoffman said eventually, the suspect crashed into a fence in the neighborhood. Officer Hoffman said that he heard someone on the police radio announce that the suspect was armed with a gun.

Officer Hoffman said he drove his police vehicle eastbound on 8870 South, parked his vehicle and got out. Officer Hoffman said he saw the suspect running towards him and other officers in the area. Officer Hoffman said he saw the suspect was armed with a gun. Officer Hoffman said he heard Officer Jenkins challenge the suspect and order the suspect to drop his gun. Officer Hoffman said he took cover behind Officer Jenkins' police truck.

Officer Hoffman said he heard two gunshots and looked up to see the suspect on the ground. Officer Hoffman said he went over to the suspect and said: "Don't go for it, don't go for it," referring to the suspect's gun which was close by. Officer Hoffman said he assisted other officers with first aid for the suspect until medical personnel arrived.

### ***WJPD Officer Harvie***

OICI protocol investigators interviewed WJPD Officer James Harvie. Officer Harvie said he was on duty on November 2, 2016. Officer Harvie said he heard the armed robbery call on the police radio and heard that a GPS tracker had been placed with the money given to the suspect. Officer Harvie said he heard officers responding to following the suspect's vehicle based on the GPS tracker data as relayed by dispatchers. Officer Harvie said he headed the suspect's direction hoping to deploy his spikes and stop the suspect.

Officer Harvie said he heard an officer on the radio announce that the suspect was armed with a gun. Officer Harvie said he drove to the area of 1075 West and 8925 South near where the suspect had crashed his vehicle.

Officer Harvie said he saw the suspect coming out from behind a fence in the neighborhood and run towards some officers. Officer Harvie said he saw the suspect had a gun in his hand. Officer Harvie described the gun as long and silver and said it looked “almost looked like a target pistol.” Officer Harvie said he yelled at the suspect to drop the gun, but the suspect did not.

Officer Harvie said he (Officer Harvie) did not fire his weapon at the suspect due to a crossfire situation. Officer Harvie said he saw the suspect running directly towards Officer Jones who may have been in Officer Harvie’s line of fire. Officer Harvie said he heard two shots and saw the suspect fall to the ground. Officer Harvie said he called for medical to respond to the scene.

#### ***WJPD Det. Saunders***

OICI protocol investigators interviewed WJPD Det. Doug Saunders. Det. Saunders said he was on duty on November 2, 2016. Det. Saunders said he heard dispatchers announce the armed robbery at the credit union and that a GPS tracker had been placed. Det. Saunders said he drove together with WJPD Det. Denise Vincent towards the location dispatchers were relaying from the GPS data.

Det. Saunders said he heard on the radio that the suspect crashed his vehicle in the area of 8600 South and 1200 West. Det. Saunders said he heard on the radio that the suspect ran on foot in the area of 8870 South and 1100 West. Det. Saunders said he drove north on 1075 West from 9000 South.

Det. Saunders said when he arrived in the area, he saw the suspect run into the backyard of a home on 1075 West. Det. Saunders said he saw the suspect run back to the north on 1075 West towards other police officers in the area. Det. Saunders said he heard someone yell “gun” or “drop the gun.” Det. Saunders said he heard two gunshots and saw the suspect on the ground.

#### ***WJPD Officer Jenkins***

OICI protocol investigators interviewed WJPD Officer Keith Jenkins. Officer Jenkins said he was on duty on November 2, 2016. Officer Jenkins said he heard on the police radio that an armed robbery had just occurred at the Mountain America Credit Union (“MACU.”) Officer Jenkins said he heard that the suspect was armed with a handgun at the credit union. Officer Jenkins said he heard police dispatchers giving the suspect’s location based on the GPS data they were receiving. Officer Jenkins said he drove towards the suspect’s location.

Officer Jenkins said as he was headed towards the suspect location, he saw a truck driving at a high rate of speed in the area of 7000 South and 1300 West. Officer Jenkins said he

watched as the suspect collided with and drove through lowered crossing guard arms at the UTA TRAX light rail crossing on 7000 South. Officer Jenkins said that to him, the suspect's actions seemed to convey the suspect had no regard for his life or anyone else's life.

Officer Jenkins said he followed the suspect as the suspect drove at a high rate of speed through a residential neighborhood. Officer Jenkins said he heard someone on the police radio announce that the suspect had crashed his vehicle and an officer was in a foot pursuit with the suspect. Officer Jenkins said he heard an officer announce on the radio that the suspect was armed with a gun.

Officer Jenkins said he arrived in the area and saw the suspect running towards Officer Jenkins and other officers while still armed with the suspect's handgun. Officer Jenkins said he believed that the suspect had plenty of opportunity to drop his gun but he did not. Officer Jenkins said he yelled at the suspect either "Police, stop!" or "Police, don't move!"

