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Chief Chris Burbank
Salt Lake City Police Department
315 East 200 South, SLC
Salt Lake City, UT, 84111

Via Hand Delivery

March 7, 2012

RE: *Investigation of Officer Shane Conrad's Use of Deadly Force*
Our Case No.: 2011-1829
Incident Date: October 28, 2011
Incident Location: 210 West, 500 South, Salt Lake City, Utah

Dear Chief Burbank:

The Office of the Salt Lake County District Attorney's Office is required by Utah State law to perform joint investigations and independent reviews of officer involved critical incidents, including police officers' use of deadly and potentially deadly force, used in the scope of their official duties.

On October 28, 2011, Salt Lake City Police Officer Shane Conrad fired five rounds into a Chevrolet Impala driven by Dennzel Davis. One round struck Davis in the abdomen. Four other rounds were recovered from the vehicle. Salt Lake City Police Detectives working together with Salt Lake County District Attorney Investigators performed a joint investigation of the incident. Their findings were presented to the District Attorney's Office for review as an officer involved critical incident ("OICI"). Pursuant to that review, my office has concluded that Conrad's first shot fired into the vehicle was not justified under Utah law even when considered in the light most favorable to the office. We also concluded that the remaining four shots he fired may be justified under Utah law; however, Conrad's first shot was not justified and the purposes for firing the remaining shots cannot justify that which was not justified in its inception. The following discussion identifies the material facts from the incident that were relied upon for the review and the legal analysis and conclusions that my office reached in that review.

MATERIALS RELIED UPON

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

- **Salt Lake City Police Department Reports** Nos. 2011-184548, 2011-181865 and 2011-181444;
- **Reports of Sgt. Mark Knighton, District Attorney's Office Investigator**, in which Sgt. Knighton describes his investigative efforts and facts developed therefrom;
- **Statement of Brad Mauss**, obtained by OICI protocol investigators on October 28, 2011 as set forth more fully below;
- **Statement of Zachary James** obtained by OICI protocol investigators on October 28, 2011 as set forth more fully below;
- **Statement of Sylvain Boko** obtained by OICI protocol investigators on October 28, 2011 and a follow up statement on January 12, 2012 as set forth more fully below;
- **Statement of Ann Martin** obtained by OICI protocol investigators on October 28, 2011 as set forth more fully below;
- **Statement of Brigham Barzee** obtained by OICI protocol investigators on October 28, 2011 as set forth more fully below;
- **Statement of David Johnson** obtained by OICI protocol investigators on October 28, 2011 as set forth more fully below;
- **Statement of Wayne Howe** obtained by OICI protocol investigators on October 28, 2011;
- **Statement of Nathan Brower** obtained by OICI protocol investigators on October 28, 2011;
- **Statement of Dennzel Davis** obtained by OICI protocol investigators on October 29, 2011 as set forth more fully below;
- **Statement of William Reuter** obtained by OICI protocol investigators on November 15, 2011 as set forth more fully below;

- **Statement of Sgt. Mike Hatch** obtained by OICI protocol investigators on October 28, 2011 as set forth more fully below;
- **Statement of Det. Richard Farnsworth** obtained by OICI protocol investigators on November 2, 2011 as set forth more fully below;
- **Written Statement of Officer Shane Conrad** provided to OICI protocol investigators on November 9, 2011 as set forth more fully below;
- **Photographs** and of the scene obtained on October 28, 2011;
- **Photographs** and forensic evidence depicting the Chevrolet Impala;
- **Diagrams** of the OICI scene as set forth more fully below.
- **Interviews of Officers Richard Farnsworth and Shane Conrad during a walk-through of the scene of the incident.**

The opinions and conclusions contained in this letter are based upon facts obtained from the joint investigation as set forth in sources referenced above. Should additional or different materials or facts 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 October 28, 2011, Salt Lake City Police Detectives Shane Conrad and Richard Farnsworth were conducting an investigation concerning alleged aggravated exploitation of prostitution. They arrived at the McDonald's restaurant at 210 West, 500 South, Salt Lake City, Utah, (hereinafter, the "McDonald's") and were looking for a suspect who was involved in the investigation. Conrad and Farnsworth were using an unmarked Mazda sedan as an undercover vehicle and were dressed in plain clothes. Conrad was driving and Farnsworth was in the front passenger seat. The officers intended to arrest the suspect in connection with their investigation.

Conrad and Farnsworth identified a man, later identified as Dennzel Davis, driving a Chevrolet Impala in the McDonald's parking lot as a suspect in their investigation. They positioned their vehicle in front of and at an angle to Davis' north facing Impala in an effort to apprehend him. Conrad and Farnsworth exited their vehicle, drew their weapons, verbally identified themselves as police officers, and told Davis to exit the Impala. Farnsworth had a police badge around his neck on a lanyard on the outside of his clothing; Conrad's police badge was on his belt and probably obscured by his untucked shirt.

Instead of exiting his vehicle as the officers instructed, Davis put the Impala into reverse and quickly backed southward through the McDonald's parking lot. Conrad and Farnsworth pursued Davis on foot as he was reversing his vehicle through the parking lot.

After traveling much of the length of the parking lot in reverse, Davis' vehicle suddenly turned, causing his vehicle to be positioned perpendicular to his initial direction and stopped. As the vehicle was turning and came to a stop, Conrad and Farnsworth ran and were able to catch up to Davis' vehicle. Conrad and Farnsworth positioned themselves forward of the vehicle. From various accounts, it appeared that Davis initially began to move forward in an apparent effort to drive away, but due to Conrad's and Farnsworth's position in front of the vehicle (and perhaps their orders to stop) Davis stopped the vehicle. Farnsworth and Conrad pointed their drawn guns at Davis and ordered him to stop. Farnsworth yelled he would shoot if Davis continued to move forward toward them.

In an effort to enter and disable the vehicle, Conrad tried to open the Impala's front passenger door while giving verbal commands to Davis to stop. The door was locked. In an effort to break the passenger side window to enter the vehicle, Conrad used the muzzle of his gun and impacted the window. The weapon failed to break the window. Davis began to reverse the vehicle. In his effort to enter the vehicle, Conrad fired one round into the passenger window.

