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July 20, 2023

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Chief Deputy District Attorney
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35 East 500 South
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Re: OICI – SLCPD Officer Matthew Farillas re: L [REDACTED] C [REDACTED]
Date of Incident: September 4, 2020

1. My name is Eric P. Daigle, Esquire. I am an active consultant and expert in law enforcement operations. My experience focuses on officer use of force, including use of force training and investigations, supervision of use of force incidents, and investigating and reviewing deadly force incidents throughout the country.
2. Since 1989, I have been actively involved in police practices and law enforcement operations on the municipal and state level, and during my time served as military law enforcement.
 - a. From 1987 to 1995, I was assigned to the United States Army Reserves serving as a Military Police Officer. I was activated and served in Operation Desert Shield/Operation Desert Storm with the 344th Military Police Company.
 - b. From 1992 to 2002, I was a member of the Connecticut State Police, spending many years as a detective assigned to investigative units. My experience included leading investigations, processing crime scenes for the collection of forensic evidence, and preparing cases for prosecution. I am currently assigned as a reserve officer and maintain my Connecticut Police certification.
 - c. For the past 20 years, I have been a certified instructor on a wide range of law enforcement subjects and have conducted training at multiple police academies. I provide recruit and in-service law enforcement training in the areas of Laws of Arrest, Search and Seizure. Use of Force and Force Investigation, Tactical Operations and Civil Liability.
3. I have a Juris Doctor degree from Quinnipiac University School of Law. I am admitted to practice law in Connecticut State and Federal Court, Second Circuit, and the United States Supreme Court. From 2002-2010, I was a member of the Halloran & Sage, LLP law firm, practicing in the Police and Municipal Liability Group.

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4. In 2010, after eight years of litigation experience, I formed the Daigle Law Group, LLC, which specializes in Law Enforcement, Corrections and Security Management Operations Consultant services
5. As the principle of Daigle Law Group, LLC, I work as a consultant to various law enforcement agencies and serve as an expert witness in litigation matters, specializing in law enforcement pattern and practice analysis. While serving as a Police Practices Consultant to multiple departments throughout the country, I revise and develop department policies; provide daily operational legal advice; investigate and evaluate use of force and internal affairs operations; incorporate accreditation standards; and develop effective training and employment operational procedures. I currently instruct and educate law enforcement personnel, prosecutors, attorneys, and other students in the areas of use of force, shooting incident reconstruction, crime scene reconstruction, officer-involved critical incident investigations, and in-custody death investigations.
6. As an instructor, I participate in law enforcement seminars throughout the United States where I have instructed officers, commanders, agency administrators, and the attorneys representing these agencies on a number of liability and investigation-related subjects. My instruction focuses on Monell liability protection for departments, including developing effective policies, conducting effective training, and ensuring proper supervisory oversight. I have hosted and participated in seminars focusing on use of force legal standards, including investigating and reconstructing force, electronic control weapon usage, and responses to officer-involved shootings. I have served as a member of the Independent Monitoring Team for Oakland, CA and Niagara Falls, NY. I also worked as a police practices consultant for law enforcement agencies under investigation or a Consent Decree by the Department of Justice Civil Rights Litigation Section.
7. I am General Counsel for the FBI-Law Enforcement Executive Development Association (FBI-LEEDA) and a member of their instructor cadre teaching Supervisory Liability. I am the General Counsel for the National Internal Affairs Investigators Association (NIAIA) and instruct at their conference yearly on conducting force investigations. I have served as the Chairman of the IACP Legal Officer Section and currently serve on the IACP Civil Rights Committee. I have served on the Board of Directors for Americans for Effective Law Enforcement (AELE). I am also the Legal Section Chairman for the National Tactical Officers Association (NTOA) and a member of the National Association for Civilian Oversight of Law Enforcement (NACOLE), where I hold the Certified Practitioner of Oversight from NACOLE.
8. My areas of expertise in policing include but are not limited to: police use of force; pursuits; police administration; training; police operations; criminal investigations; interviews and interrogations; civil rights violations and investigations; internal/administrative investigations; criminal investigations; police discipline; citizen complaints; and police policies and procedures.
9. I have reviewed the following materials provided to date in connection with the above-referenced incident:

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- a. SLCPD General Offense Report GO# SL2020-159727
- b. WVC PD – Major Crimes – Salt Lake City Police Department OICI PowerPoint, SLCPD Case # 20-159727; WVC PD Case # 20I025285; DA Case 20-A79
- c. Officer Interviews – Audio:
 - Matthew Farillas
 - Todd Goodsell (1st and 2nd)
 - Shawn Bennett
 - Darlene Ziebarth
 - Ally Hendrix
- d. Witness Interviews – Audio
 - A [REDACTED] M [REDACTED] – follow up
 - Cassidy Hayden
 - G [REDACTED] B [REDACTED]
 - J [REDACTED] B [REDACTED]
 - M [REDACTED] C [REDACTED]
 - R [REDACTED] P [REDACTED]
 - T [REDACTED] H [REDACTED]
- e. Body Worn Camera video
 - AXON_Body_2_Video_2020-09-04_2254
 - AXON_Body_2_Video_2020-09-04_2321
 - AXON_Body_2_Video_2020-09-05_0154
 - Axon_Body_3_Video_2020-09-04_2238
 - Axon_Body_3_Video_2020-09-04_2243
 - Axon_Body_3_Video_2020-09-04_2243-2
 - Axon_Body_3_Video_2020-09-04_2244
 - Axon_Body_3_Video_2020-09-04_2244 (2)
 - Axon_Body_3_Video_2020-09-04_2248
 - Axon_Body_3_Video_2020-09-04_2249
 - Axon_Body_3_Video_2020-09-04_2249 (2)
 - Axon_Body_3_Video_2020-09-04_2251
 - Axon_Body_3_Video_2020-09-04_2251 (2)
 - Axon_Body_3_Video_2020-09-04_2252
 - Axon_Body_3_Video_2020-09-04_2323
 - Axon_Body_3_Video_2020-09-05_0005
 - Axon_Body_3_Video_2020-09-05_0012
 - Axon_Body_2_X81602238 09-05-2020 (Officer Involved Shooting)
 - Axon_Body_2_X81602238 09-05-2020 (Officer Involved Shooting (2))
 - Axon_Body_2_X81602238 09-05-2020 (Officer_Involved_Shottinh (sic))
 - Axon_Body_3 – 09/04/20 – X6030027Q
 - Axon_Body_3 – 09/04/20 – X6030417R (OIC)
 - Axon_Body_3 – 09/04/20 – X6030453E (OICI)
 - Axon_Body_3 – 09/04/20 – X6030460P (OICI-)
 - Axon_Body_3 – 09/04/20 – X6030460P (OICI-2)
 - Axon_Body_3 – 09/04/20 – X6030284R

