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DISTRICT ATTORNEY
SALT LAKE COUNTY
SIM GILL

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

Via hand delivery

June 28, 2012

RE: *Investigation of Officer Morgan Matthews Use of Deadly Force*
Our Case No.: 2012-1848
Your Case No.: CO12-62145
Incident Date: May 19, 2012
Incident Location: 3365 South, 900 West, Salt Lake City, Utah

Dear Sheriff Winder:

The Office of the Salt Lake County District Attorney's Office (hereinafter, "DA's Office") is required by Utah State law to perform joint investigations and independent reviews of officer involved critical incidents (hereinafter, "OICI") including police officers' use of deadly and potentially deadly force, while in the scope of their official duties. Pursuant to an agreement between the DA's Office and participating law enforcement agencies, the DA's Office has reviewed the above referenced matter. The DA's Office has determined that Officer Matthews' use of force was justified under Utah State law.

On May 19, 2012, at 3365 South, 900 West, Salt Lake City, Utah, Unified Police Department (hereinafter, "UPD") Officer Morgan Matthews fired one shot at the tire of John J. Samora's vehicle. As outlined more fully below, Officer Matthews fired his weapon because he believed Mr. Samora posed threat of death or serious bodily injury to others if Samora's apprehension was delayed and Officer Matthews' belief that deadly force was necessary to prevent the Samora's arrest from being defeated by escape was reasonable under the circumstances.

MATERIALS RELIED UPON

The following information developed during the joint investigation was among that relied upon for the independent review.

- **UPD Reports** in case no. CO 2012-62145, in which the investigation of the above referenced matter is set forth as discussed more fully below;
- **Reports of Sgt. Craig Hicken, District Attorney's Office Investigator**, in which Sgt. Hicken describes his investigative efforts and facts developed therefrom;
- **Statement of UPD Officer Morgan Mathews**, obtained by OICI protocol investigators on May 29, 2012 as set forth more fully below;
- **Statement of UPD Officer William Stone** obtained by OICI protocol investigators on May 19, 2012 as set forth more fully below;
- **Statement of UPD Officer Ryan Stocking** obtained by OICI protocol investigators on May 19, 2012 as set forth more fully below;
- **Statement of UPD Sgt. James Blanton** obtained by OICI protocol investigators on May 19, 2012 as set forth more fully below;
- **Photographs** of the OICI scene on May 19, 2012 and May 20, 2012;
- **Photographs** and forensic evidence depicting the Lincoln Town Car;
- **Surveillance videos** from Los Coyotes depicting the OICI event as more fully set forth below;
- **BOLO**¹ dated May 19, 2012 in which a Lincoln is described as carrying a parole fugitive who was armed and dangerous as more fully set forth below. See Attachment A;
- **Diagrams** of the OICI scene as set forth more fully below;
- **Salt Lake City Police Report**, Case No. 2012-86548, in which facts of Samora's May 23, 2012 arrest are set for as described in more detail below.

¹ "BOLO" is an abbreviation for "be on the lookout (for)" and refers to information sent from police dispatchers to law enforcement officers generally. In this matter, this BOLO went out in written format to officers' mobile data terminal (in -car computers) and audibly over the air.

The opinions and conclusions contained in this letter are based upon facts obtained from the joint investigation as set forth in sources referenced above among others. Should additional or different materials or facts subsequently become known, the opinions and conclusions contained herein are subject to change based upon that additional information.

UTAH STATE LAW

The following statutory provisions were among those relied upon 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;

76-2-404. 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.

FACTS

On May 18, 2012, the Metro Gang Unit Intelligence Bulletin included, among other people, John Jesse Samora as one of the “most wanted” individuals sought by law enforcement. The intelligence bulletin stated that Samora was wanted for a parole violation², a felony offense.

At 1:44 a.m. on May 19, 2012, a BOLO was issued by the Salt Lake City Police Department for a 1990 gray Lincoln automobile, Utah license plate C892JE. In the BOLO, the Lincoln was described as a fleeing suspect, last seen westbound on I-80. The BOLO included the information that the “occupants [were] armed and dangerous[;] one is a parole fugitive.” See, *BOLO* attached hereto as Attachment A. The BOLO also relayed that the suspect “stated they will take out people if stopped.” *Id.*

Shortly before 3:00 a.m., UPD Officers spotted the Lincoln in the Los Coyotes parking lot at 3365 South, 900 West, Salt Lake City, Utah. UPD Officer William Stone announced on the radio that he had found the vehicle described in the BOLO. Officer Stone saw UPD Officers Morgan Matthews and Ryan Stocking walking to the Lincoln. Officer Stone saw a male standing outside of and next to the Lincoln. Officer Stone saw the male get back in the vehicle, and saw Officers Matthews and Stocking yelling commands to the driver. Officer Stone saw Officers Matthews and Stocking striking the windows of the Lincoln in an attempt to access the driver.