After Conrad fired the round through the passenger window, Davis continued to rapidly reverse the vehicle in a direction that had the rear of the vehicle heading toward the McDonald's building. Conrad then fired four more rounds at Davis through the front windows of the vehicle. One round hit Davis in the torso. The Impala slowed and came to a rolling stop with its rear wheels against the curb next to the McDonald's building.

Davis was taken into custody and treated for his injuries. A search of Davis revealed a small caliber handgun in his coat pocket.

INTERVIEWS, STATEMENTS

As identified previously, several 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.

Detective Conrad

Conrad declined to be interviewed immediately following the incident. However, on November 9, 2011, Conrad submitted a written statement of the incident through his attorney. On December 13, 2011, Conrad participated in a walk-through of the scene with his attorney present and answered questions posed to him.

Detective Conrad's Written Statement

The following relevant excerpts were taken from Conrad's written statement.

The suspect was in the parking lot, stopped on the west side of the drive lane adjacent to the parking stalls on the west side against the building, facing north, stopped so that he could see into the restaurant seating area through the windows. I pulled into the McDonald's parking lot from the northeast entrance, and pulled into the west side of the drive lane as well. As we pulled up, the suspect started to pull to the east side of the drive lane like he was going to go around us. Both Detective Farnsworth and I recognized him as the male we were looking for, so I positioned my car to stop him at the point. We both exited the unmarked car; Detective Farnsworth got out of the passenger side and said "Stop, Police." I got out of the driver's side and said "Stop, Police." We continued to give verbal commands to stop. I had my badge on, but it was underneath my shirt. I do not know if Detective Farnsworth had his badge out. As we

were issuing verbal commands to stop, the suspect put his car in reverse and began to back up quickly and recklessly; as the suspect started backing up, we both drew our weapons, and continuously gave commands to stop.

The suspect was going at a high rate of speed in reverse. I could hear the engine revving. He was heading towards the grassy area just south of the McDonald's building and parking lot. There were two people on the grass in fact that had to run out of the way to avoid being struck by the suspect's vehicle. The suspect eventually stopped as his driver's side rear tire went up on the concrete just in front of the grassy area. We were pursuing the suspect on foot and when the suspect stopped we were able to run up to his car, me on the passenger side and Detective Farnsworth on the driver's side. We continued to give the suspect commands to stop, identifying ourselves as police officers. The suspect put the car into drive and he started moving forward, either trying to hit us, or go around us, I'm not sure which. The suspect came very close to hitting me and I had to maneuver out of the way. Regardless, after throwing it into drive, the suspect did a sharp right turn and started to go around me towards the south parking lot entrance.

I was still on the passenger side. I don't know if the south entrance was blocked by a car or what but the suspect did not go out of the parking lot, but stopped. I realized at that point that the suspect did not care about my safety, Detective Farnsworth's safety, or the safety of anyone at the restaurant. The suspect had already almost hit two people on the grassy area when he backed up trying to get away from us, and almost hit me trying to go around me. So I decided to try and open the passenger side door to somehow disable the car, or take it out of gear, or somehow subdue the suspect or convince him to give up.

While giving verbal commands to stop, I grabbed the passenger side door handle and tried to open the door, but it was locked. So I decided to break the passenger side window to gain entrance to the vehicle. I tried to punch the window with the muzzle of my gun. I did not use the butt of the gun because I did not want it go off, and with the muzzle of the gun I could control that better, and knew that the gun would be pointed in a safe direction. I could not break the window with the muzzle of the gun however.

At that point the suspect started to back up again quickly so I started moving with the vehicle. As I'm moving with the vehicle I could see that there was no one in the passenger seat, and because I could not break the window with the muzzle of my firearm, I fired one round downward through the bottom of the passenger side window into the passenger seat. The shot was angled sharply downward so as to fire directly into the passenger

seat without danger to anyone around. My purpose for firing that shot was to gain entry into the vehicle to physically stop the suspect from escaping and possibly running over me, Detective Farnsworth, or one of the many people at the restaurant. I knew the round wasn't going to hit the suspect in the vehicle, but was instead going to go safely into the seat. I did not have time to deploy any other method for breaking the glass, and gaining entry into the vehicle through the window still seemed like the best alternative to stopping this volatile situation. The shot through the glass into the seat was my only and last option to gaining entry into the vehicle. That shot through the window into the passenger seat did shatter the glass, but did not clear the glass away. The suspect continued to go in reverse at a high rate of speed and I could no longer keep up with the vehicle. As the suspect continued to move away from me, he turned the wheel sharply to the right directly towards Detective Farnsworth who I knew was still on the driver's side of the car and now at a significant risk of being run over. This all happened very quickly, but as the suspect is turning the front wheels backing towards where I knew Detective Farnsworth was, and the back of his car moving quickly towards the restaurant and the doors on the south east side of the building, I also noticed two people starting to exit the building directly towards where the suspect was backing up. I then knew that along with Detective Farnsworth, the people exiting the restaurant were in imminent danger of being injured or killed and I knew I had to take more aggressive action. I believed the suspect was not going to stop, and believed that the suspect was either going to seriously injure a restaurant patron exiting the building, go through the restaurant wall itself and injure the people inside the building, or run over Detective Farnsworth; the suspect was moving very quickly, and I remember hearing the engine loudly, like the suspect was accelerating quickly. At this point the suspect was going too fast for me to continue to try and get in the passenger side door; to even try to attempt this at that point would have put me in danger of getting run over myself.

This all was happening in a fraction of a second. All of these thoughts were going through my mind at once. At the same time as the suspect is now backing up towards the building, the people exiting the building, and Detective Farnsworth, I quickly positioned myself in front of the passenger side of the car, with the front passenger side fender several feet away from my position. With the brick wall of the restaurant as my backstop, I began firing my weapon until the suspect came to a stop, up against the curb adjacent to the building. I was aiming at the suspect, center mass, in an attempt to stop him and his vehicle, in order to prevent a serious injury or death to Detective Farnsworth or the restaurant patrons. I believed at the time that I fired three shots at the driver.

Detective Conrad Walk-Through

Conrad walked through the scene in chronological order of events as they unfolded during the incident. He first demonstrated how he and Farnsworth blocked the drive lane on the east side of the restaurant to stop Davis' vehicle. Conrad showed how he exited his vehicle and challenged Davis at gun point. He explained that Davis' vehicle fled from them going in reverse in a southbound direction.