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- Axon_Body_3 – 09/04/20 – X6030819Q
 - Axon_Body_3 – 09/04/20 – X6030041Q (OICI-white-SUV)
 - Axon_Body_2 – 09/05/20 – X81248628 (OICI 1267 W 500 S)
 - Axon_Body_2 – 09/05/20 – X81248628 (OICI 1267 W 500 S-2)
 - Axon_Body_2 – 09/05/20 – X81248628 (OICI 1267 W 500 S-3)
 - Axon_Body_2 – 09/05/20 – X81248628 (OICI 1267 W 500 S-4)
 - Axon_Body_3 – 09/05/20 – X6030990R (Outer Perimeter Watch)
 - Axon_Body_3 – 09/05/20 – X6030990R (Outer Perimeter Watch (2))
 - Axon_Body_2 – 09/05/20 – X81365520 (OICI-4)
 - Axon_Body_2 – 09/05/20 – X81248533 (Shooting)
 - Axon_Body_2 – 09/05/20 – X81248533 (Shooting (2))
- f. Surveillance Video
- 516_s_Navajo_Surveillance
 - FILE190709-073-310-071052R
- g. WVCPCD Protocol Team Reports:
- Detective Neile Hill (South Salk Lake PD)
 - Detective Kenyon Kawa (Cottonwood Heights PD)
 - Sgt. J. Orton (Granite School District PD)
 - Detective EmmieLou Hope (Utah Transit Authority)
 - Officer Sean Welsh (Utah Transit Authority – K9)
 - WVCPCD Detail Incident Report for 20I025285
- h. Search Warrants (Clothing, Equinox, Silverado, Yard)
- i. Weyherlaw emails
- j. A [REDACTED] M [REDACTED] Witness Statement dated 09/04/20
- k. S [REDACTED] M [REDACTED] Witness Statement dated 09/04/20
- l. Photographs of scene and residence
- m. SLCPD 911 Radio Calls
- SL20-159727
 - SL20-159727 (1)
 - SL20-159727 (2)
 - SL20-159727 (3)
 - SL20-159727 (4)
 - SL20-159727 (5)
 - SL20-159727 (6)
 - SL20-159727 (7)
- n. SLCPD Radio Communications SL20-159727
- o. SLCPD CAD CALL – Hardcopy Report
- p. SLCPD Related Reports
- General Offense Report GO# 2020-144066 (08/13/20)
 - CAD Call Report CP 2020-149085 (08/20/20)
 - General Offense Report GO# SL 2020-149085 (08/20/20)
 - General Offense Report GO# SL 2020-149085 (08/20/20)
 - General Offense Report GO# SL 2019-156472 (08/23/19)
 - General Offense Report GO# SL 2016-54596 (03/30/16)
 - General Offense Report GO# SL 2016-165161 (09/04/16)

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- General Offense Report GO# SL 2015-87488 (05/18/15)
 - General Offense Report GO# SL 2015-20375 (02/04/15)
 - General Offense Report GO# SL 2015-150576 (08/11/15)
 - General Offense Report GO# SL 2013-157711 (09/30/13)
 - General Offense Report GO# SL 2012-10617 (01/19/12)
 - General Offense Report GO# SL 2009-49909 (03/21/09)
 - General Offense Report GO# SL 2008-161492 (08/17/08)
- q. SLCPD Related 911 Calls
- SL20-144066 911 Call
 - SL20-144066 911 2nd caller
 - SL20-149085 911 Call
 - SL20-149085 2nd call
 - SL20-149085 911 3rd call
 - SL20-149085 911 4th call
 - SL20-149085 911 5th call
 - SL20-149085 Radio
- r. Lyon County Sheriff's Office – Deputy Report for Case 20LY00196 (01/16/20)
- s. Lyon County Sheriff's Office – Deputy Report for Case 20LY01310 (04/02/20)
- t. Bingham City Sheriff's Office – Incident # 01-2016-04480 (08/26/16)
- u. Blackfoot City Police Department Incident Report – Incident # 02-2019-02429 (04/06/17)
- v. Materials produced to Salt Lake County DA's Office on 08/19/21 – "Response from SLCPD to GRAMA Request for Crisis Intervention Team ("CIT") and Mental Health-related Training, Policies, Procedures
- w. Patrol Rosters / Training Division Rosters
- x. SLCPD Response to Request for records GRAMA; List of Lieutenants – August 30, 2021