Officer Stone saw the driver start the Lincoln and begin to drive off when he heard a pop. The Lincoln evaded Sgt. Blanton’s patrol car in front of the Lincoln; the Lincoln drove off at a high rate of speed and was pursued by police cars in the area.

The Lincoln was later found and an examination revealed evidence consistent with a bullet impacting the Lincoln’s driver’s side rear wheel. An examination of the OICI scene showed broken glass from the Lincoln’s windows; bullet fragments; an empty cartridge; and an impression in the front right quarter panel of a vehicle parked next to the OICI scene.

² As per Utah State law, an offender sentenced to prison may be paroled by the Utah Board of Pardons and Parole. Upon receipt of allegations that a parolee has violated terms of his or her parole, the Board may issue a warrant for the arrest of the parolee. For Samora to have been wanted for a parole violation, Samora would have (by definition) been convicted of a felony, sentenced to prison, paroled from prison and have allegedly violated the terms of his parole. If an offender is adjudged in violation of parole, the offender may be returned to incarceration at the prison.

INTERVIEWS, STATEMENTS

As identified previously, interviews and statements were taken from witnesses to the incident. Below is an outline of the information from the interviews and statements that were material to the review.

Officer Matthews

On May 29, 2012, Officer Matthews was interviewed with his attorney present by UPD Detective Rob Scott and DA's Office Investigator Sgt. Craig Hicken. Officer Matthews said he started a "secondary assignment" shift at about 12:30 a.m. on May 19, 2012 at the Los Coyotes nightclub at 3365 South, 900 West, Salt Lake City, Utah. Officer Matthews was in his duty uniform.

Officer Matthews said while he and UPD Officer Ryan Stocking were in the Los Coyotes parking lot, Officer Matthews heard another UPD unit on the radio announce the officer believed he had found a vehicle described in a recent BOLO. Officer Matthews said he was aware from the BOLO³ that the person sought was reported to be armed, that "he [wanted] to take out a cop;" Officer Matthews said he also believed the person sought "wants to go out like his ...buddy Marano⁴ [sic]." *Transcript of Interview of Officer Morgan Matthews*, p.3.

Officer Matthews said he saw a Lincoln Town Car pull into the parking lot and back into a parking stall. Officer Matthews said he heard UPD Officer William Stone call over the radio that he was behind the Lincoln and could see that the vehicle had one male occupant.

Officer Matthews said he and Officer Stocking began to walk over to the Lincoln. Officer Matthews stated he could see the Lincoln's driver watching Officer Stone's patrol car. Officers Matthews and Stocking continued to walk towards the Lincoln. As they did so, the driver got out of the Lincoln and continued to watch Officer Stone's vehicle drive in the parking lot.

Officer Matthews said the driver then noticed Officers Matthews and Stocking walking towards him. Officer Matthews said that the driver's expression conveyed alarm and the driver began running back to the Lincoln. Officer Matthews said that Officer Stocking verbally confirmed that he recognized the driver as John Samora. Officer Matthews said that he drew his firearm from his holster and continued to approach Samora.

³ Officer Matthews said he couldn't remember whether he heard the BOLO himself, but he stated he and Officer Stocking discussed the BOLO and the person sought therein.

⁴ Officer Matthews was referring to Jesus Merina, who was involved in an OICI on June 24, 2011. Merina led police officers on a high-speed pursuit during and after which he fired numerous shots at police officers. Merina was killed by police after he continued to fire at officers even after being struck by a police vehicle.

Samora got back into the Lincoln. Both officers began yelling commands to Samora to get out of the vehicle, but Samora did not comply; instead, he started the car. Officers Matthews and Stocking both began to strike the windows of the vehicle to gain access to the driver and arrest him. Officer Matthews said he was using his firearm to strike the window. After a few strikes, Officer Matthews broke the driver's side window.