Conrad said he and Farnsworth chased after Davis' vehicle on foot. Conrad said that Davis started to lose control of the vehicle and the rear of the car headed in a southwest direction toward the lawn area, south of the restaurant. Conrad said that the vehicle hit the curb on an angle and the left rear tire went over the curb and was up on the sidewalk when the car stopped. Conrad said there were people on the grassy area that were in danger and who fled on foot when Davis' car turned in their direction.

When Davis' vehicle hit the curb and stopped, Conrad said that he and Farnsworth were in front of the vehicle. Conrad said that he was on the passenger side and Farnsworth was on the driver's side. Conrad said that Davis' vehicle's front wheels turned hard right and proceeded to go forward in a southerly direction in an apparent effort to exit to 500 South, but stopped.

Conrad followed the path of the vehicle and was still on the passenger side toward the front when it stopped. Conrad said that he tried to open the car door, but it was locked. Conrad demonstrated how he attempted to break the door window with his handgun to gain access; he said that the window did not break. Conrad said that the car started to move again in reverse and he felt that the situation was becoming more dangerous and he needed to gain access to stop the driver.

Conrad said that the front passenger seat was not occupied and the only occupant was the driver so he fired a shot from his handgun through the window of the front passenger side door aiming down into the passenger seat. He said he did this to break the window and gain access into the vehicle.

Conrad said that after he shot the window, Davis accelerated in reverse while turning the rear of the car in a westbound direction. He said that the front of the vehicle was swinging to the north in an arching movement. Conrad said that he was focused on the driver, but he knew that Farnsworth had been at the front of the vehicle on the driver's side in the area that the front of the vehicle was then moving toward. Conrad also said that he saw two people exit the McDonald's east exit doors into the path of the reversing vehicle. Conrad said that at this point, he believed that Farnsworth and the citizens by the east door were in danger of serious injury from the suspect vehicle. He also mentioned that he was aware that in Davis' previous maneuvers, the vehicle had lost control and had driven onto the sidewalk. Additionally, Conrad said he felt that the suspect vehicle reversing at a high speed toward the restaurant put the people inside the restaurant in danger. Conrad said that because of these concerns, he felt that he needed to use deadly force to stop the suspect.

Conrad said that he was still on the passenger side of the vehicle but toward the front. Conrad demonstrated how he was walking in a northbound direction in front of the car when he fired what he thought was 3 shots at the driver of the vehicle. Conrad said that he was mindful that he had the brick building as a backstop. Conrad said that the suspect vehicle then stopped as it came up to the curb. Conrad then explained that they took Davis into custody.

Zachary James

On October 28, 2011, District Attorney Investigator Sgt. Knighton and Salt Lake Police Detective Cordon Parks interviewed Zachary James. Mr. James said that on the day of the incident, he drove a work truck into the McDonald's east parking to get a drink. After getting his drink, Mr. James exited the McDonald's to return to his truck.

Mr. James said he as soon as he exited the McDonald's, he saw two undercover police officers tapping their guns on the windows of a black Chevrolet Impala. Mr. James said the Impala was facing southbound. Mr. James said the driver of the Impala was driving away. He said he heard the two officers yell: "Police, stop or we'll shoot!" and that he heard these commands issued several times. Mr. James said the driver of the Impala was driving erratically in the parking lot, stopping and starting several times. He used the word "leapfrogging" to describe the manner of the Impala's movements.

Detective Parks asked Mr. James whether the Impala driver could have just driven away. Mr. James said that at various points in time, an officer was in front of the Impala. Mr. James said the driver perhaps could have run over one of the officers to escape, but the driver appeared to maneuver around the officers in an effort to escape.

Mr. James said that the Impala was driving forward and an officer fired his weapon. He said the Impala then stopped and backed up. The officer then fired more shots as the Impala backed up. The Impala stopped against the sidewalk next to the restaurant.

Mr. James diagramed the events he described. Mr. James diagramed one officer who remained on the passenger side of the vehicle during the incident, and the other officer moving from the driver's side to the front of the vehicle and back to the driver's side of the vehicle.

Investigators tried to clarify Mr. James' observations when the first shot was fired. Mr. James said the Impala was moving forward "slow" as though the Impala were going to run over the officer, changed his mind, put the vehicle in reverse and "floored" it when the "shots" were fired. Mr. James believed the officer with long hair (Farnsworth) fired the first shot.

When asked whether the officers were in physical danger during the events, Mr. James said that the Impala was "leapfrogging" around the parking lot, and that the Impala could have run over the officers if he wanted to, but that the driver stopped the Impala before it hit an officer.

Mr. James also observed police officers removing a silver handgun from the coat pocket of the driver. Mr. James did not see which pocket the gun came from.

Ann Martin

On October 28, 2011, District Attorney's Office Investigator Sgt. Cortney Nelson and Salt Lake City Police Detective Michael Hardin met with and interviewed witness Ann Martin. Ms. Martin said that she was inside of the McDonald's and was opening the east side exterior door to exit the business. Ms. Martin said that as she exited she could hear a lot of yelling outside but could not hear what was being said. Ms. Martin said she saw the Impala stopped against the curb and saw a male next to the car holding a gun.

Ms. Martin said that she was scared and turned around and went back into the McDonald's. As she was turning she saw the male holding the gun break a window out of the Impala. She said that she continued back into the McDonald's and once she was back inside she heard several gunshots, possibly three or four. Ms. Martin said that at this time she called 911. Ms. Martin said that she exited the McDonald's again to see what she could see and saw a male lying in the parking lot with his hands secured behind him. She said that she saw a man running towards a car parked north of the subject vehicle and that he had a gun.

Ms. Martin said that she reentered McDonald's and saw this same man that had the gun run around the subject vehicle and remove an item from the man that was lying on the ground. She said that she thought it may have been a wallet.

Ms. Martin said she believed (but was not sure) that the Impala was facing east bound and that the man with the gun she saw standing by it would have been on the passenger side of the car. She said that the vehicle was in the same place the entire time that she saw it. Ms. Martin said that she did not know that the two men she saw with guns were police officers until later when someone told her.

Brigham Barzee

On October 28, 2011, District Attorney Investigator Sgt. Nelson and Salt Lake City Police Detective Michael Hardin interviewed witness Brigham M. Barzee. Mr. Barzee said that he was sitting in the driver's seat in his vehicle that was parked on the east side of the McDonald's. Mr. Barzee said that he was getting ready to back out of the parking stall when he observed a vehicle going north bound behind him stop blocking him from backing out. He described this vehicle as a black sedan. Mr. Barzee said that he then observed a second vehicle going southbound that the undercover officers were in and it pulled directly in front of the first vehicle and stopped right behind his car.