10. Bibliography:

- Tennessee v. Garner, 471 U.S. 1 (1985) Use of Deadly Force the use of deadly force against, as in this case, an apparently unarmed, non-dangerous fleeing suspect; such force may not be used unless necessary to prevent the escape and *the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others*. Where practicable prior to discharge of the firearm, officers shall identify themselves as law enforcement officers and state their intent to shoot. (emphasis added)
- Graham v. Connor, 490 US 388 (1989), "the degree of force used in effecting an arrest, investigatory stop, or other seizure is evaluated by using an objective, reasonable police officer standard. The reasonableness of each particular use of force will be judged from the perspective of a reasonable officer on the scene, based on the facts and circumstances known to and confronting the officer at the time. In determining the appropriate level of force to be used, officers shall evaluate each situation in light of the unique facts and circumstances of each case. Those factors include, but are not limited to, the seriousness of the crime or suspected offense; the level of threat or resistance presented by the subject; the risk or apparent attempt by the subject to

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- escape; and whether the subject was posing an imminent threat to officers or others."
- Horton v. Pobjecky, et al, 883 F.3d 941 (7 Cir 2018), "Judges view facts from afar, long after the gun smoke clears, and might take months or longer to decide cases that forced police officers to make split-second decisions in life-or-death situations with limited information. We as judges have minutes, hours, days, weeks, even months to analyze, scrutinize and ponder whether an officer's actions were 'reasonable,' whereas an officer in the line of duty all too frequently has only that split-second to make the crucial decision. The events here unfolded in heart-pounding real time, with lives on the line. (The Officer) lacked our luxury of pausing, rewinding, and playing the videos over and over."
 - Estate of Corey Hill v. Miracle, 2017 WL 1228553 (6th Cir. Decided April 4, 2017), "Where a situation does not fit within the *Graham* test because the person in question has not committed a crime, is not resisting arrest, and is not directly threatening the officer, the court should ask: (1) Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others; (2) Was some degree of force reasonably necessary to ameliorate the immediate threat; (3) Was the force used more than reasonably necessary under the circumstances (i.e., was it excessive)"
 - Salt Lake City Police Department Policies and Procedures:
 - Policy 300, Use of Force
 - Policy 304, Officer-involved Shooting and Deaths
 - Policy 409, Civil Commitments

INTRODUCTION

11. This report is based on the materials provided to date. I recognize that there may be additional documentation as the case progresses. If supplementary material is produced, I shall be prepared to supplement this report.
12. The below listed opinions were formulated based on my experience, training, and knowledge of police practices, as well as my continued research and national work with law enforcement. In addition, these opinions are based on my education in the law enforcement field; and the standard of care recognized by law enforcement organizations and officials throughout the United States as the custom and practice for the administration, management, and supervision of police agencies and personnel. Furthermore, the opinions are based on my knowledge of law enforcement training and my knowledge of the written standards and materials generally available for training and guiding law enforcement officers in their everyday assignments. The opinion provided below is an analysis of the officer-involved shooting incident that occurred on September 4, 2020, at or near 517 S. Navajo Street, Salt Lake City, involving Officer Matthew Farillas, utilizing the standard of what other law enforcement agencies and well-trained law enforcement officers would do in situations similar to the facts present in this case.
13. There is a large body of knowledge and literature regarding the practices and standards that modern, reasonably managed and administered law enforcement agencies should follow and apply to their operations. These generally accepted practices have developed over time to encourage and assist law enforcement agencies to deliver law enforcement services to

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communities that are professional, reasonable, effective, and constitutionally and legally sound. These generally accepted practices are in response to reported cases of police misconduct and liability, and a desire by law enforcement to create a system to ensure that police conduct remains within acceptable legal and constitutional bounds. I am familiar with this body of knowledge and, through my continuous training and audits, assist law enforcement agencies in meeting the requirement to provide reasonable law enforcement response to field incidents, and for continued improvement.

14. The terminology I use in this Expert Report is not meant to encroach upon any court's authority or the jury's final determination. I use these terms in my training of law enforcement officers and law enforcement supervisors when instructing on Laws of Arrest, Search & Seizure, Use of Force, and Civil Liability. These references stem from a continued review of case law and law enforcement policies, which guide a reasonable police officer or a reasonable police supervisor in the performance of his/her duties. These terms include arrest, investigation, jurisdiction, probable cause, and reasonable suspicion.
15. Deputy District Attorney Jennifer Bailey requested that I review the records associated with this incident, including the above-listed materials, to determine if the procedures followed and actions and/or inactions taken by Officer Matthew Farillas ("Farillas"), of the Salt Lake City Police Department, during the officer-involved shooting incident that occurred on September 4, 2020, at or near 517 S. Navajo Street, Salt Lake City, were reasonable and consistent with legal and general industry standards for use of force and officer-involved shootings. Pursuant to my engagement by Deputy DA Bailey, I conducted a review and analysis of the events in the above reference matter, utilizing the materials that have been provided to us.