Samora did not comply with any of the officers' commands. Instead, he put the Lincoln into gear and began to drive away from them. Officer Matthews said that, believing Samora to be the armed and dangerous person described in the BOLO, and a person who apparently wanted to "take out a cop," and "go out like his ... buddy Marano [*sic*]," Officer Matthews pointed his weapon down and fired at the Lincoln's driver's side rear tire. Officer Matthews said he fired "hoping to disable the vehicle" and "prevent a chase" because he feared for the safety for "not only everybody in the parking lot" but also "the general safety of everybody around." *Id.* Officer Matthews said he believed Samora was a "parole fugitive," and in firing at the tire, Officer Matthews was trying to prevent a chase that he believed would ensue. *Id.* at 16.

Officer Matthews said that when he fired at the tire, he knew the location of other people around him. Officer Matthews said he specifically knew that Officer Stocking was about forty-five degrees off line from the direction of fire when he shot. Officer Matthews also accounted for the location of Officer Stone, others in the parking lot as well as the suspect, Samora.

Officer Matthews said he believed he did not hit the tire, because he could see the tire was still inflated as Samora drove off. Officer Matthews said he remained to protect the scene while other officers gave chase. At this point, Officer Matthews discovered he was injured and bleeding.

Officer Matthews said that he was between the Lincoln and another parked vehicle in the next parking stall when he fired. Officer Matthews estimated that he was about four to five feet away from the tire when he fired. Officer Matthews said he aimed by panning his weapon, tracking with the rear tire and fired at the tire. Officer Matthews said he believed it was about ten seconds between his arrival at Samora's vehicle and when Samora drove off.

Officer Stocking

On May 19, 2012, UPD Officer Ryan Stocking was interviewed with his attorney present by Det. Scott and Sgt. Hicken. Officer Stocking said he started a "secondary assignment" shift at about 12:30 a.m. on May 19, 2012 at the Los Coyotes nightclub. Officer Stocking was in his duty uniform.

Officer Stocking said that he heard radio traffic from Officer Stone who had spotted the wanted vehicle in the parking lot. Officer Stocking said he and Officer Matthews walked towards the Lincoln. Officer Stocking said as he approached, he recognized Samora; Officer Stocking knew Samora when Officer Stocking worked at the

Salt Lake County Jail and Samora was an inmate there. Officer Stocking said he knew that Samora's criminal history included violent offenses and that Samora was an active gang member. Officer Stocking said he knew Samora was "in and out of maximum security for getting into fights with inmates fairly consistently and disobeying the rules." *Id.* at 10. Officer Stocking said that on the night of the OICI, he knew Samora had a felony warrant for his arrest.

As Officer Stocking approached Samora, he said: "John, put your hands in the air." Officer Stocking said he approached Samora with his firearm drawn. Officer Stocking said Samora was standing outside the Lincoln with the car door open. Officer Stocking said that when Samora saw Officers Stocking and Matthews, Samora "jumped in the car." *Transcript of Interview of Officer Ryan Stocking*, p.3.

Officer Stocking said he went to the Lincoln's passenger side front window, holstered his firearm, and struck the window with his baton. Officer Stocking said the window broke after two strikes. Officer Stocking said Officer Matthews was giving commands to Samora to get out of the car, but Samora was not complying. Officer Stocking said he intended to use his taser on Samora, but didn't get a chance to; Officer Stocking said Samora put the car in gear and drove out of the parking stall.

Officer Stocking said after Samora drove away, he heard radio traffic that a gun had been shot. Officer Stocking said he did not recall hearing a gunshot during the OICI. Officer Stocking put his baton away, ran to his police car and began to pursue Samora along with other police officers.

Officer Stone

On May 19, 2012, UPD Officer William Stone was interviewed by Det. Scott and Sgt. Hicken. Officer Stone said that earlier that day, he was on duty in uniform and in his patrol car when a BOLO came over the air. Officer Stone said he printed out the BOLO and listened to radio traffic about the wanted suspect. Officer Stone said he reviewed and familiarized himself with the information in the BOLO; Officer Stone said he did not know who the wanted person was.

Officer Stone said later that night, he saw a Lincoln that generally matched the description of the wanted vehicle in the BOLO. Although he lost sight of the car briefly, he found the Lincoln in the parking lot of Los Coyotes. After he confirmed the vehicle matched the description in the BOLO, he advised his sergeant over the radio that he had found the wanted vehicle.

Officer Stone said he drove into the Los Coyotes parking lot, but didn't want to interact with the suspect without other officers present. Officer Stone said he drove around the parking lot and saw Officers Matthews and Stocking walking toward the Lincoln. Officer Stone said he positioned his patrol so as not to interfere with Officers Matthews and Stocking who were close to the suspect vehicle.