Mr. Barzee said at that time he observed the officers exit the second vehicle both officers had their guns out. He said that both of officers began yelling "Police, Police, get out of the car." Mr. Barzee said that the first vehicle then began to back up at a high

rate of speed through the parking lot to get away from the officers. He said that the two officers were yelling "Police, stop the car, stop the car." Mr. Barzee said that the two officers ran after the vehicle as it traveled south bound in reverse. He said that the first car was not going to be able to reverse out of the parking lot so it stopped and tried to drive away. In the diagram drawn by Mr. Barzee he drew the first car backing south bound then turning so it was backing west bound and came to stop at the south east corner of McDonald's.

Mr. Barzee said that it looked like the officers cornered the subject. He said that here was an officer on each side of the first vehicle. He said he then he heard about eight gunshots. He said that he saw the passenger side window shatter and then the car stopped backing. Mr. Barzee said that the officers removed the driver from the vehicle and placed him on the ground and handcuffed him. He said that he could not recall if there were any people in the parking lot or near the McDonald's where this took place. Mr. Barzee said at that time he did not see what else took place because he stopped watching. Mr. Barzee said that he was looking over his right shoulder as the events were unfolding.

William Reuter

On November 15, 2011, District Attorney Investigator Sgt. Knighton and Salt Lake City Police Detective Cordon Parks interviewed William Reuter in a conference room at the Sheraton Hotel, 150 West 500 South in Salt Lake City, Utah. Mr. Reuter works at the Sheraton as an engineer, and he was walking to his vehicle to go home when the incident occurred. He was east of the incident and estimated he was 40 yards away.

Mr. Reuter said he saw a black Chevrolet Impala across the street in the McDonald's parking lot. Mr. Reuter said the Impala was driving southbound through the parking lot. Mr. Reuter said there were two policemen on foot chasing the Impala trying to get the vehicle to stop. He said he didn't know they were policemen at the time. Mr. Reuter heard the men yelling "police, stop" at the vehicle. Mr. Reuter said after they shouted "police" he knew they were policemen. Mr. Reuter said he never saw badges or other identifications on the officers.

Mr. Reuter said the Impala was trying to get out of the parking lot. He said he heard "burned rubber, tires squealing." Mr. Reuter said that twice the vehicle started and stopped. The two police men were jumping in front of the vehicle with their guns drawn trying to get it to stop. When the vehicle tried to escape the third time, the police fired into the vehicle. Mr. Reuter said one officer was in front of the vehicle and the other may have been on the side.

Mr. Reuter said that when the vehicle reversed the final time, he heard shots fired. Mr. Reuter said he heard 5 shots as the vehicle backed away from the officers. He described the 5 shots being fired in rapid succession with no pauses or hesitations in between.

David Johnson

On October 28, 2011, District Attorney Investigator Sgt. Vaun Delahunty and Salt Lake City Police Detective Hopkins interviewed witness David M. Johnson in the Public Safety Building. Mr. Johnson stated that he was inside the McDonald's at approximately 4:45 p.m. getting dinner before he started work. At approximately 4:47 p.m., he exited the east side and walked north. When he got approximately 100 feet from the doors, he heard "police, stop." He saw a black Impala backing up and going forward several times trying to evade undercover officers in plain clothing flashing their badges telling the driver of the Impala to stop.

Mr. Johnson said the driver of the Impala would not stop. He said then the undercover officers pulled out their handguns. Mr. Johnson said the driver of the Impala continued to try and evade the undercover officers. One of the undercover officers on the passenger side of the Impala hit the passenger side front window with the butt of his gun. Mr. Johnson said he then heard approximately 5 shots. When the shots were fired there was an undercover officer approximately 20 feet away from the driver side of the Impala, one approximately 15 feet in front of the Impala and one an unknown distance from the passenger side. Mr. Johnson said the Impala was facing in a southeast direction.

When the first three shots were fired, the Impala was in a forward direction toward the undercover officer in front of the Impala. He stated it appeared the driver of the Impala was trying to "shoot the gap" between the undercover officer in front of the Impala and the one on the passenger side. After the first shots were fired, Mr. Johnson said there was a very slight pause and then two more shots were fired as the Impala was reversing. Mr. Johnson said the Impala came to a stop and the driver was taken into custody. Mr. Johnson said it was discovered that the driver had been shot. He said the officers immediately called for medical assistance. Mr. Johnson stated from the first shot to the last was approximately 7 seconds. He said the undercover officers had clearly identified themselves as police and their badges were visible. He said he did not know which undercover officer fired the rounds.

Sylvain Boko

On October 28, 2011, District Attorney Investigator Sgt. Knighton Salt Lake City Police Detective Cordon Parks interviewed Sylvain Boko at the Salt Lake City Police Department Public Safety Building. Mr. Boko explained that he was entering the McDonald's restaurant through the east doors when the incident occurred.

Mr. Boko stated he saw the vehicle driving south in a "fast" and "crazy" manner, and two men were running by the vehicle attempting to get it to stop. The vehicle almost made it out onto the street from the south driveway when another vehicle blocked it from leaving. The vehicle went into reverse and nearly hit Mr. Boko on the sidewalk. Mr. Boko had to jump out of the way. He stated that he believes the officers were endangered by the vehicle's driving.

Mr. Boko stated that he heard two shots and he entered the restaurant for his personal safety. He did not see the officers fire their guns. He heard the police shout "I'm going to shoot you" twice, but he did not hear them identify themselves as police

officers. Mr. Boko stated the vehicle was moving forward when the first shot was fired, and then the vehicle reversed.

Mr. Boko continued to watch the vehicle from inside the restaurant. He observed the police open the driver door of the vehicle and remove the driver. The police placed the driver in handcuffs. Mr. Boko stated that he noticed a badge around one of the officer's neck, but he did not notice the badge until after the shooting had stopped.

Sylvain Boko's Follow Up Interview

On January 12, 2012, Mr. Boko was interviewed by Sgt. Knighton for some follow up questions. Mr. Boko said that he was walking northbound on the sidewalk on the west end of the parking lot (next to the McDonald's building) when he saw the black Impala reversing quickly southbound through the parking lot. He said the Impala was weaving like it was going to lose control.