SUMMARY OF EVENTS:

16. Based on my review of the provided materials, I found that on September 4, 2020, G [REDACTED] B [REDACTED] ("G [REDACTED]"), mother of L [REDACTED] C [REDACTED] ("L [REDACTED]"), contacted Salt Lake City Police Department 911 Dispatch at 2210 hours and requested a CIT officer because she wanted her son to go to the hospital and was unable to get him into the hospital on her own. G [REDACTED] also told the 911 operator that L [REDACTED] had threatened to shoot one of her co-workers and also stated that L [REDACTED] had shown a coworker a BB gun, which she had just found out about. When asked if L [REDACTED] had access to a gun, G [REDACTED] responded: *"No, not that I believe."* G [REDACTED] then said, *"Well, I don't know honestly. I don't believe so, but like I told the officer from the past, he had a shootout with police in Lyon County and they did nothing. Nobody does anything. He's sick. He needs to go to the hospital."* G [REDACTED] also informed the 911 Operator that L [REDACTED] was autistic, hallucinating, and refusing to take his medication. SLCPD 911 Recording (initial call) - SL20-159727)
17. The call was dispatched over the radio to officers as follows: *"Possibly violent psych problem . . . downstairs unit. Calling for her 14-year-old son who has mental health issues. Looks like he also has an aggressive history with police. Needs help calming him down."* The initial remarks in the CAD Call Report provided: *"Downstairs Unit. Requesting CIT Officer. Son had a high speed chase with PD last week, every night Comp has to call as son is out of control."*

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He is screaming and upset because she didn't answer phone while at work, stated she would break every window in house, threatened to shoot one of Comp's employee." The dispatcher did not notify the officers that L [REDACTED] had autism. (SLCPD CAD Report – CP2020-159727; SLCPD Radio SL20-159727)

18. The CAD remarks further stated that SLCPD has had multiple interactions with L [REDACTED], but the responding officers had not been involved with those calls. The CAD remarks also provided that L [REDACTED] had a history with BB guns or facsimile of firearms and known to have weapons. (WVCPD Detail Incident Report, 20I025285, page 24; SLCPD CAD Report – CP2020-159727)
19. After the dispatcher reported over the radio: *"She's now advising that he was showing someone a BB gun or a pellet that she just really found out about,"* Officer Shawn Bennett ("Bennett") then notified officers over the radio that he believed "the juvenile" was the individual who had been involved in an incident a few weeks prior in which he took a truck from his mother and has "fake guns that he's tossed out before saying he wants to get in a shootout with police." (SLCPD Radio SL20-159727)
20. Officer Todd Goodsell ("Goodsell") was the initial responding officer to the scene, with Officer Ally Hendrix ("Hendrix") and Officer Matthew Farillas ("Farillas") also responding. G [REDACTED] had notified dispatch that she would be waiting for the officers at 1300 West/500 South in a white Ford vehicle, which dispatch provided to the responding officers. (SLCPD CAD Report – CP2020-159727; SLCPD 911 Recording (initial call) - SL20-159727; SLCPD Radio SL20-159727)
21. Upon arrival, Goodsell located G [REDACTED], who informed him that her father had been murdered on January 16 by a police officer and as a result her son reacts to the "outfits" – presumably meaning law enforcement uniforms – but stated the police were the only ones she could call. G [REDACTED] indicated she had worked that day and was on her way home. During the day, L [REDACTED] had become upset with her because she did not answer calls from him as her cell phone had been charging in her vehicle. She informed Goodsell that L [REDACTED] had a BB gun, which she had just recently learned. When Goodsell asked her if she was sure it was a BB gun, G [REDACTED] responded: *"I don't know if it's a BB gun, I don't know if it's a pellet gun, I don't know if it's a prop weapon because my other son ..."* When asked whether she knew it wasn't a real gun, G [REDACTED] stated she didn't "believe" it was a real gun but could not confirm it. Goodsell then informed her: *"So unfortunately, we have to kind of treat them all as if they are."* To which G [REDACTED] responded, *"I know."* (Goodsell BWC footage, Axon Body 2 X81248919; Transcript of Goodsell BWC footage "talking to complainant", 5:24-6:14)
22. G [REDACTED] told Goodsell that she needed L [REDACTED] to go to the hospital that evening but she couldn't get "in there on her own." She informed Goodsell that L [REDACTED] had suicidal tendencies. When asked whether L [REDACTED] had expressed hurting other people that evening, G [REDACTED] stated that he is threatened by males and made a threatening statement regarding a male coworker over the speaker on her phone: *"So you're with that man worker. I'm going to fucking shoot his ass."* (Goodsell BWC footage, Axon Body 2 X81248919; Transcript of Goodsell BWC footage "talking to complainant", 7:2-16)

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23. When Goodsell stated: *"We understand he doesn't like law enforcement. We have notes,"* G█████ responded: *"No, not at all. It's a trigger. Like, I mean, he sees the badge and he automatically thinks, like, you're going to kill him or he has to defend himself in some way. Like, he - - he freaks out."* She also stated L█████ has a "sensory disorder." (Goodsell BWC footage, Axon Body 2 X81248919; Transcript of Goodsell BWC footage "talking to complainant", 8:13-20)
24. Based on G█████'s statements to him regarding L█████, Goodsell requested that additional units respond and stage to the east. As a result, Officer Shawn Bennett ("Bennett") and Training Officer Darlene Ziebarth ("Ziebarth") were dispatched to the scene as a fourth officer to assist. (Goodsell recorded statement transcript, 5:24-6:2; Bennett recorded statement transcript, 6:17-24)
25. Farillas was present during G█████'s briefing to Goodsell. While he moved back and forth between Goodsell and another officer, he was able to listen to the briefing and heard G█████'s statements regarding the possibility that L█████ had a gun or access to one and she could not confirm whether it was real or fake. He also heard G█████ state that L█████ had threatened to shoot a male coworker, and that L█████ was "off his meds" and she wanted them to see if they could get L█████ to go to the hospital. (Farillas recorded statement transcript, 6:9-25)
26. After the officers began making their way to the residence, G█████ made an additional call to the 911 dispatcher during which she stated that the officers were already on scene, but she forgot to let them know it was best to approach at the downstairs back door, that L█████ would run if he looked out the window, and that it might be best to leave 1-3 officers outside the front door. WVCPSD Major Crime PowerPoint re: SLCPD OICI, page 11; SLCPD 911 Recording (second call) - SL20-159727)
27. The residence was a "split" apartment with an upstairs apartment and a basement apartment, where C█████ and his family lived. Goodsell and Hendrix went to knock on the door while Farillas went to the back yard. When Goodsell knocked on the door, L█████ ran out of the house into the backyard. Farillas yelled "Stop. Police," but L█████ jumped over a fence into an alley. Farillas called out over the radio that L█████ had run out of the house and the officers pursued him on foot after breaking through the fence. When Farillas joined the foot pursuit he ran by two officers and told them *"he may have a gun."* As Farillas pursued L█████ he yelled "Police. Stop" multiple times. (WVCPSD Detail Incident Report, 20I025285, page 24; Farillas BWC footage, Axon Body 2 X81252430; Farillas recorded statement transcript, 7:17-9:3)
28. Officers Bennett and Ziebarth parked their vehicle to the east on 1250 West and South of the dispatched call near a dirt alley as requested by the units already on scene. When Bennett exited his vehicle, he could hear yelling and observed flashlights to the North and West of his location. Bennett heard over the radio that officers ran south in a foot pursuit. Bennett went into the alley that exited onto the road and planned to tackle L█████ when he ran towards him. When Bennett saw L█████ run towards him, he yelled "please stop man, come on man just stop." L█████ just turned and started running westbound through the alley, with Bennett in pursuit. When Bennett was approximately 10 yards from L█████, he again yelled for him to stop. While running through the alley, Bennett observed some officers trying to get through a fence and saw L█████ turn and go northbound. Bennett called out, *"Hey, he's going*