Officer Jenkins said he made eye contact with the suspect while the suspect continued to run at him with a gun. Officer Jenkins said that he could see that the suspect had not changed his stride while running at him and did not respond to any commands. Officer Jenkins said he saw that WJPD Det. Vincent was nearby and not wearing any body armor; Officer Jenkins said he feared that the suspect could have shot Det. Vincent. Officer Jenkins said he believed the suspect could have very quickly and very easily shot at him or anyone else.

Officer Jenkins said that if the suspect would have run past Officer Jenkins and other officers, the suspect would have placed civilian lives in immediate danger. Officer Jenkins said that after suspect refused all commands, continued to run towards the officers while still armed with a handgun in his hand, Officer Jenkins believed he needed to use deadly force to prevent the suspect from killing someone. Officer Jenkins said he shot three times at the suspect. Officer Jenkins said the suspect went down and Officer Jenkins said he took a medical bag to assist with lifesaving measures for the suspect.

#### ***Witness K.C.***

OICI protocol investigators interviewed witness K.C. K.C. said she was at home when she heard a truck collide with a fence. K.C. said she looked outside and saw a man running with a silver gun in his hand. K.C. said she saw several police officers around the man with the gun and heard officers yelling for the man to "Stop!" and "Drop the gun!" K.C. said she saw the man with the gun run towards officers. K.C. said she heard and saw an officer fire his weapon at the man running with the gun. K.C. said she was surprised that the police officers waited as long as they did to shoot the man.

OICI protocol investigators also interviewed other civilian witnesses, some of whom saw or heard some portions of the OICI. None of the witnesses interviewed contradicted any other witness accounts in any material way.

### *Physical Evidence*

OICI protocol investigators obtained and reviewed dash camera video recordings from WJPD Officer Hoffman's patrol vehicle and from WJPD Officer Harvie's patrol vehicle. Each camera captured the OICI event from a different angle, but both videos recorded Mr. Taylor running through the neighborhood. Both recordings also captured audio from the scene and officers can be heard yelling at Mr. Taylor to "Stop!" and "Drop the gun!"

OICI protocol investigators recovered three spent (empty) cartridges at the scene from Officer Jenkins' weapon. OICI protocol investigators also recovered and inspected Mr. Taylor's .22 caliber pistol. Mr. Taylor's weapon had a fully loaded magazine, but no cartridge was found in the firing chamber.

OICI protocol investigators served a search warrant on Mr. Taylor's vehicle. Investigators recovered and documented the following items inside Mr. Taylor's vehicle: marked US currency from the credit union; additional US currency from the credit union; a ski mask matching the one worn by the credit union armed robber video as recorded on credit union video surveillance recording; the credit union's GPS tracking device; and a leather holster for Mr. Taylor's .22 caliber handgun.

## **DISCUSSION**

### *Justified Use of Deadly Force*

Officer Jenkins believed he encountered a man who had recently robbed a credit union at gun point. Officer Jenkins said he observed that Mr. Taylor seemed to have little regard for his life or the lives of others, demonstrated as Mr. Taylor fled at high speeds through neighborhoods and crashed through lowered crossing guard arms at a railroad crossing. Officer Jenkins saw that Mr. Taylor disregarded numerous commands to stop and drop his weapon, and instead continued to run through a residential neighborhood. Officer Jenkins reasonably believed that he needed to act to prevent Mr. Taylor from further endangering police officers and civilians living in the neighborhood.

Given what Officer Jenkins believed about Mr. Taylor, taken together with Officer Jenkins' personal observations of Mr. Taylor's noncompliance with lawful orders and Mr. Taylor running with a gun towards and possibly past police officers, Officer Jenkins reasonably believed that Mr. Taylor presented a threat of death or seriously bodily injury to the officers and residents of the neighborhood. Officer Jenkins reasonably believed that he needed to use deadly force against Mr. Taylor to prevent Mr. Taylor from inflicting death or serious bodily harm upon others.

Also, Officer Jenkins reasonably believed deadly force was necessary against Mr. Taylor to prevent Mr. Taylor's arrest from being defeated by escape. Officer Jenkins reasonably believed that Mr. Taylor had committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury (aggravated robbery at the credit union). Also, Officer

Jenkins reasonably believed that Mr. Taylor posed a threat of death or serious bodily injury to himself and/or others if Mr. Taylor's apprehension were delayed.

### **CONCLUSION**

Officer Jenkins reasonably believed deadly force was necessary to prevent death or serious bodily injury to himself and/or others; and Officer Jenkins reasonably believed deadly force was necessary to prevent Mr. Taylor's arrest from being defeated by Mr. Taylor's escape. Accordingly, Officer Jenkins' use of deadly force was "justified" under Utah State law, and provides Officer Jenkins a legal defense to a criminal prosecution. Therefore, the District Attorney's Office declines to file criminal charges and prosecute or otherwise pursue matters against Officer Jenkins.

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,

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SIM GILL,  
Salt Lake County District Attorney