Mr. Boko said the Impala turned and traveled in an easterly direction and stopped with its rear tired on or near the east curb of the parking lot. Mr. Boko said that he did not see any people on the east grass strip of the parking lot.

Mr. Boko said that the Impala went forward in a southerly direction toward the exit onto 500 South, and both officers placed themselves in front of the Impala. Mr. Boko heard the officers challenging the driver that they would shoot him if he drove at them. Mr. Boko said about this time, a Chevy Blazer pulled into the parking lot blocking the exit. The Impala went into reverse towards the McDonald's. Mr. Boko said that the Impala was coming at him, and he started running northbound. Mr. Boko then heard the gunshots.

Sergeant Mike Hatch

On October 28, 2011, District Attorney Investigator Sgt. Knighton and Salt Lake City Police Detective Cordon Parks interviewed Sergeant Mike Hatch at the Public Safety Building. Hatch is the sergeant over the Salt Lake City Police Vice Squad and prior to the incident he was parked in his vehicle south of the McDonald's across 500 South.

Farnsworth and Conrad were parked north of the McDonald's. A black male arrived at the McDonald's driving a black Impala. Hatch stated that he thought the vehicle and suspect were the same vehicle and suspect that the Vice Squad stopped the prior evening at a hotel during the prostitution investigation. Detective Goodman was on the phone with the suspect, and she radioed Hatch that the suspect had arrived at the McDonald's. Hatch then radioed this to Farnsworth and Conrad.

Hatch said Farnsworth and Conrad entered the parking lot from the north driveway. Hatch stated that the detectives were at the north end of the parking lot when the confrontation began. The suspect vehicle reversed traveling south through the parking lot. The vehicle made a turn to the west, and then stopped with the front end of

the vehicle facing east. Hatch was delayed by traffic, and when he looked at the parking lot again he saw Farnsworth and Conrad outside confronting the suspect vehicle. Hatch entered the McDonald's parking lot through the south driveway. He observed the suspect vehicle pause for a second and then back up. As Hatch entered the parking lot, the suspect vehicle pulled forward. Hatch said the vehicle moved forward and backward several times.

Hatch stated that prior to the shooting, he could see the detectives shouting commands at the suspect vehicle, but he could not hear what they said because his windows were up. However, he stated that he was sure he heard the detectives say the word "police" many times. Hatch reported that Farnsworth had a police badge around his neck, but he did not notice if Conrad had a badge visible.

Farnsworth and Conrad continued to follow the vehicle with their guns drawn. Hatch saw Conrad fire into the vehicle. He said he believed that Conrad fired three shots. Hatch said Conrad and Farnsworth were standing in front of the vehicle when the shots were fired, and the vehicle was in motion. Hatch stated that he exited his vehicle and handcuffed the suspect who was not cooperating with the officers' commands.

Detective Farnsworth's Interview

On November 2, 2011, Salt Lake City Police Detective Justin Hudson interviewed Detective Farnsworth. Farnsworth stated that he was at the McDonald's on October 28, 2011, for a Vice Squad operation. Farnsworth and Conrad positioned their undercover vehicle in the driveway north of the McDonald's. Farnsworth said the undercover vehicle did not have lights or any other identifiable options to show police involvement. Farnsworth stated he was wearing plain clothes, but that he had a badge around his neck identifying him as a police officer. Farnsworth stated he did not know if Conrad had anything on to identify himself as a police officer.

Farnsworth stated that the black Impala entered the McDonald's parking lot on the east side of the store, and that they received an update from Detectives Goodman and Mullen that the suspect had arrived. Conrad drove the undercover vehicle into the McDonald's' parking lot and turned south towards the suspect. The suspect vehicle was stopped in the middle of the parking lot facing north and Conrad stopped their vehicle directly in front of the suspect vehicle.

Farnsworth said he and Conrad exited their vehicle with guns drawn and he approached the driver side door. He pointed his gun at the suspect and yelled loudly "Police, turn your car off, show me your hands." The suspect vehicle windows were up, but Farnsworth said he did not hear any music. The suspect was still on his cell phone with Detective Goodman, so Farnsworth believed it was impossible that the music was on loud in the suspect's car.

As Farnsworth approached the suspect vehicle, the vehicle reversed quickly southbound. He estimated the vehicle's speed reached 15 or 20 MPH. Farnsworth ran after the suspect vehicle and the vehicle turned and stopped. The suspect vehicle was

now facing to the southwest. Farnsworth moved in front of the vehicle and pointed his gun at the suspect. Farnsworth believed the vehicle was going to run him over and he yelled "Stop or I'll shoot." He stated he could hear an accelerated engine noise and he feared the suspect might run him over. Farnsworth stated at this point he yelled "police" five or six times.

As he was in front of the vehicle, the vehicle began reversing again with the back of the car proceeding north. Farnsworth stated he was unsure where Conrad was at this point. Farnsworth said that he believed that the suspect may have almost run over Conrad. Farnsworth ran to keep up with the vehicle as it was backing up and he saw Conrad appear on the passenger side of the vehicle. Farnsworth heard Conrad fire two rounds at the suspect. There was a short pause and then Farnsworth heard two more rounds fired.

At this point, Farnsworth was standing close to Conrad, and he told Conrad "you got him." The vehicle stopped accelerating and coasted backwards until it was stopped against the sidewalk in front of the McDonald's. The vehicle was facing east. Farnsworth recalled that the shots were fired when the vehicle was in motion. After the shots were fired, but before the vehicle came to a stop, Conrad broke out the front passenger side window with his gun and pointed his gun at the driver.

Farnsworth told Conrad to sit down and Farnsworth opened the driver door and held the suspect at gunpoint. Farnsworth pulled the suspect out of the vehicle and he noticed the suspect had been shot. The suspect continued to resist arrest. Sergeant Hatch handcuffed the suspect with Farnsworth's handcuffs. Conrad approached the suspect and helped perform a search. Conrad located a small silver handgun in the right front sweatshirt pocket of the suspect. Farnsworth returned to the undercover vehicle to contact dispatch.