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northbound now.” (WVCPD Detail Incident Report, 20I025285, pages 17-18; Bennett BWC footage, Axon Body 3 X6030531R; Bennett recorded interview transcript, 6:25-7:17,

29. At the corner of the alley and 1300 West, Bennett observed L█████ turn right and run North on 1300 West. Officer Farillas was approximately 10-15 yards behind L█████, and Bennett was approximately 10 yards behind Farillas. Bennett observed Farillas turn the corner after L█████ and heard Farillas yelling but could not hear what was said. (WVCPD Detail Incident Report, 20I025285, page 18; Bennett BWC footage, Axon Body 3 X6030531R; Bennett recorded interview, 21:6-21)
30. A█████ M█████ (“M█████”), who lives at 1278 West Ashley, and has the alleyway right behind his house stated when he heard the “commotion” he grabbed his flashlight and was in the backyard looking over the fence. He observed L█████ in that area near his property line stop and appear to be “searching his waistband area.” M█████ then observed L█████ run off again. M█████ heard “Stop. Hold right there. Don’t move. Stop” and L█████ ran off again. When L█████ went another 10-15 feet, M█████ observed him stop again and search his waistline again, and then M█████ heard gunshots. (M█████ recorded interview transcript, 2:24-4:10, 5:3-10)
31. In his interview, Farillas stated that as he rounded the corner to follow L█████, he “pied” the corner. Farillas had his weapon out as he rounded the corner and saw L█████ trying to hop a fence. Farillas was concerned for the safety of the residents in that area and yelled “Police, stop. Get on the ground. Get on the ground.” L█████ came off the fence with the front of his body facing directly at Farillas. As Farillas was giving L█████ commands to get on the ground, he saw L█████’s hand go to the right of his waistband. (Farillas BWC footage, Axon Body 2 X81252430; Farillas recorded interview transcript, 9:18-10:7)
32. Bennett, who also took the corner wide, saw that L█████ had stopped running and had his back to the street. Bennett was facing L█████ and L█████’s right side of his body was facing towards Bennett. Bennett saw that Farillas had his weapon drawn and was pointing it at L█████, who was approximately 10 yards from Farillas. Bennett observed L█████ turning with both hands in, or under, the waistline of his “hooded jacket” as he “hunched over.” Bennett could not tell if L█████ was reaching into the waist pocket of a jacket or into the waistline of his pants as he could not see his hands. (WVCPD Detail Incident Report, 20I025285, page 18; Bennett BWC footage, Axon Body 3 X6030531R; Bennett recorded interview transcript, 22:6-11, 23:4-16)
33. When Farillas saw L█████’s hands disappear inside his waistband, he believed L█████ had a gun and was going to kill him or someone else. It was at that time that Farilla made the decision to fire his weapon and fired eleven rounds. Once L█████ fell to the ground, Farillas stated “show me your hands” and then told Goodsell “I’m going hands”– meaning he was going to approach and handcuff L█████. Once L█████ was handcuffed, the officers on-scene immediately began to administer first aid to L█████ until the arrival of SLC Fire. Upon arrival, SLC Fire took over L█████’s medical care, and transported him to Primary Children’s Hospital.