Officer Stone said he stopped his patrol vehicle and got out. He said he could see the suspect outside of the Lincoln and could see Officer Stocking approaching the suspect. Officer Stone said he believed Officer Stocking had drawn his firearm. Officer Stone said he was about to draw his firearm because the BOLO said the suspect was armed and dangerous, but hesitated to draw his weapon because Office Matthews was in his line of fire.

Officer Stone said he observed the suspect get back into the Lincoln and heard Officers Matthews and Stocking commanding the suspect to get out of the car. Officer Stone said that once the suspect got back in the Lincoln, Officer Stone got back in his patrol car because Office Stone didn't "know what [the suspect was] reaching for. All I know is the information ... he's got weapons... and they're going to try and take anybody off who's .. so I'm preparing to get a gun fight" He saw the officers striking the Lincoln's windows. Officer Stone said he saw the suspect car move and heard a gunshot. Officer Stone said the suspect drove off at a high rate of speed, nearly hitting two other officers' vehicles.

Sgt. Blanton

On May 19, 2012, UPD Sgt. James Blanton was interviewed by Det. Scott and Sgt. Hicken. Sgt. Blanton said while he was working earlier that morning, he was providing back up to Officer Stone on a traffic stop when they saw a Lincoln Town Car that matched the description of a wanted vehicle described in an "ATL [Attempt to Locate⁵.]" *Transcript of Interview of Sgt. Blanton*, p.1. Sgt. Blanton said that he heard the ATL over the radio from dispatch, preceded by three beeps that dispatchers use to alert those listening that urgent radio traffic will follow. Sgt. Blanton also said that he saw the BOLO on his computer describing the suspect information. Sgt. Blanton recalled that the BOLO about Samora included the information that "he was armed," and that it "said that he would kill cops if he had to." *Id.* at 3.

Sgt. Blanton and Officer Stone discussed the Lincoln as the suspect vehicle and that the likely driver, John Samora, was "armed and dangerous fugitive number one for the Metro Gang Unit." *Id.* at 1. Sgt. Blanton and Officer Stone drove their vehicles to look for the Lincoln. Sgt. Blanton said that eventually Officer Stone notified him on the radio that Office Stone located the Lincoln in the Los Coyotes parking lot.

Sgt. Blanton said that Officers Matthews and Stocking were working at the Los Coyotes parking lot. Sgt. Blanton said he turned his vehicle around and he heard "shots fired ... he's fleeing" over the air. *Id.* Sgt. Blanton said as he turned the corner to enter the Los Coyotes parking lot, the Lincoln "was coming straight at [him] and he's just barreling fast as he can at me." *Id.*

⁵ The terms BOLO and ATL are often interchanged with each other and mean substantially the same thing.

Gang Task Force

According to a report authored by Salt Lake City Police Detective Devin Stutz, on May 23, 2012, the Safe Streets Task Force gang detectives responded to Samora's home. Detectives Ford, Riley and Stutz arrested Samora on the outstanding fugitive warrant. After being arrested, Samora made a comment to the detectives about being shot at by police.

SCENE PHOTOGRAPHS AND DIAGRAMS

As mentioned above, the incident occurred in the Los Coyotes' parking lot. Photographs taken at the OICI and subsequently confirm that Officer Matthews was within a few feet of Samora's tire when Matthews fired the shot. As shown in the photograph below, debris from the Lincoln's window and bullet fragments generally corroborate Officer Matthews' statements that he was within a few feet of the rear tire when he fired. The yellow placards shown below depict the location of bullet fragments found on the ground.



The following photograph depicts detail of the white vehicle shown above. This vehicle was parked next to the Lincoln prior to the OICI. Officer Matthews was between the Lincoln and the white vehicle shown above. As shown below, Officer Matthews backed up into the white vehicle's right front quarter panel, leaving an impression in the quarter panel.



As illustrated by the above photographs, Officer Matthews was in very close proximity to the Lincoln and in a confined area when the Lincoln sped off. The above photographs also corroborate Officer Matthews' statements that he was four to five feet away from the Lincoln's tire when he fired. The above photographs show that Officer Matthews may have been even closer when he fired.

DISCUSSION

1. Police Officer's Use of Deadly Force

As reflected in Utah Code Annotated 76-2-404, the justification for the use of deadly force by a peace officer "when effecting an arrest" requires that the officer have "probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or others if apprehension is delayed."