Detective Farnsworth's Walk Through

On January 4, 2012, District Attorney Investigator Sgt. Knighton met with the protocol team to perform a walk-through of the scene with Detective Farnsworth. Farnsworth demonstrated how the vehicle reversed his car southbound back through the parking lot, and illustrated how the Impala turned with the rear of the vehicle facing east with the front of the vehicle pointed in a westerly direction. Farnsworth described how he remained forward of the vehicle on the driver side as it was reversing.

After the vehicle made the turn, it began to move forward turning south toward the exit on 500 South. Farnsworth positioned himself in the front of the vehicle and ordered Davis to stop and that if he drove forward toward him that he would shoot. Farnsworth believed that Conrad was to his left and toward the front of the vehicle. Farnsworth said that the vehicle then reversed quickly in a northerly direction and turned so the back of the vehicle was headed west, towards the restaurant.

Farnsworth said that both he and Officer Conrad were in front of the Impala following the vehicle on foot. Farnsworth described that he was about 5 to 10 feet

directly in front of the vehicle on the driver side as it was going in reverse. Farnsworth demonstrated that Officer Conrad was on his left in front of the vehicle on the passenger side.

Farnsworth said that Conrad started shooting. Farnsworth remembered hearing a “pop” from a gunshot but did not see and any bullet holes appear in the vehicle. Farnsworth said that he heard second “pop” and then saw the first hole in the front windshield appear. Farnsworth said this bullet hole in the windshield was the closest to the passenger side of the car. Farnsworth then heard a third “pop” and the second bullet hole appeared in the windshield. This hole was right in line with the first but closer to the driver’s side. Farnsworth then heard a fourth “pop” and saw the third bullet hole appear in the windshield next to the second hole but closer still to the driver’s side of the car.

Farnsworth said he never saw a bullet hole in the passenger side window and did not know it had been hit with a bullet. After the shooting, Farnsworth stated he observed Conrad breaking out the glass of the front passenger side window with the butt of his gun.

At the walk-through, Sgt. Knighton asked Farnsworth why he never shot his gun at Davis, the driver. Farnsworth said that he challenged Davis when Davis started to drive forward toward him and he told Davis he would shoot him if he came forward. Farnsworth said that Davis then drove in reverse away from him and towards the restaurant. Farnsworth said that he did not feel threatened at that point and that he felt that Davis was trying to get away from both he and Conrad.

Dennzel Davis

On October 29, 2011, Salt Lake City Police Detective Hudson interviewed Dennzel Davis at the University Medical Center. Davis stated he was at the McDonald’s on October 28, 2011 to pick up a woman. He was driving north through the McDonald’s parking lot on the east side of the building when a vehicle cut him off. He had loud music on in the car and the windows were rolled up.

Davis attempted to go around the vehicle when two men got out of the car with guns in their hands. The two men began running towards his vehicle. Davis stated he did not see that the men had badges. He put his car in reverse and backed up at a high rate of speed, but then he stopped quickly because he was losing control of the vehicle and did not want to hit anyone.

Davis stated that one of the men went to the passenger side of his car and began hitting the front passenger window with his gun. Davis said he looked for an opening to drive away but the other man was standing in front of his vehicle. Davis stated he did not know the men were police officers at this point. He turned down his music and he heard one of the men yell “stop or I’ll fucking shoot.” Davis did not hear the men state that they were police officers, but at this point he assumed that they were.

Davis said both men began shooting at him and that he was hit in the stomach. He stated that both officers pulled him out of his vehicle and handcuffed him. Davis said

he informed the officers that he had a gun in his back pocket, and he told them that he had been hit by one of the rounds. Davis said he blacked out shortly after this and did not wake up until after surgery.

THE SCENE AND EXAMINATIONS THEREOF

The incident occurred in the McDonald's parking lot. A diagram of the parking lot is attached hereto as Exhibit A.

The parking lot has a driveway entrance from 200 West at the north end of the east lot. There is also a driveway entrance from 500 South into the east lot at the southeast corner of the parking lot.

Davis' black Chevy Impala LT labeled 01 on the diagram was facing east, parked out of alignment across the diagonal parking stall lines, just north of the southeast corner of the building. The back tires of the Impala were nearly touching the west curb of the east parking lot. The front tires were turned slightly to the right (or to the south.)



There were three bullet holes in the right side of the windshield and the passenger side front door window was shattered. There was glass residue inside and outside the vehicle.



Sgt. Hatch's Chevrolet Tahoe, labeled 02 in the attached diagram, was facing approximately northwest. The Tahoe was blocking travel for vehicles going from 500 South toward the north end of the east parking lot. There was a Speer 9mm Luger shell casing, labeled 03, east of the Impala and south of the Tahoe. There was an additional Speer 9mm Luger shell casing, labeled 04, southeast of the casing labeled 03. There was an additional Speer 9mm Luger shell casing, labeled 05 just south of the left front door of the Tahoe. There was an additional Speer 9mm Luger shell casing, labeled 06, just under the left rear corner of the Tahoe. There was a final Speer 9mm Luger shell casing, labeled 07 east and south of the Tahoe.

There was a bullet fragment, labeled 08 in a parking stall just north of the left rear tire of the Impala. There was a chrome and black Davis Industries brand .380 Auto pistol, labeled 11 also on the left side of the Impala trunk lid. The pistol had four "RP 380 Auto" hollow tip cartridges in the magazine; there were no rounds in the chamber.

PHYSICAL EVIDENCE

Examinations of Davis' Impala were made. Shortly after the incident occurred, Salt Lake City Police Detective Cordon Parks arrived on scene. Among other observations he made, he described Davis' Impala as it ended up after the shooting. Det. Parks said that the Impala was facing southeast. The rear right tire was contacting the sidewalk on the east side of the McDonald's building. Det. Parks said that the front tires were turned slightly to the south. He noted there were three obvious bullet holes in the windshield. The right front passenger door was open. Det. Parks observed the right front

passenger window was broken out. There were glass fragments on the ground under the window.

Inside the vehicle, Det. Parks observed what appeared to be bullet strikes in the interior. One bullet strike was on top of the center console; one was in the right side of the center console, one was in the driver's seat upright in the upper right corner; and one was in the top of the steering wheel. Det. Parks saw another hole just about in the center of the driver's seat, but could not tell if it was related to the bullets or just a small hole.