OPINION- Use of Deadly Force by Officer Matthew Farillas

34. It is my *opinion to a reasonable degree of professional certainty* that Officer Matthew Farillas' actions, including the amount of force used, were reasonable and consistent with general industry standards for the use of deadly force and officer-involved shootings. Officer Farillas was not indifferent to the rights of L █████ C █████ ("L █████") in the manner in which he responded to the threat of serious physical injury or death posed to him by L █████. Specifically, the manner in which Officer Farillas responded to the call dispatched for L █████ C █████ as "Psychiatric Problem Violent" on September 4, 2020 complied with the Salt Lake City Police Department's policy related to the use of force, Salt Lake City Police Department training, and common use of force industry standards. Officer Farillas' actions, and the amount of force used, were reasonable considering the totality of the circumstances surrounding the incident. This opinion is based upon my specialized training, experience, background, and education, as well as my continued research, writing, training, policy development, and the auditing of law enforcement agencies throughout the United States. The evidence reviewed in preparation of this report would lead any reasonable law enforcement officer to conclude that Officer Farillas utilized his experience, proper training, and common sense during his response to L █████'s actions on September 4, 2020.
35. An excessive non-deadly use of force claim analysis requires an objectively reasonableness test, which is set forth in *Graham v. Conner*. Where an incident, however, does not fit within the *Graham* test because the individual in question has not committed a crime, is not resisting arrest, and is not directly threatening the officer, the analysis should involve the following: (1) Was the person experiencing a medical emergency that rendered him incapable of making a rational decision under circumstances that posed an immediate threat of serious harm to himself or others? (2) Was some degree of force reasonably necessary to ameliorate the immediate threat: (3) Was the force used more than reasonably necessary under the circumstance (e.g., was it excessive). In the present matter, however, although the initial call from G █████ was to request a CIT officer and for L █████ to be transported to the hospital, once officers were on scene and spoke with G █████, they learned that L █████ could be armed with a weapon and that he had threatened to harm himself and others. Accordingly, once the officers gave chase and L █████'s behavior indicated he may be armed and intended to use the weapon against the officers, Farillas' use of force would fall under a *Tennessee v. Garner* analysis.
36. At an ever-increasing rate, law enforcement officers are encountering life-threatening situations and critical incidents involving individuals who possess weapons and attack law enforcement officers and civilians. Currently, there is a substantial rise in the number of officers killed in the line of duty. At the end of 2021, data collected indicated that 502 officers were killed in the line of duty¹. Of those deaths, 62 were related to gunfire. At the end of 2022, data collected indicated that 245 officers were killed in the line of duty². All officers are trained that when they are faced with threat of serious bodily harm or death, or reasonably perceive such a threat, they are justified in responding with the use of deadly force. *Tennessee v. Garner* provides: "*deadly force may not be used unless it is necessary to prevent an escape and the officer has probable cause to believe that the suspect poses a significant threat of death*

¹ <https://www.odmp.org/search/year/2021>

² <https://www.odmp.org/search/year/2022>

or serious physical injury to the officer or others.” (Emphasis Added) Clearly established law dictates that where the threat of serious bodily harm or death is perceived to be of an imminent nature, officers may resort immediately to the use of deadly force.

37. Deadly force encounters are often very brief, violent, and lethal, and they demand a police officer’s utmost level of response, decision-making skills, and performance. Deadly force incidents involve a complex mix of human factors and dynamics. As stated above, deadly force encounters are judged from the perspective of a reasonable officer on the scene, based on the facts and circumstances known to and confronting the officer at that time. Such deadly force encounters must not be judged using the “20/20 vision of hindsight.” The evidence in this case indicates that Officer Farillas’ perception of the events, his action and reaction to that perception, the timing related to the processing of information and motor programs, were reasonable and necessary, and within established law enforcement use of force training.
38. Courts recognize the dangerous and confusing nature of the circumstances surrounding these potentially deadly encounters, where officers have mere fractions of seconds to make decisions. Courts find this to be the case even where they are able to view a recording of the incident, with the ability to press pause, rewind and play the recording over and over. In *Horton v. Pobjecky, et al.*,³ the United States Court of Appeals for the Seventh Circuit, evaluated an excessive force case where an officer used deadly force. The court noted:

“Judges view facts from afar, long after the gun smoke clears, and might take months or longer to decide cases that forced police officers to make split-second decisions in life-or-death situations with limited information. We as judges have minutes, hours, days, weeks, even months to analyze, scrutinize and ponder whether an officer’s actions were ‘reasonable,’ whereas an officer in the line of duty all too frequently has only that split-second to make the crucial decision. The events here unfolded in heart-pounding real time, with lives on the line. (The Officer) lacked our luxury of pausing, rewinding, and playing the videos over and over.”

39. It is well known in law enforcement that officers are not required to attempt lesser use of force alternatives, or to exhaust other means, before resorting to deadly force in order to comply with the generally accepted practices or legal mandates governing the use of force. When Officer Farillas ran after L █████ on foot, he was aware that L █████ might potentially be in possession of a weapon, as his mother was unable to dispute that possibility when the dispatcher asked her if he had a weapon and when the officers first spoke to her on scene. In fact, while running by other officers during the foot pursuit Farillas yelled “he may have a gun.” When Farillas came upon L █████ attempting to climb over the fence, he became concerned that L █████ would attempt to enter a neighbor’s house and believed that if he got into the house, he could shoot the occupants, or it would turn into a hostage situation. (Farillas recorded interview transcript, 9:21-24) At that time, Farillas began giving L █████ repeated commands of “stop” and “get on the ground.” L █████ came off the fence and faced L █████ but did not follow Farillas’ verbal commands. Instead, L █████’s hands went down to the right waistband and out of Farillas’ sight. Farillas stated that when he observed these actions he stated: “*I’m thinking he has a*

³ 883 F.3d 941 (7 Cir 2018)

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gun. He's going to try to kill me or someone else." (Farillas recorded interview transcript, 10:1-7) Based on these facts and circumstances, Officer Farillas believed that if he did not respond to the L [REDACTED]'s actions with the use of deadly force he may be killed or seriously injured in the incident. To stop the threat against himself, Officer Farillas fired his weapon at L [REDACTED].