Case law is consistent with and adds to the factors to analyze. Among the factors to consider include "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.” *Cordova v. Aragon*, 569 F.3d 1183, 1188 (10th Cir. 2009), quoting *Weigel v. Broad*, 544 F.3d 1143, 1151-52 (10th Cir. 2008)(citation omitted).

Our standard of analysis is also governed by a principle articulated in the *Cordova* opinion: “We ... ask ‘whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Cordova*, at 1188 (citations omitted). Furthermore, “[r]easonableness ‘must be judged from the perspective of a reasonable officer on the scene,’ who is ‘often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Id.*

Thus, Officer Matthews’ use of force must be analyzed by considering whether his actions were objectively reasonable from the perspective a reasonable officer on the scene, in light of the facts and circumstances confronting him. Careful and individual consideration of the specific circumstances surrounding and causing the use of deadly force, as measured by a reasonable officer, must control the analysis of whether the use of force was reasonable and justifiable.

2. *Effecting an Arrest, Preventing a Pursuit.*

Immediately prior to and at the time of the OICI, Officer Matthews reasonably believed that the Lincoln was the vehicle described in the BOLO. Officer Matthews also reasonably believed that the person sought was reported to be armed, and that “he [wanted] to take out a cop;” Officer Matthews said he also believed the person sought “wants to go out like his ...buddy Marano [*sic*].” Officer Matthews also reasonably believed that the suspect had an arrest warrant for being a “parole fugitive,” including all the information implied by being a parole fugitive as outlined above.

All available evidence indicates that Officer Matthews did not fire prior to Samora driving off. When Samora, contrary to the officers’ commands, started to drive off, Officer Matthews pointed his weapon down and fired at the Lincoln’s driver’s side rear tire. When Officer Matthews fired, “hoping to disable the vehicle” and “prevent a chase” he did so reasonably fearing for the safety for “not only everybody in the parking lot” as well as “the general safety of everybody around.”

3. *The Use of Deadly Force was Justified*

Officer Matthews is justified in using deadly force against Samora. Immediately prior to the OICI, Officer Matthews was effecting the arrest of Samora. Samora was “actively resisting arrest [and attempted] to evade arrest by flight.” *Cordova*, at 1188. Based upon Officer Matthews’ knowledge of Samora’s history and background, Officer Matthews had “probable cause to believe [that Samora posed] a threat of death or serious bodily injury to the officer or others if apprehension [were] delayed.” *Id.*

Officer Matthews and others used several means to arrest Samora. The officers gave several verbal commands to Samora in order to take him into custody. Samora

acted contrary to the verbal commands. Officers Matthews and Stocking used impact weapons to gain access to Samora to take him into custody. Instead of complying with the officers' commands, Samora actively resisted arrest and evaded arrest by flight. Officer Matthews awareness that Samora was "armed and dangerous;" that Samora had an active parole violation warrant for his arrest; that it was believed that Samora "stated [he] will take out people if stopped;" and that Samora was on the gang's most wanted list all contributed to probable cause that if Samora's apprehension were delayed, Samora posed a threat of death or serious bodily injury to others.

OICI CONCLUSIONS

Officer Matthews was aware of Samora's criminal history, present status and threats he allegedly made. Officer Matthews had probable cause to believe that delaying Samora's apprehension would pose a threat of death or serious bodily injury to the officer or others. As such, we conclude that Officer Matthews' use of deadly force against Samora was justified under Utah Law.

Very Truly Yours,

Sim Gill,
Salt Lake County District Attorney

SG/JWH/jh

cc: Officer Morgan Matthews

CAD BOLO ENTRY: Added: 12May19 0144 By: WITHERS, LINDEE (XK2)

- add comments

{Fleeing sus }

REQUESTING AGENCY {Salt lake }

DATE AND TIME OCCURRED {05192012 }

LOCATION AND BUSINESS NAME {LAST SEEN WB I80 }

WEAPON INFORMATION { }

SUSPECT VEHICLE {GRY LINCOLN PC 1990 C892JE }

SUSPECT INFORMATION {OCCUPANTS ARMED AND DANGEROUS ONE IS A PAROLE
FUGITIVE }

DIRECTION OF TRAVEL {WB }

ADDITIONAL INFORMATION {STATED THEY WILL TAKE OUT PEOPLE IF STOPPED }