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 requires that the officer “reasonably believe” that the use of deadly force is “necessary to prevent” the threat of “death or serious bodily injury.” However, it does not require an “imminent use of unlawful force” by another that constitutes the threat of death or serious bodily injury. The analysis of the reasonableness of whether, and if so, the extent to which the officer’s belief that deadly force is necessary, turns on among other things, whether the threat of death or serious bodily injury was imminent. The more imminent the threat, the more reasonable the officer’s belief that deadly force is necessary.

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.*

In addition to the factors set forth above, the *Cordova* court opined: “we have considered ‘whether the officers’ own reckless or deliberate conduct during the seizure unreasonably created the need to use such force.” *Cordova*, quoting *Medina v. Cram*, 252 F.3d 1124, 1132(10th Cir.2001)(citation omitted).

Thus, Conrad’s 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. *Two Shootings*

According to Conrad, and largely substantiated by other witness accounts, the incident evolved and unfolded and events progressed. Davis reversed his vehicle rapidly southbound through the parking lot. Thereafter, Conrad and Farnsworth were at various distances from the vehicle as Davis maneuvered it around the parking lot. As the situation unfolded, threat levels, and those potentially in harm’s way changed. As discussed in more detail below, Conrad’s statements distinguish the reasons he fired his weapon the first time (to gain entry) from the second through fifth rounds he fired (to stop Davis). Conrad’s reasons for firing his weapon were the result of and in response to different circumstances. As such, we divide the shooting into two shootings for the purpose of analyzing whether, and if so why Conrad was justified in his use of force.

A. *Shooting to Enter*

Conrad wrote that prior to firing his first shot, Davis “put his car in reverse and began to back up quickly and recklessly...a high rate of speed in reverse.” Conrad “could hear the engine revving.” Conrad stated that Davis “was heading towards the grassy area¹ just south of the McDonald’s building and parking lot.” Conrad wrote: “There were two people on the grass in fact that had to run out of the way to avoid being struck by the suspect’s vehicle.”

¹ Officer Conrad’s description of Mr. Davis’ turn after backing through the parking lot is inconsistent with all other witness accounts. Everyone who described Mr. Davis’ first turn after backing described the Impala turning to the west, not to the east as described by Officer Conrad. If the Impala in fact turned to the west, the Impala would not have headed towards the McDonald’s, but rather away from it. The dynamic nature of the unfolding situation together with Officer Conrad’s stress and focused attention likely explains Officer Conrad’s apparent error. However, if, as the other witnesses say, Mr. Davis initially turned away from the McDonald’s rather than towards it, those citizens near the McDonald’s who apparently fled from the Impala.

As Conrad and Farnsworth approached Davis' Impala, Davis "put the car into drive and he started moving forward, either trying to hit us, or go around us, I'm not sure which. The suspect came very close to hitting me and I had to maneuver out of the way." As Davis continued to maneuver apparently to escape, Conrad stated: "I realized at that point that the suspect did not care about my safety, Detective Farnsworth's safety, or the safety of anyone at the restaurant. The suspect had already almost hit two people on the grassy area when he backed up trying to get away from us, and almost hit me trying to go around me. So I decided to try and open the passenger side door to somehow disable the car, or take it out of gear, or somehow subdue the suspect or convince him to give up."

As described in his statement, Conrad tried to open the Impala passenger door, but couldn't. Next he tried to break open the window with his handgun, but that also failed. Conrad stated: "At that point the suspect started to back up again quickly so I started moving with the vehicle. As I'm moving with the vehicle I could see that there was no one in the passenger seat, and because I could not break the window with the muzzle of my firearm, I fired one round downward through the bottom of the passenger side window into the passenger seat."

Conrad described his efforts to use care in firing the shot: "The shot was angled sharply downward so as to fire directly into the passenger seat without danger to anyone around. My purpose for firing that shot was to gain entry into the vehicle to physically stop the suspect from escaping and possibly running over me, Detective Farnsworth, or one of the many people at the restaurant. I knew the round wasn't going to hit the suspect in the vehicle, but was instead going to go safely into the seat."

B. Conrad's Shot to Enter the Vehicle was Deadly Force

As illustrated in the photograph below, two shots fired by Conrad (illustrated by dark orange and light orange colored rods in the above photographs) entered the Impala's front passenger window. One shot entered and traveled at roughly a right angle to the window with a downward trajectory. It seems likely that this round was the first round Officer Conrad fired to gain entry into the Impala.

The photograph below shows that this round did not in fact go "safely into the [passenger] seat" as Conrad ostensibly intended, but rather entered and exited the Impala's center console. The path of this bullet is illustrated by the light orange colored rod in the photograph below. The effects of several variables (angle of the muzzle, the deflection of the bullet traveling through objects such as glass, center console, movement of the vehicle, movement of Davis, etc.) could have directed the projectile into Davis' person.



The other shot fired through the Impala's front passenger window traveled in shallow, downward angle and from forward to rear, and impacted the Impala's driver's seat, as illustrated by the dark orange colored rod in the photograph. As before, the effect of the same variables could have resulted in serious bodily injury or death to Davis.

To the extent that it is less than certain which of the shots fired through the front passenger window, neither of the shots went "safely" into the passenger seat. Indeed, both rounds landed close enough to Davis that either round was "force...likely to cause death or serious bodily injury." As such, we conclude that Conrad's shot into the front passenger window, although ostensibly done to gain access to the vehicle, was the use of deadly force.

C. The Use of Deadly Force to Enter was Not Justified

Officer Conrad's own written statement sets forth his reasons for shooting. Conrad wrote that, prior to shooting the window, Davis "had already almost hit two people on the grassy area when the he backed up trying to get away from us, and almost hit me trying to go around me." Explaining his assessment of Davis' state of mind at the time, Conrad wrote that he "realized at that point that the suspect did not care about my safety, Detective Farnsworth's safety, or the safety of anyone at the restaurant."

Conrad wrote that he shot the Impala's window to "gain entry into the vehicle..." Conrad wrote that he believed he had to gain entry to the vehicle "to physically stop the suspect from escaping and possibly running over me" in addition to the risks Conrad explained.

To justifiably use deadly force to arrest Davis (“to physically stop the suspect from escaping” as Officer Conrad wrote) Conrad had to reasonably believe “that deadly force [was] necessary to prevent the arrest from being defeated by escape.” *and* Conrad had to have probable cause to believe that Davis has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury... or... 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.