40. The basic concept of deadly force training is well established in law enforcement, which simply provides: "action" generally beats "reaction." Law enforcement officers are trained that deadly force is justified in circumstances where they are in imminent danger of serious bodily harm or death. As stated above, Officer Farillas was reasonable in his use of deadly force in that he believed that L [REDACTED] may be armed with a firearm, that he refused to follow Farillas' commands to get on the ground, and that he moved his hands down to the right and into his waistband.
41. Officer Farillas was faced with a split-second decision in this rapidly evolving, tense, and uncertain event, which left him with no choice but to respond with the use of deadly force. As discussed in more detail above, deadly force encounters are judged from the perspective of a reasonable officer on the scene, based on the facts and circumstances known to and confronting the officer at that time. Officer Farillas feared for his personal safety and reasonably perceived that L [REDACTED] intended to seriously injure or kill him or someone else that day. Under these circumstances, any reasonable and well-trained officer would recognize the need to respond to the threat with deadly force until the threat is reasonably perceived to have ended.
42. The threat analysis includes a review of the subject's intent, opportunity, and ability, based on the officers' perception of the totality of the circumstances, as it unfolded. It was clear from the evidence reviewed that L [REDACTED] presented a perceived threat to Officer Farillas in that the officer believed L [REDACTED] may have a weapon in his possession and therefore had the ability and opportunity to harm him. L [REDACTED] continued to move his hands in and around his waistband area, and refused to get on the ground, as instructed by Farillas. By failing to obey Officer Farillas commands and continuing to move his hands in and around his waistband, L [REDACTED] indicated a perceived intent to harm Officer Farillas. Mr. M [REDACTED] stated during his interview that L [REDACTED] was near his property line when he first saw him stop. He shined his flashlight on L [REDACTED] and observed him "searching his waistband area." Mr. M [REDACTED] heard officers yelling, "Stop. Hold right there. Don't move. Stop" and L [REDACTED] took off running again. He saw L [REDACTED] move another 15-20 feet towards the next property line and then stop again, and he observed him "messaging around with his waistband." He s stated that when he would stop, it appeared L [REDACTED] was "reaching for something" or "trying to get rid of something." (M [REDACTED] recorded follow-up statement transcript dated 09/04/2020, 2:24-7:15) Bennett also stated that he observed L [REDACTED] "hunched over" with his hands near the pocket area of a hoodie. He didn't know if L [REDACTED] was reaching for something in his hoodie pocket or if he had something in his waistband, but he was unable to see L [REDACTED]'s hands as they were covered or they were in the jacket. (Bennett recorded interview transcript, 23:24-25:3) Goodsell stated during his interview that the "notes" (CAD remarks) provided to them indicated L [REDACTED] "was known to carry a gun." (15:24-16:1) During the initial briefing from G [REDACTED], which Farillas overheard, G [REDACTED] was unable to confirm that the "gun" L [REDACTED] supposedly had was indeed a "BB gun." As such, without that confirmation, the officers had to assume he might possibly be armed with a real gun. Accordingly, given all these factual circumstances, it is reasonable for

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Officer Farillas to perceive that L [REDACTED] had the opportunity, ability, and intent to cause him or others serious bodily harm or death. It is important to note that the threat analysis does not required Officer Farillas' perception to be accurate, it only requires it to be reasonable. The analysis does not change, nor is the reasonableness of the perception affected, if the subject is later discovered to be unarmed.

43. The analysis of this interaction does require an evaluation of human factors applicable to Officer Farillas' response to stimuli, as well as his perceptions leading up to and during the event. Officer Farillas stated that the initial dispatch call was for a "violent psychiatric juvenile with a firearm." (Farillas recorded interview transcript, 5:15-19). The "remarks" provided electronically to the officers indicated that the complainant (G [REDACTED]) didn't believe L [REDACTED] had access to a gun, but she didn't know; that he had been involved in a prior shootout with police; and that L [REDACTED] had shown a coworker a BB gun or pellet gun. G [REDACTED] confirmed this information in Officer Farillas presence during her briefing with Officer Goodsell. Further, Bennett stated over the police radio that he believed L [REDACTED] was the juvenile who had wanted to get in a shootout with police during the vehicle pursuit incident. Farillas also heard G [REDACTED] tell Goodsell that L [REDACTED] did not like law enforcement, that it was a trigger for him, and he thinks the police are going to kill him or he has to defend himself. This information, combined with the fact that upon encountering L [REDACTED] on the sidewalk near 517 S. Navajo Street, he observed L [REDACTED] "going for his waistband" and L [REDACTED] refusing to "get on the ground" when ordered to do so, all created the perception that L [REDACTED] could be armed with a weapon. Determining the reasonableness of Officer Farillas' response must start with a discussion on priming. Research has found that:

Experience in any practical domain allows practitioners to develop patterns of key information within their realm of expertise. These patterns or mental models permit them to quickly evaluate situations and to act with less than perfect information by systematically focusing on what is important while ignoring what is not (Kelin, 2011). The police are no different (e.g. Stalans and Finn, 1995); and the classic observational studies of police are replete with references to this kind of rapid pattern assessment followed by decisive and often consequential action" (Taylor, Paul L; Dispatch Priming and the Police Decision to Use Deadly Force)

While the policing literature lacks a cohesive term for the type of decision making described above, the psychological and behavioral economics literature would call them heuristics. Daniel Kahneman (2011, 98), defines heuristics as "simple [mental] procedures that help find adequate, though often imperfect, answers to difficult questions.

