



# Utah County Attorney

## Criminal Division

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November 8, 2018

Sheriff Mike Smith  
Utah County Sheriff  
3075 North Main Street  
Spanish Fork, UT 84660

Re: June 30, 2018 Officer Involved Incident

Dear Sheriff:

In 2015, the Utah Legislature enacted Utah Code Section 76-2-408, Peace officer use of force – investigations. This code section invokes particular procedures when an “officer-involved critical incident” occurs. Its subsection (1)(d) defines the term “officer-involved critical incident” (“OIS”) and its subsection (iv) includes in that definition “a fatal injury to a person resulting from the efforts of an officer attempting to prevent a person's escape from custody, make an arrest, or otherwise gain physical control of a person.”

As you know, most OISs involve the use of deadly force by an officer. Utah County law enforcement’s practice has been, pursuant to our Protocol (the “Utah County Law Enforcement Officer Involved Incident Protocol”) and state law, for the OIS investigation team to issue a report and for me to "determine if the decedent died by unlawful means" and "determine if criminal prosecution shall be instituted." Protocol Section III(A)(11)(c)(3). However, Utah Code Section 76-2-408(1)(d)(4)’s definition of an OIS does not always contemplate an action by a law enforcement officer that would invoke Utah criminal laws. In fact, 76-2-408(1)(d)(4) can trigger an OIS investigation even when no officer has used deadly force or acted in a manner to cause fatal injury.

Such is the case for the July 13, 2018 pursuit that resulted in the death of Mr. Hal Gadd. In that incident, Utah County Sheriff Deputy Jeff Wabel conducted a traffic stop on a pickup truck driven by Mr. Trevor Pitcher. As Deputy Wabel made his initial approach to talk to Mr. Pitcher, Mr. Pitcher fled. As he attempted to escape or avoid Deputy Wabel, Mr. Pitcher ran a red light and struck and killed Mr. Gadd. Mr. Pitcher’s decision to ignore a red light and drive through an active intersection resulted in Mr. Gadd’s death. While Deputy Wabel’s decision to attempt to gain physical control of Mr. Pitcher was, of course, a piece of the causal “chain” leading to Mr. Gadd’s death, it was only indirectly related to his death. Again, Mr. Gadd’s death was directly caused by Pitcher’s decisions and his decisions alone.

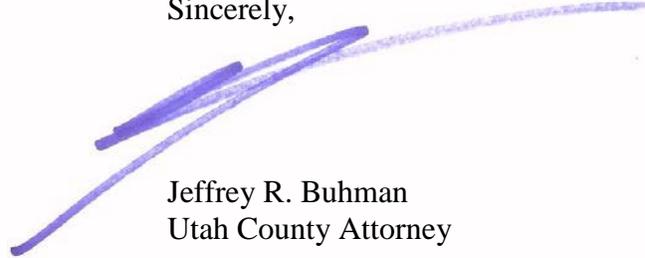
Utah Code Section 76-2-101(1)(a), Requirements of criminal conduct and criminal responsibility, states: “A person is not guilty of an offense unless the person's conduct is

prohibited by law.” In this incident, Deputy Wabel was not “prohibited by law” from attempting to gain the physical control of the driver of a vehicle fleeing a lawful traffic stop. In other words, because Deputy Wabel was within his statutory duty to conduct a traffic stop of Pitcher and did not use any means prohibited by the Utah Code, his conduct was not prohibited by law.

Accordingly, while the decedent, Mr. Gadd, “died by unlawful means,” his death was caused by Pitcher and cannot, under Utah criminal laws, reasonably be attributed to the actions of any law enforcement officer. This office, therefore, will not institute criminal proceedings against any law enforcement officer involved in the pursuit.

Please call me if you have any concerns or questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Jeffrey R. Buhman", is written over a light blue horizontal line. The signature is slanted upwards from left to right.

Jeffrey R. Buhman  
Utah County Attorney

Cc: Deputy Jeff Wabel