We have nothing before us to provide probable cause that Davis committed a felony offense² involving the infliction or threatened infliction of death or serious bodily injury. Similarly, none of the witnesses, including Conrad, provide probable cause to believe Davis posed a threat of death or serious bodily injury if apprehension was delayed. The elements required to use deadly force to effect an arrest are not present.

Alternatively, to justifiably use deadly force against Davis, Conrad had to “reasonably believe[] that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.” *Id.* Conrad’s statements do not support a reasonable belief that Davis posed³ a threat of death or serious bodily injury to the officer or another person.”

As *Cordova* explained, our analysis considers “whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation” and as viewed by a reasonable officer under the circumstances. Thus, although Conrad ostensibly exercised care to ensure that the shot to open the Impala’s window would travel safely into the unoccupied passenger seat, something else resulted: the round traveled into and through the Impala’s center console or into the driver’s seat. Either shot, intended only to gain access to the vehicle, imperiled Davis’ safety.

As we stated above, shooting a firearm into an occupied vehicle is the “use of deadly force.” Conrad’s use of deadly force by firing a round to open the Impala’s window was not objectively reasonable under the circumstances. Accordingly, we conclude that this use of deadly force was not justified pursuant to U.C.A. 76-2-404.

² While it has been suggested that Mr. Davis was under suspicion for aggravated exploitation of a prostitute, and Officer Conrad likely knew of alleged prior violence by Mr. Davis, some claim of a prior felony offense involving the infliction or threatened infliction of death or serious bodily injury does not satisfy this element of the statute. The commission of a felony offense involving the infliction or threatened infliction of death or serious bodily injury must be circumstantially and temporally connected to the use of deadly force. To conclude otherwise would justify the use of deadly force against someone with a decades old violent felony conviction if other elements of the statute are met.

³ According to Officer Conrad, Mr. Davis “almost hit two people on the grassy area... [and] almost hit me trying to go around me...” Furthermore, Officer Conrad’s explanation for gaining entry to the vehicle included the need to “physically stop the suspect from ... possibly running me over.” As discussed herein, Officer Conrad seems to be mistaken about “almost hitting two people on the grassy area,” as it appears Mr. Davis’ first turn after reversing was to the east, not to the west.

D. Shooting to Stop

According to Conrad, Davis rapidly accelerated in reverse after the window was shot. Conrad said he could “no longer keep up with the vehicle.” Conrad wrote that as Davis was reversing, he “turned the wheel sharply to the right directly towards Detective Farnsworth who I knew was still on the driver’s side of the car and now at a significant risk of being run over.” According to Conrad, as Davis’ vehicle was reversing and turning towards Farnsworth, he stated that he “also noticed two people starting to exit the building directly towards where the suspect was backing up.”

Conrad asserted: “I then knew that along with Detective Farnsworth, the people exiting the restaurant were in imminent danger of being injured or killed and I knew I had to take more aggressive action. I believed the suspect was not going to stop, and believed that the suspect was either going to seriously injure a restaurant patron exiting the building, go through the restaurant wall itself and injure the people inside the building, or run over Detective Farnsworth...” Conrad said that to even try another attempt to open the Impala door would have put him in danger of getting run over himself.

Conrad wrote that he “quickly positioned [himself] in front of the passenger side of the car, with the front passenger side fender several feet away from [his] position.” Conrad was aware that the restaurant’s brick wall could act as a backstop. After he was positioned in front of the Impala, he fired his weapon “aiming at the suspect, center mass, in an attempt to stop him and his vehicle, in order to prevent a serious injury or death to Detective Farnsworth or the restaurant patrons.”

As distinguished from shooting to break the Impala’s window, Conrad was shooting at Davis to stop Davis and terminate the threat his actions caused to restaurant patrons and Farnsworth.

E. The Use of Deadly Force to Stop may be Justified

Among Conrad’s stated reasons for using deadly force to stop Davis was Conrad’s fear for Farnsworth’s safety as Davis rapidly backed away and turned. Farnsworth was asked where he was positioned when Conrad shot to break the Impala’s window and thereafter as the car backed away. Farnsworth stated he was always in front of the Impala. Farnsworth’s description of his position is inconsistent with Conrad’s statement that he “knew [Farnsworth] was still on the driver’s side of the car and now at a significant risk of being run over.” However, this difference in perception may be reasonably explained by considering that Conrad’s attention was very likely focused on Davis and the Impala and the gun sights of Conrad’s weapon. Given the dynamic nature of the situation, Conrad’s likely focus and awareness, and Davis’ prior actions, we cannot conclusively say that Conrad’s belief that Farnsworth was in jeopardy was unreasonable. Accordingly, while perhaps factually incorrect, Conrad’s belief that Farnsworth was in peril can be considered in our determination of justification.

No witness contradicts that the path of travel of the backing Impala could have taken the vehicle into (and perhaps breached the wall of) the restaurant. Given the Impala's apparent acceleration, and the probability that, if left unaltered, the Impala could have traveled into and perhaps through the restaurant wall, it is reasonable to conclude that deadly force was necessary to prevent Davis from causing death or serious bodily injuries to others.

As mentioned, my office has concluded that Conrad's first shot fired into the vehicle was not justified under Utah law even when considered in the light most favorable to the office. For the reasons outlined above, the remaining four shots Conrad fired may be justified under Utah law; however, Conrad's first shot was not justified and the purposes for firing the remaining shots cannot justify that which was not justified in its inception.

OICI CONCLUSIONS

Conrad stated that he intended to enter Davis' vehicle to bring the vehicle to a stop. Conrad used deadly force by firing his weapon into the Impala's passenger window. Whether or not Conrad simply intended to enter the vehicle, and Conrad's ostensible efforts to "safely" shoot into the passenger seat notwithstanding, Davis came within inches of being hit by the shot used to break the window. This is deadly force.

Conrad was not justified in using deadly force to break the window because the legal elements required for the use of deadly force were not present as discussed above.

However, once Davis rapidly reversed his vehicle in the direction of the restaurant, deadly force was necessary to prevent Davis from causing death or serious bodily injuries to others. As such, this use of force may be justified under Utah state law. Such justification does not affect our conclusion that Conrad's first shot was not justified under Utah law.

Very Truly Yours,

Sim Gill,
Salt Lake County District Attorney

SG/JWH/jh

cc: Officer Shane Conrad