44. This incident may involve a number of heuristic concepts, including the concept of "priming." "Priming" is the notion that exposure to an earlier stimulus can influence the response to later stimulus (Eitam and Higgins, 2010). The information known to Officer Farillas at the time of the shooting incident, as provided in the above paragraph, show a clear example of "priming."
45. It is my *opinion to a reasonable degree of professional certainty* that Officer Farillas' use of deadly force was within the Salt Lake City Police Department's Use of Force policy and

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training and met with national use of force training standards. The Salt Lake City Police Department's Use of Force Policy 300, Section 300.5 provides: *"An officer may use deadly force to protect him/herself or others from what he/she reasonably believes would be an imminent threat of death or serious bodily injury."* As discussed in greater detail above, Officer Farillas was made aware through the Dispatcher and the CAD remarks that L■■■■ may have a gun, that he had an "aggressive history with police," that L■■■■ "had a shootout with police in Lions County," and that "he has hallucinations and has been off meds." Therefore, based on the totality of the circumstances, Officer Farillas was reasonable in his belief that deadly/lethal force was necessary to defend himself from the perceived imminent threat of death or serious bodily injury from L■■■■.

46. While our evaluation of the provided materials concluded that, based on the totality of the circumstances, Officer Farillas' use of force was reasonable and within industry standards, we must also look at whether this situation could have been avoided in the first place. Law enforcement officers face special challenges when responding to persons with mental health issues or individual who are experiencing a mental health crisis. Given the rise in the number of calls involving persons with mental health issues, officers must be provided clear policy direction and training on dealing with persons with these issues. Officers are not expected to diagnose mental or emotional conditions, but rather to recognize behaviors that may indicate that a person is experiencing these issues. Officers, however, should also not rule out other potential causes for behavior, such as the effects of alcohol or drugs, temporary emotional disturbances, or medical conditions. Agencies must ensure they equip officers with the necessary skills to interact with persons who have mental health issues or experiencing a mental crisis.
47. Officers may use certain indicators to assess whether the individual is potentially a danger to themselves, the officer, or others. These factors include, but are not limited to the following⁴:
- The availability of weapons
 - Threats of harm to self or others or statements by the person that suggest that they are prepared to commit a violent or dangerous act.
 - A personal history that reflects prior violence under similar or related circumstances.
 - The amount of self-control that the person exhibits, particularly the amount of physical control, over emotions, such as rage, anger, fright, or agitation.
 - Indications of substance abuse
 - The volatility of the environment. Agitators that may affect the person or create a particularly combustible environment or incite violence should be taken into account and mitigated. For example, the mere presence of a law enforcement vehicle, an officer in uniform, and/or a weapon may be seen as a threat to a PIC and has the potential to escalate a situation. Standard law enforcement tactics may need to be modified to accommodate the situation when responding to a PIC.
 - Aggressive behaviors such as advancing on or toward an officer, refusal to follow directions or commands combined with physical posturing, and verbal or nonverbal threats.

⁴ IACP Law Enforcement Policy Center: Responding to Persons Experiencing a Mental Health Crisis, August 2018

48. Here, the responding officers had information from L■■■■'s mother and past interactions with L■■■■ regarding his mental health struggles; and that he potentially had a weapon in his possession, had made threats against others, became agitated at the sight of police, and was threatened and/or frightened by them, and that he had a prior history of violence and issue with law enforcement officers. Responding officers, knowing this information prior to engaging with L■■■■, should have taken additional steps to accommodate the known circumstances and attempted to resolve the matter without using force. What appeared to be lacking in the Department's responses in that they should have considered the following responses:

- Ensure a Supervisor was on the scene before attempting contact with L■■■■.
- Control and contain the situation by setting up an effective perimeter before initiating contact with L■■■■.
- Request assistance from individuals with specialized training in dealing with mental illness or crisis situations (e.g., Crisis Intervention Team, Crisis Mental Health Personnel, Crisis Negotiator).
- Contact and exchange information with a treating clinician or mental health resource for assistance
- Take steps to calm the situation. Where possible, eliminate emergency lights and sirens, disperse crowds, lower radio volume, and assume a quiet non-threatening manner when approaching or conversing with the individual. Where violence or destructive acts have not occurred, avoid physical contact, and take time to assess the situation. Officers should understand that time is an ally and there is no need to rush or force the situation.
- If possible, create increased distance to provide the officer with additional time to assess the need for force options. Officers should avoid closely approaching the subject until a degree of rapport has been developed, if possible.
- Utilize environmental controls, such as cover, concealment, and barriers to help manage the volatility of situations.
- Move slowly and do not excite the individual. Provide reassurance that officers are there to help and that the individual will be provided with appropriate care.
- Have necessary non-deadly weapons available to address any threats to officers on scene.

One precipitating factor to the use of deadly force in this circumstance is the fact that the officers gave chase and pursued L■■■■, rather than containing the area and making attempts to calm the situation and provide additional time to allow them to appropriately resolve the matter. It was of significant concern that during the foot pursuit of L■■■■ by Officer Farillas he did not utilize proper tactics and officer safety training such as clearing corners and engaging L■■■■ who he reasonably believed has a gun in the open without any cover or non-deadly alternatives.

49. Law enforcement officers should be provided with guidance and training to effectively assess and respond to situations involving individuals experiencing a mental health crisis, to de-escalate the situation for all individuals involved whenever possible. Officers, however, must always be aware that their person safety when dealing with persons who

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exhibit behaviors indicating a mental health crisis. As such, once C [REDACTED] could flee his home and officers gave chase, the safety of the officers and others became a paramount concern. Industry standards allow officers to use deadly force when the officer has *“probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others.”* This standard is not negated by the fact a person is suffering from a mental health crisis. In sum, the evidence in this case clearly supports Officer Farillas’ reasonable perception that L [REDACTED] intended to cause him serious physical injury or death; that Officer Farillas’ actions and reaction to that perception was reasonable, including the timing related to the processing of the information and the underlying motor programs, all of which are established in and supported by law enforcement use of force training.

This report is signed under penalty of perjury on July 20, 2023, in Plantsville, Connecticut.



Eric P. Daigle, Esquire